



Solicitation Information

Date October 22, 2012

RFP # 7458202

TITLE: Energy Performance Contracting Services (ESCO) - Rhode Island College
Submission Deadline: November 29, 2012 @ 11:30 am (EST)

A **Mandatory** Pre-Bid conference will be held on November 9, 2012 at 10:00 AM at:
*RIC Physical Plant Building, second floor conference room, 600 Mount Pleasant Avenue,
Providence, Rhode Island 02908*

Questions concerning this solicitation may also be e-mailed to the Division of Purchases at questions@purchasing.ri.gov no later than November 16, 2012 -at 12 pm (Eastern Time). Please reference the RFP # 7458202 on all correspondence. Questions received, if any, will be answered and posted on the Internet as an addendum to this solicitation. It is the responsibility of all interested parties to download this information.

SURETY REQUIRED: No

BOND REQUIRED: No

Thomas Bovis, Interdepartmental Project Manager

Vendors must register on-line at the State Purchasing Website at www.purchasing.state.ri.us.

NOTE TO VENDORS:

**Offers received without the entire completed three-page RIVIP
Generated Bidder Certification Form attached may result in
disqualification.**

THIS PAGE IS NOT A BIDDER CERTIFICATION FORM

REQUEST FOR QUALIFICATIONS/PROPOSALS
For Energy Performance Contracting Services
For
Rhode Island College Bid # 7458202
October 18, 2012

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RFP: Instructions and Administrative Information

ATTACHMENTS

- Attachment A:** Special Contract Terms and Conditions
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1.0 Overview and Background

Rhode Island College (RIC) seeks proposals from Energy Services Companies (Contractor) to conduct technical energy audits of RIC facilities and implement an Energy Performance Contract. The Contractor will identify and implement building improvements to reduce energy and related costs in facilities, so that the annual cost savings resulting from the improvements are applied to the annual payments of the cost of the improvements.

The contracting process has three phases:

- Technical Energy Audit and Project Proposal Phase: A contract for the Technical Energy Audit will be developed with the selected Contractor. This investment grade audit will identify and evaluate cost-saving measures and define the proposed project scope, cost, savings and cash-flow over the proposed financing term. A project proposal will present aggregated measures that can be financed through guaranteed savings.
- Construction/Implementation/Commissioning: An Energy Performance Contract may be negotiated following the audit. This establishes the project scope and costs, and provides for construction and follow-up services to be provided during the contract term. Financing will be via State Certificates of Participation.
- Post-Construction Guarantee/Monitoring Phase: After construction, the Contractor will offer a variety of services to ensure savings are met, such as a savings guarantee, staff training, follow-up monitoring, and contract maintenance services.

2.0 Proposal Submittal and Selection Process

2.1 POLICIES

2.1.1 All submittals shall become the property of the College and will not be returned.

2.2 SUBMITTAL INSTRUCTIONS

2.2.1 Late submittals shall not be evaluated.

2.2.2 The College reserves the right to accept or reject any or all proposals or any part of any proposal; to waive any informalities or technicalities, to clarify any ambiguities in a proposal; and to modify any criteria in this Request for Proposal as long as the action is in the best interest of the College to do so.

2.2.3 College shall not be liable for any costs incurred by respondents in the preparation of submittals and proposals nor for costs related to any element of the selection and contract negotiation process.

2.2.4 Pre-proposal Conference

See Selection Process below for details.

2.2.5 Communications Regarding This RFP

Questions and requests for clarification on this Request for Proposals/Qualification must be submitted *in writing* following the instructions posted in the Notice. No verbal inquiries shall be addressed.

Communication with College officials, the Selection Committee, or others associated with the College, other than the designated Contact person, with regard to this Request for Proposals/Qualification is prohibited, and shall be grounds for disqualification.

2.3 SUBMITTAL FORMAT

2.3.1 Prepare proposals to respond to the items in the **ESCO Response to Request for Proposals/Qualification (Attachment B)**. Follow the same sequence and state each number and question prior to your response.

2.3.2 Submit *Request for Proposal/Qualification Cover Sheet* and submit six paper copies of the whole submittal, and two CD or DVD copies (IBM platform) of the submittals. Each copy of the CD or DVD shall include only two files, both in the .pdf format. The **Response (Attachment B)** shall be converted in entirety to a single .pdf formatted file and submitted on the CD or DVD. Similarly, the requested sample investment grade audit report shall be converted in its entirety to .pdf format and copied as a single file onto the same CD or DVD. Security protection of the pdf file is allowed, but printing shall be enabled.

Hard copies must be submitted in a three ring binder. In addition to the requirements of this RFP please provide any narrative description and exhibits that you would like to include to support your proposal.

2.3.3 Deliver proposals to:

Mr. Thomas Bovis
 Interdepartmental Project Manager
 State of Rhode Island
 Department of Administration
 Division of Purchases
 One Capital Hill 2nd Floor
 Providence, RI 02908
No Later Than: November 29, 2012 11:30 AM (EST)

SUBMITTAL SCHEDULE

The following schedule has been established for this Request for Proposals/Qualification. Note that this schedule may be subject to change.

	TASK	DATE	TIME
1.	Pre-Proposal Conference	11/9/2012	10:00 AM
2.	Tour of facilities	TBD	TBD

3.	Proposals due	November 29, 2012	11:30 AM (EST)
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2.4 SELECTION PROCESS

2.4.1 Pre-Proposal Conference and Site Visit. A pre-proposal conference will be held. The purpose of the Pre-proposal Conference will be to review the requirements of this RFP and answer questions from ESCOs in attendance. The conference is **mandatory** for all Contractors who plan to submit a proposal.

DATE: November 9, 2012

TIME: 10:00 AM (EST)

LOCATION:

Rhode Island College
Physical Plant, 2nd Floor Conference Room
600 Mt. Pleasant Avenue
Providence, RI 02908

2.4.2 Site Visits: All site visits must be arranged through the following contact person:

Kevin J. Fitta, P.E.
Interim Director of Capital Projects
Rhode Island College
401-456-9885

Circumventing this contact person to make site visits may result in your disqualification from participation in this solicitation.

2.4.3 Review of Written Proposals. Proposals must be prepared as described in **Attachment B: Contractor Response**. Proposers within the competitive range will be invited to participate in the interview phase.

2.4.4 Interviews. Interviews will provide an opportunity for clarification of the written proposal. Contractor representatives at the interview should include individuals who will be *key* points of contact and have *major* responsibility for contract negotiation, engineering and design, construction management and follow-up monitoring. Scores from the written proposal will be modified based on clarifications and the top-ranking Contractor will be considered for award.

2.4.5 Final Selection. Final reference checks will be conducted with the apparent awardee (top-ranked Contractor) prior to making the final selection.

2.4.6 Post Selection Process. The selected firm will be notified in writing and given a period of time to develop a Financial Grade Audit (FGA) based on the Initial Proposal. The Selected firm will be given three months to develop an FGA for the RIC campus.

The FGA results must be within fifteen percent (15%) of the proposal in order to be awarded the contract. The 15% range applies to each of the following: total project cost, total dollar savings, and total present value of the net savings. This must be for the same set of measures and the same term as presented in the Initial Proposal. If the selected firm finds that the FGA will vary outside of this 15% range from the Initial Proposal it may withdraw from the project at no cost or obligation to either the firm or the State.

If the selected firm develops an acceptable FGA, then the State and the firm will attempt to enter into a final contract. Once a final contract is struck, the firm will be given time to develop a Complete Scope of Work (CSW). This CSW may be done in phases

3 Scope of Work

3.4 ENERGY PERFORMANCE CONTRACT PROJECT PHASES

3.4.3 Technical Energy Audit and Project Proposal Phase

Technical Energy Audit and Project Proposal Contract.

A Technical Energy Audit and Project Proposal Contract will be negotiated in a format similar to that presented in **Attachment E: Model Contract**

3.4.4 Construction/Implementation/Commissioning/Financing Phase

Energy Performance Contract. Following successful completion and acceptance of the Technical Energy Audit and Project Proposal Contract, an Energy Performance Contract may be negotiated to implement the selected projects, in a similar format as that presented in **Attachment E: Model Contract**

Financing Agreement. Any and all financing arrangements are subjected to College approval in accordance with College Charter and State statute.

3.5 CONTRACTOR SERVICES

Contractor must have the demonstrated capability in engineering and management to provide a broad range of services. Services may include but are not limited to the following:

Technical Energy Audit and Project Proposal Phase

- technical energy audit to evaluate costs and savings of a variety of energy and water-saving measures
- project proposal including financial analysis
- benchmarking using Energy Star tools
- monitoring and verification plan
- utility bill data services to capture credits from utility bill errors

Construction/Implementation/Commissioning and Financing Phase

- engineering design
- equipment procurement and purchasing
- construction management
- hazardous waste disposal or recycling
- access to financing from credible companies
- commissioning

Guarantee/Monitoring Phase

- continuing operations and maintenance for all improvements
- staff training on routine maintenance and operation of systems
- training of occupants
- guarantee of performance and cost savings for the entire term of the contract
- monitoring and verification for measurement and reporting of the performance and savings
- allow for independent review of monitoring & verification (guaranteed savings to pay for independent Contractor)
- analysis and application for Energy Star Label www.energystar.gov and/or LEED-EBOM (Leadership in Energy and Environmental Design for Existing Buildings-Operations and Maintenance, by the US Green Building Council) <http://www.usgbc.org/DisplayPage.aspx?CMSPageID=221>
- monitoring and reporting of emissions reductions
- maintaining long-term, high-efficiency performance of buildings

Contractor must have the technical capability to address a broad range of systems including, but not limited to:

- Mechanical Systems. Heating, ventilating and air conditioning (HVAC) systems, energy management and control systems, domestic hot water systems, distribution systems, etc.
- Plants. Distribution systems, cogeneration systems, central steam plants, etc.
- Lighting systems. Indoor and outdoor lighting systems, lighting controls, daylighting strategies.
- Electrical distribution systems. Transformer replacements, etc.
- Building envelope systems. Windows, insulation, weatherization, etc. (It is recognized that window replacements are rarely cost-effective, but could be considered as part of an overall comprehensive plan.)
- Specialty Systems: laundry equipment, kitchen equipment, renewable energy systems (e.g. PV, solar thermal, ground source heat pumps, wind power.)
- LEED-EBOM: LEED-EB strategies to improve operations and maintenance practices
- Water and Sewage Systems. Automatic controls, low-flow faucet aerators, low-flow toilets, cooling tower modifications, and irrigation system controls or modifications.

3.6 BUILDINGS, FACILITIES AND APPROACH

All facilities owned, managed or operated by College at any time during the term of the performance contract will be considered for this work. Specific facilities now operated by

College are listed in **Attachment D: Technical Facility Profile**. Additional facilities not yet identified that are under the jurisdiction of the College at any time during the term of the performance contract can be included in the scope of work through a contract amendment.

Work may be conducted in phases where the detailed scope of work can be developed at any time during the term of the performance contract.

The performance contract can be amended at any time during the initial performance contract term to address other buildings or new projects.

Utility Incentives – Contractor must diligently pursue any local utility incentive programs, grants, or assignment of tax benefits, as applicable. Detailed information concerning these programs may be obtained directly from the utilities or other funding sources. Contractor will deduct any utility incentives from the Total Project Investment. All grants and other funding sources must entirely be passed through to the College. The selected Contractor will be required to secure and maximize the usage of all applicable utility incentives available for this project.

College reserves the right to reduce the scope of work, to conduct the work in phases or to segment work in facilities based on technological improvements.

The objective of the College in issuing this RFP is to upgrade facilities through a “Guaranteed Energy Savings Contract”, sometimes also referred to as “Performance Contracting”. The College is interested in contracting for a full range of energy services and energy-related capital improvements ("energy conservation measures" or "ECMs"), financed through a guaranteed energy savings contract at no capital cost to the College, for the Project Sites listed in Attachment E. The total amount of space that is being considered for this contract is approximately 1,434,000 square feet in forty three (43) facilities.

Please note, in order to conserve the resources of both the College and the proposing ESCo’s, we are asking that the ESCo’s prepare a proposal on only the following facilities:

- i. Classroom Building – Horace Mann
- ii. Residence Hall Building – Browne Hall
- iii. Central Steam Plant (in Whipple Hall) & Steam Distribution System & Condensate Return System

Identification of preliminary ECMs. The College expects the ESCOs to individually propose innovative ways to reduce current energy usage and costs and propose creative solutions to operational problems and maintenance issues.

However, in order to make the evaluation process somewhat more objective, and to ease comparison of technical and pricing approaches between the submitted proposals, the

ESCOs, shall consider, at a minimum the following list of energy conservation measures (ECMs):

- Lighting and lighting controls
- HVAC equipment and controls
- Building management system improvements
- Steam system
- Hot water
- Building envelope improvements
- Steam plant – controls and automation
- Water saving devices (esp. in Browne Hall)

ATTACHMENT A: SPECIAL CONTRACT TERMS AND CONDITIONS

Contract Documents. The **Model Energy Performance Contract (Attachment G)** will be used.

Funding sources to support annual payment:

The following payment sources will be considered in the audit:

- Annual energy cost savings
- Annual water and other utility cost savings
- Material/commodity savings, only in years when savings are achieved, including avoided costs such as lamp and ballast replacements, scheduled replacement of parts, etc.
- During negotiations, College may consider savings to include the following:
 - Maintenance cost savings such as terminated service contracts on equipment.

Equity cash outlay:

- At option of College, an equity cash outlay, pending funding approval, may be used to supplement savings

Maintenance and operation cost savings: 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 actually occur.

Contract Term. The contract term is up to 15 years provided the cost-weighted average lifetime of the equipment exceeds the contract term. The *ASHRAE Book of Standards* will be used in determining the cost-weighted average useful life of the equipment.

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, Contractor fees, maintenance services, monitoring services, third party consultant services, and other services.

Annual Guaranteed Cost Savings. An annual contractual guarantee will be provided for every year of the contract term. However, the College reserves the right to terminate the Guarantee after three years from the date of project acceptance. If the College exercises that option, the ESCO will have no more savings guarantee requirements. Any measurement guarantee shall be made available as a continued option for each subsequent year of the contract term. The College can cancel the guarantee at any time after the required period. The guarantee must provide for the sum of identified cost savings to equal or exceed the amount of the annual payment, where annual payment equals lease plus monitoring & verification fee plus required service, each and every year while the guarantee is in effect.

Interim Savings during Construction Period. Savings accrued during the construction period will not be allocated to the annual savings of any year, unless the College directs the selected ESCO to include it. See “Annual Savings Exceed Annual Costs” above.

Excess Savings (beyond the guaranteed amount). Excess savings will be retained by College and will not be allocated to 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 proposal will be used in both the Technical Energy Audit and the Energy Performance Contract, provided the size and scope of the project remain similar. Cost markups presented in the proposal can be negotiated downward.

Open Book Pricing. Open book pricing will be required, such that the Contractor will fully disclose all costs, including all costs of subcontractors and vendors. Contractor will maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. Contractor will provide access to 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. Stated cost markups will be clearly applied.

Labor Requirements. ESCO shall and cause its Subcontractors to comply with the requirements of Title 37 Chapter 13 of the General Laws of Rhode Island with respect to the payment of the general prevailing rate of per diem wages, including regular, overtime and other working conditions existing in the locality for each craft, mechanic, teamster or type of workman needed to execute the work described in this RFP. The use of Labor Unions are not required.

Contingency. Any unused contingency cost will not be retained by the Contractor and will be applied to the project.

Equipment Compatibility or Standardization. All equipment installed that is comparable to similar equipment at the facilities, shall have compatibility (and be of equivalent or better quality) with existing systems, and/or be of the same manufacturer for standardization of equipment College-wide, unless excepted by College.

Annual Appropriations. Annual payment is subject to annual appropriations.

Inflation and Escalation Rates. Any inflation rates will be pre-approved by College.

Energy Escalation Rates. Where the annual lease-purchase 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 US Department of Energy for energy saving performance contracts in its Federal Energy Management Program. The tool is on-line at: http://www1.eere.energy.gov/femp/information/download_blcc.html#eerc (EERC). *However for the purposes of the RFP response, all ESCOs should use a 2% escalation factor for all utilities and a 3% escalation factor for all M&V and O&M costs.*

Monitoring and Verification Plan. A monitoring and verification plan will be developed per IPMVP guidelines in the energy performance contract. The plan that describes those scientific, operational or other protocols used to validate that the Project’s stated savings and/or cost reductions are being achieved. Note that the College will engage a third party consultant to review this plan.

Independent Review of Monitoring & Verification. The energy performance contract must include a portion of the guaranteed savings to be used to cover the cost of the College's independent monitoring & verification specialist (company to be determined) to provide an independent review of the Contractor's monitoring & verification plans and reporting.

ATTACHMENT B: CONTRACTOR RESPONSE

- *An electronic copy of this RFP section is available for easier preparation.*
- *Please number and re-state each subheading or question, followed by your response.*
- *Number all pages.*

COVER SHEET

See cover sheet example at the end of this attachment.

Step 1 (all proposers)

1. FIRM'S GENERAL APPROACH TO PERFORMANCE CONTRACTING

Describe performance contracting from your firm's perspective, describing your phases and your firm's ability to support each of the phases. Provide a stand-alone overview, maximum of 5 pages, using any order or format to present your company as you wish. Include highlights on company background, market sectors served, company strengths and areas of expertise. Also include your general approach to performance contracting: typical phases for a project and ability to support each phase (Project Development, Energy Auditing, Performance/Savings Guarantee, Financing, Construction, Commissioning, Measurement and Verification, Client Staff/Occupant Training, Post-construction Maintenance Support).

The purpose of this overview is to provide a good introduction of your firm to the evaluation committee.

2. PROJECT HISTORY

a. Project List.

List all energy performance contracts that your firm or personnel have managed within the last five years. Include list as shown below. Truncate the list at one page.

1) PERFORMANCE CONTRACTING PROJECTS

Project Name	City, State	Total Project \$	Year completed

All projects listed should be those conducted only by your firm. If you deem it relevant to list projects under contract to a different firm, clearly identify the name of firm responsible for the project and indicate why you're including it as a reference for your company and for this project.

2) OTHER PROJECTS (only if deemed relevant to this project)

If desired, also list related projects deemed relevant to this work, particularly those managed in the state.

Project Name	Project Type	City, State	Total Project \$	Year constructed

b. Project References

Provide detailed information on *performance contract-based projects* you want to showcase that have similarities to work related to this proposal. Similarities could include type/use of building, work on comparable sized college or university campus, size of individual buildings, size of total expected project, technical scope of projects, geographic region (work in this state or similar type of metro/rural region). Include the following information on each project, as a minimum.

Using the forms on the following pages, list at least 3 energy performance contracting projects in repayment by and currently under contract with your firm. Limit your response to **ONLY** those projects that have been managed directly by the specific branch, division, office or any individual in such branch, division or office who will be specifically assigned to this project. Attach additional sheets as necessary. Please put an asterisk by any project references involving buildings similar to the building(s) described in the technical appendices. All information requested is required.

PROJECT HISTORY AND CLIENT REFERENCE FORM

Project Name and Location; Number of Buildings; Primary Use; Total square footage	
Project Dollar Amount (installed project costs); Source of Project Financing	
Primary ECMs Installed; ESCO Services Provided	
Construction Start & End Dates	
Contract Start & End Dates	
Dollar Value and Type of Annual Operational Cost Savings (if applicable) (e.g., outside maintenance contracts, material savings, etc.)	
Method(s) of Savings Measurement and Verification	

<p>Provide CURRENT and ACCURATE telephone numbers and email addresses of the owner(s)' representatives with whom your firm did business on this project. You should ensure that all representatives are familiar with this project.</p>	
<p>Describe the specific roles and responsibilities of ESCO personnel associated with the identified project. Limit your response to only those personnel who will be directly involved in Customer's project.</p>	
<p>ESCO Notes or Comments</p>	

Complete the following information for each of the projects listed.

A. ANNUAL ENERGY SAVINGS DATA FORM

Name of Project: _____ **Name of ESCO:** _____

	Projected	Guaranteed	Achieved				
			Year 1	Year 2	Year 3	Year 4	Year 5
KWH							
KW Demand							
Therms							
Water(Gallons)							
Other (Specify)							
Other (Specify)							

Information for each of the headings listed above MUST be completed using the above format. DO NOT provide savings data in terms of BTU's or dollars. Data should be given in the form of fuel units which appear in the utility bills. Additional forms should be reproduced as needed.

