

**REQUEST FOR PROPOSAL FOR  
ENERGY EFFICIENCY INVESTMENT GRADE AUDIT AND IMPLEMENTATION  
OF RELATED CONSERVATION MEASURES FROM ENERGY SERVICES  
COMPANY (ESCO)**

The Santa Barbara Unified School District (“District”) is seeking proposals/Qualifications from qualified persons or entities (“Responders”) to provide energy efficiency investment grade audit and implementation of related conservation measures from an energy service company (ESCO). The District seeks an Energy Services Company (ESCO) to maximize energy and related operational cost savings to pay for facility upgrades, improvements, and services. These upgrades, improvements, and services will be implemented via an Energy Savings Performance Contract (“ESPC” or “Contract”).

Statements/proposals in the prescribed form must be received by January 16, 2025, by 2:00 p.m. at the Santa Barbara Unified School District Administration Office, 720 Santa Barbara Street, Santa Barbara, California 93101. Attention: Marina Verdian

The Request for Proposals (RFP) will be on file and available to view, download through the District website at [www.sbunified.org](http://www.sbunified.org). Additional information may be obtained by contacting the Santa Barbara Unified School District, attention Marina Verdian, Director of Facilities and Operations, 724 Santa Barbara Street, Santa Barbara, CA 93101; 805-963-4338 X 6238 or [mverdian@sbunified.org](mailto:mverdian@sbunified.org)

The Santa Barbara Unified School District reserves the right to reject any and all submissions at its discretion.

BY THE ORDER OF THE BOARD OF EDUCATION OF THE SANTA BARBARA UNIFIED SCHOOL DISTRICT

By: Marina Verdian, Director of Facilities and Modernization

Published: December 4, 2025, December 11, 2025.

# **SANTA BARBARA UNIFIED SCHOOL DISTRICT**

## **REQUEST FOR QUALIFICATIONS AND PROPOSALS**

### **TO PROVIDE ENERGY EFFICIENCY INVESTMENT GRADE AUDIT AND IMPLEMENTATION OF RELATED CONSERVATION MEASURES FROM ENERGY SERVICES COMPANY (ESCO)**

**SBUSD # 08-25/26**

#### **SANTA BARBARA UNIFIED SCHOOL DISTRICT**

724 Santa Barbara Street, Santa Barbara, CA 93101

**Date Issued: December 4, 2025**

**Deadline for Submittal of Qualifications/Proposals: January 16, 2026, 2:00 pm.**

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#### **MODEL ENERGY SERVICES AGREEMENT**

## **SECTION 1: PROJECT-SPECIFIC INFORMATION AND REQUIREMENTS**

### **A. BASIC SCOPE AND NEEDS OF THE CONTRACT:**

The District is a public school district which serves approximately 12,000 students at 18 elementary and junior and senior high schools. A list of sites and District information is available on the District Web Site ([www.sbunified.org/schools/](http://www.sbunified.org/schools/)). For more detailed facility information see Attachment A- Facility Technical Profile

The Santa Barbara Unified School District (the “District” or “SBUSD”) seeks an Energy Services Company (ESCO) to maximize energy and related operational cost savings to pay for facility upgrades, improvements and services. These upgrades, improvements, and services will be implemented via an Energy Savings Performance Contract (“ESPC” or “Contract”).

The ESCO shall be qualified to conduct an Investment Grade Audit (“IGA”) and implement an ESPC to install Energy Conservation Measures (“ECMs”) to provide energy and maintenance cost-saving equipment and services. The purpose of this Contract is to focus on energy efficiency, sustainability, greenhouse gas reduction, equipment maintenance/repair, etc.

The ESCO, through its work under this Contract, shall support the District’s interest in improving the energy and water efficiency across their portfolio of facilities and maintaining the energy and water savings for the life of the Contract. The ESCO shall evaluate opportunities for electrification of fossil-fueled systems, wherever technically and financially feasible. The ESCO shall seek all available funding opportunities including federal and state funding and separate grant or rebate opportunities to support the guaranteed savings in funding the upfront and on-going project costs.

Facility upgrades, operational improvements, and on-going maintenance, management, and monitoring services to be funded through an ESPC, which:

- a. Incurs no initial capital costs but with an option for SBUSD to provide initial capital if desired;
- b. Achieves significant long-term operating efficiencies, cost savings and/or carbon emission reduction;
- c. Provides an annual cost savings and performance guarantee over the term of the contract;
- d. Maintains improvements in, and consistent levels of, operational functionality;
- e. Realizes additional related benefits such as reduced maintenance needs, facility improvements, deferred maintenance, and occupant comfort;
- f. Maintains consistency with all applicable state and local codes and standards. Designs shall comply with all relevant building codes and shall meet or exceed any SBUSD performance specifications provided;
- g. Maximizes financial benefits from participation in utility sponsored energy efficiency and demand response programs, as well as other Federal or State grant programs;

- h. The ESCO will include in the proposal, Investment Grade Audit, and subsequent Performance Contract, the cost for a Third-Party Consultant or internal staff to assist in the evaluation of the selected ESCO's proposed cost-saving measures, and oversight during both implementation and the performance period.

## **SCOPE OF SERVICE - PROJECT PHASES**

**Comprehensive Services:** It is the intent of SBUSD to utilize a single ESCO to implement the comprehensive services described in each phase below. The Investment Grade Audit (IGA) scope, costs, and savings are non-transferable between ESCOs due to the conflicts of interest and potential risks that may arise for both SBUSD and the ESCO.

**Phase 1 - Preliminary Assessment:** The selected ESCO shall conduct a district-wide Preliminary Assessment (PA) at-risk to identify the potential energy and operational savings measures, determine potential cost and savings of the project as a whole, and present a measurement and verification plan with a proposed project cash flow to present to the District.

**Phase 2 - Investment Grade Audit and Project Development:** Upon completion, review, and acceptance of the Preliminary Assessment, the District in its sole discretion may enter into an Investment Grade Audit Agreement (IGAA) with the ESCO to conduct an IGA. This IGA shall build upon the Phase 1 – Preliminary Assessment and shall be a district-wide IGA to further identify energy and operational savings measures, determine the cost and savings of each measure, and present a measurement and verification plan and commissioning plan to verify the project savings. A project proposal shall present a comprehensive package of measures that can be financed through guaranteed savings over the proposed ESPC contract term which shall not exceed 20 years. The District, at its sole option, shall choose the financing approach and contract term. The ESCO shall submit the IGA Report to the District for review and approval. The scope & approach of the IGA shall align with the Exhibit A – Scope of Work detailed in the Sample IGAA in Attachment B.

**Phase 3 – ESA/Financing:** The District reserves the right to evaluate all forms of financing and will determine financing structure, cost, and financial terms for the performance contract. When negotiations are concluded, the District may issue a Notice to Proceed (“NTP”). Through the Energy Services Agreement (ESA), the ESCO shall proceed to final design, construction, and commissioning of the improvement measures. The ESA shall define the final agreed upon list of measures, equipment, and labor costs, guaranteed cost savings, measurement & verification plans, and additional relevant information. The document shall identify equipment specifications and warranties and establish the schedule and responsibilities of the ESCO and the District.

**Phase 4 – Design, Implementation, and Commissioning:** Upon issuance of a Notice to Proceed, the ESCO shall continue the design process from the IGA phase and initiate construction. The ESCO shall work continuously with its sub-contractors for each ECM to provide interim design plans, design drawings, and equipment submittals to SBUSD for review. Designs shall comply with adopted building codes and receive required permits. Design charrette(s) shall be held with the ESCO and SBUSD personnel, and submittal reviews at the 30%, 60%, and 95% levels shall be performed by the District. The review process should be documented accordingly, so that the appropriate designs and related equipment match the final IGA scopes of work and meet the original ECM intent. During the IGA phase, the ESCO will provide a construction schedule which includes estimated completion dates for the following: ECM installation, commissioning (Cx), post-installation Measurement & Verification (M&V), punch list, and final acceptance. Throughout the implementation phase, this schedule shall be

updated to reflect the actual progress towards final completion. Upon completion of the construction, but prior to Project Acceptance by the District, the ESCO shall verify via Cx that the design intent has been implemented. The District reserves the right to have its own representative witness all Cx activities, as well as review all plans, manuals, and reports related to this Project. Equipment submittals will be reviewed and compared to design and will be tested by the ESCO in the field to verify performance. When all ECMs are completed, the ESCO will issue a Final Completion Certification. This document is the formal notification to SBUSD that the ESCO has completed all ECM tasks outlined in the ESA including installation, Cx, and post-install M&V. SBUSD will have inspected the project and accepted resolution of any outstanding punch list items prior to this notice. The ESCO confirms through Final Completion that the project is providing cost savings sufficient to repay the investment. Acceptance of the Final Completion Certification by SBUSD constitutes the date of completion of the construction period and the commencement of the performance period for the project and the term of the ESA.

**Phase 5 - Measurement and Verification:** The ESCO shall guarantee all project savings. Accordingly, the ESCO shall manage, measure, and monitor the cost savings measures implemented under the performance contract, and shall at least once per year prepare and provide a project M&V Report to SBUSD which verifies the performance of the cost-savings measures. The M&V Plan shall follow the latest established industry guidelines such as the guidelines presented by the International Performance Measurement and Verification Protocol (IPMVP) and the Federal Energy Management Program (FEMP).

All District projects must comply with Title 24 of the California Code of Regulations and be approved by the Division of State Architect. State-funded projects may have additional procurement or construction requirements, including those imposed or overseen by the Office of Public School Construction.

## **B. MINIMUM QUALIFICATIONS**

Proposer must be accredited as an Energy Services Company (ESCO) and/or Energy Services Provider (ESP) by the National Association of Energy Services Companies (NAESCO).

## **C. PROCUREMENT SCHEDULE FOR REQUEST FOR PROPOSALS:**

The schedule for selection of the ESCO will be as follows:

Issuance of RFP	<b>December 4, 2025</b>
Non-mandatory Pre-proposal Meeting (via Teams)	<b>December 12, 2025</b>
Deadline for Questions (EOBD)	<b>December 19, 2025</b>
Issuance of Addendum/Answer to Questions	<b>January 9, 2026</b>
RFP Submittal Deadline	<b>January 16, 2026</b>
Public Hearing and Contract Award	<b>January 30, 2026</b>

The District reserves the right to amend this schedule for any reason.

## **D. SUBMITTAL INFORMATION**

The deadline for submittals is identified in the Procurement Schedule section on the Request for Proposal . Submittals received after the deadline will be returned unopened and not be considered. rejected. All submittals become the sole property of SBUSD and the content will be held confidential until the selection of a firm is made.

Submit sealed proposals clearly marked “SBUSD ESPC RFP” to the following location:

Santa Barbara Unified School District  
Attention: Desmond Ho  
Sustainability and Operations Coordinator  
724 Santa Barbara Street  
Santa Barbara, CA 93101

Questions or clarification may be submitted via e-mail to Desmond Ho at [desmondho@sbunified.org](mailto:desmondho@sbunified.org). Questions must be received no later than the deadline identified in the Procurement Schedule section of the Notice to Request for Proposal . Questions received after this deadline will not be answered. Timely questions received and answers will be posted on the district website facilities page on the date identified in the Procurement Schedule section on the RFP.

The District must receive your proposal by **January 16, 2026 by 2:00 p.m.** at the Santa Barbara Unified school District, Administration Office, 720 Santa Barbara Street, Santa Barbara, CA 93101. Proposers must submit two (2) paper copies of their proposal and one (1) digital copy via flash drive in PDF format. The District reserves the right to reject any proposal deemed not to be in its best interest and waive minor technicalities. Postmarks, faxes, and email proposals will not be considered.

## **E. PRE-PROPOSAL MEETING**

ESCOs are encouraged to attend a virtual, non-mandatory pre-proposal conference on December 12, 2025 at 1:00 p.m. Please RSVP by 4:00 PM on Wednesday, December 10, 2025 by emailing Desmond Ho at [desmondho@sbunified.org](mailto:desmondho@sbunified.org) to request a virtual meeting link.

## **F. SUBMITTAL FORMAT**

All submittals shall be in the form and formatted as specified in Exhibit A. Content shall be tabbed and numbered per the provided format. Include a Table of Contents. The submittal should be responsive to each of the items set forth below. (All references to “you”, “your,” or “firm” mean the individual or entity submitting a Proposal.)

## **SECTION 2 – PROPOSAL EVALUATION**

### **A. EVALUATION OF PROPOSALS, AND SELECTION OF THE ESCO:**

All proposals shall be reviewed to verify the Proposer has met the RFP submission requirements. Proposals that have not followed the rules, do not meet minimum content, requirements, qualifications, and quality standards, take unacceptable exceptions to the RFP or to SBUSD General Conditions, or are non-responsive to the requirements in this RFP, will be eliminated from further consideration.

Proposals determined to have met the RFP requirements will be reviewed and evaluated by the evaluation team. As a part of this review, SBUSD may require proposing firm(s) or organization(s) to clarify the information submitted. This clarification process may be conducted through written or electronic correspondence or through an interview with the evaluation team.

Responsive Proposers found to be most qualified to perform the services required, based upon the listed criteria may be required to participate in interviews with the evaluation team as part of the evaluation process. The purpose of the interview is to give “Finalists” an opportunity to demonstrate their unique attributes, ability to perform the scope of work defined in this RFP and clarify outstanding issues. It is in the proposing firm’s best interests to submit a thorough and complete proposal and not depend on the interview process to provide additional information. All firms selected for an interview will be notified of the proposed interview date(s) at least one week in advance. Any interview shall be virtual.

From among the Finalist Proposers, SBUSD may select one firm to enter into final proposal negotiations for the RFP award. If the District is unable to successfully negotiate a Contract with the successful Responder which is satisfactory to the District, or if the selected proposer refuses or fails to execute the tendered contract, the District may award the contract to the proposer with the second highest best value score, if deemed in the best interest of the District. If that proposer then refuses or fails to execute the tendered contract, the Board may award the contract to the proposer with the third highest best value score, and so on.

The SBUSD Evaluation Team will make its evaluation based on the criteria below. Following its selection of the successful Responder, the District will notify all Responders of its intent to award a contract.

## POINT SCORING SCHEDULE

	<b>Evaluation Criteria</b>	<b>Points</b>
A	Proposer Qualifications and References	125
B	Team Qualifications	100
C	Technical Approach	125
D	Financial Approach	50
E	Pricing	50
F	Value Add	50
	Points:	500

## **B. EVALUATION CRITERIA**

Proposals will be reviewed, evaluated, and scored in accordance with the point schedule for all evaluation criteria noted below. See Exhibit A – Proposal Content and Format for further details.

### **A. Proposer Qualifications and References: 125 Points**

- Number of years the company has been involved in the energy-efficiency related business
- Number of years the company has offered Energy Savings Performance Contracting
- Number of performance contracting projects completed by the company in the 5 years immediately preceding the date of this RFP
- Experience with projects of similar size, scope or type of work expected to be required of SBUSD.
- Financial soundness and expected stability of the company
- Quality of provided project references

### **B. Team Qualifications: 100 Points**

- Provide an organization chart and the resumes (up to one page each) for each of the key project personnel to confirm that they have the necessary professional qualifications and experience for the work to be performed.

### **C. Technical Approach: 125 Points**

- Preliminary Assessment Approach
- Investment Grade Audit approach
- Commissioning approach
- Measurement and Verification approach
- Operations & Maintenance approach
- Handling of Savings Shortfalls

### **D. Financial Approach: 50 Points**

- Approach to supporting past clients in exploring the pros, cons, and other key considerations of various financing strategies commonly employed for Energy Savings Performance Contracts
- Recommendations for SBUSD to consider in evaluating potential financing vehicles for an Energy Services Agreement (ESA)
- Past experience capturing utility rebates, tax incentives, and/or grants on behalf of customers

### **E. Pricing: 50 Points**

- Project Cost Breakdown
- Investment Grade Audit Fee
- Self-Performed Work Fees
- Annual Costs and Fees
- Contingency
- Equipment/Labor Cost Competition
- Open Book Pricing

### **F. Value Add: 50 Points**

Improvements to the learning and working environment, improvements to the living environment, green building considerations, greenhouse gas reductions, alignment with other school district goals, teaching opportunities, and student engagement opportunities.

## **SECTION 3 – DISTRICT REQUIREMENTS**

### **A. OTHER INFORMATION**

1. **Conflict of Interest:** The successful Responder shall certify that no official or employee of the District, nor any business entity in which an official of the District has an interest, has been employed or retained to solicit or assist in the procuring of the resulting construction agreement, nor that any such person will be employed in the performance of any such construction agreement without immediately divulging of this fact to the District.
  
2. **Skilled Workforce:** Prior to entering into the IGA or ESPC Contract, the contractor shall provide the District with an enforceable commitment that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the Project or contract that falls within an apprenticeable occupation in the building and construction trades. (Education Code 17407.5)
  
3. **Insurance:** The successful Responder will need to provide evidence of the following insurance coverages prior to contract award:
  - Workers Compensation
  - Employer's Liability
  - General Liability (including coverage for automobile liability and property casualty) -policy limits of not less than \$2,000,000.00 per occurrence and \$4,000,000.00 aggregate.
  - Builder's Risk based on completed value of Project.Further details of coverage requirements will be set forth in the ESPC Contract.
  
4. **DIR Registration:** Contractors and their subcontractors (of any tier) shall not be qualified to submit or be listed on a proposal, or engage in the performance of any contract for public work, as defined in the Labor Code, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. It is not a violation of this section for an unregistered contractor to submit a proposal that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 of the Labor Code at the time the contract is awarded. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. The successful Responder will be required to post all job-site notices required by DIR regulations and other applicable law.

5. **Prevailing Wage:** The Contractor and all subcontractors shall comply with the requirements set forth in Division 2, Part 7, Chapter 1 of the Labor Code. Pursuant to Labor Code section 1770 et seq., the District has obtained from the Director of the Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this work is to be performed for each craft, classification or type of worker needed to execute the contract. Copies are available from the District to any interested party on request and are also available from the Director of the Department of Industrial Relations.
6. **District Rights:** The District reserves the right to: **(1)** Reject any or all submittals at its sole discretion; **(2)** Cancel the Request for Proposals; or **(3)** Modify any requirements contained within the RFP and request a revised submission from all Responders.

The District reserves the right to negotiate the scope and fee for all services. This RFP does not commit the District to negotiate or award a contract. District will not be responsible for any expenses incurred by any firm in preparing and submitting a proposal or response to this RFP.

7. **No Oral Clarifications/Modifications:** The District will not provide any oral clarifications or modifications to the RFP or the requirements hereof; no employee, officer, agent or representative of the District is authorized to provide oral clarifications or modifications to the RFP. No Respondent shall rely on any oral clarification or modification to the RFP.
8. **Protests:** A Responder may protest: (1) the process used to seek proposals for the work; (2) another Responder's proposal for the work; and/or (3) the intended award of the contract for the work, only by filing a written protest with the District in accordance with the procedures set forth in this Section (each a "Protest").

The District will not accept or consider any oral Protest (e.g., by telephone). A Responder may not submit a Protest unless: (1) they have duly submitted a proposal for the work; and (2) they make a supportable assertion that the intended contract award is not in compliance with the law, Board Policy or this RFP's specifications. There is no basis for protest if the District rejects all proposals.

In order for a Protest to be valid and considered by the District, the Protest: (i) Must be received by the District not later than 4:00 p.m. on the fifth business day following the issuance of the notice of intent to award a contract; (ii) Must clearly identify the Responder that is filing the Protest, together with the name, address and telephone number of the person representing the proposer for purposes of the Protest; (iii) Must clearly identify the specific process, or other matter that is the subject of the Protest; (iv) Must clearly identify the specific provisions of all documents relevant to the Protest; (v) Must clearly identify and describe in detail the specific basis (or bases) for the Protest and all facts relevant thereto; (vi) Must clearly identify and describe in detail all arguments in support of the Protest, including, without limitation, citations to applicable statutory requirements; and (vii) Must be submitted with all documentation the

Responder desires to submit that is relevant to and supports the basis or bases underlying the Protest.

If a Protest does not comply with each and all of the foregoing requirements (provided that a Responder will be deemed to have submitted all documentation that it desires in accordance with clause (vii) of the foregoing), the District will reject the Protest as invalid. There is no right to supplement the Protest after the initial submission. A Responder may, at any time, withdraw its Protest.

Upon receipt of a valid Protest, the District and/or its legal counsel will review the Protest and all relevant information and documents and will provide a written determination to the protesting Responder, which determination shall be final. Alternatively, in the District's sole election, the District may present the Protest, together with a written recommendation to the District Board, for final determination.

In response to a Protest that a Responder has not withdrawn, the District may decline to award the contract, may award the contract to a Responder other than as previously intended, may award the contract to a Responder as previously intended despite the Protest, or may take other action as may, in the sole discretion of the District, be deemed appropriate. Notwithstanding the foregoing, the District may proceed with the award of the contract to the intended Responder pending the final determination of a Protest.

