

REQUEST FOR QUALIFICATIONS COMPLIANCE CERTIFICATE FOR ENERGY MANAGEMENT SERVICES

Name of Local Governmental Authority:	Hopkinton Public Schools
Chief Procurement Officer or alternative official with equivalent responsibilities:	Susan Rothermich
Contact responsible for project:	Susan Rothermich
Title:	Assistant Superintendent for Finance & Operations
Email Address:	srothermich@hopkinton.k12.ma.us
Phone:	508-302-9599
Street Address:	89 Hayden Rowe St.
	Hopkinton, MA 01748

Forms attached **must** include:

INITIAL

SE	Request for Qualifications (RFQ)
SE	RFQ 2 years comprehensive energy consumption data (NA for onsite energy generation)
SE	Facility Profile – see 19.03 (1) (a)
SE	Model EMS contract

1. Provided “Notice of EMS Procurement” to Department of Energy Resources of intent to solicit proposals or qualifications for an EMS contract at least 15 Business Days prior to filing the RFQ with the Secretary of the Commonwealth for publication in the *Central Register*
2. Bid requests competitive sealed responses
3. Bid specifies the term of the contract is a maximum of twenty years
4. Bid requests DCAMM Certificates of Eligibility and Update Statements in Energy Systems
5. Bid includes time and date for receipt of responses
6. Bid includes address of the office to where responses are to be delivered
7. Bid provides a general statement of the minimum scope of building (facility) improvements
8. Bid does not have the effect of exclusively requiring a proprietary supply or service

SECTION	INITIAL
1	SR
2/3	SR
5	SR
2	SR
Cover	SR
Cover	SR
5	SR
7	SR

July 10, 2015

9. Bid includes a statement of objectives, identifying the priorities on which the proposals will be evaluated
10. Bid requires respondent to provide the cost of an investment grade audit and soft-cost mark-ups.
11. Bid identifies mandatory and non-negotiable contract terms and conditions.

Attach 4/5

<i>6</i>	<i>8K</i>
<i>7</i>	<i>8K</i>

I hereby certify that the information contained herein is, to the best of my knowledge, complete and accurate and complies with statutory and regulatory requirements.

Signature: Susan Rothermich

Date: 5/8/2025

Email: srothermich@hopkinton.k12.ma.us

Phone: 508-302-9599

For DOER use only:

Acknowledgement of receipt by
DOER

Office Signature

Title

Date

July 10, 2015



HOPKINTON PUBLIC SCHOOLS

REQUEST FOR QUALIFICATIONS ENERGY CONSERVATION PROJECTS

Submission Deadline:

June 23, 2025 at 2:00 PM EST

Accepted in-person or via USPS/overnight delivery

Submissions, questions and more information:

Susan Rothermich

Assistant Superintendent for Finance & Operations

Hopkinton Public Schools

89 Hayden Rowe Street

Hopkinton, MA 01748

srothermich@hopkinton.k12.ma.us

508-302-9599

REQUEST FOR QUALIFICATIONS

Energy Conservation Projects

The School Committee for the Hopkinton Public Schools (Awarding Authority) issues this Request for Qualifications (RFQ), pursuant to 225 CRM 19.00, from qualified energy management service companies (ESCOs) interested in implementing a comprehensive, performance-based, Energy Conservation Project¹ (Project) with guaranteed energy savings² at its buildings and facilities. The Awarding Authority intends to select and enter into an Energy Management Services Contract with the most highly qualified provider per the evaluation criteria herein.

The Awarding Authority may cancel this RFQ, or may reject in whole or in part any and all responses if the Awarding Authority determines that cancellation or rejection is in its best interest.

Projected Selection Timeline:

Notification to the DOER:	May 7, 2025
Published in Central Register:	May 28, 2025
Published in	Metrowest Daily News
RFQ available:	May 28, 2025
Mandatory Pre-bid Conference:	June 5, 2025 AT 3:00 PM
Facility Tour	June 5, 2025 AT 3:00 PM
Final Inquiry Date:	June 18, 2025
Responses Due:	June 23, 2025 at 2:00 pm
Location:	Hopkinton Public Schools Central Offices, 89 Hayden Rowe Street, Hopkinton, MA 01748
Anticipated Evaluation Complete:	June 30, 2025
Anticipated Interviews:	July 7, 2025
Anticipated Selection for Negotiations:	July 11, 2025

RFQ Contact Person: Susan Rothermich
Title: Assistant Superintendent for Finance & Operations
Email: srothermich@hopkinton.k12.ma.us
Street Address: 89 Hayden Rowe Street, Hopkinton, MA. 01748
Telephone: 508-302-9599

¹ "Energy conservation projects", projects to promote energy conservation, including but not limited to energy conserving modification to windows and doors; caulking and weather-stripping; insulation, automatic energy control systems; hot water systems; equipment required to operate variable steam, hydraulic and ventilating systems; plant and distribution system modifications, including replacement of burners, furnaces or boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; on-site electrical generation equipment using new renewable generating sources as defined in section 11F; and cogeneration systems. G.L. c. 25A, §3.

² The energy management services contract shall include a written guarantee of the qualified provider that either the amount of energy savings guaranteed shall be achieved or the qualified provider shall reimburse the public agency for the shortfall amount. Excess savings remain the property of the awarding authority. Methods for measurement and verification of energy savings shall conform to the most recent standards established by the Federal Energy Management Program of the United States Department of Energy.

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1. DEFINITIONS:

ASHRAE. The American Society of Heating, Refrigerating and Air Conditioning Engineers.

Business Day. A business day shall mean Monday through Friday, exclusive of state and federal legal holidays.

Contractor. The vendor selected by the Local Governmental Body to perform the energy management services solicited through an RFQ under 225 CMR 19.00 also known as an Energy Services Company (ESCO).

DCAM. The Division of Capital Asset Management and Maintenance, established by M.G.L. c. 7, § 4A.

DOER. The Department of Energy Resources, established by M.G.L. c. 25A, §1.

Eligible. Able to meet all requirements for offerors or bidders set forth in section 11C or 11I and section 44D of chapter 149 and not barred from bidding under section 44C of said chapter 149 or any other applicable law, and who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.

Energy Conservation. A modification of, or change in, the operation of real or personal property in a manner likely to improve the efficiency of energy use, and shall include Energy Conservation Measures and any Energy Audits to identify and specify energy and cost savings.

Energy Conservation Measures. Measures involving modifications of maintenance and operating procedures of a building or facility and installations therein, which are designed to reduce energy consumption in such building or facility, or the installation or modification of an installation in a building or facility, which is primarily intended to reduce energy consumption.

Energy Conservation Projects. Projects to promote Energy Conservation, including but not limited to energy conserving modification to windows and doors; caulking and weather stripping; insulation, automatic energy control systems; hot water systems; equipment required to operate variable steam, hydraulic and ventilating systems; plant and distribution system modifications, including replacement of burners, furnaces or boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; on-site electrical generation equipment using new renewable generating sources as defined in section 11F; and cogeneration systems.

Energy Management Services (EMS). A program of services, including Energy Audits, Energy Conservation Measures, Energy Conservation Projects or a combination thereof, and building maintenance and financing services, primarily intended to reduce the cost of energy and water in operating buildings, which may be paid for, in whole or in part, by cost savings attributable to a reduction in energy and water consumption that result from such services. The EMS contract may extend for a term not to exceed twenty years. The allowable length of the contract may also reflect the useful life of the cost savings measures.

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Energy Savings. A measured reduction in fuel and its costs, energy and its costs, water and its costs, or operating or maintenance costs resulting from the implementation of Energy Conservation Measures or Projects; provided, however, that any payback analysis to evaluate the energy savings of a geothermal energy system to provide heating, cooling or water heating over its expected lifespan shall include gas and electric consumption savings, maintenance savings and shall use an average escalation rate based on the most recent information for gas and electric rates compiled by the Energy Information Administration of the United States Department of Energy.

Established Baseline. A written description of previous fuel, energy, and water consumption data and operating and maintenance costs for the past three years, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed. The description shall be included in the RFQ.

Guarantee of Generation. The written guarantee of a Contractor warranting the particular electrical energy generation to be derived from the On-site Electrical Generation unit. Such written guarantee shall:

- (a) include a detailed description of the equipment to be installed; and
- (b) state the annual amount of electrical energy to be generated in kilowatt-hours per year.

Guarantee of Savings. The written guarantee of a Contractor, warranting the energy savings to be derived from a particular Energy Conservation Measure, Energy Conservation Project, Energy Management Services, or Energy Savings. Such written guarantee shall include a detailed description of the cost of the energy or water conservation or usage measures, all causally connected work, and ancillary improvements provided for in the contract. The guarantee shall state the annual savings expressed in applicable energy units or (if water savings) in gallons per year and be based on dollars saved by reference to established unit rates.

Guidelines. A set of clarifications, interpretations, and procedures, including forms and model documents, developed and issued by DOER to assist it in determining compliance with 225 CMR 10.00. Each Guideline shall be effective on its date of issuance or on such date as is specified therein, except as otherwise provided in 225 CMR 10.00.

Investment Grade Audit (IGA). An Energy Audit that includes a detailed evaluation of the Energy Conservation Project cost, including but not limited to the investment opportunities for Energy Conservation Measures, operations and maintenance. The IGA shall provide a return on investment that represents an optimized bundle of short-term payback Energy Conservation Measures combined with long-term payback Energy Conservation Measures to meet Local Governmental Body Energy Savings and financial goals.

Local Governmental Body. A city, town, district, regional school district or county, or an agency or authority thereof, including a housing authority, board, commission, department or instrumentality of a city, town district, regional school district or county, and any other agency that is not a state agency or building authority; or a combination of two or more such cities, towns, districts, regional school districts or counties, or agencies or authorities thereof.

Minor informalities. Minor deviations, insignificant mistakes, and matters of form rather than substance of the proposal or contract document which may be waived or corrected without prejudice to other offerors, potential offerors, or the public agency.

On-site Energy Generation. The generation of renewable energy or the cogeneration of electricity and heating or cooling of a generation unit located on or adjacent to a building or structure owned by a Local

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Governmental Body that utilizes some or all of the energy so generated either directly or indirectly through net metering, as defined in M.G.L. c. 164, §138.

Renewable Generation. The electrical energy output of an RPS Class I Renewable Generation Unit or Solar Carve-Out Renewable Generation Unit as defined under 225 CMR 14.00: *Renewable Energy Portfolio Standard – Class I*.

Request for Qualifications (RFQ). A written document issued by a Local Governmental Body that invites qualified providers to submit responses outlining their qualifications, the desire to perform the EMS for the Local Governmental Body, and other information required by 225 CMR 19.00 and the Local Governmental Body.

Responsive Offeror. A person who has submitted a proposal, which conforms in all respects to the RFQ and who possesses the skill, ability, and integrity necessary to faithfully perform the work, based upon a determination of competent workmanship and financial soundness in accordance with M.G.L. c. 149, §44D.

Update Statement. A form developed by DCAM, as defined in 810 CMR 4.01: *Definitions*, to be completed by a General Contractor and submitted with all proposals.

Person. Any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals.

Qualified provider. Responsible and eligible person able to meet all requirements set forth in section 11C or 11I, and not barred from bidding under section 44C of chapter 149 or any other applicable law and experienced in the design, implementation and installation of energy savings measures.

Responsible. Demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work required by a particular contract, based upon a determination of competent workmanship and financial soundness in accordance with section 11C or 11I and section 44D of chapter 149.

Responsive offeror. A person who has submitted a proposal which conforms in all respects to the requests for proposals.

2. SOLICITATION AND QUALIFICATION PROCESS

STAGE ONE: DCAM Contractor Certification Process

To be Eligible to respond, Contractors are advised that advance certification by Massachusetts Division of Capital Asset Management and Maintenance (DCAM) is required pursuant to M.G.L. c. 149 § 44. Certification application forms are available from DCAM Contractor Certification Office at (617) 727-9320.

STAGE TWO: Pre-Qualifications Conference and Facility Tour

A mandatory Pre-Qualification Conference and Tour of the Facility(s) will be held on June 5, 2025 at 3:00 PM at Hopkinton High School, 90 Hayden Rowe Street, Hopkinton. All prospective respondents must attend the mandatory pre-bid conference. Respondents interested in attending must confirm attendance by contacting Katie Putnam at kputnam@hopkinton.k12.ma.us. Respondents must provide the number of and the full contact information for the key person attending the pre-bid conference.

All questions and inquiries concerning this RFQ must be submitted in writing no later than June 18, 2025 to srothermich@hopkinton.k12.ma.us. Inquiries will not be answered directly. The Awarding Authority will issue

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an addendum to address the written questions and submit to all registered bid holders. It is the responsibility of the ESCO to contact srothermich@hopkinton.k12.ma.us prior to the submittal deadline to ensure that the ESCO has received all addenda issued by the Awarding Authority.

The Awarding Authority reserves the right to amend this RFQ based on questions and issues raised prior to and at the Pre-Qualification Conference.

STAGE THREE: Submission of Qualifications

Any qualified respondent who wishes to submit a statement of qualifications (“Response”) to this RFQ shall submit TWO (2) copies of the Response and one single-file electronic version. Respondents will be evaluated only on the criteria set forth in this RFQ.

STAGE FOUR: Selection of Vendor

The Awarding Authority will evaluate and rank all Responses based upon the criteria listed in this RFQ, and reserves the right to waive any minor informalities.

Following selection of the top-ranked Responses, the Awarding Authority and the ESCO will enter into an agreement for an energy audit to verify the proposed conservation strategy. Based upon the results of the energy audit, the Awarding Authority may negotiate an Energy Management Services Contract with the selected ESCO. If an acceptable contract cannot be reached, the Awarding Authority may initiate negotiations with the second ranked ESCO.

3. RFQ PROCEDURES

- A. Modification or Withdrawal of RFQ: Any response may be withdrawn or modified by written request of the ESCO, provided such request is received by the Awarding Authority at the above address prior to the due date for Responses.
- B. Cost of Response Preparation: The Awarding Authority will not reimburse ESCOs for any costs incurred in preparing Responses, including site visits or preliminary engineering analyses.
- C. Public Record: To review a copy of responses submitted to the Awarding Authority after the contract has been awarded, submit a written request in compliance with the State's Freedom of Information Act to the RFQ Contact Person identified above.

4. GENERAL INFORMATION

The Awarding Authority seeks responses from qualified providers interested in implementing a comprehensive, performance-based Energy Management Services Project³ at its facilities identified in Attachment 1: *Facility Profile*

³ “Energy management services”, a program of services, including energy audits, energy conservation measures, energy conservation projects or a combination thereof, and building maintenance and financing services, primarily intended to reduce the cost of energy and water in operating buildings, which may be paid for, in whole or in part, by cost savings attributable to a reduction in energy and water consumption which result from such services. G.L. c. 25A, §3.

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This Project will upgrade facilities and optimize utility and operating budgets through a comprehensive infrastructure renewal process. It will ensure continued and/or improved peak efficiency through proactive maintenance and service programs and training, customized for the Awarding Authority staff, buildings, and facilities. The Awarding Authority intends to leverage energy savings to fund the cost of the Project to the greatest extent possible so the cost of implementing efficiency measures is paid for in whole or in part by the energy and water savings guaranteed from the project by the chosen vendor. The Awarding Authority may consider additional improvements resulting in an overall project that ensures a comprehensive renewal of facilities.

The Project should include a comprehensive range of energy conservation measures⁴ and services including, without limitation, (a) a detailed energy audit⁵ (b) the installation or modification of new and existing equipment to reduce energy and water consumption associated with heating, ventilation, and air conditioning system, lighting system, building envelope, domestic hot water system, and other energy and water using devices, (c) performance-contracting utility-demand reduction projects, (d) innovative project financing (optional at the Awarding Authority's sole discretion), (e) proactive maintenance and service programs and staff training, and (f) the work associated with monitoring and verifying project savings and the study and/or design of the subject work.

Payments for all services will be indexed to measured reductions in energy and water cost savings and there will be no up-front costs to the Awarding Authority. ESCOs may wish to enhance their responses by considering participation in any utility programs.

In accordance with G.L. c.71, §38R, the Awarding Authority may request and obtain all available criminal offender record information (CORI) from the Criminal History Systems Board of any contractor "who may have direct and unmonitored contact with children." As a condition of the award of any contract and prior to commencement of any work, the successful ESCO shall complete and sign a Request Form to obtain CORI. The ESCO shall be responsible to have all of its contractors complete and sign the form.

5. TERMS OF QUALIFICATIONS

a) General Terms

The Awarding Authority intends to use this Project to address, meet, or exceed several of the goals, objectives, strategies, and actions identified in the Net Zero Resolution for the town of Hopkinton as follows:

The Town of Hopkinton commits to a net zero goal of 2045 to eliminate or offset all carbon emissions including municipal, commercial, and residential sources with intermediate milestones of 50% emissions reductions by 2030, and 75% emissions reductions by 2037, relative to 2017 baseline levels. The Proposal should include:

1. A complete range of conservation services (i.e., auditing, equipment selection and installation, rate monitoring, operation and maintenance strategy, training of facility personnel, commissioning, disposal

⁴ "Energy conservation measures", measures involving modifications of maintenance and operating procedures of a building or facility and installations therein, which are designed to reduce energy consumption in such building or facility, or the installation or modification of an installation in a building or facility which is primarily intended to reduce energy consumption. G.L. c. 25A, §3.

⁵ "Energy audit", a determination of the energy consumption characteristics of a building or facility which: (a) identifies the type, size and rate of energy consumption of such building or facility and the major energy using systems of such building or facility; (b) determines appropriate energy conservation maintenance and operating procedures; and (c) indicates the need, if any, for the acquisition and installation of energy conservation measures or alternative energy property.

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of ballasts with PCBs, disposal of lamps with mercury, treatment of CFCs in refrigeration systems, etc.) to provide energy and water efficiency upgrades at no up-front cost to the Awarding Authority and to use the money saved to increase building performance to national energy performance ratings⁶, including the installation of renewable energy projects where feasible.

2. Any available utility rebates, Renewable Energy Trust funds, etc., that facilitate the incorporation of renewable energy resources, demand resource programs, and/or grants for the renovation of schools with high performance standards.
3. A complete structural review of the Awarding Authority's buildings to determine the viability of retrofitting them with photovoltaic installation on roofs including application of any available grant funds.
4. A review of maintenance and operation procedures of each facility against potential energy saving options.
5. Where applicable, the installation of integrated energy management systems for all facilities.
6. A review of energy source (e.g., electric, natural gas, or heating oil) to identify potential alternatives for each facility to meet the Awarding Authority's greenhouse gas emission reduction targets.
7. If the respondent is not Massachusetts based, identify and describe the organization, experience, and relationship of the firm that will guarantee the local support services necessary for fulfilling the contract terms.
8. Respondents shall include in their Response information on its past experience installing renewable energy systems (such as solar hot water, photovoltaic, wind turbines, biomass and landfill-gas to energy systems), high-efficiency power systems (such as combined heat and power systems), district energy systems (serving the Awarding Authority's residents and businesses) and green technologies (such as green roofs, rainwater reclamation, etc.).

b) Respondent's Abilities

1. Please provide the resumes of project team members, including the prime contractor and any subcontractors, and a description of their respective responsibilities. The project team must include a Massachusetts Registered Professional Engineer. Resumes should include each participant's background, specific areas of expertise, and previous experience with projects of this type and size.
2. Provide a copy of a contract recently executed by your company, firm, or organization with a similar organization (City, Town, or School Department). Please provide a minimum of three (3) project references for the proposed project team members. These project references should be of the same size and type of project as the Project.

c) Finance Options

Financing for performance contracts may be provided in a variety of ways. Respondents shall include information regarding financing provided by the ESCO directly, or through a third party. Other financing mechanisms may be

⁶ The national energy performance rating system is an Energy Star benchmark that determines how efficiently buildings use energy, relative to similar buildings nationwide. The rating system's 1–100 scale shows how a building is performing — a rating of 50 indicates average energy performance, while a rating of 75 or better indicates top performance.

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included in the Response provided they are paid out of energy savings and the ESCO guarantees the savings. The Awarding Authority reserves the right to secure financing from whichever source(s) it determines is in its best interest.

ESCOs should include in their responses (a) information regarding all potential funding sources that could be applied to any or all potential energy management services, (b) description of the applicant's experience(s) in securing such funding, and (c) description of any new sources of funding that may have recently become available but that the respondent has not yet had experience with. Such funding sources may include, but are not limited to utility rebates; demand response payments; grants; sale of renewable energy, carbon, or air quality emissions credits; or sale of efficiency benefits on the ISO New England Forward Capacity Market. All benefits that stem from the implementation of energy management services under the Energy Management Services contract EMSA and that are deemed to have a monetary or societal value shall be the sole property of the Awarding Authority.