B. ANNUAL ENERGY SAVINGS DATA FORM

Name of Project: _____ **Name of ESCO:** _____

	Projected	Guaranteed	Achieved				
			Year 1	Year 2	Year 3	Year 4	Year 5
KWH							
KW Demand							
Therms							
Water Gallons							
Other (Specify)							
Other (Specify)							

All projects listed should be those conducted only by your firm. If you deem it relevant to list projects under contract to a different firm, clearly identify the name of firm responsible for the project and indicate why you're including it as a reference for your company and for this project.

c. Relevant Experience - Overview of Strengths

Briefly summarize your project histories to define your firm's strengths and the relevance of past work to this project (experience similar to this project in terms of size, scope, facility type; experience with types of retrofits applicable to this project; etc.).

3. QUALIFICATIONS OF THE FIRM OR TEAM

a. Background Information on the Firm

- 1) Structure and Evolution of Firm.** Type of firm (corporation, partnership, sole proprietorship, joint venture); Name of parent company if applicable (include the name, main office address and parent company's tax identification number). Name of division or branch office if applicable; Name of current firm and number of years operating under this firm name; Former firm names if applicable and corresponding years in operation. Structure of team if this is a joint venture.
- 2) Years in Energy Business.** State the number of years your firm has been involved in the energy-efficiency related business.
- 3) Years in Performance Contracting.** State the number of years your firm has offered performance contracting services.
- 4) Number of Performance Contracting Projects.** State the number of performance contracting projects completed by your firm. Number under \$1 million. Number over \$1 million.
- 5) Project Team Members**
Briefly describe the relevant experience, qualifications and educational background for each individual team member assigned to this project using the format provided below. Project Manager, Site Manager, Point of Contact, and a Professional Engineer Registered in Rhode Island must be included in the team. Do not include individual resumes in lieu of this information.

Name of Project Team Member:	
Current Job Title: Job responsibilities: Number of years with ESCO: Primary Office Location:	
Employment History Company Name: Primary job responsibilities: Number of years with firm:	
Educational Background <i>List all academic degrees, certifications, professional affiliations, relevant publications and technical training.</i>	
<i>List all energy performance contracting projects this individual has been involved with during past 5 years. Include project location, type of facilities,</i>	

year implemented and dollar value of installed project costs.	
Describe the specific role and responsibilities this individual had for each listed project.	
Provide a detailed description of the role and responsibilities this individual will have for the duration of this project.	
Describe any other relevant technical experience.	
Indicate the total years of relevant energy-related experience for this individual.	

6) **Organizational Chart** - Submit an organizational chart that clearly identifies the roles and relationships of all key team members.

b. Financial Qualifications & Stability of Firm

- 1) **Financial Soundness.** Describe the financial soundness and stability of the firm.
- 2) **Profitability.** Has your firm or parent company been profitable each year for the past three years?
- 3) **Financial Report.** Submit the most recent annual summary (1-3 pages) of the annual Statements of Financial Conditions, including balance sheet, income statement and statement of cash flows, dated within the past twelve (12) months, along with name, address, and the telephone number of firm(s) that prepared the Financial Statements.
- 4) **Bonding.** Current bonding capacity; bond rating; confirmation that firm is currently bondable for 100% of a payment bond for construction of this project; 100% of a performance bond for construction of this project; letter from a licensed surety as evidence of ability to bond for each of these categories.

c. Industry Accreditations

State if your firm is accredited by industry organizations, such as the National Association of Energy Service Companies (NAESCO), or pre-qualified for work through the U.S. Department of Energy for federal facilities or the U.S. Department of Defense. Describe the relevance or importance of any accreditations or pre-qualifications with regard to this project. *All firms must be on the Rhode Island State MPA list prior to the date of proposal submission.*

d. Compliance with Requirements

Affirm your ability to meet requirements: *“Yes, this firm or team responding to this proposal understands the requirements specified in Attachment A: Special Contract Terms and Conditions, Attachment E: Model Energy Performance Contract*

4. PERFORMANCE CONTRACTING CAPABILITY & TECHNICAL APPROACH

a. General Scope of Services

Following is a minimum scope of services acceptable to compete for an energy performance contract. Add a brief comment for each item (25 words or less preferred) to demonstrate your capability for each.

1) Energy systems in buildings, facilities and infrastructure:

Mechanical/Electrical Systems

- Lighting: indoor and outdoor
- Heating
- Ventilation and indoor air quality issues
- Cooling
- Control and building automation
- Fuel switching
- Central plant
- Water-consuming

Steam & Condensate

- Campus steam distribution
- Campus condensate return
- Central Steam Plant

Renewables

- Daylighting
- Solar-electric
- Solar thermal
- Geothermal
- Wind, small-scale or large-scale
- Biomass
- Distributed generation

Specialty Systems or Specific Building Types

- Kitchen or laundry
- Laboratories, clean rooms
- Healthcare hospitals, nursing homes, clinics
- Swimming pools and recreational facilities
- Computer laboratories

Energy Management Services:

- Energy management
- Utility bill auditing and bill payment (identifying errors and collecting credits)
- Energy Star Portfolio Manager, benchmarking
- LEED for Existing Buildings Operations & Maintenance
- Commissioning/re-commissioning
- LEED-NC support for any new building/addition project

Other

- Transportation – fleet fuel management, etc.
- Other

2) Project Development and Implementation

- a) Energy auditing (identify potential energy-saving measures, determine savings projection based on standard energy engineering principles; estimate project costs; present package of measures with cash flow)
- b) System design engineering: mechanical, electrical, etc.
- c) Procurement, bidding
- d) Construction
- e) Commissioning of projects and retro-commissioning of existing buildings
- f) Project management
- g) Identification of asbestos and other hazardous materials and abatement, recycling or disposal as applicable

3) ***Core Performance Contracting Services***

- a) Performance guarantee for every year of the financing term
- b) Insurance per contract requirements
- c) Equipment warranties
- d) Ability to facilitate financing including a municipal, tax-exempt lease purchase
- e) Measurement and verification of savings
- f) Training: maintenance staff and occupants

4) ***Support Services***

- a) Long-term maintenance services on energy systems
- b) Application for an Energy Star Label and LEED certification.
- c) Calculation and reporting of emissions reductions
- d) Assistance with securing funding from the State of Rhode Island.

b. **Performance Contracting Technical Approach**

- 1) **Performance Guarantee.** How is a performance guarantee provided (self-guarantee or third party) and describe the value of this approach?
- 2) **Insurance.** How is insurance provided (self-guarantee or third party) and describe the value of this approach?
- 3) **Warrantees.** Who provides warrantee service (Contractor or manufacturer)? How is this provided? Describe the value of this approach.
- 4) **Standards of Comfort.** Describe standards of comfort that are generally used for light levels, space temperatures, ventilation rates, etc. in the intended facilities. Describe any flexibility.
- 5) **Baseline Calculation Methodology.** Describe in detail the methodology your firm normally uses to compute baseline of energy and water use as well as performance.
- 6) **Project Schedule.** Comment on your ability to meet the schedule and the reasonableness of the schedule.

c. **Sample Technical Audit.**

Submit a sample technical audit conducted by your firm for a similar project (as directed in the Proposal Submittal Information).

- 1) Briefly describe this sample audit. It should be representative of the type of facility and the type of audit that will be conducted.
- 2) Verify that this audit includes detailed energy and economic calculations.
- 3) Verify that it was conducted by a current member of the team proposed for this project.

d. Financing

College will obtain certificates of participation through the State of Rhode Island to finance the project.

- 1) **Site-Specific Approach** Types of Services. Summarize the scope of services (auditing, design, construction, monitoring, operations, maintenance, training, financing, etc.) identified for this project.
- 2) **Potential Projects (Preliminary Technical Energy Audit)**. For the three (3) facilities listed in Attachment D: Based on your preliminary assessment of the information provided, describe any equipment modifications, installations or replacements at the facility that your firm would consider installing as a part of this project. Address energy, water and LEED-EBOM opportunities related to operation and maintenance. Also describe any special features, renewable technologies, or advanced technologies that might be applicable. Describe any special features or services associated with your proposed improvements that would add value to College. Describe your approach to achieve compatibility (such as open systems) and/or standardization of equipment in the facilities to be addressed. Complete the Summary Table below and include in the Executive Summary.

ECM Summary Table

<i>ECM No.</i>	<i>ECM Description</i>	<i>Implementation Expense</i>	<i>Monthly Demand Savings (kW)</i>	<i>Annual Electric Savings (kWh)</i>	<i>Annual Fossil Fuel Savings (mmBtu)</i>	<i>Annual Water Savings (gal)</i>	<i>Annual Utility Cost Savings</i>	<i>Annual O&M Cost Savings</i>	<i>Total Cost Savings</i>	<i>Estimated Incentive</i>	<i>Simple Payback (yrs)</i>
1											
2											
3											
4											
<i>Project Totals</i>											

5. MANAGEMENT AND STAFFING FOR THIS PROJECT

This section applies to this project, with an emphasis on local capability/service.

a. Management

- 1) **Coordination.** Describe your firm's approach to managing this project. Include an organizational chart showing clear lines of communication and responsibility. Describe the transition and responsible parties from the sales to auditing phase, auditing to construction phase, construction to follow-up monitoring phase, etc.

- 2) **Construction Management.** Describe how your firm would work with current building management and maintenance personnel in order to coordinate construction and avoid conflicts with the building's operation and use. It should be recognized that RIC is a heavily used campus with classes during the days and evenings. In addition there are weekend events, as well as summer classes and programs. Describe your flexibility and/or any limitations regarding possible College activities such as: management of additional energy and water projects, monitoring of installation and performance of Contractor projects, integration of other identified capital needs with Contractor projects which may or may not contain energy and water saving opportunities.

- 3) **In-house Capability vs. Subcontractors.** Generally describe the types of services (both professional and construction services) that you offer in-house and the services you offer through subcontractors, and describe the strategy behind in-house vs. subcontractor use. (Detailed information on pricing of subcontractors is requested in the Cost Section below.)

- 4) **College Involvement.** Describe how you engage the College in decision-making regarding project scope, equipment specifications, ongoing operational and maintenance strategies, etc., and how you incorporate College's needs.

- 5) **Local Staffing and Support.** Describe extent of local staffing and support for the geographic region. Include basic job descriptions and capabilities of the local staff. Describe the relevance or importance of local presence with regard to this project.

- 6) **Long-term Servicing.** Describe long-term servicing of equipment and systems. State the location of your nearest servicing office.

- 7) **Risk/Responsibility Allocation.** Use the Risk/Responsibility matrix below to propose sharing of risks between the College and ESCO.

RESPONSIBILITY/DESCRIPTION	ESCO PROPOSED APPROACH
1. Financial	
<p>a. Interest rates: Neither the Contractor nor the College has significant control over prevailing interest rates. During all phases of the project, interest rates will change with market conditions. Higher interest rates will increase project cost, financing/project term, or both. The timing of the Contract / Delivery Order signing may impact the available interest rate and project cost.</p>	

<p>b. Energy prices: Neither the Contractor nor the College has significant control over actual energy prices. For calculating savings, the value of the saved energy may either be constant, change at a fixed inflation rate, or float with market conditions. If the value changes with the market, falling energy prices place the Contractor at risk of failing to meet cost savings guarantees. If energy prices rise, there is a small risk to the College that energy saving goals might not be met while the financial goals are. If the value of saved energy is fixed (either constant or escalated), the College risks making payments in excess of actual energy cost savings. Clarify how future energy costs will be treated.</p>	
<p>c. Construction costs: The Contractor is responsible for determining construction costs and defining a budget. In a fixed-price design/build Contract, the College 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 Contract award. In any design/build Contract, the College loses some design control. Clarify design standards and the design approval process (including changes) and how costs will be reviewed.</p>	
<p>d. M & V costs: Third party M&V costs are paid from the project savings. Clarify how project savings are being verified (e.g., equipment performance, operational factors, energy use) and the impact on M&V costs.</p>	
<p>e. Non-Energy Cost Savings: The College and the ESCO may agree that the project will include savings from <i>recurring</i> and/or <i>one-time</i> costs. Recurring savings generally result from reduced O&M expenses or reduced water consumption. These O&M and water savings must be based on actual spending reductions. Clarify sources of non-energy cost savings and how they will be verified.</p>	

<p>f. Delays: Both the Contractor and the College can cause delays. Failure to implement a viable project in a timely manner costs the College in the form of lost savings, and can add cost to the project (e.g. construction interest, re-mobilization). Clarify schedule and how delays will be handled.</p>	
<p>g. Major changes in facility: The College controls major changes in facility use, including closure. Clarify responsibilities in the event of a premature facility closure, loss of funding, or other major change.</p>	
<p>2. Operational</p>	
<p>a. Operating hours: The College 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&V method (e.g., operating hours multiplied by improved efficiency of equipment vs. whole-building/utility bill analysis). Clarify whether operating hours are to be measured or stipulated and what the impact will be if they change. If the operating hours are stipulated, the baseline should be carefully documented and agreed to by both parties.</p>	
<p>b. Load: Equipment loads can change over time. The College 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 & V method. Clarify whether equipment loads are to be measured or stipulated and what the impact will be if they change. If the equipment loads are stipulated, the baseline should be carefully documented and agreed to by both parties.</p>	

<p>c. Weather: A number of energy efficiency measures are affected by weather. Neither the Contractor nor the College has control over the weather. Changes in weather can increase or decrease “savings” depending on the M&V method (e.g. equipment run hours multiplied by efficiency improvement vs. whole-building/utility bill analysis). If weather is “normalized,” actual savings could be less than payments for a given year, but will average out over the long run. Clearly specify how weather corrections will be performed.</p>	
<p>d. User participation: 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. Clarify what degree of user participation is needed and utilize monitoring and training to mitigate risk. If performance is stipulated, document and review assumptions carefully and consider M&V to confirm the capacity to save (e.g., confirm that the controls are functioning properly).</p>	
<p>3. Performance</p>	
<p>a. Equipment performance: Generally the Contractor has control over the selection of equipment and is responsible for its proper installation, commissioning, and performance. Generally the Contractor has responsibility to demonstrate that the new improvements meet expected performance levels including specified equipment capacity, standards of service, and efficiency. 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.</p>	
<p>b. Operations: Responsibility for operations is negotiable, and it can impact performance. Clarify responsibility for operations, the implications of equipment control, how changes in operating procedures will be handled, and how proper operations will be assured.</p>	

<p>c. Preventive Maintenance: Responsibility for maintenance is negotiable, and it can impact performance. 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 long-term preventive maintenance to maintain operational performance throughout the Contract term. Clarify what will be done if inadequate preventive maintenance impacts performance.</p>	
<p>d. Equipment Repair and Replacement: Responsibility for repair and replacement of Contractor-installed equipment is negotiable, however it is often tied to project performance. Clarify who is responsible for replacement of failed components or equipment throughout the term of the Contract. 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>	

b. SELF-PERFORMED WORK OR SUBCONTRACTORS.

- 1) State whether work is completed by the Contractor or by a subcontractor for each category of measure (auditing, design, procurement/supply of equipment from vendors and manufacturers, engineering, construction management services, lighting, HVAC, controls, monitoring & verification, etc.),
- 2) Describe how subcontractors are selected. Also comment on your ability to competitively select subcontractors.
- 3) Identify any subcontractors already selected.

6. COST AND PRICING

a. Markups

Markups represent a percentage added to the base cost for the project. Markup costs are disclosed to provide a typical project costing approach for a project of similar scope and size. This disclosure will provide the open book pricing structure to be used by the Contractor for this project. The markups will be used in the Technical Energy Audit Contract and Energy Performance Contract. (A substantial change in the scope and size of the project may necessitate renegotiation of the markups.)

Provide your company’s proposed maximum allowable markups in the schedule below for each category listed on the schedule. (The use of margins in lieu of markups is not acceptable.) This format is required and must be completed in its entirety. Use only the categories provided. Ranges for markups are not acceptable.

Clearly indicate (mark by page) if elements of this section are requested to be treated as proprietary (the responsible Purchasing official will make the final decision if this is to be treated as proprietary).

MARK-UPS		
CATEGORY OF MARK-UP	MARK-UP APPLICATION	% MARK-UP
Overhead		
Profit		
Labor – Internal		
Equipment Purchased		
Materials Purchased		
Subcontract Labor		
Subcontract Material		
Total:		

Clearly describe how self-performed work will be charged (billed hourly, billed as a markup of equipment and labor costs, etc.). If self-performed work will be billed hourly, include markups proposed to be applied to the hourly rate.

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

b. Fees

Provide your company’s proposed maximum allowable fees in the schedule below for each category listed on the schedule. This format is required and must be completed in its entirety. Use only the categories provided. Ranges for fees are not acceptable. If a proposal is from a joint venture partnership, provide proposed maximum allowable fees in the schedule format below for each participating company.

FEES		
CATEGORY OF FEE	HOW DETERMINED AND USED	YEARS APPLIED (One-time,

		<i>Annual, etc.)</i>
Technical Energy Audit and Project Development	\$ _____ per Square Foot	One time
Solicit & Evaluate Project Financing Proposals		
Design	(Example) ___ % of _____	
Contingency		
Permits		
Performance Bond		
Project Management		
Commissioning		
Training		
Monitoring and Verification		
Warranty Service		
Maintenance on Installed Measures		

Provide the proposed maximum fee for Technical Energy Audit and Project Proposal on a cost per square foot basis. The company agrees that the proposed maximum fees shall incorporate its responsibility to adhere to and complete the full scope of work as presented in the Standard Technical Energy Audit and Project Proposal Contract.

For each fee category listed on the schedule describe how that fee is determined, how the fee is charged to the project and when it is applied. For example, fees might be based on a percentage of project cost. Markups on fees are not allowable.

c. Audit Cost

- 1) **Total Cost.** State the total cost of the technical energy audit. Ensure that your cost is based on the approach and requirements included in **Attachment E: Model Energy Performance Contract**. For the purpose of this evaluation, assume all facilities listed in Attachment D: Technical Facility Profile will be audited.
- 2) **Unit Cost.** State the cost per square foot of the audit. This cost will be evaluated on the basis of reasonableness, so an unrealistically high or low cost will be devalued in the evaluation process.
- 3) **Meet Full Scope of Work of Audit Contract.** State your capability to complete the full scope of work as presented in **Attachment E: Model Technical Energy Audit and Project Proposal Contract**, within your proposed cost.

d. 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 the Facility Owner or be applied to additional work scope through a change order approved by the Facility Owner.

State how the contingency will be applied to cover changes in work scope and subcontractor change orders. State the typical level of contingency budget for lighting, electrical, mechanical, controls projects, and other projects.

Note that all unused contingency funds will revert to Agency or be applied to additional work scope through a State approved change order.

e. 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 the Facility Owner.

f. Open Book Pricing

Open book pricing is full disclosure by the contractor to the Facility Owner of all costs and markups for materials, labor, and services received during the project development, implementation, and performance period phases. Open book pricing will be required such that all costs, including all costs of subcontractors and vendors, are fully disclosed. Describe your company's approach to open book pricing and its method for maintaining cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records.

g. Application of Markups and Fees (Hypothetical Example)

Provide a sample of your pricing model using a two-measure performance contracting project. Show the complete detail of what will be provided to the College in the actual project using the markups and fees you will commit to in the actual project, as identified above, for all categories, fees and services that will be seen in the actual project.

Include a sample project proforma and clearly indicate all fees required for monitoring & verification, project management and all services that may be included in the actual project, including the audit cost. All markups and fees used in this example must be representative of what will be used in the actual project.

Additional markups, fees, or service category costs not shown in this example will NOT be allowed in the final contract.

Incomplete information will be considered an incomplete response and cause the response to be rejected.

a) Provide an example lighting measure that relates to this project in size and scope. Provide all pricing documentation as you will provide it for open book pricing in the final contract.

Clearly differentiate the subcontracted portion of the project and break out labor, materials and other categories as you will for open book pricing.

- b) Provide same information for an example boiler measure (or other heating/cooling equipment if a boiler replacement is not relevant for this project)
- c) Show the two measures above in a complete two-measure performance contracting project. Provide a proforma to clearly indicate all costs and fees represented as they will be applied in the final contract. Use the format and structure you will use in the final contract.

Best Value. Briefly describe how your approach to performance contracting delivers best value for the investment. This is an opportunity to point out how your company may be able to deliver a more cost-effective overall project due to corporate structure, relationships with vendors, depth of experience and expertise, local relationships and experience, experience in similar types of facilities, knowledge of particular retrofits, etc. Also describe any utility rebates or other financial incentives or grants can potentially provide and/or facilitate.