COMPLIANCE WITH THE FOREGOING PROTEST REQUIREMENTS IS MANDATORY. EACH RESPONDER THAT DESIRES TO PROTEST MUST FILE ITS OWN PROTEST IN ACCORDANCE WITH THE FOREGOING REQUIREMENTS, AND NO RESPONDER MAY RELY ON A PROTEST BY ANOTHER RESPONDER AS A MEANS OF SATISFYING SUCH REQUIREMENTS. COMPLIANCE WITH THE FOREGOING REQUIREMENTS IS THE SOLE AND EXCLUSIVE MEANS OF PROTESTING A PROPOSAL UNDER THIS RFP, THE CONTRACTOR SELECTION PROCESS AND/OR THE INTENDED AWARD OF THE CONTRACT, AND FAILURE TO SO COMPLY SHALL BE DEEMED AND CONSTRUED AS A WAIVER OF ANY AND ALL RIGHTS THE RESPONDER MAY HAVE TO PURSUE A CLAIM, DEMAND OR ACTION ARISING FROM ANY SUCH MATTER.

**END OF RFP**

# EXHIBIT A – PROPOSAL CONTENT AND FORMAT

## Proposal Content and Format

The requirements and format listed below shall be included in the Respondent's proposal. Failure to provide a complete proposal or inability to meet requirements listed below may result in exclusion from consideration.

Each section will include a page limit. Proposals will be scored based on the Proposer's professional merit. Custom graphics, marketing content, excessive formatting, and irrelevant photos are strongly discouraged and will not be considered as part of evaluation. Relevant photos of referenced past/current projects will not be counted towards the page limits indicated in the sections below and may be included.

The Respondent's proposal shall include the following sections:

### Cover Letter

Include a cover letter indicating that the Respondent's proposal is in response to this RFP and that the information included in the proposal is accurate. All cover letters **MUST** be signed. Include the Proposer's primary contact information for this proposal including name, address, phone number, website, and email address. We will direct all RFP related correspondence to the email address listed in this section (**one page max**).

## A. Proposer Qualifications

### i. Performance Contracting overview

Provide a stand-alone overview (**maximum of one page**) to present an overview of your company. Briefly describe your Company's expertise in the following market sectors:

- K-12 School Districts in California
- Other State Government Agencies
- Cities/Counties
- Other Relevant Agencies

Higher value will be placed on local/state experience in the above sectors.

### ii. Project History and References

Briefly describe your company's expertise in K-12 facilities.

Project Data and References – Up To Five (5) Recent Projects (**one page per project**):

- Provide the details of up to five (5) recent projects your firm completed. Only include projects that have at least one year of documented performance data, are currently in repayment, are currently under contract with your firm, and can be used as references. Include the following information, at minimum, for each project.
- Projects listed should be of similar size, scope or type of work expected to be required of SBUSD and successfully completed in the five (5) years immediately preceding the date of this RFP.

<b>Project Data and References</b>
Project Name
Facility Type and Use
Project Size: <ul style="list-style-type: none"> <li>• Number of Buildings</li> <li>• Total Square Footage</li> </ul>
Types of Measures: <ul style="list-style-type: none"> <li>• Energy, water, waste, maintenance (include % savings for each type)</li> <li>• Any deep retrofits (over 50% savings)</li> <li>• Benefits to the Agency</li> <li>• Unique technologies or approaches (if applicable), including those that promote stewardship or work/study opportunities.</li> </ul>
Project Cost: Installed Project Costs
Project Cost: Financed Amount
Guaranteed Annual Savings (\$)
Financing/Funding: <ul style="list-style-type: none"> <li>• Sources</li> <li>• Name of finance company</li> <li>• Financing Term (years)</li> <li>• Company's role in securing financing</li> </ul>
Project Schedule: <ul style="list-style-type: none"> <li>• Audit Start and Acceptance Date</li> <li>• Construction Start and End Dates (Notice to Proceed; Notice of Substantial Completion; Final Completion)</li> <li>• Guarantee Period Start and End Dates</li> <li>• Describe if project was completed on schedule or delayed</li> </ul>
Measurement and Verification <ul style="list-style-type: none"> <li>• Methods, Protocols</li> <li>• % of stipulated savings</li> </ul>
Project Personnel: <ul style="list-style-type: none"> <li>• List all ESCO personnel associated with this project (limit to those who may be assigned to a project) and their roles and responsibilities (only list those who may be assigned to a project).</li> </ul>
Contact Information: <ul style="list-style-type: none"> <li>• Provide two relevant references (preferably one administrator and one facility/maintenance supervisor). Include title, current phone numbers and email addresses.</li> </ul>
Agency's stated criteria for success <ul style="list-style-type: none"> <li>• Top 3 outcomes of the project, process and results (e.g., kWh/kW saved).</li> <li>• Expected performance of maintenance measures.</li> </ul>

- Comments on any special features, services, conditions, creative approaches, special requirements.

### **iii. Experience and Expertise**

History and Focus of Company and Employees

Limit your response to **no more than one page** for this section (History and Focus of Company). **One additional page** may be included for partnering firms' qualifications.

- Structure and Evolution of the Firm: List any other names for company's business. Provide any other information, only if deemed necessary.
- Years in the Energy Business: State the number of years the company has been involved in the energy-efficiency related business.
- Involvement in Performance Contracting.
- State the number of years the company has offered Energy Savings Performance Contracting services.
- State the number of project professionals (energy engineers, project managers, etc.) in your firm that are directly involved in the performance contracting and energy efficiency or renewable energy business.
- Number of Performance Contracting Projects Completed: State the number of performance contracting projects completed by the company.

### **iv. General Scope of Services**

The purpose of this section is to ensure the firm has the qualifications to provide the full scope of ESPC services. Provide a brief discussion (**five pages max**) with the scope of services below to illustrate the company's technical capabilities in each area.

- Buildings and Energy Systems
- Energy Conservation Measures: This discussion may include but should not be limited to: lighting and lighting controls, building envelope and weatherization, HVAC equipment upgrades, building automation / energy management control systems, retro-commissioning, central plants, HVAC system optimization, air/water-side distribution upgrades, electrical system upgrades, and similar measures.
- Operational Savings Measures: This discussion may include reducing or eliminating maintenance costs, training and educational programs for staff or occupants, and other similar measures.
- Electrification: This discussion may include the firm's overall approach to electrification of buildings and proposed benefits.
- Renewables: This discussion may include the firm's overall approach to installation and management of renewable energy assets.
- Project Development and Implementation (one page max)
- Equipment and subcontractor procurement, bidding, and compliance with DVBE requirements.
- Construction management.

- Commissioning of projects and retro-commissioning of existing buildings.
- Project management.
- Cost Controls.
- Standards of comfort (company guidelines on light levels, space temperatures, ventilation rates, etc. in typical government facilities).
- Hazardous materials identification and abatement, recycling, or disposal (including asbestos).
- Performance guarantees
- Insurance per contract requirements.
- Equipment warranties, and warranty management.
- Approach to financing and/or facilitating the financing. local sub-contractors, vendors, and suppliers.
- Describe how you propose to involve SBUSD in the evaluation and selection of sub-contractors and proposed equipment/materials.
- If the Offeror is a team or joint venture, the names and addresses of the team or individual members of the joint venture, and copies of any joint venture or teaming agreements shall be provided. If the Offeror is a team the teaming agreement should include intention, expectations, roles and responsibility of the ESCO, roles and responsibility of the teaming partner, why the parties are teaming, division of the work and percentages. If the Offeror is a team or a Joint Venture of multiple companies, the Evaluation Committee will consider the experience of each member of the team or Joint Venture in light of their role in the proposed team or Joint Venture.

## **v. Financial Capability**

Describe the financial soundness and expected stability of the company, including the financial ability to serve SBUSD related to this RFP.

- Financial Reports
- Provide a Federal Tax Identification Number.
- Profitability: Demonstrate that the Offeror is financially stable and has been in business, providing a similar service for at least the last three (3) years. The offeror shall provide proof of a positive balance sheet and profitable business operations for two (2) of the previous three (3) years.
- Bonding
- Ability to obtain the necessary bonding for the work required by SBUSD related to this RFP.
- Current bonding rating.
- Current bonding capacity.
- Amount or percentage of bonding capacity currently obligated.
- Confirmation that the company is bondable for 100% of a payment bond on a project.
- Confirmation that the Offeror is bondable for 100% of a performance bond on a project.

- Letter from a licensed surety as evidence of ability to bond for payment and performance.

#### **vi. Insurance**

Ability to obtain and maintain insurance coverage for public liability and property damage within limits sufficient to protect the company and all the subcontractors of the Company from claims for personal injury, accidental death and damage to property that may arise in connection with the work required by SBUSD.

### **B. Team Qualifications**

Provide an organization chart and the resumes (**up to one page each**) for each of the key project personnel to confirm that they have the necessary professional qualifications and experience for the work to be performed.

### **C. Technical Approach**

Limit responses for this section to **no more than 15 pages** (excluding sample M&V plan and report).

#### **i. Preliminary Assessment Approach**

Provide an overview of your approach to performing a Preliminary Assessment of the District facilities. The purpose of this study is to provide the District with a general overview of the potential Rough Order of Magnitude (ROM) costs & savings of the project, the potential scope opportunities, and to provide the District with an overall business case to proceed confidently into the Investment Grade Audit phase.

#### **ii. Investment Grade Audit Approach**

Briefly summarize your overall approach to IGA development. Be prepared to provide a sample Investment Grade Audit report for an ESPC project that your firm implemented in a public facility, including detailed energy/water savings and economic calculations (excluding equipment cut sheets) and samples of tables, and supporting calculations. This is intended to allow reviewers to conduct a reasonable analysis of your company's auditing methodology. Please be judicious regarding the volume of information submitted. The sample audit is not required at this time.

#### **iii. Design and Implementation Approach**

Provide a review and analysis of the data and information provided in the Technical Facility Profile Exhibit A for the representative sample of buildings. Provide a projected schedule and recommended approach to the IGA and the Implementation Phases. Describe your project management plan, communication plan, ability to scale, potential obstacles, and how your approach will resolve those issues and ensure a successful outcome for this project.

#### **iv. Commissioning Approach**

Briefly summarize your overall approach to Commissioning. Include a brief overview of your sample Commissioning Plan and provide a copy of a Commissioning Plan from a previous performance contracting project.

**v. Measurement and Verification Approach**

Briefly summarize your overall approach to Measurement and Verification including your approach to developing the M&V Plan & M&V Report. Include a brief overview of a sample M&V plan and M&V report.

As an appendix to your response, provide a sample Measurement and Verification Plan & Report from a performance contracting project implemented by your company. The sample M&V plan and report do not count toward page limits for this section.

**vi. Operations & Maintenance approach**

Briefly summarize your approach to Operations and Maintenance. Include a brief overview of your sample Operations and Maintenance Plan. As an appendix to your response, provide a sample Operations & Maintenance Plan for a performance contracting project implemented by your firm. SBUSD may, if it is deemed beneficial, require the selected ESCO to provide all maintenance of replaced equipment over the contract term. Please describe your firm’s technical, management, and financial approach to this scenario. Also describe how your firm would approach a scenario in which SBUSD would take full or partial responsibility for maintenance of replaced equipment over the contract term.

**vii. Handling of Savings Shortfalls**

Address any savings shortfalls that occurred previously (provide up to 5 examples) and describe how they were resolved. Include contact information, including points of contact name; title; organization; email; and direct phone number; for each client involved.

**D. Financial Approach**

Provide an overview of your approach to supporting past clients in exploring the pros, cons, and other key considerations of various financing strategies commonly employed for Energy Savings Performance Contracts.

Describe past experience capturing utility rebates, tax incentives, and/or grants on behalf of customers.

Provide recommendations for SBUSD to consider in evaluating potential financing vehicles for an Energy Services Agreement (ESA).

**E. Pricing**

Each responding company shall provide its proposed maximum cost for performing an IGA as well as schedules illustrating proposed maximum project markups, overhead and profit markups, and fees for pre-defined categories. See below for a description of required Cost and Pricing Information.

**i. Project Cost Breakdown**

In the table below, provide your company’s proposed Maximum Percentage of Total Project Price for each category listed. This format is required and must be completed in its entirety. Use only the categories shown. Ranges are not acceptable.

Also, clearly describe how incidental and ancillary work will be charged (e.g., billed hourly, billed as a markup of equipment and labor costs). Incidental and ancillary work includes

jobsite safety, security, cleanliness and sanitation, limited demolition, and other incidental work that is necessary to ensure that all work is completed in a timely manner.

If a submittal is from a joint venture partnership, include proposed maximum allowable markups in the schedule format for each participating company.

		<b>MAXIMUM MARKUPS</b>
	<b>Project Budget</b>	<b>Percent of Total Project Price</b>
A	Subcontractor Costs (Contractor Costs to ESCO)	N/A
B	Other Direct Purchases of Equipment, Material, Supplies, etc	
C	<b>Total of Hard Costs</b>	$c = a + b$
D	Project Development	
E	Design/Engineering	
F	Project Management	
G	Permits	
H	Performance Bond	
I	Payment Bond/Insurance	
J	Commissioning	
K	Measurement & Verification	
L	Training	
M	Contingency	
N	Warranty Service	
O	<b>Total of ESCO Fees</b>	$o = \text{sum}(d:n)$
P	Overhead	
Q	Profit	
R	<b>PROJECT PRICE SUB TOTAL w/OH &amp;P</b>	$r = c + o + p + q$

**Assumptions for Cost Markup Table Above:**

Rows D - N are calculated as a percent of Row C

Rows P & Q are calculated as a percent of the sum of Rows C & O

**ii. Investment Grade Audit Fee (Maximum)**

Identify your fixed fee to conduct the Investment Grade Audit and Project Development Proposal, on a cost per square foot basis:

	Proposed Fixed cost per sf
--	----------------------------

Investment Grade Audit and Project Proposal	\$/sf
---	-------

**iii. Self-Performed Work Fees**

In the table below, provide the position descriptions and hourly rates (with Overhead and Profit applied) for labor and services as performed by your company. The purpose of this is to enable confirmation through open book pricing.

Position Description	Hourly Rate
Project Development Manager	\$xx.xx
Lead Project Engineer	\$xx.xx
Project Engineer	\$xx.xx
Construction Manager	\$xx.xx
Construction Superintendent	\$xx.xx
Operations & Maintenance Manager	\$xx.xx
Measurement & Verification Manager	\$xx.xx
HVAC Skilled Trades Professional	\$xx.xx
Electrical Skilled Trades Professional	\$xx.xx

**iv. Annual Costs and Fees (Maximum)**

For each category describe how that annual cost is determined, how the fee is charged to the project and when it is applied. Markups on fees are not allowable.

- **Measurement and Verification – Annual Fee:** The Measurement and Verification Services cost is the annual cost for the services necessary after acceptance of the project to annually verify the Energy Performance Contract guarantees. The cost for the guarantee is based upon the M&V option utilized, the risk of savings failure, the field time to measure building performance, and the time to document and present the report.
- **Warranty:** Warranty is the burdened labor cost associated with time anticipated to be expended by ESCO staff in supporting their direct purchase equipment warranties; and/or equipment provided by subcontractors. This warranty cost may also include costs for extended equipment warranties in those cases where the required/specified equipment warranty is longer than the equipment warranty offered by the manufacturer.
- **Other:** Describe any other fees and how they will be determined.

Category of Service Fees	Estimated % of Annual Cost Savings
Annual Service Fees	

Measurement & Verification	
Maintenance	
Equipment Performance Monitoring	
Annual Training	
Warranty Management	
<b>Total</b>	

**v. Contingency**

Describe your company’s typical level of contingency budget for lighting, electrical, mechanical, controls projects, and other projects and how it proposes to apply contingency to cover changes in work scope and subcontractor change orders. Note that all unused contingency funds will revert to SBUSD or be applied to additional work scope through a change order approved by SBUSD.

**vi. Equipment/Labor Cost Competition**

Describe your company’s process to solicit bids on equipment/labor or to ensure price/cost competition and the best value for SBUSD.

**vii. Open Book Pricing**

Open book pricing is required. Describe your company’s approach to open book pricing and the method for maintaining cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records.

**F. Value Add**

Briefly describe how your approach to Performance Contracting delivers best value for the investment. Describe any utility rebates or other financial incentives or grants you can potentially provide and/or facilitate.

**G. Exceptions and Confidential Information**

All exceptions to the RFP or SBUSD terms and conditions must be listed on an item-by-item basis and cross-referenced with the RFP document. If there are no exceptions, Proposer must expressly state that no exceptions are taken. Please Note: Taking exceptions to proposal requirements or SBUSD General Provisions may render a Proposer’s proposal non-responsive and rejected from further consideration.

**H. Additional Submittals**

In addition to the Proposer and Firm Qualifications, the submittal shall also include completed versions of the following applicable forms:

1. Appendix X
2. Appendix X

## DEFINITIONS AND ACRONYMS

Buyer	Purchasing employee responsible for distributing all proposal documents and receiving all questions, issues, and concerns in written form. Refer to the front page of the document for specific contact information
Commissioning	A comprehensive quality assurance process, overseen by a qualified commissioning authority or qualified third-party Consultant. Systematic, thoroughly documented and collaborative process ensures system components are designed, installed, functionally tested, and capable of operating at peak performance through their lifecycle, and will achieve the energy, water and maintenance savings stated in the approved project documents.
District	Santa Barbara Unified School District - SBUSD
ESCO	Energy Service Company. Organization/individual submitting a proposal in response to this RFP.
ESPC	Energy Savings Performance Contract
Evaluation Committee	An independent committee, established by SBUSD to review proposals submitted in response to this RFP, score the proposals and recommend a Supplier(s) for Agreement award
Investment Grade Audit (IGA)	The investment-grade audit carefully analyzes energy, water, and operating cost savings measure (ECM) estimates and implementation and maintenance costs and should examine the interactive and/or synergistic impacts of various savings measures. It also addresses benefits including, but not limited to, savings in energy usage, water usage, maintenance, materials, labor, as well as the potential labor savings through increased productivity and decreased absenteeism. The financial analysis should clearly delineate the costs and benefits of the Project including first cost, simple payback period, net present value, and internal rate of return. This audit also provides objective and professional evaluation of internal control through financial, operational and compliance audits.
M&V	Measurement and Verification. Those scientific, operational, or other methods and protocols used to validate that the Project's stated savings and/or cost reductions are achieved.
May	Indicates something that is not mandatory but permissible
Open Book Pricing	Respondent will fully disclose all costs, including all costs of subcontractors and vendors. The ESCO will maintain cost accounting records on authorized work performed showing actual costs for labor and materials.

Respondent	A prospective Supplier submitting a proposal
RFP	Request for Proposal
Shall/Must/Will	Indicates a mandatory requirement. Failure to meet mandatory requirements may result in rejection of a proposal as non-responsive
Should	Indicates something that is recommended, but not mandatory. If the Respondent fails to provide in its proposal the recommended information, SBUSD may, at its sole option, ask the Respondent to provide the information, or evaluate the proposal without the information
Subcontractor	Third party, not directly employed by SBUSD, who will, if the Respondent is selected, provide services in connection with the Agreement anticipated by the RFP
Supplier	Individual or firm(s) selected to perform the Scope of Work
Third-Party Consultant	Individual/firm hired to work on behalf of SBUSD to assist SBUSD as necessary to review proposed energy, water and/or operating savings for the performance contract project and may provide post-implementation review of Project savings measurement and verification results reported by the ESCO. Although the listed duties are not meant to be all-inclusive, whatever roles the consultant fills will be advisory only.
Work	The provision or furnishing of goods and/or services as indicated throughout the entire RFP document

# ATTACHMENT A – FACILITY TECHNICAL PROFILE

## FACILITY TECHNICAL PROFILE

### List of Facilities

#### Santa Barbara High School

- Address: 700 E Anapamu St, Santa Barbara, CA 93103
- Square Footage: Approx. 275,000 Sqft
- Potential Opportunities: HVAC and electrical upgrades, LED lighting retrofits, improved windows, enhanced security systems, and EV charging infrastructure to support the City's sustainability goals.
- Operational Schedule: School hours: 8:30 AM – 3:30 PM

#### Dos Pueblos High School

- Address: 7266 Alameda Ave, Goleta, CA 93117
- Square Footage: Approx. 230,000 Sqft
- Potential Opportunities: HVAC and ventilation upgrades, electrical system improvements, enhanced security measures, and the implementation of comprehensive controls for all rooftop units (RTUs).
- Operational Schedule: School hours: 8:30 AM – 3:30 PM

#### San Marcos High School

- Address: 4750 Hollister Ave, Santa Barbara, CA 93110
- Square Footage: Approx. 200,000 Sqft
- Potential Opportunities: HVAC and electrical upgrades, air conditioning, and new windows.
- Operational Schedule: School hours: 8:30 AM – 3:30 PM

#### Santa Barbara Junior High School

- Address: 721 E Cota St, Santa Barbara, CA 93103
- Square Footage: Approx. 180,000 Sqft
- Potential Opportunities: Potential to improve classroom environments through HVAC and electrical upgrades and a modernized intercom system.

