

ENERGY SAVINGS PERFORMANCE CONTRACTING SERVICES

REQUEST FOR PROPOSALS (RFP)

RFx Number: 6000001646

Project Number: 2600000003

Schedule:

	TASK	DATE/TIME
1	RFP Issued	August 1, 2024
2	Pre-Submittal Meeting	August 8, 2024
3	Written Inquiries (to be submitted to Procurement Officer)	August 14, 2024
3	Response to Inquiries (issued by the City)	August 19, 2024
4	Solicitation Deadline for Proposal Submissions	August 23, 2024
5	Proposal Review Period End Date	September 6, 2024
6	Notice of Intent to Award	September 13, 2024
7	City Council Award	October 16, 2024
8	Execution of Base Contract (anticipated)	November 11, 2024

Submit proposals and requests for alternate formats to:

Kandi Kawolsky, Procurement Manager
City of Phoenix Design and Construction Procurement
200 W. Washington Street, 5th Floor
Phoenix, Arizona 85003
kandi.kawolsky@phoenix.gov
602-256-4108

ISSUE DATE: August 1, 2024

****This RFP does not commit the City of Phoenix to award any agreement. All dates are subject to change at the discretion of the City. The City may cancel this RFP at any time if deemed to be in the best interest of the City in the City's sole discretion.*

REQUEST FOR PROPOSALS

for Energy Savings Performance Contracting Services
for the City of Phoenix

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I. OVERVIEW AND BACKGROUND

The City of Phoenix (the “City”) seeks proposals from Energy Service Companies (“ESCO” or “Offeror”) to conduct Investment Grade Audits of City facilities and implement Energy Performance Contracts for projects throughout the City on an as-needed basis as required by the City. The ESCO will be expected to identify and implement building improvements to reduce energy and related costs in facilities such that annual cost savings are applied to annual payments for improvements.

A selected ESCO will be required to comply with applicable laws, expressly including Arizona Revised Statutes (“ARS”) § 34-105 as related to guaranteed energy cost savings contracts.

The contracting process is multi-faceted and will include the following phases, as applicable:

- Selection and Execution of Base Contract: If an ESCO’s offer is accepted by the City, the ESCO will be required to execute a Base Contract with the City for a term of five years with a five-year option for renewal. The Base Contract is attached as Exhibit A.

- Investment Grade Audit and Specific Project Proposal: A contract for an Investment Grade Audit will be developed between the City and a selected ESCO. The investment grade audit will identify and evaluate cost-saving measures and define the proposed project scope, cost, savings, and cash-flow over the proposed term. The ESCO will further present a project proposal that will be agreed upon between the City and the ESCO (collectively the “Parties”). A Model Investment Grade Audit and Project Development Contract is attached as Exhibit E. The Parties will be expected to negotiate and finalize a mutually agreeable Investment Grade Audit and Project Development Contract as applicable. The Investment Grade Audit and Project Development Contract must comply with ARS § 34-105 (attached as Exhibit G).

- Construction/Implementation/Commissioning: An Energy Savings Performance Contract will be negotiated and finalized in a mutually agreeable manner following the investment grade audit. The Energy Savings Performance Contract will establish the project scope and costs and provide for construction and follow-up services to be provided during the term. A Model Energy Savings Performance Contract is attached as Exhibit F. The Parties will be expected to negotiate and finalize a mutually agreeable Energy Savings Performance Contract as applicable. The Energy Savings Performance Contract must comply with ARS § 34-105.

- Post-Construction Guarantee/Monitoring Phase: After construction, the ESCO will offer a variety of services to ensure savings are met. This includes, but is not limited to, a savings guarantee based on International Performance Measurement & Verification Protocol (IPMVP), staff training, follow-up monitoring, and contract maintenance services.

II. PROPOSAL SUBMITTAL AND SELECTION PROCESS

1. Policies

a. City's Vendor Self-Registration and Notification

- i. City vendors must be registered in the City's eProcurement Self-Registration System at <https://www.phoenix.gov/financesite/Pages/EProc-help.aspx> in order to respond to solicitations and access procurement information. The City may, at its sole discretion, reject any offer from an ESCO who has not registered in the City's eProcurement system.

b. Certification

- i. By submitting an offer, the ESCO certifies that the submission of the offer did not involve collusion or anti-competitive practices.
- ii. The ESCO further certifies that it will not (1) discriminate against any employee or applicant for employment in violation of Federal or State Law or (2) give, offer to give, or intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted offer.

c. Solicitation Transparency

- i. Commencing on the date and time this solicitation is published, potential or actual offerors or respondents (including their representatives) shall only discuss matters associated with the solicitation with the Mayor, any members of City Council, the City Manager, any Deputy City Manager, or any department director directly associated with the solicitation (including in each case their assigned staff, except for the designated procurement officer) at a public meeting, posted under Arizona law, until the resulting contract(s) are awarded or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or similar solicitation. As long as the solicitation is not discussed, Offerors may continue to conduct business with the City and discuss business that is unrelated to the solicitation with the City staff who are not involved in the selection process.
- ii. Offerors may discuss their proposal or the solicitation with the Mayor or one or more members of the Phoenix City Council, provided such meetings are scheduled through the Procurement Officer, and are posted as open meetings with the City Clerk at least 24 hours prior to the scheduled meetings. The City Clerk will be responsible for posting the meetings. The posted notice shall identify the participants and the subject matter, as well as invite the public to participate.

- iii. With respect to the selection of a successful ESCO, the City Manager and/or City Manager's Office will continue the past practice of exerting no undue influence on the process. In all solicitations of bids and proposals, any direction on the selection from the City Manager and/or City Manager's Office and Department Head (or representative) to the proposal review panel or selecting authority must be provided in writing to all prospective Offerors.
- iv. This policy is intended to create a level playing field for all Offerors, assure that contracts are awarded in public, and protect the integrity of the selection process. **PROPOSERS THAT VIOLATE THIS POLICY SHALL BE DISQUALIFIED.** After official notice is received from the City for disqualification, the Proposer may follow the Protest process, unless the Solicitation is cancelled without notice of intent to reissue.
- v. "To discuss" means any contact by the proposer, regardless of whether the City responds to the contact. Offerors that violate this policy shall be disqualified until the resulting contract(s) are awarded, or all offers or responses are rejected and the solicitation is cancelled without any announcement by the Procurement Officer of the City's intent to reissue the same or a similar solicitation. The City interprets the policy as continuing through a cancellation of a solicitation until Council award of the contract, as long as the City cancels with a statement that the City will reissue the solicitation.

2. Submittal Instructions

a. Preparation of Offer

- i. All requested information and forms must be included in the proposal. Offerors will not be permitted to supplement their proposals after the solicitation deadline.
- ii. All time periods stated as a number of days are calendar days.
- iii. It is the responsibility of the Offeror to review the solicitation and its requirements and to seek clarification via written inquiry to the Procurement Officer if necessary.
- iv. Offerors are responsible for consideration and understanding of applicable laws and/or economic conditions that may affect cost, progress, performance, or furnishing of the goods or services.

b. Communications Regarding this RFP

- i. Questions and requests for clarification must be submitted in writing to only the Procurement Officer. No verbal inquiries will be

addressed. The City will respond to applicable inquiries as otherwise set forth in this solicitation. Communication in violation of the above-referenced Solicitation Transparency Policy is prohibited.

c. Cost Disclaimer

- i. The City shall not be liable for any costs incurred by ESCOs in the preparation of offers and proposals or related to any element of the selection or negotiation process. The ESCOs are responsible for all costs incurred, and the City shall not entertain any requests for compensation or reimbursement.

d. Timeliness

- i. Proposals must be in the possession of the City prior to the solicitation deadline set forth in the Schedule. Late proposals will not be considered.

e. Electronic Submittal Required

- i. Proposals must be submitted electronically to the email address of the Procurement Officer or as otherwise directed by the Procurement Officer. The following information should be clearly noted in the email: (1) Offeror's Name and (2) Solicitation Number/Title.
- ii. It is the responsibility of the Offeror to ensure that the offer is timely and that no technical reasons cause the submittal to be late. The date and time of the email as received by the City's inbox will provide proof of submission and shall control in any timeliness dispute. Offerors are encouraged to submit an offer and follow up with the Procurement Officer to confirm receipt prior to the solicitation deadline.

f. Exceptions

- i. Proposals should not take any exceptions to the terms, conditions, or material requirements of this solicitation, including the Base Contract. Proposals submitted with exceptions may be deemed non-responsive and disqualified from further consideration. ESCOs must conform to all the requirements specified in the solicitation. The City encourages ESCOs to submit written inquiries to the Procurement Officer questions rather than including exceptions in their Offer.
- ii. The City recognizes that the Parties will negotiate final terms and conditions of the Investment Grade Audit and Project Development Contract and Energy Savings Performance Contract. To that end, the City requests that ESCOs not include requested changes to the

Model Contracts as those may be reviewed and revised with a successful Offeror at a future date.

3. Submittal Format

- a. Proposals should conform with the ESCO Response Template and include all requested information for purposes of review and evaluation of the proposal. The ESCO Response Template is attached as Exhibit B.

4. Submittal Schedule

- a. The following schedule is subject to change and intended to provide an overview of the timeline for the solicitation and resulting Base Contract:

	TASK	DATE/TIME
1	RFP Issued	August 1, 2024
2	Pre-Submittal Meeting	August 8, 2024
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5. Selection Process

- a. Review of Proposals
 - i. Timely submitted proposals in compliance with the Submittal Format identified above will be reviewed by the City. Proposals and other information received in response to the solicitation will only be shown to authorized City personnel having an interest in the solicitation or otherwise assisting with the solicitation, including evaluation.
 - ii. An Evaluation Panel will review and score each proposal based on the criteria below.
 - iii. The Evaluation Panel will recommend for award the ESCO(s) that are highest rated based on the evaluation criteria. The Evaluation Panel may recommend one or more ESCOs for award.
- b. The Evaluation Criteria are as follows (including weighted score percentage) and included in the ESCO Response Template:

- i. Participation and Compliance (Pass/Fail)
- ii. Overview of Approach to Performance Contracting (5 points max)
- iii. Project History (15 points max)
- iv. Qualifications (15 points max)
- v. Financial Solvency (15 points max)
- vi. Technical Approach (10 points max)
- vii. Management Approach (10 points max)
- viii. City of Phoenix-Specific Approach (15 points max)
- ix. Cost and Pricing (15%)

c. Multiple Awards

- i. The City reserves the right to award to one or more ESCOs in its sole discretion.
- ii. The City further reserves the right to award to the next highest rated ESCO if the City and the originally selected ESCO are unable to execute a Base Contract after notice of award.

d. Award and Execution of Contract

- i. Upon selection of an ESCO for award, the City will issue a public notice of award. City Council must then award the contract. The City and the ESCO will then execute the Base Contract. Thereafter, the City and ESCO may engage in specific projects, which will include the execution of additional contracts and documents as applicable and agreeable between the Parties.

6. Responsiveness, Responsibility, and Disqualification

- a. The City reserves the right to disqualify any Offeror that fails to provide information or data requested or who provides materially false or misleading information or data. The City further reserves the right to disqualify any Offeror on the basis of any real or apparent conflict of interest between the Parties. And the City reserves the right to disqualify any Offeror for reasons of non-responsiveness or non-responsibility.
- b. Offers will be reviewed for documentation of minimum qualifications, completeness, and compliance with the Solicitation requirements. The City reserves sole discretion to determine responsiveness and responsibility.
- c. Responsiveness
 - i. The solicitation states criteria that determine responsiveness, and the solicitation includes terms and conditions that if included or excluded from Offers (as the case may be) will render an Offer nonresponsive. Non-responsive Offers will not be considered in the evaluation process.

- ii. Exceptions, conditions, reservations, or understandings are presumed to be unacceptable, and an Offer that includes unacceptable exceptions, conditions, reservations, or understandings may be rejected as non-responsive. Alternatively, the City in its sole discretion may instruct in writing that any Offeror remove the conditions, exceptions, reservations or understandings. If the Offeror fails to do so in writing, the City may determine the Offer to be nonresponsive.
- d. Responsibility
 - i. To obtain true economy, the City must conduct solicitations to minimize the possibility of a subsequent default by the contractor, late deliveries, or other unsatisfactory performance that may result in additional administrative costs. It is important that the Offeror be a responsible contractor. Responsibility includes the Offeror's integrity, skill, capacity, experience, and facilities for conducting the work to be performed.
 - e. The Procurement Officer, in consultation with legal counsel, will review each Offer to determine if the Offeror is responsive or responsible. The City's determination as to whether an Offeror is responsive or responsible will be based on the information furnished by the Offeror, and information received from Offeror's references, including information about Offeror's past history, terminations for convenience or cause, contract breach lawsuits or notices of claim and any other sources the City deems appropriate. Award of the contract resulting from the solicitation will not be made until any necessary investigation, which each Offeror agrees to permit by submitting its Offer, is made by the City as it deems necessary. A review of responsiveness and responsibility may occur up to contract award.
 - f. The Offeror's unreasonable failure to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such Offeror.

7. Public Record

- a. All Offers submitted in response to this solicitation will become the property of the City and become a matter of public record available for review as allowable under Arizona law. If an Offeror believes that a specific section of its Offer response is confidential, the Offeror will isolate the pages marked confidential in a specific and clearly labeled section of its Offer response. An Offeror may request specific information contained within its Offer to be treated by the Procurement Officer as confidential provided the Consultant clearly labels the information "confidential." To the extent necessary for the evaluation process, information marked as "confidential" will not be treated as confidential. Once the procurement file becomes available for public

inspection, the Procurement Officer will not make any information identified by the Consultants as “confidential” available to the public unless required to do so under Arizona law. If a public records request for such information is received, the Procurement Officer will notify an Offeror in writing of any request to view any portion of its Offer marked “confidential.” The Offeror will have the time set forth in the notice to seek a court order enjoining such disclosure. If the Offeror does not provide the Procurement Officer with proof of seeking a court order enjoining release of the information during the designated time, the Procurement Officer will make the information available in accordance with the request if permitted under Arizona law.

8. Protest Process

- a. An Offeror may protest the contents of a solicitation no later than seven days before the solicitation deadline when the protest is based on an apparent alleged mistake, impropriety or defect in the solicitation. Protests filed regarding the solicitation may be addressed by an amendment to the solicitation or denied by the City. If denied, the opening and award will proceed unless the City determines that it is in the City’s best interests to set new deadlines, amend the solicitation, cancel or re-bid.
- b. Therefore, unless otherwise notified by a formal amendment, the Protester must adhere to all solicitation dates and deadlines, including timely filing of an offer, regardless of filing a protest.
- c. An Offeror may protest an adverse determination issued by the City regarding responsibility and responsiveness, within seven days of the date the Offeror was notified of the adverse determination.
- d. An Offeror may protest an award recommendation if the Offeror can establish that it had a substantial chance of being awarded the contract and will be harmed by the recommended award. The City will post recommendations to award the contract(s) to a particular Offeror on the City’s website. Offeror must submit award protests within seven days after the posting of the award recommendation, with exceptions only for good cause shown, within the City’s full and final discretion.
- e. All protests will be in writing, filed with the Procurement Officer identified in the solicitation, and include the following:
 - i. Identification of the solicitation number;
 - ii. The name, address and telephone number of the protester;
 - iii. A detailed statement describing the legal and factual grounds for the protest, including copies of relevant documents;
 - iv. The form of relief requested; and
 - v. The signature of the protester or its authorized representative.

- f. The Procurement Officer will render a written decision within a reasonable period after the protest is filed. The City will not request City Council authorization to award the contract until the protest process is complete. All protests and appeals must be submitted in accordance with the Phoenix City Code and administrative regulations, and any protests or appeals not submitted within the time requirements will not be considered.

III. SCOPE OF WORK

Base Contract

A selected ESCO is required to enter into the Base Contract with the City, which will establish the contractual relationship between the Parties throughout the term of the engagement. The Base Contract will set forth applicable terms and conditions required by the City of Phoenix. The Base Contract will also set forth terms and conditions related to the conduct of Investment Grade Audits of City facilities, the implementation of Energy Performance Contracts for projects throughout the City on an as-needed basis as required by the City, and any post-construction guarantee and monitoring obligations. The potential project areas throughout the City are identified in the Facility Overview, which may be revised or supplemented at any time by the City. The Facility Overview is attached as Exhibit C. The Base Contract will also include a price schedule derived from the Cost and Pricing Overview as supplemented by cost and pricing information included in the proposal. The Cost and Pricing Overview is attached as Exhibit D.

Investment Grade Audit and Project Development

The Investment Grade Audit will identify potential cost-saving measures, determine the cost and savings of each measure, and present a measurement and verification plan to validate future savings of each measure which is consistent with IPMVP Guidelines. A project proposal will present a bundle of measures that can be financed through guaranteed savings over the proposed financing term, including a cash-flow table, assuming the City chooses to finance the cost rather than paying outright.

A selected ESCO under the Base Contract will enter into an Investment Grade Audit and Project Development Contract once a potential project has been identified by the Parties. As noted above, a Model Investment Grade Audit and Project Development Contract is attached as Exhibit E. The Model Contract is meant to serve as a guide and starting point toward contract finalization and execution. The finalized Investment Grade Audit and Project Development Contract must adhere to and implement the requirements of ARS § 34-105 as applicable or otherwise directed by the City. And the terms and conditions set forth in the Base Contract shall be incorporated by reference into the finalized Contract.

Energy Savings Performance Contract

Through the Energy Savings Performance Contract, the ESCO proceeds to final design, construction, and commissioning of the improvement measures. Following satisfactory completion of the Investment Grade Audit, the Parties will negotiate and develop the Energy Savings Performance Contract. As noted above, the Energy Savings and

Performance Contract is attached as Exhibit F. The Contract will define the final agreed upon list of measures, equipment, labor costs, and annual guaranteed savings. It will document equipment specifications and warranties as applicable. It will further establish the construction schedule and responsibilities of the Parties. It must adhere to applicable law, including Arizona law.

The finalized Energy Savings Performance Contract must adhere to and implement the requirements of ARS § 34-105 as applicable or otherwise directed by the City. And the terms and conditions set forth in the Base Contract shall be incorporated by reference into the finalized Contract.

Measurement and Verification

In order to provide the performance guarantee, the ESCO must provide annual measurement and verification (“M&V”) services consistent with IPMVP Guidelines. The guarantee is required to cover the cost of this service. In relation to the performance guarantees and M&V services, the ESCO is further required to adhere to and implement the requirements of ARS § 34-105 as applicable or otherwise directed by the City.

ESCO Services

The ESCO 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:

Investment Grade Audit and Project Proposal Phase

- Technical audit to evaluate costs and savings of a variety of energy and water-saving measures
- Project proposal, including expected costs
- Benchmarking using Energy Star tools
- Measurement and verification plan
- Commissioning plan
- Utility bill data services to capture credits from utility bill errors
- Conduct a study to establish the exact scope of the guaranteed energy cost savings contract, the fixed cost savings guaranteed amount
- Correspond with the City’s agents as they conduct an independent review of the Investment Grade Audit and Project Proposal

Construction/Implementation/Commissioning

- Engineering design
- Equipment procurement and purchasing in accordance with applicable Arizona law
- Construction management
- Hazardous waste disposal or recycling
- 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 per the terms of the contract
- Monitoring and verification for measurement and reporting of the performance and savings
- Correspond with the City's agents as they conduct an independent review of the monitoring & verification (guaranteed savings pay for independent contractor)
- Analysis and application for Energy Star Label and/or LEED-EB (Leadership in Energy and Environmental Design for Existing Buildings, by the US Green Building Council)
- Monitoring and reporting of emissions reduction
- Maintaining long-term, high-efficiency performance of buildings

The ESCO must further have the technical capability to address a broad range of systems including, but not limited to the following:

- 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, etc.
- Lighting Systems: Indoor and outdoor lighting systems, lighting controls, daylighting strategies.
- Renewable Energy Systems: Solar photovoltaic (PV), solar thermal, small wind.
- Building Envelope Systems: Windows, insulation, weatherization, etc.
- Specialty Systems: Laundry equipment, kitchen equipment, pool systems, renewable energy systems.
- LEED-EB: 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, pool covers, and irrigation system controls or modifications.
- Desired Projects: The City reserves the right to supplement this list as needed for City-specific projects that may be applicable.

Building, Facilities, and Financial Approach

All facilities owned, managed, or operated by the City at any time during the term of the Base Contract may be considered for energy savings performance projects and work or services related thereto. Specific facilities now operated by the City are included in the Facility Overview, which is attached as Exhibit C. The City reserves the right to revise and supplement the Facility Overview at any time during the solicitation or the term of the engagement.

Work may be conducted in phases where the detailed scope of work can be developed at any time during the term of the Energy Savings Performance Contract. The Energy Savings Performance Contract can be amended at any time during the initial performance of the contract term to address additional projects, including those that may occur at other buildings.

The City 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 City reserves the right to evaluate all forms of financing and will determine financing structure, cost, and financial terms for the performance contract as applicable and may request assistance from the ESCO(s) at its sole and independent discretion. The response shall demonstrate each ESCO's experience and expertise in assisting public agencies to evaluate and pursue financing strategies. However, the City will ultimately dictate financing as it relates to possible projects.

SAMPLE PROJECT SCHEDULE FOR REFERENCE

This sample project schedule is a general overview only. All activities set forth below include estimated duration, which is merely an estimate and subject to change as needed.

- RFP Phase (14 weeks)
 - o ESCO Selection and Award
 - o Execution of Base Contract
- Investment Grade Audit Phase (12-16 weeks)
 - o Contract Negotiation, Finalization, and Approval
 - o Execution of Investment Grade Audit and Project Development Contract
 - o Audit, Final Report, and Presentation
- Energy Savings Performance Contract Phase (18 – 24 months)
 - o Contract Negotiation, Finalization, and Approval
 - o Design, Implementation, and Commissioning.
- Monitoring Phase (Recurring Annually)

Exhibit A – Base Contract

(ATTACHED)

BASE CONTRACT
FOR
ENERGY SAVINGS PERFORMANCE CONTRACTING SERVICES
BETWEEN
THE CITY OF PHOENIX
AND

Agreement No. _____

SECTION I – Agreement

ENERGY SAVINGS PERFORMANCE CONTRACTING SERVICES AGREEMENT BETWEEN THE CITY OF PHOENIX AND _____

This Energy Savings Performance Contracting Services Agreement (the “Base Contract” or “Agreement”), entered into on the ____ day of _____, 2024 and upon signature of the Parties and attestation by the City Clerk, as required by the Phoenix City Code (“Effective Date”), is between the City of Phoenix, an Arizona municipal corporation (the “City”), and _____, a qualified energy services company incorporated in _____ (the “ESCO” or “Contractor”) (each a “Party” and collectively the “Parties”).

RECITALS

A. The City Manager is authorized by the provisions of the City Charter to execute this Agreement;

B. The City desires to obtain guaranteed energy cost savings through energy savings performance contracting services pursuant to A.R.S. § 34-105;

C. The City procured these services in accordance with Arizona law and the Phoenix City Code;

D. Contractor is a Qualified provider (per A.R.S. § 34-105) and possesses the skills and expertise necessary to provide such services as desired by the City; and

E. This Agreement is authorized by the City Council pursuant to Ordinance No. _____, which was adopted at a public City Council meeting on _____.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto covenant and agree as follows:

1. Purpose of Agreement

The purpose of the Base Contract is to establish the contractual relationship between the City and the ESCO to obtain energy savings performance contracting (“ESPC”) services for development and implementation of ESPC projects. This Base Contract ensures the ESCO follows standard processes, procedures, and documentation and obligates the ESCO to follow guidelines, rules, and provisions of this Base Contract, as well as subsequent contracts entered into by the Parties in relation to ESPC projects, and applicable law, expressly including Arizona Revised Statutes (“ARS”) § 34-105.

2. Term of Agreement

The Base Contract will be effective upon the Effective Date as described above. The Base Contract's initial term will be five years. The City has the right to exercise a one-year optional renewal reoccurring on an annual basis, which shall be memorialized in writing.

The Base Contract may otherwise be terminated before the conclusion of the initial term in accordance with the terms and conditions herein.

Services for ESPC projects may extend beyond the life of the Base Contract with the applicable terms and conditions remaining in effect until completion of the work governed by subsequent contracts entered into by the Parties in relation to such projects.

3. Termination and Cancellation

The City reserves the right to terminate the Base Contract with or without cause, for any reason or no reason whatsoever, upon provision of thirty (30) days' notice to the ESCO.