ATTACHMENT C: EVALUATION

The Evaluation Team has identified scoring weights for each section, with the “Cost and Pricing” section equaling a minimum of 30% of the total score of the written response to this RFP. The Evaluation Team recognizes it is premature to place a major emphasis on projected financial benefits prior to the completion of the Technical Energy Audit, because the Audit will define the potential scope and cost benefit. Therefore, the most emphasis will be on qualifications and less emphasis will be placed on the cost information, as shown below.

Project Management

<u>Criterion</u>	Point Value
Clarity, organization, and level of detail in written proposal.	5
Quality of presentation content, and communication skills of the ESCO's representatives at the oral interview (for firms that are selected for interviews)	10
Clarity and reasonableness of proposed milestones and timeline for project implementation.	3
Quality of proposed training for facility staff.	3
Quality of products proposed.	3
General reputation, reliability, working relationship and performance capabilities of the qualified providers.	6
Total:	30

Technical Approach

<u>Criterion</u>	Point Value
Quality of project-specific Preliminary Technical Energy Audit Report, including comprehensiveness of analysis, understanding of existing building systems and conditions, and conformity with specifications set forth in the RFP.	10
Quality of baseline energy calculations.	5
Quality of proposed project-specific Project Commissioning Plan.	4
Quality of proposed project-specific Maintenance Plan	3
Understanding of customer's facility, operation, and challenges.	3
Quality of proposed project-specific Measurement and Verification Plan.	5
Total:	30

Financial Approach

<u>Criterion</u>	Point Value
Reasonableness of proposed financing arrangement and financial analysis assumptions proposed for this project.	5
Reasonableness of the project-specific Preliminary Cost Proposal	3
Dollar value of projected energy savings.	3
Dollar value of projected operating savings and clarity of supporting documentation.	4
Reasonableness of investment grade energy audit costs.	3

Subcontractor prices offered are reasonable	2
Markups fair and reasonable	5
Proposed costs of construction, financing, maintenance and training.	5
Total:	30

Other benefits to College: This can refer to such non-tangible benefits such as improvements to the learning environment, teaching opportunities, green building considerations, greenhouse gas reductions, anti-drought measures, etc. **10**

Grand Total: 100

INTERVIEWS

Contractors in the competitive range will be invited for an oral interview. The proposal scores will be modified based on clarifications to responses provided in the interview.

SELECTION

The Evaluation Team will identify the apparent awardee and then contact references to complete the evaluation.

With quality references, the apparent awardee will be notified of selection; otherwise, the same process will be used with the second-ranked Contractor.

ATTACHMENT D: TECHNICAL FACILITY PROFILE

The information in this technical facility profile is provided to inform the Contractor about the condition of the facilities. The information was prepared with diligence. The Contractor is responsible for verifying the accuracy, as necessary.

Description of Buildings in Proposal

- 1) Horace Mann Hall – Office and Classroom Building
- 2) Browne Hall – Residence Hall (with some offices)
- 3) Central Steam Plant (located in Whipple Hall) and Steam Distribution and Condensate Return Systems

Building List for Potential Future Projects

Number	Building	Occupancy	Gross Area (SF)
1	Adams Library	Library	103,178
2	Craig-Lee Hall	Classroom	80,352
3	Student Union	College	39,240
4	Clarke-Science (w/greenhouse)	Laboratory	43,126
5	Donovan Dining (w/ faculty center)	Dining	57,595
6	Forman Center	Office	20,986
7	Roberts Hall	Office	61,845
8	Building 9 (School of Social Work)	Classroom	21,267
9	Murray Center	Gymnasium	72,265
10	Nazarian Center	Performing Arts	46,110
11	Fogarty Life Science	Classroom	55,924
12	Gaige Hall	Classroom	62,952
13	Horace Mann Hall	Classroom	46,023
14	Whipple	Classroom	37,960
15	Alger Hall	Classroom	29,303
16	H. Barnard School	Classroom	81,433
17	Recreation Center	Recreation Center	71,987
18	Building 3	Office	9,385
19	Building 4	Office	8,388
20	Building 5	Office	8,388
21	Sherlock Center	Office	11,342
22	Art Center	Classroom	34,081
23	Physical Plant	Office	30,300
24	Sweet Hall	Dormitory	45,553
25	President's House	Dwelling	4,769
26	Cooperative Pre-School	Classroom	1,821
27	Fruit Hill Ave (Bldg. 30)	Office	4,017
28	Alumni House (Bldg. 31)	Office	5,107
29	Building 29 - Center for Economic Education	Office	2,749

30	Barn	Storage	4,343
31	Building 26 (former Sherlock Center)	Office	3,514
32	Yellow Cottage	Vacant	4,650
33	Building 1	Office	9,065
34	Building 2	Office	9,065
35	Building 6	Office	9,065
36	Building 8	Office	9,065
37	Building 10 (Kauffman Center)	Office	10,486
38	New Residence Hall	Dormitory	125,000
39	Thorp Hall	Dormitory	32,491
40	Weber Hall	Dormitory	40,718
41	Browne Hall	Dormitory	52,353
42	Willard Hall	Dormitory	26,709
	Total		1,433,970

Note: The Recreation Center was renovated in 2012, The Yellow Cottage was renovated in 2012, and the Art Center will be completed renovated in 2012-2014. Gaige Hall and Craig Lee Hall are scheduled for renovation in 2013-2014.

Energy and Water Cost & Consumption Information

RIC is compiling the latest three years of utility data and cost into spreadsheets. They will be supplied in an Addendum.

ATTACHMENT E: Energy Performance Contract

OVERVIEW:

This Energy Performance Contract is for audit, design, construction, guarantee, and follow-up monitoring of energy-saving projects. The audit provides the basis to develop and negotiate this Energy Performance Contract.

The complete “model” contract is under a separate electronic file for easier use.

ENERGY PERFORMANCE CONTRACT

BETWEEN

RHODE ISLAND COLLEGE

AND

ESCO

October 18, 2012

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ATTACHMENTS

A-1	Description of Premises
A-2	Scope of Audit Services for Financial Grade Audit
A-3	Payment Schedule for Financial Grade Audit
A-4	Form of Audit Work Order
B-1	Description of Premises
B-2	Scopes of Work
B-3	Payment Schedule
B-4	Measurement and Verification Plan and Performance Guarantee
B-5	Equipment Standards
B-6	Specialized Construction or Operational Requirements
B-7	Hours Available for Performing the Work
B-8	Comfort Standards
B-9	Evidence of Corporate Authority & Qualification as Foreign Corporation, if Necessary
B-10	Delivery and Acceptance Certificates – Upon Substantial and Final Completion
B-11A	Guidelines for Project Acceptance
B-11B	Delivery and Acceptance Certificate – Upon Project Acceptance
B-12	Security For Performance Guarantee
B-13	Major Equipment
B-14	Changes to the Work Form

Preamble

THIS ENERGY PERFORMANCE CONTRACT (hereinafter "Contract") is made and entered into as of _____, 2009 ("Effective Date") by and between **ESCO** (hereinafter "ESCO"), a Corporation organized under the State laws of **State** having its principal offices at # **Street, City, State Zip Code**, and The Rhode Island Board of Governors for Higher Education acting on behalf of Rhode Island College (hereinafter "the Customer"), having its principal offices at 600 Mount Pleasant Avenue, Providence Rhode Island 02908, (collectively the "Parties") for the purpose of providing services and furnishing certain equipment and work specified herein ("Work") designed to improve thermal efficiency, conserve energy and conserve water, reduce waste water, reduce operating costs and, when specified, generate electrical power at Customer properties (hereinafter, collectively, the "Premises"). Said Premises may include all existing buildings; new buildings, and buildings rehabilitated during the term of this Contract; as well as the central plant and all distribution systems for steam, electric, fuel, water and sewer at Customer properties.

WHEREAS, The Customer desires ESCO to perform a Financial Grade Energy Audit ("Audit"), pursuant to this Contract, for premises ("Premises") listed in Attachment A-1 hereto and perform one or more additional Audits pursuant to an authorized notice to proceed ("NTP") from the Customer (Audit Work Orders), for properties to be identified in such NTP. The Audit shall, consistent with the requirements of Attachment A-2, develop potential energy conservation measures ("ECMs") and operating cost savings measures ("OCMs") for installation and implementation at the Premises.

WHEREAS, The Customer further desires that ESCO perform the Work identified in a Customer-accepted Audit under such terms and conditions set forth in this Contract and in accordance with any further requirements set forth in a construction work order ("Construction Work Order").

WHEREAS, the general terms and conditions set forth herein are the terms by which ESCO agrees to perform the Work for the Customer and by which the Customer agrees to compensate ESCO for such Work. This Contract and any Construction Work Order issued hereunder is conditioned upon the Customer obtaining financing from a reasonably acceptable lender or lessor in an amount not less than the Contract Price as described in the applicable Attachment B-3 and upon such terms as are satisfactory to the Customer, provided Customer shall diligently pursue such financing upon such terms as are customary, reasonable and in compliance with pertinent laws and regulations including, without limitation, financing arranged by ESCO. Should the Customer fail to obtain financing or decide not to go forward with the project for any reason prior to ESCO beginning construction pursuant to the applicable Construction Work Order, Customer shall reimburse ESCO as described in the applicable Attachment A-3, Payment Schedule for Financial Grade Audit and ESCO shall have no further obligations to Customer under that Project and Customer shall have no further obligation to ESCO.

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties agree as follows:

1. Definitions

The following terms used within this Contract are defined as follows:

Construction Work Order – Work as defined in Schedule B of this Contract.

Customer's Representative – The individual or individuals authorized in writing by the Owner to represent the Customer.

Energy Baseline – A calculation or measure of each type of energy consumed (or, as appropriate, water consumed or operating and maintenance costs) in existing facilities at the Premises prior to the installation of energy conservation measures or energy efficiency measures as described in Attachment B-4.

Energy Cost Savings Measures (ECMs)/Operating Cost Savings Measures (OCMs) – A set of activities that result in savings of energy, water or operating and maintenance costs at the Premises and described in detail in Attachment B-2. ECMs may include replacement, retrofit, and improvement of existing systems or equipment as well as the addition of new equipment, new buildings, and building additions. OCMs include any expenses that are eliminated, avoided and stipulated as a result of the installation or modification of equipment, or services performed by ESCO. OCMs do not include any savings that are realized solely because of a shift in the cost of personnel or other similar short-term cost savings.

Energy Savings – The reduction in energy consumption or demand resulting from ESCO's ECMs/OCMs and shall include electric energy savings, gas energy savings, operational savings, maintenance savings, water consumption savings and any other savings achieved as a result of the Work as shall be determined after adjustments for variations in other factors that might substantially affect the data such as weather, changes in operating practices or other external influences. Energy savings shall be determined by comparing the Energy Baseline with the energy consumed (or demand) after ESCO has implemented ECMs/OCMs. A description of the promised savings and the terms of the Performance Guarantee with respect to promised Energy Savings are included in Attachment B-4.

Final Completion – The date on which ESCO warrants by written notice in the form provided in Attachment B-10-B that all Work is completed including all remaining items of Work identified in the notice contained in Attachment B-10-A delivered at Substantial Completion.

Project Acceptance – The date the Customer approves all Work warranted by ESCO to be at Final Completion, including all remaining items of Work identified in the notice delivered at the Substantial Completion date. Project Acceptance will not be made until ESCO has successfully demonstrated the Guidelines for Project Acceptance as described in Attachment B-11-A. Project Acceptance shall be by written notice in the form provided in Attachment B-11-B.

Substantial Completion – The date on which ESCO warrants by written notice in the form provided in Attachment B-10-A that the ECMs/OCMs are fully installed and in good working condition consistent with the requirements of the Contract, and verified by an initial commissioning report, and the Customer has accepted such ECM/OCM as installed.

Work – The performance of the Audit as per the applicable Audit Work Order or, as the case may be, the installation of ECMs / implementation of OCMs and other services provided by ESCO as more particularly described in this Contract and the applicable Construction Work Order.

2. Contract Documents

It is understood and agreed that the Contract consists of this document and all attachments, work orders, schedules and any amendments or addenda thereto. In addition, all requirements set forth in the request for proposals/qualifications (RFP) issued by Customer and in ESCO's response, unless specifically excluded, shall be part of the Contract. Further, to the extent there are future projects at the Premises undertaken by the parties, it is understood that any reference herein to attachment or schedule shall be for that "applicable" or "respective" attachment or schedule. If any terms are contradictory between this Contract and the RFP documents, the order of precedence shall be as follows:

1. Amendments and Change Orders
2. Construction Work Orders
3. Audit Work Orders
4. Base Contract
5. RFP and ESCO's Proposal Response

3. Representations and Warranties

3.01 Representations and Warranties of Both Parties

Each party hereto represents and warrants to the other that:

- (i) it has adequate power and authority to conduct its business as presently conducted or contemplated hereby to be conducted, to enter into this Contract and to perform its obligations hereunder,
- (ii) It possesses full authority to execute and deliver this Contract and that it does not contravene any applicable law, rule or regulation;
- (iii) its execution, delivery and performance of the 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;
- (iv) its execution, delivery and performance of this Contract will not result in a breach or violation of, or constitute a default under any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- (v) 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 that would materially and adversely affect its ability to perform hereunder.

3.02 Representations and Warranties of ESCO

ESCO hereby warrants, represents and promises that:

- (i) Before commencing performance of the Contract ESCO shall have become qualified, licensed or otherwise permitted to do business in the State of Rhode Island shall provide proof and documentation of such qualification to the extent not included in Attachment B-9;
- (ii) Before commencing any work or audit under this contract and issuance of a Purchase Order by Customer, ESCO shall provide proof and documentation of all required insurance and bonds pursuant to this Contract;
- (iii) ESCO shall use subcontractors who are qualified, licensed and bonded in this State and approved by Customer in writing to perform the Work so subcontracted;
- (iv) ESCO has all requisite authority to license the use of proprietary property, both tangible and intangible, contemplated by this Contract;
- (v) Equipment installed as part of the ECMs/OCMs will meet or exceed the equipment standards set forth in Attachment B-5 and acknowledges that Customer reserves the right to reject all non-conforming goods and to cause their return for credit or replacement at Customer's option;
- (vi) the equipment installed as part of the ECMs/OCMs is or will be compatible with all other Premises' mechanical and electrical systems, subsystems, or components with which such equipment interacts, and that, as installed, neither such 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;
- (vi) 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 the Contract and has no outstanding and delinquent debt owed to the State of Rhode Island or any political subdivision thereof;
- (vii) it has not, directly or indirectly, participated in any collusion or otherwise taken any action in restraint of full competitive bidding with respect to this Contract or the solicitation process leading to this Contract; and
- (viii) it has not paid, and agrees not to pay, any bonus, commission, fee or gratuity to any employee or official of the State of Rhode Island for the purpose of obtaining this Contract or any other contract or award issued by the State and that no commission or other payment has been or will be received from or paid to any third party contingent upon the award of any contract by the State except as previously communicated to the State Purchasing Agent in writing (and ESCO acknowledges that, pursuant to state regulation, subsequent discovery of non-compliance with this provision constitutes sufficient cause for immediate termination of this Contract and other remedial action).

3.03 Representations and Warranties of the Customer

Customer hereby represents and warrants that:

- (i) It is a tax exempt entity and, therefore, the Work required by this Contract may be subject to tax exemption for Rhode Island sales or use tax purposes upon compliance with the appropriate process.

4. Price and Terms

4.01 Contract Price

The price for full consideration of the Work performed in this Contract is stated in Attachments A-3 and B-3.

For work related to the implementation of ECMs and OCMs, ESCO will submit for the payment of progress, a monthly Payment Application to Customer, either on a form issued by the American Institute of Architects ("AIA") or another form, substantially similar to the AIA form, approved by the Customer ("Payment Application"), for portions of the ECMs and OCMs completed by ESCO that have been commissioned, on a building-by-building basis, segments/components steam systems completed by ESCO that have been commissioned and for Major Equipment (as defined in Attachment B-13) delivered to the site. Customer shall approve and authorize release of construction financing less ten percent (10%) retain age from the Escrow Agent/Trustee to the ESCO within forty-five (45) days following Customer's receipt of a Payment Application. Customer shall not be required to approve the release of construction financing for Work yet to be performed, for portions of ECMs, OCMs or steam system components/segments that have not been commissioned on a building-by-building or pipe segment-by-pipe segment basis or for Major Equipment not delivered to the site. In the event that the Customer disputes a portion of a Payment Application, Customer shall timely authorize the release of construction financing in an amount equal to the undisputed portion of the Payment Application. In the event that Customer disputes a Payment Application or a portion of the Payment Application, Customer shall indicate its reason for the dispute in writing to ESCO within fourteen (14) days of the receipt of the Payment Application and the parties will negotiate in good faith in an attempt to resolve the dispute prior to the expiration of the forty-five (45) day period. If the parties cannot resolve the dispute within such forty-five (45) day period, Late Payment interest shall begin to accrue pursuant to section 4.02 hereof but such Late Payment interest shall only be released to ESCO in the event that the dispute, or some portion thereof, is eventually resolved in favor of ESCO in accordance with Section 9.01's Dispute Resolution procedure. Customer shall continue to make payments, including release of retainage, for all undisputed work during the period of the dispute resolution.

ESCO shall be responsible for paying all other taxes and tariffs of any sort related to the Work. ESCO shall be responsible to pay for all labor, materials, equipment, tools, construction, equipment and machinery, fuel, transportation and other facilities and services necessary for the proper execution and completion of the Work. To assist in ESCO's tax compliance, however, upon Final Project Completion Customer agrees, if applicable, to execute the required Written Allocation including the Declaration related to Section 179D of the Internal Revenue Code. ESCO will be responsible for preparing the Declaration, all accompanying documentation and the contents therein. ESCO will be designated the sole Section 179D beneficiary. ESCO shall reduce the Customer's costs in an amount that constitutes an equitable split of the Section 179D credit, said split to be determined by the Parties in an amount and/or percentage mutually agreeable to the Parties, of any tax credit or rebate received by the ESCO pursuant to Section 179D of the Internal Revenue Code, less ESCO's

costs incurred in preparing the required audit, Declaration and other related documentation. Following Project Acceptance, the Customer shall pay ESCO in accordance with Attachment B-3 for the management and monitoring and verification services described in Attachment B-4. The continuing payment for monitoring and verification services and any operating services shall be a condition to ESCO's Performance Guarantee. Notwithstanding any other provisions of this Contract, in the event the Customer terminates the measurement and verification services, ESCO's Performance Guarantee shall terminate. ESCO shall provide full disclosure of all costs relating to the Work, including costs to subcontractors and vendors. ESCO shall provide a listing of direct costs including copies of PO's for vendors and subcontractors and a breakdown of indirect costs associated with the project.

4.02 Late Payment

Interest shall accrue on any past due balance ("Late Payment") owed to either party hereunder, including for the Work or pursuant to the Performance Guarantee, at the rate of one percent (1%) per month (or the highest rate not prohibited by law), whichever is lower. This remedy shall be in addition to, and not exclusive of, any other remedy available under this Contract or applicable law.

4.03 Contract Termination

This Contract shall be effective and binding upon the parties immediately upon its execution and issuance by the Customer of a Purchase Order. Unless otherwise terminated, including pursuant to Section 7.0 of the Contract, or agreed to in writing pursuant to this Contract, this Contract shall terminate on the last day of the Performance Guarantee, as stated in Attachment B-4, Section 2, unless otherwise extended by subsequent Work Orders.

5. The Work

5.01A Financial Grade Audit

- i) Upon signature of this Contract by the Parties and receipt of a fully executed Audit Work Order in a form substantially similar to Attachment A-1, Schedule A which is hereby incorporated by reference, ESCO will begin performance of an Audit in accordance with Attachment A-2 – Scope of Audit Services for Financial Grade Audit of Selected Facilities.
- ii) The Customer agrees to assist ESCO in performing the Audit by working diligently to provide full and accurate information. Customer agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed. It is the ESCO's responsibility to verify all information provided by Customer.
- iii) The primary purposes of the Audit are to identify specific areas where ECMs and OCMs can provide the Customer with long-term energy and operating cost savings, and define a program for installation of such ECMs/OCMs.
- iv) ESCO shall issue an Audit Report ("Audit Report" or "Report"), which shall include a Scope of Work for proposed installation of ECMs/OCMs in accordance with the terms of this Agreement. The anticipated cost savings to be achieved by the recommended ECMs/OCMs shall be designed to

cover the eventual Contract Price for installation of such ECMs/OCMs.