- Operational Schedule: School hours: 8:45 AM – 3:15 PM

### **Goleta Valley Junior High School**

- Address: 6100 Stow Canyon Rd, Goleta, CA 93117
- Square Footage: Approx. 118,000 Sqft
- Potential Opportunities: Improved comfort, energy efficiency, and safety through HVAC and electrical upgrades, air conditioning enhancements, security improvements, and installation of LED lighting in non-classroom spaces.
- Operational Schedule: School hours: 8:45 AM – 3:15 PM

### **La Colina Junior High School**

- Address: 4025 Foothill Rd, Santa Barbara, CA 93110
- Square Footage: Approx. 108,000 Sqft
- Potential Opportunities: Included in district-wide roofing, lighting, and systems upgrades as outlined in the Facilities Master Plan, with a specific need to implement LED lighting in non-classroom spaces.
- Operational Schedule: School hours: 8:45 AM – 3:15 PM

### **Adams Elementary**

- Address: 2701 Las Positas Rd, Santa Barbara, CA
- Square Footage: Approx. 55,000 Sqft
- Potential Opportunities: Opportunity to enhance air quality and occupant comfort through HVAC and ventilation upgrades, supported by electrical modernization to enable efficient air conditioning. LED lighting is needed in portable buildings to improve energy efficiency and lighting quality.
- Operational Schedule: School hours: 8:30 AM – 3:00 PM

### **Cleveland Elementary**

- Address: 123 Alameda Padre Serra, Santa Barbara, CA
- Square Footage: Approx. 55,000 Sqft
- Potential Opportunities: Potential to enhance learning environments through HVAC and ventilation improvements, electrical safety upgrades, and updated wiring systems. While HVAC systems are currently being replaced, there may be an

opportunity to expand solar capacity to further support energy efficiency and sustainability goals.

- Operational Schedule: School hours: 8:30 AM – 3:00 PM

### **Franklin Elementary**

- Address: 1111 East Mason St, Santa Barbara, CA
- Square Footage: Approx. 77,000 Sqft
- Potential Opportunities: Opportunity for electrical infrastructure upgrades and new air conditioning to boost classroom comfort and support technology use.
- Operational Schedule: School hours: 8:30 AM – 3:00 PM

### **Harding Elementary**

- Address: 1625 Robbins St, Santa Barbara, CA
- Square Footage: Approx. 49,000 Sqft
- Potential Opportunities: Potential to improve system reliability and energy efficiency through full HVAC replacement and upgraded electrical panels, with additional opportunity to incorporate solar energy solutions.
- Operational Schedule: School hours: 8:30 AM – 3:00 PM

### **McKinley Elementary**

- Address: 350 Loma Alta Dr, Santa Barbara, CA
- Square Footage: Approx. 65,000 Sqft
- Potential Opportunities: Opportunity for HVAC and lighting modernization, intercom system upgrades, and window replacements to improve comfort and energy performance.
- Operational Schedule: School hours: 8:30 AM – 3:00 PM

### **Monroe Elementary**

- Address: 431 Flora Vista Dr, Santa Barbara, CA
- Square Footage: Approx. 51,000 Sqft
- Construction Details: Potential to enhance indoor conditions with HVAC and ventilation improvements, upgraded wiring, and added air conditioning.
- Operational Schedule: School hours: 8:30 AM – 3:00 PM

### **Roosevelt Elementary**

- Address: 1990 Laguna St, Santa Barbara, CA
- Square Footage: Approx. 42,000 Sqft
- Potential Opportunities: Potential to improve comfort and safety through new windows, upgraded video intercom systems, and air conditioning installations. There is also a need to upgrade existing lighting to LED and replace the current water-source heat pump (WSHP) system to enhance energy efficiency and system reliability.
- Operational Schedule: School hours: 8:30 AM – 3:00 PM

### **Washington Elementary**

- Address: 290 Lighthouse Road Santa Barbara, CA
- Square Footage: Approx. 45,000 Sqft
- Potential Opportunities: Opportunity for energy efficiency gains through HVAC, electrical, and window upgrades, paired with air conditioning improvements.
- Operational Schedule: School hours: 8:30 AM – 3:00 PM

### **District Office**

- Address: 720 Santa Barbara St, Santa Barbara, CA
- Square Footage: Approx. 45,000 Sqft
- Potential Opportunities: Potential for energy efficiency improvements through LED lighting upgrades and retro commissioning (RCx) of the chiller system to optimize performance and reduce operational costs.
- Operational Schedule: School hours: 8:30 AM – 3:00 PM

## Facility Utility Data

Site Name	Electric Costs (\$)	Gas Costs (\$)	Water Costs (\$)
<b>Santa Barbara High School</b>	\$ 557,491	\$ 105,447	\$ 169,882
<b>Dos Pueblos High School</b>	\$ 532,239	\$ 110,184	\$ 228,830
<b>San Marcos High School</b>	\$ 501,379	\$ 71,286	\$ 202,029
<b>Santa Barbara Junior High</b>	\$ 101,252	\$ 33,649	\$ 101,252
<b>La Cumbre Junior High</b>	\$ 193,187	\$ 44,133	\$ 71,600
<b>Goleta Valley Junior High</b>	\$ 116,374	\$ 30,500	\$ 117,129
<b>La Colina Junior High</b>	\$ 110,249	\$ 23,271	\$ 259,988
<b>Adams Elementary</b>	\$ 57,341	\$ 9,710	\$ 28,854
<b>Cleveland Elementary</b>	\$ 90,765	\$ 7,345	\$ 59,780
<b>Franklin Elementary</b>	\$ 133,281	\$ 7,345	\$ 59,780
<b>Harding Elementary</b>	\$ 77,927	\$ 11,916	\$ 33,447
<b>McKinley Elementary</b>	\$ 84,692	\$ 7,793	\$ 38,753
<b>Monroe Elementary</b>	\$ 59,038	\$ 12,703	\$ 22,738
<b>Roosevelt Elementary</b>	\$ 101,663	\$ 7,516	\$ 40,997
<b>Washington Elementary</b>	\$ 67,353	\$ 9,571	\$ 27,285
<b>District Office</b>	\$ 49,296	\$ 14,533	\$ 18,809
<b>All Sites</b>	\$2,937,017	\$ 509,088	\$1,498,820

## List of ECMs for consideration

- Interior & Exterior Lighting Upgrades with Occupancy Controls  
Upgrade lighting systems with high-efficiency LEDs and integrate advanced occupancy and daylight controls for optimal energy savings.
- Window Upgrades & Window Film  
Improve thermal efficiency and reduce solar heat gain through advanced window technologies and energy-efficient films.

- Building Envelope Weatherization & Insulation  
To minimize thermal bridging, enhance energy retention with high-performance insulation, air sealing, and weatherization strategies.
- Transformer Replacements  
Replace aging transformers with energy-efficient models to improve power distribution and reduce energy losses.
- Vending Machine and Plug Load Controls  
Implement smart power strips and occupancy-based plug load controllers to minimize energy consumption during idle periods.
- Walk-In Cooler Controls  
Add temperature optimization controls for walk-in coolers and freezers, ensuring efficient operation and energy savings.
- Kitchen Hood Controls  
Integrate demand-control ventilation systems for kitchen hoods, adjusting airflow based on real-time cooking activity.
- Water Efficiency Improvements  
Upgrade fixtures, install low-flow aerators, and optimize water systems for enhanced conservation and cost savings.
- Roof-Mounted, Parking Canopy, and Ground-Mounted Solar Photovoltaic (PV) Arrays  
Deploy solar PV systems to offset energy usage, utilizing available rooftop, parking canopy, and ground-mounted areas for maximum energy generation.
- Roof Replacements  
Include energy-efficient and solar-ready roofing systems to support sustainability goals and enhance building resilience.
- Electrification of HVAC via Various Heat Pump Technologies  
Transition from fossil-fuel-based systems to advanced heat pump technologies, including air-source, ground-source, and water-source heat pumps.
- HVAC Modernization/Upgrades  
Upgrade existing HVAC systems with high-efficiency units, including variable speed drives, economizers, and improved air distribution.
- Building Automation System - Direct Digital Controls (DDC) Upgrades / Retro-commissioning (RCx)  
Modernize building automation systems to improve energy management through advanced digital controls and optimize existing systems via retro-commissioning.
- Pumping and Motor Control Upgrades  
Enhance the efficiency of pumps and motors by implementing variable frequency drives (VFDs) and advanced control systems.
- Microgrids and Distributed Energy Resources (DERs)  
Design and implement microgrid systems to improve energy resilience, integrate

distributed energy resources (such as solar, battery storage, and fuel cells), and support grid-independent operation during outages.

- Battery Energy Storage Systems (BESS)

Incorporate battery storage to maximize the utilization of renewable energy, reduce peak demand charges, and provide backup power for critical infrastructure.

## **ATTACHMENT B – INVESTMENT GRADE AUDIT CONTENTS**

### **SAMPLE INVESTMENT GRADE AUDIT AGREEMENT**

#### **TABLE OF CONTENTS**

##### **EXHIBITS**

Exhibit A: Scope of Work

Exhibit B: Notice of Acceptance of Investment Grade Audit Report

Exhibit C: Guidelines for Preliminary Monitoring and Verification Plan

Exhibit D: Pricing for Project

##### **APPENDICES**

Appendix A RFP for ESCO Solicitation

Appendix B ESCO RFP Response

Appendix C Professional Services Agreement Terms and Conditions

Appendix D Additional Minimum Standard Contract Clauses

## INVESTMENT GRADE AUDIT AGREEMENT

This Investment Grade Audit Agreement (the "Contract") is made and entered into as of this day of \_\_\_\_\_, at \_\_\_\_\_, in the County of \_\_\_\_\_, State of \_\_\_\_\_, by and between \_\_\_\_\_ ("ESCO"), having its principal offices at \_\_\_\_\_, and \_\_\_\_\_ ("Owner") having principal offices at \_\_\_\_\_, for the purpose of identifying certain energy and water cost saving equipment upgrades, and identifying other services designed to save energy for the Owner's property and buildings, known as \_\_\_\_\_, located at \_\_\_\_\_ (the "Project Site(s)").

### WITNESSETH

WHEREAS, This Contract was created to obtain a Investment Grade Audit of a facility from a private energy service company (ESCO).

WHEREAS, ESCO has submitted a ESCO Response, in response to Owner's Request for Proposals (RFP), pertaining to the discovery, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy and water saving measures at Owner's facilities; and

WHEREAS, Owner has selected ESCO to provide the services described herein; and

WHEREAS, Owner desires to enter into a Contract to have ESCO perform an Investment Grade Audit and Project Proposal to determine the feasibility of entering into an **Energy Services Agreement** to provide for installation and implementation of energy and water saving measures at Owner's facilities.

WHEREAS, if energy and water saving measures are determined to be feasible, and if the amount of savings can be reasonably sufficient to cover all costs, as defined by Owner, associated with an Energy Savings Performance Contracting project, the parties intend to negotiate an Energy Services Agreement under which the ESCO will design, procure, install, implement, maintain and monitor such energy and water saving measures. However, this intent does not commit Owner to entering into such Energy Services Agreement.

THEREFORE, the parties agree as follows:

### 1. Investment Grade Audit Report

ESCO agrees to perform a Investment Grade Audit in accordance with the Scope of Work described below in Exhibit A. ESCO agrees to complete the Investment Grade Audit and tender to Owner a final report within 120 calendar days from the execution of this Contract.

Owner agrees to assist the ESCO in performing the Investment Grade Audit in accordance with the Scope of Work described below. Owner agrees to work diligently to provide full and accurate information. ESCO agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed. The parties contemplate that this will be an iterative process and that Owner will have a reasonable amount of time to review and determine acceptance before issuing the **Notice of Acceptance (Exhibit B: Notice of Acceptance of Investment Grade Audit Report)**.

ESCO agrees to offer an **Investment Grade Audit Report** with a package of energy and water saving measures and with details as specified in the Scope of Work in Exhibit A.

## 2. Compensation to ESCO

ESCO shall be compensated as follows:

- a. **Basis and Maximum Amount.** Except as provided for in **Subsections 2(b), 2(c), or 2(d)** below, within 120 days after Owner's acceptance of the final **Investment Grade Audit Report**, Owner shall pay to ESCO a sum not to exceed Dollar Amount in Words (\$ dollar amount) based on a maximum of square footage to be audited gross square feet at cost per square foot per square foot of audited square-footage, as per **Exhibit D: Pricing for Project**. Owner shall only pay for square-footage actually audited. Areas deemed by ESCO not to be audited will not be charged to Owner.
- b. **Payment through Performance Contract.** Owner shall have no payment obligations under this contract provided that ESCO and Owner execute an Energy Services Agreement within 120 days, after issuance of the **Notice of Acceptance (Exhibit B: Notice of Acceptance of Investment Grade Audit Report)** of the final **Investment Grade Audit Report**, but the fee indicated above shall be incorporated into ESCO's project costs in the Energy Services Agreement and paid through the project's funding mechanisms.
- c. **Project With Insufficient Savings.** Owner shall have no payment obligations under this Contract in the event that ESCO's final **Investment Grade Audit Report** does not contain a package of energy and water saving measures which, if implemented and as meeting terms of **Exhibit A: Scope of Work, (b) Guidelines and Requirements**, will provide Owner with cash savings sufficient to fund Owner's payments of all costs and fees associated with the Energy Services Agreement, including 1) the fee associated with the Investment Grade Audit, 2) all monthly payments on a lease purchase agreement to finance the measures, 3) any annual fees for monitoring and maintenance incurred by the ESCO, and 4) all fees related to the Owner's 3<sup>rd</sup> Party Representative. Should the ESCO determine at any time during the Investment Grade Audit that savings cannot be attained to meet these terms, the Investment Grade Audit will be terminated by written notice by the ESCO to Owner. In this event this Contract shall be cancelled and Owner shall have no obligation to pay, in whole or in part, the amount specified in this **Section 2(a)**.

## 3. Scope of Work

The Investment Grade Audit shall be performed as described in **Exhibit A: Scope of Work**.

## 4. Termination

This Contract may be terminated at any time as described below by:

### a. Termination for Default/Cause

#### 1) Default.

If the ESCO refuses or fails to timely perform any of the provisions of this contract, with such diligence as will ensure its completion within the time specified in this contract, the procurement officer may notify the ESCO in writing of the non-performance, and if not promptly corrected within the time specified, such officer may terminate the ESCO's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. The ESCO shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

- 2) **ESCO's Duties**  
Notwithstanding termination of the contract and subject to any directions from the procurement officer, the ESCO shall take timely, reasonable and necessary action to protect and preserve property in the possession of the ESCO in which the purchasing Owner has an interest.
- 3) **Compensation**  
Payment for completed services delivered and accepted by Owner shall be at the contract price. Owner may withhold amounts due to the ESCO as the procurement officer deems to be necessary to protect Owner against loss because of outstanding liens or claims of former lien holders and to reimburse the Owner for the excess costs incurred in procuring similar goods and services.
- 4) **Excuse for Nonperformance or Delayed Performance**  
The ESCO shall not be in default by reason of any failure in performance of this contract in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. Upon request of the ESCO, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the ESCO's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the purchasing Owner.
- 5) **Erroneous Termination for Default**  
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 been issued pursuant to the termination for convenience clause.

**b. Termination for Convenience**

- 1) **Termination**  
The Owner may, when the interests of the Owner so require, terminate this contract in whole or in part, for the convenience of the Owner. The Owner shall give written notice of the termination to the ESCO specifying the part of the contract terminated and when termination becomes effective. This in no way implies that the purchasing Owner has breached the contract by exercise of the Termination for Convenience Clause.
- 2) **ESCO's Obligations**  
The ESCO shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the ESCO will stop work to the extent specified. The ESCO shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The ESCO shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Owner may direct the ESCO to assign the ESCO's right, title, and interest under terminated orders or subcontracts to the purchasing Owner. The ESCO must still complete and deliver to the purchasing Owner the work not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

### 3) Compensation

- a) The ESCO shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the ESCO fails to file a termination claim within 90 days from the effective date of termination, the Owner may pay the ESCO, if at all, an amount set in accordance with subparagraph C of this Section.
- b) The Owner and the ESCO may agree to a settlement provided the ESCO has filed a termination claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by the purchasing Owner, the proceeds of any sales of supplies and manufactured materials made under agreement, and the contract price of the work not terminated.
- c) Absent complete agreement, under subparagraph B of this Section, the Owner shall pay the ESCO the following amounts, provided the payments agreed to under subparagraph B shall not duplicate payments under this subparagraph:
  - (1) Contract prices for supplies or services accepted under the contract;
  - (2) Costs incurred in preparing to perform the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid to or to be paid for accepted supplies or services; provided, however, that if it appears that the ESCO would have been sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss.
  - (3) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the ESCO's obligations paragraph of this clause. These costs must not include costs paid in accordance with subparagraph B of this Section.
  - (4) The reasonable settlement costs of the ESCO including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the terminated portion of this contract.
  - (5) The total sum to be paid the ESCO under this subparagraph C shall not exceed the total contract price plus settlement costs, reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph B, and the contract price of work not terminated.
- d) Cost claimed or agreed to under this section shall be in accordance with applicable sections of the State Procurement Code.

#### **d. Available Funds – Contingency – Remedies**

The Owner is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. Therefore, ESCO's compensation is contingent upon the continuing availability of Owner appropriations. Payments pursuant to this contract shall only be made from available funds encumbered for this Contract, and the Owner's liability for such payments shall be limited to the amount remaining of such encumbered funds. If

Owner or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the Owner may immediately terminate the Contract in whole or in part without further liability in accordance with the Termination for Cause subsection of the Remedies section of this Contract. All payments are subject to the general Remedies section of this Contract.

## **5. Insurance**

Before commencing any Work under this Contract, ESCO shall file with Owner certificates of insurance evidencing the coverage's as specified below

- a. It is agreed and understood ESCO shall 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.
- b. The ESCO shall obtain, and maintain at all times during the term of this Agreement, insurance in the following kinds and amounts.
  - 1) Standard Workers' Compensation and Employer's Liability as required by State statute, including occupational disease, covering all employees at the work site.
  - 2) General Liability (minimum coverage)
    - a) Combined single limit of \$2,000,000.00 written on an occurrence basis.
    - b) Any aggregate limit will not be less than \$4,000,000.00.
    - c) The ESCO must purchase additional insurance if claims reduce the annual aggregate below \$600,000.
  - 3) Automobile Liability (minimum coverage) in the amount of \$600,000 combined single limit
  - 4) The Owner shall be named as an additional insured on each commercial general liability policy.
  - 5) The insurance shall include provisions preventing cancellation without 30 calendar days prior written notice, by certified mail to the Principal Representative
  - 6) 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 Contract, provided that any such claim, damage, loss or expense is caused by any negligent act, error or omission of ESCO, any Consultant or associate thereof, or anyone directly or indirectly employed by ESCO. ESCO shall submit a Certificate of Insurance at the signing of this Contract and also any notices of Renewal of said Policy as they occur.

## **6. Energy Services Agreement**

The Parties intend to negotiate an Energy Services Agreement under which the ESCO will design, install and implement energy and water saving measures which the Parties have agreed to, and provide certain maintenance and monitoring services. However, nothing in this Contract should be construed as an obligation on any of the Parties to execute such a contract. The terms and provisions of such an Energy Services Agreement will be set forth in a separate contract.

## **7. Extent of Agreement**

- a. This Contract represents the entire and integrated agreement between Owner and ESCO and supersedes all prior negotiations, representations or agreement, either written or oral. This Contract may be amended only by written instrument signed by the Owner.
- b. The Owner and ESCO understand and agree the attachment and exhibits hereto are and shall be an integral part of this Contract and the terms and provisions thereof are hereby incorporated, made a part of and shall supplement those recited herein. In the event of any conflict, or variance, the terms and provisions of this printed Agreement shall supersede, govern and control.

## **8. Term**

The term of this Contract will become effective upon approval by the District. The term shall end 120 days after signing of the **Notice of Acceptance (Exhibit B: Notice of Acceptance of Investment Grade Audit Report)** of the Final Investment Grade Audit Report by the Principal Representative.

## **9. Order of Precedence**

In the event of conflict or inconsistency between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- 1. Request for Proposal Documentation & Response by ESCO**
- 2. Contract - general terms and conditions**
- 3. Other exhibits or attachments**

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Contract on the date first written above.

Owner

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ESCO

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

# **EXHIBIT A - Investment Grade Audit Scope of Work**

## **1. Detailed Task List**

The following scope will be conducted in intervals with review milestone points/submissions at the 30%, 60%, 90%, and 100% levels of completion. The entire Investment Grade Audit Scope fo Work shall be completed within 120 calendar days of the date of execution of the Investment Grade Audit Agreement (IGAA). An ECM Matrix (or similar document approved by Owner) will be used in the presentations to facilities and management teams for decision-making and approval. This includes estimated cost, savings, simple payback and expected M&V Methodology for each individual measure, while emphasizing the performance of all measures as a whole.