The Selection Committee will weigh the merit and value added to the Awarding Authority by any proposed financing source or financing model. The ESCO should note if any part of the Response is conditional upon the Awarding Authority utilizing an identified financing source or proposed model and describe any way in which rejection of the financing proposal would change any other part of the Response.

At a minimum, the ESCO must cooperate with the Awarding Authority in obtaining financing. This cooperation may include the provision of backup or supplementary information to support the Awarding Authority's financing application, answering questions orally and in writing to one or more prospective financing entities, and providing adequate disclosures in connection with the due diligence of a financing entity.

All applications or requests for financing, grants, or other assistance made by the ESCO on the Awarding Authority's behalf are subject to review and approval by the Awarding Authority prior to submission.

d) Guaranteed Savings

1. The guaranteed savings provision shall be fully defined in the EMS Contract and shall be the measured reduction in fuel, energy, water, and operating or maintenance costs resulting from the implementation of the Scope of Services defined in the Contract. Such guaranteed savings shall be determined when compared with an established baseline of previous fuel, energy, water, and operating or maintenance costs, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed pursuant to the Contract.

The selected ESCO shall provide the Awarding Authority with a written guarantee that either the amount of energy and water savings guaranteed will be achieved on an annual basis or the ESCO shall reimburse the Awarding Authority for the full shortfall amount each year for which the shortfall exists. Methods for measurement and verification of guaranteed savings shall conform to the most recent standards established by the Federal Energy Management Program of the U.S. Department of Energy and the most recent International Performance Measurement & Verification Protocol (IPMVP).

The value of guaranteed savings may represent either all or part of annual payments at the discretion of the Awarding Authority. The overall term of the EMS Agreement, including the performance term shall not exceed 20 years. The guarantee shall be a first party direct guarantee from the ESCO to Awarding Authority. No third-party guarantee shall be allowed, except however, corporate guarantees from a parent company of the ESCO will be considered. All savings in excess of the guaranteed savings shall be the sole property of the Awarding Authority.

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$$\text{Savings} = \text{Baseline Energy} - \text{Post Installation Energy} \pm \text{Adjustments}^7$$

6. ENERGY AUDIT AGREEMENT

In accordance with 225 CMR 19.00, the Awarding Authority and the selected most qualified ESCO will negotiate the scope of work for an Investment Grade Energy Audit (IGA Agreement), by which the ESCO will conduct an energy audit of facilities and energy systems at the project site to substantiate its ability to achieve energy and cost savings for the site.

a) Audit Agreement

The Agreement shall use the Model Energy Audit Agreement (Attachment 6: *Investment Grade Audit Agreement*), and include, but not be limited to:

- A facilities and maintenance assessment
- A written investment quality comprehensive energy audit report for a comprehensive and sustainable conservation and renewable program
- A detailed proposed technical scope of work for construction/implementation of the ESCO's recommendations including facility improvements and maintenance and/or owner training programs
- Proposed methods of measurement and verification of guaranteed savings that conform to the most recent standards established by the Federal Energy Management Program of the United States Department of Energy.
- A proposed Guaranteed Energy Savings provision.

b) Audit Report

Upon completion of the Energy Audit, the ESCO will provide Awarding Authority with a detailed written report (the Audit Report) containing:

1. Facility profile of building characteristics and energy and water use.
2. Determination of the total annual cost to operate and maintain the existing energy and water systems in each building including the energy rate/cost per unit of energy usage (electricity, natural gas, etc.), the demand cost and its basis.
3. Description of energy and water systems and the power plant.
4. The methodology used for the lighting system component of the audit shall be as follows:
 - a. To ensure consistency in the lighting system component of the audit, the abbreviations for lighting systems shown below should be used.

C	Compact fluorescent	EE	Energy efficient lamp
HW	Hard wired fixture	HO	High output lamp
LV	Low voltage	VHO	Very high output lamp
FIXT	Fixture	STD	Standard Ballast
BX	Biax/Twin tube lamp	NEW	New fixture

⁷ FEMP M&V Guidelines: Measurement and Verification for Federal Energy Projects, Version 4.0, U.S. Department of Energy

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R	Reflector	SI	Screw in lamp
T/TW	Tandem wire	PAR/P	Parabolic lens
MV	Mercury vapor lamp	WRAP	Wrap style fixture
MH	Metal halide lamp	T8	T8 Lamp/Elect. ballast
Lens/Rep	Lens replacement	HPS	High pressure sodium lamp
EEMAG	Energy efficient magnetic	LED	Light Emitting Diode

b. To ensure accuracy regarding the type of ballast or lamp type, a percentage of each fixture type must be opened to determine the manufacture and model of number of the ballast, and the number of lamps and lamp type. A random sample of at least 30 fixtures of each type must be opened.

5. Allocation of total energy and water among end uses including:

- a. Heating
- b. Air Conditioning
- c. Domestic Hot Water
- d. Fans & Pumps
- e. Lighting, indoor and outdoor
- f. Equipment
- g. Standard and any other major water uses (laundry, irrigation, and pool)

Allocation must be reconciled with actual usage. The allocation must be based on at least a bin⁸ calculation and consider:

- a. Documented hourly occupancy patterns
- b. Heat gain/loss analysis to include:
 - i. shell losses/gains: roofs, walls, glass
 - ii. air flow losses/gains: infiltration, ventilation

c. Equipment performance

Heating and cooling crossover temperatures resulting from the analysis should be noted (these may vary with operating conditions.)

- 6. List of recommendations. For each of the proposed improvements, the ESCO shall provide costs and annual savings, the source of energy saving, the amount and type of energy saved, the cost savings, the implementation cost and a payback analysis (including any major assumptions made in the analysis).
- 7. The savings shall be calculated using the same method described above and shall consider the interactions among measures. The total annual cost to operate and maintain the proposed conservation measures in each building shall be determined.
- 8. Exploration of appropriateness of current utility rates and available incentive/rebate programs.
- 9. Energy usage for the last three fiscal years (to be provided by the facility).
- 10. The audit must be stamped by a Massachusetts Registered Professional Engineer.

⁸ As used in the Federal Energy Management Program, a bin is an energy estimating technique wherein energy usage for different temperature intervals and time periods is evaluated separately.

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11. ESCO's proposed baseline and proposed annual adjustments. Inventory of all energy using equipment and appliances during base year including ratings and capacities.
12. The method utilized for determining actual energy and water savings by the ESCO that agree with the most recent version of the FEMP Guidelines.

c) Acceptance of the Audit Report

As part of its consideration of the Audit Report and the recommendations of the successful ESCO, the Awarding Authority may, in its sole discretion and prior to the execution of the EMS Agreement, elect to proceed with all or any portion of the Response. The Awarding Authority may also elect to proceed with certain improvements on a "phased" basis, whether over a period of months or years if it determines that proceeding with all of the selected improvements simultaneously is not in the best interests of the Awarding Authority.

If the Awarding Authority decides not to enter into a Contract with the ESCO after the Energy Audit, even though the proposed contract terms meet all the conditions set forth in the RFQ, the Awarding Authority will pay costs under the IGA Agreement. However, the Awarding Authority may refuse payment for the Audit Report if (a) the savings identified in the Response vary more than 15% from the proposed savings identified in the audit, (b) the projected value of the net benefit to the Awarding Authority set forth in the Response differs by more than ten percent (10%) of the corresponding purchase option price provided in the Energy Audit, or (c) any purchased option price set forth in Energy Audit is greater than one hundred and ten percent (110%) of the corresponding purchase option price provided in the Response.

7. MINIMUM CONTRACTUAL TERMS

The Response shall conform to the terms and services in the Model EMS Contract, found at Attachment 7, and discussed below. The Response may contain additional services or terms, but no Response will be considered if these minimum conditions cannot be met.

Part 1: Required Energy Services

- A. The ESCO will be required to work with current operating and maintenance personnel, training and overseeing their work on a pre-planned and programmed basis. The facility maintenance responsibilities will be clearly delineated in the Contract. In addition, the ESCO will develop for the maintenance staff a preventive maintenance schedule for all new equipment installed as part of this project. No equipment may be installed that will require the Awarding Authority to hire additional maintenance personnel, unless contract negotiations produce an explicit exemption from this rule for a specific installation (such as the agreement to include cogeneration as part of the project).
- B. All energy systems in the Awarding Authority's buildings must be considered in this project. These systems include but are not limited to: space heating; domestic hot water; air conditioning; ventilating; pumps and motors; interior and exterior lighting; energy management system; all other water and energy uses, including laundry and irrigation. The Awarding Authority is responsible for determining end-use condition requirements at all times, and must have override capability to deal with emergencies, malfunctions, or extra-ordinary needs. Responses may include maintenance services for all equipment installed for the full length of the contract. At all times, the requirements of the Massachusetts Building Code shall be met.
- C. The Contract must require the ESCO to provide "as built" and record drawings of all existing and modified conditions associated with the project conforming to typical engineering standards. This should include

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architectural, mechanical, electrical, structural, and control drawings each stamped by a Massachusetts Registered Professional Engineer (P.E.) for the corresponding discipline.

- D. Minimum acceptable illumination must be kept for the use intended. Light levels within other space types should be determined using the most current Illuminating Engineering Society guidelines based upon the tasks performed. Please note bench testing and test retrofits may be requested to verify illumination levels. In areas where light levels are specifically mandated by code, light levels must meet these requirements at all times.
- E. All ballasts are suspected to contain PCBs unless they are specifically labeled otherwise. Further inquiry and clarification of PCB ballast storage and disposal can be obtained from the Massachusetts Department of Environmental Protection.
- F. Disposal plans must be documented and appropriate transportation and disposal documents prepared before disposal. Actual disposal must be documented immediately after disposal.
 - 1) Lamp Ballasts Containing PCBs: The ESCO will be responsible for the proper handling and storage of fluorescent lamp and HID fixture ballasts containing or suspected of containing PCBs in accordance with applicable local, state, and federal laws and regulations.
 - 2) Lamps Containing Mercury: The ESCO will be responsible for the proper handling, storage, and transportation of fluorescent and HID lamps, as necessary, in accordance with applicable local, state and federal laws and regulations.
- G. The ESCO will use a method for computing the energy baseline and subsequent energy savings which is wholly consistent with the letter and intent of the most recent version of the U.S. Department of Energy, Federal Energy Management Measurement and Verification Guidelines (FEMP Guidelines).
- H. The ESCO is responsible for providing the owner with an energy conservation measurement (ECM) commissioning plan that assures the Awarding Authority that the performance of the ECMs achieves facility and/or process performance requirements as set out in the Contract. ECM Commissioning is to be accomplished through a process of verification and documentation. Furthermore, commissioning requirements must be: 1) specified in the contract, 2) defined explicitly after design, 3) implemented during construction, 4) completed prior to final project acceptance, and 5) followed-up on after acceptance.

Part 2: Required Contractual Language

- A. Terms of the Contract must conform to the terms included in the RFQ. Terms that do not conform to the terms set forth in this RFQ shall be considered void.
- B. The Awarding Authority will determine whether the material or equipment installed is equal to those specified in the Response. In the event an article of any class or materials or equipment specified by the trade name of any particular patentee, manufacturer, or dealer, or by reference to the catalog of any such article or articles or materials is to be substituted, the replacement must be equal in quality, finish and durability and equally as serviceable for the purpose for which it is or they are intended as the originally specified article. The Awarding Authority will make the final decision as to whether the materials or equipment offered are equal to those specified.

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- C. The ESCO will protect and save the Awarding Authority harmless against all claims, and actions brought against it by reason of any actual infringement upon patent rights in any material, process, machine or appliance used by him in the work.
- D. The ESCO will obey and abide by all laws of the Commonwealth of Massachusetts relating to the employment of labor and public work and all ordinances and requirements of the Awarding Authority regulating or applying to public improvements.

The ESCO agrees not to discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex, race, color, religion, national origin, or ancestry.

- E. In the execution of the Contract, it may be necessary for the ESCO to subcontract part of the work to others; however, the ESCO shall not award any work to any subcontractor without prior written approval of the Awarding Authority.

The ESCO will be fully responsible to the Awarding Authority for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by the ESCO, as it is for the acts and omissions of persons directly employed by it. Nothing contained in this Agreement shall create any contractual relation between any subcontractor and the Awarding Authority.

The ESCO will not assign, transfer, convey, or otherwise dispose of the Contract, or any part hereof, or its right, title or interest in the same or any part thereof, without the prior written consent of the Awarding Authority. The ESCO will not assign by power-of-attorney, or otherwise, any of the moneys due or to become due and payable under this Agreement, without the prior written consent of the Awarding Authority.

- F. During the life of the Contract, the ESCO will procure and maintain Worker's Compensation Insurance in accordance with the Worker's Compensation Act of the Commonwealth of Massachusetts.
- G. ESCO must carry an appropriate level of insurance for both the construction and operations phases
- H. Notwithstanding any other law, the provider of the energy management services must file with the Awarding Authority a payment and performance bond relating to the installation of the project including the following:
 - 1) Prior to entering into a Contract, the ESCO shall furnish a certified copy and duplicate of a performance bond, with project financier as co-beneficiary along with the Awarding Authority;
 - 2) The performance bond shall be in an amount equal to 100% of the total contract value from a surety company licensed to do business in the Commonwealth and whose name appears on U.S. Treasury Dept. Circular 570;

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- 3) The ESCO shall furnish a certified copy and duplicate of a performance bond, with project financier as co-beneficiary along with the Awarding Authority. The ESCO shall also furnish a payment bond in duplicate;
 - 4) Unless otherwise specified by the Awarding Authority, the performance and payment bonds shall remain in effect during the total implementation period for all ECMs. The ECM implementation period shall include all time required for installation, testing, measuring initial performance, and Awarding Authority acceptance of all installed ECMs;
 - 5) The performance bond shall be released upon Awarding Authority acceptance of all ESCO-installed ECMs. The payment bond shall be released upon receipt of satisfactory evidence that all subcontractors, laborers, etc., have been paid in full or final acceptance whichever is later; and,
 - 6) The ESCO shall not file any mechanics liens against the Awarding Authority for the project and this requirement shall flow down to all subcontractors. Therefore, the payment bond shall secure the ESCO's obligations for payment of laborers, suppliers, and all subcontractors.
-
- I. The ESCO will maintain and operate the equipment in a manner that will provide the accepted standards of service and comfort (i.e.; heating, cooling, hot water, lighting and so forth).
 - J. Within two months of contract execution, the ESCO will begin implementation of preliminary operations and procedures to save energy and/or water at the named properties of the Awarding Authority.
 - K. The Awarding Authority retains ultimate approval over scope of work, choice of subcontractor, equipment installed, and end use conditions. No work can proceed without the prior written consent of the Awarding Authority. However, such approval shall not be unreasonably withheld.
 - L. The Awarding Authority will review all proposed modifications to the building and systems, and must approve of them before commencement of any work. Such approval shall not be unreasonably withheld.
 - M. ESCO is required to pay minimum wage rates for all employees involved in providing contract services, as determined by the Division of Occupational Safety⁹. Please note wage rates are valid only for 90 days from date of issue. Further inquiry and clarification of prevailing wage laws can be obtained from the Massachusetts Division of Occupational Safety.
 - N. All work shall meet the minimum standards of ASHRAE and the Massachusetts Building Code.

⁹ The Massachusetts prevailing wage laws require that employees on public works projects, except those who perform strictly supervisory functions, be paid a minimum hourly rate set by the Department of Labor and Workforce Development, Division of Occupational Safety (DOS) (Mass. General Laws c. 149, s.26).

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- O. The Awarding Authority must have access to inspect both the work conducted at project site(s) during construction and operations phases, and to the books, records, and other compilations of data, which pertain to the performance of the provisions and requirements of this agreement. Records shall be kept on a generally recognized accounting basis, and calculations kept on file in legible form.
- P. Prior to contract termination, the ESCO will be obligated to perform a walk-through survey of the facility and to prepare an assessment of the condition of the equipment installed as part of the project. The Awarding Authority retains the right to hire an independent, certified professional engineer to prepare an assessment of the condition of the equipment installed as part of the contract.
- Q. All drawings, reports and materials prepared by the ESCO specifically in performance of the Energy Services Agreement shall become the property of the Awarding Authority, and shall be delivered to the Awarding Authority as needed or upon contract termination.
- R. The ESCO will be required to file a Disclosure Statement listing all its public contractors; a Truth in Negotiations Certificate as describe in M.G.L. Chapter 7, section 30I, a Financial Interest Statement as described in M.G.L. 7, section 14A; and a Tax Certificate as described in M.G.L. Chapter 62C, section 49A.
- S. The ESCO shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, including applicable licensing requirements, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of the Awarding Authority relative to the premises. The ESCO shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder.

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Energy Conservation Projects

ATTACHMENT 1: PROPERTY DESCRIPTION

Facility	Hopkinton High School	2021			
Address	90 Hayden Row Street	Electric (kWh)		Gas (therms)	
Year Built	1999	Use	Cost (\$)	Use	Cost (\$)
Type	School	1,200,169	105,944	77,602	34,376
Square Feet	143,464				
		2022			
		Electric (kWh)		Gas (therms)	
		Use	Cost (\$)	Use	Cost (\$)
		1,152,140	125,921	65,753	31,961
		2023			
		Electric (kWh)		Gas (therms)	
		Use	Cost (\$)	Use	Cost (\$)
		1,459,176	121,496	60,488	37,841
		2024			
		Electric (kWh)		Gas (therms)	
		Use	Cost (\$)	Use	Cost (\$)
		1,125,595	195,486	61,668	40,870

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Facility	Hopkinton Middle School	2021			
Address	88 Hayden Row Street	Electric (kWh)		Gas (therms)	
Year Built	1954	Use	Cost (\$)	Use	Cost (\$)
Type	School	558,809	48,953	85,632	37,540
Square Feet	135,760				
		2022			
		Electric (kWh)		Gas (therms)	
		Use	Cost (\$)	Use	Cost (\$)
		481,770	58,331	79,182	38,172
		2023			
		Electric (kWh)		Gas (therms)	
		Use	Cost (\$)	Use	Cost (\$)
		617,969	89,011	61,771	38,397
		2024			
		Electric (kWh)		Gas (therms)	
		Use	Cost (\$)	Use	Cost (\$)
		540,346	137,044	64,823	42,642

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Energy Conservation Projects

ATTACHMENT 2: RFQ Form of Response

Proposal Title Page

To: _____

ESCO: _____

Address: _____

City, State, Zip Code: _____

Phone: _____

Fax: _____

E-mail _____

Federal tax id# (SSN for individuals): _____

Organizational structure:

Corporation: _____

Partnership: _____

Joint venture: _____

Individual/Proprietorship _____

Other: _____

Ownership:

Public stock: _____

Privately owned: _____

Non-profit: _____

Minority and women business enterprise information (check as appropriate):

Minority owned: _____

Women owned: _____

Owned by person with disability: _____

Small Business: _____

SOMWBA Certified: _____

I have read, understand, and agree to comply with the terms and conditions for providing Energy Management Services to the Awarding Authority as stated in the Awarding Authority's Request for Proposals. Furthermore, I hereby certify, under penalties of perjury, that this Proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Signature

Date

If applicable, please complete the following:

I acknowledge receipt of Addendum No(s). _____, dated _____.

Signature

Date

Responses must be submitted in the format outlined. The Awarding Authority may reject from further consideration any Response that does not follow the format or is deemed non-responsive. Please provide eight (8) copies of your response, and one single-file electronic version.

REQUEST FOR QUALIFICATIONS

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TABLE OF CONTENTS (Statements of Qualifications shall include a table of contents properly indicating the section and page numbers of the information included.)

1. CONTRACTOR QUALIFICATIONS DATA

A. Minimum Required Items

1. Proposal completeness and adherence to format. Substantial conformity with the specifications and other conditions set forth in the request for qualifications.
2. References of other energy savings contracts performed by the qualified providers.
3. Department of Capital Asset Management (DCAM) Certificate of Eligibility (DCAM Form CQ7) and Update Statement (DCAM Form CQ3)
4. Quality of the products proposed
5. Methodology of determining energy savings
6. Time specified in the qualifications for the performance of the contract.
7. General reputation and performance capabilities of the qualified providers.