- v) Reuse of the Audit Report or portions thereof by the Customer shall be limited to the Customer and the Customer's Representatives. When reuse is contemplated, all title blocks and references to ESCO shall be removed from drawings unless written consent for reuse is given by ESCO. The Customer shall defend, indemnify and hold ESCO, its officers, employees and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims or injury or damages arising out of the reuse of the Audit Report and/or any designs or portions thereof without the written consent of ESCO.
- vi) Audit Review: The Customer's Representatives shall meet with ESCO to review the Audit Report and agree upon the Scope of Work for the Construction Work Order. ESCO shall document: the Scope of Work, a Payment Schedule and the corresponding energy and operating cost savings guaranteed by ESCO by negotiating and preparing Attachments to a proposed Construction Work Order for review by Customer. The Customer shall subsequently execute and issue a Construction Work Order in form acceptable to Customer. Should the Customer fail to obtain financing or decide not to go forward with the Project for any reason prior to ESCO beginning construction pursuant to the applicable Construction Work Order, Customer shall reimburse ESCO as described in the applicable Attachment A-3, Payment Schedule for Financial Grade Audit and ESCO shall have no further obligations to Customer under that Project and Customer shall have no further obligation to ESCO.

5.01B Energy Cost Savings Measures and Operating Cost Savings Measures

ESCO will implement ECMs/OCMs as specified in Attachment B-2 and related drawings and plans and any subsequent revisions thereto ("Scope of Work") upon receipt of a fully executed Construction Work Order, in a form substantially similar to Schedule B.

5.01C Time for Performance and Project Acceptance related to Implementation of ECMs/OCMs

ESCO shall commence Work within thirty (30) days of the receipt from Customer of the Construction Work Order in a form substantially similar to Schedule B, which Customer shall send upon closing financing. ESCO shall substantially complete the Work consistent with the schedule set forth in Attachment B-2. Except as otherwise provided herein, extension of dates to commence or complete Work shall be granted at the sole discretion of the Customer. Approval for an extension of dates to commence or complete Work shall not be unreasonably withheld if the cause for an extension is pursuant to Sections 5.03, 5.06, 5.08, 5.12, 5.13, or 9.02.

Once all of the ECMs/OCMs are implemented, all items on the Checklist for Project Acceptance in the form provided in Attachment B-11-A are complete and all items that Customer previously deemed not to be in compliance with the requirements set forth in this Contract have been corrected, ESCO shall submit and deliver to Customer a Delivery and Acceptance Certificate Upon Final Completion in the form provided in Attachment B-10-B evidencing in reasonable detail that all items on the Checklist for Project Acceptance located in

Attachment B-11-A are complete and that all items that Customer deemed not to be in compliance with the requirements set forth in this Contract have been corrected and which shall also be accompanied by a Final Commissioning Report.

Upon receipt by Customer of Delivery and Acceptance Certificate upon Substantial Completion, Customer shall have thirty (30) days to complete review of the ECMs/OCMs in accordance with the Guidelines for Project Acceptance in the form provided in Attachment B-11-A. The Customer shall notify the ESCO of each item that does not satisfy the Guidelines for Project Acceptance within thirty (30) days of receipt of the Delivery and Acceptance Certificate Upon Substantial Completion Form or Substantial Completion will be deemed to have been achieved. The Customer reserves the right to reject the work if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes or is otherwise not in compliance with the terms of this Contract. Upon correcting all items identified by Customer as not satisfying the Guidelines for Project Acceptance, ESCO shall submit and deliver to Customer a new Delivery and Acceptance Certificate Upon Substantial Completion. Customer shall have an additional twenty-one (21) days to complete review of the ECMs/OCMs in accordance with the Guidelines for Project Acceptance upon receipt of a new Delivery and Acceptance Certificate Upon Substantial Completion.

Final Project Acceptance shall be evidenced by the Customer submitting and delivering to the ESCO the Delivery and Acceptance Certificate Upon Project Acceptance in the form provided in Attachment B-11-B, the delivery of which will indicate acceptance of the Final Commissioning Report.

In the event that Attachment B-2 includes a provision for liquidated damages in the event that ESCO does not attain Final Completion by the date of Final Completion, then such liquidated damages shall be the Customer's sole remedy for any such delay in the completion of the Work.

5.02 Specifications of Work

ESCO's obligations hereunder are specified in the "Scope of Work", as approved by the Customer. Excluded from the Work are any modifications or alterations to the properties not expressly included within the Scope of Work. The requirements of all applicable laws, regulations and codes of federal, state, and local town or city government shall be met at all times. Additional construction or operation requirements at the Premises, if any, are described in Attachment B-7. All Work shall be performed in a good and workmanlike manner. Time is of the essence with respect to the Work.

5.03 Construction Procedures, Changes to Work and Coordination

ESCO shall furnish all labor, materials and equipment and supervise, coordinate and direct the Work using ESCO's best ability, skill, attention, and oversight. ESCO, in consultation with Customer, shall be responsible for the construction means, methods, techniques, sequences, and procedures. The Customer shall promptly review all proposed material modifications to the building and systems and must approve of same prior to commencement of any Work; such approval will be made in a timely manner and will not be unreasonably withheld.

Customer or ESCO may propose a change to the scope or specifications of Work ("Change to the Work"). However, no change to the scope or specifications of Work shall be

made without the written consent of both the Customer and the ESCO, in the form of a revision to the Scope of Work, in accordance with Attachment B-14. The description of the Change to the Work shall include a description of the change to the scope or specifications of Work; a price to furnish and install said changes and its affect on the Contract Price; the adjustment to the energy and cost savings as described in Attachment B-3, part D and Attachment B-4; and the adjustment to the price for M&V and O&M services as described in Attachment B-3, part D. Each requested Change to the Work shall be approved or rejected by the Customer or ESCO within thirty (30) business days of receipt of the proposed Change to the Work.

If ESCO fails to correct Work which is not in accordance with the specifications or persistently fails to meet specifications herein, Customer may order ESCO to stop the Work, or any portion thereof, until the cause for such order has been rectified to the Customer's satisfaction. ESCO shall perform the Work in such a manner as not to harm the structural integrity or operating systems of any building and shall repair and restore any damage caused by its Work at ESCO's expense. ESCO shall not create or allow to continue any condition deemed to endanger health or safety as defined in Section 6.01 and if such a condition exists Customer shall have the right to exercise the remedies described therein. ESCO shall supply to the Customer the telephone number of a responsible person who may be contacted during non-work hours for emergencies arising in connection with or affecting the Work. ESCO shall coordinate any utility hookups provided by others under a separate agreement at no additional cost or expense to the Customer. ESCO acknowledges that there is sufficient space within the Premises for the performance of the Work.

5.04 Relationship with Maintenance Staff

ESCO shall cooperate with Customer's operating and maintenance personnel, train said personnel in operation and maintenance of any equipment installed as part of the Work, and coordinate the Work on a planned and programmed basis including the specific actions described in Attachment B-2. ESCO shall deliver a preventive maintenance schedule and procedures for any equipment installed as part of the Work.

5.05 Material and Equipment Installed

The Customer shall make the final determination whether any material or equipment installed is as specified in the Scope of Work or, if appropriate, ESCO's Response to the RFP, which is incorporated in this Contract by Section 9.13 below. No substitution of any material or equipment specified shall be made without the written consent of the Customer in the form of a revision to the Scope of Work, and any such substitution shall be at least equal in quality, finish, durability, serviceability and performance for the purpose intended. If alternative material or equipment is proposed, ESCO must update any and all software associated with the ECMs/OCMs, the Work or the measurement of savings. Customer reserves the right to reject all non-conforming goods and services and to direct ESCO to replace or credit the Customer, at Customer's election. Failure by Customer to discover latent defects or concealed damage or non-conformance shall not foreclose Customer's right to subsequently reject the goods or services delivered pursuant to this Contract. Formal or informal acceptance by the Customer of non-conforming goods or services shall not constitute a precedent or waiver with respect to successive receipts of goods and services. If ESCO fails to promptly cure the defect or replace nonconforming goods or services, the Customer reserves the right to, after receipt by ESCO of Customer's written notice to ESCO, terminate the Contract, contract with a different entity for the goods and services to be provided herein and to invoice ESCO for any differential in price.

ESCO shall install and, when applicable, maintain, or, if specified in the Scope of Work, train Customer personnel to operate and maintain equipment in a manner that will provide standards of service to meet requirements of Section 5.02 and equipment manufacturers' literature, specifications and instructions. ESCO will service and maintain the ECMs/OCMs described in Attachment B-2 and Customer shall pay ESCO for such services during the term of this Contract as provided in Attachment B-3. Except for ECMs/OCMs or other equipment that is to be serviced and maintained by ESCO as provided in Attachment B-2, Customer shall be responsible for servicing and maintaining equipment at the Premises. ESCO shall prepare and furnish at least three (3) maintenance manuals that include product data and which are subject to acceptance by the Customer for all equipment installations at the Premises.

5.06 Asbestos and Hazardous Materials

ESCO will be responsible for proper disposal of construction demolition debris that does not contain Hazardous Materials, as defined herein. ESCO will be responsible for proper disposal of all ballasts in the Scope of Work containing or suspected of containing PCBs and fluorescent lamps containing mercury. Disposal plans must be documented and appropriate transportation and disposal documents prepared before disposal commences and actual disposal must be documented to Customer immediately after disposal.

The Customer recognizes that in connection with the Work, installation and/or service or maintenance of equipment and/or systems at the Customer's facilities, 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, or (ii) mold, materials containing mold, or the existence, use, detection, removal, containment or treatment thereof, or (iii) pollutants, hazardous wastes, hazardous materials, contaminants (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 hereinafter referred to as "Excluded Materials and Activities". The Customer agrees that if ESCO encounters any Excluded Materials and Activities, upon receipt of any and all appropriate funding and approval, the Customer will perform or arrange for the performance of such Work and will bear the sole risk and responsibility therefore. The foregoing sentence notwithstanding, ESCO shall remove and dispose of asbestos containing or hazardous materials which is specifically included in the Work and specifically described in Attachment B-2. In the event ESCO discovers Hazardous or Excluded Materials, ESCO will immediately cease Work, remove all ESCO personnel or subcontractors from the site, and notify the Customer. The Customer will be responsible to handle such Materials at the Customer's expense. ESCO will undertake no further Work at the facility except as authorized by the Customer in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Customer will not constitute a default by the Customer. In all instances, with the only exception being those hazardous materials that Contractor brings to the site, the Customer will be the "Generator" of record and sign any and all manifests as such in order to document the abatement or removal of any such hazardous materials from Customer's site or Premises.

ESCO will be solely responsible for any hazardous or other materials, including without limitation those listed in this paragraph, that it may bring to the site.

5.07 Subcontracting and Assignments

- 1) ESCO may elect to use subcontractors in meeting its obligations hereunder. Customer shall approve all subcontractors and outside professionals in advance which approval shall not be unreasonably withheld or delayed. ESCO shall be responsible for the conduct, acts and omissions, whether intentional or unintentional, of its subcontractors, employees, agents, invitees or suppliers. ESCO agrees to bind each of its material subcontractors to the terms of ESCO's obligations under Sections 5.01 - 5.06, 5.08, 5.09, 5.14 - 5.16, 8.01 - 8.07, 9.03, 9.04, 9.06 and 9.10 of this Contract. Nothing in this Contract shall create any contractual relationship between any subcontractor, employee, agent, invitee or supplier and the Customer.
- 2) ESCO shall not assign this Contract in whole or in part to any other party without first obtaining the consent of Customer, which shall not be unreasonably withheld, denied, or delayed, provided that ESCO may assign the Contract to a ESCO affiliate that controls, is controlled by or is under common control with ESCO with prior notice to Customer. Notwithstanding the foregoing, ESCO may assign, without obtaining the consent of Customer, its rights for payments under this Contract to any financial institution, lender or investor in connection with a leasing or financing arrangement for the ECMs/OCMs. ESCO will notify Customer thirty (30) days prior to any such assignment.

5.08 Delays

If ESCO is delayed in the commencement or completion of any part of the Work due to events beyond ESCO's control and without the fault or tortuous act or omission of ESCO, including but not limited to fire, flood, extended labor disputes, unusual delays in deliveries, unavoidable casualties, abnormal adverse weather, war, and acts of God, or due to Customer's actions that are reasonably foreseeable to said Customer or Customer's failure to perform its obligations under this Contract, then ESCO will notify Customer in writing of the existence, extent of, and reasons for such delay. ESCO shall have a claim for reasonable reimbursement on account of such delays. ESCO and Customer may extend the contract time by revision to the Scope of Work for such reasonable time as they shall agree. If Customer determines that a delay described in the first sentence of this section will result in ESCO not completing the Work for a period of ninety (90) days or more, then Customer may terminate this Contract and the Customer shall pay ESCO for the portion of the Work completed up to the Contract termination date.

5.09 Equipment Location and Access

The parties understand and agree that the Premises will be occupied during construction. ESCO shall take all necessary precautions to ensure the public safety and convenience of the occupants during construction and Customer shall cooperate with ESCO's reasonable requirements and related requirements described in Attachments B-2 and B-4. ESCO shall complete the Construction Work in accordance with the schedule in Attachment B-2. ESCO shall use sufficient personnel and adequate equipment to complete the Work pursuant to Section 5.01. The Work must be completed in a continuous uninterrupted operation on the days and between the hours specified in Attachment B-7, unless otherwise authorized in writing by the Customer. No Work is to be done on holidays, Saturdays, or Sundays except as contemplated in Attachment B-7, the Scope of Work in order to maintain the Standards of

Comfort described in Attachment B-8 or in the event of emergencies unless otherwise approved by Customer. The Customer will provide access to the Premises at the times agreed upon and make all reasonable provisions for ESCO to enter the Premises where Work is to be performed so that Work may be performed in an efficient manner. ESCO shall complete the Construction Work also in accordance with the Specialized Construction or Operational Requirements as defined in Attachment B-6, as applicable.

ESCO is responsible for the security of partially completed work and for uninstalled materials or equipment stored at Customer properties. Only materials and equipment intended and necessary for immediate use shall be brought into the buildings. Equipment and unused materials shall be removed from each building by the end of each workday unless overnight storage is provided for within the Scope of Work. The Customer shall provide if available, without charge, a mutually satisfactory location or locations for the storage and operation of materials and equipment and the performance of the Work, including a location for staging and mobilization. ESCO assumes all risk of loss or damage to the Work/equipment until achievement of Substantial Completion of each ECM, and at that time risk of loss and title to the Work/equipment shall pass to the Customer.

Flammables and combustibles shall be stored only in accordance with the requirements of relevant statutes, regulations, NFPA standards and Customer procedures. In the event that the Customer is unable to provide a satisfactory location for the storage of flammables and combustibles, then ESCO shall provide and pay for suitable storage.

5.10 Permits and Fees

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

5.11 Utilities

The Customer shall provide and pay for water, heat, fuel and utilities consumed by ESCO. ESCO shall install and pay for any facilities or modifications not already in existence that are necessary to access such water, heat, and utilities during the Work.

5.12 Concealed or Unknown Conditions

If ESCO finds conditions during the Work that are subsurface or otherwise concealed physical conditions that differ materially from those indicated on the drawings or are unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in similar construction activities, ESCO shall notify Customer of such conditions promptly, prior to significantly disturbing the same, and in no event later than one (1) business day after first observing the conditions. Such conditions may include, but are not limited to, water damage, termite damage, or structural building defects. If such conditions differ materially and cause an increase in ESCO's cost of, or time required for, performance of any part of the Work, ESCO shall submit a written estimate of the material and labor cost increase and time delay. If the Customer concurs with the need, cost

estimate, and time delay, Customer and ESCO shall make an equitable adjustment in the Contract Price or Time for Performance and Final Completion, or both. ESCO shall be entitled to damages as defined heretofore in Section 5.08 of this Agreement.

5.13 Casualty, Condemnation, Damage

If any fire, flood, other casualty, or condemnation renders a portion of any property described in Attachment A-1 unsuitable for habitation or destroys a substantial part of the area within which the Work is to be performed or which the Work affects, the Customer and ESCO may terminate or modify this Contract by mutual agreement. The Customer shall pay ESCO for all Work completed to the date of termination. If any materials or equipment are damaged by the tortuous act or omission of an employee, agent or invitee of Customer, Customer shall repair or replace said item within a reasonable period of time, or, adjust the Contract Price to pay for repair or replacement or adjust Time for Performance and Final Completion, or both.

5.14 Standards of Service and Comfort

The facility performance requirements of service and comfort applicable to the Premises for heating, cooling, hot water, and ventilation and lighting are stated in Attachment B-8 ("Standards of Comfort") and shall apply throughout the Contract. If ESCO is unable to meet these Standards of Comfort for any reason, the Customer and ESCO shall mutually agree upon an appropriate adjustment to Energy Savings, the price paid for the Work or any corrective measures that shall be provided and paid for by ESCO.

5.15 Shutdown of Services

ESCO hereby acknowledges that continuous operation of services, including but not limited to heat, water, domestic hot water, electricity, gas, sanitary facilities, elevators, fire alarms or protections, and access to the property, or common areas is essential to the operation of the Customer's properties as reflected in the Standards of Comfort. If any such service, or access to the property, or any common area is to be discontinued for any period of time in order to perform the Work (including actions described within the Scope of Work), ESCO shall give the Customer as much notice in writing as is practicable, but in no event less than seven (7) days in which event the Customer shall, by written response, approve unconditionally or with conditions such shutdown of services and the timing thereof. The use of any portion of the Premises by ESCO for parking or staging areas for the Work shall be expressly approved by Customer prior to the Commencement of the Work. Such conditional approval may include a requirement for ESCO to provide and pay for temporary services, may limit the time period for which services or access may be shut down, or may require other actions, accommodations or expenditures on the part of ESCO. With respect to fire alarm or other fire protections, ESCO shall also notify the Customer's project manager and contact as designated in the Construction Work Order of any shutdown of service and notify the Customer's project manager when such service is restored.

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

5.16 Indemnification and Limitation of Liability (Non-Patent or Copyright)

ESCO shall be responsible for the Work and take all reasonably foreseeable precautions for preventing injuries to persons and property in or about the Work and shall indemnify, hold harmless and bear the costs of all losses or damages to persons, property or equipment, resulting from, arising out of or on account of the Work, services, equipment and products furnished by ESCO under this Contract. ESCO shall pay or cause payment to be made for all labor performed or furnished and for all material used or employed in carrying out this Contract. ESCO shall assume the defense of, indemnify and hold harmless the Customer and its officers and agents from all claims relating to losses arising from ESCO's tortuous act or omission with respect to:

- 1) Labor performed or furnished and materials used or employed for the Work;
- 2) Injuries to any person received or sustained by or from ESCO and its employees, subcontractors and its employees, any agents, suppliers and invitees in doing the Work, or as a consequence of any improper materials, implements of labor used or employed therein; and
- 3) Any negligent act, omission, of ESCO and its employees, subcontractors and employees, agents, suppliers and invitees.

ESCO shall in no way be liable for losses arising from Customer's negligence.

Anything herein notwithstanding, in no event shall either Customer or ESCO be liable to the other party for special, indirect, incidental or consequential damages, including commercial loss, loss of use, or lost profits, even if either party has been advised of the possibility of such damages.

5.17 Indemnification (Patent and Copyright)

- (a) ESCO will, at its own expense, defend or at its option settle any suit or proceeding brought against Customer in so far as it is based on an allegation that any Work (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if ESCO is promptly provided Notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. ESCO will pay the damages and costs awarded in any suit or proceeding so defended. ESCO will not be responsible for any settlement of such suit or proceeding made without its prior written consent. *In case the Work, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by Customer is enjoined, ESCO will, at its option and its own expense, either: (i) procure for Customer the right to continue using said Work; (ii) replace it with substantially equivalent non-infringing Work; or (iii) modify the Work so it becomes non-infringing.*
- (b) ESCO will have no duty or obligation to Customer under Section 5.17(a) to the extent that the Work is: (i) modified by Customer or its contractors after delivery; or, (ii) combined by Customer or its contractors with items not furnished hereunder and by reason of said design, instruction, modification, or combination a suit is brought against Customer. In

addition, if by reason of such modification or combination, a suit or proceeding is brought against ESCO, unless expressly prohibited by law, Customer shall protect ESCO in the same manner and to the same extent that ESCO has agreed to protect Customer under the provisions of Section 5.17(a) above.