### **1.1 30% Phase - Assessment of Needs and Opportunities**

#### **Collect General Facility Information**

Owner agrees to work diligently to furnish ESCO, upon request, accurate and complete data and information, as available. Owner will allow ESCO reasonable access to facility staff to ensure understanding of existing systems and opportunities. Owner shall have final approval of ESCO access. Upon notice to ESCO, Owner may, but shall not be required to, conduct the task to collect utility information from utilities in order to reduce ESCO time and expense.

The ESCO shall collect data and background information from Owner concerning facility operation and energy and water use, including any changes to operation, energy and water use anticipated within the next 5 years. ESCO agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed. Where information is not readily available from Owner, ESCO will make a diligent effort to collect such information through the facility inspection, staff interviews, and utility companies.

Collect the following information for the past 36-month period (where reasonably available):

#### **General Facility Information**

- Building list with square footage and age (including age of major remodels or additions)
- Construction data of buildings and major additions including building envelope, window specifications/performance and roof/wall assembly.
- General use of facility

#### **Utility Information**

- Utility company invoices
- Most recent energy supply contracts for determination of baseline cost analysis

#### **Sub Meter Information**

- Historical thermal and electrical sub meter data if available

#### **Equipment and Facility Information**

- Equipment Descriptions: Descriptions of all major energy and water consuming or energy and water saving equipment

- Facility Descriptions: Description of any structural or building use changes
- Past Changes: Record of any improvements or modifications related to energy, water or operational efficiencies that have been installed during the past three years
- Future Plans: Description of current or future plans regarding building or equipment modifications
- Drawings and Specifications: Drawings, as reasonably available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels).
- Original construction submittals and factory data (specifications, pump curves, etc.), as reasonably available.
- Floor plans
- Hazardous materials inspection records

### Operations Information

- Occupancy schedules
- Typical building/facility usage information
- Description of current energy management procedures
- Description of current operational practices
- Operating engineer logs, maintenance work orders, etc., as available
- Records of maintenance expenditures on energy or water-using equipment, including service contracts
- Existing issues with comfort levels, controls or equipment reliability.

*Any estimations and/or assumptions made during IGA development shall be agreed to by all parties.*

### **Inventory Existing Systems and Equipment**

Compile an inventory based on a physical inspection of the major electrical and mechanical systems at the Facility, including:

- Cooling systems and related equipment
- Heating and heat distribution systems
- Automatic temperature control systems and equipment
- Air distribution systems and equipment
- Outdoor ventilation systems and equipment
- Kitchen and associated dining room equipment, if applicable
- Exhaust systems and equipment
- Domestic Hot water systems
- Electric motors 5 HP and above, transmission and drive systems. Although motors under 5HP may not be inventoried, options for upgrading these motors shall still be considered (ECM type motors, etc.).
- Interior and exterior lighting
- Laundry equipment, if applicable
- Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.
- Other major energy using systems, if applicable
- Existing on-site generation/distributed generation systems/assets
- Renewable energy systems.

Address the following considerations:

- The loads, proper sizing, efficiencies or hours of operation for each system; (Where measurement costs, facility operating or climatic conditions necessitate, engineering estimates may be used, but for large fluctuating loads with high potential savings, appropriate measurements are required unless waived by Owner).
- Current operating condition for each system;
- Remaining useful life of each system;
- Feasible replacement systems
- Hazardous materials and other environmental concerns
  - Please note that the ESCO will not be responsible for removal of existing hazardous materials (ex: asbestos).

Use data loggers and conduct interviews with facility operation and maintenance staff regarding systems operation, occupancy patterns and problems with comfort levels or equipment reliability.

### **Establish Baseline**

#### Estimate Loads

- Estimate loads, usage and/or hours of operation for all major end uses of total facility consumption including: lighting, heating, cooling, motors (fans and pumps), plug loads, kitchen equipment, water, and other major energy and water using equipment.
- Where loading or usage are highly uncertain (including variable loads such as cooling), ESCO will use its best judgment, use of existing EMCS capabilities for trend data, or measurements from data loggers. ESCO should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

#### Estimate Baseline Usage

- Examine utility supply contracts and utility rate structure applicable to each building.
- If building-specific utility data is not available or not useful, then provide other means (for example sub meters and/or data loggers) to establish baseline consumption. Establish base year and/or baseline consumption.
- Present base year and/or baseline consumption in terms of energy or water 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 base year and/or baseline consumption and demand (averaging, selecting most representative contiguous 12 months, or sampling; sampling may include temporary sub meters or data loggers where needed).
- Consult with facility personnel to account for any anomalous schedule or operating conditions on billings or equipment conditions that could skew the base year and/or baseline representation.
- ESCO will (as best as possible) account for periods of time when equipment was broken or malfunctioning in calculating the base year or baseline definition period.

#### Reconcile Estimates

- Reconcile annual end-use estimated consumption and demand with the metered data collected during the IGA phase and extrapolated to reflect the annual base

year consumption. The purpose of this is to place reasonable limits on potential savings.

- Reconcile the annual end use estimated consumption with the annual Base Year consumption to within 5% for electricity (kWh), fossil fuels and water.
- Reconcile the contribution to electric peak demand for each end use within 5% of the annual Base Year peak.
- The “miscellaneous” category shall not be more than 5%.
- This reconciliation will place reasonable “real-world” limits on potential savings.

#### Baseline Adjustments

- Propose adjustments to the baseline for energy and water saving measures that will be implemented in the future.
- Baseline adjustments may be made only with advance approval by Owner.

### 1.2 60% Phase - Initial Analysis of Measures

#### Identify Potential Measures

Interviews: Interview the facility manager and a sampling of maintenance staff, subcontractors and occupants of each building regarding:

- Facility operation, including energy management and operating procedures
- Equipment maintenance problems
- Comfort problems and requirements
- Equipment reliability
- Projected equipment needs
- Occupancy and use schedules for the facility and specific equipment.
- Facility improvements – past, planned and desired
- Other project sustainability goals, metrics or standards (i.e. LEED, ENERGY STAR, Net Zero Energy, etc.)

Surveys: Survey major energy and water-using equipment, including:

- lighting (indoor and outdoor)
- heating and heat distribution systems
- cooling systems and related equipment
- automatic temperature control systems and equipment
- air distribution systems and equipment
- outdoor ventilation systems and equipment
- exhaust systems and equipment
- domestic hot water systems
- electric motors
- transmission and drive systems
- electrical transformers
- special systems (kitchen/dining equipment, etc.)
- renewable energy systems
- Other energy using systems
- water consuming systems (restroom fixtures, water fountains, irrigation systems, etc.)
- plug loads

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

### **Assess potential measures**

Consider the following for each system:

- Comfort and maintenance problems
- Energy use, loads, proper sizing, efficiencies and hours of operation
- How the measures work together (i.e. lighting upgrades can introduce less heat which requires less space cooling)
- Current operating condition
- Remaining useful life
- Feasibility of system replacement and replacement costs
- Owner's future plans for equipment replacement or building renovations
- Facility operation and maintenance procedures that could be affected
- Capability to monitor equipment or system performance and verify savings

List Measures: Develop a preliminary list of potential energy and water saving measures.

- List all potential opportunities that will be considered for the ESPC.
- 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.
- Identify measures which appear likely to be cost effective and therefore warrant detailed analysis

Evaluate Measures:

- Estimate the cost, savings and life expectancy of each proposed measure.
- Conduct a preliminary analysis of potential measures using life cycle cost analysis and examining the value of non-energy benefits of specific measures

### **Present Findings**

- Submit the preliminary findings and list of measures to Owner based on the agreed upon schedule.
- Meet with Owner to present preliminary findings prior to thorough analysis.
- Describe how the project economics, savings, and financials will meet Owner's terms for completing the IGA phase. Discuss assessment of energy use, savings potential, and project opportunities. Owner shall have the option to reject calculations of savings, potential savings allowed, or project recommendations or request recalculations of savings, potential savings allowed, or related to project recommendations.
- Develop a list of recommended measures with Owner for further analysis.

## **1.3 90% Phase - Further Analysis for Investment Grade Audit**

Further estimate the cost, savings and life expectancy of each proposed measure.

### **Savings Analysis**

- Follow the methodology of ASHRAE or other nationally-recognized authority following the engineering principle(s) identified for each retrofit option
- Utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings. Include 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, calculations which account for the interactive effects of the recommended measures.
- Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use
- Provide analysis methodology, supporting calculations and assumptions used to estimate savings.
- Manual calculations should disclose essential data, assumptions, formulas, etc. so that a reviewer could replicate the calculations based on the data provided
- For savings estimates using computer simulations, Company shall provide access to the program and all inputs and assumptions used, if requested by Owner.
- Provide detailed calculations for any rate savings proposals
- Provide detailed supporting calculations for any proposed maintenance savings
- Estimate any environmental costs or benefits of the proposed ECMs (e.g. disposal costs, avoided emissions, water conservation, etc.)
- Specify Facility operations and maintenance procedures which will be affected by the installation/implementation of the proposed ECMs.
- Establish standards of comfort for each building which will be discussed and agreed to by all parties and included in the IGA report.

### **Inflation & Escalation Rates**

Any general inflation rates and/or escalation rates will be pre-approved by Owner and mutually agreed upon. Escalation rates shall be justified and at a minimum based on DOE's Energy Escalation Rate Calculator (EERC) based on Energy Information Administration (EIA) energy price projections. A calculator may be used to determine the maximum value as developed by the National Institute of Standards and Technology (NIST) and the US Department of Energy's Federal Energy Management Program (FEMP). The energy escalation calculation tool can be found at the following website (<https://pages.nist.gov/eerc/>). Owner may authorize ESCO to utilize additional resources to further vet escalation values.

### **Cost Estimates**

Provide detailed estimates of costs associated with the installation, implementation and commissioning of each of the ECMs proposed in the Audit including breakouts for labor, materials, and equipment. Markups and fees must be consistent with those presented in **ESCO's RFP Response and those documented in Exhibit D.**

Provide estimates of monthly and/or costs associated with sustaining the project performance including breakouts for maintenance fees, measurement and monitoring fees, and training fees.

### **Measurement and Verification Plan**

- Provide a final draft measurement and verification plan for each proposed ECM
- Develop a measurement and verification plan for each measure
- Follow additional guidelines for analysis and report preparation given below.

- ESCO will use best industry standards for M&V plan development. At a minimum IPMVP shall be used and additional standards including FEMP M&V guidelines should be considered.

### **Commissioning Plan**

- Provide a preliminary commissioning plan for the proposed ECMs.

### **Operations and Maintenance Plan**

- Develop a preliminary Operations and Maintenance Plan.

### **Training Plan**

- Develop a preliminary Training Plan for proposed ECMs.

## **1.4 100% Phase - Final Investment Grade Audit Report**

The final Investment Grade Audit Scope of work shall be completed within 180 days of the date of execution of this Contract.

### **Investment Grade Audit Report**

The Investment Grade Audit report includes:

#### **Overview**

- Contact information
- Executive Summary
- Description of the facility, measures evaluated, analysis methodology, results
- Summary table presenting the cost and savings estimates for each measure and for the project as a whole.
- Summary table of recommended energy and water saving measures, including total and 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
- Any cost savings due to changes to utility rates or commodity costs due to changes in metering, commodity procurement, etc.
- Summary of annual energy and water use and costs by fuel type and costs of existing or base year condition
- Calculation of energy and cost savings expected if all recommended measures are implemented, and total percentage savings of total facility energy cost.
- Description of the existing facility, mechanical and electrical systems
- Summary description of measures, including estimated costs and savings for each as detailed above
- Summary of recommended Owner related actions (i.e. internal occupant energy reduction programs or competitions, plug load reduction measures, procurement recommendations-laptops not desktops, etc.)
- Discussion of measures considered but not investigated in detail
- Summary of the value beyond energy cost savings (i.e. improvement to learning environment, student engagement, campus sustainability goals, greenhouse gas reduction, employee retention and recruiting benefits, employee productivity benefits, etc.). Qualitative at a minimum, quantitative would be best.

- Conclusions and recommendations

#### Baseline and/or base year energy use

- Description and itemization of current billing rates, including schedules and riders.
- Summary of all utility bills for all fuel types and water.
- Identification and definition of base year consumption and description of how established
- Provide detail on baseline adjustments, if any, as approved by Owner.
- Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc.) with base year (include discussion of any unusual findings)

#### Description of each operational, energy and water saving measure

##### Written description

- Existing conditions
- Description of equipment to be installed and how it will function
- Detailed descriptions for each measure including analysis method, supporting calculations (submitted in appendices), results, proposed equipment and implementation issues, including a discussion of facility operations and maintenance procedures that will be affected by installation/implementation.
- Plan for installing or implementing the recommendation.
- Discussion of the conclusions, observations and caveats regarding cost and savings calculations.

##### Savings calculations

- Base year energy use and cost
- Post-retrofit energy use and cost
- Savings calculations including analysis methodology, supporting calculations and assumptions used.
- Annual savings calculations. The cost savings for all energy saving measures must be estimated for each year during the contract period. Savings must be able to be achieved each year (cannot report average annual savings over the term of the contract).
- Savings calculations must be limited to savings allowed by Owner as described above.
- Percent cost-avoidance projected
- Description and calculations for any proposed rate changes
- Explanation of how savings interactions between retrofit options is accounted for in calculations.
- Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment.
- If computer simulation is used, include a short description and state key input data and software used. If requested by Owner, access will be provided to the program and all assumptions and inputs used, and/or printouts shall be provided of all input files and important output files and included in the Financial Grade Operational Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts

- If manual calculations are employed, formulas, assumptions and key data shall be stated.
- Conclusions, observations, caveats

#### Cost estimate

- A detailed narrative of the construction scope of work and open book pricing model that builds up the cost to a total fixed-firm price. Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts.
- Engineering/design costs
- ESCO/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.
- Permit costs
- Construction management fees
- Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.)
- Note that all markups and fees stated in **Exhibit D** shall be used in the cost estimates, unless otherwise documented and justified due to change in scope or size of project or other unforeseen circumstances agreed to by Owner in writing.
- Conclusions, observations, caveats
- Other cost categories as defined above under “markups” in Section 3b above.

#### Other

- Estimate of average useful service life of equipment
- Preliminary commissioning plan
- Preliminary measurement and verification plan, following the current version of the International Performance Measurement and Verification Protocol (IPMVP), explaining how savings from each measure is to be measured and verified (description of Option A, B, C, or D will be implemented for the measure).
- Discussion of impacts that facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc., and identify who is responsible for maintenance.
- Compatibility with existing energy management control and/or building automation systems.
- Complete appendices that document the data used to prepare the analyses. Describe how data were collected.

Report Submissions and Review Process (recommended but can be modified based upon IGA development tracking).

- 30% IGA Report (shall be completed within 45 calendar days after execution of this Contract). Facility descriptions (general, envelope, lighting, HVAC, controls, water); baseline lighting and water audit; equipment inventories; baseline EMS trending and data logger measurements (if completed, acceptable to submit at 60% report). This is

to be submitted after the Scope of Work in Section 1.1 of this document is completed.

- 60% IGA Report (shall be completed within 90 calendar days after execution of this Contract) – Used as a scoping document to outline potential ECMs that will be feasible to include in performance contract and those that will not; high-level cost and savings analysis; draft pro forma/financial models; draft M&V plan; submission of supporting data including EMS trending analyses and data logger results; baseline energy simulation model (if applicable) input files and output reports. This is to be submitted after the Scope of Work in Section 1.2 of this document is completed.
- 90% IGA Report (shall be completed within 135 calendar days of the date of execution of this Contract) – Baseline energy and water consumption/cost analysis per site and per building; utility consumption allocation by end-use; building EUI and other performance metrics; Executive summary with ECM list economics and pro forma; facility descriptions; energy and water analysis; ECM section with detail descriptions existing conditions and proposed upgrades; final M&V plan; final ECM costs following open-book pricing model; final ECM savings analyses – spreadsheet models or energy models (input and outputs if applicable); appendices for supporting data including EMCS trending data. This is to be submitted after the Scope of Work in Section 1.3 of this document is completed.
- 100% IGA Report, which shall incorporate all necessary engineering, economic, financial, and overall scope of work changes, as well as all Owner and 3<sup>rd</sup> Party comment resolutions, shall be completed within 180 calendar days of the execution of this Contract. This is to be submitted after the Scope of Work in Section 1.4 of this document is completed.

After each report submission, Owner's Representative shall have ten (10) working days of focused review of reports and generate comments and questions in a formal comment document. This is submitted to ESCO for review and response. A conference call then takes place to review any comments needing further discussion and resolution. ESCO has built in, sufficient time in the agreed to schedule to complete this process.

# EXHIBIT B – Notice of Acceptance of IGA Report

## Notice of Acceptance of Investment Grade Audit Report

Notice of Acceptance

Date of Notice \_\_\_\_\_

Notice is hereby given that **Owner** accepts the Investment Grade Audit and Project Development Proposal by ESCO, as contemplated in **Section 2 of the Investment Grade Audit \ Contract** dated \_\_\_\_\_.

Owner Name

By \_\_\_\_\_

Date

When completely executed, this form is to be sent by certified mail to the ESCO by Owner Name.

# EXHIBIT C – Measurement and Verification Plan

## SAVINGS MEASUREMENT AND VERIFICATION PLAN

The M&V plan will be developed per the most recent IPMVP guidelines for M&V of annual guaranteed savings. This plan and report shall be thoroughly reviewed by Owner and its 3rd Party Owner’s Representative. Energy-related cost savings shall be measured and/or calculated as specified in the savings M&V Plan. Upon acceptance of construction by Owner, an annual M&V Report shall be provided to Owner for the previous performance year to provide verification of savings. The M&V report shall be submitted within 60 days of the anniversary of the performance period Commencement Date.

In the event the Energy and Cost Savings achieved during such guarantee year are less than the Guaranteed Energy and Cost Savings as defined in the agreed to Savings Guarantee, the ESCO shall pay the Owner an amount equal to the shortfall. The ESCO shall remit such payments to the Owner within an agreed upon time frame (in days) of written notice by the Owner of such monies due. The ESCO shall also be obligated to remedy the ECM deficiencies causing the shortfall at no cost to the Owner.

Prepare the M&V Plan as outlined below.

### List of Processes and Tables:

#### Risk, Responsibility and Performance Matrix.

#### M&V Plan and Savings Calculation Methods

- Proposed Annual Savings Overview
- Site Use and Savings Overview (Optional)
- M&V Plan Summary
- Schedule of Verification Reporting Activities
- Proposed Annual Savings For ECM
- Expected Year 1 Savings for ECM

#### Risk, Responsibility and Performance Matrix.

The ESCO shall complete and include the matrix below to summarize the allocation of responsibility for key items related to M&V.