For terminations with cause, the ESCO will be provided a thirty (30) day window to cure, if applicable. The City may allow a longer cure window in its sole discretion.

The Base Contract may further be cancelled pursuant to ARS § 38-511.

4. Compliance with Laws

The Parties will comply with all existing and subsequently enacted federal, state, and local laws, ordinances, codes, and regulations that are or become applicable under the Base Contract and as related to subsequent contracts entered into by the Parties, including but not limited to the Investment Grade Audit and Project Development Contract and the Energy Savings Performance Contract. In particular, the ESCO is responsible for ensuring the services provided in relation to ESPC projects are in compliance with applicable law, expressly including ARS § 34-105.

5. Responsibilities of ESCO

The responsibilities of the ESCO shall include, but are not necessarily limited to, the following:

a. General

i. Follow applicable procurement and contracting practices and requirements for all ESPC projects. The ESCO must work with the City to establish applicable contracts required for ESPC projects and adhere to the City's contracting obligations and requirements. And the ESCO must consult with the City to confirm compliance with applicable law as needed.

ii. For all services and projects contemplated hereunder, the ESCO must apply no more than the maximum cost and pricing elements contained in the Cost and Pricing Overview (Attachment B) as derived from the ESCO's Proposal Response (Attachment F).

b. Marketing and Preliminary Project Evaluation

i. The ESCO must identify and secure on behalf of the City all available energy, demand, water, and operational savings and renewable energy utility incentives available for all ESPC projects. In addition, the ESCO shall provide an incentive summary to the City, which will document correspondence and application forms required for federal, state, and local utility incentives (including those available from the Building Infrastructure Law (BIL) and the Investment Recovery Act (IRA)) that were applied for and secured on behalf of the City.

ii. The ESCO is expected to consult with the City to determine possible ESPC projects. The ESCO must engage the City immediately upon learning of or identifying a potential ESPC project.

iii. The ESCO must perform initial evaluations of potential ESPC projects and discuss the feasibility and benefits of such projects with the City.

c. Investment Grade Audit and Project Development

i. The ESCO must develop an Investment Grade Audit and Project Development Contract in consultation with the City. The Model Investment Grade Audit and Project Development Contract, which is included as Attachment E, must be used as the starting point for discussions and negotiations. The ESCO is responsible for ensuring that the finalized Investment Grade Audit and Project Development Contract complies with applicable law, expressly including ARS § 34-105.

ii. The ESCO must comply with all requirements and findings of the Investment Grade Audit and Project Development Contract, including but limited to the following: conduct an Investment Grade Audit; prepare a detailed technical proposal for the project, including expected costs; and develop a monitoring and verification plan that guarantees energy cost savings to the City in compliance with the International Performance Measurement & Verification Protocol (IPMVP).

iii. The ESCO must assign individuals to the project team representing project development, engineering, project management, commissioning, monitoring and verification, and upper management support.

iv. The ESCO must ensure appropriate personnel attend project development meetings depending upon and relevant to the subject matter to be discussed.

v. The ESCO must address issues, recommendations, and requests from the City in support of the City's internal review and facilitation process.

d. Energy Savings Performance Contract Implementation

i. The ESCO must develop an Energy Savings Performance Contract, in consultation with the City, that delivers guaranteed energy cost savings based upon the results of the Investment Grade Audit. The Model Energy Savings Performance Contract, which is included as Attachment E, must be used as the starting point for discussions and negotiations. The ESCO is responsible for ensuring that the finalized Energy Savings Performance Contract complies with applicable law, expressly including ARS § 34-105.

ii. The ESCO must comply with all requirements of the Energy Savings Performance Contract, including but not limited to the following: design services; construction and equipment procurement and purchasing as applicable; construction and management services; hazardous material abatement or disposal; commissioning services on installed measures; and monitoring and verification services.

iii. The Parties must establish implementation schedules, milestones, and related benchmarks to ensure to timely and effective performance of applicable services. The ESCO must abide by and meet the aforementioned benchmarks or otherwise mutually amend such benchmarks with the City's written consent.

iv. The ESCO must ensure appropriate personnel attend project development meetings depending upon and relevant to the subject matter to be discussed.

v. The ESCO must address issues, recommendations, and requests from the City in support of the City's internal review and facilitation process.

vi. The ESCO must provide a post-implementation report to the City.

e. Performance Period

i. The ESCO must comply with all requirements of the Energy Savings Performance Contract, including but not limited to the following: measurement and verification reporting and services; guarantee of performance and cost savings; maintenance and/or repair of equipment; training for facility personnel on maintenance and operation of systems; and training for City staff or other designated personnel.

ii. The ESCO must provide the City with annual reports on project cost, status, savings achieved, and square footage impacted for each ESPC project individually and all ESPC projects collectively.

iii. The ESCO must ensure appropriate personnel attend project development meetings depending upon and relevant to the subject matter to be discussed.

iv. The ESCO must address issues, recommendations, and requests from the City in support of the City's internal review and facilitation process.

f. Data Collection and Reporting

i. The ESCO shall collect project data on behalf and with approval of the City.

ii. The ESCO will report such data to an applicable source only if expressly permitted in writing by the City.

6. Responsibilities of City

a. The City will work with the ESCO to develop the Investment Grade Audit and Project Development Contract and the Energy Savings Performance Contract for each project as applicable.

b. The City will review audits, proposals, calculations, contracts, and measurement and verification reports when provided by the ESCO.

c. The City will monitor project implementation.

d. The City will assign members to the facility project team including operations, maintenance, financial, and upper management personnel.

e. The City will ensure appropriate personnel attend project development meetings depending upon and relevant to the subject matter to be discussed.

f. The City will provide access and escorts to buildings as applicable and subject to background screening requirements.

g. The City will provide information as needed and requested by the ESCO for the feasibility study, the Investment Grade Audit, and other project development activities.

h. The City will work with the ESCO to develop and/or refine project parameters.

i. The City will review and approve, in its sole discretion, ESCO proposals, designs, and reports.

j. The City will ensure recommendations from the ESCO will be reviewed and addressed if deemed appropriate by the City.

k. The City will execute mutually-agreeable contracts with the ESCO in relation to and/or in support of ESPC projects.

l. The City will make payments for applicable services as outlined and required in executed contracts between the Parties.

m. The City will make arrangements for project financing.

n. The City, in consultation with the ESCO, will provide project management.

o. The City will provide access to information as needed for measurement and verification services.

7. Order of Precedence

In the event of a conflict in the provisions of the Base Contract, the following will prevail in the order set forth below:

a. Section I – Agreement

b. Section II – Additional Terms and Conditions

c. Section III – Insurance and Indemnification

d. Section V – Attachments

SECTION II – Additional Terms and Conditions

1. Applicable Law and Compliance with Laws

This Agreement will be governed by the laws of the State of Arizona, and suits pertaining to said Agreement will be brought only in Federal or State courts in Maricopa County, State of Arizona.

The Parties agree to fully observe and comply with all applicable federal, state, and local laws, regulations, standards, codes and ordinances when performing under this Agreement regardless of whether they are being referenced herein.

Because Contractor will be acting as an independent contractor, the City assumes no responsibility for Contractor's acts.

2. Inspection and Audit

All books, accounts, reports, files, and other records relating to the Agreement will be subject at all reasonable times to inspection and audit by the City for up to five years after termination or expiration of the Agreement. Such records may be made available to the City electronically, if permitted by the City. Confidentiality will be maintained to the greatest extent possible under applicable law, and the City will not violate applicable proprietary or confidentiality interests of the Contractor unless required to do so by law. Contractor agrees to permit City inspection of Contractor's records to verify any such compliance.

3. Records

The City's treatment of records in its possession and constituting public records shall be subject to the requirements of the Arizona Public Records Law, A.R.S. § 39.101 *et seq.* If the Contractor deems any record confidential, the document must be clearly marked when provided to the City as "Confidential" and a full explanation of confidentiality must be provided prior to invoking confidentiality treatment pursuant to this Agreement.

4. Non-waiver of Liability and No Indemnification of Contractor

The City, as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, any Contractor agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable Arizona law. Moreover, the City cannot agree to indemnify Contractor.

5. Method of Ordering and Payment

Contractor shall register as a vendor with the City. Insofar as payment from the City to Contractor is required in relation to ESPC projects, Contractor will deliver items and/or services only upon receipt of a written purchase order issued by the applicable City department. All Contractor invoices and packing/delivery tickets must include the City of Phoenix purchase order number. Payment will be made for actual goods and services received and accepted by the City and required to be paid in relation to the ESPC projects. Payment will be made NET forty-five (45) days effective after receipt of invoice or acceptance, whichever is later.

6. Independent Contractor Status; Employment Disclaimer

a. The Parties agree that Contractor is providing services under this Agreement on a part-time and/or temporary basis and that Contractor's status created by this Agreement is that of an independent contractor. Neither Contractor nor any of Contractor's agents, employees, or affiliates will be deemed to be an employee, agent, or servant of the City.

b. This Agreement is not intended to constitute, create, give rise to, or otherwise recognize a joint venture, partnership, or formal business association or organization of any kind, and the rights and obligations of the Parties will be only those expressly set forth in this Agreement. The Parties agree that no individual performing under this Agreement on behalf of Contractor will be considered a City employee and that no rights of City Civil Service, City retirement, or City personnel rules will accrue to such individual. Contractor will have total responsibility for all salaries, wages, bonuses, retirement, withholdings, worker's compensation, other employee benefits, and all taxes and premiums appurtenant thereto concerning such individuals and will save and hold harmless the City with respect thereto.

7. Legal Worker Requirements

The City is prohibited by ARS § 41-4401 from awarding a contract to any contractor who fails, or whose subcontractors fail, to comply with ARS § 23-214(A). Accordingly, Contractor agrees as follows:

a. Contractor and each subcontractor it uses warrant their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with ARS § 23-214(A).

b. A breach of warranty under Paragraph 7(a) above shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of the Agreement.

c. The City retains the right to inspect the papers of Contractor or subcontractor employees who work on this Agreement to ensure that Contractor or subcontractor is complying with the warranty hereunder.

8. Confidentiality

“Confidential Information” means all non-public, confidential, sensitive, or proprietary information disclosed or made available by City to Contractor or its affiliates, employees, contractors, partners, or agents (collectively “Recipient”), whether disclosed before or after the Effective Date, whether disclosed orally, in writing, or via permitted electronic access, and whether or not marked, designated, or otherwise identified as confidential. Confidential Information includes, but is not limited to: user contents, electronic data, meta data, employment data, network configurations, information security practices, business operations, strategic plans, financial accounts, personally identifiable information, protected health information, protected criminal justice information, and any other information that by the nature and circumstance of the disclosure should be deemed confidential. Confidential Information does not include this document or information that: (a) is now or subsequently becomes generally available to the public through no wrongful act or omission of Recipient; (b) Recipient can demonstrate by its written records to lawfully have had in its possession prior to receiving such information from the City; (c) Recipient can demonstrate by its written records to have been independently developed by Recipient without direct or indirect use of any Confidential Information; (d) Recipient lawfully obtains from a third party who has the right to transfer or disclose it; or (e) the City has approved in writing for disclosure.

Recipient shall: (a) protect and safeguard Confidential Information with at least the same degree of care as Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, such as ensuring data is encrypted in transit and at rest and maintaining appropriate technical and organizational measures in performing the Services under the Agreement; (b) not use Confidential Information, or permit it to be accessed or used, for any purpose other than in accordance with the Agreement; (c) not use Confidential Information, or permit it to be accessed or used, in any manner that would constitute a violation of law, including without limitation export control and data privacy laws; and (d) not disclose Confidential Information except to the minimum number of recipients who have a need to know and who have been informed of and agree to abide by confidentiality obligations that are no less restrictive than the terms of this Agreement. If Recipient is required by law or court order to disclose any Confidential Information, Recipient will first give written notice to the City and provide the City with a meaningful opportunity to seek a protective order or limit disclosure.

Upon the City’s written request or expiration of this Agreement, whichever is earlier, Recipient shall, at no additional costs to the City, promptly return or destroy all Confidential Information belonging to the City that Recipient has in its possession or control. After return or destruction of the Confidential Information, Recipient shall certify in writing as to its compliance with this paragraph.

If applicable, Contractor agrees to comply with all City information technology policies and security standards, as may be updated from time to time, when accessing City networks and computerized systems whether onsite or remotely.

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

9. Data Protection

The Parties agree this Section shall apply to the City's Confidential Information and all categories of legally protected personally identifiable information (collectively "PII") that Contractor processes pursuant to the Agreement. "Personally identifiable information" is defined as in the Federal Privacy Council's Glossary available at: <https://www.fpc.gov/resources/glossary/>.

As between the parties, the City is the data controller and owner of PII and Contractor is a data processor. In this Section, the term "process," "processing," or its other variants shall mean: an operation or set of operations which is performed on PII, whether or not by automated means, including without limitation: collection, recording, copying, analyzing, caching, organizing, structuring, storage, adaptation, alteration, retrieval, transmission, dissemination, alignment, combination, restriction, erasure, or destruction.

a. When Contractor processes PII pursuant to the Agreement, Contractor shall, at no additional cost to the City:

i. process PII only within the United States and only in accordance with the Agreement and not for Contractor's own purposes, including product research, product development, marketing, or commercial data mining, even if the City's data has been aggregated, anonymized, or pseudonymized;

ii. implement and maintain appropriate technical and organizational measures to protect PII against unauthorized or unlawful processing and against accidental loss, destruction, damage, theft, alteration or disclosure, including at a minimum, and as applicable, those measures specified by the National Institute of Standards and Technology (NIST) SP800-53; A.R.S. § 18-552 (Notification of Security System Breaches); A.R.S. § 44-7601 (Discard and Disposal of Personal Identifying Information Records); Health Information Technology for Economic and Clinical Health (HITECH) Act; Payment Card Industry Data Security Standards; and good industry practice; (When considering what measures are appropriate and in line with good industry practice, Contractor shall keep abreast of current regulatory trends in data security and the state of technological development to ensure a level of security appropriate to the nature of the data to be protected and the harm that might result from such unauthorized or unlawful processing or accidental loss, destruction, damage, theft, alteration or disclosure. At minimum, Contractor will timely remediate any vulnerabilities found within its network that are rated medium or more critical by the Common Vulnerability Scoring System (CVSS); however, Contractor must remediate vulnerabilities that are rated critical within 14 days and vulnerabilities that are rated high within 30 days. If requested by the

City, Contractor shall promptly provide a written description of the technical and organizational methods it employs for processing PII);

iii. not subcontract any processing of PII to any third party (including affiliates, group companies or sub-contractors) without the prior written consent of the City; and Contractor shall remain fully liable to the City for any processing of PII conducted by a sub-processor appointed by Contractor;

iv. as applicable, implement and maintain appropriate policies and procedures to manage payment card service providers with whom Contractor shares sensitive financial information or cardholder data; and provide the City with a Qualified Security Assessor Attestation of Compliance for Payment Card Industry Data Security Standards on an annual basis, but no later than within 30 days of attestation report completion;

v. take reasonable steps to ensure the competence and reliability of Contractor's personnel or sub-processor who have access to the PII, including verifications and background checks appropriate to the security level required for such data access;

vi. maintain written records of all information reasonably necessary to demonstrate Contractor's compliance with this Agreement and applicable laws; and

vii. allow the City or its authorized agents to conduct audit inspection during the term of the Agreement, but no more than once per year, which may include providing access to the premises, documents, resources, personnel Contractor or Contractor's sub-contractors use in connection with the Services; provided however, the City may at its sole discretion accept a qualified and industry recognized independent third-party assessment report or certification (such as SSAE 18 SOC 2 or ISO/IEC 27001) provided by Contractor at no cost to the City in lieu of the audit inspection rights of this Section.

b. If Contractor becomes aware of any actual or potential data breach (each an "Incident") arising from Contractor's processing obligations pursuant to the Agreement, Contractor shall notify the City at SOC@phoenix.gov without undue delay within 48 hours; and:

i. provide the City with a detailed description of the Incident, the type of data that was the subject of the Incident, and the identity of each affected person as soon as such information can be collected or otherwise becomes available;

ii. take action immediately, at Contractor's own expense, to investigate the Incident and to identify, prevent, and mitigate the effects of the Incident and to carry out any recovery or other action necessary to remedy the Incident;

iii. cooperate with the City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable laws or as otherwise required by the City; and

iv. not directly contact any individuals who may be impacted by the Incident or release or publish any filing, communication, notice, press release, or report concerning the Incident without the City's prior written approval (except where required to do so by applicable laws).

A violation of this Section shall be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may at the City's discretion result in immediate termination of this Agreement without notice. The obligations of Contractor under this Section shall survive the termination of this Agreement.

10. Contacts with Third Parties

a. Contractor or its subcontractors will not contact third parties to provide any information in connection to the Services provided under this Agreement without the prior written consent of the City. Should Contractor or its subcontractors be contacted by any person requesting information or requiring testimony relative to the Services provided under this Agreement or any other prior or existing Agreement with the City, Contractor or its subcontractors will promptly inform the City and provide details of the request, the information sought, and provide assurances that information was not provided without the written consent of the City, or pursuant to a court order. The obligations of Contractor and its subcontractors under this Section will survive the termination of this Agreement.

b. Contractor agrees that the requirements of this Agreement will be incorporated into all subcontractor agreements entered into by the Contractor where applicable. It is further agreed that a violation of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court. A violation of this Section may result in immediate termination of this Agreement without notice.

11. SBE/DBE Utilization

The City extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for City business and strongly encourages voluntary utilization of small and/or disadvantaged businesses to reflect both the industry and community ethnic composition. The use of such businesses is encouraged whenever practical.

12. Amendments and Alterations

No alteration or variation, verbal or otherwise, will be binding upon the Parties unless captured in a mutually-executed written amendment to the Agreement.

13. Notices

a. Any notice, consent or other communication (“Notice”) required or permitted under this Agreement will be in writing and either: (1) delivered in person; (2) sent via e-mail, return receipt requested; (3) sent via facsimile transmission; (4) deposited with any commercial air courier or express delivery service; or (5) deposited in the United States mail, postage prepaid.

If to Contractor:

[insert contact]

If to City:

Eric J. Froberg, PE, City Engineer
200 W. Washington Street, 5th Floor
Phoenix, AZ 85003

b. Notice will be deemed received: (1) at the time it is personally served; (2) on the day it is sent via e-mail; (3) on the day it is sent by facsimile transmission; (4) on the second day after its deposit with any commercial air courier or express delivery service; or (5) five business days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice will be computed from the time the Notice is deemed received.

c. Notices sent by e-mail and facsimile transmission will also be sent by regular mail to the recipient at the above address. This requirement for duplicate Notice is not intended to change the effective date of the Notice sent by e-mail or facsimile transmission.

14. Fiscal Year Clause

The City’s fiscal year begins July 1st and ends June 30th each calendar year. The City may make payment for services rendered or costs encumbered only during a fiscal year and for a period of sixty (60) days immediately following the close of the fiscal year, under the provisions of ARS § 42-17108. Therefore, Contractor must submit billings for services performed or costs incurred prior to the close of a fiscal year within ample time to allow payment within this sixty (60) day period.

15. Professional Competency

a. Contractor represents that it is familiar with the nature and extent of this Agreement, the services to be provided hereunder, and any conditions that may affect its performance under this Agreement. Contractor further represents that it is fully experienced, properly qualified, equipped, organized, financed, and in compliance with all applicable license requirements to perform services related to ESPC projects.

b. Services provided by Contractor will be performed in a manner consistent with that level of care and skill ordinarily exercised by members of Contractor's profession currently practicing in the same industry under similar conditions. Acceptance or approval by the City of Contractor's work will in no way relieve Contractor of liability to the City for damages suffered or incurred arising from the failure of Contractor to adhere to the aforesaid standard of professional competence.

16. Release of Information; Advertising and Promotion

Contractor will not publish, release, disclose, or announce to any member of the public, press, official body, or any other third party: (1) any information concerning this Agreement, the services to be provided hereunder, or any part thereof; or (2) any documentation or the contents thereof, without the prior written consent of the City, except as required by law. The City itself or the name of any site on which services are performed will not be used in any advertising or other promotional context by Contractor without the prior written consent of the City. The Agreement itself is considered to be a public record and may be disclosed.

17. Conflicts of Interest

a. Contractor acknowledges that, to the best of its knowledge, information and belief, no person has been employed or retained to solicit or secure this Agreement upon a promise of a commission, percentage, brokerage, or contingent fee, and that no member of the Phoenix City Council or any employee of the City has any financial interest in Contractor's business beyond such interest permitted under Arizona law. For breach of violation of this warranty, the City will have the right to annul this Agreement without liability, including any such commission, percentage, brokerage, or contingent fee.

b. The City reserves the right to immediately terminate the contract in the event that the City determines that Contractor has an actual or apparent conflict of interest.

c. Upon a finding by the City that gratuities in the form of entertainment, gifts or inducements were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of the City for the purpose of securing this Agreement, or securing favorable treatment with respect to the awarding, amending, or making of any determination with respect to the performance of this Agreement, the City may, by one calendar day written notice to Contractor, terminate the right of Contractor to proceed under this Agreement, provided that the existence of the facts upon which the City made such finding will be an issue and may be litigated in an Arizona court of competent jurisdiction. In the event of such termination, the City will be entitled to the same remedies against Contractor as could be pursued in the event of default by Contractor.

d. This Agreement is subject to the requirements of ARS § 38-511.

18. Claims or Demands Against the City

a. Contractor acknowledges and accepts the provisions of Chapter 18, Section 14 of the Charter of the City of Phoenix, pertaining to claims or demands against the City, including provisions therein for set-off of indebtedness to the City against demands on the City, and Contractor agrees to adhere to the prescribed procedure for presentation of claims and demands. Nothing in Chapter 18, Section 14 of the Charter of the City of Phoenix alters, amends or modifies the supplemental and complementary requirements of the State of Arizona Notice of Claim statutes, ARS §§ 12-821 and 12-821.01, pertaining to claims or demands against the City. If for any reason it is determined that the City Charter and state law conflict, then state law will control.

b. Moreover, nothing in this Agreement will constitute a dispute resolution process, an administrative claims process, or contractual term as used in ARS § 12-821.01(C), sufficient to affect the date on which the cause of action accrues within ARS § 12-821.01(A) and (B).

19. Waiver of Claims for Anticipated Profits

Contractor waives any claims against the City and its officers, officials, agents and employees for loss of anticipated profits caused by any suit or proceeding, directly or indirectly, involving any part of this Agreement.

20. Continuation During Disputes

a. Contractor agrees as a condition of this Agreement that in the event of any dispute between the parties, provided no Notice of Termination has been given by the City, and if it is feasible under the terms of this Agreement each party will continue to perform the obligations not related to the dispute required of it during the resolution of such dispute, unless enjoined or prohibited by a court of competent jurisdiction.

b. Failure or delay by either Party to exercise any right, power or privilege specified in or appurtenant to this Agreement will not be deemed a waiver.

21. Third Party Beneficiary Clause

This Agreement is not intended by any of its provisions to create any right of the public or any member thereof as a third party beneficiary nor to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

22. Assignment; Delegation; Exclusivity

a. Neither a right nor interest in this Agreement nor monies due hereunder will be assigned in whole or in part without prior written permission of the City, and no delegation

of any duty of Contractor will be made without prior written permission of the City, which may be withheld for good cause.

b. This Agreement was awarded at the sole convenience of the City and shall not be interpreted as providing exclusive rights to Contractor in relation to the provision of energy performance contracting services to the City. The City reserves the right to obtain like goods or services from another source as needed.

23. No Israel Boycott

If this Contract is valued at \$100,000 or more and requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, or construction, then Contractor must certify and agree that it does not and will not boycott goods or services from Israel, pursuant to Title 35, Chapter 2, Article 9 of the Arizona Revised Statutes. Provided that these statutory requirements are applicable, Contractor by entering this Contract now certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of goods or services from Israel.