- (c) THIS SECTION 5.17 IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF CUSTOMER RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS. Compliance with Section 5.17 as provided herein shall constitute fulfillment of all liabilities of the parties under the Contract with respect to intellectual property indemnification.

5.18 Commissioning

Prior to the start of construction activities, the ESCO shall thoroughly review the proposed system and its design and evaluate whether such design will provide the stated performance. The team will prepare a Commissioning Plan that includes a Construction Checklist of equipment/areas to be inspected for the specific project under contract, and the functional tests to be used during the verification. ESCO will monitor the construction process and will verify that the equipment is properly installed, and that it is capable of being operated and maintained to perform in conformity with the design intent of the project. The results of these efforts will be documented as part of a commissioning report that will be presented to the Customer along with the Acceptance Certificate upon Final Completion.

6. Performance and Evaluation Subsequent to Work

6.01 Workmanship and Equipment Warranty

ESCO shall assign to the Customer all assignable warranties of all equipment and materials used in the Work. Attachment B-2 lists equipment and material warranties, however, failure to include any equipment or materials having a warranty neither excludes said equipment or materials from the provisions of this section nor ESCO's responsibilities hereunder. At, or before the Project Acceptance, ESCO shall provide Customer with a list in MS Excel spreadsheet format of all serial numbered items, including steam system segments, of Major Equipment listed in Attachment B-13 installed as part of the Work with the relevant warranty information.

ESCO warrants that, for a period of one year from a date of a Certificate of Substantial Completion on a per ECM basis, per Building Basis or, alternatively, on a per segment basis for steam and/or condensate line piping ECMs ("Warranty Period"), the relevant equipment, materials and Work shall be new and free from defects in material, manufacture, workmanship and performance as set forth by the catalogs, bulletins and specifications included within ESCO's Response to the RFP or the Scope of Work, whichever is appropriate. If such defect occurs within the Warranty Period, ESCO shall correct and pay for correction of all defects including replacement or repair and all parts and labor.

ESCO warrants that, for any equipment or materials used in the Work with a warranty period in excess of one year, ESCO shall correct all defects including replacement or

repair provided that ESCO's obligation is limited to the terms of the warranty and provided further that the Customer, by mutual consent with ESCO, may correct said defect.

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

If ESCO, upon written notice from the Customer, fails to correct defective equipment, materials or Work within a reasonable period of time, but no less than seventy-two (72) hours, unless such defect is a condition deemed to endanger health or safety, is a fire hazard or would otherwise render the Premises unfit for occupancy, Customer may correct any defect and ESCO shall reimburse Customer for its reasonable expenses incurred in performing such correction subject to any limitations contained within this section. Conditions which are deemed to endanger health or safety are applicable provisions of the state or local sanitary code, fire hazards under applicable fire prevention regulations and codes and other emergency conditions that shall be addressed promptly and jointly, if necessary, by ESCO and Customer assuring that immediate precautions are taken to avoid risk to persons or property, immediate measures are taken to prevent deterioration of condition, occupants are alerted to any dangers or hazards, and steps for final correction taken within twenty-four (24) hours. Customer may take reasonable steps to protect the Premises or the Work on an emergency if it is not possible or reasonable to notify ESCO before taking such actions.

THE EXPRESS LIMITED WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH, TO THE EXTENT PERMITTED BY LAW, ARE HEREBY EXPRESSLY DISCLAIMED. THE LIMITED EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS CONTRACT MAY ONLY BE MODIFIED OR SUPPLEMENTED IN A WRITING EXECUTED BY A DULY AUTHORIZED SIGNATORY OF EACH PARTY.

6.02 Evaluation of Savings Achieved

ESCO shall also prepare and deliver to Customer an annual report of the savings achieved at the Premises for each of the twelve-month periods specified in Attachment B-4 in a form suitable for review and subsequent forwarding to the Customer and any consultant or auditor designated by Customer. ESCO shall include in such report, to the extent practicable, emissions reduction quantities or similar data attributable to or resulting from the Work and advise Customer on opportunities to achieve monetary benefits from such credits or attributes which shall be the property of Customer.

The Customer shall notify ESCO of substantive changes in the properties or the operation or occupancy thereof which could affect energy or water use. Such substantive change shall be agreed upon by the parties and incorporated in the determination and evaluation of savings.

The obligations under this Article are also described in Attachment B-4. ESCO shall be compensated at the rate described in Attachment B-3 for maintaining, monitoring and verification and reporting services.

6.03 Performance Guarantee

ESCO hereby guarantees the level of savings for the time periods and to the level described in Attachment B-4 ("Performance Guarantee"). The Performance Guarantee commencement date shall not occur and the Customer shall not be required to accept the Work unless and until all equipment installation at the Premises and training is completed in accordance with the terms and conditions of this Contract, including, without limitation, the satisfaction of all claims for labor and materials. In the event that Final Completion occurs subsequent to the commencement date of the Performance Guarantee (See Attachment B-4), then the parties will mutually agree on a modified Attachment B-4 to accommodate the delay in commencing the Performance Guarantee.

The Performance Guarantee is to be achieved as a result of the Work and the ECMs/OCMs and the resulting savings, if any, shall be calculated in accordance with the procedures described in Attachment B-4. The Performance Guarantee is subject to the performance by Customer of all of its obligations under this Contract. In the event that this Contract is terminated by an uncured Event of Default by Customer, the Performance Guarantee shall be cancelled. The Performance Guarantee shall remain in effect for the term stated in Attachment B-4, Section 2, i.e., the period after the commencement of the Performance Guarantee. The Performance Guarantee shall terminate simultaneously with the termination of the Contract. In any event, ESCO and Customer have structured the Energy Savings and the Performance Guarantee to be sufficient to exceed any and all payments required by Customer in connection with the acquisition of equipment to be installed by ESCO pursuant to this Contract, the Customer's lease or financing obligations and any related agreements associated with the execution of this Contract or the implementation of the Work.

Other than as described above, ESCO shall have no obligation to continue providing measurement and verification services or to honor the Performance Guarantee with respect to any portion of the Work in the event the Customer: (i) fails to authorize a reacceptance test or recommissioning of ECM/OCMs modified, repaired or replaced by ESCO that ESCO reasonably deems necessary in order to prevent a savings shortfall with respect to such portion of the Work; or (ii) fails to provide access to a site where such portion of the Work was performed as required herein; or (iii) fails to service and maintain all equipment associated with such portion of the Work in accordance with the manufacturers' recommendations, by either Customer employees or Extended Service Maintenance, in order to prevent a savings shortfall.

6.04 Performance Remedies

Energy-related cost savings shall be measured and/or calculated as specified in the measurement and verification plan provided in Attachment B-4 or as may be mutually agreed upon in writing. In the event that the energy and cost savings achieved during such twelve-month period is less than the corresponding Guaranteed Savings for the same annual period as reflected in Attachment B-4 while the Performance Guarantee is in effect, ESCO shall pay to Customer within thirty (30) days of the delivery of such report an amount equal to the deficiency. ESCO shall be afforded up to ninety (90) days in which to remedy such non-conformance at no additional cost to Customer. Energy Savings shall be measured again in accordance with the requirements of the measurement and verification plan provided in Attachment B-4. If, despite ESCO's efforts, ESCO has failed to remedy such non-conformance, ESCO shall pay such deficiency with interest pursuant to Section 4.02. All costs associated with having the ECMs/OCMs repaired, replaced, adjusted or re-engineered and re-installed shall be paid by ESCO and presentation of evidence of such payment shall be a condition to any

Customer approval of such work. If during any twelve-month period specified in Attachment B-3 and Attachment B-4 the savings achieved are greater than the Guaranteed Energy and Cost Savings, such excess shall be retained by the Customer and not applied to ESCO's requirement to deliver Energy Savings beyond the stated year.

6.05 Security for Performance Guarantee

At the time of Project Acceptance, ESCO shall provide security for the guaranteed savings to the Customer in one or more of the following forms as mutually acceptable to ESCO and the Customer unless waived or otherwise specified in Attachment B-12, or if the M&V plan includes only either stipulated or one-time measurements for energy savings:

- 1) An efficiency bond, so called, prepaid and renewable annually in a face amount equal to the annual projected guaranteed savings, said bond to be placed with a regulated financial institution with a Best Rating of not less than A, or a comparable rating from a recognized financial rating firm;
- 2) Escrow account equal to the annual projected guaranteed savings;
- 3) Letter of credit, prepaid for an amount equal to the annual projected guaranteed savings, from a regulated financial institution with a Best Rating of not less than A, or a comparable rating from a recognized financial rating firm; or,
- 4) A guarantee in an amount equal to the annual projected guaranteed savings from a corporate entity affiliated with ESCO (e.g., ESCO's parent) with a credit rating of at least "A" from Standard & Poors or a rating of at least "A2" from Moodys.

The Customer may waive, at its discretion, the security requirements herein provided in the event of any of the following:

- 1) The actual savings have met or exceeded projected or guaranteed savings for a period of not less than three years;
- 2) The actual savings in the most current year exceed projected or guaranteed savings by not less than 50%;
- 3) All Work and equipment are functioning as intended and no extraordinary shutdowns or replacements are anticipated; or,
- 4) The financial condition of ESCO, as indicated by standard financial ratio tests applied to audited statements which include contingent liabilities for other Contracts of this kind, is at least as strong as the financial statement submitted with ESCO's Response to the RFP or the savings incurred as a result of this waiver shall inure to the benefit of the Customer. Said waiver may be cancelled by the Customer upon thirty (30) days written notice to ESCO at which time ESCO shall provide security as required herein.

6.06 Independent Audit

The Customer shall have the right to retain, at its own expense unless the audit demonstrates a variance of more than ten percent (10%) in favor of the Customer in which case ESCO shall reimburse Customer for such cost or an offset may be made against amounts due pursuant to Attachment B-3, an independent certified public accountant or other independent expert to complete and submit to the parties an audit of the calculations of energy and operational savings made pursuant to this Contract. At the Customer's option, any such audit may also be performed by Customer's internal audit department subject to appropriate audit standards. Any audit so performed must use and incorporate the same methods, procedures, and assumptions as contained in this Contract and used by ESCO to perform the calculations undergoing an audit pursuant to this Section. Any payments between the parties necessary to resolve any irregularities identified in the audit shall be made within thirty (30) days after submission of the audit to the parties. If, after thirty (30) days, the parties are unable to agree upon the adjustment, the matter shall be submitted to resolution pursuant to Section 9.01, and the disputed portion of any additional payment due under this Section shall not be payable until the dispute resolution procedure required in Section 9.01 has been completed.

6.07 Other Performance Terms and Conditions

All actions taken under Section 6, including but not limited to correction of warranties, remedy of performance shortfalls and maintenance of equipment by ESCO, shall conform with sections 5.02 through 5.18 inclusive.

6.08 Contract Closeout Responsibility

At the termination of the Contract, ESCO shall perform a walk-through survey of the properties covered by this Contract and prepare an assessment of the condition of the equipment and materials installed as part of the Work and subsequent thereto under this Article. This closeout report shall include but not be limited to the following, as appropriate:

- 1) Operating and maintenance recommendations during the remaining life of equipment installed if different from requirements furnished upon installation or if changes in technology or procedures affecting the equipment could extend the useful life of the equipment or increase the conservation efficiency,
- 2) An overview of new technology or additional conservation measures for the Customer to consider.

7. Obligations of the Parties

7.01 Obligations of ESCO

ESCO acknowledges and agrees that ESCO's obligations hereunder are in the capacity of providing professional services for the purposes described in the Preamble to this Contract and in said capacity is expected to provide energy, water and operational auditing, engineering, design and monitoring services, construction management including general contracting as necessary, and other related services as solicited in the RFP and as may normally be incidental to these types of professional services. ESCO acknowledges and agrees that any other functions, including, but not limited to, manufacturer's representative, dealer or distributor of equipment, materials or commodity specified herein or as subcontractor, or any ownership interest in whole or in part, or financial affiliation with a company that performs such

other function shall constitute a conflict of interest which shall constitute a material breach of this Contract unless 1) fully disclosed in ESCO's Response to the RFP, and 2) accepted by the Customer under terms which are specified in the Scope of Work. ESCO acknowledges and agrees that this paragraph applies to all its officers and employees.

ESCO agrees that during the construction period; a quarterly report shall be submitted to the Customer no later than the 15th of the month following the end of each quarter year. The quarters shall end on March 31, June 30, September 30 and December 31 of each year. This reporting document shall be submitted in a paper and electronic form for historic preservation. At a minimum, the report shall contain and/or address the following:

- a) Executive Summary, including basic project information, synopsis of program scope, key program contacts, and assessment of contractor's progress on the contract;
- b) Description of construction activities during the quarter (inclusive of photographs of key system details/installations) include subcontractor activities and milestones;
- c) Construction and/or scheduling difficulties encountered over the quarter; other factors that affected activities; include complaint log with remedies, identify corrective actions put in place to mitigate or prevent reoccurrence;
- d) Dollar value of construction activities completed for the quarter; value of activities completed to date; provide supporting list of significant supplies delivered or received;
- e) Dollar value of savings accrued during the quarter; savings accrued project to date; provide validating and/or supporting data;
- f) Provide 'look ahead' of next quarter construction activities (with timeline), list potential interferences and/or critical path items that may impact successful execution or delivery of planned activities; list customer support expectations; and,
- g) List 'other' information and/or significant construction period activities (i.e., traffic, noise, etc.) pertinent to or impacting the successful delivery of contract scope (not specifically included herein).

The following events or conditions shall, without limitation, constitute a breach by ESCO and shall give the Customer the right, without an election of remedies, to proceed pursuant to Section 9.01 and/or terminate this Contract by delivery of written notice declaring termination, upon which event ESCO shall be liable to the Customer for any and all resulting damages sustained by the Customer:

- 1) Any attempt by ESCO to increase the Contract price for reasons other than those related to changes in the Work pursuant to Section 5.03 or elsewhere in this Contract or Construction Work Order;
- 2) Any failure by ESCO to provide quarterly monitoring reports pursuant to Sections 6.02 or 7.01 provided that such failure continues for fifteen (15) days after notice from Customer;
- 3) Any failure by ESCO to make payments pursuant to the Performance Guarantee or to remedy a shortfall in the Performance Guarantee savings pursuant to Section 6.04 provided that such failure continues for seven (7) business days after notice from Customer;
- 4) Any material representation or warranty furnished by ESCO in ESCO's Response

to the RFP, the Scope of Work or this Contract which is false or misleading in any material respect when made;

- 5) Any state, county or federal license, authorization, waiver, permit, qualification or certification by statute, ordinance, law or regulation to be held by ESCO to provide the goods or services required by this Contract is denied, revoked, debarred, excluded, terminated, suspended, lapsed or not renewed, provided that such failure continues for fifteen (15) days after notice from Customer;
- 6) The filing of bankruptcy by ESCO or by ESCO's creditors, an involuntary assignment for the benefit of creditors, or the liquidation of ESCO;
- 7) Any failure by ESCO to perform or comply with any other material term or condition of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to ESCO demanding that such failure be cured or, if cure cannot be effected in thirty (30) days, ESCO fails to begin to cure and proceed to completion thereof as quickly as is reasonably possible;
- 8) Any failure to maintain the Standards of Comfort and service set forth in Attachment B-8 due to the failure of ESCO to properly design, install, repair, adjust or commission the equipment installed and maintained as part of the Work during the warranty period except that such failure, if corrected or cured within fifteen (15) days after written notice by Customer to ESCO demanding that such failure be cured, shall be deemed cured for purposes of this Contract;
- 9) Any failure to furnish and install the equipment or ECMs/OCMs or perform the Work and make it ready for use within the time specified by this Contract as set forth in Attachment B-2;
- 10) Any lien or encumbrance upon the equipment or the Premises by any subcontractor, laborer or material man of ESCO which is not released within thirty (30) days of receipt of written notice of same;
- 11) Any failure by ESCO to pay any amount due or perform any material obligation under the terms of this Contract, which continues more than thirty (30) days after receipt of written notice from Customer; and
- 12) It is determined that ESCO has failed to disclose a material conflict of interest relative to the performance of this Contract or if it is found that any gift or gratuity were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Customer with a view forward securing a contract or favorable treatment with respect to performance of the Contract.

7.02 Obligations of the Customer

Customer shall respond to all audits, proposed revisions and related requests on a timely basis for the expeditious design, implementation and monitoring of conservation measures. Furthermore, Customer shall comply with the Customer Responsibilities as are detailed in Attachment B-2.

Each of the following events or conditions shall constitute a breach by Customer and shall give ESCO the right, without an election of remedies to proceed pursuant to Section 9.01 and terminate this Contract by delivery of written notice declaring termination, upon which event the Customer shall be liable to ESCO for all Work furnished to date:

- 1) Any failure by the Customer, without cause, to authorize payment due within thirty (30) days after receipt of notice that the Customer is delinquent in making payment;
- 2) Any intentional and material representation by Customer in the RFP and this Contract that is intentionally false or intentionally misleading in any material respect when made; and
- 3) Any failure by the Customer to perform or comply with any other material term or condition of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to the Customer demanding that such failure be cured or, if cure cannot be effected in thirty (30) days, the Customer fails to begin to cure and proceed to completion thereof as quickly as is reasonably possible.

8. Insurance and Bond Requirements for Construction Work Order

8.01 Worker's Compensation Insurance

ESCO shall provide or cause its subcontractors to provide during the life of this Contract Worker's Compensation Insurance as follows:

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

8.02 Comprehensive General Liability

ESCO shall provide or cause its subcontractors to provide Comprehensive General Liability with the following coverage with respect to the Work and other operations performed by ESCO and its subcontractors:

Bodily Injury and Property Damage	\$1,000,000 each occurrence, \$1,000,000 aggregate
Products and Completed Operations	\$1,000,000 each occurrence, \$1,000,000 aggregate
Contractual Liability and Property Damage	\$1,000,000 each occurrence, \$1,000,000 aggregate

8.03 Automobile Liability

ESCO shall provide or cause its subcontractors to provide the following coverage

with respect to the operations of any vehicle relating to the Work, including coverage for owned, non-owned, and hired vehicles:

Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$1,000,000 each occurrence

8.04 Professional Liability Insurance

ESCO shall maintain in full force and effect, at ESCO's expense, an Errors and Omissions or Professional Liability Insurance Policy in the amount of \$1,000,000 coverage. The policy shall remain in effect for the duration of the applicable statute of limitations.

8.05 Customer as Additional Insured

The Customer shall be named as additional insured on ESCO's Comprehensive General Liability Policy.

8.06 Certificates of Insurance, Policies

Certificates of insurance, acceptable to the Customer, shall be submitted to the Customer upon the execution of this Contract and shall be renewed upon expiration of the policies. Certificates shall indicate that the coverage required by section 8.01 through 8.04 is in effect. If the Customer is damaged by ESCO's failure to maintain such insurance, then ESCO shall be responsible for all reasonable costs or damages attributable thereto. Certificates shall note the thirty (30) day cancellation notice requirement of Section 8.07. All policies shall be issued by companies authorized to write that type of insurance under the laws of the State of Rhode Island. Any and all deductibles and self-insured retention contained in any insurance policy shall be assumed by and at the risk of ESCO.

8.07 Cancellation

Customer shall be provided notice of cancellation at least thirty (30) days prior to the effective date thereof for any insurance policy required of ESCO by this Contract.

8.8 Waiver of Subrogation

The Customer and ESCO waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damage caused by fire or other causes to the extent covered by insurance obtained pursuant to this Section 8 or other insurance applicable to the Work. The Customer or ESCO, as appropriate, shall require of consultants, separate contractors, subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein.

8.09 Self Administered Claims Program

In lieu of any insurances required in this Section 8, ESCO may self assume the risks hereunder and use a Self Administered Claims Program for this purpose. ESCO will notify Customer in writing 30 days prior to cancellation of the Self Administered Claims Program.

8.10 Bonds

ESCO shall provide the Customer with payment and performance bonds and other security unless waived by the Customer pursuant to Section 6.05, to cover the full term and value of the Contract and issued by a regulated financial institution with a Best Rating of not less than A, or a comparable rating from a recognized financial rating firm, as follows upon receipt of a Purchase Order and prior to any construction being performed on the Project:

1) Performance and payment bonds shall secure 100% of the Contract Price and

2) Other security as provided in Section 6.05.

Performance and payment bonds shall apply only to the installation of the ECMs and not the Financial-Grade Audit. The Payment and Performance Bonds required hereunder shall expire upon Final Completion of all ECMs required under this Agreement, and shall not secure any energy savings, measurement and verification obligations or maintenance/service obligations, which may be guaranteed by ESCO under this Agreement.