### RISK, RESPONSIBILITY AND PERFORMANCE MATRIX

RESPONSIBILITY/DESCRIPTION	CONTRACTOR PROPOSED APPROACH
1. Financial	
<p><b>a. Interest rates:</b> Neither the contractor nor the Owner has significant control over prevailing interest rates. Higher interest rates will increase project cost, financing/project term, or both. The timing of the TO signing may impact the available interest rate and project cost.</p>	

<p><b>b. Construction costs:</b> The contractor is responsible for determining construction costs and defining a budget. In a fixed-price design/build contract, the Owner assumes little responsibility for cost overruns. However, if construction estimates are significantly greater than originally assumed, the contractor may find that the project or measure is no longer viable and drop it before TO award. In any design/build contract, the Owner loses some design control. <b>Clarify design standards and the design approval process (including changes) and how costs will be reviewed.</b></p>	
<p><b>c. M&amp;V confidence:</b> The Owner assumes the responsibility to determine the confidence that it desires to have in the M&amp;V program and energy savings determinations. The desired confidence will be reflected in the resources required for the M&amp;V program, and the ESCO must consider the requirement prior to submittal of the final proposal. <b>Clarify how project savings are being verified (e.g., equipment performance, operational factors, energy use) and the impact on M&amp;V costs.</b></p>	
<p><b>d. Energy Related Cost Savings:</b> The Owner and the contractor may agree that the project will include savings from <i>recurring</i> and/or <i>one-time</i> costs. This may include one-time savings from avoided expenditures for projects that were appropriated but will no longer be necessary. Including one-time cost savings before the money has been appropriated may involve some risk to the Owner. Recurring savings generally result from reduced O&amp;M expenses or reduced water consumption. These O&amp;M and water savings must be based on actual spending reductions. <b>Clarify sources of nonenergy cost savings and how they will be verified.</b></p>	
<p><b>e. Delays:</b> Both the contractor and the Owner can cause delays. Failure to implement a viable project in a timely manner costs the Owner in the form of lost savings, and can add cost to the project (e.g., construction interest, re-mobilization). <b>Clarify schedule and how delays will be handled.</b></p>	
<p><b>f. Major changes in facility:</b> The Owner controls major changes in facility use, including closure. <b>Clarify responsibilities in the event of a premature facility closure, loss of funding, or other major change.</b></p>	
<p><b>2. Operational</b></p>	
<p><b>a. Operating hours:</b> The Owner generally has control over operating hours. Increases and decreases in operating hours can show up as increases or decreases in "savings" depending on the M&amp;V method (e.g., operating hours multiplied by improved efficiency of equipment vs. whole-building/utility bill analysis). <b>Clarify whether operating hours are to be measured or stipulated and what the impact will be if they change.</b> If the operating hours are stipulated, the baseline should be carefully documented and agreed to by both parties.</p>	
<p><b>b. Load:</b> Equipment loads can change over time. The Owner generally has control over hours of operation, conditioned floor area, intensity of use (e.g., changes in occupancy or level of automation). Changes in load can show up as increases or decreases in "savings" depending on the M&amp;V method. <b>Clarify whether equipment loads are to be measured or stipulated and what the impact will be if they change.</b> If the equipment loads are stipulated, the baseline should be carefully documented and agreed to by both parties.</p>	
<p><b>c. Weather:</b> A number of energy efficiency measures are affected by weather. Neither the contractor nor the Owner has control over the weather. Should the Owner agree to accept risk for weather fluctuations, it shall be contingent upon aggregate payments not exceeding aggregate savings. <b>Clearly specify how weather corrections will be performed.</b></p>	

<p><b>d. User participation:</b> Many energy conservation measures require user participation to generate savings (e.g., control settings). The savings can be variable and the contractor may be unwilling to invest in these measures. <b>Clarify what degree of user participation is needed and utilize monitoring and training to mitigate risk.</b> If performance is stipulated, document and review assumptions carefully and consider M&amp;V to confirm the capacity to save (e.g., confirm that the controls are functioning properly).</p>	
<p><b>3. Performance</b></p>	
<p><b>a. Equipment performance:</b> The contractor has control over the selection of equipment and is responsible for its proper installation, commissioning, and performance. The contractor has responsibility to demonstrate that the new improvements meet expected performance levels including specified equipment capacity, standards of service, and efficiency. <b>Clarify who is responsible for initial and long-term performance, how it will be verified, and what will be done if performance does not meet expectations.</b></p>	
<p><b>b. Operations:</b> Performance of the day-to-day operations activities is negotiable and can impact performance. However, the contractor bears the ultimate risk regardless of which party performs the activity. <b>Clarify which party will perform equipment operations, the implications of equipment control, how changes in operating procedures will be handled, and how proper operations will be assured.</b></p>	
<p><b>c. Preventive Maintenance:</b> Performance of day-to-day maintenance activities is negotiable and can impact performance. However, the contractor bears the ultimate risk regardless of which party performs the activity. <b>Clarify how long-term preventive maintenance will be assured, especially if the party responsible for long-term performance is not responsible for maintenance (e.g., contractor provides maintenance checklist and reporting frequency). Clarify who is responsible for performing long-term preventive maintenance to maintain operational performance throughout the contract term. Clarify what will be done if inadequate preventive maintenance impacts performance.</b></p>	
<p><b>d. Equipment Repair and Replacement:</b> Performance of day-to-day repair and replacement of contractor-installed equipment is negotiable, however it is often tied to project performance. The contractor bears the ultimate risk regardless of which party performs the activity. <b>Clarify who is responsible for performing replacement of failed components or equipment replacement throughout the term of the contract.</b> Specifically address potential impacts on performance due to equipment failure. Specify expected equipment life and warranties for all installed equipment. Discuss replacement responsibility when equipment life is shorter than the term of the contract.</p>	

**M&V PLAN AND SAVINGS CALCULATION METHODS OUTLINE**

Fill in the following tables or provide equivalent information.

**PROPOSED ANNUAL SAVINGS OVERVIEW**

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)*	Total energy and water cost savings, Year 1 (\$/yr)	Other energy-related O&M cost savings, Year 1 (\$/yr)	Total cost savings, Year 1 (\$/yr)



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

\*M&V options include A, B, C, and D of the International Performance Measurement and Verification Protocol (IPMVP).

### SCHEDULE OF VERIFICATION REPORTING ACTIVITIES

Item	<sup>a</sup> Recommended time of submission	<sup>a</sup> Owner's review and acceptance period
Post-Installation Report	30 to 60 days after acceptance	30 days
Annual Report	30 to 60 days after annual performance period	30 days

<sup>a</sup>Times are recommended based on industry practice; modify as needed.

### PROPOSED ANNUAL SAVINGS FOR EACH ECM

[Include all applicable fuels/commodities for project, such as: electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

	Total energy use (MBtu/yr)	Electric energy use (kWh/yr)	Electric energy cost, Year 1 (\$/yr)	Electric demand* (kW/yr)	Electric demand cost, Year 1 (\$/yr)	Natural gas use (MBtu/yr)**	Natural gas cost, Year 1 (\$/yr)	Water use (gallons/yr)	Water cost, Year 1 (\$/yr)	Other energy use (MBtu/yr)**	Other energy cost, Year 1 (\$/yr)	Other energy-related O&M costs, Year 1 (\$/yr)	Total costs, Year 1 (\$/yr)
Baseline use													
Post-installation use													
Savings													

**Notes**

\*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.

MBtu = 10<sup>6</sup> Btu.

\*\*If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

### ECM-SPECIFIC M&V PLAN AND SAVINGS CALCULATION METHODS

### **Develop section for each ECM.**

- 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).
- Specify the M&V guideline and option used from the International Performance Measurement and Verification Protocol (IPMVP).
- Provide an overview of M&V Activities for ECM. Explain intent of M&V plan, including what is being verified.
- Provide an overview of savings calculations methods for ECM. Provide a general description of analysis methods used for savings calculations.

### **Proposed Energy and Water Savings Calculations and Methodology**

- Provide detail description of analysis methodology used. Describe any data manipulation or analysis that was conducted prior to applying savings calculations.
- Detail all assumptions and sources of data, including all stipulated values used in calculations.
- Include equations and technical details of all calculations made. (Use appendix and electronic format as necessary.) Include description of data format (headings, units, etc.).
- Details of any savings or baseline adjustments that may be required.
- Detail energy and water rates used to calculate cost savings. Provide post-acceptance performance period energy and water rate adjustment factors.
- Detail proposed savings for this energy conservation measure for post-acceptance performance period. Include table - Proposed Annual Savings for Each ECM.

### **Operations and Maintenance Cost Savings**

- Provide justification for O&M cost savings. Describe how savings are generated. Detail cost savings calculations.
- Provide post-acceptance performance period other cost savings adjustment factors.

### **Details of other savings (if applicable)**

- Provide justification for cost savings. Describe how savings are generated. Detail cost savings calculations.
- Provide post-acceptance performance period other cost savings adjustment factors.

### **Post-Installation M&V Activities** - Describe the intent of post-installation verification activities, including what will be verified.

- Describe variables affecting post-installation 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 post-installation conditions such as lighting intensities, temperature set points, etc.
- Define requirements for Owner witnessing of measurements if different than whole project data requirements.
- Provide details of post-installation data to be collected, including: Parameters to be monitored, Details of equipment to be monitored (location, type, model, quantity, etc.), Sampling plan, including details of usage groups and sample sizes, Duration, frequency, interval, and seasonal or other requirements of measurements, Monitoring equipment to be used, Installation requirements for monitoring equipment, Calibration requirements/procedures, Expected accuracy of

measurements/monitoring equipment, Quality control procedures to be used, Form of data to be collected (.xls, .cvs, etc.), Sample data collection forms (optional)

- Detail data analysis to be performed.

#### **Post-Acceptance Performance Period Verification Activities**

- Describe variables affecting post-acceptance performance period 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 post-acceptance performance period conditions. Include factors such as comfort conditions, lighting intensities, temperature set points, etc.
- Describe the intent of post-acceptance performance period verification activities – what will be verified.
- Provide detailed schedule of post-acceptance performance period verification activities and inspections.
- Define requirements for Owner witnessing of measurements if different than whole project data requirements.
- Provide details of post-acceptance performance period data to be collected, including: Parameters to be monitored, Details of equipment to be monitored (location, type, model, quantity, etc.), Sampling plan, including details of usage groups and sample sizes, Duration, frequency, interval, and seasonal or other requirements of measurements, Monitoring equipment to be used, Installation requirements for monitoring equipment, Calibration requirements/procedures, Expected accuracy of measurements/monitoring equipment, Quality control procedures to be used, Form of data to be collected (.xls, .cvs, etc.), Sample data collection forms (optional)
- Detail data analysis to be performed.
- Define O&M and repair reporting requirements. Detail verification activities and reporting responsibilities of Owner and contractor on operations and maintenance items. Define reporting schedule.

## EXHIBIT D – Project Pricing Format

### PROJECT PRICING FORMAT

The below schedule is a deliverable that summarizes the pricing structure and the proposed project costs and price. ESCO shall complete this chart as a project deliverable as described in Exhibit A – Scope of Work

#### Cost Markups

		<b>RFP MARKUPS</b>	<b>FINAL PROJECT MARKUPS &amp; TOTAL COSTS</b>	
	<b>Project Budget</b>	<b>Maximum Percentage</b>	<b>Percent of Total Project Price</b>	<b>Price/Cost</b>
a	Subcontractor Costs (Contractor Costs to ESCO)	N/A		
b	Other Direct Purchases of Equipment, Material, Supplies (Supplier Costs to ESCO)			
c	<b>Total of Hard Costs</b>		$c = a + b$	
d	Project Development			
e	Design/Engineering			
f	Project Management			
g	Permits			
h	Performance Bond			
i	Payment Bond			
j	Commissioning			
K	Measurement & Verification			
l	Training			
m	Contingency			
n	Warranty Service			
o	<b>Total of Hard Costs &amp; ESCO Fees</b>		$o = c + \text{sum}(d:n)$	
p	Overhead			
q	Profit			
r	<b>PROJECT PRICE SUB TOTAL w/OH &amp;P</b>		$r = o + p + q$	

*Assumptions for Cost Markup Table Above*

Rows D - N are calculated as a percent of Row C

Rows P & Q are calculated as a percent of Row O

**Annual Fees**

<b>First Year Annual Service Fees</b>	<b>Maximum Percent of Annual Savings</b>	<b>Final Annual Service Fee</b>
Measurement & Verification		
On-going Training		
Operations & Maintenance		
OTHER		
OTHER		

**Audit Fee**

Below is the fee to conduct the Investment Grade Audit and Project Development Proposal, on a cost per square foot basis and total price.

<b>AUDIT FEES</b>			
a	Investment Grade Audit	\$0.X/SQFT	
b	Total Square Feet (SQFT)	YYY	
c	Total Price for IGA	\$ZZZ	c = a x b

**Additional Minimum Standard Contract Clauses**

Payment through Performance Contract: Owner shall have no payment obligations under this contract provided that ESCO and Owner execute an ESPC within 60 days after issuance of the Notice of Acceptance of the final Investment Grade Audit. The IGA fee shall be incorporated into ESCO’s project costs in the ESPC and paid for through the ESPC funding mechanisms.

Project with Insufficient Savings: Owner shall have no payment obligations under this Contract in the event that the ESCO’s final Investment Grade Audit does not contain a package of energy and water saving measures, per the ESPC Specifications and Scope of Work, that will provide the Owner with annual cost savings sufficient to fund the Owner’s annual payments of all costs and fees associated with the ESPC. This includes 1) the fee associated with the IGA, 2) all monthly/annual payments on the applicable debt service to finance Energy Conservation Measure (ECM) construction, 3) any annual service fees including but not limited to Measurement & Verification (M&V), Operations & Maintenance (O&M), Repair & Replacement (R&R), or other service fees that the ESCO incurs, and all fees related to the Owner’s 3<sup>rd</sup> Party Representative. Should the ESCO determine at any time during the IGA that savings cannot be attained to meet these terms, the IGA shall be terminated by written notice by the ESCO to the Owner. In this event, the Contract shall be cancelled, and Owner shall have no obligation to pay, in whole or in part.

Project is Declined by Owner: Within 60 days of the Owner's decision not to execute the Project Proposal Contract, the Owner shall pay the ESCO a sum not exceeding the maximum cost per square as agreed to by the ESCO and Owner in the executed IGA Agreement. The Owner shall only pay for the square footage actually audited. Areas deemed by the ESCO not to be audited will not be charged to the Owner.

Funding Sources to Support Annual Payment: The following payment sources identified in the Investment Grade Audit Report will be considered acceptable:

- 1) Annual utility cost savings
- 2) Material/commodity savings, only in years when savings are achieved, including avoided costs such as lamp and ballast replacements, scheduled replacement of parts, etc. (savings for this line item will be limited to those that can be thoroughly documented and approved. Such savings must only be attributed to the cash flow in years when savings will occur).
- 3) Maintenance cost savings such as terminated service contracts on equipment (savings will be limited to those that can be thoroughly documented and approved. Such savings must only be attributed to the cash flow in years when savings will occur).
- 4) Grants/Rebates/Incentive Programs

Equity cash outlay - At option of the Owner, an equity cash outlay, pending funding approval, may be used to supplement savings. This is only by direction of the Owner. The ESCO shall proceed with development of a fully self-funding project paid only through cost savings stated above.

Contract Term: The maximum contract term is 20 years.

Annual Savings Exceed Annual Costs: Annual savings shall exceed annual payments each and every year while the performance guarantee is in effect. This means that excess savings in other years and interim savings during the construction period shall not be allocated to meet shortfalls in any other year. Annual payments shall include debt service, ESCO fees, maintenance services, M&V services, third party consultant services, and other services.

Annual Guaranteed Cost Savings: An annual contractual guarantee with the associated annual M&V report will be provided by the ESCO for every year of the contract term. However, the Owner reserves the right to terminate the Guarantee after the first performance year from the date of project acceptance. If the Owner exercises that option, the ESCO will have no more savings guarantee requirements. Any savings guarantee shall be made available as a continued option for each subsequent year of the contract term. The Owner may cancel the guarantee at any time after the minimum requirement period.

Interim Savings during Construction Period: Savings accrued during the construction period will not be allocated to the annual savings of any year unless the Owner directs the selected ESCO to include it. See "Annual Savings Exceed Annual Costs" above. Any interim cost savings realized are retained by the Owner.

Excess Savings (beyond the guaranteed amount): Excess savings will be retained by Owner and will not be allocated to cover shortfalls in savings in other years. See "Annual Savings Exceed Annual Costs" above.

Use of Stated Cost Markups: The individual cost markups disclosed in the ESCO proposal shall be the values that are used for Overhead & Profit as part of the ESCO project cost build-up and open book pricing model. The markups presented in the ESCO proposal can be negotiated downward, however the cost markups stated in the proposal shall be the maximum markups allowed by the ESCO.

Open Book Pricing: Open book pricing will be required, such that the ESCO will fully disclose all costs, including all costs of subcontractors and vendors. ESCO will maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. Costs will be evaluated by the Owner and its consultants through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical price benchmarks. Stated cost markups will be clearly applied. ESCO will provide access to records and preserve them during the construction phase of the project.

Contingency: Any unused contingency cost at the end of the construction period will be applied to the project and will not be retained by the ESCO.

Equipment Compatibility or Standardization: All equipment installed that is comparable to similar equipment at the facilities, shall have compatibility with existing systems, and/or be of the same manufacturer for standardization of equipment Owner-wide, unless an exception is made by the Owner.

Available Funds – Contingency – Remedies: The Owner is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. Therefore, ESCO's compensation is contingent upon the continuing availability of Owner appropriations. Payments pursuant to this contract shall only be made from available funds encumbered for this Contract, and the Owner's liability for such payments shall be limited to the amount remaining of such encumbered funds.

Inflation and Escalation Rates: Any general inflation rates and/or escalation rates will be pre-approved

by Owner and mutually agreed upon.

Energy Escalation Rates: Where the annual debt service payments are set up to escalate each year in anticipation of annually escalating energy cost savings, a calculator will be used to determine the maximum value as developed by the National Institute of Standards and Technology (NIST) and the US Department of Energy's Federal Energy Management Program (FEMP). The energy escalation calculation tool can be found at the following website: <https://pages.nist.gov/eerc/>

Measurement and Verification Plan: The M&V plan will be developed per the most recent IPMVP guidelines for M&V of annual guaranteed savings. This plan and report shall be thoroughly reviewed by the Owner and its 3<sup>rd</sup> Party Owner's Representative. Energy-related cost savings shall be measured and/or calculated as specified in the savings M&V Plan. Upon acceptance of construction by the Owner, an annual M&V Report shall be provided to the Owner for the previous performance year to provide verification of savings. The M&V report shall be submitted within 60 days of the anniversary of the performance period Commencement Date.

In the event the Energy and Cost Savings achieved during such guarantee year are less than the Guaranteed Energy and Cost Savings as defined in the agreed to Savings Guarantee, the ESCO shall pay the Owner an amount equal to the shortfall. The ESCO shall remit such payments to the Owner within an agreed upon time frame (in days) of written notice by the

Owner of such monies due. The ESCO shall also be obligated to remedy the ECM deficiencies causing the shortfall at no cost to the Owner.

Independent Review of Project: The Owner's 3<sup>rd</sup> Party Owner's Representative fee to provide an independent review of the ESCO's scope, pricing reasonableness, energy savings calculations, M&V plan, O&M plans, commissioning plans, reporting, etc. as well as the annual performance period ESCO M&V reports shall be included in the project cash flow model and be paid for from the annual savings guarantee. ESCOs shall include this as a line item in their cost buildup and cash flow document.

Contract Price: The agreed to Contract Sum for the Work will be a fixed-firm price as set forth in the final Project Cost & Project Cash Flow and agreed to upon acceptance of the IGA Report and signature of the project Energy Services Agreement.

Project Commissioning: The ESCO shall conduct a thorough and systematic performance test of each element and total system of the installed equipment in accordance with the procedures specified in a Systems Start-Up and Commissioning plan. This will take place prior to acceptance of the project by the Owner. Testing shall be designed to determine if the equipment is functioning in accordance with both its published specifications and the details of the IGA Report and supporting documentation for each ECM, and to determine if modified building systems, sub-systems or components are functioning properly within the new integrated environment. The ESCO shall provide notice to the Owner of the scheduled test(s) and the Owner and/or its designees shall have the right to be present at any or all such tests conducted by ESCO and/or manufacturers of the equipment. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in systems and equipment operations that may be observed during system commissioning procedures as specified in the Systems Start-Up and Commissioning plan. Prior to Owner acceptance, the ESCO shall also provide the Owner with reasonable satisfactory documentary evidence that the equipment installed is the equipment specified in the IGA report and that the all equipment is operating as intended per the approved project specifications and scope of work.

Standards of Comfort: ESCO will maintain and operate the equipment in a manner which will provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality and levels as defined by the Owner during the IGA phase. During the term of this Contract, ESCO and the Owner will maintain and operate the equipment in a manner that will provide the standards of comfort and levels of operation as described in the IGA report.

Hazardous Materials: In the event ESCO discovers Hazardous or Excluded Materials (as agreed to in the Contract), ESCO shall immediately cease work, remove all ESCO personnel or subcontractors from the site, and notify the Owner. The Owner shall be responsible to handle such Materials at its expense. ESCO shall undertake no further work on the Project Site(s) except as authorized by the Owner in writing. Notwithstanding anything in the project Contract to the contrary, any such event of discovery or remediation by the Owner shall not constitute a default by the Owner. In the event of such stoppage of work by ESCO, the Time for Completion of Work will be automatically extended by the amount of time of the work stoppage and any additional costs incurred by ESCO as a result will be added by Change Order.

ESCO shall be responsible for any hazardous or other materials, including, without limitation, those listed in this section that it may bring to the Project Site(s).

Fluorescent Lamp and Ballast Disposal: ESCO will enter into an agreement with an approved PCB ballast disposal company that will provide an informational packet, packing receptacles

and instructions, labels and shipping materials, transportation, and recycling or incineration services for PCB ballasts. All capacitors and asphalt potting compound materials removed from Owner's PCB ballasts will be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction will be provided by the approved facility to Owner. ESCO's responsibility shall be for the proper and legal management of any of Owner's PCB ballasts removed as a result of the installation of the Equipment and shall be limited only until said PCB ballasts are loaded onto an approved ESCO PCB ballast disposal vehicle for transportation.

ESCO will enter into an agreement with an approved lamp disposal company who will provide approved containers, materials required to label, transportation, recycling, or incineration in accordance with EPA requirements, and a copy of the manifest.

Project Training: The ESCO shall conduct a training program that is agreed to with the Owner and per the IGA report. The training must be completed prior to final acceptance of the equipment installation. The ESCO shall provide ongoing training whenever needed with respect to updated or altered equipment, including upgraded software. Such training shall be provided at no charge to the Owner and shall have no effect on prior acceptance of equipment installation.

ESCO Performance: ESCO shall perform all tasks/phases under the Contract, including construction and installation of the equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the Standards of Comfort and the Construction Schedule agreed to in the Contract. ESCO shall repair and restore to its original condition any area of damage caused by ESCO's performance under this Contract. The Owner reserves the right to review the work performed by ESCO and to direct ESCO to take certain corrective action if, in the opinion of the Owner, the structural integrity of the Project Site(s) or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by ESCO's performance of the work shall be borne by ESCO.

ESCO shall remain responsible for the professional and technical accuracy of all services performed, whether by the ESCO or its subcontractors or others on its behalf, throughout the term of this Contract.