24. No Forced Labor of Ethnic Uyghurs

If this Contract requires Contractor (a company engaging in for-profit activity and having ten or more full-time employees) to acquire or dispose of services, supplies, information technology, goods, or construction, then pursuant to Title 35, Chapter 2, Article 10 of the Arizona Revised Statutes Contractor must certify and agree that it and any contractors, subcontractors, or suppliers it utilizes do not and will not use the forced labor of ethnic Uyghurs in the People's Republic of China or any goods or services produced by such forced labor. Provided these statutory requirements are applicable, Contractor, by entering this Contract, now certifies it is not currently engaged in, and agrees for the duration of the Contract to not engage in, (a) the use of forced labor of ethnic Uyghurs in the People's Republic of China; (b) the use of any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (c) the use of any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

25. Heat Mitigation

Per Phoenix City Code G-7241, effective April 25, 2024, any ESCO whose employees and contract workers perform work in an outdoor environment under this contract must keep on file a written heat safety plan. The City may request a copy of this plan and documentation of all heat safety and mitigation efforts currently implemented to prevent heat-related illnesses and injuries in the workplace. The plan must also be posted where it is accessible to employees. At a minimum, the heat safety and mitigation plan and documentation required under this provision shall include each of the following as it relates to heat safety and mitigation:

Effective acclimatization practices to promote the physiological adaptations of employees or contract workers newly assigned or reassigned to work in an outside environment.

Conduct training and make it available and understandable to all employees and contract workers on heat illness and injury that focuses on the environmental and personal risk factors, prevention, how to recognize and report signs and symptoms of heat illness and injury, how to administer appropriate first aid measures and how to report heat illness and injury to emergency medical personnel.

The ESCO further agrees that this clause will be incorporated in all subcontracts with subconsultants, sublicensees or sublessees who may perform labor or services in connection with this contract. Additionally, the ESCO agrees to require all subconsultants, sublicensees or sublessees to include this clause in all contracts with any third party who is contracted to perform labor or services in connection with this contract. It is the obligation of the ESCO to ensure compliance by its subconsultants.

26. Equal Employment Opportunity

In order to do business with the City, Contractor must comply with Phoenix City Code, 1969, Chapter 18, Article V, as amended, Equal Employment Opportunity Requirements. Contactor will direct any questions in regard to these requirements to the City's Equal Opportunity Department.

For suppliers/lessees with thirty-five (35) employees or less:

a. Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor otherwise commit an unfair employment practice. The supplier and/or lessee will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee.

For suppliers/lessees with more than thirty-five (35) employees:

b. Any supplier/lessee in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, sex, national origin, age, or disability, nor

otherwise commit an unfair employment practice. The supplier and/or lessee will ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, sex, national origin, age, or disability. Such action shall include but not be limited to the following: Employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training; including apprenticeship. The supplier further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract. Supplier/lessee further agrees that this clause will be incorporated in all subcontracts, job-consultant agreements or subleases of this agreement entered into by supplier/lessee. The supplier/lessee further agrees not to discriminate against any worker, employee or applicant, or any member of the public, because of sexual orientation or gender identity or expression and shall ensure that applicants are employed, and employees are dealt with during employment without regard to their sexual orientation or gender identity or expression.

Suppliers and lessees may be required to provide additional documentation to the City's Equal Opportunity Department affirming that a nondiscriminatory policy is being utilized.

The City's Equal Opportunity Department shall monitor the employment policies and practices of suppliers and lessees subject to this article as deemed necessary. The City's Equal Opportunity Department is authorized to conduct on-site compliance reviews of selected firms, which may include an audit of personnel and payroll records, if necessary.

27. Background Screening

CONTRACTOR AND SUBCONTRACTOR WORKER BACKGROUND SCREENING

- A. **Contract Worker Background Screening.** Contractor agrees that all contract workers and subcontractors (collectively "Contract Worker(s)") that Contractor furnishes to the City pursuant to this Agreement shall be subject to background and security checks and screening (collectively "Background Screening") at Contractor's sole cost and expense as set forth in this Section. The Background Screening provided by Contractor shall comply with all applicable laws, rules and regulations. Contractor further agrees that the Background Screening required in this Section is necessary to preserve and protect public health, safety and welfare. The Background Screening requirements set forth in this Section are the minimum requirements for this Agreement. The City in no way warrants that these minimum requirements are sufficient to protect Contractor from any liabilities that may arise out of Contractor's services under this Agreement or Contractor's failure to comply with this Section. Therefore, in addition to the specific measures set forth below, Contractor and its Contract Workers shall take such other reasonable, prudent and necessary measures to

further preserve and protect public health, safety and welfare when providing services under this Agreement. The City may, in its sole discretion, accept or reject any or all of the Contract Workers proposed by Contractor to perform work under this Agreement as well those Contract Workers actually providing services during the term of this Agreement.

B. Background Screening Requirements and Criteria. Because of the varied types of services performed, the City has established three levels of risk and associated Background Screening. The risk level and Background Screening required for this Agreement is [CITY TO INSERT LEVEL OF RISK].

i. Minimum Risk and Background Screening (“Minimum Risk”).

A minimum risk Background Screening shall be performed when the Contract Worker:

- a) will not have direct access to City facilities or information systems; or
- b) will not work with vulnerable adults or children; or
- c) when access to City facilities is escorted by City workers. The Background Screening for minimum risk shall consist of the screening required by Arizona Revised Statutes §§ 41-4401 and following to verify legal Arizona worker status.

ii. Standard Risk and Background Screening (“Standard Risk”).

A standard risk Background Screening shall be performed when the Contract Worker’s work assignment will:

- a) require a badge or key for access to City facilities; or
- b) allow any access to sensitive, confidential records, personal identifying information or restricted City information; or
- c) allow unescorted access to City facilities during normal and non-business hours.

The Background Screening for this standard risk level shall include the Background Screening required for the Minimum Risk level and a background check for real identity/legal name, and shall include felony and misdemeanor records from any county in the United States, the state of Arizona, plus any other jurisdiction where the Contract Worker has lived at any time in the preceding seven (7) years from the Contract Worker’s proposed date of hire.

iii. Maximum Risk and Background Screening (“Maximum Risk”).

A maximum risk Background Screening shall be performed when the Contract Worker’s work assignment will:

- a) have any contact with vulnerable people such as children, youth, elderly, or individuals with disabilities; or
- b) have any responsibility for the receipt or payment of City funds or control

- of inventories, assets, or records that are at risk of misappropriation; or
- c) have unescorted access to City data centers, money rooms, or high-value equipment rooms; or
- d) have access to private residences; or
- e) have access to Homeland Defense Bureau identified critical infrastructure sites/facilities.

The Background Screening for this maximum risk level shall include the Background Screening required for the Standard Risk level, plus a sexual offender search, a credit check, and driving record search for the preceding seven (7) years from the Contract Worker's proposed date of hire. Contract Workers who work directly with children or vulnerable adults are also subject to fingerprint verification through the Arizona Department of Public Safety as mandated by Phoenix City Code, § 2-27.

- C. Contractor Certification; City Approval of Maximum Risk Background Screening. By executing this Agreement, Contractor certifies and warrants that Contractor has read the Background Screening requirements and criteria in this Section, understands them and that all Background Screening information furnished to the City is accurate and current. Also, by executing this Agreement, Contractor further certifies and warrants that Contractor has satisfied all such Background Screening requirements for the Minimum Risk and Standard Risk Background Screenings as required. In addition, for Maximum Risk Background Screening, Contractor shall furnish to [INSERT CITY CONTACT] for the City's review and approval such Background Screenings for any Contract Worker considered for performing services under this Agreement where human safety or facility security is classified as a Maximum Risk level. The subject Contract Worker shall not apply for the appropriate City of Phoenix identification and access badge or keys until Contractor has received the City's written acceptance of the subject Contract Worker's Maximum Risk Background Screening. A Contract Worker rejected for work at a Maximum Risk level under this Agreement shall not be proposed to perform work under other City contracts or engagements without City's prior written approval.
- D. Terms of This Section Applicable to all of Contractor's Contracts and Subcontracts. Contractor shall include the terms of this Section for Contract Worker Background Screening in all contracts and subcontracts for services furnished under this Agreement including, but not limited to, supervision and oversight services.
- E. Materiality of Background Screening Requirements; Indemnity. The Background Screening requirements of this Section are material to City's entry into this Agreement and any breach of this Section by Contractor shall be deemed a material breach of this Agreement. In addition to the indemnity provisions set forth in this Agreement, Contractor shall defend, indemnify and hold harmless the City for any and all Claims (as defined in this Agreement) arising out of this Background Screening Section including, but not limited to,

the disqualification of a Contract Worker by Contractor or the City for failure to satisfy this Section.

- F. Continuing Duty; Audit. Contractor's obligations and requirements that Contract Workers satisfy this Background Screening Section shall continue throughout the entire term of this Agreement. Contractor shall notify the City immediately of any change to a Maximum Risk Background Screening of a Contract Worker previously approved by the City. Contractor shall maintain all records and documents related to all Background Screenings and the City reserves the right to audit Contractor's compliance with this Section.

CONTRACT WORKER ACCESS CONTROLS, BADGE AND KEY ACCESS REQUIREMENTS

A Contract Worker shall not be allowed to begin work in any City facility without: (1) the prior completion and City's acceptance of the required background screening; and (2) when required, the Contract Worker's receipt of a City issued badge. A badge will be issued to a Contract Worker solely for access to the City facility(s) to which the Contract Worker is assigned. Each Contract Worker who enters a City facility must use the badge issued to the Contract Worker.

- A. Badge Access Procedures. An authorized City of Phoenix badge application form is available at the City of Phoenix Badging Office, 251 W. Washington St., 2nd Floor, Phoenix, AZ 85003-1611. Each Contract Worker (as defined herein) who is furnishing Standard Risk (as defined herein) or Maximum Risk (as defined herein) services under this Agreement shall submit to the City of Phoenix, Banking & Cashiering Division, 251 W. Washington, 3rd Floor, Phoenix, AZ 85003-1611:
- i. a fully completed and authorized City of Phoenix badge application form;
 - ii. a check in the initial badge fee amount listed below made payable to the "City of Phoenix"; and
 - iii. two forms of identification. One form of identification must be a government issued credential with an accompanying photograph. The second form of identification must be a valid passport; military issued identification card; immigration and naturalized services identification card; social security card; or an original birth certificate.
- After receipt of the badge application and payment, the Contract Worker will proceed to the badging office for processing of the badge application and issuance of the badge. The City will not process the badge application until the Contract Worker satisfies the required Background Screening (as defined herein). The Contract Worker shall comply with all requirements and furnish all requested information within five (5) business days from initial submission of the badge application or the subject Contract Worker's badge application shall be rejected.

- B. Key Access Procedures. If the Contract Worker's services require keyed

access to enter a City facility(s), a separate key issue/return form must be completed and submitted by the Contractor for each key issued. The key issue/return form is available at and the completed form shall be submitted to the badging office at the address above.

- C. Stolen or Lost Badges or Keys. Contractor shall report lost or stolen badges or keys to their local police department and must obtain a police department report (PDR) prior to re-issuance of any lost or stolen badge or key. A new badge application or key issue form shall be completed and submitted along with payment of the applicable fees listed below prior to issuance of a new badge or key.
- D. Return of Badges or Keys. All badges and keys are the property of the City and must be returned to the City at the badging office within one (1) business day of when the Contract Worker's access to a City facility is no longer required to furnish the services under this Agreement. Contractor shall collect a Contract Worker's badge and key(s) upon the termination of the Contract Worker's employment; when the Contract Worker's services are no longer required at the particular City facility(s); or upon termination, cancellation or expiration of this Agreement.
- E. Contractor's Default; Liquidated Damages; Reservation of Remedies for Material Breach. Contractor's default under this Section shall include, but is not limited to the following: (i) Contract Worker gains access to a City facility(s) without the proper badge or key; (ii) Contract Worker uses a badge or key of another to gain access to a City facility; (iii) Contract Worker commences services under this Agreement without the proper badge, key or Background Screening; (iv) Contract Worker or Contractor submits false information or negligently submits wrong information to the City to obtain a badge, key or applicable Background Screening; or (v) Contractor fails to collect and timely return Contract Worker's badge or key upon termination of Contract Worker's employment, reassignment of Contract Worker to another City facility or upon the expiration, cancellation or termination of this Agreement. Contractor acknowledges and agrees that the access control, badge and key requirements in this Section are necessary to preserve and protect public health, safety and welfare. Accordingly, Contractor agrees to properly cure any default under this Section within three (3) business days from the date notice of default is sent by the City. The parties agree that Contractor's failure to properly cure any default under this Section shall constitute a breach of this Section. In addition to any other remedy available to the City at law or in equity, the Contractor shall be liable for and shall pay to the City the sum of one thousand dollars (\$1,000.00) for each breach by Contractor of this Section. The parties further agree that the sum fixed above is reasonable and approximates the actual or anticipated loss to the City at the time and making of this Agreement in the event that Contractor breaches this Section. Further, the parties expressly acknowledge and agree to the fixed sum set forth above because of the difficulty of proving the City's

actual damages in the event that Contractor breaches this Section. The parties further agree that three (3) breaches by Contractor of this Section arising out of any default within a consecutive period of three (3) months or three (3) breaches by Contractor of this Section arising out of the same default within a period of twelve (12) consecutive months shall constitute a material breach of this Agreement by Contractor and the City expressly reserves all of its rights, remedies and interests under this Agreement, at law and in equity including, but not limited to, termination of this Agreement.

- F. Badge and Key Fees. The following constitute the badge and key fees under this Agreement. The City reserves the right to amend these fees upon thirty (30) days prior written notice to Contractor.

Initial Badge Fee:	\$ 55.00	per applicant
Replacement Badge Fee:	\$ 55.00	per badge
Lost / Stolen Badge Fee:	\$ 55.00	per badge
Replacement Key Fee:	\$ 55.00	per key
Lost / Stolen Key Fee:	\$ 55.00	per key
Replacement Locks	\$ 55.00	per lock

SECTION III – Insurance and Indemnification

1. INDEMNIFICATION CLAUSE

To the maximum extent allowed by law, including Title 34 A.R.S., Contractor (“Indemnitor”) must defend, indemnify, and hold harmless the City and its officers, officials (elected or appointed), agents and employees (“Indemnitee”) from any and all claims, actions, liabilities, damages, losses or expenses (including but not limited to court costs, attorney fees, expert fees, and costs of claim processing, investigation and litigation) of any nature or kind whatsoever (“Losses”) caused or alleged to be caused, in whole or in part, by the wrongful, negligent or willful acts, or errors or omissions of Indemnitor or any of its owners, officers, directors, members, managers, agents, employees, or subconsultants (“Indemnitor’s Agents”) arising out of or in connection with this Contract. This defense and indemnity obligation includes holding Indemnitee harmless for any Losses or other amount arising out of or recovered under any state’s workers’ compensation law or arising out of the failure of Indemnitor or Indemnitor’s Agents to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. Indemnitor’s duty to defend Indemnitee accrues immediately at the time a claim is threatened or a claim is made against Indemnitee, whichever is first. Indemnitor’s duty to defend exists regardless of whether Indemnitor is ultimately found liable. Indemnitor must indemnify Indemnitee from and against any and all Losses, except where it is proven that those Losses are solely as a result of Indemnitee’s own negligent or willful acts or omissions. Indemnitor is responsible for primary loss investigation, defense and judgment costs where this indemnification applies. In consideration of the award of this contract, Indemnitor agrees to waive all rights of subrogation against Indemnitee for losses arising from or related to any work

performed by Indemnitor or Indemnitor's Agents for the City of Phoenix under this Contract. The obligations of Indemnitor under this provision survive the termination or expiration of this Contract.

2. CONTRACTOR'S INSURANCE

Contractor and subcontractors must procure insurance against claims that may arise from or relate to performance of the work hereunder by Contractor and its agents, representatives, employees and subcontractors. Contractor and subcontractors must maintain that insurance until all their obligations have been discharged, including any warranty periods under this Contract.

The City in no way warrants that the limits stated in this section are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors and Contractor may purchase additional insurance as they determine necessary.

- 2.1. SCOPE AND LIMITS OF INSURANCE:** Contractor must provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the liability limits provided that (1) the coverage is written on a "following form" basis, and (2) all terms under each line of coverage below are met.

Projects on the airside of Phoenix Sky Harbor International Airport must have \$5,000,000. Projects on the airside of Deer Valley Airport or Goodyear Airport must have \$3,000,000 limits of liability. Projects \$10M and above will have higher insurance limits of liability.

2.1.1. Commercial General Liability – Occurrence Form

General Aggregate	\$2/\$5/\$3,000,000
Products – Completed Operations Aggregate	\$1/\$5/\$3,000,000
Personal and Advertising Injury	\$1/\$5/\$3,000,000
Each	\$1/\$5/\$3,000,000

- The policy must name the City of Phoenix as an additional insured with respect to liability for bodily injury, property damage and personal and advertising injury with respect to premises, ongoing operations, products and completed operations and liability assumed under an insured contract arising out of the activities performed by, or on behalf of the Contractor related to this Contract.
- There shall be no endorsement or modification which limits the scope of coverage or the policy limits available to the City of Phoenix as an additional insured.

- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.

2.1.2. Automobile Liability

Bodily injury and property damage coverage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000/\$5/\$3,000,000

- The policy must be endorsed to include the City of Phoenix as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, related to this contract.
- City of Phoenix is an additional insured to the full limits of liability purchased by the Contractor.
- The Contractor's insurance coverage must be primary and non-contributory with respect to any insurance or self-insurance carried by the City.
- Policy must not contain any restrictions of coverage with regard to operations on or near airport premises.

2.1.3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability:	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- Policy must contain a waiver of subrogation against the City of Phoenix.
- This requirement does not apply when a contractor or subcontractor is exempt under A.R.S. §23-902(E), **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

2.1.4. Professional Liability (Errors and Omissions Liability)

Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

- The policy must cover liability arising from the failure to meet the professional standards required or expected in the delivery of those services as defined in the Scope of Services of this Contract.

- Contractor warrants that any retroactive date under the policy must precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended reporting period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

2.2. NOTICE OF CANCELLATION: For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the City, within five business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice must be mailed, emailed, or hand delivered to City of Phoenix Design and Construction Procurement 200 W. Washington Street, 5th Floor, Phoenix, AZ 85003-1611.

2.3. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Arizona and with an “A.M. Best” rating of not less than B+ VI. The City in no way warrants that the required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

2.4. VERIFICATION OF COVERAGE: Contractor must furnish the City with certificates of insurance (ACORD form or equivalent approved by the City) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract must be sent directly to Design and Construction Procurement via email at str.title34.procure@phoenix.gov. The City project/contract number and project description must be noted on the certificate of insurance. The City reserves the right to review complete copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE CITY’S RISK MANAGEMENT DIVISION.**

2.5. SUBCONTRACTORS: Contractor’s certificates shall include all subcontractors as additional insureds under its policies **OR** Contractor shall be responsible for ensuring and verifying that all subcontractors have valid and collectable insurance. At any time throughout the life of the contract, the City of Phoenix reserves the right to require proof from the Contractor that its subcontractors have insurance coverage. All subcontractors providing services included under this Contract’s Scope of Services are subject to the insurance coverages identified above and must include the City of Phoenix as an additional insured.

In certain circumstances, the Contractor may, on behalf of its subcontractors, waive a specific type of coverage or limit of liability where appropriate to the type of work being performed under the subcontract. Contractor assumes liability for all subcontractors with respect to this Contract.

- 2.6. APPROVAL:** Any modification or variation from the insurance coverages and conditions in this Contract must be documented by an executed contract amendment.

SECTION IV – Approvals

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement which is operative on the Effective Date.

City of Phoenix
an Arizona municipal corporation
Jeffrey Barton, City Manager

Firm Name,
a/an State [Enter Business Type]

By: _____
Eric J. Froberg, PE, City Engineer

By: _____
Name of Signatory, Title

ATTEST:

City Clerk

APPROVED AS TO FORM
JULIE M. KRIEGH, City Attorney

By: _____
[Insert Name]
Assistant Chief Counsel

SECTION V – Attachments

The following Attachments are included below:

Attachment A – Scope of Work

Attachment B – ESCO's Proposal Response

Attachment C – Facility Overview

Attachment D – Cost and Pricing Overview

Attachment E – Model Investment Grade Audit and Project Development Contract

Attachment F – Model Energy Services Performance Contract

Attachment A – Scope of Work

Base Contract

The ESCO will adhere to the terms and conditions of the Base Contract in providing energy savings performance contracting services to the City. The ESCO will further adhere to applicable terms and conditions related to the conduct of Investment Grade Audits of City facilities, the implementation of Energy Performance Contracts for projects throughout the City on an as-needed basis as required by the City, and any post-construction guarantee and monitoring obligations. The potential project areas throughout the City are identified in the Facility Overview, which may be revised or supplemented at any time by the City. The Facility Overview is included as Attachment C. The Base Contract will also include a price schedule derived from the Cost and Pricing Overview as supplemented by cost and pricing information included in the proposal. The Cost and Pricing Overview is included as Attachment B.

In providing energy savings performance contracting services to the City, the ESCO must comply with applicable laws, expressly including ARS § 34-105.

Investment Grade Audit and Project Development

The Investment Grade Audit will identify potential cost-saving measures, determine the cost and savings of each measure, and present a measurement and verification plan to validate future savings of each measure. A project proposal will present a bundle of measures that can be financed through guaranteed savings over the proposed financing term, including a cash-flow table – assuming the City chooses to finance the cost rather than paying outright.

As applicable, the ESCO will enter into an Investment Grade Audit and Project Development Contract once a potential project has been identified by the Parties. A Model Investment Grade Audit and Project Development Contract is included as Attachment D. The Model Contract is meant to serve as a guide and starting point toward contract finalization and execution. The finalized Investment Grade Audit and Project Development Contract must adhere to and implement the requirements of ARS § 34-105 as applicable or otherwise directed by the City. And the terms and conditions set forth in the Base Contract shall be incorporated by reference into the finalized Contract.

Energy Savings Performance Contract

Following satisfactory completion of the Investment Grade Audit, the Parties will negotiate and develop the Energy Savings Performance Contract. Through the Energy Savings Performance Contract, the ESCO proceeds to final design, construction, and commissioning of the improvement measures. The Energy Savings and Performance Contract is included as Attachment E. The Contract will identify the list of measures, equipment, labor costs, and guaranteed savings. It will document equipment

specifications and warranties as applicable. It will further establish the schedule and responsibilities of the Parties. It must adhere to applicable law, including Arizona law.

The finalized Investment Energy Savings Performance Contract must adhere to and implement the requirements of ARS § 34-105 as applicable or otherwise directed by the City. And the terms and conditions set forth in the Base Contract shall be incorporated by reference into the finalized Contract.

Measurement and Verification

In order to provide the performance guarantee, the ESCO must provide and report annual measurement and verification (“M&V”) services following the guidelines of the IPMVP. The guarantee is required to cover the cost of this service. In relation to the performance guarantees and M&V services, the ESCO is further required to adhere to and implement the requirements of ARS § 34-105 as applicable or otherwise directed by the City.

ESCO Services

The ESCO 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:

Investment Grade Audit and Project Proposal Phase

- Technical audit to evaluate costs and savings of a variety of energy and water-saving measures
- Project proposal, including expected costs
- Benchmarking using Energy Star tools
- Measurement and verification plan
- Commissioning plan
- Training plan
- Operations & Maintenance plan
- Utility bill data services to capture credits from utility bill errors
- Conduct a study to establish the exact scope of the guaranteed energy cost savings contract, the fixed cost savings guaranteed amount
- Correspond with the City’s agents as they conduct an independent review of the Investment Grade Audit and Project Proposal
-

Construction/Implementation/Commissioning

- Engineering design
- Equipment data sheet/shop drawing submissions
- Equipment procurement and purchasing in accordance with applicable Arizona law
- Construction management
- Hazardous waste disposal or recycling
- Commissioning

- Measurement & verification activities during construction, prior to project acceptance
- Enter all project data and documents into the US Department of Energy's free on-line tool, [eProject eXpress](#), for recordkeeping purposes.
- Submit Post-Installation Report for City review

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
- Correspond with the City's agents as they conduct an independent review of monitoring & verification (guaranteed savings pay for independent contractor)
- Analysis and application for Energy Star Label and/or LEED-EB (Leadership in Energy and Environmental Design for Existing Buildings, by the US Green Building Council)
- Monitoring and reporting of emissions reduction
- Maintaining long-term, high-efficiency performance of buildings

The ESCO must further have the technical capability to address a broad range of systems including but not limited to the following:

- 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, microgrids, etc.
- Lighting Systems: Indoor and outdoor lighting systems, lighting controls, daylighting strategies.
- Renewable Energy Systems: Solar photovoltaic (PV), solar thermal, small wind power, and battery energy storage systems (BESS).
- Building Envelope Systems: Windows, insulation, weatherization, etc.
- Specialty Systems: Laundry equipment, kitchen equipment, pool systems, electric vehicle charging systems, etc.
- LEED-EB: 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, pool covers, and irrigation system controls or modifications.
- Desired Projects: The City reserves the right to supplement this list as needed for City-specific projects that may be applicable.