Customer agrees that upon Final Completion any performance and payment bonds shall be released and any obligations arising thereunder shall be terminated. AIA bond forms may be employed.

9. **General Provisions**

9.01 Dispute Resolution

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

- 1) All claims by ESCO shall be made in writing and submitted to the Customer for a written decision.
- 2) ESCO shall not delay, suspend, or curtail performance under the Contract as a result of any dispute subject to this section.
- 3) Within sixty (60) days of submission of the dispute to the Customer, the Customer shall issue a written decision stating the reasons therefore, and shall notify the parties of their right of appeal under this section. If the official of the Customer is unable to issue a decision within sixty (60) days, he shall notify ESCO in writing of the reasons and of the date by which the decision shall issue.
- 4) Failure to issue a decision within one hundred and twenty (120) day period or within the additional period specified in such written notice shall give the petitioner the right to pursue any legal remedies available to him without further delay.

- 5) ESCO and Customer agree that all disputes relating to this Contract and performance thereunder shall be resolved in the Business Calendar of the Superior Court, Providence County, Rhode Island and any appellate court from which an appeal may be taken therefrom. To the fullest extent permitted by law, the parties irrevocably and unconditionally submit to the exclusive jurisdiction of said court.

9.02 Conditions Beyond Control of the Parties

Except as otherwise provided herein, if either party shall be unable to carry out any material obligation under this Contract due to events beyond its control, such as acts of God, governmental or judicial Customer, insurrections, riots, extended labor disputes, fires, explosions or floods, this Contract shall remain in effect but the affected party's obligations shall be suspended until the uncontrollable event terminates or is resolved, unless the Contract is terminated by either party following a ninety (90) day delay, in which event, Customer shall pay ESCO for all parts of the Work furnished to the date of termination or as otherwise agreed.

9.03 Labor Laws

ESCO shall obey and abide by all laws and regulations of the State of Rhode Island relating to the employment of labor and public work, including, without limitation, the State's drug free workplace policy (ESCO shall deliver to Customer a certificate of compliance with such policy).

ESCO shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices. ESCO shall not discriminate in the delivery of services against any person who otherwise meets the eligibility criteria for services, or in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, status as a Vietnam Era Veteran, sexual orientation or for exercising any rights or benefits afforded by law including the requirements of Federal Executive Orders 11246, 11625, 11375 and 11830 and Title 28 Chapter 5.1 of the General Laws of Rhode Island.

ESCO shall comply with the requirements of Title 37 Chapter 14.1 of the General Laws of Rhode Island with respect to Minority Business Enterprises, including the requirement that ten percent (10%) of the dollar value of work performed against contracts for construction exceeding \$5,000 shall be performed by Minority Business Enterprises where it has been determined that subcontract opportunities exist and where certified Minority Business Enterprises are available.

ESCO's failure to abide by these rules, regulations, contract terms and reporting requirements shall be grounds for forfeiture and penalties as shall be established, including, but not limited to, suspension.

9.04 Prevailing Wage Rate

ESCO shall and cause its Subcontractors to comply with the requirements of Title 37 Chapter 13 of the General Laws of Rhode Island with respect to the payment of the general prevailing rate of per diem wages, including regular, overtime and other working

conditions existing in the locality for each craft, mechanic, teamster or type of workman needed to execute the work described in this Contract.

9.05 Appropriations

The Customer reasonably believes that funds can be obtained sufficient to make all payments due to ESCO under this Contract. The Customer hereby covenants that it will make reasonable and diligent efforts to obtain and maintain funds from which such payments may be made, including making provisions for such payments to the extent necessary in each annual or supplementary budget submitted for the purpose of obtaining funds, and using reasonable efforts to have such portion of the budget approved. Nothing herein shall obligate the Customer to institute legal action before any court, to commence proceedings before any forum, or to institute proceedings in the nature of mandamus against any public official in attempting to obtain said funds.

9.06 Laws, Regulations, Ordinances and Standard Practices

ESCO shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, regulations, ordinances and by-laws, including applicable licensing and permitting requirements, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules or policies of the Customer relative to the properties. ESCO shall be responsible for obtaining all governmental permits, licenses, consents, and authorizations as may be required to perform its obligations hereunder (see also Section 5.10 regarding permits and fees pertaining to the Work).

9.07 Access and Inspection

Customer shall have access to inspect, upon reasonable notice, the Work and the books, records, and other compilations of data which pertain to this Contract. Records shall be kept on a generally recognized accounting basis and calculations kept on file in legible form. Records shall be saved or archived by ESCO for a period of three (3) years after the termination of this Contract and shall be kept or made available within Rhode Island.

ESCO shall have access, upon reasonable notice to the Customer, to inspect the property to assess the condition and operation of material and equipment installed.

9.08 Ownership Rights

All drawings, reports and other materials prepared by ESCO specifically in performance of this Contract shall become the property of the Customer as needed or upon the termination of the Contract and following payment of undisputed amounts owed to ESCO. Customer shall be entitled to any currently or future available credits other than those agreed to by the Parties to be assigned to the ESCO, i.e. utility rebates, or rights of use associated with the reduction of energy use, particular technologies employed in or any attributes associated with the Work.

9.09 Certificates

ESCO certifies as follows:

- 1) Certificate of Authorization: If ESCO is a corporation, each person executing this Contract on behalf of ESCO hereby covenants, represents

and warrants that ESCO is a duly incorporated or duly qualified (if foreign) corporation and is authorized to do business in the State of Rhode Island (a copy of evidence thereof to be supplied to the Customer upon request); and that each person executing this Contract on behalf of ESCO is an officer of ESCO and that he or she is duly authorized to execute, acknowledge and deliver this Contract to the Customer, a copy of a corporate resolution to this effect is attached hereto as Attachment B-9.

- 2) Tax Compliance Certification: Each person signing this Contract on behalf of ESCO hereby certifies, under the penalties of perjury, that to the best of his/her knowledge and belief, ESCO has complied with any and all applicable state tax laws.
- 3) Certificate of Non-collusion: The undersigned certifies under penalties of perjury that this Contract has been made in good faith and without collusion or fraud with any other person.. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity of group of individuals.
- 4) Foreign Corporation: ESCO, if a foreign corporation or company, hereby certifies that it is in compliance with Title 7 Chapter 1.1 of the General Laws of Rhode Island and that the name and address of the resident agent is included with Attachment B-9.

9.10 Assignment

ESCO shall not assign, transfer, convey, or otherwise dispose of this Contract, or any part hereof, or his right, title or interest in the same or any part thereof, without the prior written consent of the Customer provided, however, that Customer may not unreasonably withhold or delay its consent to an assignment of its interest in this Contract to a corporate affiliate and provided further that ESCO may without the consent of Customer assign its rights for payments under this Contract to any financial institution, lender or investor in connection with a leasing or financing arrangement for the ECMs/OCMs. ESCO shall not otherwise assign by power-of-attorney, or otherwise, any of the moneys due or to become due and payable under this Contract, without the prior written consent of the Customer.

9.11 Applicable Law and Severability

This Contract is made and shall be interpreted and enforced in accordance with the laws of the State of Rhode Island. Any lawsuit, whether in law and/or equity, arising from any dispute and/or any disagreement between the Parties regarding this Contract and/or Agreement shall be brought in Providence County Superior Court, Providence, Rhode Island. If any provision of this Contract shall be determined to be invalid or unenforceable under applicable law, such provision shall, insofar as possible, be construed or applied in such manner as will permit enforcement; otherwise this Contract shall be construed as if such provision had never been made part thereof.

9.12 Independent Contractor

The Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither the Contractor nor any agent or employee of the Contractor shall be deemed to be an agent or employee of the State of Rhode Island or any agency of subdivision thereof. Contractor shall be responsible for all payroll taxes and benefits for its employees.

9.13 Complete Contract

This Contract, together with any documents incorporated herein by attachment as an exhibit or by reference, shall constitute the entire and exclusive Contract between both parties, except as may be provided by relevant law or regulation, and supersedes and terminates all prior or contemporaneous arrangements, understandings and agreements, whether oral or written, and this Contract may not be amended or modified except in writing and executed by the Customer and ESCO. The RFP and ESCO's response thereto are incorporated by reference in accordance with Section 2 to the extent not superseded by the Scope of Work or this Contract.

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

9.14 Further Documents

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

9.15 Counterparts

This Contract may be executed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and in making proof of this Contract it shall not be necessary to produce or account for more than one such counterpart.

9.16 Creditworthiness

If, at any time, Customer's credit rating falls below investment grade as defined by Moody's Investors Services (or other nationally-recognized independent rating agency), Customer agrees to provide ESCO with current information regarding its creditworthiness upon the request of ESCO. At its sole option, ESCO may then require Customer to provide security satisfactory to ESCO, and the Work may be withheld until such security is received. If Customer deposits the contract amount into a third-party escrow account with an escrow agent and agreement acceptable to ESCO, then the terms of this paragraph are not applicable.

10. Contract Signatures

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

ESCO (Identify)

by and through the **Owner (Identify)**

Signature

Signature

Name

Name

Title

Title

Date

Date

ATTACHMENT A-1

Description of Premises

Project No. 1

Building Name	Building No.	Type of Audit	Area (Square Feet)
Identify	?	?	?

Note 1:

Note 2:

ATTACHMENT A-2

Scope of Audit Services for the Financial Grade Audit of Selected Facilities

Sample Project Name

1. GENERAL INSTRUCTIONS

- A. General Expectations:** The purpose of the Financial Grade Audit (FGA or "Audit") is to provide an investment-grade analysis that quantifies the size, scope, payback, and firm cost for each energy and water cost savings measure (ECM) and operating cost savings measure (OCM) that may be financed through an energy performance contract.
- B. Presentation:** The Audit shall address all sites in Attachment A-1. The FGA shall be presented in accordance with the "Format for Financial Grade Audit" below. Tabs or markers shall separate each section of the report. Each table shall be titled and/or numbered, and labeled clearly. Six paper packages (one original and five copies) of the FGA shall be submitted in three-ring binders. An electronic copy of the Financial Grade Audit Report in Adobe PDF will be provided on a USB flash drive or CD.
- C. Existing Conditions:** Existing conditions will determine the feasibility and cost of energy conservation measures as well as the ease and time required for installation. ESCO will identify inefficient building systems and infrastructure. ESCO will also document any existing deficiencies (PCB ballasts, equipment malfunctions, peculiar wiring, structural or mechanical disrepair) discovered during the normal conduct of the ESCO's audit services.
- D. Customer Obligations:** Customer shall assist ESCO during the Audit by providing access to utility bills, maintenance records, drawings, or other records necessary to execute the Audit. Upon ESCO's request, customer shall assist ESCO with coordination of site visits and shall provide access to the Premises in a timely manner.

2. CALCULATION INSTRUCTIONS

- A. General Calculation Instructions:** For all calculations, state major and detailed assumptions and formula used, label all units clearly, and explain the method used to make the calculations. When calculating energy savings for more than one ECM, interaction between/among the measures must be taken into account. All shall be submitted in native electronic format with all cell formulas active. Computer energy simulation models will be submitted with all input and output files in their native electronic formats (ie, eQuest, Trane Trace, etc.), not in Adobe PDF or other 'image' based formats.
- B. Energy Consumption:** Accurate energy consumption and cost data is important to establish a baseline for measuring and evaluating the effectiveness of all recommended actions. Estimates will be used if the necessary information is not available. If estimates are used, the data should be clearly labeled and an explanation must be provided on

why monthly records were not available. Procedures used to estimate monthly consumption figures must be presented and clearly explained. In addition, an analysis of the various variables that may affect the baseline shall be included. The parties agree adjustment factors for weather, occupancy, and hours of operation shall be mutually determined as appropriate.

- C. Calculation of ECM Costs:** A firm cost per ECM shall be provided and valid for at least 90 days from the FGA Report submittal date. Cost for labor that is planned for normal working hours shall include prevailing wages. Cost for labor that is planned for off hours shall include the applicable night, weekend and holiday wages.

3. SCOPE OF WORK

A. General Scope: The FGA shall be conducted at the facilities listed in Attachment A-1 – Description of Premises. For each building, one of three types of Financial Grade Audits (Type A, Type B, and Type C) shall be performed. The selection of the type of audit to be done for each building will be determined by the Customer.

B. Detail of Scope for Financial Grade Audit of “Type A”: The “Type A” audit shall include the following:

1. An on-site survey of the facility. Potential Energy Conservation Measures to be evaluated will be limited to:
 - a. Lighting
 - b. Lighting controls
 - c. Steam traps
Boiler Plant Upgrades and addition of Biomass Boiler
 - d. Energy management and control systems
 - e. Efficient motors
 - f. Variable frequency drives
2. A summary of the historical energy and water use of the building. Energy use anomalies or high costs per square foot will be evaluated and recommendations will be made.
3. A thorough description, with outline specifications and conceptual sketches, of the recommended ECMs covering improvements to the facilities for the items listed above. For each measure, a description of the current situation and practices must be included. In addition, the following must be provided for each measure: 1) estimates of initial costs for design and installation, 2) efficiency levels or performance levels characteristics of the equipment comprising the measure, 3) ongoing maintenance costs, 4) annual energy and cost savings and, 5) the useful life of the measure. The projected energy savings will account for interaction between selected ECMs.
4. All ECMs will be developed, designed, and implemented in a way as not to compromise the space conditions of the Site spaces. The description will discuss how the measure will modify the existing building systems. It shall also discuss the measure's compatibility with existing systems and describe proper O&M procedures required to achieve the measure's maximum savings potential.

The description shall describe additional operation costs, if any, which the facility will incur by implementing the proposed action.

C. Detail of Scope for Financial Grade Audit of “Type B”: The “Type B” audit shall include the following:

1. An on-site survey of the facility. All potential Energy Conservation Measures and facility infrastructure improvements, which are economically and technically feasible, will be evaluated.
2. A summary of the historical energy and water use of the building including an allocation of total energy use among end uses. Energy use anomalies or high costs per square foot will be evaluated and recommendations will be made. The allocation will be reconciled with actual usage and must be based on generally accepted engineering practices.
3. A thorough description, with outline specifications and conceptual drawings of the recommended ECMs covering improvements to the facilities for the items listed above. For each measure, a clear description of the current situation and practices must be included. In addition, the following will be provided for each measure: 1) estimates of initial costs for design and installation, 2) efficiency levels or performance levels characteristics of the equipment comprising the measure, 3) ongoing maintenance costs, 4) annual energy and cost savings and, 5) the useful life of the measure. The projected energy savings will account for interaction between selected ECMs.
4. All ECMs will be developed, designed, and implemented in a way as not to compromise the space conditions of the Premises. The description will discuss how the measure will modify the existing building systems. It shall also discuss the measure's compatibility with existing systems and describe proper O&M procedures required to achieve the measure's maximum savings potential. The description shall describe additional operation costs, if any, which the facility will incur by implementing the proposed action.

D. Detail of Scope for Financial Grade Audit of “Type C”: The “Type C” audit shall encompass the steam and condensate distribution systems and shall include the following:

1. An on-site survey of the steam and condensate distribution systems described in Attachment A-1 – Description of Premises.
2. A summary of the historical steam use and fuel use, as well as a summary of heat and water losses from the steam and condensate piping systems. Energy use anomalies or high costs per linear foot of pipe will be evaluated and recommendations will be made. The allocation will be reconciled with actual steam and fuel usage and must be based on generally accepted engineering practices.
3. A thorough description with outline specifications and conceptual drawings of the recommended improvements to the steam and condensate distribution systems. A clear description of the current situation and practices will be included. In addition, the following will be provided: 1) estimates of initial costs for design and

installation, 2) performance characteristics of the equipment comprising the measure, 3) estimated ongoing operating and maintenance costs, 4) annual energy and cost savings and, 5) the useful life of the measure. The projected energy savings will account for interaction between selected ECMs.

4. The description will discuss how the recommended improvements will modify the existing steam and condensate distribution systems. It shall also describe proper operating and maintenance procedures required to achieve the measure's maximum savings potential. The description shall describe additional operating costs, if any, which the facility will incur by implementing the proposed action. Applicable Codes and Standards and Customer Standards should be consulted for guidance on the target performance levels. Evidence will be provided, if appropriate, to demonstrate that the measure will not violate any state or local code or ordinance.

4. FGA Schedule

Within two (2) weeks of Audit Work Order issued by the Customer, ESCO shall submit an audit project schedule for the buildings listed in Attachment A-1 with the following milestones:

- Pre-Audit review kickoff meeting date;
- Site visits dates;
- Financial Grade Audit Report ("Report") submittal date; and
- Completion of Customer's internal review date.

5. FORMAT FOR FINANCIAL GRADE AUDIT

The format for the Report shall be as follows:

A. Executive Summary

Brief description of the ECM's included in the project and the cost and savings of the project. A table summarizing the ECM cost, energy and water savings, total savings, and simple payback.

B. Data on Present

- Square Footage
- Use
- Occupancy schedule
- HVAC system
- Controls
- Lighting
- Other major equipment

C. Energy Conservation Measures

Detailed description of the ECM's and Facilities Modernization Projects (FMP's) included in the project. The ECM and FMP's descriptions will contain the existing conditions, energy savings opportunity, proposed solution, scope of work, arrangement drawings as required and commissioning process of the ECM.

D. Operation and Maintenance

Description of the basic O&M requirements for the ECM's.

E. Historical Energy Consumption

- energy type and current rate
- unit (in kWh, gals, etc.)
- average price per unit
- marginal price per unit, if applicable
- Fuel usage escalation

F. Measurement and Verification

Description of the M&V requirements for each ECM's. This section will provide a table summarizing each ECM and the M&V option selected. A description of the M&V approach, baseline period, post-installation period, calculations and adjustments, and metering plan will be included.

G. Appendices

- Savings Calculations
- EMS Points List
- Standards of Control
- Project Schedule
- Lighting Line-by-Lines
- Catalog Data

ATTACHMENT A-3

Payment Schedule for Financial Grade Audit

Price and Construction Financing for Scope of Work

Financial Grade Audit:

Project No. 1

As full consideration for the Work as described in Attachment A-2 in the event that the Customer does not proceed with the installation of the ECMs/OCMs in accordance with Section 5.01A, the Customer shall pay to ESCO the amount of \$ [REDACTED]. In the event that the Customer does issue a fully executed Purchase Order to ESCO for the installation of the ECMs/OCMs contemplated in the Audit Report, the actual cost of the Audit will be included in the Contract Price to the Customer, as described in Attachment B-3 Payment Schedule for Construction.

ESCO shall supervise and direct the Scope of Audit Services described in Attachment A-2 and shall be solely responsible for all means, methods, techniques, sequences, and procedures and for coordinating all portions of the Audit as described in Attachment A-2. ESCO shall be responsible to pay for all services necessary for the proper execution and completion of the Scope of Audit Services for the Financial Grade Audit. ESCO agrees to complete the Financial Grade Audit and present the Audit Report to the Customer within one hundred and twenty (120) calendar days from the date of the fully executed Audit Work Order.

Until Customer has paid ESCO the full consideration for the Work set forth herein, Customer is prohibited from using the FGA Report, any designs or any other work product prepared or produced by ESCO ("Work Product") hereunder as a basis for facility construction or implementation of ECM's developed herein by any entity other than ESCO for a period of five (5) years after delivery of the FGA Report/Work Product or the termination of this Contract.

ATTACHMENT A-4

SCHEDULE A

FORM OF AUDIT WORK ORDER

This Audit Work Order (“Audit Work Order”) incorporates the terms, definitions and conditions of that certain Master Energy Performance Contract dated **day, month**, 200 (the “Contract”) by and between **ESCO** (“Contractor”) and _____ (“Customer”).

WHEREAS, Customer hereby requests that Contractor complete the Work as detailed in this Audit Work Order, pursuant to the Contract and the attachments set forth and hereby incorporated below;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the Parties hereby agree to the terms and conditions of the following Attachments in accordance with the Contract:

- | | |
|----------------|-------------------------|
| ATTACHMENT A-1 | PREMISES |
| ATTACHMENT A-2 | SCOPE OF AUDIT SERVICES |
| ATTACHMENT A-3 | PAYMENT SCHEDULE |

ESCO

Owner, by and through
the **Department**

Signature

Signature

Name

Name

Title

Title

Date

Date

ATTACHMENT B-1

Description of Premises

Project No. 1

Building Name	Building No.	Area (Square Feet)
Name	No.	Area

Note 1:

ATTACHMENT B-2

Scope of Work – Sample Project Name

- A. Description of ECMs/OCMs
- B. Equipment and Material Warranties
- C. Extended Maintenance Services
- D. Project Schedule
- E. Construction Management and Commissioning
- F. Form of Construction Work Order

Part A. Description of ECMs/OCMs

ECM NUMBER: ECM-1

ECM TITLE: ECM-1 TITLE

DESCRIPTION:

ECM Description.