# **ATTACHMENT E – ENERGY SERVICES AGREEMENT**

## **SAMPLE ENERGY SERVICES AGREEMENT (ESA)**

**This document is part of a collection of model procurement and contracting documents that represent Best Practices for state energy offices (SEOs) to launch and administer programs to increase energy efficiency through Energy Savings Performance Contracting. The documents draw from successful programs in various states and are continually updated to incorporate the latest strategies. They can be easily customized to meet the needs of any SEO or similar government department.**

### **DESCRIPTION –Energy Services Agreement**

This Energy Services Agreement is for design, construction, guarantee, and follow-up monitoring of energy-saving projects. An energy audit was previously completed that identified the costs and savings of each project. The audit provides the basis to develop and negotiate this Energy Services Agreement.

This is a model document only and does not attempt to identify or address all circumstances or conditions you may encounter or desire. Consult with your legal counsel and procurement staff to adapt it to meet your needs.

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Schedule S	Construction and Installation Schedule
Schedule T	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule U	Standards of Comfort
Schedule V	ESCO's Training Responsibilities
Schedule W-AA	Left blank for optional schedules

### **Post-Construction**

Schedule BB	ESCO's Maintenance Responsibilities
Schedule CC	Owner's Maintenance Responsibilities
Schedule DD	Facility Maintenance Checklist
Schedules EE – II	Left blank for optional schedules

### **Administration**

Schedule JJ	Alternative Dispute Resolution Procedures
Schedule KK – OO	Left blank for optional schedules

## **EXHIBITS**

Exhibit I	Performance Bond
Exhibit II	Labor and Material Payment Bond <i>if required</i>
Exhibit III (i)	Certificate of Acceptance—Investment Grade Audit Report
Exhibit III (ii)	Certificate of Acceptance—Installed Equipment
Exhibit IV	Equipment Warranties

## **APPENDICES**

Appendix A	RFP for ESCO Solicitation (Pre-qualification Phase; Final Selection Phase)
Appendix B	ESCO Proposal (Pre-qualification Phase; Final Selection Phase)
Appendix C	Investment Grade Audit and Project Development Contract
Appendix D	Investment Grade Audit Report

## MODEL ENERGY SERVICES AGREEMENT

This Energy Services Agreement (the "Contract") is made and entered into as of this day of \_\_\_\_\_, at \_\_\_\_\_, in the County of \_\_\_\_\_, State of \_\_\_\_\_, by and between \_\_\_\_\_ ("ESCO"), having its principal offices at \_\_\_\_\_, and \_\_\_\_\_ ("Owner") having principal offices at \_\_\_\_\_, for the purpose of installing certain energy and water cost saving equipment, described in **Schedule R (Equipment to Be Installed by ESCO)**, and providing other services designed to save energy for the Owner's property and buildings, known as \_\_\_\_\_, located at \_\_\_\_\_ (the "Project Site(s)").

### RECITALS

WHEREAS, Owner owns and operates the Project Site(s), and is in need of energy and water cost saving equipment and services designed to save energy and associated energy costs at said Project Sites; and

WHEREAS, Owner has been authorized to enter into a third party financing agreement for all professional services, equipment and construction for the purchase and installation of energy and water cost savings measures, collectively referred to as the "Work" (as herein after defined); and

WHEREAS, ESCO has developed or become knowledgeable about certain procedures for controlling energy and water consumption through services provided and equipment installed and maintained at project sites similar in scope and scale of Owner; and

WHEREAS, ESCO was selected after a determination that its proposal was the most advantageous to Owner pursuant to a Request for Proposal and contract for the Investment Grade Audit and Project Development Proposal (as hereinafter defined); and

WHEREAS, ESCO has made an assessment of the utility consumption characteristics of the Project Site(s) and existing Equipment described in **Schedule Q (Description of Project Site(s))**, which was delivered to Owner as an Investment Grade Audit Report which Owner has approved and is attached as **Appendix D: Investment Grade Audit Report**; and

WHEREAS, Owner desires to retain ESCO to purchase, install and service certain energy and water cost savings equipment and to provide other services and strategies described in the attached Schedules, for the purpose of achieving energy and water cost reductions within Project Site(s), as more fully described herein; and

WHEREAS, Owner is authorized under the Constitution and the laws of the State of \_\_\_\_\_ to enter into this Contract for the purposes set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Owner and ESCO hereto covenant and agree that the following Schedules, Exhibits and Appendices are attached hereto (or will be, as provided in this Contract) and are made a part of this Contract by reference.

### ARTICLE 1. DEFINITIONS, SCHEDULES, EXHIBITS AND APPENDICES

## **Section 1.1. Definitions.**

**Certificate of Acceptance:** The certificate substantially in the form provided in **Exhibit III**.

**Contract:** This Energy Services Agreement and all Schedules and Exhibits attached hereto.

**Contract Sum:** The sum of all materials, labor, auditing, design, engineering, project construction management fees, overhead, profit, contingency, subcontracted services related to the project.

**Energy and Water Cost Savings:** The savings as provided in **Schedule A (Savings Guarantee)**.

**Energy and Cost Savings Guarantee:** The guarantee that is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract as specified in **Schedule J (Compensation to ESCO for Annual Service)** and in accordance with the Savings Calculation Formula as set forth in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements)**.

**Equipment:** The goods enumerated on **Schedule R (Equipment to be Installed by ESCO)** that is now or hereafter from time to time become attached hereto and incorporated herein by reference, together and with any and all additions, modifications, attachments, replacements and parts thereof.

**Event of Default:** Those events described in **Section 20 (Events of Default)** hereof.

**Interim Period:** The period from contract execution until the Commencement Date.

**Commencement Date:** The date described in **Section 2.2 (Commencement Date)**.

**Project Site(s):** The facilities of the Owner in need of energy and water saving equipment and services designed to reduce consumption and associated costs at said Project Site(s)

**Investment Grade Audit:** A study by the qualified energy services provider selected for a particular Energy Services Agreement project which includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements and the utility and operations and maintenance cost savings projected to result from the recommended improvements.

**Work:** Collectively, the Equipment, professional services and project construction related to the project.

## **Section 1.2. Investment Grade Audit Report and Project Development Proposal.**

Section 1.2: This section records the approval and acceptance by the Owner of the Investment Grade Audit Report which must be completed prior to the execution of this contract. A Certificate of Acceptance of the audit should be signed by both parties and attached to the

contract (Exhibit III (i)). If the list of measures is not completely finalized prior to the signing of this contract, then language to that effect should be included.

ESCO has prepared the complete Investment Grade Audit Report of the Project Site(s) set forth in **Appendix D (Investment Grade Audit Report)** which has been approved and accepted by Owner as set forth in Exhibit III (i) (**Certificate of Acceptance—Investment Grade Audit Report**). The audit includes all measures agreed upon by the parties.

### **Section 1.3. Schedules, Exhibits and Appendices**

Section 1.3: The contract schedules detail the substantive technical parameters of the projects negotiated by the parties and accepted and approved by the Owner. These schedules are also referenced throughout the various sections of the Contract. Their titles may be included here for ease of reference or located at the end of the contract. If any schedules need to be completed after execution of the contract, language to the effect they are forthcoming should be included. (Please note that descriptions for each contract schedule are provided at the end of this sample contract document under the heading of Attachment I.)

ESCO has prepared and Owner has approved and accepted the following Schedules, Exhibits, and Appendices, copies of which are attached hereto (or will be as provided for in the Contract), set forth in their entirety as Attachment I and made a part of this Contract by reference.

## **Schedules**

### **Savings Guarantee**

- Schedule A Savings Guarantee
- Schedule B Baseline Energy Consumption; Methodology to Adjust Baseline
- Schedule C Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements
- Schedule D-G Left blank for optional schedules

### **Payments and Schedule**

- Schedule H Final Project Cost & Project Cash Flow Analysis
- Schedule I Financing Agreement and Payment Schedule
- Schedule J Compensation to ESCO for Annual Services
- Schedule K Rebates, Incentives and Grants
- Schedule L-P Left blank for optional schedules

### **Design and Construction Phase**

- Schedule Q Description of Project Site(s)
- Schedule R Equipment to be Installed by ESCO
- Schedule S Construction and Installation Schedule
- Schedule T Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
- Schedule U Standards of Comfort
- Schedule V ESCO's Training Responsibilities
- Schedule W-AA Left blank for optional schedules

### **Post-Construction**

Schedule BB ESCO's Maintenance Responsibilities  
Schedule CC Owner's Maintenance Responsibilities  
Schedule DD Facility Maintenance Checklist  
Schedules EE – II Left blank for optional schedules

**Administration**

Schedule JJ Alternative Dispute Resolution Procedures  
Schedule KK – OO Left blank for optional schedules

**Optional Schedules**

Pre-Existing Service Contracts  
Energy Savings Projections  
Facility Changes Checklist  
Current and Known Capital Projects at Facility

**Exhibits**

Exhibit I Performance Bond  
Exhibit II Labor and Material Payment Bond *if required*  
Exhibit III (i) Certificate of Acceptance—Investment Grade Audit Report  
Exhibit III (ii) Certificate of Acceptance—Installed Equipment  
Exhibit IV Equipment Warranties  
Optional Exhibits  
Manifest of Ownership  
Minority and Woman-Owned Business Certification  
Certification that Financing Term is no Longer than the Aggregated  
Equipment Lifetime  
Notice of Substantial Completion  
Notice to Proceed with Construction Phase  
Record of Reviews by Owner

**Appendices**

Appendix A RFP for ESCO Solicitation (Pre-qualification Phase; Final  
Selection Phase)  
Appendix B ESCO Proposal (Pre-qualification Phase; Final Selection Phase)  
Appendix C Investment Grade Audit and Project Development Contract  
Appendix D Investment Grade Audit Report

**Section 1.4. Other Documents**

Section 1.4: This section makes the original Request for Proposals (RFP) and the selected ESCO's proposal part of the contract. It also acknowledges the completion of the ESCO's Investment Grade Audit Report and its approval and acceptance by the Owner. It is recommended that the original Investment Grade Audit Report in its entirety be attached and/or referenced as an Exhibit to this contract. It is important to note the last sentence of this provision makes it clear that if there is any future discrepancy between the Investment Grade Audit Report and any technical schedule(s), the terms of this contract shall apply.

This Contract incorporates herein and makes a part hereof the entire RFP and ESCO Proposal for this Project labeled Appendix A and B respectively. Acceptance by the Owner of the Investment Grade Audit Report is reflected in Exhibit III (i). Notwithstanding, the provisions of this Contract and the attached Schedules shall govern in the event of any inconsistencies between the Investment Grade Audit Report and the provisions of this Contract.

## **PAYMENTS AND SCHEDULES**

### **ARTICLE 2. PURCHASE AND SALE; COMMENCEMENT DATE AND TERMS; INTERIM PERIOD**

#### **Section 2.1. Purchase and Sale**

Section 2.1. When using a third-party lease-purchase structure the ESCO will receive 100% of the Contract Sum from the Owner once the Certificate of Acceptance is signed. The payments to the ESCO during the construction period (Interim Period) can be drawn down by the ESCO from the proceeds of the lease through an escrow account set up by the leasing ESCO. Payments will be made based upon the percentage of work completed and approved by the Owner. The Owner should require a \_\_\_% retainage be withheld from the ESCO until the Certificate of Acceptance is executed at which time final payment can be made.

Owner agrees to lease Equipment through a third party financier, name of lender, as provided for in a separate lease document, **Schedule I (Financing Agreement and Payment Schedule)**. ESCO agrees to provide the Equipment, together with installation, maintenance and other services as provided herein, as in **Schedule R, (Equipment to be Installed by ESCO)** based upon the terms and conditions set forth in **Schedule I (Financing Agreement and Payment Schedule)**.

The agreed to Contract Sum for the Work is a Guaranteed Maximum Price of \$ \_\_\_\_\_ as set forth in **Schedule H (Final Project Cost & Project Cash Flow Analysis)**. Payment terms are described in **Schedule I (Financing Agreement and Payment Schedule)**.

ESCO will provide the Work and all related services identified in **Schedule R (Equipment to be Installed by ESCO)** and the services detailed in **Schedule BB (ESCO's Maintenance Responsibilities)** and **Schedule J (Compensation to ESCO for Annual Services)**. ESCO shall supervise and direct the Work and shall be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Contract. ESCO shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work.

Owner shall pay ESCO the Contract Sum in accordance with **Schedule I (Financing Agreement and Payment Schedule)**. Payments will be made on a progress basis in accordance with **Schedule I (Financing Agreement and Payment Schedule)**, for Work completed and authorized by Owner during the Interim Period. The Progress Payments outlined in **Schedule I (Financing Agreement and Payment Schedule)** will not be applicable to this Contract. Retainage of \_\_\_% will be withheld from each payment until the construction installation is completed as set forth in **Section 2.2 (Commencement Date)**.

## **Section 2.2. Commencement Date**

Section 2.2: This section defines the Commencement Date which is the actual beginning date for the savings guarantee period. It is standard for this date to be the first month AFTER the ESCO has completed construction and delivered a notice that all equipment is installed and operating. In addition, the Owner will have accepted the installation by signing a Certificate of Acceptance which should be attached to the contract. It also clearly states that no payment for any of the ESCO's on-going services (e.g. measurement and verification, project monitoring, maintenance, training etc.) will be made prior to the Commencement Date. It is recommended that the repayment obligation of project financing be arranged to coincide with the Commencement Date. The timing of the Commencement Date may also need to be arranged to accommodate the Owner's fiscal year for the purpose of appropriations and budgeting. This date alignment should not prevent the ESCO from timely remuneration for training and other services performed prior to Commencement Date.

The Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by Owner and ESCO shall have delivered a Notice to Owner that it has installed and commenced operating all of the Equipment specified in **Schedule R (Equipment to be Installed by ESCO)** and in accordance with the provisions of **ARTICLE 8 (Construction Schedule and Equipment Installation; Approval), Schedule S (Construction and Installation Schedule)** and **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**; and Owner has inspected and accepted said installation and operation as evidenced by the Certificate of Acceptance as set forth in **Exhibit III (ii) (Certificate of Acceptance—Installed Equipment)**.

Notwithstanding anything to the contrary in this **Article 2 and Article 3 (Purchase and Sale; Commencement Date and Terms; Interim Period)**, the Commencement Date shall not occur and the Owner shall not be required to accept the work under this Contract unless and until all Equipment installation for the Project Site(s) is completed by ESCO in accordance with the terms and conditions of this Contract. Owner shall have \_\_\_\_\_ days after notification by the ESCO to inspect and accept the Equipment. Owner reserves the right to reject the Equipment if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. ESCO shall not be paid in full, including retainage, until after the punch list is completed and ESCO has satisfied any and all claims for labor and materials and the Certificate of Acceptance has been signed. The Certificate of Acceptance will not be unreasonably withheld by the Owner.

Compensation payments due to ESCO for on-going services and maintenance under this Contract as set forth in **Schedule J (Compensation to ESCO for Annual Services)** shall begin no earlier than \_\_\_\_\_ from the Commencement Date as defined herein.

## **Section 2.3. Term of Contract; Interim Period**

Section 2.3: Prior to the Commencement Date (Section 2.2) the final contract and technical schedules are negotiated and executed by signature. At that point in time the ESCO typically begins the final design of the project and finalizes the construction schedule with the Owner. The "Interim Period" refers to the construction period, during which some amount of energy savings will start to accrue. The treatment of those energy savings can be negotiated to either be credited to the ESCO's guarantee or credited to the Owner. If such savings are credited to

the ESCO's guarantee, it is recommended that such credit be extended for a specified period of time (e.g. 1-2 years). If the ESCO is credited with the interim period savings, the Owner and ESCO will need to agree to develop an approach to the measurement of those savings.

Subject to the following sentence, the term of this Contract shall be \_\_\_\_\_ years measured beginning with the Commencement Date. Nonetheless, the Contract shall be effective and binding upon the parties immediately upon its execution, and the period from contract execution until the Commencement Date shall be known as the "Interim Period". All energy savings achieved during the interim period will be fully credited to Owner.

## **ARTICLE 3. SAVINGS GUARANTEE; ANNUAL RECONCILIATION; PAYMENTS TO ESCO**

### **Section 3.1. Energy and Cost Savings Guarantee**

Section 3.1: This section establishes the term of the Energy and Cost Savings Guarantee to be on an annual basis and structured to cover any and all annual payments (debt service/lease payment and on-going ESCO fees) to be made by the Owner. It ensures that the ESCOs' savings guarantee will at least cover annual project lease-purchase costs (principal and interest) and all annual ESCO service fees for maintenance.

ESCO has formulated and, subject to the adjustments provided for in **ARTICLE 15 (Material Changes)**, has guaranteed the annual level of energy and water cost savings to be achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract in accordance with the methods of savings measurement and verification as set forth in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements)**. The Energy and Cost Savings Guarantee is set forth in annual increments for the term of the Contract as specified in **Schedule A (Savings Guarantee)** and has been structured by the ESCO to be sufficient to cover any and all annual payments required to be made by the Owner as set forth in **Schedule J (Compensation to ESCO for Annual Services)** and **Schedule I (Financing Agreement and Payment Schedule)**.

### **Section 3.2. Annual Review and Reimbursement/Reconciliation**

Section 3.2: At the end of each year of the contract and within a specified number of days, there will be a review and reconciliation of the actual achieved savings (subject to any adjustments made for weather, occupancy, operations etc.) with the ESCO's guaranteed savings. If there is a savings shortfall, the ESCO is contractually liable to reimburse the Owner for the difference between what was actually achieved and the amount guaranteed. It is recommended that all excess savings be retained by the Owner. Owner may negotiate to receive cash, equipment or services equivalent to any deficiency in savings.

Energy-related cost savings shall be measured and/or calculated as specified in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting)** and **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)** and a report provided within ninety (90) days of the end of the year for the previous year for each anniversary of the Commencement Date.

In the event the Energy and Cost Savings achieved during such guarantee year are less than the Guaranteed Energy and Cost Savings as defined in **Schedule A (Savings Guarantee)**, ESCO shall pay the Owner an amount equal to the deficiency.

The ESCO shall remit such payments to the Owner within \_\_\_ days of written notice by the Owner of such monies due. When the total energy savings in any one year during the guarantee period exceed the Energy and Cost Savings Guarantee as set forth in **Schedule A (Savings Guarantee)** and are in addition to those monies due the ESCO for compensation for services as set forth in **Schedule J (Compensation to ESCO for Annual Services)**, such excess savings shall accrue to the benefit of the Owner and shall not be applied to reimburse ESCO for any payment ESCO made to Owner to meet ESCO's guarantee for previous years in which the energy savings fell short of ESCO's Energy and Cost Savings Guarantee under the terms as set forth in **Schedule A (Savings Guarantee)**. In no event shall excess savings be applied to satisfy saving guarantees in future years of the Contract.

### **Section 3.3. ESCO Compensation and Fees**

Section 3.3: This section ensures that the ESCO's savings guarantee will, at a minimum, cover annual project financing costs (principal and interest). In addition, it states that all annual ESCO service fees for maintenance will also be paid from savings.

ESCO has structured the Energy and Cost Savings Guarantee referred to in 3.1 above, to be sufficient to include any and all annual payments required to be made by the Owner in connection with financing/purchasing the Equipment to be installed by ESCO under this Contract as set forth in **Schedule I (Financing Agreement and Payment Schedule)**. Actual energy and operations savings achieved by ESCO through the operation of Equipment and performance of services by ESCO shall be sufficient to cover any and all annual fees to be paid by Owner to ESCO for the provision of services as set forth and in accordance with the provisions of **Schedules J (Compensation to ESCO)** and **BB (ESCO's Maintenance Responsibilities)**.

### **Section 3.4. Billing Information Procedure**

Sections 3.4 & 3.5: These sections which deal with payment can be negotiated and structured to suit the needs of the Owner. It is, however, important to provide the ESCO with monthly utility bills and to do so in a timely manner. The project's billing schedule for on-going ESCO services can be set up on a monthly or quarterly basis.

Payments due to ESCO under this Section 3 shall be calculated each \_\_\_\_\_ in the following manner:

- (i) By the \_\_\_\_\_ day after receipt, Owner shall provide ESCO with copies of all energy bills for the Project Site(s) which it shall have received for the preceding month;
- (ii) Upon receipt of the required information, ESCO shall calculate the savings in accordance with the agreed-upon calculation formulae in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements)**.
- (iii) Based upon paragraphs (i) and (ii) above, ESCO shall prepare and send to Owner a \_\_\_\_\_ invoice which shall set forth for each \_\_\_\_\_ the amounts of the

energy and operations dollar savings calculated in accordance with **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Report Requirements)** and for the services as provided for in **Schedule J (Compensation to ESCO for Annual Services)**. The invoice will set forth the total \_\_\_\_\_ payment due from Owner.

### **Section 3.5. Payment**

Owner shall pay ESCO within \_\_\_ days of receipt of ESCO's invoice.

### **Section 3.6. Effective Date of Payment Obligation**

Section 3.6: This section states that no ESCO fees for ongoing maintenance, monitoring or other services shall be paid until all equipment is installed and operating in accordance with the agreed upon Construction Schedule and Owner has approved the completed installation and signed the requisite Certificate of Acceptance—Installed Equipment.