Building, Facilities, and Approach

All facilities owned, managed, or operated by the City at any time during the term of the Base Contract may be considered for energy savings performance projects and work or services related thereto. Specific facilities now operated by the City are included in the

Facility Overview, which is included as Attachment C. The City reserves the right to revise and supplement the Facility Overview at any time during the term of the engagement.

Work may be conducted in phases where the detailed scope of work can be developed at any time during the term of the Energy Savings Performance Contract. The Energy Savings Performance Contract can be amended at any time during the initial performance of the contract term to address additional projects, including those that may occur at other buildings.

The City 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.

SAMPLE PROJECT SCHEDULE FOR REFERENCE

This sample project schedule is a general overview only. All activities set forth below include estimated duration, which is merely an estimate and subject to change as needed.

- RFP Phase (8 weeks)
 - o ESCO Selection and Award
 - o Execution of Base Contract
- Investment Grade Audit Phase (12-16 weeks)
 - o Contract Negotiation, Finalization, and Approval
 - o Execution of Investment Grade Audit and Project Development Contract
 - o Audit, Final Report, and Presentation
- Energy Savings Performance Contract Phase (18 – 24 months)
 - o Contract Negotiation, Finalization, and Approval
 - o Design, Implementation, and Commissioning
- Monitoring Phase (Recurring Annually)

Attachment B – ESCO’s Proposal Response

[This Attachment will incorporate relevant cost and pricing information submitted by a selected ESCO]

Attachment C – Facility Overview

[This Attachment will carry over the Facility Overview, supplemented and revised as necessary in the City's discretion, from the underlying RFP]

Attachment D – Cost and Pricing Overview

[This Attachment will incorporate relevant cost and pricing information submitted by a selected ESCO]

Attachment E – Model Investment Grade Audit and Project Development Contract

[This Attachment will carry over the Model Investment Grade Audit and Project Development Contract from the underlying RFP, subject to negotiation and revision as applicable]

Attachment F – Model Energy Savings Performance Contract

[This Attachment will carry over the Model Energy Savings Performance Contract from the underlying RFP, subject to negotiation and revision as applicable]

Exhibit B – ESCO Response Template

(ATTACHED)

ESCO RESPONSE TEMPLATE

Responses to this RFP should include responses to each item herein. In the interest of the City's efficient evaluation of proposals, please limit inclusion of additional information. Offerors are encouraged to submit an inquiry to the Procurement Officer if needed.

SUBMISSION CATEGORIES (to also serve as evaluation criteria)

- 1.0 Participation and Compliance**
- 2.0 Overview of Approach to Energy Savings Performance Contracting**
- 3.0 Project History**
- 4.0 Qualifications**
- 5.0 Financial Solvency**
- 6.0 Technical Approach**
- 7.0 Management Approach**
- 8.0 City of Phoenix-Specific Approach**
- 9.0 Cost And Pricing**

IMPORTANT:

- 1) Re-state the number and question before your response to each item.
- 2) Before developing your response, note the requirements and obligations stated in the RFP and Exhibits.

1.0 Compliance

This section will not be included in the information made available on the website for Owners to review.

1.1 Compliance with Performance Contracting Requirements

State your firm's commitment to adhere to the following:

- 1.1.1 Arizona Law, including but not limited to ARS § 34-105 (attached as Exhibit I to the RFP)**
- 1.1.2 ESCO Base Contract (attached as Exhibit A to the RFP)**
- 1.1.3 Model Investment Grade Audit and Project Development Contract (attached as Exhibit E to the RFP)**
- 1.1.4 Energy Savings Performance Contract (attached as Exhibit F to the RFP)**

1.1.5 Financing in relation to Energy Savings Performance Contracting

1.1.6 Data Collection and Reporting (as required by law or otherwise applicable to Energy Savings Performance Contracting)

2.0 Overview of Approach to Energy Savings Performance Contracting (ESPC)

Provide an overview, maximum of three pages, to present your company as it relates to performing ESPC services and working on ESPC projects for municipalities. The purpose of this overview is to provide a good introduction of your firm to the evaluation committee.

3.0 Project History

3.1 Market Sector Involvement

Briefly describe your company’s expertise/experience in the market sector and types of facilities related to this RFP.

3.2 Project List

List up to 15 Energy Savings Performance Contracting projects developed and implemented by your firm within the past five years that have completed construction.

If it is relevant to list projects performed outside of the firm, clearly identify the firm with overall responsibility for that project and the project’s relevance to this solicitation.

Project Name	Market Sector	City & State	Project Size (Dollars)	Project Size (Square Feet)	Year Completed

3.3 Project Data and References

Using the table below, provide detailed information on up to eight performance contracting projects your firm completed. Only include projects that have at least one year of documented performance data, are currently in repayment, are currently under contract with your firm, and that can be used as references. If desired provide additional project detail, such as a case study, in any format (maximum of an additional two pages for each project). We recognize that the actual performance data of some projects may be confidential information, protected by the customer and subject to confidentiality agreements in project contracts.

Project Data and References	
Project Name	
Facility Type and Use	
Project Size: -Number of Buildings -Total Square Footage	
Types of Measures	
Project Cost: Installed Project Costs	
Project Cost: Financed Amount	
Guaranteed Annual Savings (\$)	
Financing/Funding Source	
Project Schedule: -Construction Start and End Dates -Guarantee Period Start and End Dates Describe if project was completed on schedule or delayed	
Measurement and Verification Methods	
Project Personnel: List all ESCO personnel associated with this project (limit to those who may be assigned to a project) and their roles and responsibilities (only list those who may be assigned to a project).	
Contact Information: Current phone and email address of owner representatives you worked with.	

Commodity	Units	Guaranteed Annual Savings	Achieved Savings Year 1	Achieved Savings Year 2	Achieved Savings Year 3	Achieved Savings Year 4	Achieved Savings Year 5
Electricity	kWh						
Electric Demand	kW						
Natural Gas	Therms						
Fuel Oil	Gal						
Steam							
Fuel Oil	Gal						
Water							
Other							
Material	\$						
Maintenance Contracts	\$						

Other	\$						
TOTAL							

4.0 Qualifications

4.1 History and Focus of Company

Limit your response to no more than one page for this section.

4.1.1 Structure and Evolution of the Firm.

List any other names for company's business. Provide any other information, only if deemed necessary.

4.1.2 Years in the Energy Business.

State the number of years the company has been involved in the energy-efficiency related business.

4.1.3 Involvement in Performance Contracting.

- a) State the number of years the company has offered Energy Savings Performance Contracting services.
- b) State the number of project professionals (energy engineers, project managers, etc.) in your firm that are directly involved in the performance contracting and energy efficiency or renewable energy business.

4.1.4 Number of Performance Contracting Projects.

State the number of performance contracting projects completed by the company.

4.2 Industry Accreditations

List any industry accreditations, partnerships, memberships, and pre-qualifications and briefly describe the relevance of each. Note that accreditation is not a requirement and no firm will be penalized for the lack of industry accreditations, partnerships, memberships and pre-qualifications.

4.3 General Scope of Services

4.3.1 Energy systems in buildings:

Provide a brief discussion (five pages maximum) for this section (Energy Systems in Buildings) to illustrate the company's capability in each area.

4.3.1.1 Mechanical/Electrical Systems

This discussion could include: lighting: indoor and outdoor, heating, ventilation and indoor air quality issues, cooling, control and building automation, fuel switching, central plant, etc.

4.3.1.2 Renewables

4.3.1.3 This discussion could include: daylighting, solar-electric, solar thermal, geothermal, wind, biomass, distributed generation.

4.3.1.4 Water Measures

4.3.1.5 This discussion could include: plumbing fixtures, landscape irrigation, mechanical plant water-saving measures, etc.

4.3.1.6 Specialty Systems or Specific Building Types

- 4.3.1.7 This discussion could include kitchen or laundry; laboratories, clean rooms; healthcare hospitals, nursing homes, clinics; swimming pools and recreational facilities; computer laboratories, data Centers; correctional facilities.
- 4.3.1.8 **Energy Management Services**
This discussion could include: energy management, occupant programs (behavior focus), utility bill auditing and bill payment, benchmarking, LEED for Existing Buildings, etc.
- 4.3.1.9 **Envelope Measures**
This discussion could include: walls, windows, roof, infiltration reduction, etc.
- 4.3.1.10 **Operational Savings Measures**
This discussion could include eliminated maintenance costs, training programs for staff or occupants, waste measures, etc.
- 4.3.1.11 **Other**

4.3.2 Project Development and Implementation

- 4.3.2.1 Energy auditing (potential measures, savings projections; cost estimates)
- 4.3.2.2 Baseline development (including future savings adjustment)
- 4.3.2.3 Project proposal (package of measures with cash flow)
- 4.3.2.4 System design engineering
- 4.3.2.5 Equipment and subcontractor procurement and bidding
- 4.3.2.6 Construction management
- 4.3.2.7 Commissioning of projects and retro-commissioning of existing buildings
- 4.3.2.8 Project management
- 4.3.2.9 Hazardous materials identification and abatement, recycling or disposal (including asbestos)

4.3.3 Core Performance Contracting Services

- 4.3.3.1 Performance guarantee for every year of the financing term
- 4.3.3.2 Insurance per contract requirements
- 4.3.3.3 Equipment warranties
- 4.3.3.4 Facilitation of financing (including a municipal, tax-exempt lease purchase), to the extent your firm is registered to do so.
- 4.3.3.5 Measurement and verification of savings
- 4.3.3.6 Training (facility staff, occupants)

4.3.4 Support Services:

- 4.3.4.1 Marketing and promotion
- 4.3.4.2 Long-term maintenance services on energy systems
- 4.3.4.3 Application for an Energy Star Label and LEED certification.
- 4.3.4.4 Data reporting and other reporting as required (emissions reductions, assistance to the City with preparing annual reports, etc.)

5.0 Financial Solvency

5.1 Financial Soundness

Describe the financial soundness and expected stability of the company.

5.1.1 Financial Reports:

Provide financial reports for the last 3 years, including, at a minimum: Balance Sheet, Income Statement, Statement of Cash Flow, and Statement of Financial Conditions. Include the name, address, and telephone number of the preparer.

5.1.2 Bonding

Include responses to the following:

5.1.3 Current bonding rating

5.1.4 Current bonding capacity

5.1.5 Amount or percentage of bonding capacity currently obligated

5.1.6 Current bonding rate

5.1.7 Confirmation that the company is bondable for 100% of a payment bond on a project

5.1.8 Confirmation that the company is bondable for 100% of a performance bond on a project

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

6.0 Technical Approach

6.1 Investment Grade Audit

6.1.1 Briefly summarize your overall approach to auditing.

6.1.2 Provide a brief overview of your sample Investment Grade Audit. Under separate cover (as directed in the RFQ), provide a sample Investment Grade Audit report for an Energy Savings Performance Contracting project that your firm implemented in a public facility. Include detailed energy/water savings and economic calculations (excluding equipment cut sheets) and samples of tables and supporting calculations. This is intended to allow reviewers to conduct a reasonable analysis of your company's auditing methodology. Please be judicious regarding the volume of information submitted.

6.2 Measurement and Verification

6.2.1 Briefly summarize your overall approach to Measurement and Verification.

6.2.2 Include a brief overview of your sample M&V plan. As an appendix to your response, provide a sample Measurement and Verification Plan from a performance contracting project implemented by your company.

6.3 Commissioning

6.3.1 Briefly summarize your overall approach to commissioning.

6.3.2 Provide a brief overview of your sample Commissioning Plan. As an appendix to your response, provide a sample Commissioning Plan from a performance contracting project implemented by your firm.

6.4 Operations & Maintenance Plan

6.4.1 Briefly summarize your approach to Operations and Maintenance.

6.4.2 Include a brief overview of your sample Operations and Maintenance Plan. As an appendix to your response, provide a sample Operations & Maintenance Plan from a performance contracting project implemented by your firm.

6.5 Measurement and Verification Savings Report

6.5.1 Briefly summarize your approach to the M&V report.

6.5.2 Include a brief overview of your sample Measurement and Verification Report. As an appendix to your response, provide a sample Measurement and Verification Savings Report prepared by your firm from a completed performance contracting project currently in repayment.

6.6 Handling of Savings Shortfalls

Address any savings shortfalls that occurred over the past 5 years (up to 10 examples) and describe how they were resolved.

7.0 Management Approach

7.1 Project Management and Coordination

Limit this section to five pages.

7.1.1 Organizational Structure

Show the organization chart for implementing and managing the project with the core energy team assigned to this project. Show clear lines of communication and responsibility. Describe the transition and responsible parties involved from the sales to auditing phase, auditing to construction phase, construction to follow-up monitoring phase, etc. Also include an organization chart showing the corporate structure with added corporate support for the project.

7.1.2 Local Staffing and Support

List the office location (city and state) for the core energy team for this project. Describe the extent of local staffing and support for the each phase of a typical project. Describe the relevance or importance of local presence with regard to this project.

7.1.3 In-House vs. Subcontractors

Describe the types of services (both professional and construction services) that your company offers in-house and the services to be offered through subcontractors.

Describe how subcontractors are selected. Also comment on your ability to competitively select subcontractors.

7.1.4 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. Describe your flexibility and/or any limitations regarding possible Owner activities such as: management of additional energy and water projects, monitoring of installation and performance of Contractor projects and integration of other identified capital needs with Contractor projects which may or may not contain energy and water saving opportunities.

7.1.5 Owner Involvement.

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

7.1.6 Long-term Servicing.

Describe long-term servicing of equipment and systems. State the location of your nearest servicing office.

7.2 Personnel and Staffing

Use the following table to present background on personnel or subcontractors who will be assigned responsibility for a core project task. Also include any added expertise and capability of staff available through other branch offices, subcontracts, etc., that can provide back-up strengths.

Personnel Profile:		Name
Potential Role Base Location		
Current Employment Current job title Company (if subcontractor) Job responsibilities Number of years with ESCO		
Previous Employment Job Title Company name Job responsibilities Number of years with firm		
Academic/Professional Qualifications Degree/discipline: College/university Professional affiliations Technical Training Accreditations		
Overall Total years of relevant experience: Other relevant experience or accomplishments:		

<p>Performance Contracting Experience (Past 5 Years) Project # _____ Project Name: Project location: Type of facilities: Year implemented: Project Cost (installed cost): Role and responsibilities:</p>	
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8.0 City of Phoenix-Specific Approach

8.1 Types of Services

Summarize the scope of services (auditing, design, construction, monitoring, operations, maintenance, training, financing, etc.) identified for the City.

8.2 Potential Projects

Based on your preliminary assessment of the Facility Overview and your experience generally, describe any equipment modifications, installations or replacements at the facility that your firm would consider installing as a part of possible City projects. Address energy, water and operational opportunities. 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 Owner. Describe your approach to achieve compatibility (such as open systems) and/or standardization of equipment in the facilities to be addressed.

9.0 Cost And Pricing

Responses to this section only will remain proprietary.

This response will establish the overhead and profit percentage (markup) for your firm for this contract. This markup will be applied to any Investment Grade Audit and Project Development Contract or Energy Savings Performance Contract and can be negotiated downward.

See definitions and a **Sample Price Sheet** in Exhibit D – Cost and Pricing Overview. In addition to the items below, ESCO Offerors must also submit a **Sample Price Sheet** with their offer.

9.1 Project Cost Breakdown

In the table below, provide your company’s proposed Maximum Percentage of Total Project Price for possible City projects, for each category listed. This format is

required and must be completed in its entirety. Use only the categories shown. Ranges are not acceptable.

Clearly describe how incidental and ancillary work will be charged (billed hourly, billed as a markup of equipment and labor costs, etc.). Incidental and ancillary work includes but is not limited to work that is related to ensure jobsite safety and security, jobsite cleanliness and sanitation, limited demolition, and other incidental work that is necessary to enable subcontractors to perform their work in a timely manner.

Project Construction Cost Category	Maximum Percent of Total Project Price	Self-Performed or Subcontracted
Pre-Construction Costs		
Design and other Engineering <i>Professional architectural and engineering services; Energy modeling</i>		
Pre-Construction Services <i>Construction management and project development services</i>		
Other Pre-Construction Costs <i>Site visits, Owner meetings, Legal review, Accounting services, etc.</i>		
Construction Costs		
Trade Subcontractors <i>Construction contractors subcontracted to ESCO; Lighting, construction, sheet metal, etc.</i>	N/A until Investment Grade Audit is completed	
Design/Build Subcontracts <i>Construction and design contractors</i>	N/A until Investment Grade Audit is completed	
Direct Purchase Equipment <i>Equipment directly purchased by ESCO</i>	N/A until Investment Grade Audit is completed	
Construction Management <i>Construction manager and site superintendent</i>		
Project Engineering <i>Design engineer inspections; Engineering analysis</i>		

General Conditions <i>Miscellaneous non-staffing costs; Equipment rentals, security fencing, etc.</i>		
Construction Completion <i>Commissioning, Training, Construction M&V, O&M Manuals</i>		
Other Construction Costs <i>Site visits, Owner meetings, Permits, Insurance, Bonds, Warranty Labor</i>		

9.2 Profit Markup

In the table below provide the maximum percentage markup that will be applied to direct purchases of equipment, material, and subcontractors for this project. Note that overhead is included in Construction Costs - General Conditions.

	Maximum Markup %
Overhead and Profit Percent	

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

In applying the scoring method, the selection committee will separately evaluate and score the technical proposal before opening evaluating, and scoring the price proposal. A maximum score of 15 points will be awarded to the proposer with the lowest overhead and profit percentage.

The firm offering the lowest markup will receive the maximum score of 15 points. The other firms will receive a prorated score calculated by dividing the lowest markup by their markup and multiplying the result by the 15 points available for cost.

EVALUATION EXAMPLE.

An example is provided below to demonstrate how the evaluation criteria will be applied. For purposes of this example, proposals were received from three hypothetical firms, Companies A, B, and C. Each firm provided technical proposals and a markup percentage with the details as shown in Table 2 below. As mentioned in the Evaluation Process above, the technical proposals are evaluated and scored before opening the Price Proposals.

TABLE 2: SAMPLE TECHNICAL PROPOSAL SUBMITTAL INFORMATION				
ELEMENT	FACTOR	Company A	Company B	Company C

TECHNICAL PROPOSAL	PARTICIPATION AND COMPLIANCE	PASS		FAIL
	OVERVIEW OF APPROACH TO PERFORMANCE CONTRACTING	4	1	3
	PROJECT HISTORY	10	8	9
	QUALIFICATIONS	14	11	14
	FINANCIAL SOLVENCY	12	14	15
	TECHNICAL APPROACH	7	9	10
	MANAGEMENT APPROACH	8	8	8
	CITY OF PHOENIX SPECIFIC APPROACH	14	12	13
	SUB-TOTALS	69	63	72

The final sub-totals for the technical proposal will be the average of the selection committee's sub-total score. For this example, the sub-total Technical score for Company A is 69; Company B is 63; and Company C is 72.

The Price Proposals are then opened and the results are tabulated as shown in Table 3 below. Company B gave the lowest markup percentage and would receive 15 points. The other price proposals are scored relative to the lowest weighted price proposal for this area.

TABLE 3: SAMPLE PRICE SUBMITTAL INFORMATION				
ELEMENT	FACTOR	Company A	Company B	Company C
	OVERHEAD & PROFIT FACTOR	16%	18%	15%
	WEIGHTED MARKUP %	$15/16 * 15 = 14.06$	$15/18 * 15 = 12.50$	$15/15 * 15 = 15$

For this example, the score for Company A is 31.42; Company B is 40.00; and Company C is 39.11.

The final sub-total scores from the Technical Proposals are then added to the Price Proposal scores. The final results of the evaluation are summarized as shown in Table 4 below:

TABLE 4: SAMPLE FINAL SCORE TABULATION				
ELEMENT	FACTOR	Company A	Company B	Company C
COMBINED PROPOSAL	TECHNICAL PROPOSAL	69.00	63.00	72.00
	PRICE PROPOSAL	14.06	12.50	15.00
	Total	83.06	75.50	87.00

For this example, the overall final score for Company A is 83.06; Company B is 75.50; and Company C is 87.00. Therefore, Companies C and A will be the selected as “Best Qualified” firms for this contract.

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

9.4 Investment Grade Audit Fee

In the table below, provide the maximum fee to conduct the Investment Grade Audit and Project Development Proposal, on a cost per square foot basis. Through this proposed maximum fee your firm acknowledges the responsibility to adhere to and complete the full scope of work as presented in a finalized Investment Grade Audit and Project Development Contract.

	Proposed Max cost per sf
Investment Grade Audit and Project Proposal	\$/sf

9.5 Self-Performed Work Fees

In the table below, provide the position descriptions and hourly rates for labor and services as performed by your company.

The purpose of this is to enable confirmation through open book pricing.

Position Description	Hourly Rate
Position	\$xx.xx
Position	\$xx.xx
Position	\$xx.xx
Position	\$xx.xx

9.6 Annual Costs and Fees

9.6.1 Measurement and Verification – Annual Fee

Describe how the post-retrofit Measurement & Verification annual fee is determined.

The Measurement and Verification Services cost is the annual cost for the services necessary after acceptance of the project to annually verify the Energy Performance Contract guarantees. The cost for the guarantee is based upon the M&V option utilized,

the risk of savings failure, the field time to measure building performance, and the time to document and present the report.

9.6.2Warranty

Describe how the warranty cost is determined.

Warranty is the burdened labor cost associated with time anticipated to be expended by ESCO staff in supporting their direct purchase equipment warranties; and/or equipment provided by subcontractors. This warranty cost may also include costs for extended equipment warranties in those cases where the required/specified equipment warranty is longer than the equipment warranty offered by the manufacturer.

9.6.3Other

Describe any other fees and how they will be determined.

9.7 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 Owner.

9.8 Open Book Pricing

Open book pricing is required as stated in the Model Energy Savings Performance Contract.