ECM NUMBER: ECM-2

ECM TITLE: ECM-2 TITLE

DESCRIPTION:

ECM Description.

ECM NUMBER: ECM-3

ECM TITLE: ECM-3 TITLE

DESCRIPTION:

ECM Description.

Etc.

Part C. Extended Maintenance Services

This project does not include any extended Maintenance service on any project scope.

Part D. Project Schedule

Project Start	Contract Signature
Engineering & Design to Begin	90 Days
Customer Review & Approval of Design	120 Days
Procurement of Equipment/Beginning of Construction	90 – 400 Days
Substantial Completion of Construction	400 Days
Customer & ESCO Punch List Developed	420 Days
Commissioning of Equipment	450 Days
Final Completion of Project	480 Days

Part E. General Construction Management

ESCO will oversee all construction activities and manage and control the activities of the Subcontractors. ESCO will inspect the work of the subcontractors for compliance with the contract documents and ECM intent.

ESCO's on-site project managers will ensure continuity from construction phase design, as applicable, to project implementation, to commissioning, and into the service phase. They will also be responsible for the accomplishment of all of the key elements required - ensuring a successful project implementation and performance of the improvements.

The Project Managers (PMs) will be responsible for the accomplishment of the key elements required to achieve successful project implementation and performance of the improvements. The PM will schedule a project kick off meeting with Customer's facilities team. Discussion items for the kick off meeting include, but are not limited to:

- Review of the Scope of Work.
- Project contact information for customer, ESCO, and subcontractors.
- Security issues, access to all areas included in scope of work.
- Work hours for site personnel and contractor staff.
- Hazardous areas and hazardous materials throughout the facility.
- Customer concerns, ESCO concerns.
- Staging areas, trailers, material storage, lockable space.

After each ECM submittal has been developed, presented to Customer, and received final approval, the Project Managers will begin the implementation of the ECM in a collaborative effort with the site personnel. Project management procedures employed by ESCO include the following:

- PM coordinates work schedules with customer and subcontractor(s).
- PM provides periodic updates to customer via established process.
- PM provides periodic updates to the status of submittals and key approval dates.
- PM monitors the status of material and work progress.
- PM inspects work during site visits and reviews work with subcontractor. (punch list items are documented as necessary)
- PM coordinates all commissioning and initiates training procedures.
- PM oversees the preparation of all O&M documentation.

All punch list issues will be resolved prior to Final Completion of each ECM by site staff. Completed as-built drawings as applicable, O&M manuals, and any other pertinent documents will be submitted and approved as part of the project completion process. All such procedures outlined in the energy services agreement will be strictly observed.

Subcontractor Management

ESCO will utilize the services of subcontractors for the construction of ECMs at **RIC.....**

Part F.

**SCHEDULE B
FORM OF CONSTRUCTION WORK ORDER**

This Construction Work Order (“Construction Work Order”) incorporates the terms, definitions and conditions of that certain Master Energy Performance Contract dated **date, month, 201** (the “Contract”) by and between **ESCO** (“Contractor”) and _____ (“Customer”).

WHEREAS, Customer hereby requests that Contractor complete the Work as detailed in this Construction Work Order, pursuant to the Contract and the attachments set forth and hereby incorporated below;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the Parties hereby agree to the terms and conditions of the following Attachments in accordance with the Contract:

ATTACHMENT B-1	DESCRIPTION OF PREMISES
ATTACHMENT B-2	SCOPES OF WORK
ATTACHMENT B-3	PAYMENT SCHEDULE
ATTACHMENT B-4	MEASUREMENT & VERIFICATION PLAN
ATTACHMENT B-5	EQUIPMENT STANDARDS FOR ECMs/OCMs
ATTACHMENT B-6 REQUIREMENTS	SPECIALIZED REQUIREMENTS OR OPERATIONAL
ATTACHMENT B-7	HOURS AVAILABLE FOR PERFORMING THE WORK
ATTACHMENT B-8	COMFORT STANDARDS
ATTACHMENT B-9	EVIDENCE OF ESCO CORPORATE AUTHORITY AND QUALIFICATION OF ESCO AS A FOREIGN CORPORATION
ATTACHMENT B-10-A	DELIVERY & ACCEPTANCE CERTIFICATE UPON SUBSTANTIAL COMPLETION
ATTACHMENT B-10-B	DELIVERY & ACCEPTANCE CERTIFICATE UPON FINAL COMPLETION
ATTACHMENT B-11-A	GUIDELINES FOR PROJECT ACCEPTANCE
ATTACHMENT B-11-B ACCEPTANCE	DELIVERY & ACCEPTANCE CERTIFICATE UPON PROJECT
ATTACHMENT B-12	SECURITY FOR PERFORMANCE GUARANTEE

ATTACHMENT B-13

MAJOR EQUIPMENT

ATTACHMENT B-14

CHANGES TO THE WORK FORM

ESCO

**OWNER, by and through
the**

Signature

Signature

Name

Name

Title

Title

Date

Date

ATTACHMENT B-3

Payment Schedule

Project No. ____

A. Price and Construction Financing for Scope of Work

1. Price

ECM/OCM Implementation:

As full consideration for the Work as described in Attachment B-2, Part A: Description of ECMs/OCMs, the Customer shall pay to ESCO the amount of \$x,xxx,xxx. The Price will be equal to the sum costs of the Financial Grade Audit and all installed equipment, materials, labor, design, engineering, permits, project management fees, and other installation services, including bonding, insurance, contingency, overhead, and profit, unless increased or decreased by the price of an approved change of scope of work, as outlined in Section 5.03 of the Contract.

ESCO shall supervise and direct the Work and shall be solely 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.

2. Open Book Pricing: ESCO will maintain cost accounting records on authorized work performed documenting actual costs for labor and material, or other basis agreed to by the Customer. ESCO will afford Customer access to these records and preserve them for a period of three (3) years after final payment. Costs may be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices.

3. Contingencies: Contingencies associated with this Contract might be of three types; and are identified in 3.1 through 3.3 below.

3.1 ESCO Contingencies

ESCO contingencies are those amounts of money or percentages added to specific costs to cover uncertainties associated with those specific costs. Typically, ESCO Contingencies cover such items as cost increases that occur after the cost is set and cost increases for items absent from the subcontractor's scope of work. ESCO contingencies shall be included, without identification, within the cost and pricing of the various ECMs/OCMs and other Project activities. ESCO contingencies shall not be identified separately in the Contract or as a separate cost component of any ECM/OCM. ESCO contingencies are paid by the Customer to the ESCO through routine progress payments as part of the payment for completion of the work associated with that specific cost.

3.2 Project Contingencies

Project contingencies, if any, shall be specifically identified in Table A below. Typically, Project Contingencies cover specific work items that can not be accurately defined until the construction commences; such as replacing exhaust fans that might fail when a roof is replaced. Project Contingencies may either be specific allocations associated with ECMs/OCMs, or a lump sum for the entire project. Project Contingencies associated with specific ECMs/OCMs may be used for their designated purpose by the ESCO without prior notice to and approval by the Customer.

Project Contingencies for ECMs/OCMs may be used for other than their designated purpose only upon written agreement of both the Customer and the ESCO. Neither the ESCO nor the Customer shall have any exclusive rights to use or affect the use of lump sum contingency monies, and lump sum contingencies monies shall be used only upon written agreement of both the Customer and the ESCO. Project contingencies shall be paid to the ESCO only if that specific work associated with the use of that portion of the contingency amount is accomplished. Project contingencies that are not used at the end of the contract will become unearned and unpaid funding that the Customer shall retain.

Table A. Project Contingencies

ECM	Amount
Lump Sum	\$0

3.3 Customer Contingencies

The Customer may hold a separate contingency outside this Contract. Only the Customer shall have rights to use or affect the use of contingency monies held outside the Contract. Specifically, a contingency fund will be set aside in an escrow account that will be controlled by the Customer. Funds can be withdrawn from this account at the Customer's discretion. The Customer-controlled contingencies provide the added flexibility and control with respect to added scope of work or to remedy unforeseen conditions. If the costs for additional work exceed of the value of the Customer Contingencies, then those costs will be borne by the Customer.

4. Construction Escrow: The Customer has agreed to deposit \$ [redacted] in an escrow account/trustee account at a financial institution satisfactory to both the Customer and ESCO (the "Construction Escrow Account"). All interest income and expenses to establish the Escrow Account shall be the complete responsibility of the Customer and the Customer will receive all interest earnings from the Escrow Account. ESCO will submit periodic invoices to the Customer based on the Draw Down Schedule in Table A below. The Customer shall be responsible for submitting the necessary documentation to the Escrow Agent/Trustee for timely withdraws from the Escrow Account. The funding of the Escrow Account in an amount equal to or greater than the amount stated above shall be a condition precedent to ESCO obligation to begin to perform the Work. If the Escrow Account is not funded within thirty (30) days from the execution of the Construction Work Order, this Contract shall be null and void. This thirty (30) day funding period may be extended as mutually agreed upon in writing by both parties.

5. Timely Approval of Payment Applications: The Customer agrees to approve the release of funds to ESCO per Table B below by approving the ESCO's Payment Applications in accordance with the terms of the Contract.

Table B. Estimated Construction Payment Draw Down Schedule

Period	Amount
Mobilization	\$ x,xxx,xxx
Month 1	\$ xxx,xxx
Month 2	\$ xxx,xxx
Month 3	\$ xxx,xxx
Month 4	\$ xxx,xxx
Month 5	\$ xxx,xxx

Period	Amount
Month 6	\$ xxx,xxx
Month 7	\$ xxx,xxx
Month 8	\$ xxx,xxx
Month 9	\$ xxx,xxx
Month 10	\$ xxx,xxx
Month 11	\$ xxx,xxx
Month 12	\$ xxx,xxx
Month 13	\$ xxx,xxx
Month 14	\$ xxx,xxx
Month 15	\$ xxx,xxx
Month 16	\$ xxx,xxx
Total	\$ x,xxx,xxx

Mobilization is due upon Contract execution and is not an estimate. The remaining payment amounts reflected herein are estimates only. The actual percentage of work performed and the amounts reflected in each Payment Application will vary depending on the amount of Work actually completed and the value of major equipment delivered to the site at the time that the Payment Application is submitted. The Work completed in Month 1 will include ESCO's actual development and preliminary engineering costs and mobilization costs.

In accordance with Section 4.01 of the Contract, ESCO will submit a monthly Payment Application to Customer for portions of the Work that ESCO shall have already performed for OCM's and ECMs completed by ESCO that have been commissioned, component steam systems completed by ESCO that have been commissioned and for Major Equipment delivered to the site. Customer shall approve and authorize release of construction financing less ten percent (10%) retainage from the Escrow Agent/Trustee to the ESCO within thirty (30) days following Customer's receipt of a Payment Application. For any specific ECM or OCM, Customer and ESCO will agree on the reasonable value of any punchlist items that remain prior to Project Acceptance. Upon Project Acceptance, ESCO will submit a Payment Application to Customer for the remaining retainage. Customer shall approve and authorize release of all retainage from the Escrow Agent/Trustee to the ESCO within thirty (30) days following Customer's receipt of the Payment Application.

6. Utility Rebates: ESCO will apply for utility rebates in a timely manner. Rebates will be paid directly to the Customer. Any rebate amounts projected by ESCO are estimates and are subject to pre-approval and post-approval by the utilities. Actual amounts paid by the utilities may vary from the estimated rebates.

B. Payment for Measurement & Verification Services

Price: As full consideration for the services as described in Attachment B-4, the Customer shall pay to ESCO, for **the first year only**, the amount of **\$xx,xxx** and shall pay to ESCO, for the subsequent annual periods, an amount equal to **3.0%** greater than the prior year (**3.0%** is based on historical consumer price indices). The sum of the payments over the **X** year Term will be **\$ xx,xxx** unless terminated in accordance with Section 6.03 of the contract.

Term: The term of the Measurement & Verification Services shall commence on the date of the Acceptance Certificate of Final Completion and shall continue for **X** years unless terminated in accordance with Section 6.03 of the contract.

C. Payment for Extended Maintenance Services

Price: As full consideration for the services as described in Attachment B-2, Part C, the Customer shall pay to ESCO the amounts in accordance with Table B. The sum of the payments over the Term will be **\$ 0** unless terminated in accordance with Section 6.03 of the contract.

Table B. Extended Maintenance Service Payment Schedule

Term: The term of the Extended Maintenance Services shall commence on the date of the Acceptance Certificate of Final Completion in a form substantially similar to Attachment B-11-B and shall continue for **X** years unless terminated in accordance with Section 6.03 of the Contract.

D. Cash Flow

In accordance with section 6.03 of the Contract and as shown in the following cash flow table, ESCO and Customer have structured the Energy Savings and the Performance Guarantee to be sufficient to exceed: 1) any and all payments required by Customer in connection with the acquisition of equipment to be installed by ESCO, 2) the Customer’s lease or financing obligations, and 3) any related agreements associated with the execution of this Contract or the implementation of the Work. The total costs to Customer over the Term are projected to be **\$ 0** based on the illustrative cash flow table below and the related assumptions. ESCO makes no representations or guarantees with regard to the interest rate or repayment terms that Customer will have with their source of financing.

Year	Utility Savings	Total Savings	Estimated COPS Coupon	COPS Debt Service	M&V Service	O&M Service	Total Cost	Net Cash Flow
1	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx
2	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx
3	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx
4	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx
5	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx
6	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx
7	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx
8	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx
9	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx
10	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx
11	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx
12	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx
13	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx

Year	Utility Savings	Total Savings	Estimated COPS Coupon	COPS Debt Service	M&V Service	O&M Service	Total Cost	Net Cash Flow
14	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx
15	\$ xxx,xxx	\$xxx,xxx		\$xxx,xxx	\$ xx,xxx	\$ x	\$xxx,xxx	\$xx,xxx
Total	xx,xxx,xxx	\$xx,xxx,xxx	\$ x	\$x,xxx,xxx	\$xx,xxx	\$ x	\$x,xxx,xxx	\$x,xxx,xxx

ATTACHMENT B-4

Measurement and Verification Plan and Performance Guarantee

Project Site Name

Project No. _____

1. DEFINITIONS

When used in this Agreement, the following capitalized words shall have the meaning as described to them below:

“Baseline Usage” is defined as the calculated or measured energy or water usage of a specific building system or piece of equipment (lighting, motors, boilers, etc.) prior to the implementation of the ECM.

“Baseline Demand” is defined as the calculated or measured energy demand of a specific building system or piece of equipment prior to the implementation of the ECM.

“Construction Period” is defined as the period beginning with the customer’s execution of Notice to Proceed in accordance with section 5.01 of the Energy Performance Contract and ending on the day before the start of the First Guaranty Period.

“Energy and Water Costs” may include, but are not limited to, the costs of electricity, fossil fuels, water, sewer, and district utility supply to operate the Premises, as applicable.

“Engineering Calculations” are the energy savings spreadsheet calculations contained in the Detailed Energy Audit or Proposal prepared by ESCO.

“Energy Cost Savings Measure” (ECM) is a set of activities that result in the saving of energy or water costs at the Premises and described in detail in Attachment B-2 of the Energy Performance Contract.

“Energy Unit Savings” are the savings in units of energy, power, water, etc., achieved through the reduction in energy consumption, demand, through the implementation of the Scope of Work as defined and calculated in herein.

“Excess Verified Savings” is the amount of Verified Savings minus Guaranteed Savings in a Guaranty Period.

“First Guaranty Period” is defined as the period beginning on the first (1st) day of the month following the date of execution of the Delivery and Acceptance Certificate (Attachment B-11-B of the Energy Performance Contract) by the Customer and ending on the day prior to the first (1st) twelve-month anniversary thereof.

“Guaranty Period” is defined as the First Guaranty Period and each of the successive twelve-month periods commencing on the anniversary of the commencement of the First Guaranty Period throughout the Term of the Energy Performance Contract.

“Guaranteed Savings” is defined as the amount of avoided Energy and Water Costs and avoided

Operations and Maintenance Costs guaranteed to the Customer in each Guaranty Period.

“Guaranteed Savings Reconciliation Report” is defined as the process and report for determining the Verified Savings in each Guaranty Period and reconciling it to the Guaranteed Savings in the same Guaranty Period.

“Measurement and Verification Plan” (M&V Plan) is defined as the plan providing details on how the Verified Savings will be determined.

“Operating Cost Savings Measure” (OCM) is a set of activities that result in the saving of operations and maintenance costs at the Premises and described in detail in Attachment B-2 of the Energy Performance Contract. OCMs include any expenses that are eliminated, avoided and agreed upon as a result of the installation or modification of equipment, or services performed by ESCO.

“Operations and Maintenance Costs” (O&M Costs) shall include the cost of operating and maintaining the Premises as further described in the Measurement and Verification Plan.

“Premises” shall mean those impacted by the Project and described in Attachment B-1 of the Energy Performance Contract.

“Term” shall be **number (X)** years from Final Completion in accordance with section 4.03 of the Energy Performance Contract.

“Verified Savings” is defined as the summation of avoided Energy and Water Costs and avoided Operations and Maintenance Costs as determined by the Measurement & Verification Plan for the Premises in each Guaranty Period as a result of the ECMs and OCMs provided by ESCO.

2. TERM AND TERMINATION

2.1 Guaranty Term. The Term of this Guaranty shall commence on the first (1st) day of the month following the date of execution of the Delivery and Acceptance Certificate by the Customer and shall terminate at the end of **number (X)** years unless terminated earlier as provided for in section 6.03 of the Energy Performance Contract.

2.2 Guaranty Termination. Should the Energy Performance Contract be terminated (including, as applicable, the Maintenance or Measurement & Verification Services) in whole or in part for any reason prior to the end of the Term, the Guaranteed Savings for the Guaranty Period in which such termination becomes effective shall be prorated as of the effective date of such termination, with a reasonable adjustment for seasonal fluctuations, if any, in Energy Costs and Operations and Maintenance Costs, and the Guaranteed Savings for all subsequent Guaranty Periods shall be null and void.

3. SAVINGS GUARANTY

3.1 Expected Savings. The following table lists the amount of energy and water savings that are expected to result from the ECMs to be installed by ESCO.

#	ECM	Electricity	#6 Oil	Biomass	Total Equivalent
		kWh	Gallons	Fuel MMBtu	Gallons of oil Gallons
ECM1					
ECM2					
ECM3					
ECM4					
ECM5					
ECM6					
ECM7					
ECM8					
ECM9					
ECM10					
	TOTAL				

3.2 Energy Rates. The energy, water, and sewer rates shown in the following table shall be used to calculate the energy and water cost savings in Year 1. The energy rates in this table are based on the energy rates in effect during fiscal year 2010 with a x.x% upward adjustment to account for expected rate increases during the two year construction period. For subsequent years, these energy rates will be adjusted in accordance with section 3.3.

Energy rates shall be set and agreed upon by ESCO and customer during the Financial Grade Audit.

Building	Electric Blended \$/kWh	#2 Oil \$ / Gal	Biomass Fuel \$ / MMBtu
All buildings	\$x.xxxx	\$x.xx	\$x.xx
			@\$xx per ton of Biomass Fuel

3.3 Annual Utility Rate Escalation Rate. Beginning in Year X, the utility rates to be used for calculating energy cost savings will increase by 2.5% each year over the rates in the prior year.

3.4 Guaranteed Savings: The following table lists the amount of Guaranteed Savings resulting from the ECMs to be installed by ESCO.

Year	Utility Savings
1	\$xxx,xxx
2	\$xxx,xxx
3	\$xxx,xxx
4	\$xxx,xxx
5	\$xxx,xxx
6	\$xxx,xxx

Year	Utility Savings
7	\$xxx,xxx
8	\$xxx,xxx
9	\$xxx,xxx
10	\$xxx,xxx
11	\$xxx,xxx
12	\$xxx,xxx
13	\$xxx,xxx
14	\$xxx,xxx
15	\$xxx,xxx
Total	\$x,xxx,xxx

3.5 Adjustments to Guaranteed Savings. If all or a portion of a proposed ECM cannot be implemented due to site conditions or Customer requirements, Guaranteed Savings will be adjusted equitably based on the savings calculations, spreadsheets, simulation models, and as-built quantities.