Notwithstanding the above provisions in Section 3, Owner shall not be required to begin any payments to ESCO under this Contract unless and until all equipment installation is completed by ESCO in accordance with the provisions of **Article 8 (Construction and Equipment Installation; Approval)** and **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**, and accepted by Owner as evidenced by the signed Certificate of Acceptance as set forth in **Exhibit III (ii) (Certificate of Acceptance—Installed Equipment)**, and unless and until said equipment is fully and properly functioning.

### **Section 3.7. Open Book Pricing**

Section 3.7: This section establishes that the ESCO will fully disclose all costs, providing access to records for all labor and material costs, making them available for three years beyond final payment.

Open book pricing will be required, such that the Contractor will fully disclose all costs of materials and labor purchased and subcontracted by the ESCO, the project cost build up, and a list of hourly rates and position descriptions for labor or services provided by the ESCO. ESCO will maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. Contractor will afford Agency access to these records and preserve them for a period of three (3) years after final payment. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices. The pricing methodology and individual cost markups disclosed during preliminary contract negotiations will be the max amount expected to be applied, providing the scope and size of the project remain the same as assumed when markups were disclosed.

Owner shall have the right to audit all books and records (in whatever form they may be kept, whether written, electronic or other) relating or pertaining to this contract or agreement (including any and all documents and other materials, in whatever form they may be kept, which support or underlie those books and records), kept by or under the control of the ESCO, including, but not limited to those kept by the ESCO, its employees, agents, assigns, successors and subcontractors.

The ESCO shall maintain such books and records, together with such supporting or underlying documents and materials, for the duration of this contract or agreement and for at least 3 years following the completion of this contract, guarantee period, or agreement, including any and all renewals thereof. The books and records, together with the supporting or underlying documents and materials shall be made available, upon request, to through its employees, agents, representatives, contractors or other designees, during normal business hours at the ESCO's office or place of business. In the event that no such location is available, then the books and records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location at, location, which is convenient for ESCO.

## **ARTICLE 4. FISCAL FUNDING**

### **Section 4.1. Non-appropriation of Funds**

Section 4.1: This section protects the Owner in the event no funds or insufficient funds are appropriated to cover the financial payments due to the ESCO under the terms of this Contract, in effect terminating the contract with no penalty to the Owner. This is a standard provision in public sector performance contracting and is generally accepted by the ESCO industry since it is unlikely that funding for utilities (source of funds) would be withheld.

In the event insufficient Owner funds are appropriated and budgeted, and funds are otherwise unavailable by any means whatsoever in any fiscal period for which payments are due ESCO under this Contract, then the Owner will, not less than \_\_\_ days prior to end to such applicable fiscal period, in writing, notify the ESCO of such occurrence and this Contract shall terminate on the last day of the fiscal period for which appropriations were made without penalty or expense to the Owner of any kind whatsoever, except as to the portions of payments herein agreed upon for which Owner and/or other funds shall have been appropriated and budgeted or are otherwise available.

### **Section 4.2. Non-substitution**

Section 4.2: In the rare event that funds were not appropriated or the Owner is in default, and to protect the ESCO, this provision prevents the Owner from securing funding for the same purposes for a period of one year following the termination of the contract.

In the event of a termination of this contract due to the non-appropriation of funds or in the event this Contract is terminated by ESCO due to a default by the Owner, the Owner agrees, to the extent permitted by state law, not to purchase, lease, rent, borrow, seek appropriations for, acquire or otherwise receive the benefits of any of the same and unique services performed by ESCO under the terms of this Contract for a period of three-hundred sixty five (365 ) calendar days following such default by Owner, or termination of this Contract due to non-appropriations.

## **ARTICLE 5. ENERGY USAGE RECORDS AND DATA**

Article 5: This section ensures that the ESCO has access to the historical energy consumption, facility operations and occupancy data in order to develop baseline utility consumption. At a minimum, there should be 24 months of data made available, however, 36 months is

recommended. Existing facility conditions, operations and equipment needs to be carefully recorded to establish an accurate baseline. This will serve as a record of your buildings as they were configured prior to project installation and will be critical to the establishment and adjustment of baseline, and measurement of savings. As well, any prior technical studies and/or energy audits should also be made available for the ESCO's review and verification.

Owner has furnished and shall continue to furnish (or authorize its energy suppliers to furnish) during the Term of this Contract to ESCO or its designee, upon its request, all of its records and complete data concerning energy and water usage and related maintenance for the Project Site(s).

## **ARTICLE 6. LOCATION AND ACCESS**

Article 6: This provision states the Owner's responsibility for providing adequate space and protection for the installed equipment and authorizes the ESCO's access to the facility to perform routine and emergency operations.

ESCO acknowledges that there exists sufficient space on the Project Site(s) for the installation and operation of the Equipment. Owner shall take reasonable steps to protect such Equipment from harm, theft and misuse during the term of this Contract. Owner shall provide access to the Project Site(s) for ESCO to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by ESCO and acceptable to the Owner. ESCO shall be granted immediate access to make emergency repairs or corrections as it may, in its discretion, determine are needed. The ESCO's access to Project Site(s) to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by the Owner. ESCO shall immediately notify the Owner when emergency action is taken and follow up with written notice with three (3) business days specifying the action taken, the reasons therefore, and the impact upon the Project Site(s), if any.

## **ARTICLE 7. PERMITS AND APPROVALS; COORDINATION**

### **Section 7.1. Permits and Approvals**

Section 7.1: This standard construction provision requires the ESCO comply with all code requirements, pay all associated permit fees and provide the Owner with copies of each permit and license required to do the work. The Owner agrees to assist the ESCO to the best of its ability to obtain all required permits and approvals.

Owner shall use its best efforts to assist ESCO in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Owner, however, be responsible for payment of any permit fees. The equipment and the operation of the equipment by ESCO shall at all times conform to all federal, state and local code requirements. ESCO shall furnish copies of each permit or license which is required to perform the work to the Owner before the ESCO commences the portion of the work requiring such permit or license.

### **Section 7.2. Coordination During Installation**

Section 7.2: This standard provision directs the Owner and ESCO to coordinate the equipment installation activities to not interfere with the Owner's business activities. If an installation will require interference, the ESCO must first obtain the Owner's written approval to proceed. If a facility generates revenue for the Owner (e.g. civic center, theater, arena etc.) and scheduled revenue-producing activities are interrupted due to the fault of the ESCO, either during project installation or operation, then a provision for the collection of damages may be negotiated.

The Owner and ESCO shall coordinate the activities of ESCO's equipment installers with those of the Owner, its employees, and agents. ESCO shall not commit or permit any act which will interfere with the performance of business activities conducted by the Owner or its employees without prior written approval of the Owner.

## **ARTICLE 8. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL**

### **Section 8.1. Construction Schedule: Equipment Installation**

Section 8.1: It is important that the construction/installation phase of the project be managed in compliance with individual Owner requirements and the appropriate governing statutes. Since construction is just one component of the overall project, a separate construction contract may be desirable and in some cases necessary. The construction contract would then be referred to in the body of the contract and attached as an exhibit, appendix or other type of attachment. Another approach would be to consolidate the appropriate construction language for inclusion in the body of the final contract.

Construction and equipment installation shall proceed in accordance with the construction schedule approved by Owner and attached as **Schedule S (Construction and Equipment Installation Schedule)**.

### **Section 8.2. Systems Startup and Equipment Commissioning**

Section 8.2: This section requires the ESCO to conduct performance testing of the equipment as specified in its Commissioning Plan located in **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**, and verify the specified operating parameters to make certain the system is working properly. In most instances this activity occurs prior to the Owner's final acceptance of the project as fully installed, however, if any testing is negotiated to occur after project acceptance, language to that effect should be included here. It also requires the ESCO notify the Owner of when the testing will take place and gives the Owner (or its designee) the right to be present during all tests. Make sure the commissioning plan includes manufacturer's startup and performance sheets.

The ESCO shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)** and prior to acceptance of the project by the Owner as specified in **Exhibit III (i) (Certificate of Acceptance)**. Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if modified building systems, subsystems or components are functioning properly

within the new integrated environment. The ESCO shall provide notice to the Owner of the scheduled test(s) and the Owner and/or its designees shall have the right to be present at any or all such tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures as specified in **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**. The Contractor shall be responsible for correcting and/or adjusting all deficiencies in Equipment operation that may be observed during system testing procedures. Prior to Owner acceptance ESCO shall also provide Owner with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in **Schedule R (Equipment to be Installed by ESCO)**.

#### **ARTICLE 9. EQUIPMENT WARRANTIES**

Article 9: This warranty provision requires all installed equipment be new and protected by appropriate written manufacturers warranties for a minimum of one year, covering parts and performance. It also requires warranties provide for the installation of only new parts (not used or reconditioned) during the warranty period. While equipment warranties will be transferred to the Owner after completed project installation, this provision makes the ESCO responsible for pursuing any necessary remedies during the warranty period. If the ESCO fails to exercise the warranty and damages occur, the ESCO is responsible for all costs of repair and any lost savings.

ESCO warrants that all equipment sold and installed as part of this Contract is new, will be materially free from defects in materials or workmanship, will be installed properly in a good and workmanlike manner, and will function properly for a period of one (1) year from the date of the Substantial Completion for the particular energy conservation measure if operated and maintained in accordance with the procedures established per building. Substantial Completion shall be defined as the stage in the progress of the Work where the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can utilize and take beneficial use of the Work for its intended use or purpose. Substantial Completion does not occur until the Equipment or system has been commissioned, accepted, and the "Substantial Completion" form fully executed.

After the warranty period, ESCO shall have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims relating to the Equipment, except as provided in **Schedule BB (ESCO's Maintenance Responsibilities)**.

ESCO further agrees to assign to Owner all available manufacturer's warranties relating to the Equipment and to deliver such written warranties and which shall be attached and set forth as **Exhibit IV (Equipment Warranties)**; pursue rights and remedies against the manufacturers under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance. ESCO shall, during the warranty period, notify the Owner whenever defects in Equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by ESCO. During this period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property and equipment of the Owner or the Project Site(s), due to ESCO's failure to exercise its warranty rights shall be borne solely by ESCO.

All warranties, to the extent transferable, shall be transferable and extend to the Owner. The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction. All extended warranties shall be addressed as the property of the owner and appropriately documented and titled.

Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve the ESCO from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

#### **ARTICLE 10. STANDARDS OF COMFORT**

Article 10: This section references the **Schedule U (Standards of Comfort)** which the ESCO is contractually liable to maintain throughout the term of the contract. These standards are negotiated between the ESCO and Owner to reflect realistic ranges of heating, cooling and hot water temperatures, lighting levels, chilled water requirements, and other specified comfort and operating parameters to be maintained.

ESCO will maintain and operate the Equipment in a manner which will provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality and levels as described in **Schedule U (Standards of Comfort)**. During the term of this Contract, ESCO and Owner will maintain, according to **Schedule BB (ESCO's Maintenance Responsibilities)** and **Schedule CC (Owner's Maintenance Responsibilities)**, and operate the Equipment in a manner that will provide the standards of comfort and levels of operation as described in **Schedule U (Standards of Comfort)**.

#### **ARTICLE 11: ENVIRONMENTAL REQUIREMENTS**

##### **Section 11.1. Excluded Material and Activities**

Section 11.1. This section addresses hazardous materials and establishes that the ESCO may encounter such materials but is not responsible for identification, handling or any work. The Owner will be responsible for such handling at its expense. In the event the ESCO discovers such materials, the ESCO will stop work and the Owner will handle it. Neither the ESCO's stoppage of work nor the Owner's discovery are grounds for default. If work can commence, any lost time will be added to the time schedule. The ESCO is responsible for any hazardous materials related to equipment it brings to the site.

Owner recognizes that in connection with the installation and/or service or maintenance of Equipment at Owner's Project Site(s), ESCO may encounter, but is not responsible for, any work relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, (ii) fungus (any type of form of fungi, including mold or mildew, and myotoxins, spores, scents or by-products produced or released by fungi), (iii) incomplete or damaged work or systems or code violations that may be discovered during or prior to the work of this agreement, or (iv) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in this Section below (collectively "Hazardous Materials"), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof. The materials and activities listed in the foregoing sentence are referred to as "Excluded Materials and Activities". Owner agrees that if performance of work involves any Excluded Materials and Activities, Owner will perform or

arrange for the performance of such work and shall bear the sole risk and responsibility therefore. In the event ESCO discovers Hazardous or Excluded Materials, ESCO shall immediately cease work, remove all ESCO personnel or subcontractors from the site, and notify the Owner. The Owner shall be responsible to handle such Materials at its expense. ESCO shall undertake no further work on the Project Site(s) except as authorized by the Owner in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Owner shall not constitute a default by the Owner. In the event of such stoppage of work by ESCO, the Time for Completion of Work will be automatically extended by the amount of time of the work stoppage and any additional costs incurred by ESCO as a result will be added by Change Order.

ESCO shall be responsible for any hazardous or other materials, including, without limitation, those listed in this section that it may bring to the Project Site(s).

### **Section 11.2. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps**

Section 11.2. The ESCO is required to have an agreement with an approved PCB ballast disposal company that will properly handle transport, recycling, and incineration, providing information for site handling and a Certificate of Destruction. Similarly the ESCO is required to have an agreement with an approved lamp disposal company. In both cases, the Owner will sign manifests of ownership.

ESCO will enter into an agreement with an approved PCB ballast disposal company that will provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services for PCB ballasts. All capacitors and asphalt potting compound materials removed from Owner's PCB ballasts will be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction will be provided by the approved facility to Owner. ESCO's responsibility shall be for the proper and legal management of any of Owner's PCB ballasts removed as a result of the installation of the Equipment and shall be limited only until said PCB ballasts are loaded onto an approved PCB ballast disposal ESCO's vehicle for transportation.

ESCO will enter into an agreement with an approved lamp disposal company who will provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the manifest.

Owner agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Project Site(s).

## **ARTICLE 12. TRAINING BY ESCO**

Article 12: In many performance contracts the training of facility personnel is often conducted prior to acceptance by the Owner of the completed installation. There are occasions, however, where it may be necessary to conduct training after project acceptance, which can be noted and included in the appropriate schedule. If there are charges for unscheduled training, such charges should be noted in this section.

The ESCO shall conduct the training program described in **Schedule V (ESCO's Training Responsibilities)** hereto. The training specified in **Schedule V (ESCO's Training Responsibilities)** must be completed prior to acceptance of the Equipment installation. The

ESCO shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software. Such training shall be provided at no charge to the Owner and shall have no effect on prior acceptance of Equipment installation.

## **POST-CONSTRUCTION PHASE**

### **ARTICLE 13. EQUIPMENT SERVICE**

#### **Section 13.1. Actions by ESCO**

Section 13.1: This section refers to the maintenance and service responsibilities of each party as they are specified in **Schedule BB (ESCO's Maintenance Responsibilities)** and **Schedule CC (Owner's Maintenance Responsibilities)**. It also states that if the Owner is at fault for causing additional maintenance or repair to the equipment, then the Owner will be charged by the ESCO for the cost of the required maintenance or repair.

ESCO shall provide all service, repairs, and adjustments to the Equipment installed under terms of this Contract pursuant to **Schedule BB (ESCO's Maintenance Responsibilities)**. Owner shall incur no cost for Equipment service, repairs, and adjustments, except as set forth in **Schedule J (Compensation to ESCO for Annual Services)**, provided, however, that when the need for maintenance or repairs principally arises due to the negligence or willful misconduct of the Owner or any employee or other agent of Owner, and ESCO can so demonstrate such causal connection, ESCO may charge Owner for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

#### **Section 13.2. Malfunctions and Emergencies**

Section 13.2: This section requires the Owner to notify the ESCO within a specified number of hours of actually knowing about any situation that impacts the performance of the equipment. As described here, the impacts cover both pre-existing energy related equipment and the newly installed equipment. The impacts defined here include equipment malfunction or modification, interruption of power supply or any emergency situation which may affect the Energy and Cost Savings Guarantee. If such an impact is known by the Owner to have occurred and the Owner delays in notifying the ESCO and doesn't correct the situation, it will be treated as a Material Change and the baseline will be adjusted accordingly. If the Owner makes an effort to assess the situation and incorrectly determines it doesn't have an impact, then the ESCO will not fault the Owner, although an adjustment to the baseline may still be warranted.

Owner shall use its best efforts to notify the ESCO or its designated subcontractors within 24 hours after the Owner's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the guaranteed energy savings, (ii) any interruption or alteration to the energy supply to the Project Site(s), or (iii) any alteration or modification in any energy-related equipment or its operation.

Where Owner exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings. Owner shall notify ESCO within twenty-four (24) hours upon its having actual knowledge of any emergency

condition affecting the Equipment. ESCO shall respond or cause its designee(s) shall respond within \_\_\_\_ hours and shall promptly proceed with corrective measures. Any telephonic notice of such conditions by Owner shall be followed within three business days by written notice to ESCO from Owner. If Owner unreasonably delays in so notifying ESCO of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, ESCO may charge Owner for its loss, due to the delay, associated with the guaranteed savings under this Contract for the particular time period, provided that ESCO is able to show the direct causal connection between the delay and the loss.

The ESCO will provide a written record of all service work performed. This record will indicate the reason for the service, description of the problem and the corrective action performed.

### **Section 13.3. Actions by Owner**

Section 13.3: This section states the Owner may not make any changes to the operation and maintenance of the equipment without the prior written approval of the ESCO unless otherwise indicated in **Schedule CC (Owner's Maintenance Responsibilities)** or if there is an emergency and the ESCO can't be reasonably notified. In the case of such emergency, the Owner should follow instructions provided by the ESCO for emergency action.

Owner shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of ESCO except as set forth in **Schedule CC (Owner's Maintenance Responsibilities)**. Notwithstanding the foregoing, Owner may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify ESCO before taking any such actions. In the event of such an emergency, Owner shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency action provided in advance by ESCO. Owner agrees to maintain the Project Site(s) in good repair and to protect and preserve all portions thereof which may in any way affect the operation or maintenance of the Equipment.

## **ARTICLE 14. MODIFICATION, UPGRADE OR ALTERATION OF THE EQUIPMENT**

### **Section 14.1. Modification of Equipment**

During the Term of this Contract, Owner will not, without the prior written consent of ESCO, affix or install any accessory Equipment or device on any of the Equipment if such addition will change or impair the originally intended functions, value or use of the Equipment without ESCO's prior written approval, which shall not be unreasonably withheld.

### **Section 14.2. Upgrade or Alteration of Equipment**

Section 14: This section describes the terms and conditions under which the ESCO may make changes to the equipment, operating procedures or take other energy savings actions. If such changes are implemented during any time during the contract they must be described in a supplemental schedule and be approved by the Owner. As well, any equipment replaced is required to be new and have the potential to produce at least as much or more savings. If computer software is updated, the licensing provisions of Section 17.1 still apply.

ESCO shall at all times have the right, subject to Owner's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the

operation of the Equipment or implement other energy saving actions in the Project Site(s), provided that: (i) the ESCO complies with the standards of comfort and services set forth in **Schedule U (Standards of Comfort)** herein; (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the guaranteed energy and cost savings at the Project Site(s) and; (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the ESCO.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the Owner for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall, unless otherwise agreed, be new and have equal or better potential to reduce energy consumption at the Project Site(s) than the Equipment being replaced. The ESCO shall have the right to update any and all software to be used in connection with the Equipment in accordance with the provisions of **Section 17.1 (Ownership of Certain Proprietary Rights)** and **Schedule BB (ESCO's Maintenance Responsibilities)**. All replacements of and alterations or additions to the Equipment shall become part the Equipment described in **Schedule R (Equipment to be Installed by ESCO)** and shall be covered by the provisions and terms of **Article 8 (Construction Schedule and Equipment Installation; Approval)**.

## **ARTICLE 15. MATERIAL CHANGES**

Article 15: This section defines the term "Material Change" which covers any condition other than weather that affects building energy use by more than the negotiated percentage (see above discussion). It is typical for the percent of deviation to be negotiated as a value ranging between 2% and 5% based on aggregate consumption costs. The lower value (2%) may be appropriate for large facilities (over \$20,000/month utility bills) and the higher value (5%) may be appropriate for small facilities (less than \$5,000/month utility bills).