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

9.9 Best Value

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

Exhibit C – Facility Overview

(ATTACHED)

Department	Facility/Group Name	Address	Primary Use	2022 Electricity Cost	2022 Electricity Usage	2022 Natural Gas Cost	2022 Natural Gas Usage (therm)	2022		Solar Capacity Installed (kW-DC)	Utility
								Total Building Area	Construction Date		
Arts	Phoenix Art Museum	1625 N Central Ave	MUSEUM	\$ 455,335	3,927,722	\$ 60,580	60,580	385,669	01/01/1969	-	APS
Arts	Phoenix Theatre	100 E McDowell Rd	PERFORMINGARTS	\$ 137,132	984,795	\$ -	-	35,000	01/01/1951	-	APS
Aviation	PHX Terminal 4	3800 E Sky Harbor Blvd	TRANSPORTATIONTE	\$ 9,242,820	77,846,446	\$ 22,331	22,331	1,918,732	01/01/1989	-	APS
Aviation	PHX Terminal 3	3400 E Sky Harbor Blvd	TRANSPORTATIONTE	\$ 4,336,278	28,537,506	\$ -	-	880,000	01/01/1979	-	APS
Aviation	PHX SkyTrain	Various	OTHERUTILITY	\$ 2,570,853	15,340,141	\$ -	-	-	-	N/A	Both
Aviation	PHX Rental Car Center	1795 E Sky Harbor Cir S	PARKING	\$ 823,046	8,024,021	\$ -	-	361,276	01/01/1980	4,100	APS
Aviation	PHX South Air Cargo	3002 E Old Tower Rd	WAREHOUSE-UNREFR	\$ 375,620	3,336,780	\$ -	-	198,090	01/01/2000	-	APS
Aviation	PHX East Econ Pkg Garage	4445 E Sky Harbor Blvd	PARKING	\$ 172,645	1,262,410	\$ -	-	-	-	1,300	APS
Aviation	PHX Building 1302	2739 E Washington St	UNKNOWN	\$ 122,516	1,072,119	\$ -	-	-	-	-	APS
Aviation	PHX Building C - Cargo	1251 S 25th St	WAREHOUSE-UNREFR	\$ 120,019	1,026,401	\$ -	-	79,933	01/01/1975	-	APS
Aviation	GY Building 18	1658 S Litchfield Rd	UNKNOWN	\$ 115,994	929,207	\$ -	-	-	-	-	APS
Aviation	PHX Facilities & Services	2515 E Buckeye Rd	GENERAL	\$ 112,880	907,279	\$ 9,619	9,619	61,085	01/01/1966	-	APS
Aviation	PHX Terminal 2	3200 E Sky Harbor Blvd	TRANSPORTATIONTE	\$ 108,525	873,059	\$ -	-	-	01/01/1962	-	APS
Aviation	PHX Building B - Cargo	1249 S 27th St	WAREHOUSE-UNREFR	\$ 87,968	756,550	\$ -	-	53,290	01/01/1975	-	APS
Aviation	PHX Building A - Cargo	1247 S 27th St	WAREHOUSE-UNREFR	\$ 90,259	722,769	\$ -	-	53,417	01/01/1975	-	APS
Aviation	PHX Command Center	1550 S Copperhead Dr	GENERAL	\$ 77,461	618,203	\$ -	-	20,000	01/01/2017	-	APS
Aviation	PHX Aviation HQ	2485 E Buckeye Rd	GENERAL	\$ 102,391	561,012	\$ -	-	78,000	11/01/2016	580	APS
Aviation	PHX Fire Station 19	3547 E Sky Harbor Blvd	FIRESTATION	\$ 73,793	545,934	\$ -	-	34,101	01/01/2002	-	APS
Aviation	PHX Operations Center	3300 E Sky Harbor Blvd	GENERAL	\$ 64,660	476,990	\$ -	-	15,276	01/01/1971	-	APS
Aviation	PHX Aviation Admin Building	3420 E Sky Harbor Blvd	GENERAL	\$ 58,959	451,230	\$ -	-	20,795	01/01/2006	-	APS
Aviation	PHX Bus Maint Facility	2425 E Buckeye Rd	REPAIRSERVICES	\$ 53,910	444,523	\$ 26,818	26,818	27,848	-	-	APS
Aviation	PHX DCS Building	500 S 24th St	GENERAL	\$ 48,840	350,293	\$ -	-	19,247	-	-	APS
Aviation	PHX Executive Terminal	2908 E Sky Harbor Blvd	GENERAL	\$ 36,589	267,878	\$ 1,238	1,238	8,334	01/01/1973	-	APS
Aviation	PHX RCC Small Ops	1712 E Rental Car Way	AUTOMOBILEDEALER	\$ 34,241	249,150	\$ -	-	7,860	-	-	APS
Aviation	DVT Terminal	702 W Deer Valley Rd	TRANSPORTATIONTE	\$ 30,356	230,896	\$ 2,607	2,607	-	-	-	APS
Aviation	GY Terminal	1658 S Litchfield Rd	TRANSPORTATIONTE	\$ 33,877	216,438	\$ -	-	-	-	-	APS
Aviation	PHX City Hangar	2725 E Air Ln	HANGAR	\$ 26,257	190,894	\$ -	-	31,407	01/01/1967	-	APS
Aviation	DVT Hangar 45	702 W Deer Valley Rd	HANGAR	\$ 20,925	167,621	\$ -	-	14,892	-	-	APS
Aviation	PHX Tonto West Parking	2325 E Sky Harbor Cir North	PARKING	\$ 22,441	162,862	\$ 368	368	-	-	-	APS
Aviation	DVT Hangar 36	22500 N 4th Ave	HANGAR	\$ 19,084	141,568	\$ -	-	14,892	-	-	APS
Aviation	PHX Tonto East Parking	986 S 24th St	PARKING	\$ 20,000	133,489	\$ -	-	-	-	-	APS
Aviation	GY Building 48	1658 S Litchfield Rd	UNKNOWN	\$ 18,181	128,608	\$ -	-	-	-	-	APS
Aviation	PHX 42nd St Employee Lot	4000 E Sky Harbor Blvd	PARKING	\$ 15,962	121,265	\$ -	-	-	-	-	APS
Aviation	PHX West Economy Parking Lot	2910 E Buckeye Rd	PARKING	\$ 15,886	115,493	\$ -	-	-	-	-	APS
Aviation	PHX Building 123	2535 E Air Ln	HANGAR	\$ 17,737	89,763	\$ -	-	3,600	-	-	APS
Aviation	DVT Hangar 21	702 W Deer Valley Rd	HANGAR	\$ 13,046	85,524	\$ -	-	15,028	-	-	APS
Aviation	DVT Hangar 27	702 W Deer Valley Rd	HANGAR	\$ 11,483	82,443	\$ -	-	14,892	-	-	APS
Aviation	DVT Hangar 18	700 W Deer Valley Rd	HANGAR	\$ 11,892	81,487	\$ -	-	15,028	-	-	APS
Aviation	DVT Aircraft Maintenance Bays	702 W Deer Valley Rd	REPAIRSERVICES	\$ 11,710	75,817	\$ -	-	6,888	-	-	APS
Aviation	GY TH2	1658 S Litchfield Rd	UNKNOWN	\$ 11,371	73,248	\$ -	-	-	-	-	APS
Aviation	West Cell Phone Parking Lot	2810 E Sky Harbor Blvd	PARKING	\$ 9,714	68,587	\$ -	-	-	-	-	APS
Aviation	PHX Maintenance Support	3328 E Jackson St	REPAIRSERVICES	\$ 10,146	64,755	\$ -	-	-	-	-	APS
Aviation	DVT Hangar 12	702 W Deer Valley Rd	HANGAR	\$ 9,677	59,807	\$ -	-	-	-	-	APS
Aviation	DVT Maintenance Bldg West	702 W Deer Valley Rd	REPAIRSERVICES	\$ 9,198	55,094	\$ -	-	4,752	-	-	APS
City Clerk	City Clerk Cust Srv Center	2640 S 22nd Ave	GENERAL	\$ 56,890	360,917	\$ 6,315	6,315	19,301	-	-	APS
Convention	PCC North & West Bldgs	100 N 3rd St	CONVENTION_CN	\$ 1,714,529	19,032,246	\$ 373,816	373,816	1,766,280	-	100	APS
Convention	PCC South Bldg	95 S 3rd St	CONVENTION_CN	\$ 392,028	3,536,234	\$ 11,814	11,814	286,000	-	-	APS
Convention	PCC East Garage	601 E Washington St	PARKING	\$ 167,830	1,550,526	\$ -	-	-	-	-	APS
Convention	Symphony Hall	75 N 2nd St	PERFORMINGARTS	\$ 175,084	1,520,615	\$ -	-	-	01/01/1972	-	APS
Convention	Herberger Theater	222 E Monroe St	PERFORMINGARTS	\$ 127,703	1,004,310	\$ -	-	-	01/01/1989	-	APS
Convention	Regency Garage	121 E Adams St	PARKING	\$ 59,965	447,380	\$ 3,384	3,384	-	-	-	APS
Convention	Heritage Garage	125 N 5th St	PARKING	\$ 28,811	221,512	\$ -	-	-	-	-	APS
Fire	Fire Academy	2425 W Lower Buckeye Rd	VOCATIONALSCHOOL	\$ 250,869	2,124,801	\$ -	-	155,216	-	10	APS
Fire	Fire Admin - Ops Phase 2	150 S 12th St	REPAIRSERVICES	\$ 212,701	1,921,321	\$ 6,548	6,548	42,193	01/01/1997	-	APS
Fire	Fire Resource Management	2625 S 19th Ave	GENERAL	\$ 121,929	1,020,778	\$ 17,827	17,827	85,000	01/01/1975	-	APS
Fire	Fire Admin - Ops Phase 1	150 S 12th St	GENERAL	\$ 97,472	860,223	\$ -	-	95,866	01/01/1997	-	APS
Fire	Fire Dept - Special Operations	2430 S 22nd Ave	VOCATIONALSCHOOL	\$ 46,635	324,165	\$ 2,521	2,521	20,641	01/01/1962	-	APS
Fire	Fire Station 01	323 N 4th Ave	FIRESTATION	\$ 43,256	315,249	\$ 6,750	6,750	13,888	01/01/1991	20	APS
Fire	Fire Station 43	4110 E Chandler Blvd	FIRESTATION	\$ 31,777	306,438	\$ 6,840	6,840	22,000	01/01/2002	-	SRP
Fire	Fire Station 41	2501 W Morningside Dr	FIRESTATION	\$ 42,027	297,479	\$ 13,301	13,301	7,332	01/01/1986	-	APS
Fire	Fire Station 25	4010 N 63rd Ave	FIRESTATION	\$ 26,608	263,314	\$ 4,462	4,462	16,450	01/01/1995	-	SRP
Fire	Fire Station 30	2701 W Belmont Ave	FIRESTATION	\$ 22,991	228,158	\$ 8,395	8,395	16,000	01/01/2000	-	SRP
Fire	Fire Station 50	20225 N 35th Ave	FIRESTATION	\$ 28,736	217,433	\$ 4,524	4,524	13,700	01/01/2003	-	APS
Fire	Fire Station 12	4247 N 32nd St	FIRESTATION	\$ 21,251	208,680	\$ 9,994	9,994	13,499	01/01/1998	-	SRP
Fire	Fire Station 09	330 E Fairmount Ave	FIRESTATION	\$ 27,940	207,005	\$ 4,688	4,688	10,940	01/01/1983	-	APS
Fire	Fire Station 18	5019 N 23rd Ave	FIRESTATION	\$ 20,227	204,648	\$ 3,166	3,166	11,600	01/01/1991	-	SRP
Fire	Fire Station 32	7620 S 42nd Pl	FIRESTATION	\$ 21,370	204,368	\$ 4,581	4,581	15,403	01/01/2006	-	SRP
Fire	Fire Station 03	1257 W Pierce St	FIRESTATION	\$ 26,532	203,189	\$ 3,481	3,481	11,600	01/01/1991	-	APS

Fire	Fire Station 08	1025 E Polk St	FIRESTATION	\$	24,499	184,092	\$	4,844	4,844	11,957	01/01/1987	-	APS
Fire	Fire Station 29	3949 E Air Ln	FIRESTATION	\$	24,950	181,981	\$	-	-	22,000	01/01/2002	-	APS
Fire	Fire Station 57	1660 W Dobbins Rd	FIRESTATION	\$	18,196	171,894	\$	7,894	7,894	14,000	01/01/2007	-	SRP
Fire	Fire Station 44	7117 W Mcdowell Rd	FIRESTATION	\$	16,100	162,305	\$	3,896	3,896	7,396	07/07/1998	-	SRP
Fire	Fire Station 52	21650 N Tatum Blvd	FIRESTATION	\$	21,115	156,764	\$	5,300	5,300	13,700	01/01/2000	-	APS
Fire	Fire Station 10	2731 N 24th Dr	FIRESTATION	\$	21,334	154,836	\$	2,429	2,429	9,556	01/01/1987	-	APS
Fire	Fire Station 54	9820 W Campbell Ave	FIRESTATION	\$	15,495	143,558	\$	2,658	2,658	14,000	01/01/2005	-	SRP
Fire	Fire Station 61	1925 E Indian School Rd	FIRESTATION	\$	19,448	143,553	\$	5,436	5,436	12,000	01/01/2007	-	APS
Fire	Fire Station 60	2405 W Townley Ave	FIRESTATION	\$	13,895	131,765	\$	5,941	5,941	9,500	01/01/2007	-	SRP
Fire	Fire Station 11	2727 E Roosevelt St	FIRESTATION	\$	19,813	131,009	\$	3,852	3,852	6,016	01/01/1976	-	APS
Fire	FEMA Warehouse	2450 S 22nd Ave	WAREHOUSE-UNREFR	\$	18,891	130,779	\$	1,549	1,549	20,300	01/01/1968	-	APS
Fire	Fire Station 22	230 E Roeser Rd	FIRESTATION	\$	12,947	127,034	\$	2,013	2,013	6,016	01/01/1977	-	SRP
Fire	Fire Station 56	3210 W Canotia Pl	FIRESTATION	\$	17,600	125,460	\$	3,524	3,524	14,000	01/01/2006	-	APS
Fire	Fire Station 37	16602 N 40th St	FIRESTATION	\$	16,498	121,133	\$	-	-	6,194	01/01/1983	-	APS
Fire	Fire Station 16	1414 E Mohave St	FIRESTATION	\$	17,780	120,032	\$	2,825	2,825	12,291	01/01/2005	-	APS
Fire	Fire Station 59	1111 S 65th Ave	FIRESTATION	\$	13,671	119,851	\$	5,748	5,748	21,000	01/01/2011	15	SRP
Fire	Fire Station 26	3301 W Rose Ln	FIRESTATION	\$	12,466	118,222	\$	4,113	4,113	5,908	01/01/1963	-	SRP
Fire	Fire Station 33	2409 W Cactus Rd	FIRESTATION	\$	16,495	118,179	\$	5,575	5,575	5,809	01/01/1967	-	APS
Fire	Fire Station 20	726 W Glendale Ave	FIRESTATION	\$	17,218	114,848	\$	2,947	2,947	3,425	01/01/1961	-	APS
Fire	Fire Station 35	646 E Paradise Ln	FIRESTATION	\$	16,997	113,995	\$	4,091	4,091	7,162	01/01/1980	-	APS
Fire	Fire Station 38	5002 E Warner Rd	FIRESTATION	\$	11,431	113,805	\$	2,769	2,769	7,200	01/01/1997	-	SRP
Fire	Fire Station 24	2602 N 43rd Ave	FIRESTATION	\$	11,249	111,093	\$	2,556	2,556	6,016	01/01/1974	-	SRP
Fire	Fire Station 36	21602 N 9th Ave	FIRESTATION	\$	15,423	110,331	\$	1,825	1,825	7,091	01/01/1987	-	APS
Fire	Fire Station 05	1840 E Cambridge Ave	FIRESTATION	\$	15,495	110,005	\$	3,068	3,068	6,466	01/01/1986	-	APS
Fire	Fire Station 04	1601 N 3rd Ave	FIRESTATION	\$	17,395	107,108	\$	3,429	3,429	7,162	01/01/1981	-	APS
Fire	Fire Station 55	26700 N 27th Ave	FIRESTATION	\$	15,912	106,565	\$	8,006	8,006	11,212	01/01/2019	-	APS
Fire	Fire Station 49	3750 E Dynamite Blvd	FIRESTATION	\$	17,577	103,550	\$	-	-	7,200	01/01/1995	-	APS
Fire	Fire Station 46	15402 E Marketplace Way	FIRESTATION	\$	10,569	103,375	\$	-	-	4,200	01/01/1992	-	SRP
Fire	Fire Station 58	4718 W Dobbins Rd	FIRESTATION	\$	10,536	96,940	\$	-	-	7,200	01/01/2010	-	SRP
Fire	Fire Station 23	4416 S 32nd St	FIRESTATION	\$	9,601	94,933	\$	2,945	2,945	7,091	01/01/1983	-	SRP
Fire	Fire Station 45	20030 N 26th St	FIRESTATION	\$	13,014	91,969	\$	3,889	3,889	4,200	01/01/1992	-	APS
Fire	Fire Station 27	12449 N 32nd St	FIRESTATION	\$	12,859	91,066	\$	4,906	4,906	5,908	01/01/1967	-	APS
Fire	Fire Station 40	3838 N 83rd Ave	FIRESTATION	\$	9,615	89,360	\$	5,362	5,362	7,091	01/01/1982	-	SRP
Fire	Fire Station 48	5230 W Happy Valley Rd	FIRESTATION	\$	13,299	89,299	\$	-	-	7,300	01/01/2005	-	APS
Fire	Fire Station 15	4730 N 43rd Ave	FIRESTATION	\$	8,982	87,616	\$	-	-	4,597	01/01/1979	-	SRP
Fire	Fire Station 22 - Admin	220 E Roeser Rd	GENERAL	\$	8,930	84,614	\$	-	-	7,084	01/01/1995	-	SRP
Fire	Fire Station 31	5730 E Thunderbird Rd	FIRESTATION	\$	13,420	84,543	\$	-	-	4,597	01/01/1976	-	APS
Fire	Fire Station 28	7409 S 16th St	FIRESTATION	\$	8,543	84,460	\$	2,045	2,045	5,908	01/01/1970	-	SRP
Fire	Fire Station 42	3246 W Greenway Rd	FIRESTATION	\$	13,421	83,496	\$	-	-	4,597	01/01/1979	-	APS
Fire	Fire Station 72	33027 N Cave Creek Rd	FIRESTATION	\$	12,958	82,801	\$	13,988	13,988	11,000	01/01/2010	14	APS
Fire	Fire Station 39	2276 W Southern Ave	FIRESTATION	\$	8,509	80,200	\$	2,335	2,335	4,200	01/01/1992	-	SRP
Fire	Fire Station 17	1531 E Missouri Ave	FIRESTATION	\$	11,324	78,254	\$	2,366	2,366	4,636	01/01/1964	-	APS
Fire	Fire Station 07	403 E Hatcher Rd	FIRESTATION	\$	11,302	76,882	\$	4,088	4,088	4,636	01/01/1966	-	APS
Fire	Fire Station 21	1212 S 27th Ave	FIRESTATION	\$	11,188	76,033	\$	3,610	3,610	4,636	01/01/1963	-	APS
Fire	Fire Station 06	368 W Apache St	FIRESTATION	\$	10,091	65,583	\$	2,356	2,356	4,636	01/01/1966	-	APS
Fire	Fire Station 14	1330 N 32nd Ave	FIRESTATION	\$	9,927	60,572	\$	3,163	3,163	3,540	01/01/1959	-	APS
Fire	Fire Station 34	50 N 51st Ave	FIRESTATION	\$	6,009	55,875	\$	1,522	1,522	5,809	01/01/1970	-	SRP
Fire	Fire Station 13	2828 N 47th Pl	FIRESTATION	\$	6,286	55,485	\$	3,135	3,135	3,340	01/01/1958	-	SRP
Golf	Encanto Golf Course	2775 N 15th Ave	RETAIL	\$	37,473	286,455	\$	9,981	9,981	12,824	01/01/1935	-	APS
Golf	Palo Verde Golf Course	6215 N 15th Ave	RETAIL	\$	13,035	122,380	\$	1,096	1,096	1,540	01/01/1965	-	SRP
Golf	Aguila Golf Course	7858 S 35th Ave	RETAIL	\$	7,985	71,419	\$	-	-	8,735	01/01/1999	-	SRP
Housing	Sidney P Osborn Apartments	1730 E Monroe St	MULTIHOUSING	\$	176,880	999,660	\$	3,373	3,373	-	-	-	APS
Housing	Sunnyslope Manor	205 E Ruth Ave	MULTIHOUSING	\$	116,481	965,608	\$	-	-	111,596	01/01/1980	113	APS
Housing	Fillmore Gardens	802 N 22nd Pl	MULTIHOUSING	\$	114,586	928,227	\$	-	-	-	01/01/1978	207	APS
Housing	Ambassador West	340 N 5th Ave	MULTIHOUSING	\$	88,220	719,346	\$	30,339	30,339	-	-	-	APS
Housing	Maryvale Terrace	4545 N Maryvale Pkwy	MULTIHOUSING	\$	52,790	611,510	\$	48,879	48,879	76,000	01/01/1976	-	SRP
Housing	Foothills on the Preserve	1525 E Cheryl Dr	MULTIHOUSING	\$	15,190	92,241	\$	1,017	1,017	-	-	-	APS
Housing	Desert Meadows	16819 N 42nd Ave	MULTIHOUSING	\$	23,817	89,037	\$	-	-	-	-	-	APS
Housing	Supplies Warehouse	701 W Buchanan St	WAREHOUSE-UNREFR	\$	14,423	86,962	\$	5,379	5,379	10,732	01/01/1945	-	APS
Housing	E. McLoughlin Comm Center	1150 S 7th Ave	GENERAL	\$	14,918	81,730	\$	950	950	10,200	06/28/1905	-	APS
Housing	La Cascada II	229 E Ruth Ave	MULTIHOUSING	\$	14,089	78,667	\$	-	-	-	-	-	APS
Housing	Sand Dollar	18410 N 27th Ave	MULTIHOUSING	\$	13,872	76,349	\$	2,018	2,018	-	-	-	APS
Housing	Windrose Villas	1520 W Peoria Ave	MULTIHOUSING	\$	17,321	63,990	\$	-	-	863,850	-	0	APS
Human Service	Family Advocacy Center	2120 N Central Ave	GENERAL	\$	187,379	1,404,666	\$	592	592	95,697	01/01/1979	-	APS
Human Service	Travis L Williams Family Services Ce	4732 S Central Ave	GENERAL	\$	37,678	351,115	\$	-	-	16,030	01/01/2000	-	SRP
Human Service	Sunnyslope Family Services Center	914 W Hatcher Rd	GENERAL	\$	36,957	226,419	\$	-	-	18,459	01/01/1993	-	APS
Human Service	McDowell Senior Center	1845 E McDowell Rd	SENIORCENTER	\$	32,409	220,026	\$	9,079	9,079	10,223	01/01/1965	-	APS
Human Service	John F Long Family Services Center	3454 N 51st Ave	GENERAL	\$	24,719	210,993	\$	-	-	18,459	01/01/2000	-	SRP
Human Service	Helen Drake Senior Center	7600 N 27th Ave	SENIORCENTER	\$	23,878	201,301	\$	-	-	12,766	01/01/2012	42	SRP
Human Service	Shadow Mountain Senior Center	3546 E Sweetwater Ave	SENIORCENTER	\$	23,087	145,277	\$	-	-	10,800	01/01/2006	-	APS
Human Service	Adam Diaz Senior Center	4115 W Thomas Rd	SENIORCENTER	\$	15,545	134,583	\$	-	-	10,300	01/01/1965	-	SRP
Human Service	Senior Opportunities - West	1224 S 7th Ave	SENIORCENTER	\$	18,638	119,859	\$	7,234	7,234	8,000	01/01/1979	-	APS