B. Other Required Items

1. Evidence of bond capability of at least five (5) million dollars from a surety company licensed to do business in the Commonwealth and whose name appears on United States Treasury Department Circular 570. Please provide the cost or fee your firm will charge for the performance and payment bonds as a percentage of the construction costs.
2. Form of legal entity and year entity was established.
3. Describe any changes in ownership status over the past ten (10) years.
4. Other entity names, if any.
5. Ultimate parent company, if applicable.
6. Federal Tax Identification Number for Respondent
7. Please submit a detailed financial report prepared in accordance with generally accepted accounting principles (GAAP) reflecting the current (as of the most recent financial statement date) financial condition of the Respondent. Such report must include a balance sheet, income statement and statement of cash flows, along with applicable footnotes, dated concurrently for at least each of the last preceding three years ending on the most recent fiscal quarter such statements were prepared. Public entities or subsidiaries should attach SEC Form 10-K along with, as applicable, detailed unaudited statements for the Submitting Entity. Non-public entities may attach either unaudited financial statements or copies of tax forms and schedules that are filed with the Internal Revenue Service where applicable.
8. Performance Guarantee. Describe the form of guarantee that the Respondent will be providing in respect of the Project, and its associated cost. If a corporate guarantee backstop by a parent company or credit enhancement by a financial institution is anticipated, please provide a letter from the parent company or financial institution, indicating that such credit enhancement is available, the terms of such credit enhancement and the credit rating of the guarantor.
9. Describe any other factors which would strengthen the credibility of the Respondent's financial capacity to undertake the construction and guarantees proposed in this Response. "Other factors" could include corporate strategies which establish and fund reserves for contingent liabilities accruing from a growing portfolio of performance contracts, escrows, energy hedging, letters of credit or other financial tools. "We have never had to fund a shortfall" is inadequate to strengthen the Respondent's financial credibility.
10. Lawsuits and Disputes. Discuss whether your firm has ever been involved in a lawsuit or dispute regarding a performance contract. If so, please provide all such incidents and describe the circumstances and outcomes of such lawsuit or litigation. Further, please discuss whether your firm has been barred

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from providing performance contracting or other services in any states.

C. General Reputation and Performance Capabilities

1. Describe the general reputation and performance capabilities of the firm and explain how these characteristics translate to optimizing results for the Awarding Authority.
2. Provide the number of years Respondent has been engaged in providing ESPC services.
3. Describe the experience the Respondent has had with municipalities and public school systems, particularly in the Northeast and specifically in Massachusetts. Respondents shall demonstrate by example its experience working in facilities similar to the facilities included in this RFQ. Please list at least five (5) examples of ESPC projects in the Northeast, and if possible, specifically in Massachusetts, which included varying types of mixed-use facilities.
4. Provide the number of projects and aggregate dollar value of ESPC projects implemented by Respondent each year for the past five (5) years, including the value of the guarantees related to such projects and any shortfall in savings related to such projects.
5. Provide the number of full-time personnel employed by the Respondent. Please segment the data, as appropriate, into categories of personnel providing ESPC services, Non-ESPC Operations/Maintenance Services and Non-ESPC Equipment Installation Services.
6. Provide the number of full-time EMS personnel located in any applicable local or branch office to be utilized for the (Awarding Authority)'s project, and the site address of that local or branch office.
7. Discuss any accreditations or pre-qualifications for EMS work, describing the relevance or importance of such qualifications to the project.

D. Experience and Project References

1. Fully describe five (5) EMS projects that Respondent has implemented within the last five (5) years. Matrix of Performance Contracting Projects -- Insert in Tab 4 a table summarizing Respondent's performance contracting or related projects and indicate the services performed in connection with each. A table similar to the following would be preferred:

Project name/ type of property	Yr	Location	Services							
			Audit	Financ'g	Constr.	Monitor	G'tees	Train'g	Cogener.	Other

2. Identify projects that involve facilities similar in type, size or scope to the Awarding Authority's facilities.
3. Identify projects that have been managed by individuals who Respondent anticipates will be assigned to the Awarding Authority's project. Discuss the level of technical/economic expertise of the staff. Provide resumes of the project team members and indicate which branch office each project team member is assigned. For each project team personnel, please list the current projects such employee is currently involved with and the status of the project. Please provide an organizational chart.
4. Provide detailed project information for all five (5) including: customer name, project dates, total project cost at proposal stage, total final project cost, projected annual energy and water cost savings from IGA, projected annual operations and maintenance cost savings, actual realized annual cost savings to date, and any annual savings shortfalls. Respondent must also indicate whether the project was completed on schedule and on budget, and if not, explain the reasons for such delay or budget noncompliance.
5. Provide a list of technologies implemented for each of the five (5) reference projects. For each technology, Respondents must provide the specific measurement and verification protocol implemented (FEMP Option A, B, C, D) along with the rationale Respondent used in selecting the specific FEMP Option.

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6. Provide references for the Respondent and references for each key person proposed in the submittal to be part of the project team, including the proposed role for each such individual. Please include the names, addresses, email addresses and telephone numbers for reference. It is understood that the Awarding Authority may contact any or all of the above references regarding the project and personnel performance as part of the RFQ submittal review process.

E. Investment Grade Audit

1. Describe Respondent's general approach to conducting an IGA. Specifically, what is the process? How will the Awarding Authority be involved? Detail the level and depth of the information and resources that will be required of the Awarding Authority.
2. Describe Respondent's approach to the technical design of the project including the methodology Respondent normally uses to compute the baseline(s) of energy and water use, as well as the performance of improvements.
3. Describe the method(s) used to adjust the energy, water, and O&M baseline due to such factors as weather, facility use changes, and operating behavioral changes. Describe factors that would necessitate adjustment.
4. List all procedures, formulas and methodologies including special metering or equipment, which Respondent would use to calculate energy, water, and O&M savings.
5. Does your firm use multiple baselines for different ECMs? If so, please discuss approach.
6. Discuss the frequency of baseline adjustments over the course of the EMSA, define the drivers that influence such adjustments and how frequently such data is collected.
7. Discuss Respondent's approach to identifying and quantifying interactivity between ECMs throughout the optimization process, specifically during the winnowing process performed in collaboration with the Awarding Authority.
8. Provide an example of a comprehensive IGA developed by Respondent for a project where the specific project team proposed for the (Awarding Authority) was involved and completed similar work as contemplated for this project. Provide a sample bound copy of the IGA as an attachment. This IGA must include energy and economic methodologies and engineering approaches.
9. Discuss Respondent's approach to relying on energy and non-energy related operational savings in the savings calculation supported by the guarantee.
10. Discuss Respondent's application of applying a "risk factor" to ECM-specific annual energy savings. Does Respondent's firm guarantee an annual level of savings less than the projected savings? Discuss how this "risk factor" is determined, whether it is ECM specific and if O&M activities contracted to the ESCO (rather than performed by the Awarding Authority) has any impact on such "risk factor".
11. Describe the procedure to assign dollar values to the savings. Include energy savings as well as maintenance or capital savings.
12. Provide a detailed schedule and timeline for the IGA from signed IGA Agreement to final IGA Report. Please assume a notice to proceed date for the IGA of xxxx, 2025.

F. Construction and Commissioning

1. Describe protocols related to management of critical path schedule to ensure timely completion, including willingness to post liquidated damages for delays and performance shortfalls. Discuss Respondent's project management protocols to ensure schedule adherence.
2. Describe Respondent's reporting and client liaison protocols to be employed throughout the construction process.
3. Describe how Respondent would work with current building management and maintenance personnel to coordinate construction activities. Discuss in detail Respondent's protocols to avoid conflicts with the facilities' operation and use, and Respondent's conflict resolution process.

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4. Discuss Respondent's perspective on integrating customer contractors into the EMSA. If desired by the Awarding Authority, is Respondent willing to solicit qualifications and expertise from local area contractors provided such contractors meet Respondent's requirements?
5. Describe standards of comfort and functionality that Respondent would propose for light levels, space temperatures, ventilation rates, etc. in the facilities. Specifically discuss the application of these standards in municipal buildings and the public school environment. Also, describe how Respondent anticipates those standards would be maintained throughout the term of the EMSA.
6. Discuss how Respondent will ensure that the Awarding Authority is not exposed to "margin pancaking" by using specialty subcontractors (defined as those subcontractors that provide full turnkey services including engineering, design, and installation). Will Respondent reduce its overhead markup on those services provided by specialty subcontractors to mitigate against the margin pancaking issue?
7. Discuss the role Respondent takes in managing subcontractors. Will Respondent oversee all work performed by subcontractors, including any work performed during occupied and unoccupied times?
8. For any design work conducted by third-party experts, please identify whether Respondent takes engineering risk including stamping engineering submittals.
9. Discuss Respondent's approach to commissioning ECMs and describe any differences in commissioning Respondent employs on an ECM basis. Please provide a copy of a commissioning plan previously executed for one of the five (5) reference customers.
10. Discuss Respondent's approach to the timing of commissioning and training with respect to the commencement of the warranty.

G. Methodology of Determining and Guaranteeing Energy Savings

225 CMR 19.00 requires that methods for monitoring, measurement, and verification of guaranteed energy and water savings shall conform to the most recent Performance Measurement & Verification Protocol (IPMVP) and standards established by the Federal Energy Management Program of the U.S. Department of Energy.

1. Describe in detail the firm's methodology to determine energy savings and explain how this approach will minimize risk and maximize return for (Awarding Authority) over the course of up to 20 years. Include in the description, the firm's approach to verifying energy savings and addressing changes based on past experience and changes in use of municipal buildings and facilities over time.
2. Discuss Respondent's general approach to identifying the appropriate M&V protocol on an ECM specific basis. Please provide a listing by ECM category of the anticipated FEMP protocol for each ECM.
3. Describe how excess savings is documented, and how Respondent treats excess annual savings. Do excess annual savings accrue to the benefit of the Awarding Authority? (Annual savings must stand alone in the year they are realized and cannot be carried over or credited to another year.)
4. How does Respondent treat savings realized during construction? Are those savings included in the guarantee and credited to the project or are those savings treated as excess savings to the Awarding Authority?
5. Describe Respondent's standard measurement and verification procedures, including reporting frequency, reconciliation methods, and timing.
6. Provide a sample measurement and verification report from one of the five reference projects together with an explanation of how Respondent demonstrated, with respect to such report, whether the guaranteed savings level was met and if not, the mechanics of how the customer would be compensated. Redacted copies protecting confidential information will be accepted.

H. Service and Maintenance and/or Owner Training

In your responses to the following, include a description of Respondent's experience with ensuring that equipment warranties and maintenance records are maintained and the requirements of the performance

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guarantee for savings is met.

1. Provide detailed information on any proposed training programs for Awarding Authority maintenance personnel and staff, including course content, location, and schedule.
2. Describe Respondent's capability to provide ongoing service and maintenance with Awarding Authority in-house personnel and with third party contractors selected by the Awarding Authority.
3. Provide the numbers of accessible truck based service and maintenance professionals and describe their level of training and experience.
4. State Respondent's general recommendations as to benefits of contracted service and maintenance vs. training of Awarding Authority personnel.

I. Pricing Structure

1. Describe Respondent's approach and preference to project pricing including: (a) Open Book/Open Book with contracted mark-ups, (b) Open Book/Closed Book/Guaranteed Maximum Price and (c) Closed Book/Guaranteed Maximum Price. Please note that the Awarding Authority will determine its final preferred approach.
2. For each of the pricing scenarios above, please discuss the Change Order process Respondent employs, including specifically how the pricing is developed and presented, and the risk controls the Awarding Authority should expect.
3. Under a Guaranteed Maximum Price contract, what level (percentage) does your firm include as a contingency to contractually eliminate any Change Orders?
4. Under an EMSA, will Respondent accept a ten-percentage holdback Retainage on all progress payments until final completion?
5. Respondents must complete the chart in Attachment 4 for contracted mark ups. If other categories are to be considered, please provide such additional information. Please also note that mark-ups not included by the Respondent in this response will not be considered in the development of the IGA Report, project development and the EMSA negotiations. ESCOs are encouraged to provide additional detail on mark-up categories as needed.
6. The Awarding Authority desires pricing for the IGA Agreement. Provide a schedule of fees for the IGA Report based on a tiered unit cost per square foot using the following tiers:
 - a) Under 1,000,000 total square feet
 - b) 1,000,001 $\geq$ 1,250,000 total square feet
 - c) 1,250,001 $\geq$ 1,500,000 total square feet
 - d) 1,500,001 $\geq$ 2,000,000 total square feet
 - e) Over 2,000,001 total square feet
7. Provide a fixed price break up fee for the IGA if the IGA is completed in accordance with the IGA Agreement and the Awarding Authority does not proceed with an EMSA. Please provide a fixed price break up fee for each of the tiered levels above.

J. Other Factors

1. Provide specific information regarding experience and expertise with the various types and uses of buildings and facilities under consideration in this Project, including but not limited to the particular needs of public schools, public safety buildings, and historic buildings. Provide a list of public buildings in Massachusetts for which Respondent has furnished comprehensive services valued at \$500,000 or greater.
2. Describe the services your firm will provide to identify, abate, and otherwise address hazardous materials that may be present in buildings or facilities under consideration for this Project. Materials may include but not be limited to asbestos and lead.

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3. Describe the type, method, formatting, and frequency of the Project reporting recommended and required. The selected ESCO shall provide access to records and preserve them for a period of six (6) years after final payment.
4. Describe any financing options that could be provided by the firm directly or through a third party. The Awarding Authority, however, reserves the right to secure financing from whichever source(s) the Awarding Authority determines is in its best interest.
5. Describe all potential funding sources that could be applied to any or all potential energy management services, including the firm's experience(s) in securing such funding, and describe any new sources of funding that may have recently become available but that the respondent has not yet had experience with. Such funding sources may include, but are not limited to, utility rebates, demand response payments, grants, sale of renewable energy or carbon credits, or sale of efficiency benefits on the ISO New England Forward Capacity Market.
6. Describe past experience installing renewable energy systems (such as solar hot water, photovoltaic, wind turbines, biomass and landfill-gas-to energy systems), high-efficiency power systems (such as combined heat and power systems), district energy systems and green technologies (such as green roofs, rainwater reclamation, etc).

K. Completeness

The Awarding Authority will review each Response prior to the selection process for completeness and adherence to format. A Response will be considered complete if all requested sections and information are included in the proper order.

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ATTACHMENT 4

Project Soft Costs Mark Ups	Lighting and Controls	Major mechanical/ HVAC systems	Chilled water systems	KAS/DDC	Building envelope & window upgrades	Air distribution/ exhaust systems	Pool improvements	W all water systems	DDW conservation	Meters/drive	Kitchen equipment	On-site generation & renewables	Vending, PC controllers, fire & safety
Investment Grade Energy Audit													
Engineering, Design and Spec													
Project Management													
On-site Construction Management													
Commissioning													
Training													
M&V During Construction													
Cost of Risk													
P&P Bonds													
Construction interest													
Travel													
Site Conditions													
Hazardous Waste													
Other -Warranty													
TOTAL													
Overhead													
Profit													

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ATTACHMENT 5: Evaluation Form

Firm Name: _____

Date: _____

Evaluator: _____

To determine the most advantageous response, the Awarding Authority will evaluate each section and sub-section individually for completeness.

Section 1: Minimum Evaluation Criteria

If a response receives a negative "(No)" rating to any requirement in Section 1, it will be deemed non-responsive and given no further consideration.

	No	Yes
1. Title page		
2. DCAM Contractor Certification & Update Statement		
3. Debarment Statement		
4. Adhered to format and is complete		
5. Evidence of bond capability		
6. Form of legal entity		
7. Changes in ownership		
8. Other entity names		
9. Parent company		
10. Federal Tax Identification Number		
11. Financial statements		
12. Form of performance guarantee		
13. Lawsuits and/or disputes		
14. References of other EMS projects		
15. Acceptance of model audit agreement and EMS contract		
16. Massachusetts licensed professional engineer		

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Section 2: Skill and Experience

1= Unacceptable

2= Disadvantageous

3= Advantageous

4= Highly Advantageous

1. Project team has extensive record of highly successful performance contracting experience with facilities similar in type, size, and scope.
2. Capacity to staff the project team with the requisite skills and expertise throughout the term of the contract.
3. Familiarity with using specific measurement and verification protocols (FEMP Option A, B, C, D) to track the performance of ECMs that demonstrates a reasonable balances between risk and cost that is most advantageous to the client.
4. History of working smoothly with client staff to collect data necessary for successful completion of the project with the least interruption to staff's other responsibilities.
5. Extensive experience in performing Investment Grade Audits (IGAs) including establishing energy and water use baselines and baseline adjustments, identifying opportunities, estimating performance of improvements, and proposing reasonable M&V strategies.
6. Shows commitment to completing projects on time and to expected level of performance.
7. History of establishing good working relationships with clients throughout the whole project including the audit, construction, and M&V phases.
8. Protocols used for working with subcontractors resulted in smooth, timely, and full completion of past projects at fair and equitable levels of cost and risk to the client.
9. Level of experience and understanding of M&V, including annual savings reconciliation and payment of shortfalls that has demonstrably minimized risk and maximized return for past clients.
10. History of developing a balance of contracted services versus training of client staff for ongoing service and maintenance work that minimized clients costs, maximized the use of resources already available to the client, and produced quality service and maintenance programs over the term of the contract.
11. History of identifying creative opportunities to employ energy and water efficiency, renewable energy, and combined heat and power and/or district heating solutions to the client's advantage.
12. History of working with clients to identify pricing structures that minimizes risk and maximizes return for the client.
13. History of understanding client's goals and developing effective strategies to achieve them.
14. Demonstrates good commissioning practices.

REQUEST FOR QUALIFICATIONS

Energy Conservation Projects

Section 3: Comparative Evaluation Criteria

RATING CATEGORY	WEIGHT
Relevant Company Experience (10,000 foot view) • Company-wide Experience and Capability • Local Experience and Capability • Technical Approach and Capability • Experience of Similar Projects • Record of Satisfactory Performance • Financial Soundness	
Project References • Five (5) Relevant Complete References • Proven Success with Similar Projects in Massachusetts • Proven Success with Similar Projects in New England • Demonstration of Savings and Project Performance • Proven Success in Meeting Client Goals	
Personnel Experience • Qualifications of Assigned Management Personnel • Qualifications of Assigned Technical Personnel • Qualifications of Assigned Construction/Site Personnel • Qualifications of Assigned Commissioning Personnel • Qualifications of M&V Staff	
Project Approach • Comprehensiveness of Overall Proposed Approach • Comprehensiveness of Scoping Audit • Technical and Engineering Approach • Construction Management Approach • Operations and Maintenance Approach • Training Approach • Commissioning Approach	
Measurement and Verification • Comprehensiveness of Overall Proposed M&V Approach • Demonstration of Achieving Savings Guarantees • Approach to M&V Reporting, Reconciliation and Shortfall Payment • Approach to M&V Leads to Reasonable Balance of Risk and Cost	
Cost and Pricing • Cost of the IGA • Approach to Pricing (Open/Closed/Hybrid) • Competitiveness of Markups • Margin Pancaking • Approach to Rebates, Incentives and Grants	

ATTACHMENT 6

MODEL INVESTMENT GRADE AUDIT AGREEMENT FOR EMS

This Energy Audit Agreement (“Agreement”) is made and entered into this _____, 20__ by and between _____ (“ESCO”) and _____ (“Awarding Authority”) for the purpose of an Investment Grade Energy Audit (IGA) and project development services to identify economically feasible energy and water conservation measures to improve thermal efficiency, conserve energy and water, reduce waste water (“ECM”), and, when specified, generate electrical power at Awarding Authority properties.

This Agreement is entered pursuant to a [Request for Proposal or Request for Qualifications (“RFP/RFQ”)] issued by the Awarding Authority dated _____, 20__, and any changes thereto, and ESCO’s response to said RFP/RFQ and any revisions thereto (“Response”). A product of this Agreement shall be an energy audit and report, which, together with all related drawings, plans and revisions shall become the specifications for work to be performed by the ESCO under a separate energy management services contract (“Contract”) to be executed *after* the acceptance by the Awarding Authority of the final Energy Audit Report.

This Agreement is coterminous with the Contract.

SECTION 1: SERVICES

The ESCO agrees to provide an “IGA” for the projects at the facility in accordance with Exhibit A: Scope of Audit. The services shall include a detailed energy audit presenting the optimized project including long-term sustainable energy efficiency and infrastructure upgrades commercially acceptable to the Awarding Authority. In the determination of ECMs, the ESCO agrees to assume full responsibility to identify all requirements to execute such ECMs.

The Awarding Authority agrees to assist the ESCO in its performance of the IGA services and provide full and accurate information. The ESCO will assess the validity of the information provided and confirm or correct the information as needed

SECTION 2: PROVISIONS

2.1 Price

Within one hundred and twenty (120) days after submission of the Final Energy Audit Report, the Awarding Authority will compensate the ESCO, as payment for the Energy Audit, the sum of _____ dollars (\$), subject to the following conditions:

- a) The Energy Audit is accepted by the Awarding Authority, and
- b) A Contract is not executed between the ESCO and the Awarding Authority.