3.6 Savings Shortfalls. In the event that the Verified Savings in the Guaranty Period is less than the Guaranteed Savings required for that Guaranty Period, ESCO shall compensate Customer the amount of any such shortfall plus any applicable interest costs pursuant to section 4.02 of the Energy Performance Contract, within ninety (90) days in accordance with section 6.04 of the Energy Performance Contract. Savings Shortfall will be limited by the value of the guaranty during the applicable Guaranty Period. Resulting compensation shall be ESCO's sole liability for any shortfall in the Guaranteed Savings. ESCO shall remedy such non-conformance in accordance with Section 6.04 of the Contract.

3.7 Guaranteed Savings Reconciliation Report. ESCO will provide Customer with a Guaranteed Savings Reconciliation Report after each Guaranty Period within 90 days. Customer shall assist ESCO in generating the savings reconciliation report by providing, together with access to, relevant records relating to such Energy and Operations and Maintenance Costs. Customer shall also assist ESCO by providing any energy billing information, maintenance records, drawings, or other data deemed necessary by ESCO to generate the said report. Data and calculations utilized by ESCO in the preparation of its Guaranteed Savings Reconciliation report will be made available to Customer, along with such explanations and clarifications as Customer may reasonably request.

3.8 Guaranteed Savings Reconciliation. Verified Savings for each Guaranty Period will be determined in accordance with the methodology(s), operating parameters, formulas, and constants as defined in the Measurement and Verification Plan contained in Section 4 of this Attachment. For ECMs where efficiency is measured (e.g., kW per ton or gallons per use), the measured pre- and post-retrofit verified savings will be adjusted to reflect actual efficiency improvement. The actual savings reduction in utility bills may vary from the Verified Savings for reasons outside of ESCO's control including but not limited to: changes in energy and other utility rates and tariffs, changes in Customer operating schedules and usage patterns, changes in Customer loads due to addition or reductions in energy and water consuming devices, changes in weather, impacts due to the operations of the ECMs or building systems, impacts due to the maintenance of ECMs maintained by Customer, additions to and/or reduction in facility space usage. For the purposes of calculating any shortfalls or excesses of Verified Savings versus Guaranteed Savings, the Measurement & Verification Plan will be utilized.

3.9 Upon receipt of the Reconciliation Report, Customer shall have forty-five (45) days to review the Guaranteed Savings Reconciliation Report and provide written notice to ESCO of non-acceptance of the Guaranteed Savings Reconciliation Report for that Guaranty Year. Such written notice shall explain the specific reasons why the Customer does not accept the report. ESCO will submit a revised report within forty-five (45) days upon receipt of notice. Failure to provide written notice within forty-five (45) days of the receipt of the Guaranteed Savings Reconciliation Report will deem it accepted by Customer.

3.10 Quarterly Status Report. In addition to the annual Reconciliation Report, ESCO will provide Customer with a Status Report three times per year. The report will include a summary of changes to the operating conditions that are observed by ESCO during the M&V and maintenance activities described here-in (e.g., changes to EMS schedules and setpoints). The report will also include, to the extent that submetered utility data is available to ESCO, a comparison of the submetered electricity and steam usage for the quarter to the submetered usage for the relevant previous quarters.

3.11 Adjustments to Verified Energy Savings

3.11.1 Additional Savings. Additional Energy and Water Cost savings and/or Operations and Maintenance Cost savings that can be demonstrated as a result of ESCO's efforts that result in no additional costs to Customer beyond the costs identified in this Agreement will be included in the Verified Savings for the applicable Guaranty Period (s).

3.11.2 Savings Prior to Final Retrofit Acceptance. If ESCO has included Guaranteed Savings for the Construction Period, all Energy and Water Cost savings and Operations and Maintenance Cost savings realized by Customer and as calculated through the Measurement & Verification Plan that result from activities undertaken by ESCO prior to Final Project Acceptance will be applied to the Verified Savings for the Construction Period.

3.11.3 Activities and Events Adversely Impacting Savings. Customer must promptly notify ESCO of any activities known to Customer that adversely impact ESCO's ability to realize the Guaranteed Savings and ESCO shall be entitled to reduce the Guaranteed Savings by the amount of any such adverse impact to the extent that such adverse impact is beyond ESCO's reasonable control.

3.11.4 Performance Deficiencies. ESCO shall have the right to rectify performance deficiencies which may be identified by measurements taken over the term of the contract, at its own expense, and to adjust Verified Savings accordingly.

3.11.5 Guaranty Adjustment. ESCO's Guaranteed Savings obligations under this Agreement are contingent upon: (1) Customer following the Operations and Maintenance requirements for the ECMs in accordance with the Agreement; (2) no alterations or additions being made by the Customer without prior notice and written agreement of the Parties; (3) Customer sending all current utility bills and other information required by the Measurement and Verification Plan to ESCO within one (1) month after request of ESCO and (4) ESCO'S ability to render services not being impaired by circumstances beyond its control. To the extent that the Customer defaults or fails to perform fully any of its obligations under this Agreement, ESCO may, in its sole discretion, adjust the Guaranteed Savings obligation; provided, however, that no adjustment hereunder shall be effective unless ESCO has first provided the Customer with written notice of Customer's default(s) or failure(s) to perform and Customer has failed to cure its default(s) and failure(s) to

perform within thirty (30) days after receipt of such notice.

3.12 Monitoring ECMs

The Customer acknowledges and consents to ESCO's right to monitor ECM Savings and energy management performance by conducting on-site measurements, including but not limited to, reading meters, installing and observing on-site monitoring equipment, and remote monitoring of the energy management systems. The Customer shall cooperate fully with any such measures instituted by ESCO pursuant to this Subsection. ESCO shall not institute any measures that unreasonably interfere with the business of Customer conducted at the Facilities.

To facilitate ESCO's monitoring of the ECMs, Customer will grant ESCO, and its EMS subcontractor, remote access via a virtual private network (VPN) account or other mutually agreeable mechanism through Customer's firewall for a specific source and destination IP address and TCP/UDP ports. ESCO will inform Customer as to what TDC/UCP ports are required. Such access shall be subject to Customer's approval.

In the event that the Customer does not allow remote access by ESCO for the purpose of monitoring the ECMs, then ESCO reserves the right to revise the M&V plan accordingly.

4. MEASUREMENT & VERIFICATION PLAN

4.1 Measurement and Verification. ESCO and the Customer agree that the Verified Savings will be determined using the following Measurement and Verification Plan. This plan verifies energy, water, and O&M savings by combining industry standards and manufacturers' equipment ratings with proven engineering calculations and measurements. The objective of the plan is to cost-effectively quantify the actual electrical, fossil fuel and water usage and compare those to the specific baselines established for each ECM, the difference of which is the energy savings.

4.2 M&V Descriptions. The M&V methodology for each ECM is summarized in the following table. Detailed descriptions of the M&V methodology for each ECM are presented on the pages after the summary table. Each description lays out the procedure for the calculation of savings, detailing the equations and specific variables. All M&V activities shall follow Federal Energy Management Program protocols.

1. **M&V Option X:** This option allows for the energy savings to be predicted, measured, and agreed upon between the Customer and ESCO. One time measurements and stipulated parameters are used to quantify savings that are stipulated for the term of the Contract.
 - a. ESCO will supply a one-time report to the Customer detailing the measurements and calculation of savings. If the calculated savings fall short of those expected, ESCO will have the opportunity to remedy the short fall and re-measure and calculate the results. Such work will be done at ESCO' expense and shall not be unreasonably

denied by the Customer, as long as such work does not interfere with the Customer's use of the Facilities. These calculated savings will be defined as Energy Unit Savings and will be agreed to occur each Guarantee Period. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion of the Energy Conservation Measure and the M&V Commencement Date. Verified Savings will be determined by multiplying the Energy Unit Savings by the Energy Rates for the applicable Guaranty Period.

b. Scope of Work

ECM-X Title

IMPVP Option , FEMP Method

Description of Energy Conservation Measure:

Measure description.

M&V Approach

IMPVP Option , FEMP Method will be used to measure and verify the electricity savings from this retrofit. This method requires measuring the light fixture power draw in both the baseline and post-installation periods. Baseline measurements will be made just prior to retrofit. Post-installation measurements will be performed once following the retrofit.

An Option X approach will be utilized for this retrofit because the savings should be persistent so long as the lighting components remain installed. In addition, savings interactions with other ECM's or subsystems are easily understood and quantified.

ESCO will conduct all M&V activities. Site personnel will be invited to observe and participate in all measurement activities.

Baseline Period

Baseline period description.

Post-Installation Period

Post-installation activities description.

Calculations and Adjustments

Baseline Period

Baseline period activities description.

Post-installation Period

Post-installation period activities description.

Metering Plan

Metering plan description.

Assumptions

Assumption description, narrative, and/or summary table.

2. **M&V Option X:** Energy savings performance of Scope of Work are measured and verified at the end-use site. Option X techniques are designed for projects where long-term continuous measurement of performance is desired and warranted. Under Option X, while some parameter may be stipulated or measured once then stipulated, some individual loads are continuously monitored to determine performance; and this measured performance is compared with an equipment-use Baseline to determine the Energy Unit Savings.
 - a. ESCO will supply a one-time report to the Customer detailing any initial measurements taken to establish usage Baselines or other parameters. Ongoing post-retrofit measurements will be compared to the Baselines, and the quantified Energy Unit Savings will be calculated and presented in ongoing reports. During the Construction Period, the Energy Unit Savings will be calculated by adding the savings measured for the whole months between Substantial Completion of the Energy Conservation Measure and the first day of the First Guaranty Period.
 - b. Scope of Work

Per ECM- Listing

IMPVP Option X, FEMP Method X

Description of Energy Conservation Measure:

ECM description.

M&V Approach

IMPVP Option X, FEMP Method X will be used to measure and verify the fuel oil savings from the biomass boiler portion of the ECM. Electricity savings and fuel oil savings from efficiency gains due to boiler improvements to the existing boilers will not be measured under this approach. Option B requires measuring the existing boiler efficiency, new boiler efficiency and on-going steam production from the biomass boiler. Baseline efficiency measurements will be made prior to retrofit. Post-installation measurements will be performed continuously for the duration of the Term.

An Option X approach will be utilized for this retrofit to ensure savings persistence and to isolate the ECM from other energy impacts at the hospital.

ESCO will conduct all M&V activities. Site personnel will be invited to observe and participate in all measurement activities.

Baseline Period

Baseline boiler description.

Post-Installation Period

Post-installation description.

Calculations and Adjustments

Baseline Period

Baseline period adjustments description.

Post-installation Period

Post-installation period description and formulas.

Energy Unit Savings will be determined as:

$$\frac{\sum_{15 \text{ minute intervals}} (\text{Fuel Oil}_{\text{Baseline}} - \text{Fuel Oil}_{\text{Post-Installation}})}{\sum_{\text{Monthly}} (\text{Biomass Fuel}_{\text{Baseline}} - \text{Biomass Fuel}_{\text{Post-Installation}})}$$

During the Construction Period, the Energy Unit Savings will be measured in each whole month between Substantial Completion of the Energy Conservation Measure and the first day of the First Guaranty Period. Verified Savings will be determined by multiplying the Energy Unit Savings by the Energy Rates for the applicable Guaranty Period.

Metering Plan

Metering plan description.

Assumptions

Assumptions description.

3. **M&V Option X:** Not Used.
4. **Stipulated Savings:** When the cost, complexity, or uncertainty of savings measurements are high as compared to the Expected Savings, the Customer and ESCO may agree to stipulate the Expected Savings as being achieved, without any measurements being taken.
 - a. For the Stipulated Option, the Energy Unit Savings presented below will be agreed to occur each year of the Contract. During the Construction Period, the Energy Unit Savings will be calculated by adding the stipulated savings for the whole months between Substantial Completion of the Energy Conservation Measure and the first day of the First Guaranty Period. Verified Savings will be determined by multiplying the Energy Unit Savings by the Energy Rates for the applicable Guaranty Period.

ATTACHMENT B-5

Equipment Standards for ECMs/OCMs

Project Site Name

Prior to the installation of the Work, ESCO shall provide Customer with descriptive literature, specifications and, if appropriate, sample fixtures and other equipment for Customer approval, such approval not to be unreasonably delayed or withheld.

The Customer shall make the final determination whether any material or equipment to be installed is as specified in the Scope of Work. No substitution of any material or equipment specified shall be made without the written consent of the Customer in the form of a revision to the Scope of Work, and any such substitution shall be at least equal in quality, finish, durability, serviceability and performance for the purpose intended.

ATTACHMENT B-6

Specialized Construction or Operational Requirements

- Site specific requirements (A)
- Site specific requirements (B)

ATTACHMENT B-7

Hours Available for Performing the Work

Building	Hours Available for Performing the Work
Occupied Buildings	Building list – Monday to Friday 7 AM to 6 PM; Weekends - 7AM to 3 PM. Holidays - No work
Unoccupied Buildings	Building list - Monday to Friday 7 AM to 6 PM; Weekends - 7AM to 3 PM. Holidays - No work

ATTACHMENT B-8

Comfort Standards

Sample Site Name

The following average maintained standards of service and comfort shall apply:

TYPE OF SERVICE	ENVIRONMENTAL REQUIREMENT
I. HEATING	
Occupied	66 - 72°F
Unoccupied	minimum of 40°F
Storage	minimum of 55°F
II. COOLING (applies only to spaces that are mechanically cooled)	
Occupied	72 - 76°F
Unoccupied	maximum of 85°F
III. HOT WATER HEATERS	140°F
IV. VENTILATION	Must meet State Building Code

ATTACHMENT B-9

Evidence of ESCO Corporate Authority
and
Qualification of ESCO as a Foreign Corporation, if Necessary

ATTACHMENT B-10-A

Delivery and Acceptance Certificate
Upon Substantial Completion

_____ (“ESCO”) warrants that certain ECMs/OCMs described in Attachment B-2 to the Contract between ESCO and _____ dated _____ and which are listed in the attachment hereto are fully installed and in good working condition consistent with the requirements of the Contract, and Customer has accepted the same as indicated by its signature hereon. Separate certificates will be executed as each ECM or group ECMs becomes substantially complete.

Substantial Completion Date: _____

ECMs/OCMs: _____

ESCO Signature: _____ Date: _____

Name: _____

Title: _____

Customer accepts that the ECMs/OCMs listed below are substantially complete.

ECMs/OCMs: _____

Customer Signature: _____ Date: _____

Name: _____

Title: _____

Customer does not accept that the ECMs/OCMs listed below are substantially complete.

ECMs/OCMs: _____

Customer Signature: _____ Date: _____

Name: _____

Title: _____

ATTACHMENT B-10-B

Delivery and Acceptance Certificate
Upon Final Completion

ESCO ("ESCO") warrants that all of the ECMs/OCMs described in Attachment B-2 to the Contract between ESCO and _____ dated _____ and which are listed in the attachment hereto are fully installed and in good working condition consistent with the requirements of the Contract. Also attached hereto is a statement evidencing that all items on the Checklist for Project Acceptance located in Attachment B-11 are complete and submission of a Final Commissioning Report.

Final Completion Date: _____

ESCO Signature: _____

Name: _____

Title: _____

ATTACHMENT B-11-A

Guidelines for Project Acceptance

ECM/OCM Installation. All ECMs/OCMs are installed in accordance with plans, specifications, standards, and other contract documents agreed upon by Customer and ESCO.

Inspection, start-up, testing and commissioning. All ECMs/OCMs are inspected, brought on line, tested, and commissioned interactively with all related Customer-owned or ESCO-installed ECMs/OCMs. The ECMs/OCMs should be operating in accordance with the design, plans, specifications, standards and other contract documents and manufacturer's recommendations. Individual ECMs/OCMs may go through start-up and testing, but all interrelated ECMs/OCMs must be installed prior to commissioning. The ESCO shall be involved in the final inspection and commissioning process along with any subcontractors. The Customer should accompany the ESCO on these inspections.

Punch list generation. A punch list is generated during inspection to document items needing fixing or deficiencies, and punch list items are corrected. In accordance with Attachment B-3, section A.5., for any specific ECM or OCM, Customer and ESCO will agree on the reasonable value of any punchlist items that remain prior to Project Acceptance.

30-day Performance Period. Upon completion of the above items for the last installed ECMs/OCMs, the ESCO shall write a letter to the Customer asking for the 30-day performance period to begin (assuming all significant punch list items have been corrected). Other discrepancies may appear during this period. The ESCO shall have them all corrected by the end of the 30-day period. If the discrepancy has the potential to reappear or if another 30-day period is warranted because of the criticality of the ECM/OCM, then a continuation of the performance period may be requested.

Final Customer Inspection. One final "walk-through" should be conducted with the Customer representative. The ECMs/OCMs should be fully operational, without "bugs" and all other items required for completion or delivery to the Customer shall have been provided.

Project Acceptance. The Customer signs and delivers a certificate that confirms that the items reflected in the checklist for project acceptance have been satisfied.

Checklist for Project Acceptance

- _____ All ECMs/OCMs have been installed.
- _____ All ECMs/OCMs have been through inspection, start-up, testing, and interactive commissioning.
- _____ All discrepancies noted have been corrected.
- _____ Appropriate training on operations and maintenance (O&M) was conducted for each ECM/OCM
- _____ O&M manuals and procedures have been provided.
- _____ Recommended spare parts lists and spares have been provided.
- _____ As-built drawings have been received and approved.
- _____ Utility rebate inspections and paperwork approved and submitted, and copies submitted to Customer
- _____ Manufacturer warranty and registration paperwork submitted to Customer
- _____ Serial number information for relevant equipment submitted to Customer
- _____ All ECMs/OCMs have performed properly for 30 days as of _____.
- _____ Customer final inspection and acceptance is confirmed as of _____.

ATTACHMENT B-11-B

Delivery and Acceptance Certificate
Upon Project Acceptance

_____ (“Customer”) hereby acknowledges Project Acceptance of all ECMs/OCMs described in Attachment B-2 to the Contract between Customer and _____ (“ESCO”) dated _____. The date of delivery of this certificate of Project Acceptance is the date at which the Customer shall be deemed to have the Work defined in the Contract has been installed, functionally tested and all punch list items completed in accordance with the Contract, so that the Customer has possession of the Work and can use it for its intended use. Customer hereby accepts the ECMs/OCMs listed hereto after full inspection thereof as satisfactory for all purposes of the Contract. Customer agrees to make the required payment(s) to ESCO pursuant to the terms of the Contract.

Final Acceptance Date: _____

ECMs/OCMs: _____

Accepted for: Customer

Accepted by: _____

Name: _____

Title: _____

ATTACHMENT B-12

Security For Performance Guarantee

In accordance with Section 6.05 of the Contract, ESCO shall provide an energy efficiency bond for each of the first X (X) Guaranty Periods in a face amount equal to the Guaranteed Savings for that Guaranty Period. The efficiency bond(s) shall be provided upon Project Acceptance and shall terminate after the Year X Guaranty Period.

ATTACHMENT B-13

Major Equipment with Warranty Information

To be determined during Financial Grade Audit Phase

ATTACHMENT B-14

Changes To The Work Form

(Request and Agreement for Change in Scope and/or Specifications and/or Contract)

Change Request No. _____

Customer: _____

Department: _____

Project No. _____ Contract No. _____ Site: _____

Revision Title: _____

1. REQUEST

Date: _____

(a) Requested by _____ Of _____

(b) Description of change _____

2. ESCO's AGREEMENT

For all costs involved in this change including extensions of time herein requested, ESCO proposes to perform the work described in accordance with the provisions of the subject Agreement and certifies that the attached cost data is accurate, complete and current, and mathematically correct.

Payment shall be made on the basis of: _____

If necessary, attach detailed estimates and breakdown for above in accordance with Revision instruction. A claim for work performed under protest may be submitted in writing.

An extension of contract time of _____ calendar days to _____ is requested.

Original Contract Price	\$
Previous Additions	\$
Previous Deductions	\$
Net Total	\$
This Revision	\$
Total Contract Price	\$

Requires Change to Guaranteed Savings: <input type="checkbox"/> Yes <input type="checkbox"/> No
Requires Change to M&V Plan: <input type="checkbox"/> Yes <input type="checkbox"/> No
Requires Change to Project Schedule: <input type="checkbox"/> Yes <input type="checkbox"/> No

APPROVALS:

ESCO

Owner by and through

Signature

Name & Title

Date

Signature

Name & Title

Date