### **Section 15.1. Material Change Defined**

A Material Change shall include any change in or to the Project Site(s), whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Owner, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)** and **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Report Requirements)** by at least \_\_\_% after adjustments for climatic variations. Actions by the Owner which may result in a Material Change include but are not limited to the following:

- (i) manner of use of the Project Site(s) by the Owner; or
- (ii) hours of operation for the Project Site(s) or for any equipment or energy using systems operating at the Project Site(s); or
- (iii) Permanent changes in the comfort and service parameters set forth in **Schedule U (Standards of Comfort)**; or
- (iv) occupancy of the Project Site(s); or
- (v) structure of the Project Site(s); or
- (vi) types and quantities of equipment used at the Project Site(s) or
- (vii) modification, renovation or construction at the Project Site(s); or

- (viii) the Owner's failure to provide maintenance of and repairs to the Equipment in accordance with **Schedule CC (Owner's Maintenance Responsibilities)**; or
- (ix) any other conditions other than climate affecting energy use at the Project Site(s) including but not limited to the replacement, addition or removal of energy and water consuming devices whether plug in or fixed assets,
- (x) casualty or condemnation of the Project Site(s) or Equipment, or
- (xi) changes in utility provider or utility rate classification, or
- (xii) any other conditions other than climate affecting energy or water use at the Project Site(s).
- (xiii) Modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules.

### **Section 15.2. Reported Material Changes; Notice by Owner**

Section 15.2: This section requires the Owner to notify the ESCO in writing if there are any actual or planned changes to the facility which would effect energy consumption by more than the specified percentage. In the event of an emergency or situation that would prevent advance notification, the Owner has a specified number of hours to inform the ESCO that a Material Change has occurred.

The Owner shall use its best efforts to deliver to the ESCO a written notice describing all actual or proposed Material Changes in the Project Site(s) or in the operations of the Project Site(s) at least \_\_\_ days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the ESCO of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the Owner within \_\_\_\_\_ hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Owner to have occurred.

### **Section 15.3. Other Adjustments**

Section 15.3: This section states that if all building conditions and operations stay the same, then energy consumption will not vary more than the negotiated percentage during any month when compared to the baseline use for that month and after adjustments for weather are made. See above discussion. In the event such a variation occurs, the ESCO will try to determine the cause of the deviation and report its findings tthe Owner. The ESCO and Owner will then determine what adjustments will be made to the baseline as described in **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)**.

As agreed in **Section 15.1** Owner will alert ESCO of materials changes as known. Both parties have a vested interest in meeting the guaranteed savings of the Contract. As such, the ESCO will work with Owner to investigate, identify and correct any changes that prevent the guaranteed savings from being realized. As a result of such investigation, ESCO and Owner shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Report Requirements)** and **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)**. Any disputes between the Owner and the ESCO concerning any such adjustment shall be resolved in accordance with the provisions of **Schedule JJ (Alternative Dispute Resolution Procedures)** hereto.

## **ARTICLE 16. PERFORMANCE BY ESCO**

### **Section 16.1. Corrective Action; Accuracy of the Services**

Section 16.1: This section directs the ESCO to protect the Project Site(s) and its contents to repair and restore to the original condition any damage caused by the ESCO in connection with this contract. Any costs incurred to correct such damage are to be paid by the ESCO. The ESCO is solely responsible for the technical professional accuracy of all work performed under this Contract including work done by subcontractors or others.

ESCO shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in **Schedule U (Standards of Comfort)** and the construction schedule specified in **Schedule S (Construction and Installation Schedule)**. ESCO shall repair and restore to its original condition any area of damage caused by ESCO's performance under this Contract. The Owner reserves the right to review the work performed by ESCO and to direct ESCO to take certain corrective action if, in the opinion of the Owner, the structural integrity of the Project Site(s) or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by ESCO's performance of the work shall be borne by ESCO.

ESCO shall remain responsible for the professional and technical accuracy of all services performed, whether by the ESCO or its subcontractors or others on its behalf, throughout the term of this Contract.

### **Section 16.2. Annual Reporting Requirements**

At the end of each year during the guarantee period as specified in **Schedule A (Savings Guarantee)** and no later than ninety (90) days thereafter, the ESCO shall complete and submit the data required in **Schedule C (C.4 Annual M&V Reporting Requirements)**.

## **ARTICLE 17. OWNERSHIP OF CERTAIN PROPRIETARY RIGHTS; EXISTING EQUIPMENT**

### **Section 17.1. Ownership of Certain Proprietary Property Rights**

Section 17.1: This provision addresses the ESCO's proprietary rights over customized (or exclusive) software used in an energy management system which may control, manage and perform other functions in conjunction with the project (there may other technical designs, processes, formulas etc., which this provision would cover). Of particular importance is the stipulation that grants the Owner a continuing license (at no charge) to use and operate the project without violating any ESCO's proprietary rights.

Owner shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. The ESCO shall grant to the Owner a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Owner to continue to operate, maintain, and repair the Equipment in a manner that will yield guaranteed utility consumption reductions for the specified contract term. ESCO shall not be liable for providing new versions of

software or other enhancements if or unless such new versions or enhancements are necessary to achieve the guaranteed utility consumption reductions.

**Section 17.2. Ownership of Existing Equipment**

Section 17.2: This provision states that the Owner has ownership of all existing equipment and that the ESCO shall notify the Owner in writing of what equipment and materials are to be replaced. If the Owner chooses to keep the equipment to be replaced, the ESCO will be notified and the Owner responsible for identifying the location of where the property is to be stored or relocated. The ESCO is responsible for all equipment and materials to be disposed. The exception to this is the treatment of any hazardous or environmentally sensitive materials.

Ownership of the equipment and materials presently existing at the Project Site(s) at the time of execution of this Contract shall remain the property of the Owner even if it is replaced or its operation made unnecessary by work performed by ESCO pursuant to this Contract. If applicable, ESCO shall advise the Owner in writing of all equipment and materials to be replaced at the Project Site(s) and the Owner shall within \_\_\_\_ days designate in writing to the ESCO which equipment and materials that should not be disposed of off-site by the ESCO. It is understood and agreed to by both Parties that the Owner shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. The ESCO shall be responsible for the disposal of all equipment and materials designated by the Owner as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

**ARTICLE 18. PROPERTY/CASUALTY/INSURANCE; INDEMNIFICATION**

Article 18: This section needs to reflect the individual Owner's standard requirements with regard to insurance and indemnification.

**Section 18.1 Insurances.** At all times during the term of this Contract, ESCO shall maintain in full force and effect, at its expense: (1) Workmen's Compensation Insurance sufficient to cover all of the employees of (ESCO) working to fulfill this Contract, and (2) Casualty and Liability Insurance on the Equipment and Liability Insurance for its employees and the possession, operation, and service of the Equipment. The limits of such insurance shall be not less than \$\_\_\_\_\_ for injury to or death of one person in a single occurrence and \$\_\_\_\_\_ for injury to or death of more than one person in a single occurrence and \$\_\_\_\_\_ for a single occurrence of property damage. Such policies shall name the Owner as an additional insured.

Prior to commencement of work under this Contract, ESCO will be required to provide Owner with current certificates of insurance specified above. These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed until at least thirty (30) days' prior written notice has been given to Owner.

**Section 18.2. Damages to Equipment or Property:** ESCO shall be responsible for (i) any damage to the Equipment or other property on the Project Site(s) and (ii) any personal injury where such damage or injury occurs as a result of ESCO's performance under this Contract.

**Section 18.3. Indemnification.** ESCO shall save and hold harmless Owner and its officers, agents and employees or any of them from any and all claims, demands, actions or liability of any nature based upon or arising out of any services performed by ESCO, its agents or employees under this Contract.

**Section 18.4. Liabilities.** Neither party shall be liable for any special, incidental, indirect, punitive or consequential damages, arising out of or in connection with this Contract. Further, the liability of either party under this Contract shall not exceed the Contract Sum in the aggregate.

## **ARTICLE 19. CONDITIONS BEYOND CONTROL OF THE PARTIES**

If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of God, insurrections or riots, or similar events, this Contract shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days notice to the performing party, in which event neither party shall have any further liability to the other.

## **ARTICLE 20. EVENTS OF DEFAULT**

### **Section 20.1. Events of Default by Owner**

Each of the following events or conditions shall constitute an "Event of Default" by Owner:

- (i) any failure by Owner to pay ESCO any sum due for a service and maintenance period of more than \_\_\_ days after written notification by ESCO that Owner is delinquent in making payment and provided that ESCO is not in default in its performance under the terms of this Contract; or
- (ii) any other material failure by Owner to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for \_\_\_ days after notice to Owner demanding that such failures to perform be cured or if such cure cannot be effected in \_\_\_ days, Owner shall be deemed to have cured default upon the commencement of a cure within \_\_\_ days and diligent subsequent completion thereof;
- (iii) any representation or warranty furnished by Owner in this Contract which was false or misleading in any material respect when made.

### **Section 20.2. Events of Default by ESCO**

Each of the following events or conditions shall constitute an "Event of Default" by ESCO:

- (iv) the standards of comfort and service set forth in **Schedule U (Standards of Comfort)** are not provided due to failure of ESCO to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within \_\_\_ days after written notice by Owner to ESCO demanding that such failure be cured, shall be deemed cured for purposed of this Contract.

- (v) any representation or warranty furnished by ESCO in this Contract is false or misleading in any material respect when made;
- (vi) failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in **Schedule R (Equipment to be Installed by ESCO)** and **Schedule S (Construction and Installation Schedule)**;
- (vii) provided that the operation of the facility is not adversely affected and provided that the standards of comfort in **Schedule U (Standards of Comfort)** are maintained, any failure by ESCO to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within \_\_\_ days after written notice by the Owner to ESCO demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract;
- (viii) any lien or encumbrance upon the equipment by any subcontractor, laborer or materialman of ESCO;
- (ix) the filing of a bankruptcy petition whether by ESCO or its creditors against ESCO which proceeding shall not have been dismissed within \_\_\_\_\_ days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of ESCO.
- (x) failure by the ESCO to pay any amount due the Owner or perform any obligation under the terms of this Contract or the Energy and Cost Savings Guarantee as set forth in **Schedule A (Savings Guarantee)**.

## **ARTICLE 21. REMEDIES UPON DEFAULT**

### **Section 21.1. Remedies upon Default by Owner**

If an Event of Default by Owner occurs, ESCO may, without a waiver of other remedies which exist in law or equity, elect one of the following remedies:

- (i) exercise all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by Owner, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy;

### **Section 21.2. Remedies Upon Default by ESCO**

In the Event of Default by ESCO, Owner shall have the choice of either one of the following remedies in law or equity:

- (i) exercise and any all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred, including attorney's fees;

## **ARTICLE 22. ASSIGNMENT**

The ESCO acknowledges that the Owner is induced to enter into this Contract by, among other things, the professional qualifications of the ESCO. The ESCO agrees that neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the Owner.

### **Section 22.1. Assignment by ESCO**

Section 22.1: This assignment provision first acknowledges that the Owner selected the ESCO for its unique expertise and qualifications to perform the services specified in the contract. The ESCO may not assign this contract to another ESCO without the written approval of the Owner and any ESCO assigned this contract must fully comply with all terms and conditions. In addition, the ESCO and any assignee remain contractually liable to the Owner for fulfilling all of the ESCO's obligations as specified in the contract.

The ESCO may, with prior written approval of the Owner, which consent shall not be unreasonably withheld, delegate its duties and performance under this Contract, and/or utilize ESCOs, provided that any assignee(s), delegee(s), or ESCO(s) shall fully comply with the terms of this Contract. Notwithstanding the provisions of this paragraph, the ESCO shall remain jointly and severally liable with its assignees(s), or transferee(s) to the Owner for all of its obligations under this Contract.

### **Section 22.2. Assignment by Owner**

Section 22.2: In turn, this provision allows the Owner to transfer or assign this contract to a new building owner or occupant. The Owner and its assignee, however, still remain responsible to the ESCO for the Owner's obligations as specified in the contract.

Owner may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Buildings or an interest therein. The Owner shall remain jointly and severally liable with its assignees or transferees to the ESCO for all of its obligations under this Contract.

## **ARTICLE 23. REPRESENTATIONS AND WARRANTIES**

Article 23: This boilerplate provision states that each party has the requisite authority and ability to enter into this contract.

Each party warrants and represents to the other that:

- (i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
- (ii) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or

- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

## **ARTICLE 24. ADDITIONAL REPRESENTATIONS OF THE PARTIES**

Article 24: These additional representations address several areas specific to the performance contract. The Owner certifies it has or will provide the ESCO will all energy and energy-related records and all future records to be provided will be truthful and accurate. The Owner also declares it has not entered into any leases or service contracts relating to energy equipment or servicing of pre-existing equipment and will notify the ESCO within a specified period of time if it does so.

In addition, the ESCO certifies that before beginning work under this contract it will: have become licensed to business in the state; provide proof of required insurance and bonds; give Owner access to all document relating to the project (including all contracts and subcontracts) upon request; use licensed and qualified subcontractors; and is financially able to complete the project and perform under the terms of this contract. In addition, the ESCO certifies that the equipment will meet or exceed the functional design tests performed prior to Owner acceptance and the installed equipment will be compatible with existing equipment and building systems.

Owner hereby warrants, represents and promises that:

- (i) it has provided or shall provide timely to ESCO, all records relating to energy usage and energy-related maintenance of Project Site(s) requested by ESCO and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and
- (ii) it has not entered into any leases, contracts or Contracts with other persons or entities regarding the leasing of energy efficiency equipment or the provision of energy management services for the Project Site(s) or with regard to servicing any of the energy related equipment located in the Project Site(s). Owner shall provide ESCO with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Project Site(s) which may be executed from time to time hereafter within \_\_\_\_ days after execution thereof.

ESCO hereby warrants, represents and promises that:

- (i) before commencing performance of this Contract:
  - (a) it shall have become licensed or otherwise permitted to do business in the State of \_\_\_\_\_
  - (b) it shall have provided proof and documentation of required insurance and bonds pursuant to this Contract;
- (ii) it shall make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;

- (iii) it shall use qualified subcontractors who are qualified, licensed and bonded in this state to perform the work so subcontracted pursuant to the terms hereof;
- (iv) The Equipment will meet or exceed the provisions set forth in **Section 8.2 (Systems Start Up and Equipment Commissioning)** and in **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**.
- (v) The Equipment is or will be compatible with all other Project Site(s) mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation or operation;
- (v) that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Contract.

## **ARTICLE 25. MICELLANEOUS DOCUMENTATION PROVISIONS**

### **Section 25.1. Waiver of Liens, Construction Performance and Payment Bonds, Labor and Material Payment Bonds**

Such executed bonds are incorporated herein by reference as **Exhibit I (Performance Bond)** and **Exhibit II (Labor and Material Payment Bond, if applicable)**.

### **Section 25.2. Further Documents**

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

### **Section 25.3 Owner's Responsibilities**

This provision protects both the ESCO and the Owner by establishing a method for the ESCO to supervise the Owner's compliance with the scheduled routine and preventative maintenance activities to be performed by the Owner (either by in-house personnel or existing maintenance contract). This checklist should be developed for both the newly installed and pre-existing energy-related equipment.

#### **(a) Methods of Operation by Owner**

The parties acknowledge and agree that said Energy and Cost Savings would not likely be obtained unless certain procedures and methods of operation designed for energy and water conservation shall be implemented, and followed by Owner on a regular and continuous basis.

#### **(b) Owner Maintenance Responsibilities**

Owner agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on **Schedule CC (Owner's Maintenance**

**Responsibilities)**, to be attached hereto and made a part hereof after Owner's approval, such approval not to be unreasonably withheld, conditioned or delayed.

**(c) Inspection of Project Site(s)**

Owner agrees that ESCO shall have the right once a month, with prior notice, to inspect Project Site(s) to determine if Owner is complying, and shall have complied with its obligations as set forth in **Section 25.3(b)**. For the purpose of determining Owner's said compliance, the checklist to be set forth at **Schedule DD (Facility Maintenance Checklist)** as completed and recorded by ESCO during its monthly inspections, shall be used to measure and record Owner's said compliance. Owner shall make the Project Site(s) available to ESCO for and during each monthly inspection, and shall have the right to witness each inspection and ESCO's recordation on the checklist. Owner may complete its own checklist at the same time. ESCO agrees to not interfere with the Owner operations during any monthly inspection.

**Section 25.4. Waiver Of Liens**

ESCO will obtain and furnish to Owner a Waiver of Liens from each vendor, material manufacturer and laborer in the supply, installation and servicing of each piece of Equipment.

**ARTICLE 26: CONFLICTS OF INTEREST**

**Section 26.1 Conflicts of Interest**

Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, neither party hereto nor any director, employee or agent of any party hereto shall give to or receive from any director, employee or agent of any other party hereto any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, neither party hereto nor any director, employee or agent of either party hereto, shall without prior notification thereof to the other party enter into any business relationship with any director, employee or agent of the other party or of any affiliate of the other party, unless such person is acting for and on behalf of the other party or any such affiliate. A party shall promptly notify the other party of any violation of this section and any consideration received as a result of such violation shall be paid over or credited to the party against whom it was charged. Any representative of any party, authorized by that party, may audit the records of the other party related to this Contract, upon reasonable notice and during regular business hours including the expense records of the party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this section.

**ARTICLE 27. COMPLETE CONTRACT**

This Contract, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Contract shall constitute the entire Contract between both parties and this Contract may not be amended, modified, or terminated except by a written Contract signed by the parties.

**ARTICLE 28. APPLICABLE LAW**

This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of \_\_\_\_\_.

**ARTICLE 29. INTERPRETATION OF CONTRACT**

The Owner shall have the authority to determine questions of fact that arise in relation to the interpretation of this Contract and the ESCO'S performance hereunder. However, such determinations are subject to the Alternative Dispute Resolution procedures as described in **Schedule JJ (Alternative Dispute Resolution Procedures)**. Unless the Parties agree otherwise, or the Work cannot be continued without a resolution of the question of fact, such determinations and Alternative Dispute Resolution procedures shall not be cause for delay of the Work. The ESCO shall proceed diligently with the performance of this Contract and in accordance with the Owner's decision whether or not the ESCO or anyone else has an active claim pending. Continuation of the Work shall not be construed as a waiver of any rights accruing to the ESCO.

**ARTICLE 30. NOTICE**

Any notices, certificates or other communications shall be sufficiently given and shall be deemed to have been received forty-eight (48) hours after deposit in the United States mail in registered or certified form with postage fully prepaid.

TO ESCO: **ESCO Name, Attention:, Complete address.  
Include COPY TO: information for ESCO, if applicable.**

TO OWNER: Santa Barbara Unified School District  
720 Santa Barbara Street  
Santa Barbara, CA 93101  
Attn: Superintendent

With Copy to: Santa Barbara Unified School District  
720 Santa Barbara Street  
Santa Barbara, CA 93101  
Attn: Director of Facilities and Modernization

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Contract by their duly authorized representatives on the effective date.

(Corporate Seal)

(ESCO)

\_\_\_\_\_ By: \_\_\_\_\_

OWNER: Santa Barbara Unified School District

By: \_\_\_\_\_ (Official Title): \_\_\_\_\_  
Santa Barbara Unified School District

Date: \_\_\_\_\_

## **CONTRACT ATTACHMENT I: Schedules, Exhibits, and Appendices**

Under a separate file, see detailed descriptions, required tables and examples.

### **Schedules**

#### **Savings Guarantee**

- Schedule A Savings Guarantee
- Schedule B Baseline Energy Consumption; Methodology to Adjust Baseline
- Schedule C Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements
- Schedule D-G Left blank for optional schedules

#### **Payments and Schedule**

- Schedule H Final Project Cost & Project Cash Flow Analysis
- Schedule I Financing Agreement and Payment Schedule
- Schedule J Compensation to ESCO for Annual Services
- Schedule K Rebates, Incentives and Grants
- Schedule L-P Left blank for optional schedules

#### **Design and Construction Phase**

- Schedule Q Description of Project Site(s)
- Schedule R Equipment to be Installed by ESCO
- Schedule S Construction and Installation Schedule
- Schedule T Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
- Schedule U Standards of Comfort
- Schedule V ESCO's Training Responsibilities
- Schedule W-AA Left blank for optional schedules

#### **Post-Construction**

- Schedule BB ESCO's Maintenance Responsibilities
- Schedule CC Owner's Maintenance Responsibilities
- Schedule DD Facility Maintenance Checklist
- Schedules EE – II Left blank for optional schedules

#### **Administration**

- Schedule JJ Alternative Dispute Resolution Procedures
- Schedule KK – OO Left blank for optional schedules

#### **Optional Schedules**

- Pre-Existing Service Contracts
- Energy Savings Projections
- Facility Changes Checklist
- Current and Known Capital Projects at Facility

### **Exhibits**

- Exhibit I Performance Bond
- Exhibit II Labor and Material Payment Bond ***if required***
- Exhibit III (i) Certificate of Acceptance—Investment Grade Audit Report

- Exhibit III (ii) Certificate of Acceptance—Installed Equipment
- Exhibit IV Equipment Warranties
- Optional Exhibits
  - Manifest of Ownership
  - Minority and Woman-Owned Business Certification
  - Certification that Financing Term is no Longer than the Aggregated Equipment Lifetime
  - Notice of Substantial Completion
  - Notice to Proceed with Construction Phase
  - Record of Reviews by Owner

**Appendices**

- Appendix A RFP for ESCO Solicitation (Pre-qualification Phase; Final Selection Phase)
- Appendix B ESCO Proposal (Pre-qualification Phase; Final Selection Phase)
- Appendix C Investment Grade Audit and Project Development Contract
- Appendix D Investment Grade Audit Report