The compensation provided by this Agreement is subject to the continued availability of the Agreed Price and annual appropriations.

The Awarding Authority reserves the right to reject the Energy Audit Report, 1) if the energy or water savings cannot be attained or do not meet the Awarding Authority’s terms in the solicitation; 2) if the

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project does not contain a package of ECMs which, if implemented, will be able to provide the Awarding Authority with cash savings sufficient to fund payments of all annual costs and fees associated with the contract, including any annual fees to the ESCOs (less any third-party rebates or incentives or cash payment the Awarding Authority may choose to contribute); or, 3) the Awarding Authority, upon review of the Energy Audit, finds it deficient or unacceptable, provided ESCO shall have fifteen (15) business days to revise the Energy Audit to the satisfaction of the Awarding Authority.

Analysis will be based on ESCO or other third-party proposed financing terms over a period not to exceed twenty years or less, with a fixed rate of interest actually available to the Awarding Authority.

2.2 Terms

- a) All recommended conservation measures shall meet all current codes including the State Sanitary Code, Plumbing and Fuel Gas Codes, Fire Prevention Regulations, Massachusetts Electrical Code, State Building Code and any other applicable requirements of federal, state, and local government. The ESCO will not be expected to resolve any existing code violations but shall make a best effort to report to the Authority if any such violations are found.
- b) The ESCO and its subcontractors, employees, and agents shall secure and maintain in force any permits and licenses required by law in furnishing the audit services.
- c) The ESCO shall furnish competent personnel consistent with ESCO's Response to the RFP/RFQ to assure professional and technical accuracy and to obviate a detailed review by the Authority.
- d) The ESCO shall not specify equipment that will require additional personnel to be hired by the Authority for operation or maintenance. ESCO, to the maximum extent feasible and consistent with the optimization of conservation measures, shall specify similar or comparable equipment of the same manufacturer at each building and property in order to achieve as much standardization of equipment as possible throughout the Authority.
- e) The ESCO shall explore and report alternative utility rate options such as peak or master metering, commodity purchases or other more favorable rate possibilities and ascertain any needed capital improvements and costs and determine the economic and operating feasibility.
- f) The Awarding Authority may retain an energy consultant to assist in the technical, financial and commercial management of the audit service. The ESCO will work collaboratively with the energy consultant as directed and shall provide all necessary documentation, in a form satisfactory to the consultant (such as MS Excel) in support of the review of the services.
- g) The ESCO agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, handicap, marital status, veteran status, age, sexual orientation, or sex.

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MODEL INVESTMENT GRADE AUDIT AGREEMENT FOR EMS

- h) The laws of the Commonwealth of Massachusetts shall govern the terms and conditions of this Agreement. If any term, condition, or provision of the Agreement is held invalid, void, or unenforceable, the remaining provisions will continue in full force and effect.

2.3 Schedule

Within one (1) week of the date of execution of this Agreement, the ESCO shall submit an audit project schedule with the following milestones:

- a) Pre-audit review kickoff meeting date;
- b) Site visit dates;
- c) Preliminary recommendations and optimization presentation; and,
- d) Final audit submittal date.

SECTION 3: PATENT AND COPYRIGHT RESPONSIBILITY

The ESCO agrees that any material or design specified by the ESCO or supplied by the ESCO pursuant to this Agreement shall not knowingly infringe any patent or copyright, and the ESCO shall be solely responsible for securing any necessary licenses required for patented or copyrighted material utilized by the ESCO in the performance of the Energy Audit and preparation of the Report

SECTION 4: OWNERSHIP AND REUSE OF DOCUMENTS

The original of all documents, drawings, calculations, test results, recommendations, technical specifications, renderings, exhibits, models, prints, photographs, or other materials prepared by the ESCO shall be and remain the property of the customer, provided the ESCO is compensated under this agreement (the cost of the audit is paid or an EMS contract is reached).

To the extent that use of Intellectual Property is required for the Awarding Authority to receive the benefits of the audit services, the ESCO will grant a perpetual, royalty-free and fully paid, irrevocable license to use such property. Any use by the Awarding Authority or its energy consultant without the ESCO's involvement is prohibited.

SECTION 5: TERMINATION

The Awarding Authority may terminate this Agreement with or without cause upon 10 days written notice. In the event of such termination without cause the Awarding Authority shall pay the ESCO, within 30 days, the full reasonable value of its services (including direct and indirect cost, expenses, overhead, and profit) not to exceed \$ _____. Upon receipt of the notice, the ESCO shall stop all work.

The ESCO may terminate this Agreement with or without cause upon 30 days written notice. The Awarding Authority will not compensate the ESCO for any services and the ESCO is not obligated to provide the Awarding Authority with any audit services.

If the ESCO refuses or fails to perform any of the provisions of this Agreement in a timely manner and with such diligence as will ensure its completion within the time specified in this contract, the

ATTACHMENT 6
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Awarding Authority shall notify the ESCO in writing of the non-performance, and if not promptly corrected within 15 days, the Agreement will terminate.

If after notice of termination of the ESCO's right to proceed under the provisions of this clause, it is determined for any reason that the ESCO was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had not been issued.

SECTION 6: LIABILITY AND INDEMNIFICATION

The ESCO hereby assumes the entire responsibility and liability for injury to or death of any person and for property damage caused by neglect on the part of the ESCO or any of the ESCO's subcontractors, consultants, agents or anyone directly or indirectly employed by any one of them whose acts may be answerable. Such liability shall not extend to injuries or death caused by neglect on the part of the Awarding Authority. The ESCO is responsible for any property damage resulting from neglect, misconduct, non-execution of the work, defective work, or materials in the execution of the audit.

The ESCO agrees to indemnify and hold harmless the Awarding Authority, including its agents, employees, and representatives against claims, damages, losses, and expenses (including attorney fees) caused by performance of the work. The indemnification shall not be limited on the amount or type of damages, compensation, or benefits payable by or for ESCO or subcontractor under the Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

The ESCO shall, at all times during the agreement, maintain in full force and effect adequate commercial general liability insurance and property damage insurance, as well as workmen's compensation and employer's liability insurance pursuant to the State insurance requirements as defined below. Before commencing any work under this agreement, the ESCO shall file with the Awarding Authority certificates of insurance evidencing the coverage's as specified below. The certificates shall contain the following express obligation:

COVERAGE LIMITS OF LIABILITY

Standard Workers' Compensation:	Statutory
Employers' Liability:	\$500,000
Bodily Injury:	\$2,000,000 each occurrence (except automobile) \$4,000,000 aggregate
Property Damage:	\$2,000,000 each occurrence (except automobile) \$4,000,000 aggregate
Automobile Bodily Injury:	\$2,000,000 each person \$4,000,000 each occurrence
Automobile Property Damage	\$2,000,000 each occurrence

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Excess Umbrella \$2,000,000 each occurrence

The Awarding Authority shall be named as an additional insured under the liability and automobile insurance. The general liability insurance policy should contain a broad form general liability endorsement. The insurance shall include provisions preventing cancellation without 30 calendar day prior written notice, by certified mail to the Principal Representative

The ESCO shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from the performance of the services contemplated in this agreement, provided that any such claim, damage, loss or expense is caused by any negligent act, error or omission of the ESCO, any ESCO or associate thereof, or anyone directly or indirectly employed by the ESCO.

SECTION 7: CORI CLEARANCE REQUIREMENTS

In accordance with M.G.L. c.71, §38R, the Awarding Authority may request and obtain all available criminal offender information ("CORI") from the Criminal History Systems Board of any contractor, subcontractor, agent, employee, or consultant who may have direct contact with children. The ESCO shall require all individuals involved in the provision of audit services to complete and sign a Request Form to obtain CORI.

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SECTION 8: ENTIRE AGREEMENT

This Agreement, the ESCO proposal, and the exhibits listed below constitute the entire agreement among the parties and may be amended only by a written amendment executed by both parties. In the event of any conflict between this Agreement and any attachments or referenced documents, this Agreement shall control.

[List all exhibits and attachments]

Exhibit A: Scope of Work

Exhibit B: Pricing and Cost

THIS AGREEMENT IS ENTERED INTO THIS _____

[ESCO]

[MUNICIPALITY]

By: _____

by: _____

Title: _____

Title: _____

Date _____

Date _____

[MUNICIPAL AGENCY]

By _____

Title _____

Date _____

Approved as to Form:

Office of General Counsel

ATTACHMENT 6
MODEL INVESTMENT GRADE AUDIT AGREEMENT FOR EMS

EXHIBIT A: SCOPE OF WORK

The purpose of the IGA is to provide an investment-grade audit that quantifies the size, scope, payback, and firm cost for each ECM that may be financed through the Contract. Execution and approval by the Awarding Authority of this Agreement shall serve as a Notice to Proceed.

The approved Investment Grade Audit Report will be used as Attachment X: *Scope of Work*. The Project Proposal is the basis for the Proforma, which will be used in Schedule ____: *Final Project Cost and Project Cash Flow Analysis of the EMS Contract*.

The ESCO shall commence preparation of the Energy Audit in sufficient time to meet the following schedule:

Site visits	As needed and scheduled with Awarding Authority
Draft Energy Audit submitted	
Authority review draft	
Energy Audit submitted	
Energy Audit accepted or rejected	

The deadline for an acceptable Energy Audit shall be no later than **4:00 PM**, on _____, **20__**. After this date, the Awarding Authority may terminate this Agreement upon written notice to ESCO, and all drafts, plans, materials, calculations, specifications, and draft Energy Audits may be retained by the Authority as liquidated damages.

1. GENERAL SCOPE

The ESCO will:

- a) Conduct and report on detailed site surveys of all property listed in RFP/RFQ Facility Profile, including all utilities identified for conservation measures and all energy and water systems and identify the size, scope, and payback of energy conservation measures by a documented analysis of various conservation opportunities.
- b) Inspect a random sampling of items (e.g. toilets, lamps, or other equipment) in sufficient detail to ensure a statistical level of confidence to guarantee the capital cost and performance of the work. ESCO shall utilize all available resources such as construction documents, equipment manuals, maintenance records, and interviews of persons familiar with each property and its operations.
- c) Examine all utility data to check for accuracy against actual bills and data printouts in order to confirm that baseline data is accurate & complete; document baseline and projected utility data for use in the performance guarantee of the Contract. The accuracy of the baseline consumption, savings projections, and capital budget are of the essence of this Agreement and the subsequent Contract.
- d) Present a thorough description of each recommended conservation measure including, but not limited to, conceptual summary, equipment and material specifications, plans, schematics or

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detail sketches as appropriate, cost, useful life, savings in utility consumption and expense, maintenance and operating expenses, assurances that the original design performance shall be maintained throughout the useful life of the equipment and systems installed, monitoring requirements, impact, if any, of each measure on the buildings, other building systems and occupants, and payback. This information shall be prepared consistent with the RFP/RFQ and with Facility Profile.

- e) Summarize any conservation measures that are rejected and state the reasons for rejection. The ESCO shall be prepared to provide backup data, calculations, and other information as requested by the Authority but need not include this detail in the Energy Audit.
- f) Prepare a detailed operational plan showing the sequence of operations for the work to be performed.
- g) Prepare sufficient design, plans, equipment, material and other detail suitable as specifications for work to be performed under the subsequent Contract, and,

2. GUARANTEED SAVINGS CALCULATIONS

- a) Annual guaranteed energy and cost savings is required for the entire financing term. The guarantee is based on cost savings attributable to all energy saving measures, and must equal or exceed all project costs each year during the contract period. Annual project costs include debt service, ESCO fees, maintenance services, monitoring services, and other services.
- b) Excess savings or annual cost savings beyond the guaranteed minimum savings will be retained by Awarding Authority, and will not be allocated to shortfalls in other years.
- c) The annual savings for all measures must be estimated for each year during the contract period.

3. ALLOWABLE COST AND SAVINGS FACTORS

- a) Allowable payment sources:
 - 1) Energy and water cost savings.
 - 2) Material/commodity savings, including scheduled replacement of parts.
 - 3) Outside labor cost savings, including maintenance contracts. Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented.
- b) Negotiable payment sources:
 - 1) Offset of Awarding Authority future capital cost
 - 2) Outside incentive funds (utility incentives, grants, etc.)

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- 3) Escalation rates for natural gas, electricity, water, and material/commodity cost savings. These are rates used in cash flow projections for project development purposes. *NOTE: Use historical data and/or federal government guidelines on utility escalation rates to ensure reasonableness.*
- 4) Interest rates (municipal tax-exempt rates for public institutions)
- 5) Awarding Authority cash outlay (at Awarding Authority's sole discretion)

The markup costs presented in Exhibit B will be used in the Technical Energy Audit and subsequent Contract.

4. EXISTING CONDITIONS

The ESCO will document the existing conditions of the facilities, including the following information itemized for each building included in the project:

- A. Building physical condition;
- B. Hours of use or occupancy;
- C. Square footage by facility including area of conditioned space; area of unconditioned space;
- D. Inventory of energy consuming equipment or systems;
- E. Energy consuming equipment operating conditions and loads;
- F. Standards of service and comfort observed (e.g. light levels, ventilation, and temperatures);
- G. Utility company invoices;
- H. Current practices that unnecessarily increase energy use or impact baseline;
- I. Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels);
- J. Operating engineer logs, maintenance work orders, etc., as available;
- K. Records of maintenance expenditures on energy-using equipment, including service contracts;
- L. Description of energy management procedures utilized on the premises;
- M. Description of any energy-related improvements made or currently being implemented;
- N. Description of any changes in the structure of the facility or energy-using or water-using equipment;

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- O. Description of future plans regarding building modifications or equipment modifications and replacements;
- P. Original construction submittals and factory data (specifications, pump curves, etc.), as available;

The Awarding Authority agrees to work diligently to furnish the ESCO accurate and complete data and information as available. Where information is not available, the ESCO will make a diligent effort to collect such information through the facility inspection, staff interviews, and utility companies.

The ESCO agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

1. FACILITY INSPECTIONS

A. Interview the facility manager, maintenance staff, and occupants of each building regarding:

- 1) Facility operation, including energy management procedures;
- 2) Equipment maintenance problems;
- 3) Comfort problems and requirements;
- 4) Equipment reliability;
- 5) Projected equipment needs;
- 6) Occupancy and use schedules for the facility and specific equipment; and,
- 7) Facility improvements past and planned.

B. Survey major energy-using equipment, including;

- 1) Lighting (indoor and outdoor);
- 2) Heating and heat distribution systems;
- 3) Cooling systems and related equipment;
- 4) Automatic temperature control systems and equipment;
- 5) Air distribution systems and equipment;

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- 6) Outdoor ventilation systems and equipment;
- 7) Exhaust systems and equipment;
- 8) Hot water systems;
- 9) Electric motors, transmission and drive systems, special systems (kitchen/dining equipment, etc.);
- 10) Renewable energy systems;
- 11) Other energy using systems; and,
- 12) Water consuming systems (restroom fixtures, water fountains, irrigation systems, etc.).

C. Perform "late-night" surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules, if deemed necessary.

D. Develop a preliminary list of potential energy and water saving measures, with consideration of the following for each system:

- 1) Comfort and maintenance problems;
- 2) Energy use, loads, proper sizing, efficiencies and hours of operation;
- 3) Current operating condition;
- 4) Remaining useful life;
- 5) Feasibility of system replacement;
- 6) Hazardous materials and other environmental concerns;
- 7) Awarding Authority's future plans for equipment replacement or building renovations;
- 8) Facility operation and maintenance procedures that could be affected; and,

The Awarding Authority will allow the ESCO reasonable access to facility staff to ensure understanding of existing systems and opportunities. The ESCO will work diligently to assess validity of information provided and confirm or correct the information as needed.

2. ESTABLISH BASELINE CONSUMPTION

- A. The ESCO will establish base year consumption by examining utility bills for the past three years for electricity, gas, steam, water, etc. Present base year consumption in terms of energy units (kWh, kW, CCF, Therms, gallons, or other units used in bills), in terms of dollars, and in terms of dollars per square foot. Describe the process used to determine the

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base year (averaging, selecting most representative contiguous 12 months, etc.). Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the base year representation. The ESCO will account for periods of time when equipment was broken or malfunctioning in calculating the base year.

B. The ESCO will estimate loading, usage and/or hours of operation for all major end uses of total facility consumption including, but not limited to:

- 1) Lighting
- 2) Heating
- 3) Cooling
- 4) Motors (fans and pumps)
- 5) Plug loads
- 6) Kitchen equipment
- 7) Other major energy and water using equipment.

Where loading or usage are highly uncertain (including variable loads such as cooling), the ESCO will use its best judgment, spot measurements or short-term monitoring. The ESCO should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

C. The ESCO will reconcile annual end-use estimated consumption with the annual base year consumption. This reconciliation will place reasonable “real-world” limits on potential savings.

D. The ESCO will propose adjustments to the baseline for energy and water saving measures that will be implemented in the future.

3. DEVELOP PRELIMINARY AUDIT ANALYSIS

- A. List all potential opportunities, whether cost-effective or not;
- B. Identify measures that seem likely to be cost effective and therefore warrant detailed analysis. Present ECMs in the order that interactions are considered;
- C. For each measure, prepare a preliminary estimate of energy or water cost savings including description of analysis methodology, supporting calculations and assumptions used to estimate savings.

Present preliminary findings prior to thorough analysis. Describe how the projected project economics meet the Awarding Authority’s terms for completing the Technical Energy Audit and Contract. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an energy performance contract. Develop a list of recommended measures for further analysis. The Awarding Authority shall have the option to reject calculations of savings, potential savings allowed, or project recommendations.

4. CONDUCT COMPREHENSIVE DETAILED ENERGY AUDIT ANALYSIS

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In analyzing the savings and costs for each energy and water measure, the ESCO will:

- A. Follow the engineering principle(s) and methodologies to calculate energy and water savings consistent with ASHRAE or other nationally-recognized authority;
- B. Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, and water saving devices as requested by the Awarding Authority;
- C. Utilize assumptions, projections, and baselines that best represent the true value of future energy or operational savings, including: accurate marginal costs for each unit of savings at the time the audit is performed; documentation of material and labor cost savings; adjustments to the baseline to reflect current conditions at the facility; and, calculations that account for the interactive effects of the recommended measures;
- D. Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use; and,
- E. Develop a preliminary measurement and verification plan for each measure based on the Awarding Authority's preference.

5. PREPARE A DRAFT TECHNICAL ENERGY AUDIT REPORT.

To provide an engineering and economic basis for negotiating a Contract between the Awarding Authority and the ESCO, the report shall include:

A. Overview

- 1) Summary table of recommended energy and water saving measures, with itemization for each measure of total design and construction cost, annual maintenance costs, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life;
- 2) Summary of annual energy and water use by fuel type and costs of existing or base year condition;
- 3) Calculation of cost savings expected if all recommended measures are implemented, and total percentage savings of total facility energy cost;
- 4) Description of the existing facility, mechanical and electrical systems;
- 5) Summary description of measures, including estimated costs and savings for each;
- 6) Discussion of measures considered but not investigated in detail;
- 7) Discussion of utility rebates, school building aid, or other rebate and incentive options; and,

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8) Conclusions and recommendations

B. Facility Profile

- 1) Description of facilities;
- 2) Size of each facility;
- 3) Facility use;
- 4) Occupancy schedule;
- 5) Original construction date;
- 6) HVAC system
- 7) Controls; and,
- 8) Other major equipment.

C. Base year energy use

- 1) Description and itemization of current billing rates, including;
 - a) Schedules;
 - b) Energy type;
 - c) Native units (kWh, gals, etc.);
 - d) Average price per unit;
 - e) Marginal price per unit, if applicable;
 - f) Effective date of prices; and,
 - g) Monthly listing for rates that vary.
- 2) Summary of all utility bills for all fuel types and water;
- 3) Base year consumption and description of how established;
- 4) Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc) with base year (include discussion of any unusual findings);

D. Full description of each energy and water saving measure including:

- 1) Existing conditions;
- 2) Recommended equipment and how it will function;
- 3) Operation and maintenance procedures affected by installation/implementation;
- 4) The plan for installing or implementing the recommendation;
- 5) Savings calculations
 - a) Base year energy use and cost;
 - b) Post-retrofit energy use and cost;
 - c) Savings estimates including analysis methodology, supporting calculations and assumptions used;
 - d) Annual savings estimates (the cost savings for all energy saving measures must be estimated for each year during the contract period and savings must be achieved each year, not reported as average annual savings over the term of the contract);
 - e) Percent cost-avoidance projected;
 - f) Description and calculations for any proposed rate changes

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- g) Explanation of how savings interactions between ECMs is calculated;
- h) Operation and maintenance savings, including detailed calculations and description;
- i) If using computer simulation, include a short description and state key input data. The Awarding Authority will require a hardcopy of printouts and electronic documentation of the analysis conducted; and,
- j) If using manual calculations, formulas, assumptions and key data shall be stated. The Awarding Authority will require a hardcopy of printouts and electronic documentation of the analysis conducted.