Library	Central Library - Burton Barr	1221 N Central Ave	LIBRARY	\$	376,767	3,594,836	\$	111,925	111,925	280,000	05/01/1995	150	APS
Library	Cholla Library	10050 Metro Parkway East	LIBRARY	\$	62,828	454,898	\$	-	-	30,000	01/01/1977	-	APS
Library	Mesquite Library	4525 E Paradise Village Pkwy	LIBRARY	\$	58,214	406,145	\$	-	-	19,875	11/01/1982	-	APS
Library	Cesar Chavez Library	3635 W Baseline Rd	LIBRARY	\$	32,956	373,560	\$	-	-	25,000	01/01/2007	-	SRP
Library	Agave Library	23550 N 36th Ave	LIBRARY	\$	52,489	332,324	\$	-	-	25,000	06/20/2009	-	APS
Library	Harmon Library	1325 S 5th Ave	LIBRARY	\$	43,113	311,305	\$	-	-	12,400	08/28/2009	-	APS
Library	Juniper Library	1825 W Union Hills Dr	LIBRARY	\$	42,769	309,332	\$	-	-	14,435	07/08/1996	-	APS
Library	Desert Sage Library	7602 W Encanto Blvd	LIBRARY	\$	25,811	305,999	\$	-	-	13,400	07/02/1997	-	SRP
Library	Ironwood Library	4333 E Chandler Blvd	LIBRARY	\$	24,868	298,838	\$	-	-	16,300	10/26/1991	-	SRP
Library	Desert Broom Library	29710 N Cave Creek Rd	LIBRARY	\$	33,304	229,595	\$	-	-	15,000	02/01/2005	-	APS
Library	Yucca Library	5648 N 15th Ave	LIBRARY	\$	16,591	223,159	\$	-	-	10,000	06/01/1969	-	SRP
Library	Saguaro Library	2808 N 46th St	LIBRARY	\$	14,974	216,709	\$	9,744	9,744	10,500	09/01/1964	-	SRP
Library	Book Mobile Warehouse	1330 N 29th Dr	WAREHOUSE-UNREFR	\$	27,490	185,655	\$	-	-	-	-	-	APS
Library	Ocotillo Library	102 W Southern Ave	LIBRARY	\$	9,960	155,992	\$	-	-	6,600	01/01/1967	-	SRP
Library	Acacia Library	746 E Townley Ave	LIBRARY	\$	21,774	142,011	\$	-	-	6,600	01/05/1969	-	APS
Library	Century Library	1750 E Highland Ave	LIBRARY	\$	7,911	134,420	\$	-	-	6,915	12/01/1973	-	SRP
Neighborhood	Graffiti Warehouse	3325 W Flower St	WAREHOUSE-UNREFR	\$	38,020	248,999	\$	-	-	24,925	01/01/1981	-	APS
Neighborhood	Broadway Heritage Resource Ctr	2405 E Broadway Rd	GENERAL	\$	14,180	119,556	\$	3,259	3,259	13,500	01/01/2004	-	SRP
Parks	Pecos Park	17010 S 48th St	COMMUNITYCENTER	\$	218,731	1,894,232	\$	73,151	73,151	93,670	01/01/2003	30	SRP
Parks	Cesar Chavez Park	7858 S 35th Ave	OUTDOORREC	\$	232,845	1,582,566	\$	-	-	-	-	-	SRP
Parks	Paradise Valley Park	17648 N 40th St	SWIMMINGPOOL	\$	207,081	1,277,454	\$	73,451	73,451	51,080	-	-	APS
Parks	Desert Park West	6501 W Virginia Ave	COMMUNITYCENTER	\$	148,441	1,165,920	\$	22,569	22,569	35,000	01/01/1988	-	SRP
Parks	Encanto Park	2705 N 15th Ave	GENERAL	\$	163,434	1,055,207	\$	4,583	4,583	44,659	-	-	APS
Parks	Paseo Highlands Park	3435 W Pinnacle Peak Rd	COMMUNITYCENTER	\$	117,882	1,043,432	\$	3,091	3,091	48,000	01/01/2003	-	APS
Parks	Margaret T. Hance Park	1218 N Central Ave	PARK	\$	122,697	995,304	\$	-	-	-	-	-	APS
Parks	Maryvale Park	4402 N 51st Ave	COMMUNITYCENTER	\$	105,417	948,667	\$	8,771	8,771	34,220	01/01/2006	-	SRP
Parks	Steele Indian School Park	300 E Indian School Rd	MUSEUM	\$	141,360	944,795	\$	-	-	30,727	01/01/1901	-	APS
Parks	Cave Creek Wash Park	2400 W Cactus Rd	PARK	\$	128,752	885,994	\$	-	-	-	-	-	APS
Parks	El Reposo Park	6246 S 7th St	SWIMMINGPOOL	\$	88,460	884,020	\$	9,336	9,336	32,500	-	-	SRP
Parks	Deer Valley Park	19602 N 19th Ave	COMMUNITYCENTER	\$	129,015	818,008	\$	75,366	75,366	38,804	01/01/1988	-	APS
Parks	Reach 11 Sports Complex	2425 E Deer Valley Dr	OUTDOORREC	\$	328,231	656,946	\$	-	-	3,990	01/01/2007	-	APS
Parks	S'edav Va'aki Mueum	4619 E Washington St	MUSEUM	\$	86,567	655,799	\$	-	-	24,053	-	-	APS
Parks	Washington Park	2240 W Citrus Way	COMMUNITYCENTER	\$	78,912	620,119	\$	-	-	38,401	01/01/1961	-	SRP
Parks	Rose Mofford	9833 N 25th Ave	OUTDOORREC	\$	148,635	570,588	\$	-	-	8,313	01/01/1990	-	APS
Parks	Mountain View CC Park	1118 E Grovers Ave	OTHERRECREATION	\$	72,891	493,584	\$	-	-	33,698	-	-	APS
Parks	South Mountain Park and Preserve	10201 S Central Ave	OTHERRECREATION	\$	51,461	418,260	\$	-	-	-	-	-	SRP
Parks	Los Olivos Park - Devonshire Center	2802 E Devonshire Ave	COMMUNITYCENTER	\$	43,487	414,533	\$	-	-	16,100	01/01/1979	-	SRP
Parks	Cortez Park	3434 W Dunlap Ave	SWIMMINGPOOL	\$	48,394	413,693	\$	108,298	108,298	10,360	01/01/1985	-	SRP
Parks	Cave Creek Golf Course	N/A	OTHERRECREATION	\$	65,335	407,218	\$	-	-	-	-	-	APS
Parks	Harmon Park	1425 S 5th Ave	FITNESSCENTERGYM	\$	64,679	401,105	\$	2,330	2,330	20,815	01/01/1974	-	APS
Parks	Sunnyslope Park	802 E Vogel Ave	FITNESSCENTERGYM	\$	55,421	392,418	\$	-	-	26,546	01/01/1978	100	APS
Parks	Heritage Square	623 E Adams St	RESTAURANT	\$	61,827	374,395	\$	-	-	14,352	01/01/1929	-	APS
Parks	Rio Salado Park	2801 S 7th Ave	PARKING	\$	62,784	357,480	\$	-	-	-	-	-	SRP
Parks	Mountain Vista Park	13647 S 50th St	PARK	\$	43,758	311,296	\$	-	-	-	-	-	SRP
Parks	University Park	1002 W Van Buren St	SWIMMINGPOOL	\$	38,626	303,599	\$	941	941	5,352	-	-	APS
Parks	Hermoso Park	2030 E Southern Ave	PARK	\$	38,677	288,593	\$	-	-	-	01/01/1975	-	SRP
Parks	Eastlake Park	1545 E Jefferson St	COMMUNITYCENTER	\$	42,785	287,632	\$	4,044	4,044	28,634	01/01/1945	10	APS
Parks	Encanto Maintenance Yard	2300 N 17th Ave	GENERAL	\$	41,213	285,269	\$	8,247	8,247	48,695	-	-	APS
Parks	Roadrunner Park	3502 E Cactus Rd	SWIMMINGPOOL	\$	35,205	276,723	\$	1,898	1,898	-	-	-	APS
Parks	Starlight Park	7810 W Osborn Rd	SWIMMINGPOOL	\$	26,033	250,637	\$	-	-	6,773	-	-	SRP
Parks	Phoenix Center for the Arts	1202 N 3rd St	ARTCENTER	\$	38,050	238,732	\$	7,156	7,156	22,344	01/01/1959	-	APS
Parks	El Oso Park	3451 N 75th Ave	PARK	\$	36,718	235,738	\$	-	-	-	-	-	SRP
Parks	Cielito Park	3402 W Campbell Ave	SWIMMINGPOOL	\$	32,720	234,408	\$	-	-	8,129	01/01/1990	-	SRP
Parks	Papago Sports Complex	1802 N 64th St	OTHERSTADIUM	\$	38,474	233,648	\$	-	-	3,918	01/01/1979	-	SRP
Parks	Deem Hills Rec Area	5050 W Andrea Ln	PARK	\$	59,144	229,817	\$	-	-	-	-	-	APS
Parks	Pierce Park	4501 E Oak St	PARK	\$	28,451	226,320	\$	-	-	-	-	-	SRP
Parks	Longview Park	4040 N 14th St	COMMUNITYCENTER	\$	31,741	219,940	\$	-	-	13,855	01/01/1998	-	APS
Parks	Barrios Unidos Park	1501 E Mohave St	PARK	\$	38,769	215,612	\$	-	-	-	-	-	APS
Parks	Marivue Park	5625 W Osborn Rd	PARK	\$	24,541	187,634	\$	-	-	-	-	-	SRP
Parks	El Prado Park	6428 S 19th Ave	SWIMMINGPOOL	\$	23,857	184,729	\$	-	-	12,142	01/01/2003	-	SRP
Parks	Civic Space Park	424 N Central Ave	SOCIALMEETINGHAL	\$	36,810	181,655	\$	-	-	25,400	01/01/2008	-	APS
Parks	Cactus Park	3801 W Cactus Rd	SWIMMINGPOOL	\$	31,790	177,746	\$	51,909	51,909	-	-	-	APS
Parks	Esteban Park	3345 E Roeser Rd	PARK	\$	31,572	177,684	\$	-	-	-	-	-	SRP
Parks	Coronado Park	1717 N 12th St	SWIMMINGPOOL	\$	35,596	169,550	\$	-	-	2,400	01/01/1940	-	APS
Parks	Telephone Pioneer Park	1946 W Morningside Dr	PARK	\$	27,569	168,279	\$	1,016	1,016	-	-	-	APS
Parks	Perry Park	2626 N 32nd St	SWIMMINGPOOL	\$	20,338	163,433	\$	-	-	12,960	-	-	SRP
Parks	East District Office	1001 N 52nd St	MIXEDUSEPROPERTY	\$	14,662	148,799	\$	-	-	11,708	01/01/1985	-	SRP
Parks	Highline Park	1346 E South Mountain Ave	UNKNOWN	\$	18,153	138,833	\$	655	655	4,000	01/01/1925	-	SRP
Parks	Visual Arts Building	220 E Moreland St	PERFORMINGARTS	\$	25,157	134,231	\$	-	-	11,560	01/01/1959	-	APS
Parks	Grant Park	707 S 3rd Ave	SWIMMINGPOOL	\$	25,012	133,696	\$	746	746	3,900	-	-	APS
Parks	Madison Park	1440 E Glenrosa Ave	SWIMMINGPOOL	\$	38,122	129,308	\$	-	-	15,522	-	-	APS
Parks	Verde Park	916 E Van Buren St	UNKNOWN	\$	22,921	129,191	\$	1,172	1,172	-	-	-	APS

Parks	Alkire Park	1602 W Pima St	SWIMMINGPOOL	\$ 14,215	124,651	\$ 795	795	-	APS
Parks	Desert Foothills Park	1010 E Marketplace SE	PARK	\$ 20,378	124,483	\$ -	-	-	SRP
Parks	Hayden Park	322 W Tamarisk St	PARK	\$ 15,774	121,619	\$ -	-	-	SRP
Parks	Venturoso Park	14425 N 32nd St	PARK	\$ 9,606	121,235	\$ -	-	-	APS
Parks	Central Park	140 E Tonto St	PARK	\$ 20,578	119,310	\$ -	-	-	APS
Parks	South Phoenix Youth Center	5245 S 7th St	COMMUNITYCENTER	\$ 12,174	116,165	\$ 1,444	1,444	6,976	01/01/1965
Parks	Sun Ray Park	4059 E Ray Rd	PARK	\$ 15,906	115,870	\$ -	-	-	SRP
Parks	Falcon Park	3420 W Roosevelt St	SWIMMINGPOOL	\$ 31,171	111,864	\$ -	-	15,900	-
Parks	Winifred Green Park	1702 W Peoria Ave	COMMUNITYCENTER	\$ 18,587	110,489	\$ -	-	6,433	01/01/1970
Parks	Papago Park	625 N Galvin Pkwy	OUTDOORREC	\$ 13,162	102,966	\$ -	-	-	SRP
Parks	La Pradera Park	6830 N 39th Ave	PARK	\$ 15,946	101,269	\$ -	-	-	SRP
Parks	Tierra Montana Park	5353 W Country Garden Ln	PARK	\$ 15,330	100,064	\$ -	-	-	SRP
Parks	ASU West Park	4701 W Thunderbird Rd	PARK	\$ 31,806	98,952	\$ -	-	-	APS
Parks	Lindo Park	2230 W Roeser Rd	COMMUNITYCENTER	\$ 11,992	93,518	\$ -	-	-	SRP
Parks	Manzanita Park	5500 S 31st Ave	PARK	\$ 13,884	89,951	\$ -	-	-	SRP
Parks	Vernell Coleman Rec Center	830 W Tonto St	COMMUNITYCENTER	\$ 13,974	89,582	\$ -	-	7,324	-
Parks	Desert Horizon Park	16002 56th St	PARK	\$ 9,998	87,913	\$ -	-	-	APS
Parks	North West Division Yard	6830 N 39th Ave	MIXEDUSEPROPERTY	\$ 9,968	83,947	\$ 667	667	5,000	-
Parks	Smith Park	4030 W Sherman St	PARK	\$ 15,235	82,929	\$ -	-	-	SRP
Parks	Holiday Park	4530 N 67th Ave	SWIMMINGPOOL	\$ 9,172	82,145	\$ 966	966	2,394	01/01/1961
Parks	Buffalo Ridge Park	19250 N 16th St	PARK	\$ 21,381	78,062	\$ -	-	-	APS
Parks	Desert Broom Park	29805 N Cave Creek Rd	PARK	\$ 23,655	76,332	\$ -	-	-	APS
Parks	Bret Tarver Learning Center	1416 N 35th Ave	COMMUNITYCENTER	\$ 11,628	75,506	\$ -	-	-	APS
Parks	Dynamite Park	4550 E Dynamite Blvd	PARK	\$ 11,689	73,321	\$ -	-	04/01/2014	-
Parks	Kid St Park - Atkinson Rec Cen	4535 N 23rd Ave	COMMUNITYCENTER	\$ 8,584	72,998	\$ -	-	3,715	01/01/2002
Parks	Monterey Park	350 E Oak St	PARK	\$ 5,549	68,766	\$ -	-	-	APS
Parks	Sereno Park	5720 E Sweetwater Ave	PARK	\$ 26,425	65,996	\$ -	-	-	APS
Parks	Sweetwater Park	13230 N 44th St	PARK	\$ 21,953	61,462	\$ -	-	-	APS
Parks	Sueno Park	4401 W Encanto Blvd	PARK	\$ 8,488	60,983	\$ -	-	-	SRP
Parks	Santa Maria Park	3425 S 71st Ave	PARK	\$ 6,442	60,529	\$ -	-	-	SRP
Parks	Moon Valley Park	502 W Coral Gables Dr	PARK	\$ 12,753	60,234	\$ -	-	-	APS
Parks	North Mountain Visitor Center	12950 N 7th St	MUSEUM	\$ 11,602	55,591	\$ -	-	10,000	01/01/2005
Parks	Playa Margarita Park	3615 W Roeser Rd	PARK	\$ 8,727	54,489	\$ -	-	-	SRP
Parks	Granada Park	6505 N 20th St	PARK	\$ 6,867	50,314	\$ -	-	-	SRP
Police	Police Headquarters	620 W Washington St	POLICE STATION	\$ 425,488	4,497,909	\$ 5,703	5,703	155,880	01/01/1974
Police	Police Crime Lab	621 W Washington St	LABORATORY	\$ 361,901	3,431,822	\$ 50,346	50,346	104,000	01/01/2007
Police	Evidence Lot/Warehouse	100 E Elwood St	WAREHOUSE-UNREFR	\$ 184,782	2,071,951	\$ 1,408	1,408	120,000	01/01/1990
Police	Police Academy	10001 S 15th Ave	VOCATIONALSCHOOL	\$ 169,749	1,761,446	\$ 11,298	11,298	67,000	01/01/1979
Police	Vision Partnership	3945 E Broadway Rd	GENERAL	\$ 87,298	920,456	\$ -	-	55,000	01/01/1980
Police	Southern Command	3443 S Central Ave	POLICE STATION	\$ 58,688	603,646	\$ 9,487	9,487	27,500	01/01/1989
Police	Estrella Mountain Precinct	2111 S 99th Ave	POLICE STATION	\$ 51,239	518,155	\$ 13,271	13,271	32,840	01/01/2009
Police	Police Air Support	702 W Deer Valley Dr	POLICE STATION	\$ 69,618	504,789	\$ -	-	42,894	-
Police	Black Mountain Precinct	33355 N Cave Creek Rd	POLICE STATION	\$ 58,778	476,139	\$ 8,537	8,537	30,524	01/01/2011
Police	Mountain View Precinct	2075 E Maryland Ave	POLICE STATION	\$ 44,552	457,678	\$ 17,985	17,985	30,524	01/01/2010
Police	Northern Command	302 E Union Hills Dr	POLICE STATION	\$ 38,415	309,143	\$ 6,628	6,628	13,073	01/01/1977
Police	MDC/SVD	425 E Buckeye Rd	WAREHOUSE-UNREFR	\$ 44,176	300,795	\$ -	-	26,250	-
Police	Cactus Park Precinct	12220 N 39th Ave	POLICE STATION	\$ 36,721	291,702	\$ 9,383	9,383	13,932	01/01/1973
Police	Maryvale Precinct	6180 W Encanto Blvd	POLICE STATION	\$ 29,232	289,910	\$ 8,789	8,789	13,583	01/01/1989
Police	South Mountain Precinct	400 W Southern Ave	POLICE STATION	\$ 27,979	280,195	\$ 3,579	3,579	11,000	01/01/1989
Police	Central Precinct	1902 S 16th St	POLICE STATION	\$ 36,819	273,675	\$ 6,164	6,164	29,800	01/01/1989
Police	Desert Horizon Precinct	16030 N 56th St	POLICE STATION	\$ 35,712	257,567	\$ 11,360	11,360	14,866	01/01/1997
Police	Sunnyslope Police Station	750 W Peoria Ave	POLICE STATION	\$ 28,018	204,999	\$ -	-	7,852	01/01/2007
Police	South Mountain Detectives Buidin	400 W Southern Ave	GENERAL	\$ 13,822	124,780	\$ 2,708	2,708	5,941	01/01/1990
Police	Neighborhood Resource Center	2405 E Broadway Rd	POLICE STATION	\$ 12,871	120,749	\$ -	-	7,300	01/01/2004
Police	Emergency Vehicle Operations Cen	8645 W Broadway Rd	TRACK	\$ 8,832	72,359	\$ -	-	2,600	01/01/1970
Public Transit	Transit Office Building	302 N 1st Ave	GENERAL	\$ 227,150	1,991,870	\$ -	-	115,827	01/01/1990
Public Transit	Ed Pastor Transit Center	10 W Broadway Rd	TRANSPORTATION	\$ 17,302	170,977	\$ -	-	13,572	-
Public Transit	40th St / Pecos Park Transit Cente	17010 S 40th St	TRANSPORTATION	\$ 15,460	144,189	\$ -	-	-	01/01/2004
Public Transit	I-17 / Bell Park & Ride	16808 N Black Canyon Hwy	TRANSPORTATION	\$ 14,820	95,981	\$ -	-	-	APS
Public Transit	Desert Sky Transit Center	7887 W Thomas Rd	TRANSPORTATION	\$ 8,728	80,263	\$ -	-	-	21
Public Transit	SR-51 / Shea Park & Ride	10203 N 32nd St	TRANSPORTATION	\$ 12,787	77,255	\$ -	-	-	SRP
Public Transit	SR-51 / Bell Road Park & Ride	3355 E Bell Rd	TRANSPORTATION	\$ 12,193	71,144	\$ -	-	-	APS
Public Works	Phoenix City Hall	200 W Washington St	GENERAL	\$ 936,520	10,092,497	\$ 27,457	27,457	600,000	01/01/1993
Public Works	North Gateway Transfer Station	30205 N Black Canyon Hwy	MRF	\$ 439,216	4,330,558	\$ 11,386	11,386	210,617	01/01/2006
Public Works	100 W Washington	100 W Washington St	VACANT	\$ 481,885	4,265,115	\$ 33,592	33,592	514,000	01/01/1971
Public Works	Phoenix Municipal Courts Bldg	300 W Washington St	COURTHOUSE	\$ 350,037	2,875,254	\$ 11,057	11,057	374,255	01/01/1999
Public Works	Adams St Garage	310 W Adams St	PARKING	\$ 251,807	2,437,429	\$ 14,073	14,073	807,264	01/01/1999
Public Works	27th Ave Transfer Stn	3060 S. 27th Ave	MRF	\$ 230,231	1,787,998	\$ -	-	129,420	01/01/1994
Public Works	Union Hills Service Center	202 E Union Hills Dr	REPAIRSERVICES	\$ 181,149	1,444,077	\$ 56,622	56,622	36,310	01/01/1980
Public Works	Salt River Service Center	3045 S 22nd Ave	REPAIRSERVICES	\$ 170,089	1,185,312	\$ 66,187	66,187	52,155	01/01/1970
Public Works	Glenrosa Service Center	4015 W Glenrosa Ave	REPAIRSERVICES	\$ 124,988	1,121,760	\$ 13,366	13,366	-	SRP
Public Works	Okemah Service Center	3828 E Anne St	REPAIRSERVICES	\$ 113,752	1,082,770	\$ 67,559	67,559	28,161	01/01/1995

Public Works	Equipment Mgmt Complex	2441 S 22 Ave	REPAIRSERVICES	\$ 107,571	720,444	\$ 16,305	16,305	117,406	01/01/1965	540	APS
Public Works	SR 85 Landfill	28361 W Patterson Rd	GENERAL	\$ 104,535	425,468	\$ 3,983	3,983	7,600		-	APS
Public Works	Historic City Hall	17 S 2nd Ave	GENERAL	\$ 44,728	367,535	\$ -	-	154,852	01/01/1929	-	APS
Public Works	Facilities Management Bldg	2631 S 22 Ave	GENERAL	\$ 44,540	273,556	\$ 7,645	7,645	40,890	01/01/1966	100	APS
Public Works	Planning & Development Bldg	438 W Adams St	GENERAL	\$ 33,434	201,557	\$ 1,220	1,220	15,950	01/01/1958	-	APS
Public Works	Driver Training Facility	3535 S 35th Ave	GENERAL	\$ 25,745	148,247	\$ -	-	9,255	01/01/2003	-	APS
Public Works	Small Equipment Repair Shop	2820 S 22nd Ave	REPAIRSERVICES	\$ 13,945	82,950	\$ -	-			-	APS
Public Works	305 Parking Garage	305 W Washington St	PARKING	\$ 33,557	72,826	\$ -	-	32,526	01/01/1994	328	APS
Streets	Design & Construction Managemer	1034 E Madison St	GENERAL	\$ 61,415	451,940	\$ 4,047	4,047	19,980	01/01/2006	-	APS
Streets	Signal Shop	2141 E Jefferson St	REPAIRSERVICES	\$ 57,434	438,051	\$ 5,992	5,992	32,500		-	APS
Streets	Street Landscape	Various	LANDSCAPE	\$ 140,562	154,780	\$ -	-			N/A	Both
Streets	Sign Shop	4035 W Glenrosa Ave	REPAIRSERVICES	\$ 15,020	144,593	\$ -	-	11,456		-	SRP
Streets	Traffic Services Bldg	1101 E Jefferson St	GENERAL	\$ 18,728	128,083	\$ 2,431	2,431	29,900		-	APS
Water	Wastewater Treatment Plants	Various	WWTP	\$ 7,855,439	114,435,119	\$ -	-			N/A	Both
Water	Water Treatment Plants	Various	WTP	\$ 7,867,773	91,589,234	\$ -	-			N/A	Both
Water	Booster Pumps	Various	PUMPING	\$ 2,007,211	19,562,502	\$ -	-			N/A	Both
Water	Booster PRV	Various	PRV	\$ 1,770,654	15,370,368	\$ -	-			N/A	Both
Water	Water Storage	Various	STORAGE	\$ 579,638	5,666,209	\$ -	-			N/A	Both
Water	Lift Stations	Various	LIFTSTATION	\$ 599,064	4,257,918	\$ -	-			N/A	Both
Water	Well Sites	Various	PUMPING	\$ 497,292	2,430,276	\$ -	-			N/A	Both
Water	Booster Well Storage	Various	PUMPING	\$ 302,795	2,275,880	\$ -	-			N/A	Both
Water	Booster PRV Well	Various	PRV	\$ 216,986	1,488,800	\$ -	-			N/A	Both
Water	Booster Storage	Various	STORAGE	\$ 112,054	1,072,410	\$ -	-			N/A	Both
Water	Booster Storage PRV	Various	STORAGE	\$ 135,622	987,840	\$ -	-			N/A	Both
Water	Booster Well	Various	PUMPING	\$ 51,313	393,600	\$ -	-			N/A	Both

Exhibit D – Cost and Pricing Overview

(ATTACHED)

Cost and Pricing Overview

*****Please note that ESCO offerors must submit the Sample Pricing Sheet (set forth in Paragraph 10) as part of their offer.**

Quick Reference of Contents

1. Investment Grade Audit Costs
2. Pre-Construction Costs
3. Construction Costs
4. Implementation Cost Subtotal
5. Total Project Price
6. Profit
7. Contingency
8. Self-Performed Work Fee
9. Annual Cost Categories

Definitions

1. Investment Grade Audit (IGA) Costs

The Investment Grade Audit (IGA) is an audit that fulfills the obligations outlined in the Investment Grade Audit and Project Proposal Contract. The cost for the IGA is based on cost per square foot and is intended to be the market rate for a technical energy audit.

2. Pre-Construction Costs

Pre-Construction Cost includes all costs, as described below, except for costs contained in the Investment Grade Audit which will be required prior to construction of all measures. All costs in this category shall be considered Open Book.

2.1 Design and Other Engineering

Design and other engineering includes all professional architecture and engineering costs required to design and specify projects to be installed as part of the Work. If design work is completed in-house, this includes burdened labor associated with design of measures included in the ESPC. If design work is subcontracted to an A&E firm, this is the quoted cost from the A&E firm plus burdened labor from ESCO energy engineers to oversee and direct A&E design services. Design and other engineering services include applicable code review costs. Any non-billable time or non-engineering supervision of engineers associated with engineers and/or design efforts will be included in the Other Pre-Construction Costs category.

Energy engineering includes all energy modeling, energy savings calculations and any additional energy engineering costs that were not accounted for in TEA costs. Costs include burdened labor, any non-billable time for energy engineers,

supervision of energy engineers or other support, training costs for energy engineers shall be included in the Other Pre-Construction Indirect Costs category.