6) Cost estimates and avoided costs

The ESCO will provide a detailed scope of the construction work needed, suitable for cost estimating. Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts.

- a) Engineering/design costs;
- b) Contractor/vendor estimates for labor, materials, and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities;
- c) Permit costs;
- d) Construction management fees;
- e) Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.);
- f) Financing costs; and,
- g) Avoided costs including utility or other rebates, subsidies, and or third-party aid.

7) Other

- a) Estimate of average useful service life of equipment
- b) Preliminary commissioning plan
- c) Impacts that the facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc.; and,
- d) Compatibility with existing systems.

8) Rebates, subsidies, and Incentives

Provide a detailed discussion of the ESCO's plan to secure on behalf of, or in conjunction with the Awarding Authority, all available rebates, subsidies and third-party aid for each ECM and the over project. Discuss which rebates, subsidies and/or third-party aid the ESCO will guarantee and whether any additional rebates, subsidies and/or third-party aid will accrue to the benefit of the Awarding Authority.

9) Measurement and Verification Plan

Provide a detailed description of the measurement and verification plan (following the Federal Energy Management Measurement and Verification Guidelines) and the approach employed for each ECM to demonstrate realized savings that are sustainable over the useful life of the ECM. The plan shall

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include definitions of terminology and the methods and procedures for reconciling the verified saving to the guaranteed savings.

10) Financial Summary

Provide a cash flow analysis listing the annual energy, water, and O&M savings, the annual lease payments, and the annual M&V, maintenance, and other costs, any rebates and/or third-party aid, and the net annual cash flow. List interest rate and applicable energy cost escalation rates.

11) Appendices

Complete appendices that document the data used to prepare the analyses, including a description of how data were collected.

E. Optimize IGA

The ESCO will meet with the Awarding Authority and present the technical and economic findings of the IGA. Such meeting will enable the Awarding Authority to collaborate on optimizing the ECM selection based on its requirements and preferences. Upon completion of the optimization process, the ESCO shall update and revise the IGA to reflect the optimized EMS project, including an updated financial summary as described above.

F. ECM Installation Schedule

For each ECM provide a proposed implementation schedule. Include the following milestones:

- 1) Design completed;
- 2) Permits;
- 3) Submittals (plans and specifications);
- 4) Equipment/Material acquisition;
- 5) Mobilization;
- 6) Installation;
- 7) Clean up;
- 8) Startup/Testing;
- 9) Final inspection
- 10) Post installation submittals; and,

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11) Training.

G. Prepare Contract Terms

Using the Department of Energy Resources Model Contract, the ESCO will provide a listing of Contract terms necessary to facilitate Awarding Authority approval, including;

- 1) A list of energy conservation measures. Include a list of services that will be provided as related to each cost;
- 2) Expected term of the Contract.
- 3) Analysis of annual cash flow for the Awarding Authority during the Contract term;
- 4) Description of how the project will be financed including available interest rates and financing terms, based on interest rates likely available to Institution at this time, and based on a 60-day and 90-day lock option.
- 5) Explanation of how the savings will be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors. Monitoring and verification methods must be consistent with the most recent version of the Federal Energy Management Program (FEMP) Measurement and Verification Guidelines.

Nothing herein obligates the Awarding Authority to enter into the Contract.

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MODEL INVESTMENT GRADE AUDIT AGREEMENT FOR EMS

Exhibit B: Pricing and Cost

Project cost is the total amount the Awarding Authority will pay for the project and ESCO's services. Costs must be competitive, reasonable, and consistent with maximum markups and fees. Costs may include but are not limited to: engineering, designing, packaging, procuring, installing (from Technical Energy Audit Report results); performance and payment bond costs; construction management fees; commissioning costs; maintenance fees; monitoring fees; training fees; legal services; overhead and profit; other markups. Responses to this section only will remain proprietary except to fulfill DOER filing requirements.

Maximum rates were established for in the initial response. Propose rates for this specific project that are equal to the stated maximum rates. All other guidelines presented in the RFP/RFQ for markups and fees shall apply.

Table 1: Energy Efficiency Measure Summary

Company Name: _____

Building or Facility Name: _____

(Aggregate data from summary sheets)

EC M No.	Energy Conservati on Measure (ECM)	Electricit y Savings (kWh/yr.)	Peak Demand Reductio n (kW)	Fuel Savings (include units)	Energy Cost Savings (\$/yr.)	Estimated Measure Cost (\$) from Table 2	Estimate d Life of Measure (years)	Refer to Page(s)

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	Totals							

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MODEL INVESTMENT GRADE AUDIT AGREEMENT FOR EMS

Table 2
Summary Sheet for ECM Number _____

Building: _____

Name of ECM: _____

1. Description (include quantities, types, sizes, locations, etc.

a) Existing Conditions: _____

b) Proposed Conditions with ECM: _____

2. Net First Year Energy Savings

Fuel Type (electric, gas, oil)	Fuel Units (kWh, Therms, CCF, KW, gallons)	First Year Fuel Savings (kWh, Therms, CCF, KW, gallons)	Unit Cost for the Fuel	Cost Savings
Totals				

1. Cost Estimate Summary of Measure

Materials \$ _____

Labor \$ _____

Contingency \$ _____

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MODEL INVESTMENT GRADE AUDIT AGREEMENT FOR EMS

Other (Specify) \$ _____

Total \$ _____

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MODEL INVESTMENT GRADE AUDIT AGREEMENT FOR EMS

4. Expected useful life: _____ years.
5. The measure interacts with ECM No(s) _____
6. The measure impacts ECM No(s) _____
6. Impact on standards of service and comfort.

Table 4: Price Formula

For each item, enter the proposed price as a lump sum and as a percentage of construction cost.

4.1	Energy Study Fee	\$			
4.2	Engineering, Design and Spec Services	\$	OR	%	% of Construction Cost
4.3	Project Management Services	\$	OR	%	% of Construction Cost
4.4	On-Site Construction Management	\$	OR	%	% of Construction Cost
4.5	Commissioning	\$	OR	%	% of Construction Cost
4.6	Training	\$	OR	%	% of Construction Cost
4.7	Commissioning	\$	OR	%	% of Construction Cost
4.8	Interest During Construction	\$	AT	%	
4.10	P & P Bond	\$	OR	%	% of Construction Cost
4.11	Miscellaneous Fees and Permits	\$	OR	%	% of Construction Cost
4.12	Term Financing Interest Rate			%	% of Principal (APR)

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MODEL INVESTMENT GRADE AUDIT AGREEMENT FOR EMS

4.13	Monitoring, Verification, and Savings Guarantee Total	\$	OR	%	% of Energy Savings
4.14	Overhead Profit				
4.15					

Table 5
Project Cost

Installed Measure Cost		
Energy Study Cost		
Design Services		
Construction/Project Management Services		
General ESCO Overhead and Profit		
Commissioning and Initial Training		
Interest During Construction		
Bond Fees		
Miscellaneous Fees and Permits		
Other		Specify
Less Utility Rebate		
TOTAL Project		

ATTACHMENT 6
MODEL INVESTMENT GRADE AUDIT AGREEMENT FOR EMS

Table 6
Calculation of Cost Savings

Year	Annual Energy Cost Savings {A}	Total Payments {B}	Net Savings ({C}={A}-{B})
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
Total			

ATTACHMENT 6
MODEL INVESTMENT GRADE AUDIT AGREEMENT FOR EMS

Table 7
Payment Schedule and Termination Value

Year	Contract Payments	Total Payments
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
Total		

<u>Year</u>	Termination Value	Total Payments from Above	
		Date	Amount
1			
2			
3			
4			
5			
6			
7			
8			

Notes: Enter the date and amount of each payment. Show additional payments on another sheet if necessary. "Termination Value" is the lump sum payment required to buy out of the contract and receive title to all equipment in each year. If this option is not proposed in any year(s), indicate by "NA."

ATTACHMENT 6
MODEL INVESTMENT GRADE AUDIT AGREEMENT FOR EMS

Form of Energy Audit Report

1. Cover

A. The cover page should provide the following information:

- 1) The words "Energy study for (the facility's name)"
- 2) Name(s) and address(es) of the building(s) analyzed in the study
- 3) Name of the firm producing study
- 4) Date

2. Table of Contents

Provide a table of contents with page numbers and descriptive title for each section, table, exhibit, attachment, etc. Tables, charts, attachments, and exhibits should be listed separately by number, title and page number.

3. Page Numbers and Revisions

Each page should be numbered and dated. Should revisions be requested, a listing of original pages and replacement pages should be provided. Each revised page should indicate at bottom right corner "Revised--date."

4. Executive Summary

Provide a short (one or two page) narrative summary of the project, including discussion of the project's energy savings and financing.

A. The following tables must be included:

- 1) A summary of ECM measures for the project (Table 1);
- 2) A summary of the project cost (Table 2);
- 3) Maintenance services provided by equipment covered, scope, frequency (Table 3);
- 4) A cost savings calculation (Table 4); and
- 5) A payment schedule (Table 5)

ATTACHMENT 7
Model Energy Management Services Agreement

PREAMBLE

This Energy Management Services Agreement (hereinafter "Agreement") is made and entered into as of _____ ("Effective Date") by and between _____ (hereinafter "**Contractor**"), a _____ based Corporation having its principal offices at _____, and _____ (hereinafter the "**Owner**"), having its principal offices at _____ (address), for the purpose of furnishing certain equipment and work specified herein ("**Work**"), and assuring the performance of said Work, for design, construction, guarantee, and follow-up measurement and verification of energy savings. The project will improve thermal efficiency, conserve energy, conserve water, reduce waste water, and, when specified, generate electrical power at Owner properties included in the RFP.

SECTION 1: DEFINITIONS

Key terms used within this Agreement are defined as follows:

Adjusted Energy Baseline. An energy baseline adjusted to compensate for factors that would have changed energy consumption in the absence of any energy conservation measures, such as increases or decreases in conditioned or illuminated space, changes in occupancy or building use, facility renovation, or extremes in weather.

Business Day. A business day shall mean Monday through Friday, exclusive of state and federal legal holidays.

Commissioning. The process for achieving, verifying, and documenting the performance of the energy and water conservation measures to meet the operational capabilities of the project as designed including documentation of checklists, systematic functional testing of equipment and systems, oversight of training for operations and maintenance staff, and follow-up on any warranty issues.

DCAM. The Division of Capital Asset Management and Maintenance, established by M.G.L. c. 7, § 4A.

DOER. The Department of Energy Resources, established by M.G.L. c. 25A, §1.

EMS Annual Report. A report form required by DOER that must be completed by the Local Governmental Body summarizing the energy or water unit and dollar cost savings. The initial report providing estimated savings must be filed along with the EMS contract and thereafter within 90 days after the anniversary of the Guaranteed Energy Performance Period.

Energy Audit. A systematic inspection, verification, and determination of the energy consumption characteristics of a building or facility which:

- (a) identifies the type, size, and rate of energy consumption of such building or facility and the major energy using systems of such building or facility;
- (b) determines appropriate energy conservation maintenance and operating procedures; and
- (c) indicates the need, if any, for the acquisition and installation of Energy Conservation Measures or On-site Energy Generation.

Energy Conservation. A modification of, or change in, the operation of real or personal property in a manner likely to improve the efficiency of energy use, and shall include Energy Conservation Measures and any Energy Audits to identify and specify energy and cost savings.

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Model Energy Management Services Agreement

Energy Conservation Measures. Measures involving modifications of maintenance and operating procedures of a building or facility and installations therein, which are designed to reduce energy consumption in such building or facility, or the installation or modification of an installation in a building or facility, which is primarily intended to reduce energy consumption.

Energy Conservation Projects. Projects to promote Energy Conservation, including but not limited to energy conserving modification to windows and doors; caulking and weather stripping; insulation, automatic energy control systems; hot water systems; equipment required to operate variable steam, hydraulic and ventilating systems; plant and distribution system modifications, including replacement of burners, furnaces or boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; on-site electrical generation equipment using new renewable generating sources as defined in section 11F; and cogeneration systems.

Energy Management Services (EMS). A program of services, including Energy Audits, Energy Conservation Measures, Energy Conservation Projects or a combination thereof, and building maintenance and financing services, primarily intended to reduce the cost of energy and water in operating buildings, which may be paid for, in whole or in part, by cost savings attributable to a reduction in energy and water consumption that result from such services. The EMS contract may extend for a term not to exceed twenty years. The allowable length of the contract may also reflect the useful life of the cost savings measures.

Energy Savings. A measured reduction in fuel and its costs, energy and its costs, water and its costs, or operating or maintenance costs resulting from the implementation of Energy Conservation Measures or Projects; provided, however, that any payback analysis to evaluate the energy savings of a geothermal energy system to provide heating, cooling or water heating over its expected lifespan shall include gas and electric consumption savings, maintenance savings and shall use an average escalation rate based on the most recent information for gas and electric rates compiled by the Energy Information Administration of the United States Department of Energy.

Established Baseline. A written description of previous fuel, energy, and water consumption data and operating and maintenance costs for the past three years, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed. The description shall be included in the Request for Proposals.

Escalation Rate. The escalation rate is the rate of increase in price that is based on the most recent information for gas and electric rates compiled by the Energy Information Administration of the United States Department of Energy (see Energy Savings).

Estimated Energy Cost Savings. The Contractor-estimated energy cost savings in dollars per year for each Energy Conservation Measure (ECM), and equal the estimated energy savings multiplied by the established energy prices in appropriate units. For ECMs with multiple energy type impacts, energy cost savings equals the sum of the products of the energy savings by energy type and established energy prices.

Excess Savings. Actual savings realized that are over and above guaranteed savings.

FEMP. The Federal Energy Management Program.

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Model Energy Management Services Agreement

Final Completion. Final Acceptance by the owner that the Contractor has fulfilled all of its obligations under the Contract including construction, installation, inspection, testing, measuring initial performance and commissioning, and that all punch list items are reconciled and subcontractors, laborers, and suppliers are paid in full.

Guarantee of Generation. The written guarantee of a Contractor warranting the particular electrical energy generation to be derived from the On-site Electrical Generation unit. Such written guarantee shall:

- (a) include a detailed description of the equipment to be installed; and
- (b) state the annual amount of electrical energy to be generated in kilowatt hours per year.

Guarantee of Savings. The written guarantee of a Contractor, warranting the energy savings to be derived from a particular Energy Conservation Measure, Energy Conservation Project, Energy Management Services, or Energy Savings. Such written guarantee shall include a detailed description of the cost of the energy or water conservation or usage measures, all causally connected work, and ancillary improvements provided for in the contract. The guarantee shall state the annual savings expressed in applicable energy units or (if water savings) in gallons per year and be based on dollars saved by reference to established unit rates.

Guaranteed Energy Savings Contract. A contract for the evaluation, recommendation or implementation of one or more energy management services in which payments are based, in whole or in part, on any energy savings attributable to the contract.¹

Guaranteed Maximum Cost. The fixed maximum cost of the Energy Management Services, including:

- (a) the cost of each energy conservation measure, after installation, startup, and testing; and
- (b) the total payments made by a Local Governmental Body to a contractor, including but not limited to, the total capital investment and the contractor's costs. Utility sponsored rebates, tax credits or other incentives, any direct governmental subsidies, interest payments, and energy and water cost savings shall not be deducted from the Guaranteed Maximum Cost.

Guaranteed Savings Year. The 365 day period beginning on the Final Completion Date and each consecutive 365 day period thereafter during the contract period.

Guidelines. A set of clarifications, interpretations, and procedures, including forms and model documents, developed and issued by DOER to assist it in determining compliance with 225 CMR 10.00. Each Guideline shall be effective on its date of issuance or on such date as is specified therein, except as otherwise provided in 225 CMR 10.00 and 225 CMR 19.00.

Implementation Period. The implementation period is the period between the date the Agreement is executed to the date that all energy conservation measures (ECMs) are operational and accepted.

Investment Grade Audit (IGA). An Energy Audit that includes a detailed evaluation of the Energy Conservation Project cost, including but not limited to the investment opportunities for Energy Conservation Measures, operations and maintenance. The IGA shall provide a return on investment that represents an optimized bundle of short-term payback Energy Conservation Measures combined with long-term payback Energy Conservation Measures to meet Local Governmental Body Energy Savings and financial goals.

¹ Same as Energy Management Services Agreement or Contract
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Model Energy Management Services Agreement

Measurement and Verification (M&V). The process of measuring and verifying the performance of the project to assure that guaranteed energy, water and related cost savings are being realized.²

Notice to Proceed. Letter from an Owner to a Contractor stating the date the Contractor may begin the Work subject to the conditions of the agreement.

On-site Energy Generation. The generation of Renewable Energy or the cogeneration of electricity and heating or cooling of a generation unit located on or adjacent to a building or structure owned by a Local Governmental Body that utilizes some or all of the energy so generated either directly or indirectly through net metering, as defined in M.G.L. c 164, §138.

Payment Bond. A type of construction bond (bid, payment, and performance bonds) that provides assurance that specified subcontractors, laborers and suppliers associated with the project will be paid in the event of default by the contractor.

Performance Bond. A type of construction bond (bid, payment, and performance bonds) that provides protection from financial loss to the project owner should the contractor or subcontractor fail to perform according to the terms and conditions of the contract (not to be confused with “guaranteed performance”).

Punch List. A list of disputed energy conservation measures.

Renewable Energy. The electrical energy output of an RPS Class I Renewable Generation Unit, Solar Carve-Out Renewable Generation Unit, or Solar Carve-Out II Renewable Generation Unit as defined under 225 CMR 14.00: *Renewable Energy Portfolio Standards – Class I*.

Request for Proposals (RFP). A written document issued by a Local Governmental Body that invites potential Responsive Offerors to submit proposals outlining their qualifications to perform the Energy Management Services for the Local Governmental Body, a cost proposal, and other information required by 225 CMR 10.03(1) and (2) and the Local Governmental Body.

Request for Qualifications (RFQ). A written document issued by a Local Governmental Body that invites qualified providers to submit responses outlining their qualifications, the desire to perform the EMS for the Local Governmental Body, and other information required by 225 CMR 19.00 and the Local Governmental Body.

Substantial Completion Date. The date on which the Contractor warrants by written notice that the ECMs are substantially complete and producing savings equal to or greater than the guaranteed savings.

Shortfall. The deficiency in energy cost savings that the Contractor guaranteed and the actual savings in any one Guaranteed Savings Year.

SECTION 2: PRICE AND TERMS

2.1 Agreement Price

As payment for the Work, Owner shall pay Contractor a firm, fixed price for which the total maximum contract value is not to exceed \$_____ (“Guaranteed Maximum Cost”). To the extent that materials and supplies are used or incorporated in the performance of Agreement, the Contractor is considered an exempt purchaser under

² See Federal Energy Management Program Measurement and Verification Guidelines [here](#)
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the Massachusetts Sales Act, Chapter 14 of the Acts of 1966. Contractor shall be responsible for paying all other taxes and tariffs of any sort related to the Work. This Agreement is conditional upon the Owner obtaining financing from a regulated lender or municipal lessor in an amount not less than the Agreement Price under such terms as are satisfactory to the Owner, provided Owner shall diligently pursue such financing and such terms are customary, reasonable and in compliance with pertinent laws and regulations.

2.02 Payment Terms

- a) Initial Payment: Upon receiving funds from its lender or municipal lessor, an amount of _____ dollars (\$) shall be paid for performance under the Investment Grade Audit Agreement ("Agreement"), mobilization and other costs incurred prior to commencement of Work.
- b) Progress and Final Payments: A Payment Schedule is attached hereto in Attachment X: Payment Schedule, Payment Application, and Certification. The Contractor will invoice on a progress basis all Work using the Application and Certification for Payment form.

All Payment Applications will be based on the Schedule of Contract Values, which will allocate the entire Project Install Price among the various portions of the Installation Services on a per ECM basis and be supported by sufficient data to substantiate its accuracy. Stored materials and pre-purchased equipment must be accompanied by written pre-authorization from the Owner. The Owner will make progress payments to the Contractor within 45 days of all amounts due upon receipt of such properly executed form.

- c) Payment Application: Progress payments will be calculated using the Payment Application and Certification Summary and Current Earnings form in Attachment 8 as follows:

- i. Current Earnings

Determine the per ECM Installation Service charge for the current billing period as the percentage of work completed of the total ECM project cost allocated to that portion of the Installation Services in the Schedule of Contract Values, less Retainage of ten percent (10%), which shall be held as additional security for the faithful performance of all the work required under this Agreement. The Owner will pay retainage within forty-five (45) days after Final Acceptance;

Add that portion of the ECM project cost for pre-approved materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, less Retainage of ten percent (10%);

Deduct any utility or third-party rebates, withheld, or nullified earnings and any other adjustments to determine revised contract value to determine Payment for current Application.

- ii. Contract Payment Status

Complete information in Application Summary bringing forward aggregate of data from Current Earnings. The Owner will review, approve, or reject Payment Application within ten business days.

- iii. Substantial Completion

Upon Substantial Completion, the Contractor will provide a Delivery and Acceptance Certificate in the form of Exhibit 4 for each ECM. Within ten business days of receipt, the owner will sign and return the Certificate for each completed ECM indicating either acceptance or rejection of

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Substantial Completion.

Other than as a result of circumstances beyond the reasonable control and without the fault or negligence of the parties (see Section 3.2), if the Contractor fails to substantially complete a specific ECM by the scheduled ECM Substantial Completion Date stated in Attachment 7: Project Schedule (or an adjusted date approved by the owner in writing) then for each 30 days (or portion thereof) that the Substantial Completion Date is behind schedule, liquidated damages will be calculated and assessed. The monetary value of damages will equal that portion of the ECM remaining incomplete multiplied by the product of the number of days late divided by 30, multiplied by 3%, which calculation shall serve to reduce the Project Install Price. The assessment of liquidated damages shall cease as of the date of submission of a Delivery and Acceptance Certificate for such ECM. This reduction in the Project Install Price, if imposed, shall constitute the sole monetary recourse for the previously mentioned delay(s).

The Contractor will submit a Payment Application and Certification Summary and Current Earnings, adding a sum sufficient to increase the balance to 90% of the ECM project cost, less any amounts disputed as incomplete Work or unsettled claims.

iv. Final Completion

At least thirty days in advance of the scheduled date of Final Completion, the Contractor will meet with the Owner to assess the progress and remaining work to complete the Scope of Services. If the Contractor is unable to complete the Scope of Services within the schedule time remaining then the Owner may request that the Contractor accelerate the Work.

v. Performance Period

Following the date that the owner executes a Final Delivery and Acceptance Certificate (Attachment x), the owner will pay the current Performance Period Fee set forth in Attachment 4 for each successive twelve (12) month period.

vi. Retainage

In addition to any other amounts to be retained hereunder, the owner may retain any sums otherwise owed to the ESCO sufficient to cover the full costs of any of the following:

- 1) The ESCO's failure to comply with any provision of the Scope of Services, or because of negligent acts or omissions in the performance of any part of the Agreement, including, but not limited to, violation of any applicable law, order, rule or regulation, including those regarding safety, hazardous materials or environmental requirements;
- 2) Correction of defective or nonconforming work by redesign, repair, rework, replacement or other appropriate means when the ESCO states, or by its actions indicates, that it is unable or unwilling to proceed with corrective action in a reasonable time and/or if the ESCO fails to take action within thirty (30) calendar days after receiving written notice and the owner is required to take action or perform work such as cleanup or completion of incomplete work.

vii. Charge Backs

The owner may also back charge the ESCO for work done or cost incurred to remedy the aforementioned or any other ESCO defaults, errors, omissions or failures to perform or observe any part of the Scope of Services. The owner shall give written notice, and the ESCO will have thirty

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calendar days to remedy the reported problem before the owner performs such actions or work or incurs such cost.

The cost of back charge work shall include:

- 1) Labor costs including all payroll additives;
- 2) Net delivered material costs;
- 3) Lower-tier supplier costs directly relating to performing the corrective action;
- 4) Equipment and tool rentals at prevailing rates;
- 5) Alternative temporary equipment; and
- 6) A factor of 15% applied to the total of Items (1) through (5) for overhead, supervision, and administrative costs. The back charge notice will request ESCO concurrence for the owner to proceed with the required action or work. The ESCO's failure to concur shall not impair the owner's right to proceed with the action or work under this or any other provision of this Agreement.

The owner will separately invoice or deduct from payments otherwise due to the ESCO the costs as provided herein. The owner's right to back charge is in addition to any and all other rights and remedies provided in this Agreement or by the Commonwealth of Massachusetts. The performance of back charge work by the owner shall not relieve CES of any of its responsibilities under this Agreement.

viii. Final Payment

The entire unpaid balance of the Project Install Price, shall be made when (1) the Installation Services have been fully performed, including all training, commissioning and delivery of Project documentation, (2) a Final Delivery and Acceptance Certificate has been executed and (3) an Application for Final Payment has been issued and approved.

The owner will make final payment not more than thirty days after the issuance of the Application for Final Payment of any balance remaining that is not disputed.

2.4 Agreement Termination

This Agreement shall terminate _____ () years after Acceptance and Final Completion unless otherwise agreed to in writing (with twenty years being the maximum allowed).

SECTION3: GENERAL PROVISIONS

3.01 Dispute Resolution

Disputes regarding changes in and interpretations of the terms or scope of the Agreement and denials of or failures to act upon claims for payment for extra work or materials shall be resolved according to the following procedures:

- a) All claims by either party shall be made in writing and submitted to the Owner for a written decision.

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- b) Contractor shall not delay, suspend, or curtail performance under the Agreement because of any dispute subject to this section.
- c) Within sixty days of submission of the dispute to the Owner, the Owner shall issue a written decision stating the reasons thereof, and shall notify the parties of their right of appeal under this section. If the official or his designee is unable to issue a decision within sixty days, he shall notify the parties to the dispute in writing of the reasons and of the date by which the decision shall issue.
- d) Arbitration to commence w/in 60 days

Failure to issue a decision within one hundred and twenty-days (or within the additional period specified in such written notice) shall give the petitioner the right to pursue any legal remedies available to him without further delay.

3.02 Conditions beyond Control of the Parties

Except as otherwise provided herein, if either party shall be unable to carry out any material obligation under this Agreement due to events beyond its control, such as acts of God, governmental or judicial, insurrections, riots, extended labor disputes, fires, explosions or floods, this Agreement shall remain in effect but the affected party's obligations shall be suspended until the uncontrollable event terminates or is resolved, unless the Agreement is terminated by mutual consent, in which event, Owner shall pay Contractor for all parts of the Work furnished to the date of termination or as otherwise agreed.

3.03 Labor Laws

The Contractor shall obey and abide by all laws and regulations of the Commonwealth relating to the employment of labor and public work.

Contractor shall comply with all federal and state laws, rules, and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices. Contractor shall not discriminate in the delivery of services against any person who otherwise meets the eligibility criteria for services, or in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, status as a Vietnam Era Veteran, sexual orientation or for exercising any rights or benefits afforded by law.

3.04 Prevailing Wage Rate

The Division of Occupational Safety has established a Schedule listing the prevailing minimum wage rates that must be paid to all workers employed on the Agreement by either the Contractor or its subcontractors. Such Schedule shall continue to be the minimum rate of wages payable to workers on this Agreement throughout the term of this Agreement. The Contractor shall not have any claim for extra compensation from the Owner if the actual wages paid to employees on the Agreement exceeds the rates listed on the Schedule. The Contractor shall cause a copy of the Schedule to be kept in a conspicuous place at the project site during the term of this Agreement (see MGL c. 149 § 27). If reserve police officers are employed by the Contractor they shall be paid the prevailing wage rate of regular police officers (see MGL c. 149 § 34B).

3.05 Appropriations

The Owner reasonably believes that funds can be obtained sufficient to make all payments due to Contractor under this Agreement. The Owner hereby covenants that it will make reasonable and diligent efforts to obtain and maintain funds from which such payments may be made, including making provisions for such payments to

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the extent necessary in each annual or supplementary budget submitted for the purpose of obtaining funds, and using reasonable efforts to have such portion of the budget approved. Nothing herein shall obligate the Owner to institute legal action before any court, to commence proceedings before any forum, or to institute proceedings in the nature of mandamus against any public official in attempting to obtain said funds.

In the event that the Owner is unable to obtain an appropriation of funds sufficient to discharge the Owner's obligations under this Agreement (**insert language citing municipal contracting/appropriation authority. See M.G.L. chapter 44, section 31**).

3.06 Laws, Regulations, Ordinances, and Standard Practices

Contractor shall perform its obligations hereunder in compliance with all applicable federal, state, and local laws, regulations, ordinances and by-laws, including applicable licensing and permitting requirements, in accordance with sound engineering and safety practices, and in compliance with all reasonable rules or policies of the Owner relative to the properties. Contractor shall be responsible for obtaining all governmental permits, licenses, consents, and authorizations as may be required to perform its obligations hereunder (see Section 4.10 regarding permits and fees pertaining to the Work).

This Agreement is made and shall be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts. If any provision of this Agreement shall be determined to be invalid or unenforceable under applicable law, such provision shall, insofar as possible, be construed or applied in such manner as will permit enforcement; otherwise this Agreement shall be construed as if such provision had never been made part thereof.

The Parties agree to notify each other as promptly as is reasonably possible but in no event more than 3 business after becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act or any other provision of Federal, State or local law, relating in any way to the undertakings of either Party under this Agreement.

3.07 Patents and Patent Rights

The Contractor shall indemnify and hold the Owner harmless from all claims and actions due to any actual or asserted infringement upon patent rights in any equipment, material, or process used by Contractor in connection with this Agreement.

3.08 Access and Inspection

Owner shall have access to inspect the Work and the books, records, and other compilations of data that pertain to this Agreement. Records shall be kept on a generally recognized accounting basis and calculations kept on file in legible form. Records shall be saved or archived for a period of three (3) years after the termination of this Agreement and shall be kept or made available within Massachusetts.

Contractor shall have access (upon reasonable notice to the Owner) to inspect the property to assess the condition and operation of material and equipment installed and shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the Agreement conforms to Agreement requirements. The Contractor shall maintain complete inspection records and make them available to the Owner.

All work is subject to inspection and testing at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Agreement. Contractor shall replace or correct work, without charge, found not to conform to the Agreement. If the Contractor does not promptly replace or correct rejected work, the

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Owner may, by contract or otherwise, replace or correct the work and charge the cost to the contractor or terminate for default the Contractor's right to proceed.

Notwithstanding inspection and acceptance by the Owner or any provision concerning the conclusiveness thereof, the Agreement warrants that all services performed will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Agreement.

3.09 Ownership of Documents

All drawings, reports and other materials prepared by Contractor specifically in performance of this Agreement shall become the property of the Owner. Said documents will be available as needed by the Owner or, if not so requested, prior to acceptance of the project.

3.10 Sales Tax Exemption

Owner is exempt from the assessment of Massachusetts sales and use taxes. Owner shall issue Contractor a tax exemption certificate to use for the purchases of new equipment/systems for the Owner's benefit to complete the Work. Contractor shall not pay any sales or use taxes on any item exempt from Massachusetts sales and use taxes unless authorized by Owner or is ordered by an appropriate taxing authority to remit sales and use taxes.

3.11 Certificates

Contractor certifies as follows:

- a) Certificate of Authorization: If Contractor is a corporation, each person executing this Agreement on behalf of the Contractor hereby covenants, represents and warrants that Contractor is a duly incorporated or duly qualified (if foreign) corporation and is authorized to do business in the Commonwealth of Massachusetts (a copy of evidence thereof to be supplied to the Owner upon request); and that each person executing this Agreement on behalf of the Contractor is an officer of Contractor and that he or she is duly authorized to execute, acknowledge and deliver this Agreement to the Owner, a copy of a corporate resolution to this effect is attached hereto as Attachment _.
- b) Tax Compliance Certification: Pursuant to M.G.L. c. 62C § 49A(b), each person signing this Agreement on behalf of the Contractor hereby certifies, under the penalties of perjury, that to the best of his/her knowledge and belief, the Contractor has complied with any and all applicable state laws.
- c) Certificate of Non-collusion: The undersigned certifies under penalties of perjury that this Agreement has been made in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity of group of individuals.
- d) Foreign Corporation: Contractor, if a foreign corporation, hereby certifies that it complies with M.G.L. c. 181 § 4 and that the name and address of the resident agent is attached hereto with Exhibit _.
- e) Covenants: Contractor covenants that: (1) it presently has no financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement or which would violate M.G.L. c. 268A, as amended from time-to-time, (2) in the performance of this Agreement, no person having such an interest shall be employed by the Contractor, and, (3) no partner or employee of the Contractor is related by blood or marriage to any Commissioner or employee of the Owner.

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- f) Owner Certification: The Owner certifies that it is duly authorized to execute, acknowledge and deliver this Agreement under the provisions of M.G.L. Chapter 25A § 11C or § 11I, to retain Contractor to design, acquire, install and assist in the maintenance of the installed equipment to accomplish the energy conservation measures and to provide other services, as more fully set forth herein, subject to all the terms and conditions of this Agreement.

3.12 Assignment

Contractor shall not assign, transfer, convey, or otherwise dispose of this Agreement, or any part hereof, or his right, title or interest in the same or any part thereof, without the prior written consent of the Owner. Contractor shall not assign by power-of-attorney, or otherwise, any of the moneys due or to become due and payable under this Agreement, without the prior written consent of the Owner.

3.13 Audit Report and Project Development

The Contractor has prepared the complete Audit Report of the Project Site(s) that has been approved and accepted by Owner (Exhibit 4: Certificate of Acceptance—Technical Energy Audit Report). The Final Audit Report set forth in Attachment 3: Scope of Work and dated _____ includes all energy conservation measures agreed upon by the parties.

3.14 Complete Agreement

This Agreement, together with any documents incorporated herein by attachment or by reference, shall constitute the entire and exclusive Agreement between both parties. This Agreement may not be amended or modified except in writing and executed by the Owner and the Contractor.

It is understood and agreed that the following documents, attachments, exhibits, schedules and any amendments and/or addenda, comprise the total Agreement:

Attachment X: Property Description
Attachment X: Baseline Energy Consumption
Attachment X: Scope of Work
Attachment X: Project Cost and Savings (Available in excel spreadsheet)
Attachment X: Measurement & Verification Plan
Attachment X: Commissioning Plan
Attachment X: Project Schedule
Attachment X: Payment Schedule, Application and Certification (Available in excel spreadsheet)
Attachment X: Equipment Submittals
Attachment X: Training

Exhibit X: Notice to Proceed
Exhibit X: Certificate of Acceptance Final Audit Report
Exhibit X: Certificate of Acceptance Forms
Exhibit X: Payment and Performance Bonds
Exhibit X: DOER Annual Report Form

The failure of either the Contractor or the Owner to insist upon the strict performance of any term or condition hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Agreement.

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SECTION 4: THE WORK

4.01 Time for Performance and Final Completion

Contractor shall commence Work within sixty days of Owner sending the Contractor a Notice to Proceed, which Owner shall send upon closing financing. Contractor shall substantially complete Work within _____ () days after commencing said Work. Extension of dates to commence or complete Work is at the sole discretion of the Owner. Approval for an extension of dates to commence or complete Work shall not be unreasonably withheld if the cause for an extension is pursuant to Sections 4.03, 4.06, 4.08, 4.12, 4.13, or 9.02.

If Contractor is delayed in the commencement or completion of any part of the Work due to events beyond Contractor's control and without the fault or negligence of the Contractor, including but not limited to fire, flood, extended labor disputes, unusual delays in deliveries, unavoidable casualties, abnormal adverse weather, war, and acts of God, or due to Owner's actions or failure to perform its obligations under this Agreement or to cooperate with the Contractor in the timely completion of the Work, then Contractor will notify Owner in writing of the existence, extent of, and reasons for such delay. Contractor shall have no claim for additional compensation because of such delays but Contractor and Owner may extend the Agreement time by revision to the Technical Audit for such reasonable time, as they shall agree.

4.02 Specifications of Work

Contractor's obligations hereunder are specified in Attachment 3: Final Accepted Technical Audit, which shall include the Scope of Work and related drawings and plans and any subsequent revisions thereto, as approved by the Owner. Excluded from the Work are any modifications or alterations to the properties not expressly included within the Work. The requirements of all applicable laws, regulations and codes of federal, state, and local town or city government shall be met at all times. All Work shall be performed in a professional and competent manner.

4.03 Construction Procedures, Changes to Work and Coordination

Contractor shall supervise and direct the Work using its best ability, skill, attention, and oversight. Contractor, in consultation with Owner, shall be responsible for the construction means, methods, techniques, sequences, and procedures. The Owner will review all proposed modifications to the building and systems and must approve of them prior to commencement of any work; such approval will not be unreasonably withheld. No change to the scope or specifications of Work shall be made without the written consent of the Owner, in the form of a revision to the Technical Audit. If Contractor fails to correct Work that is not in accordance with the specifications or persistently fails to meet specifications herein, Owner, by written order signed personally or by its authorized agent, may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

Contractor shall perform the Work in such a manner as to not harm the structural integrity or operating systems of any building and shall repair and restore any damage caused by the Work at Contractor's expense.

Contractor shall not create or allow to continue any condition deemed to endanger health or safety as defined in Section 5.01 and if such a condition exists Owner shall have the right to exercise the remedies described therein.

Contractor shall supply to the Owner the telephone number of a responsible person who may be contacted during non-work hours for emergencies arising in connection with or affecting the Work.

Contractor shall coordinate any utility hookups provided by others under a separate agreement at no additional cost or expense to the Owner.

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Contractor and its employees, subcontractors and agents shall not smoke within any building, including basements.

4.04 Relationship with Maintenance Staff

Contractor shall cooperate with Owner's operating and maintenance personnel, train said personnel in operation and maintenance of any equipment installed as part of the Work, and coordinate the Work on a planned and programmed basis. Contractor shall deliver a preventive maintenance schedule and procedures for any equipment installed as part of the Work. No equipment shall be installed which will require additional personnel to be hired by the Owner for the operation or maintenance of said equipment without prior approval of the owner in the form of a revision to the Technical Audit.

4.05 Material and Equipment Installed

The Owner shall make the final determination whether any material or equipment installed is as specified in Contractor's Response to the RFP/RFQ, which is incorporated in this Agreement by Section 3.15, and the Technical Audit. No substitution of any material or equipment specified shall be made without the written consent of the Owner in the form of a revision to the Technical Audit, and any such substitution shall be at least equal in quality, finish, durability, serviceability and performance for the purpose intended.

Contractor shall install and, when applicable, operate and maintain, or, if specified in the Technical Audit, train Owner personnel to operate and maintain equipment in a manner that will provide standards of service to meet requirements of Section 4.02 and equipment manufacturers' literature, specifications and instructions.

Prior to the installation of any major mechanical systems, the Contractor shall submit design documents. The installation of such ECM shall not commence until the Owner accepts the design documents in writing. **All mechanical, electrical, and structural design drawings shall be stamped by a Massachusetts registered professional engineer for each corresponding trade if applicable.**

Contractor will prepare and furnish at least three Maintenance Manuals that include product data and, which are subject to acceptance by the Owner for all equipment installations at each property.

4.06 Disposal

Contractor will be responsible for proper disposal of all non-hazardous materials and construction demolition debris.

The Contractor will be responsible for proper disposal of all ballast's containing or suspected of containing PCBs and fluorescent lamps containing mercury. Disposal plans must be documented and appropriate transportation and disposal documents prepared before disposal commences, and actual disposal must be documented immediately after disposal.

Demolition debris can only be disposed of at a DEP and Town Board of Health licensed municipal sanitary landfill or DEP/EPA licensed recycling facility. The landfill or recycling facility must be permitted to receive the type of waste involved.

Hazardous waste can only be disposed of by a contractor licensed for special waste disposal.

In the event that friable asbestos is encountered and must be disturbed during the course of this Agreement, the Contractor will notify the Owner immediately. All work in the affected area shall cease until the Parties agree upon a remediation plan. This will not affect the savings allocation, but an extension of the completion date may

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be granted equal to the time lost. Contractor will take into account all available asbestos studies provided by the Owner during the audit phase of the project.

4.07 Subcontracting

Contractor may subcontract part of the Work to others provided any subcontractors are identified in Contractor's Response to the RFP/RFQ or in the Technical Audit. Contractor may, with the written consent of the Owner in the form of a revision to the Technical Audit, substitute a subcontractor for one so identified or, if no subcontractor for a certain trade or task has been so identified, engage one. Contractor shall be responsible for the conduct, acts, and omissions, whether intentional or unintentional, of its subcontractors, employees, agents, invitees or suppliers. Nothing in this Agreement shall create any contractual relationship between any subcontractor, employee, agent, invitee or supplier and the Owner.