2.2 Pre-Construction Services

Pre-construction services include both construction management as well as project development services. In order to coordinate and bring many complex technical details together and present such proposal to the City, ESCOs may employ Business Development Representatives, Project Developers, and/or other resources that act as the key contact between the City and the ESCO. This line item includes all burdened labor, commission, and any other direct cost associated with presenting the best information to the City in an understandable format.

As an additional level of coordination, ESCOs may utilize a construction manager prior to construction of projects to solicit bids for final construction and also help review designs to ensure constructability. This cost includes all burdened construction manager costs associated with these efforts, if applicable.

2.3 Other Pre-Construction Costs

Site visits and City meetings are necessary before construction to ensure designs and equipment meet customer needs and fit project objectives. Other Pre-construction Costs may include but are not limited to: administrative support, legal review, accounting services, printing, copying, binding, office supplies, business travel, business meals and supervision of project development staff.

3. Construction Costs

All costs in this category are the direct costs from the subcontractors, vendors, and material providers to complete the Work, but shall not include any ESCO profit. All costs in this category shall be considered Open Book. The ESCO may add profit to these services but ESCO profit is not to be included in this line item. Profit shall be identified in the overhead and profit line item.

3.1 Trade Subcontractors

Trade subcontractors are construction contractors that are subcontracted directly to the ESCO. These subcontractors are selected by the ESCO from bidding on specifications developed by the ESCO. Such subcontractors may include lighting contractors, sheet metal contractors, piping contractors, electricians, plumbers, carpenters, controls contractors, and other trade contractors as necessary to complete the Work.

3.2 Design-Build Subcontractors

Design-build subcontractors are construction and design contractors that are subcontracted directly to the ESCO. Design-build subcontractors act as their own design agent and finalize the design of the Work Product to be installed. Such subcontractors include lighting contractors that complete their own audit and design; mechanical contractors that coordinate all of their own electrical, sheet metal work, piping and other support work; specialty contractors like pool cover

vendors, and other specialty contractors necessary to complete the Work are included in this category. The design-build subcontracts work will be through the ESCO, with the ESCO approving all drawings and specifications prior to construction and with the ESCO taking responsibility for the performance of the design-build subcontractors.

3.3 Direct Purchase Equipment

Any equipment that is directly purchased by the ESCO is included in this category.

3.4 Construction Management

Construction Management includes the burdened labor cost of a construction manager and site superintendent directly supporting the implementation effort required to oversee and coordinate subcontractors on the project.

3.5 Project Engineering

During construction the ESCO's design engineers or contract A&E firm may make periodic inspections of work and support the construction manager with engineering analysis of required field modifications. This cost includes the burdened cost of engineering labor or quoted subcontract A&E services to support the construction manager in this effort.

3.6 General Conditions

General Conditions may be required on larger and longer term projects. General conditions may cover miscellaneous non-staffing costs directly related to the project, such as; job trailer, trailer office equipment, temporary utilities, permanent utility connection fees, barriers/security fencing, scaffolding, equipment rental, site guards, cleaning and trash and recycling dumpsters.

3.7 Construction Completion

3.7.1 Commissioning

At the completion of the construction, the ESCO shall complete pre-functional and post-functional tests of all installed measures to ensure proper operation under load. This work is normally completed by commissioning agents. If this scope is completed by ESCO employees, it includes the burdened cost of commissioning staff. If this scope is outsourced to a commissioning firm, this cost includes the turnkey cost to provide necessary commissioning services.

3.7.2 Construction M&V

At the completion of construction, the ESCO shall complete the measurement and verification of installed equipment to verify post-retrofit energy efficiency and operation. This effort is necessary to ensure systems will meet the guaranteed energy savings and start the M&V Services phase. If completed by ESCO staff, this cost shall include burdened labor of Measurement & Verification Engineers. If completed by external M&V

agency, this cost includes the turnkey cost to provide necessary measurement & verification services.

3.7.3 O&M Manuals

At the completion of projects, the ESCO is required to provide complete Operation and Maintenance Manuals to the City to allow for quick reference to written documents to provide sufficient maintenance to installed equipment. O&M manuals shall include necessary as-built architectural or engineering drawings. The cost to prepare most operations and maintenance raw materials should be included in relevant subcontractor costs above. This cost is to combine all subcontractor provided material into single O&M Manuals; print, copy, bind and deliver both printed and electronic copies to the City.

3.7.4 Training

Training costs may be provided by subcontractors and as such will be included in their subcontractor bid. However, if the ESCO plans to provide training to the City, the burdened labor cost for such training shall be included in this line item. In addition to labor, this line item may include formal classroom training, training videos, online training programs, and other training efforts that include labor and materials required to provide necessary training to the City. This line item cannot be a repeat of training provided directly by subcontractors in subcontractor costs. Training labor may be utilized to supervise and coordinate subcontractor training sessions with the City.

3.8 Other Construction Costs

Site visits and City meetings are necessary at the conclusion of construction to ensure the project has been completed properly before City signs final acceptance notification. Such items as administrative support, legal review, accounting services, printing, copying, binding, office supplies, business travel, business meals and supervision of staff are all considered acceptable post-construction indirect costs. Other construction costs may include:

3.8.1 Permits

Construction is completed in various jurisdictions requiring compliance with jurisdictional codes. ESCOs must pay code reviewers to review design drawings; and render decisions on designs meeting code. In addition, the ESCO must apply for and receive any necessary construction permits and licenses to operate based on designs and/or code review. These line items include all costs associated with paying code reviewers and application fees and inspections fees for such permits. This line item does not include design fees or engineering labor to work with code officials or submit permit applications. These labor fees shall be included in the engineering and/or construction management categories listed above.

3.8.2 Insurance

ESCOs must possess applicable insurance coverages in line with the requirements of the Base Contract. The City reserves the right to request additional insurance coverage as needed and applicable.

3.8.3 Performance & Payment Bonds

All ESCOs are required to bond the performance and payment of all work by a reputable surety approved for such work. The cost of the performance and payment bond shall be included in this category for the anticipated amount of work to be completed without expending contingency funds. If and when contingency funds are expended, any increase in bond cost must be included with contingency cost expenditure proposals.

3.8.4 Warranty Labor

Warranty labor is the burdened labor cost associated with time anticipated to be expended by ESCO staff in supporting their direct purchase equipment warranties; and/or equipment provided by subcontractors. All actual warranty replacement costs shall be included with the three line-items above and shall not be included in this line item. This item does not include the annual cost of supporting warranties post-construction, which is provided in item 9.1 below.

4. Implementation Cost Subtotal

This is a subtotal of all the implementation cost expended by the ESCO to complete the Work for the City and is subject to an Open Book Review. No profit can be included in this subtotal for the ESCO or any close affiliate, parent, or subsidiary entity belonging to the ESCO. The City is entitled to audit or request as part of any pay application any and all costs included in any and all cost categories to ensure that all costs can be accounted for within standard Generally Acceptable Accounting Principles (GAAP).

5. Total Project Price

The Total Project Price includes the estimated project cost, profit markup, audit, and contingency. The price is not estimated for specific projects until an Investment Grade Audit is completed.

6. Profit

The anticipated, but not guaranteed, gross profit associated with the project. Note that overhead is included in Construction Costs - General Conditions.

7. Contingency

The project contingency is the asset of the Agency, and is held in escrow or encumbered, with the project total financed funding. As part of the project's overall budget, it is co-managed by the Agency and Contractor. The intended purpose of the project contingency is to provide funds for unforeseen elements of the scope of work, which may become known only after implementation of the scope of work

has begun. The Contractor will identify any unforeseen scope of work items, as well cost impact for those unforeseen scope of work items, to the Agency for review and approval prior to any of the project contingency being spent. Contractor will maintain an on-going record of the project contingency throughout the project. If, once all of the contracted scope of work has been completed or is nearing completion and there are project contingency monies remaining the Contractor will work with the Agency to determine the best use of the remaining funds. Agency shall have sole authority to determine best use of the remaining funds. One option is for the Agency to consider additional energy conservation or capital improvement measures for implementation utilizing the remaining contingency dollars. Contractor and Agency will work together to review the potential added measures with the finance company to assure that the potential added measures are acceptable to the finance company.

8. Self-Performed Work Fee

In order to enable confirmation through open book pricing, position descriptions are requested with hourly rates for labor and services as performed by the ESCO.

1. Project Development Manager
2. Lead Project Engineer
3. Project Engineer
4. Construction Manager
5. Construction Superintendent
6. Operations & Maintenance Manager
7. Measurement & Verification Manager

9. Annual Cost Categories

9.1 Warranty

Warranty is the burdened labor cost associated with time anticipated to be expended by ESCO staff in supporting their direct purchase equipment warranties; and/or equipment provided by subcontractors. This warranty cost may also include costs for extended equipment warranties in those cases where the required/specified equipment warranty is longer than the equipment warranty offered by the manufacturer.

9.2 Measurement and Verification

The Measurement and Verification Services cost is the annual cost for the services necessary after acceptance of the project to annually verify the Energy Performance Contract guarantees. The cost for the guarantee is based upon the M&V option utilized, the risk of savings failure, the field time to measure building performance, and the time to document and present the report.

9.3 Other

Define any Other categories and their significance.

10. Sample Pricing Sheet

Sample Pricing Sheet to be filled out by ESCO:

	Project Budget	ESTIMATED COST PERCENTAGE PER PROJECT
A	Self and Subcontractor Labor Costs	
b	Other Direct Purchases of Equipment, Material, Supplies (Supplier Costs to ESCO)	
c	Total of Hard Costs	
d	Project Development	
e	Design/Engineering	
f	Project Management	
g	Permits	
h	Performance Bond	
i	Payment Bond	
j	Commissioning	
K	Measurement & Verification	
l	Training	
m	Contingency	
n	Warranty Service	
o	Total of ESCO Fees	=sum(d:n)

Assumptions for Cost Markup Table Above

1. Overhead and Profit Factor	c.	%
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	Proposed Max Cost per Square Foot
Investment Grade Audit Fee	\$/SQFT

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

Prepared By:

Signature

Name

Position/Title

Firm Name

Exhibit E – Model Investment Grade Audit and Project Development Contract

(ATTACHED)

Exhibit E

MODEL INVESTMENT GRADE AUDIT AND PROJECT DEVELOPMENT CONTRACT

This Investment Grade Audit and Project Proposal Contract (the "Contract") is made and entered into as of [Date], or as of the City Clerk date, whichever is later ("Effective Date") between [ESCO Name] ("ESCO"), having its principal offices at [ESCO Address], and the City of Phoenix (the "City"), an Arizona municipal organization (each a "Party" and collectively the "Parties").

RECITALS

WHEREAS, This Contract was created for use by the City to obtain an Investment Grade Audit of a facility from an energy service company (ESCO).

WHEREAS, Authority exists in the law for the City to enter into this Contract, and funds have been budgeted, appropriated and otherwise made available; a sufficient unencumbered balance thereof remains available for payment; and the required approval, clearance and coordination have been accomplished.

WHEREAS, ESCO is a company with experience and technical and management capabilities to provide for the discovery, engineering, procurement, installation, financing (if applicable), savings guarantee, maintenance and measurement and verification of energy, water and operational saving measures at facilities similar in size, function and system type to the City's facilities; and

WHEREAS, ESCO submitted a proposal pursuant to a Request for Proposals (RFP) to provide these services for the City; and

WHEREAS, the City selected ESCO to provide energy savings performance contracting services, and the Parties entered into a Base Contract regarding such services, which is fully incorporated as if fully set forth herein; and

WHEREAS, the City desires to enter into this Contract to have ESCO perform an Investment Grade Audit and Project Development Proposal to determine the feasibility of entering into an **Energy Savings Performance Contract** to provide for installation and implementation of energy, demand, water and operational saving measures applicable City facilities.

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

The ESCO is responsible for ensuring that this Contract and any projects related hereto are in compliance with applicable law, expressly including Arizona Revised Statutes (“ARS”) § 34-105.

THEREFORE, the parties agree as follows:

1. Investment Grade Audit and Project Proposal Contract

ESCO agrees to perform an Investment Grade Audit in accordance with the **Scope of Work (Attachment A)**.¹ ESCO agrees to complete the Investment Grade Audit and Project Development Proposal and tender to the City a final report within 60-120 days.

The City agrees to assist the ESCO in performing the Investment Grade Audit in accordance with the **Scope of Work (Attachment A)** and agrees to work diligently to provide full and accurate information. ESCO agrees to work diligently to assess the validity of information provided and to confirm or correct the information as needed. The parties contemplate that this will be an interactive process and that the City will have a reasonable amount of time to review and determine acceptance at the 30%, 60%, 90% and 100% stages of completion, before issuing the **Notice of Acceptance of Investment Grade Audit Report and Project Development Proposal (Attachment B)**.²

ESCO agrees to offer a project development proposal, for an Energy Savings Performance Contract, with a package of energy, water and operating savings measures and with details as specified in the **Scope of Work (Attachment A)**.

2. Compensation to ESCO

ESCO shall be compensated as follows:

2.1 Payment through Performance Contract.

The City shall have no payment obligations under this Contract provided that ESCO and the City execute an Energy Savings Performance Contract within [Number of Days – 120 days suggested, allowing sufficient time for contract negotiation, attorney review, and the City processing] days, after issuance of the **Notice of Acceptance of Investment Grade Audit Report and Project Development Proposal (Attachment B)**, except that the fee indicated in **Compensation to ESCO – Basis and Maximum Amount (Section 2.3)** shall be incorporated into ESCO’s project costs and paid through the Energy Savings Performance Contract as applicable and agreed-upon by the Parties.

2.2 Project With Insufficient Savings.

The City shall have no payment obligations under this Contract in the event that ESCO’s final **Investment Grade Audit and Project Development Proposal** does not contain a package of energy, water and operating savings measures which, if

¹ Scope of Work (Attachment A) will need to be negotiated and developed between the Parties. A “SAMPLE” scope is included hereafter for reference.

² Notice of Acceptance of Investment Grade Audit Report and Project Development Proposal (Attachment B) will need to be negotiated and developed between the Parties.

implemented and as meeting terms of the **Scope of Work (Attachment A) and the Base Contract** will provide the City with cash savings (in conformance with legislation) sufficient to fund the City's payments of all costs and fees associated with the Energy Savings Performance Contract, including 1) the fee associated with the Investment Grade Audit, 2) all payments on to finance the measures, 3) any annual fees for monitoring and maintenance incurred by the ESCO.

Should the ESCO determine at any time during the Investment Grade Audit that savings cannot be attained to meet these terms, the Investment Grade Audit will be terminated by written notice by ESCO to the City. In this event this Contract shall be cancelled and the City shall have no obligation to pay, in whole or in part, the amount specified in this section, **Compensation to ESCO – Basis and Maximum Amount (Section 2.3)**.

2.3 Basis and Maximum Amount.

Except as provided for in **Subsections 2.1 or 2.2** above, within [Number of Days: 120 days recommended] days after the City's **Notice of Acceptance of Investment Grade Audit and Project Development Proposal (Attachment B)**, the City shall pay to ESCO a sum not to exceed [Dollar Amount in Words] (\$ [dollar amount]) based on a maximum of [square footage to be audited] gross square feet at [cost per square foot] per square foot of audited square-footage, as per **Cost and Pricing (Attachment D)**.³ If any non-standard facilities are being audited, such as wastewater treatment plants, parks, etc., a fair and reasonable fee will be negotiated between the parties.

The City shall only pay for square-footage actually audited. The cost will be adjusted in the event that audited square footage is changed by either the ESCO or the City. ESCO compensation is subject to acceptance of the audit report after issuance of the **Notice of Acceptance of Investment Grade Audit Report and Project Development Proposal (Attachment B)** and after verification that the project can be financed or funded in a manner mutually agreeable to the Parties and in conformance with applicable law.

2.4 Interim Deliverables

The ESCO shall follow the required Scope of Work as detailed in Exhibit A. During the IGA process, the City will review interim deliverables as follows:

Upon receipt of the 30% IGA submission, The City will review the 30% IGA Submission and the City will determine whether to allow the ESCO to continue with the IGA process. The City may approve in writing the 30% IGA Submission within fifteen (15) calendar days of the 30% Submission. In the event that the City does not

³ Cost and Pricing (Attachment D) shall be derived from the Cost and Pricing Overview contained in the Base Contract and shall further include supplementation as needed and agreed-upon by the Parties. No costs or fees shall exceed those submitted as part of the ESCO's proposal and finalized in the Base Contract.

approve the 30% IGA submission, the City shall compensate ESCO for 30% of the cost of the IGA (30% of the Fee).

Upon receipt of the 60% IGA submission, The City will review the 60% IGA Submission and the City will determine whether to allow the ESCO to continue with the IGA process. The City may approve in writing the 60% IGA Submission within fifteen (15) calendar days of the 60% Submission. In the event that the City does not approve the 60% IGA submission, the City shall compensate ESCO for 60% of the cost of the IGA (60% of the Fee).

3. Scope of Work

The Investment Grade Audit and Energy Performance Proposal Contract shall be performed as described in **Attachment A: Scope of Work**.

4. Termination

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

4.1 Termination for Default/Cause

4.1.1 Default.

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

4.1.2 ESCO's Duties

Notwithstanding termination of the Contract and subject to any directions from the procurement officer, the ESCO shall take timely, reasonable and necessary action to protect and preserve property in the possession of the ESCO in which the City has an interest.

4.1.3 Compensation

Payment for completed services delivered and accepted by the City shall be at the contract price. The City may withhold amounts due to the ESCO as it deems to be necessary to protect the City against loss because of outstanding liens or claims of former lien holders and to reimburse the City for the excess costs incurred in procuring similar goods and contract services.

4.1.4 Excuse for Nonperformance or Delayed Performance

The ESCO shall not be in default by reason of any failure in performance of this contract in accordance with its terms if such failure arises out of acts of God; acts of the public enemy; acts of any entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. Upon request of the ESCO, the City shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable

causes, and that, but for the excusable cause, the ESCO's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the City.

4.1.5 Erroneous Termination for Default

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

4.2 Termination for Convenience

4.2.1 Termination

The City may, when the interests of the City so require, terminate this contract in whole or in part, for the convenience of the City. The City shall give written notice of the termination to the ESCO specifying the part of the Contract terminated and when termination becomes effective. This in no way implies that the City has breached the contract by exercise of the Termination for Convenience Clause.

4.2.2 ESCO's Obligations

The ESCO shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the ESCO will stop work to the extent specified. The ESCO shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The ESCO shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The City may direct the ESCO to assign the ESCO's right, title, and interest under terminated orders or subcontracts to the City. The ESCO must still complete and deliver to the City the work not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

4.2.3 Compensation

4.2.3a The ESCO shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the ESCO fails to file a termination claim within 90 days from the effective date of termination, the City may pay the ESCO, if at all, an amount set in accordance with subparagraph C of this Section.

4.2.3b The City and the ESCO may agree to a settlement provided the ESCO has filed a termination claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by the City, the proceeds of any sales of supplies and manufactured materials made under agreement, and the contract price of the work not terminated.

4.2.3c Absent complete agreement, under subparagraph B of this Section, the City shall pay the ESCO the following amounts, provided the payments agreed to under subparagraph B shall not duplicate payments under this subparagraph:

- 1.** Contract prices for supplies or services accepted under the contract;
- 2.** Costs incurred in preparing to perform the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit

shall not include anticipatory profit or consequential damages) less amounts paid to or to be paid for accepted supplies or services; provided, however, that if it appears that the ESCO would have been sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss.

3. Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the ESCO's obligations paragraph of this clause. These costs must not include costs paid in accordance with subparagraph B of this Section.
4. The reasonable settlement costs of the ESCO including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the terminated portion of this contract.
5. The total sum to be paid the ESCO under this subparagraph C shall not exceed the total contract price plus settlement costs, reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph B, and the contract price of work not terminated.

Cost claimed or agreed to under this section shall be in accordance with applicable sections of the State Procurement Code.

4.3 Available Funds – Contingency - Remedies

The City is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. Therefore, ESCO's compensation is contingent upon the continuing availability of City appropriations. Payments pursuant to this contract shall only be made from available funds encumbered for this Contract, and the City's liability for such payments shall be limited to the amount remaining of such encumbered funds. If funds are not appropriated, or otherwise become unavailable to fund this Contract, the City may immediately terminate the Contract in whole or in part without further liability in accordance with the Termination for Cause subsection of the Remedies section of this Contract. All payments are subject to the general Remedies section of this Contract.

5. Insurance

5.1

It is agreed and understood ESCO shall maintain in full force and effect adequate commercial general liability insurance and property damage insurance, as well as workmen's compensation and employer's liability insurance pursuant to the Base Contract insurance requirements (including additional areas of coverage noted in the Base Contract) and as further noted below.

5.2

The ESCO is obligated to continue to obtain and maintain at all times during the term of this Agreement the same insurance coverage outlined in the Base Contract. The insurance coverage outlined in the Base Contract shall apply to this Contract, any and all Investment Grade Audits and Project Developments, any resulting Energy Service Performance Contracts, and any resulting Service Contracts.

6. Energy Savings Performance Contract

The Parties intend to negotiate an Energy Savings Performance Contract under which the ESCO will design, install and implement energy, water and operating savings measures which the Parties have agreed to, and provide certain maintenance and monitoring services.

However, nothing in this Contract should be construed as an obligation on any of the Parties to execute such a contract. The terms and provisions of such an Energy Savings Performance Contract will be set forth in a separate contract.

7. Extent of Agreement

7.1

This Contract represents the entire and integrated agreement between the City and ESCO and supersedes all prior negotiations, representations or agreement, either written or oral. This Contract may be amended only by written instrument signed by the City. The Base Contract shall be incorporated and given full force and effect as if fully set forth herein and shall take precedence over any conflicting terms herein or in any related agreement or amendment between the Parties.

7.2

The City and ESCO understand and agree the attachments and exhibits hereto are and shall be an integral part of this Contract and the terms and provisions thereof are hereby incorporated, made a part of and shall supplement those recited herein. With the exception of the Base Contract, this Contract will take precedence over attachments and exhibits hereto.

8. Term

The term of this Contract will become effective upon the Effective Date above. The term shall end 135 days after signing of the **Notice of Acceptance of Investment Grade Audit Report and Project Development Proposal (Attachment B)** by the City.

9. Order of Precedence

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

1. Special Provisions.
2. Contract - general terms and conditions
3. Other exhibits or attachments

10. City's Special Provisions

The terms and conditions of the Base Contract, including exhibits, attachments, and/or amendments are incorporated and given full force and effect as if fully set forth herein. The Base Contract is attached hereto as **Base Contract (Attachment C)**.

SAMPLE - Investment Grade Audit Scope of Work

The ESCO shall follow the detailed task list presented below for the Investment Grade Audit scope of work. In its sole discretion, **CLIENT** may choose to modify this approach to allow for a more expedited process. In which case, **CLIENT** and the ESCO will mutually agree upon a modified approach, timeline, deliverables, etc.

1. Detailed Task List

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

1.1 30% Phase - Assessment of Needs and Opportunities

Collect General Facility Information

CLIENT agrees to work diligently to furnish ESCO, upon request, accurate and complete data and information, as available. **CLIENT** will allow ESCO reasonable access to facility staff to ensure understanding of existing systems and opportunities. ESCO shall coordinate all site visits and work with the **CLIENT** project manager in advance so as to not interfere with normal operations of any **CLIENT** school. Upon notice to ESCO, **CLIENT** may, but shall not be required to, conduct the task to collect utility information from utilities in order to reduce ESCO time and expense.

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

The following information to be provided by **CLIENT** to the extent possible or otherwise collected for the past 36-month period (where reasonably available):

General Facility Information

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

Utility Information

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

Sub Meter Information

- Historical thermal and electrical sub meter data if available

Equipment and Facility Information

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

Operations Information

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

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

Inventory Existing Systems and Equipment

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

- Cooling systems and related equipment
- Heating and heat distribution systems
- Automatic temperature control systems and equipment
- Air distribution systems and equipment
- Outdoor ventilation systems and equipment
- Kitchen and associated dining room equipment, if applicable
- Exhaust systems and equipment
- Domestic Hot water systems

- Electric motors 5 HP and above, transmission and drive systems. Although motors under 5HP may not be inventoried, options for upgrading these motors shall still be considered (ECM type motors, etc.).
- Interior and exterior lighting
- Laundry equipment, if applicable
- Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.
- Other major energy using systems, if applicable
- Existing on-site generation/distributed generation systems/assets
- Renewable energy systems.