4.08 Equipment Location and Access

Buildings may be occupied during construction. Contractor shall take all necessary precautions to ensure the public safety and convenience of the occupants during construction. The Contractor shall complete the Work in accordance with the schedule in Attachment 7: Project Schedule. Contractor must use sufficient personnel and adequate equipment to complete the Work pursuant to Section 4.01. The Work must be completed in a continuous uninterrupted operation between the hours of 8:00 AM and 4:30 PM on Monday through Friday, unless otherwise authorized in writing by the Owner. No Work is to be done on holidays, Saturdays, or Sundays other than for emergencies or unless agreed to in writing.

The Contractor is responsible for the security of partially completed work and for materials or equipment stored at Owner properties. Only materials and equipment intended and necessary for immediate use shall be brought into the buildings. Equipment and unused materials shall be removed from each building by the end of each workday. The Owner shall provide if available, without charge, a mutually satisfactory location, or locations for the storage and operation of materials and equipment and the performance of the Work, including a location for staging and mobilization.

Flammables and combustibles shall be stored only in accordance with Fire Prevention Regulations (527 CMR 1.00-50.00). In the event that the Owner is unable to provide a satisfactory location then Contractor shall provide and pay for suitable storage.

4.9 Permits and Fees

Contractor shall secure and pay for building and other permits and governmental fees, licenses, and inspections that are required by federal, state, or town or city governments for proper performance and completion of the Work. In the event that fees for any permits are reduced or waived by request, standing, or intervention of the Owner, then, at the Owner's option, the amount of the savings of the fee shall be deducted from the line item in the Work budget and added to the contingency line item or the Agreement Price reduced by that amount.

Subsequent to receipt of a Notice to Proceed, the Contractor shall provide a listing of all anticipated permits required to implement the Scope of Work described in Attachment 3.

4.10 Utilities

The Owner shall provide and pay for water, heat, and utilities consumed by the Contractor during performance of the Work. The Contractor shall install and pay for any facilities or modifications not already in existence that is necessary to access such water, heat, and utilities during the Work.

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4.11 Concealed or Unknown Conditions

If Contractor finds conditions during the Work that are subsurface or otherwise concealed physical conditions that differ materially from those indicated on the drawings or are unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in similar construction activities, Contractor shall notify Owner of such conditions promptly, prior to significantly disturbing the same, and in no event later than one (1) business day after first observing the conditions. Such conditions may include, but are not limited to, water damage, termite damage, or structural building defects. If such conditions differ materially and cause an increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall submit a written estimate of the material and labor cost increase and time delay. If the Owner concurs with the need, cost estimate, and time delay, Owner and Contractor shall make an equitable adjustment in the Agreement Price or Time for Performance and Final Completion, or both. Pursuant to Section 4 above, Contractor shall not be entitled to damages for delay. In no event shall the Agreement Price be increased by more than ten percent (10%) of the applicable ECM at the applicable building.

4.12 Casualty, Condemnation, Damage

If any fire, flood, other casualty, or condemnation renders a portion of any property described in Attachment 1 unsuitable for habitation or destroys a substantial part of the area within which the Work is to be performed or which the Work affects, the Owner and Contractor may terminate or modify this Agreement by mutual agreement. The Owner shall pay Contractor for all Work completed to the date of termination. If any material or equipment is damaged by the negligence or willful misconduct of an employee, agent or invitee of Owner, Owner shall repair or replace said item within a reasonable period, or, adjust the Agreement Price to pay for repair or replacement or adjust Time for Performance and Final Completion, or both.

4.13 Standards of Service and Comfort

The following facility performance requirements of service and comfort shall apply throughout the Agreement term:

	Type of Service	Environmental Requirement
a)	Heating	
b)	1) Occupied	70° F
	2) Unoccupied	55° F
	3) Storage	55° F
c)	Cooling	
	1) Occupied	72-76° F
d)	Hot Water Heaters	140° F (Must meet 248 CMR, Board of State Examiners Plumbers and Gasfitters)
e)	Hot Water Distribution	110°F (Maximum)
f)	Ventilation	Within Code at all times
g)	Lighting	Within code at all times

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4.14 Shutdown of Services

Contractor hereby acknowledges that continuous operation of services, including but not limited to heat, water, domestic hot water, electricity, gas, sanitary facilities, elevators, fire alarms, or protections, and access to the property or common areas is essential to the operation of the Owner's properties. If any such service, or access to the property, or any common area is to be discontinued for any period of time in order to perform the Work, Contractor shall give the Owner as much notice in writing as is practicable, but in no event less than seven (7) days in which event the Owner shall, by written response, approve unconditionally or with conditions such shutdown of services. Such conditional approval may include a requirement for the Contractor to provide and pay for temporary services, may limit the time for which services or access may be shut down, or may require other actions, accommodations, or expenditures on the part of the Contractor. With respect to fire alarm or other fire protections, Contractor shall also notify the local fire department of any shutdown of service and notify the fire department when such service is restored.

The Owner acknowledges that such shutdowns may be necessary to perform the Work from time to time and will not withhold approval unreasonably. The Owner agrees to communicate with occupants on plans to shut down services or access and temporary measures, if any, which will be made.

4.15 Indemnification and Limitation of Liability

Contractor shall be responsible for the Work and take all precautions for preventing injuries to persons and property in or about the Work and shall bear the costs of all losses or damages resulting from or because of the Work. The Contractor shall pay or cause payment to be made for all labor performed or furnished and for all material used or employed in carrying out this Agreement. Contractor shall assume the defense of, indemnify and hold harmless the Owner, their officers and agents from all claims relating to the following:

- a) Labor performed or furnished and materials used or employed for the Work,
- b) Inventions, patents and patent rights used in and in doing the Work,
- c) Injuries to any person received or sustained by or from the Contractor and its employees, subcontractors and its employees, any agents, suppliers and invitees in doing the Work, or as a consequence of any improper materials, implements of labor used or employed therein, and
- d) Any act, omission, or neglect of the Contractor and any employees, subcontractors and employees, agents, suppliers and invitees.

Nothing herein shall relieve or limit the Contractor of liability for losses and damages to person or property because of its operations. The Contractor shall indemnify and hold the Owner harmless from all liability, including attorneys' fees and legal costs, associated with or resulting from the Contractor's operations.

SECTION 5: PERFORMANCE AND EVALUATION SUBSEQUENT TO WORK

5.01 Workmanship and Equipment Warranty

Contractor hereby assigns to the Owner all warranties of all equipment and materials used in the Work. Attachment 3 lists equipment and material warranties, however, failure to include any equipment or materials having a warranty neither excludes said equipment or materials from the provisions of neither this section nor Contractor's responsibilities hereunder.

Contractor warrants that, for a period of one year from the date of the Certificate of Final Completion ("Warranty Period"), all equipment, materials and Work shall be free from defects in material, manufacture, workmanship and performance as set forth by the catalogs, bulletins and specifications included within Contractor's Response to the RFP/RFQ, Technical Audit, or this agreement, whichever is appropriate. If such

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defect occurs within the Warranty Period, Contractor shall correct and pay for correction of all defects including replacement or repair and all parts and labor.

Contractor warrants that, for any equipment or materials used in the Work with a warranty period in excess of one year, Contractor shall correct all defects including replacement or repair provided that Contractor's obligation is limited to the terms of the warranty and provided further that the Owner, by mutual consent with Contractor, may correct said defect.

No warranty liability shall attach to the Contractor until Work has been substantially completed and payment has been made. Contractor's warranties expressly exclude any remedy for damage or defect caused by abuse, improper operation, unapproved modifications or improper repairs not performed by Contractor.

If Contractor, upon written notice from the Owner, fails to correct defective equipment, materials or Work within a reasonable period of time, but no less than seventy two (72) hours, unless such defect is a condition deemed to endanger health or safety or is a fire hazard, Owner may correct any defect and Contractor shall reimburse Owner for its reasonable expenses incurred in performing such correction subject to any limitations contained within this section. Conditions which are deemed to endanger under the State Sanitary Code (105 CMR 410.000) or are fire hazards under Fire Prevention Regulations (527 CMR 1.00-50.00) shall be addressed promptly and jointly, if necessary, by Contractor and Owner assuring that immediate precautions are taken to avoid risk to persons or property, imminent measures are taken to prevent deterioration of condition, occupants are alerted to any dangers or hazards, and steps for final correction taken within twenty four (24) hours.

5.02 Evaluation of Savings Achieved

The energy and water savings that occur after the Final Completion Date shall be determined by the difference between actual consumption and baseline consumption as shown in Attachment 2: *Baseline Data and Projection* and as adjusted for occupancy, changes in the manner in which energy or water may be used other than manner of use which has been incorporated as part of the Work, and in the case of heating energy, substantial differences in heating degree days for the pertinent periods. For the duration of this agreement, the Contractor shall monitor Owner's energy and water bills at properties subject to the Work for energy and water usage and shall report quarterly, within fifteen (15) business days after receiving bills for said period, comparing actual usage to the baseline and projections with detailed explanations of variations in savings, including shortfalls, to the Owner. The determination and evaluation of savings shall be consistent with procedures and methods described in the RFP/RFQ and the Audit Report.

Contractor shall prepare an annual report pursuant to 225 CMR 10.07: Monitoring; Reporting Requirements or 225 CMR 19.08: Monitoring; Reporting Requirements for submission to the Owner in a form suitable for review, and shall simultaneously forward the submission electronically to DOER at EMS.Doer@state.ma.us.

The Owner shall notify Contractor of substantive changes in the properties or the operation or occupancy thereof that could effect energy or water use within 48 hours or as soon as is reasonably possible. Such substantive change will be incorporated in the determination and evaluation of savings.

The obligations under this section are also described in the RFP/RFQ and the Contractor's response thereto, and incorporated herein by reference as described in Section 3.14: *Complete Agreement*. Contractor shall be compensated at the rate of _____ dollars (\$_____) per quarter for monitoring and reporting services, payable no later than forty-five (45) days after receipt of the quarterly report as described above, provided such compensation shall be payable only if available from savings after any scheduled financing expenses or interest are paid. [Note: The regulations do not require quarterly monitoring, however, we encourage that energy usage be monitored quarterly.]

5.03 Performance and Guarantees

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Contractor guarantees to the Owner the following:

- a) Products provided by the Contractor meet or exceed the published catalog ratings and that these ratings were accurately used in the calculation of energy and water savings estimates,
- b) Representations made concerning energy or water consumption in its estimates are accurate, and
- c) Based on the projected use of energy and water for the equipment, conditions and operations in place at the time of completion of the Work, which the Owner and the Contractor have agreed to and documented in Attachment 2: *Baseline Data and Projection*, the Owner will save at least _____ dollars (\$ _____) per year during the term of this Agreement.
- d) Calculations for Verified Unit and Cost Savings will be made in the same manner as the savings analysis set forth in the IGA, measured, and verified pursuant to Attachment 5: *Measurement and Verification Plan* and subject to adjustments as set forth in this Agreement.

5.04 Performance Remedies

Contractor shall be bound to both the yearly and total guaranteed savings. If, in any guaranteed savings year, , during the term of this Agreement, the utility savings (in native units) are less than the guaranteed amount (shortfall), Contractor shall be required to implement one or more of the following remedies, such remedies to be at the sole and exclusive discretion of the Owner:

- a) Within forty five (45) days after determination that actual savings are less than guaranteed, modify the installation at no cost to the Owner so that the guaranteed savings rate as projected in Attachment 6 is attained, and pay or credit, at the Owner's option, to the Owner an amount equal to the difference in the actual savings, if any, and the guaranteed savings, and/or
- b) Pay or credit the Owner, at the Owner's option, an amount equal to the difference between the actual savings, if any, and the guaranteed savings, as projected in Attachment 6.

The value of any shortfall in the specific year will be assessed using the utility rates calculated for the specific year (Refer to Attachment 6), in which the shortfall exists. Any excess savings will remain the property of the Owner.

5.05 Independent Audit

The Owner shall have the right to retain, at its own expense, an independent auditor to complete and submit to the parties an audit of the calculations of Energy Cost Savings made pursuant to this Agreement. Any audit so performed must use and incorporate the same methods, procedures, and assumptions as contained in this Agreement and used by Contractor to perform the calculations undergoing an audit pursuant to this Section. Any payments between the parties necessary to resolve an irregularity identified in the audit shall be made within thirty days after submission of the audit to the parties. If, after thirty days, the parties are unable to agree upon the adjustment, the matter shall be submitted to resolution pursuant to Section 3.01.

5.06 Other Performance Terms and Conditions

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All actions taken under Section 6, including but not limited to correction of warranties, remedy of performance shortfalls and maintenance of equipment by Contractor, shall conform to sections 5.02 through 5.16 inclusive.

5.07 Agreement Closeout Responsibility

Prior to any final payment made pursuant to Section 4, Contractor shall perform commissioning as stipulated in Attachment 8 of the equipment covered by this Agreement and prepare an assessment of the condition of the equipment and materials installed as part of the Work.

- a) Conduct a thorough and systematic performance test of each element and total system of the installed equipment detailed in Attachment X: Equipment Submittals in accordance with the commissioning procedures as defined in Attachment 8. Prior to Substantial Completion of each ECM, the Contractor will determine if (1) equipment is functioning in accordance with both its published specifications and, (2) in accordance with the terms of this Agreement, and all building systems, subsystems or components are functioning properly with the new integrated environment.
- b) Conduct the training program described in Attachment X: Training Program, including software, prior to Final Delivery and Acceptance. The cost of such training shall be included in the Performance Period Fee set forth in Attachment X.
- c) Prepare a closeout report that includes (but is not limited to as appropriate) the operating and maintenance recommendations during the remaining life of equipment installed, if any changes in technology or procedures affecting the equipment could extend the useful life of the equipment or increase the conservation efficiency, and an overview of new technology or additional conservation measures for the Owner to consider.

SECTION 6: OBLIGATIONS OF THE PARTIES

6.01 Obligations of the Contractor

Contractor acknowledges and agrees that Contractor's obligations hereunder are in the capacity of providing professional services for the purposes described in the Preamble to this Agreement and in said capacity is expected to provide energy and water auditing, engineering, design and monitoring services, construction management including general contracting as necessary, and other related services as solicited in the RFP/RFQ and as may normally be incidental to these types of professional services. Contractor acknowledges and agrees that any other functions including but not limited to manufacturer's representative, dealer or distributor of equipment, materials or commodity specified herein or as subcontractor, or ownership in whole or in part or financially affiliated with a Contractor which performs such other function shall constitute a conflict of interest which shall constitute a material breach of this Agreement unless 1) fully disclosed in the Contractor's Response to the RFR, and 2) accepted by the Owner under terms which are specified in the Technical Audit. Contractor acknowledges and agrees that this paragraph applies to all its officers and employees.

The following events or conditions shall constitute a breach by the Contractor and shall give the Owner the right, without an election of remedies, to proceed pursuant to Section 3.01 and/or terminate this Agreement by delivery of written notice declaring termination, upon which event the Contractor shall be liable to the Owner for any and all damages sustained by the Owner:

- a) Any attempt by the Contractor to increase the Agreement price for reasons other than those related to changes in the Work pursuant to Section 5.03,
- b) Any failure by the Contractor to provide quarterly monitoring reports pursuant to Section 6.02,
- c) Any failure by the Contractor to remedy a shortfall in the yearly guaranteed savings pursuant to Section 6.04,

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- d) Any representation or warranty furnished by the Contractor in Contractor's Response to the RFR, the Technical Audit or this Agreement which is false or misleading in any material respect when made,
- e) The filing of bankruptcy by the Contractor or by Contractor's creditors, an involuntary assignment for the benefit of creditors, or the liquidation of the Contractor,
- f) Any failure by the Contractor to perform or comply with any other material term or condition of this Agreement, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to Contractor demanding that such failure be cured or, if cure cannot be effected in thirty (30) days, the Contractor fails to begin to cure and proceed to completion thereof as quickly as is reasonably possible.

6.02 Obligations of the Owner

The Owner acknowledges and agrees that the implementation of the maximum conservation of energy and water practical within any pertinent regulatory, operational, or physical constraints is of the essence to this Agreement. Owner agrees to respond to all audits, proposed revisions and related requests on a timely basis for the expeditious design, implementation and monitoring of conservation measures.

Each of the following events or conditions shall constitute a breach by Owner and shall give the Contractor the right, without an election of remedies to proceed pursuant to Section 3.01 and terminate this Agreement by delivery of written notice declaring termination, upon which event the Owner shall be liable to the Contractor for all Work furnished to date:

- a) Any failure by the Owner, without cause, to authorize payment due more than forty-five (45) days after receipt of the invoice therefore,
- b) Any representation by Owner in the RFP/RFQ and this Agreement is false or misleading in any material respect when made,
- c) Any failure by the Owner to perform or comply with any other material term or condition of this Agreement, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to the Owner demanding that such failure be cured or, if cure cannot be effected in thirty (30) days, the Owner fails to begin to cure and proceed to completion thereof as quickly as is reasonably possible.

SECTION 7: INSURANCE AND BOND REQUIREMENTS

7.01 Worker's Compensation Insurance

Workers Compensation Coverage A	Statutory Minimum
Employer's Liability Coverage B	\$500,000 each accident \$500,000 disease per employee \$500,000 disease policy

7.02 Comprehensive General Liability

Bodily Injury and Property Damage	\$2,000,000 each occurrence, \$4,000,000 aggregate
Products & Completed Operations	\$2,000,000 aggregate
Personal & Advertising Injury	\$2,000,000 each occurrence

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This policy shall include coverage relating to explosion, collapse, and underground property damage and contractual liability coverage. Contractor shall provide a separate "Owners and Contractor's Protective Liability" policy in the name of the Owner at the same limits listed above. The completed operations coverage shall be maintained for a period of two (2) years after Substantial Completion as defined in Attachment 3.

7.03 Vehicle Liability

Contractor shall provide the following minimum coverage with respect to the operations of the any employee, including coverage for owned, non-owned, and hired vehicles:

Bodily Injury	\$2,000,000 each person
Property Damage	\$2,000,000 each accident
	\$4,000,000 aggregate

7.04 Property Coverage

Contractor shall provide the following coverage against loss or damage by fire and against loss or damage covered by the special perils insurance endorsement on all Work:

Special Perils	80% of Agreement Price minimum
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Upon completion of Work at Owner buildings, Contractor shall provide an installation floater, in the full amount of the Agreement Price, for the requirements set forth above. The policy or policies shall specifically state that they are for the benefit and payable to the Owner, the Contractor, and all persons furnishing labor or labor and materials for the Work, as their interests may appear.

7.05 Owner as Additional Insured

The Owner shall be named as additional insured on the Contractor's Liability Policies.

7.06 Certificates of Insurance, Policies

Certificates of insurance, acceptable to the Owner, shall be submitted to the Owner upon the execution of this Agreement and shall be renewed upon expiration of the policies. Certificates shall indicate that the coverage required by section 7.01 through 7.05 is in effect. If the Owner is damaged by Contractor's failure to maintain such insurance, then Contractor shall be responsible for all reasonable costs or damages attributable thereto. Certificates shall note the thirty-day cancellation notice requirement of Section 7.07. All policies shall be issued by companies authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts.

7.07 Cancellation

Cancellation of any insurance required by this Agreement, whether by the insurer or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and the Owner at least thirty days prior to the effective date thereof.

7.08 Bonds

Contractor shall provide the Owner with 100 % payment and performance within 30 days of award of the contract. The contractor shall furnish a certified copy and duplicate of a performance bond, with project financier as co-beneficiary along with the owner. Performance and payment bonds shall secure 100% of the Agreement Price for all ECMs cited. Work will not commence until the Owner receives the certified copy of the

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bonds.

The performance bond shall remain in effect until the Final Completion Date. The payment bond shall be released upon receipt of satisfactory evidence that all subcontractors, laborers, etc., have been paid in full.

Agreement Signatures

IN WITNESS THEREOF, the parties have each caused this Agreement to be executed in triplicate on the dates set forth below (the last of which shall be considered the date of execution hereof) by their duly authorized representatives.

[Contractor]
Name _____

Title _____

Date _____

[Agency]

Name _____

Title _____

[Owner]
Name _____

Title _____

Date _____

Date _____

Approved as to Form: _____
Office of General Counsel

ATTACHMENT X: PROPERTY DESCRIPTION

Provide description of properties included in the scope of work.

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Model Energy Management Services Agreement

ATTACHMENT X: BASELINE ENERGY CONSUMPTION

Describe in general terms how the baseline for each ECM is defined. Describe variables affecting baseline energy or water use. Include variables such as weather, operating hours, set point changes, etc.

Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.

Define key system performance factors characterizing the baseline conditions. Include factors such as comfort conditions, lighting intensities, temperature set points, etc.

Provide details of baseline data collected, including:

1. Parameters monitored
2. Details of equipment monitored, i.e., location, type, model, quantity, etc.
3. Sampling plan, including details of usage groups and sample sizes
4. Duration, frequency, interval, and seasonal or other requirements of measurements
5. Personnel, dates, and times of measurements
6. Monitoring equipment used
7. Installation requirements for monitoring equipments (test plug for temperature sensors, straight pipe for flow measurement etc.)
8. Certification of calibration/calibration procedures followed

ATTACHMENT 7
Model Energy Management Services Agreement

9. Expected accuracy of measurements/monitoring equipment
10. Quality control procedures used
11. Results of measurements (attach appendix and electronic forms as necessary)
12. Completed data collection forms

Provide details of baseline data analysis performed, including:

1. Analysis using results of measurements
2. Weather normalized regressions
3. Weather data used and source of data
4. The effective utility rate schedules used for calculating energy cost savings.

ATTACHMENT X: SCOPE OF WORK

ATTACHMENT 7
Model Energy Management Services Agreement

**Model Energy Management Services Agreement
ATTACHMENT X: PROJECT COSTS AND SAVINGS**

The Excel version may be found at <http://www.mass.gov/eea/energy-utilities-clean-tech/green-communities/ems.html>

Performance Period Fee: (The fee includes the Operations and Maintenance Oversight Fee and Measurement & Verification Fee)									
Year	O&M Fee	M&V Fee	Total Performance Period Fee						
1	\$0.00	\$0.00	\$0.00						
2	\$0.00	\$0.00	\$0.00						
3	\$0.00	\$0.00	\$0.00						
4	\$0.00	\$0.00	\$0.00						
5	\$0.00	\$0.00	\$0.00						
6	\$0.00	\$0.00	\$0.00						
7	\$0.00	\$0.00	\$0.00						
8	\$0.00	\$0.00	\$0.00						
9	\$0.00	\$0.00	\$0.00						
10	\$0.00	\$0.00	\$0.00						
11	\$0.00	\$0.00	\$0.00						
12	\$0.00	\$0.00	\$0.00						
13	\$0.00	\$0.00	\$0.00						
14	\$0.00	\$0.00	\$0.00						
15	\$0.00	\$0.00	\$0.00						
16	\$0.00	\$0.00	\$0.00						
17	\$0.00	\$0.00	\$0.00						
18	\$0.00	\$0.00	\$0.00						
19	\$0.00	\$0.00	\$0.00						
20	\$0.00	\$0.00	\$0.00						
Summary				Amount					
Total Financed Cost				\$0.00					
Total Credits				\$0.00					
Net Project Cost				\$0.00					
Total Fees				\$0.00					
Total Costs & Fees				\$0.00					

ATTACHMENT 7
Model Energy Management Services Agreement

Totals	\$0.00	\$0.00	\$0.00															
--------	--------	--------	--------	--	--	--	--	--	--	--	--	--	--	--	--	--	--	--

ATTACHMENT 7
Model Energy Management Services Agreement

Estimated Annual Savings Overview

Year	Energy/Utility Savings/\$	Operational Savings/\$	Total Savings/\$
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
	Total Savings		\$

ATTACHMENT 7
Model Energy Management Services Agreement

ATTACHMENT X: MEASUREMENT AND VERIFICATION PLAN

The contractor will prepare and submit a site-specific M&V plan that includes a schedule indicating M&V activities and post-award M&V reporting milestones for each ECM. Prior to installation of ECMs, the owner will witness measurements and review calculations, records (e.g., utility bills) and other elements of the baseline, to confirm its accuracy and to confirm that methods are consistent with the approved M&V plan. Include detailed energy savings calculation methodologies with supporting data and analysis; include interactions with other building energy measures.

M&V Plan Summary [Specify the M&V Option for each ECM]

ECM No.	ECM Description	Option*	Summary of M&V Plan

[*M&V options A, B, C, and D and methods proposed for each ECM must comply with the most recent version of the “DOE/FEMP M&V Guidelines: Measurement and Verification for Federal Energy Projects]

ECM-Specific M&V Plan and Savings Calculation Methods

[Develop section for each ECM]

1. Summarize the scope of work, location, and how cost savings are generated. Describe source of all savings including energy, water, O&M, and other (if applicable).
2. Specify the M&V guideline and option used from the most current Federal Energy Management Program Measurement and Verification Guidelines.
3. Provide an overview of M&V Activities for ECM. Explain intent of M&V plan, including what is being verified.
4. Provide an overview of savings calculations methods for ECM. Provide a general description of analysis methods used for savings calculations.

ATTACHMENT 7
Model Energy Management Services Agreement

ATTACHMENT X: COMMISSIONING PLAN

[Attach approved commissioning plan.]

ECM Commissioning - The contractor shall assure the agency, through the ECM Commissioning, that the ECMs performance achieves facility and/or process performance requirements as set out in the contract. The ECM Commissioning shall be accomplished through a process of verification and documentation, in accordance with the "Commissioning Guidance for DOE Super ESPCs," for which the link is located at http://www1.eere.energy.gov/femp/financing/superespcs_esp basicsp4.html.

1. **ECM Commissioning Approach** - The contractor shall submit in its final proposal, a severable ECM Commissioning Approach document, which utilizes data and factors derived from the IGA, needed to achieve facility performance requirements in accordance with the contract.
2. **ECM Commissioning Plan** - After the agency reviews and accepts the design and construction package, the contractor shall provide a Commissioning Plan to the agency for acceptance that finalizes the Commissioning Approach and addresses each ECM with specific steps that will be taken during the commissioning process.
3. **ECM Commissioning Report** - The contractor shall submit to the agency a Commissioning Report documenting the ECM's affect upon facility performance requirements in accordance with the Commissioning Plan and agency requirements.

ATTACHMENT 7
Model Energy Management Services Agreement

ATTACHMENT 7: PROJECT SCHEDULE

Within 45 days from the execution of this agreement, the Contractor will, for each ECM in each of the buildings, provide a detailed schedule for equipment delivery, when access is needed to perform construction work, building & public safety inspections, date equipment brought on-line, testing and government witnessing, and substantial completion.

ATTACHMENT 7
Model Energy Management Services Agreement

ATTACHMENT 7

Model Energy Management Services Agreement

ATTACHMENT X: PAYMENT APPLICATION AND CERTIFICATION

Excel version is available at <http://www.mass.gov/eea/energy-utilities-clean-tech/green-communities/ems.html>

PAYMENT APPLICATION AND CERTIFICATION

TO: _____
 ADDRESS: _____

 PROCUREMENT # _____
 PROJECT NAME _____
 PROJECT ID # _____

PAYMENT APPLICATION # _____
 INVOICE # _____
 PAYMENT PERIOD FROM: _____
 PAYMENT PERIOD TO: _____
 VOUCHER # (for use by owner) _____

I certify that, to the best of my knowledge and belief, this Application for Payment along with the attached Schedule of Values, represents a true and reasonable estimate of the work performed during the stated period and I further certify that the work completed to date under this contract is in full accordance with the terms of the Contract.

Contractor: _____

Signature

Date

Engineer/Architect/Project Manager Certification:

I certify that, to the best of my knowledge, this payment application represents a true and correct statement of the work performed and is in conformance with the terms of the Contract.

City Project Manager/Engineer/Architect

Date

Contract Payment Status

	Total Contract	Previous Activity	Current Application
a) Original Contract Amount	\$		
b) Previous Change Orders			
No _____ (Net + or-) _____	\$		
c) New Change Orders			
No _____ (Net + or-) _____	\$		
No _____ (Net + or-) _____	-		
No _____ (Net + or-) _____	\$		
No _____ (Net + or-) _____	-		
No _____ (Net + or-) _____	\$		
No _____ (Net + or-) _____	-		
d) Adjusted Total Contract	\$		
$d=(a + b + c)$			
e) Total Completed to Date	\$		
	-		
f) Previous Earnings		\$	
g) Earnings This Application		-	
$g=(e - f)$			
	\$		
h) Balance to Finish	-		
$h=(d - e)$			
i) Total Retainage			
Percent	\$		
t: 0.00%	-		

ATTACHMENT 7
Model Energy Management Services Agreement

<u>Checked and Approved:</u> _____ Project Supervisor Date <u>Approved:</u> _____ Director Date	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 60%;"></td> <td style="width: 10%; text-align: center;">\$</td> <td style="width: 10%; text-align: center;">-</td> <td style="width: 10%; text-align: center;">-</td> <td style="width: 10%;"></td> </tr> <tr> <td>j) Previous Retainage</td> <td></td> <td></td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td>k) Retainage This Application</td> <td></td> <td></td> <td></td> <td style="text-align: center;">-</td> </tr> <tr> <td>$k = (I - j)$</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>l) Other Previous Deductions</td> <td style="text-align: center;">\$</td> <td></td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td>m) Other Current Deductions</td> <td style="text-align: center;">-</td> <td></td> <td></td> <td style="text-align: center;">-</td> </tr> <tr> <td>n) Balance Due on Contract</td> <td style="text-align: center;">\$</td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">-</td> <td></td> <td></td> <td></td> </tr> <tr> <td>$n = (h + I + l)$</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>o) Total Previous Payments</td> <td></td> <td></td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td>$o = (f - j - l)$</td> <td></td> <td></td> <td></td> <td style="text-align: center;">-</td> </tr> <tr> <td>p) Payment This Application</td> <td></td> <td></td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td></td> <td></td> <td></td> <td></td> <td style="text-align: center;">-</td> </tr> <tr> <td>$p = (g - k - m)$</td> <td></td> <td></td> <td></td> <td></td> </tr> </table>		\$	-	-		j) Previous Retainage				\$	k) Retainage This Application				-	$k = (I - j)$					l) Other Previous Deductions	\$			\$	m) Other Current Deductions	-			-	n) Balance Due on Contract	\$					-				$n = (h + I + l)$					o) Total Previous Payments				\$	$o = (f - j - l)$				-	p) Payment This Application				\$					-	$p = (g - k - m)$				
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PAYMENT APPLICATION AND CERTIFICATION

TOTAL PREVIOUS PAYMENTS	_____	PAYMENT APPLICATION #	_____
TOTAL PAYMENT THIS INVOICE	_____	INVOICE #	_____
PROCUREMENT #	_____	PAYMENT PERIOD FROM:	_____
PROJECT NAME	_____	PAYMENT PERIOD TO:	_____
PROJECT ID #	_____	VOUCHER # (for use by owner)	_____

Energy Conservation Measure #	Building	Original Contract Amount	Change Order Adjustment (+ or-)	Revised Contract Value	Percentage Complete	Amount Requested	Initials (for internal use only)
		\$0.00	\$0.00	\$0.00	%	\$0.00	

ATTACHMENT 7
Model Energy Management Services Agreement

[illegible]

The undersigned certifies that the information contained on this page is true and accurate.

Contractor: _____

Date: _____

ATTACHMENT 7
Model Energy Management Services Agreement

ATTACHMENT X: EQUIPMENT SUBMITTAL

ATTACHMENT 7
Model Energy Management Services Agreement

ATTACHMENT X: TRAINING

ATTACHMENT 7
Model Energy Management Services Agreement

EXHIBIT X: NOTICE TO PROCEED

ATTACHMENT 7
Model Energy Management Services Agreement

EXHIBIT X: CERTIFICATE OF ACCEPTANCE, FINAL AUDIT REPORT

The undersigned hereby accepts the content and form of the Energy Study Report.

IN WITNESS WHEREOF, the parties have executed this Form, the _____ day of _____, 20____

[ESCO]

[MUNICIPALITY]

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

[MUNICIPAL AGENCY]

Name _____

Title _____

Date _____

Approved as to Form:

Office of General Counsel

ATTACHMENT 7
Model Energy Management Services Agreement

**EXHIBIT X: CERTIFICATE OF ACCEPTANCE FORMS: DELIVERY AND ACCEPTANCE UPON
SUBSTANTIAL COMPLETION**

[Use this form to accept or reject ECMs or group of ECMs as they are substantially completed. Execute separate certificates for each ECM or group of ECMs.]

The Contractor warrants the ECM(s) for a period of one (1) year beginning on the substantial completion date printed below.

Substantial Completion Date: _____

ECMs:

[List each ECM or group of ECMs separately.]

[Contractor]
Name _____ By _____

Title _____ Date _____

Owner acknowledges receipt of the following Energy Conservation Measure(s) listed below as fully installed, inspected, and in good working condition.

ECMs:

[List each ECM or group of ECMs separately.]

[Owner]
Name _____ By _____

Title _____ Date _____

Owner does not accept that the ECMs listed below are substantially complete.

ECMs/OCMs:

[List each ECM/OCM or group of ECMS/OCMs separately.]

[Owner]
Name _____ By _____

ATTACHMENT 7
Model Energy Management Services Agreement

Title _____

Date _____

ATTACHMENT 7
Model Energy Management Services Agreement

3.2: CERTIFICATE OF FINAL PROJECT ACCEPTANCE

Owner acknowledges Final Acceptance of all Energy Conservation Measures (the “ECMs”) described in Attachment 3: Scope of Work.

Checklist for Owner Acceptance of Completed Project

Task	Initials
All ECMs have been installed.	
All ECMS have been through inspection, start-up, testing, and interactive commissioning.	
Commissioning Report reviewed and approved.	
All discrepancies noted have been corrected; all punch list items are completed in accordance with the Agreement.	
Appropriate training on operations and maintenance (O&M) was conducted for each ECM	
O&M manuals and procedures have been provided.	
Recommended spare parts lists and spares have been provided.	
As-built drawings have been received and approved.	
Customer witnessing of M&V activities documentation completed.	
Post-installation M&V report received and approved.	
Utility rebate inspections and paperwork approved and submitted.	
Manufacturer warranty and registration paperwork submitted.	
All ECMs have performed properly for 30 days as of _____.	
Customer final inspection and acceptance is confirmed as of _____.	

[Contractor]

[Owner]

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

ATTACHMENT 7
Model Energy Management Services Agreement

EXHIBIT X: PERFORMANCE AND PAYMENT BONDS

***[Performance and payment bonds must be in place prior to the start of any work.
Provide proof of construction bonds to DOER.]***

ATTACHMENT 7
Model Energy Management Services Agreement

EXHIBIT X: DOER ANNUAL SAVINGS REPORT

[An Annual Savings Report for baseline information must accompany a copy of the contract when filing with DOER. The Annual Savings Report may be found on the EMS web page at <http://www.mass.gov/eea/energy-utilities-clean-tech/green-communities/ems.html>]

General Instructions:

File the first baseline report electronically with the executed contract to EMS.DOER@state.ma.us. PDF files of this report will not be accepted. All information should be contained in the EMS contract.

Fill in all fields including total cost, annual savings, and unit savings.

This report is linked to a larger activity report. Do not change the names or placement of existing headings of the report. If additional columns are needed insert the columns where indicated. DOER does not accept reports with changed headings.

File verified savings 90 days after the end date of the specific guaranteed energy cost savings year.

Summary:

The page provides a general summary of the project including important dates. In some cases, DOER will provide information such as file dates for RFP, RFQ, etc. The contract should be a municipal official with the authority to contract for the services. Include the estimated operational date in the

Annual Savings

The annual savings should be listed in a table or schedule as part of the EMS contract and are the guaranteed savings based on standard M&V calculations. The estimated or contract savings will only change if there are extraordinary circumstances that require an amendment to the contract.

ECM Savings

The energy conservation measure savings should be listed in a table or schedule as part of the EMS contract and are the guaranteed savings based on standard M&V calculations for major categories such as lighting, lighting controls, HVAC, etc. The estimated or contract savings will only change if there

Facilities

List all facilities included in the contract. This list may be different than the facilities profile submitted with the RFP or RFQ because facilities may be eliminated but not added.

M&V

Each project has a Measurement and Verification Plan. This tab is used for verified annual savings only when there is a shortfall, otherwise, the verified savings are reported each year on the Annual Savings tab.

ATTACHMENT 7
Model Energy Management Services Agreement

EXHIBIT X: DOER ANNUAL SAVINGS REPORT-SUMMARY

ATTACHMENT 7
Model Energy Management Services Agreement

Massachusetts Department of Energy Resources

ANNUAL REPORT FOR ENERGY MANAGEMENT SERVICES PROJECT

File this report, electronically, to EMS.DOER@state.ma.us. PDF files of this report will not be accepted

Report Performance Period

Estimate x (initial report upon executing contract; report contract estimates/audit baseline)
or verified savings

From: _____

To: _____

Awarding Authority:	_____	Contractor:	_____
Contact:	_____	Contract File Date:	_____
Title:	_____	Contract Start Date:	_____
Address:	_____	Term (#yrs.):	_____
City/Zip	_____	Project Cost	_____
Phone:	_____	Year 1 Total Savings:	_____
Email:	_____	Escalation Rate:	_____
RFP/REQ File Date:	_____	Project Acceptance Date:	[Estimated date that project will be substantially complete]
Financed Total:	_____		
Principle:	_____		
Interest:	_____		

Value and

Source	Type	Amount
Estimates	Grants	
	Utility Incentives	
	Other,	

ATTACHMENT 7
Management Servi

EXHIBIT X: DOER ANNUAL SAVINGS REPORT-ANNUAL ECM SAVINGS FIRST YEAR

Annual Savings per Energy Conservation Measure

Energy Conservation Measures (List major categories and energy or water savings in native units)	Oil (gallons)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (Therms/yr)	Water savings (gallons/yr)	Propane Savings (Gal/yr)	Other energy savings (specify units/yr) Insert columns here.	Total energy & water cost savings, Year # (\$/yr)	Other energy-related O&M cost savings, Year # (\$/yr)	Total cost savings, Year # (\$/yr)
Annual Guaranteed Savings	Oil (gallons)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (Therms/yr)	Water savings (gallons/yr)	Propane Savings (Gal/yr)	Other from above	Total energy & water cost savings, Year # (\$/yr)	Other energy-related O&M cost savings, Year # (\$/yr)	Total cost savings, Year # (\$/yr)
Total										
Estimated Annual Emissions Reduction (if available)										
CO2	NOx		SOx		Number of Cars		Number of Trees			

ATTACHMENT 7
Model Energy Management Services Agreement

EXHIBIT X: DOER ANNUAL SAVINGS REPORT- ONSITE ENERGY GENERATION

Annual Guaranteed Onsite Electricity Generation							
[Site Name]	Array Size	Annual Degradation Rate		Guaranteed Electricity Generation	Verified Annual Electricity Generation	Total cost, Year #	Annual Estimated Cost Savings
Performance Year	Estimated Annual Output	Electricity Price Increase Factor	Cost per kWh (if applicable)			(\$/yr)	
1	0	0		0		\$0	
2	0	0		0		\$0	
3	0	0		0		\$0	
4	0	0		0		\$0	
5	0	0		0		\$0	
6	0	0		0		\$0	
7	0	0		0		\$0	
8	0	0		0		\$0	
9	0	0		0		\$0	
10	0	0		0		\$0	
11	0	0		0		\$0	
12	0	0		0		\$0	
13	0	0		0		\$0	
14	0	0		0		\$0	
15	0	0		0		\$0	
16	0	0		0		\$0	
17	0	0		0		\$0	
18	0	0		0		\$0	
19	0	0		0		\$0	
20	0	0		0		\$0	

ATTACHMENT 7
Model Energy Management Services Agreement

EXHIBIT X: DOER ANNUAL SAVINGS REPORT- FACILITIES

ATTACHMENT 7
Model Energy Management Services Agreement

EXHIBIT X: DOER ANNUAL SAVINGS REPORT- FACILITIES

For verified savings only: [Use this section only to report measured and verified performance].

A. M&V Activities Conducted This Period - Detail measurements, monitoring and inspections conducted this reporting period in accordance with M&V plan (include all that apply for each one):

- A. Measurement equipment used.**
 - B. Equipment calibration documentation.**
 - C. Dates/times of data collection or inspections, names of personnel, and documentation of Government witnessing.**
 - D. Details to confirm adherence to sampling plan.**
 - E. Include all measured values for this period. Include periods of monitoring and durations and frequency of measurements. (Include description of data format (headings, units, etc.).**
 - F. Describe how performance criteria have been met.**
 - G. Detail any performance deficiencies that need to be addressed by ESCO or agency.**
 - H. Note impact of performance deficiencies or enhancements on generation of savings.**
- 3. Performance and O&M Issues**
- A. Note impact of operating deficiencies or enhancements on generation of savings.**
 - B. Note impact of maintenance deficiencies on generation of savings.**
 - C. Detail any deficiencies needed to be addressed by contractor or agency.**
- 4. Savings Adjustments - Provide summary of any energy and/or cost savings adjustments required.**