Address the following considerations:

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

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

Establish Baseline

Estimate Loads

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

Estimate Baseline Usage

- Examine utility supply contracts and utility rate structure applicable to each building.
- If building-specific utility data is not available or not useful, then provide other means (for example sub meters and/or data loggers) to establish baseline consumption. Establish base year and/or baseline consumption.

- Present base year and/or baseline consumption in terms of energy or water units (kWh, kW, ccf, Therms, gallons, or other units used in bills), in terms of dollars, and in terms of dollars per square foot.
- Describe the process used to determine the base year and/or baseline consumption and demand (averaging, selecting most representative contiguous 12 months, or sampling; sampling may include temporary sub meters or data loggers where needed).
- Consult with facility personnel to account for any anomalous schedule or operating conditions on billings or equipment conditions that could skew the base year and/or baseline representation.
- ESCO will (as best as possible) account for periods of time when equipment was broken or malfunctioning in calculating the base year or baseline definition period.

Reconcile Estimates

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

Baseline Adjustments

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

Identify Potential Measures

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

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

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

- lighting (indoor and outdoor)

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

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

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

- List all potential opportunities that will be considered for the ESPC.
- Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems including solar photovoltaic systems, other special equipment, irrigation systems, water saving devices, and transformers.
- Identify measures which appear likely to be cost effective or desirable to the client and therefore warrant detailed analysis.

Present Findings

- Submit the preliminary list of measures to **CLIENT** based on the agreed upon schedule.
- Meet with **CLIENT** to present preliminary findings to determine list of measures to perform more thorough analysis on in the 60% phase.

2.1 60% Phase - Further Analysis of Measures

Further Assess and Characterize Potential Measures:

Consider the following for each system & measure:

- Comfort and maintenance problems

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

List Measures: Refine the list of potential energy and water saving measures from the 30% phase.

- List all potential opportunities that will be considered for the ESPC.
- Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, and water saving devices.
- Identify measures which appear likely to be cost effective and therefore warrant detailed analysis

Evaluate the Measures from the 30% phase:

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

Present Findings

- Submit the findings and list of measures to **CLIENT** based on the agreed upon schedule.
- Meet with **CLIENT** to present more detailed findings based on a more thorough analysis.
- Describe how the project economics, savings, and financials will meet **CLIENT**'s terms for completing the IGA phase. Discuss assessment of energy use, savings potential, and project opportunities. **CLIENT** shall have the option to reject calculations of savings, potential savings allowed, or project recommendations or request recalculations of savings, potential savings allowed, or related to project recommendations, at no additional cost.

Develop a list of recommended measures with **CLIENT** for further analysis.

3.1 90% Phase - Further Analysis for Investment Grade Audit

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

Savings Analysis

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

Inflation & Escalation Rates

Any general inflation rates and/or escalation rates and the calculator used to determine those rates will be pre-approved by **CLIENT**. Escalation rates shall be justified and at a minimum based on DOE's Energy Escalation Rate Calculator (EERC) based on Energy Information Administration (EIA) energy price projections. The calculator developed by the National Institute of Standards and Technology (NIST) and the US Department of Energy's Federal Energy Management Program (FEMP) may be used to determine the maximum value. **CLIENT** may authorize ESCO to utilize additional resources to further vet escalation values.

Cost Estimates

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

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

Measurement and Verification Plan

- Provide a final draft measurement and verification plan for each proposed ECM
- Develop a measurement and verification plan for each measure
- Follow additional guidelines for analysis and report preparation given below.
- ESCO will use best industry standards for M&V plan development. At a minimum, IPMVP shall be used and additional standards including FEMP M&V guidelines should be considered.

Commissioning Plan

- Provide a preliminary commissioning plan for the proposed ECMs.

Operations and Maintenance Plan

- Develop a preliminary Operations and Maintenance Plan.

Training Plan

- Develop a preliminary Training Plan for proposed ECMs.

4.1 100% Phase - Final Investment Grade Audit Report

The final Investment Grade Audit Scope of work shall be completed within XX (MUTUALLY AGREED UPON WITH CLIENT & ESCO) calendar days of the date of execution of this Contract.

Investment Grade Audit Report

The Investment Grade Audit report includes:

Overview

- Contact information
- Executive Summary
- Description of the facility, measures evaluated, analysis methodology, results
- Summary table presenting the cost and savings estimates for each measure and for the project as a whole.
- Summary table of recommended energy and water saving measures, including total and itemization for each measure of total design and construction cost, annual maintenance costs, the first-year cost avoidance (in dollars and energy units), simple payback and equipment service life
- Any cost savings due to changes to utility rates or commodity costs due to changes in metering, commodity procurement, etc.
- Summary of annual energy and water use and costs by fuel type and costs of existing or base year condition
- Calculation of energy and cost savings expected if all recommended measures are implemented, and total percentage savings of total facility energy cost.
- Description of the existing facility, mechanical and electrical systems
- Summary description of measures, including estimated costs and savings for each as detailed above

- Summary of recommended **CLIENT** related actions (i.e. internal occupant energy reduction programs or competitions, plug load reduction measures, procurement recommendations-laptops not desktops, etc.)
- Discussion of measures considered but not investigated in detail
- Summary of the value beyond energy cost savings (i.e. improvement to learning environment, student engagement, campus sustainability goals, greenhouse gas reduction, employee retention and recruiting benefits, employee productivity benefits, etc.). Qualitative at a minimum, quantitative would be best.
- Conclusions and recommendations

Baseline and/or base year energy use

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

Description of each operational, energy and water saving measure

Written description

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

Savings calculations

- Base year energy use and cost
- Post-retrofit energy use and cost
- Provide all savings calculations including analysis methodology, supporting calculations and assumptions used.
- Spreadsheet calculations must be provided for review in an open format such that the formulas, assumptions and links are clearly traceable for technical review and verification.
- Annual savings calculations. The cost savings for all energy saving measures must be estimated for each year during the contract period. Savings must be able to be achieved each year (cannot report average annual savings over the term of the contract).

- Savings calculations must be limited to savings allowed by **CLIENT** as described above.
- Percent cost-avoidance projected
- Description and calculations for any proposed rate changes
- Explanation of how savings interactions between retrofit options is accounted for in calculations.
- Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment.
- If computer simulation is used, include a short description and state key input data and software used. If requested by **CLIENT**, access will be provided to the program and all assumptions and inputs used, and/or printouts shall be provided of all input files and important output files and included in the Investment Grade Audit report with documentation that explains how the final savings figures are derived from the simulation program output printouts
- If manual calculations are employed, formulas, assumptions and key data shall be stated.
- Conclusions, observations, caveats

Cost estimate

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

Other

- Estimate of average useful service life of equipment
- Preliminary commissioning plan
- Preliminary measurement and verification plan, following the current version of the International Performance Measurement and Verification Protocol (IPMVP), explaining how savings from each measure is to be measured and

verified (description of Option A, B, C, or D will be implemented for the measure).

- Discussion of impacts that facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc., and identify who is responsible for maintenance.
- Compatibility with existing energy management control and/or building automation systems.
- Complete appendices that document the data used to prepare the analyses. Describe how data were collected.

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

The IGA report shall be submitted as a 30% draft, 60% draft, 90% draft, and 100% draft. Each consecutive draft of the report shall include the previous draft, inclusive of any revisions agreed upon, as well as additional deliverables and sections further developed since the previous draft.

- 30% IGA Report (shall be completed within XX (MUTUALLY AGREED UPON WITH CLIENT & ESCO) calendar days after execution of this Contract). Facility descriptions (general, envelope, lighting, HVAC, controls, water); baseline lighting and water audit; equipment inventories; baseline EMS trending and data logger measurements (if completed, acceptable to submit at 60% report). This is to be submitted after the Scope of Work in Section 1.1 of this document is completed.
- 60% IGA Review (shall be completed within XX (MUTUALLY AGREED UPON WITH CLIENT & ESCO) calendar days after execution of this Contract and shall incorporate all agreed upon and necessary technical, financial, and contractual changes resulting from the 30% IGA Report submission and review process.) – Used as a scoping document to outline the potential ECMs that will be feasible to include in performance contract and those that will not; high-level cost and savings analysis; draft pro forma/financial models; draft M&V plan; submission of supporting data including EMS trending analyses and data logger results; baseline energy simulation model (if applicable) input files and output reports. This is to be submitted after the Scope of Work in Section 1.2 of this document is completed.
- 90% IGA Report (shall be completed within XX (MUTUALLY AGREED UPON WITH CLIENT & ESCO) calendar days of the date of execution of this Contract and shall incorporate all agreed upon and necessary technical, financial, and contractual changes resulting from the 60% IGA Report submission and review process) – Baseline energy and water consumption/cost analysis per site and per building; utility consumption allocation by end-use; building EUI and other performance metrics; Executive summary with ECM list economics and pro forma; facility descriptions; energy and water analysis; ECM section with detail descriptions existing conditions and proposed upgrades; final M&V plan; final ECM costs following open-book pricing model; final ECM savings analyses – spreadsheet models or energy models (input and outputs if applicable); appendices for supporting data including EMCS trending data. This is to be submitted after the Scope of Work in Section 1.3 of this document is completed.

- 100% IGA Report, which shall incorporate all necessary engineering, economic, financial, and overall scope of work changes, as well as all CLIENT and 3rd Party comment resolutions, shall be submitted incorporating changes from the 90% submission within XX (MUTUALLY AGREED UPON WITH CLIENT & ESCO) calendar days of the execution of this Contract. This is to be submitted after the Scope of Work in Section 1.4 of this document is completed.

After each report submission, CLIENT and CLIENT's Representative shall have up to thirty (30) days to review ESCO reports and generate comments and questions for the ESCO. Comments will be tracked and recorded in a formal Comment-Response-Resolution log. The Parties will then meet at a mutually convenient time to review and discuss the reports. The parties agree to work together toward resolution of comments to the satisfaction of CLIENT and incorporation of the requested revisions as agreed upon to further revisions of the IGA Report.

Exhibit F – Model Energy Savings Performance Contract

(ATTACHED)

Exhibit F

MODEL ENERGY SAVINGS PERFORMANCE CONTRACT

The below language, articles, and attachments are included as a starting point for discussions and negotiations between the City of Phoenix and an ESCO to establish an Energy Savings Performance Contract. It is the responsibility of the ESCO to ensure that such a Contract is in compliance with applicable law, expressly including Arizona Revised Statutes (“ARS”) § 34-105.

Nothing in the RFP Solicitation, the Base Contract, or the Investment Grade Audit and Project Development Contract should be interpreted to require the City of Phoenix and an ESCO to enter into an Energy Savings Performance Contract.

The Base Contract and Investment Grade Audit and Project Development Contract must be incorporated by reference and as an attachment in applicable Energy Savings Performance Contracts.

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MODEL ENERGY SAVINGS PERFORMANCE CONTRACT

This Energy Savings Performance Contract (the "Contract") is made and entered into as of this day of [DATE], or as of the City Clerk date, whichever is later ("Effective Date") by and between _____ ("ESCO"), having its principal offices at _____, and _____ (the "City" or "Owner") an Arizona municipal organization (each a "Party" and collectively the "Parties") for the purpose of installing certain energy, water and operating cost saving equipment, described in **Schedule R (Equipment to Be Installed by ESCO)**, and providing other services designed to save energy for the City's property and buildings, known as _____, located at _____ (the "Project Site(s)").

RECITALS

	Recitals	Establishes rationale for project, establishes contract authority, defines procurement process leading up to the contract, etc.	
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WHEREAS, the City owns and operates the Project Site(s), and is in need of energy, water and operating cost saving equipment and services designed to save energy and associated energy costs at said Project Sites; and

WHEREAS, the Parties have ensured adequate financing or funding is in place for all professional services, equipment and construction for the purchase and installation of energy, water and operating cost savings measures, collectively referred to as the "Work" (as herein after defined); and

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

WHEREAS, ESCO was selected after a determination that its proposal was the most advantageous to the City pursuant to a Request for Proposal, and the Parties thereafter entered into a Base Contract and subsequently a contract for the Investment Grade Audit and Project Development Proposal (as hereinafter defined), which are is fully incorporated and given full force and effect as if fully set forth herein; and

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

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

WHEREAS, City is authorized to enter into this Contract for the purposes set forth herein. The ESCO is responsible for ensuring that this Contract and any projects related hereto are in compliance with applicable law, expressly including Arizona Revised Statutes (“ARS”) § 34-105.

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

ARTICLE 1. DEFINITIONS, SCHEDULES, EXHIBITS AND APPENDICES

Section 1.1. Definitions.

Overview: This defines the key words and phrases. Subject to review and discussion between the Parties.

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

Contract (as used in this document and not including attached contracts/agreements): This Energy Savings Performance Contract and all Schedules and Exhibits attached hereto.

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

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

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

Equipment: The goods enumerated on **Schedule R (Equipment to be Installed by ESCO)** that is now or hereafter from time to time become attached hereto and

incorporated herein by reference, together and with any and all additions, modifications, attachments, replacements and parts thereof.

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

Acceptance Date: The date the City accepts the project for beneficial occupancy.

Construction Period: The period from contract signing (including signing of the finance agreement) until the Guarantee Period Start Date (also known as the interim period).

Guarantee Period Start Date: The Acceptance Date or the end of the Construction Period, whichever comes first. The date described in **Section 2.2 (Guarantee Period Start Date)**.

Project Site(s): The facilities of the City in need of the more efficient energy, demand, water and operating equipment and services designed to reduce consumption and associated costs at said Project Site(s)

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

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

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

Overview: This section establishes approval and acceptance of the prior Investment Grade Audit Report. A Certificate of Acceptance should be signed by both parties and attached to the contract.

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

Section 1.3. Schedules, Exhibits and Appendices

Overview: The contract schedules are referenced throughout the contract to provide substantial project detail and clear documentation for any aspect of the project. Exhibits include required forms and approvals. Attachments include supplementary material carried forward from the RFP Solicitation, the Base Contract, and the Investment Grade Audit and Project Development Contract (and proposal related thereto).

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

Schedules

Savings Guarantee

Schedule A Savings Guarantee

Schedule B Baseline Energy Consumption; Methodology to Adjust Baseline

Schedule C Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements

Schedule D Data Collection and Reporting

Schedule E-G Left blank for optional schedules

Payments and Schedule

Schedule H Final Project Cost & Project Cash Flow Analysis

Schedule I Financing Agreement and Payment Schedule

Schedule J Compensation to ESCO for Annual Services

Schedule K Rebates, Incentives and Grants

Schedule L-P Left blank for optional schedules

Design and Construction Phase

Schedule Q Description of Project Site(s)

Schedule R Equipment to be Installed by ESCO

Schedule S Construction and Installation Schedule

Schedule T Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment

Schedule U Standards of Comfort

Schedule V ESCO's Training Responsibilities

Schedule W-AA Left blank for optional schedules

Post-Construction

Schedule BB ESCO's Maintenance Responsibilities

Schedule CC City's Maintenance Responsibilities

Schedule DD Facility Maintenance Checklist

Schedules EE – II Left blank for optional schedules

Administration

Schedule JJ Alternative Dispute Resolution Procedures

Schedule KK – OO Left blank for optional schedules

Optional Schedules

Pre-Existing Service Contracts

Energy Savings Projections

Facility Changes Checklist

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Exhibits

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

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Appendix A RFP for ESCO Solicitation
Appendix B ESCO's Proposal Response
Appendix C Base Contract
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Appendix E Investment Grade Audit Report

Section 1.4. Other Documents

Overview: This section incorporates the RFP Solicitation, the ESCO's Response/Proposal, the Base Contract, and the Investment Grade Audit report and project proposal as exhibits to the contract. It acknowledges the completion of the ESCO's Investment Grade Audit Report and its approval and acceptance. For any discrepancy between the Investment Grade Audit Report and this contract and its technical schedules, the contract governs. However, the Base Contract must take precedence over any other documents related hereto.

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

PAYMENTS AND SCHEDULES

ARTICLE 2. PURCHASE AND SALE; GUARANTEE PERIOD START DATE AND TERMS; CONSTRUCTION PERIOD

Section 2.1. Purchase and Sale

Overview: The City agrees to the Guaranteed Maximum Price, and the Parties must ascertain financing as applicable.

During the Construction Period (also called Interim Period) the ESCO can draw-down payments from the escrow account set-up by the financing company. Payments are made based on the percentage of work completed and approved. The ESCO receives the full amount once the project is approved (Project Acceptance - Certificate of Acceptance is signed).

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

****[IF APPLICABLE]**** The City agrees to lease Equipment through a third party financier, name of lender, as provided for in a separate lease document, **Schedule I (Financing Agreement and Payment Schedule)**.

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

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

Section 2.2. Guarantee Period Start Date

Overview: This section establishes the Start Date for the Guarantee Period, which follows finalization of schedules, inspection, and Certificate of Acceptance. This section also defines any post-installation payments date (M&V services, maintenance) to be made after the Guarantee Period Start Date.

Project acceptance and commencement will be concurrent with the end of the construction period loan. If project construction is delayed, then the project acceptance date will be delayed. If the commencement date is delayed a full 12 months of guaranteed savings to cover the first full loan payment will not be available. Therefore the definition of the Guarantee Period Start Date is either: Acceptance Date or the end of the

construction loan period, whichever comes first. Thus, synchronizing financing payment periods with the guarantee period.

The Guarantee Period Start Date is set as the month after finalization of schedules and issuance of the Certificate of Acceptance.

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

Notwithstanding anything to the contrary in this **Article 2** and **Article 3 (Purchase and Sale; Guarantee Period Start Date and Terms; Construction Period)**, the Guarantee Period Start Date shall not occur and the City shall not be required to accept the work under this Contract unless and until all Equipment installation for the Project Site(s) is completed by ESCO in accordance with the terms and conditions of this Contract. The City shall have [REDACTED] days after notification by the ESCO to inspect and accept the Equipment. The City reserves the right to reject the Equipment if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. ESCO shall not be paid in full, including retainage, until after the construction is completed to the City's satisfaction and ESCO has satisfied any and all claims for labor and materials and the Certificate of Acceptance has been signed. The Certificate of Acceptance will not be unreasonably withheld by the City. The Parties may also discuss the use of Certificates of Substantial Completion as needed and applicable.

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

Section 2.3. Term of Contract; Construction Period

Overview:

The term of the contract is defined in years, beginning on the Guarantee Period Start Date. The contract and technical schedules are negotiated and executed prior to the Guarantee Period Start Date.

The Construction Period begins with financial contract signing and typically runs for 12, 18 or 24 months. During the Construction Period, savings accrue and are retained by the City. Interest only payments from the escrow account, as set up by the financing company, will be due at the end of this period; interim payments may be due if the term

greater than 12 months. These interest only payments are usually capitalized since no guaranteed savings are available to pay them. The start of the financing period begins at this time and is date specific.

Subject to the following sentence, the term of this Contract shall be [REDACTED] years measured beginning with the Guarantee Period Start Date. Nonetheless, the Contract shall be effective and binding upon the parties immediately upon its execution, and the period from Contract Execution until the Guarantee Period Start Date shall be known as the Construction Period. All savings resulting from installation of the measures during the Construction Period will be fully credited to the City.

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

Section 3.1. Energy and Cost Savings Guarantee

Overview: This section establishes an annual guarantee to cover all annual payments (principle and interest, lease payment and ESCO fees, including M&V and maintenance fees).

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

Section 3.2. Annual Review and Reimbursement/Reconciliation

Overview: At the end of each contract year the ESCO will verify actual savings. The ESCO will reimburse the City for any shortfall related to the savings guarantee. City best practice is to retain all excess savings, rather than to apply excess savings to past or future shortfalls.

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

In the event the Energy and Cost Savings achieved during such guarantee year are less than the Guaranteed Energy and Cost Savings as defined in **Schedule A (Savings Guarantee)**, ESCO shall pay the City an amount equal to the deficiency. Upon approval by the City, the ESCO may render additional services or install additional equipment in order to generate enough savings to offset future shortfalls and perform additional measurement & verification.

The ESCO shall remit such payments to the City within [] days of written notice by the City of such monies due.

In the event the Energy and Cost Savings achieved during such guarantee year are greater than the Guaranteed Energy and Cost Savings as defined in Schedule A (Savings Guarantee), the excess savings will be retained by the City and will not be allocated to cover shortfalls in other years.

In the event the Energy and Cost Savings accrue during the Construction Period, the construction period savings will not be allocated to the annual savings of any year. Any interim construction period costs savings realized are retained by the Owner.

Section 3.3. ESCO Compensation and Fees

Overview: The ESCO's savings guarantee will, at a minimum, cover annual project financing costs (principal and interest) as well as all annual ESCO service fees including M&V and maintenance for the term of the guarantee period.

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

The annual Measurement and Verification scope and related cost may be changed by the City, upon a notice 60 days in advance of the start of the next year.

Section 3.4. Billing Information Procedure

Overview: Establish the frequency of invoices and the time period for these steps: a) The City provides the utility bills to the ESCO, b) the ESCO calculates savings per agreed verification protocol, c) the ESCO invoices the City and d) the City makes payment.

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

- (i) By the _____ day after receipt, the City shall provide ESCO with copies of all energy bills for the Project Site(s) which it shall have received for the preceding month;
- (ii) Upon receipt of the required information, ESCO shall calculate the savings in accordance with the agreed-upon calculation formulae in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements)**.
- (iii) Based upon paragraphs (i) and (ii) above, ESCO shall prepare and send to the City a _____ invoice which shall set forth for each _____ the amounts of the energy and operations dollar savings calculated in accordance with **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Report Requirements)** and for the services as provided for in **Schedule J (Compensation to ESCO for Annual Services)**. The invoice will set forth the total _____ payment due from the City.

Section 3.5. Payment

Overview: This establishes the time to approve the invoice and make payment.

The City shall pay ESCO within _____ days of receipt of ESCO's invoice.

Section 3.6. Effective Date of Payment Obligation

Overview: ESCO fees for ongoing maintenance, M&V or other services are not paid until the Certificate of Acceptance of Installed Equipment has been signed.

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

Section 3.7. Open Book Pricing

Overview: The ESCO will fully disclose all costs, provide access to records for all labor and material costs, and make them available for three years beyond final payment.

Open book pricing will be required, such that the Contractor will fully disclose all costs of materials and labor purchased and subcontracted by the ESCO and a list of hourly rates and position descriptions for labor or services provided by the ESCO. Estimates for number of hours required for the project and deviations of these budgeted hours shall require prior written approval by the City or shall not be paid. 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 afford the City access to these records and preserve them for a period of three (3) years after final

payment. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices. The pricing methodology and individual cost markups disclosed during preliminary contract negotiations will be the maximum expected to be applied.

Contributing funds shall be documented separately with clear tracking of expenditures.

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

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

ARTICLE 4. FISCAL FUNDING

Section 4.1. Non-appropriation of Funds

Overview: The City is protected in the event of non-appropriation of funds or insufficient appropriated funds required to make payments, which would effectively terminate the contract with no penalty to the City (for those buildings/projects involved). This is a standard Owner provision and is generally accepted by ESCOs since it is unlikely that funding for utilities would be withheld.

In the event no City or other funds or insufficient City or other funds are appropriated and budgeted, and funds are otherwise unavailable by any means whatsoever in any fiscal period for which payments are due ESCO under this Contract, then the City will, not less than ___ days prior to end to such applicable fiscal period, in writing, notify the ESCO of such occurrence and this Contract shall terminate on the last day of the fiscal period for which appropriations were made without penalty or expense to the City of any kind whatsoever, except as to the portions of payments herein agreed upon for which the City and/or other funds shall have been appropriated and budgeted or are otherwise available.

Section 4.2. Non-substitution

Overview: In the case of non-appropriation of funds or City default, the ESCO is protected by ensuring that the City cannot secure other funding for the same purpose for one year following contract termination.

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

AUDIT AND CONSTRUCTION PHASE

ARTICLE 5. ENERGY USAGE RECORDS AND DATA

Overview: The ESCO is ensured access to historical energy consumption, facility operations and occupancy data in order to develop baseline utility consumption. The baseline is a record of the building configuration, operation and utility use prior to project installation. It provides for measurement of future savings and future adjustment of the baseline to accurately reflect savings when conditions change. Also provide any prior technical studies and energy audits for the ESCO's review.

Section 5.1. Data Provided by City

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

The City agrees to provide ESCO direct access to utility bill information, by automated data transfer as feasible.

Section 5.2 Data Collection and Reporting by ESCO

Overview: The Parties may utilize a different data collection and reporting method. eProject Builder is included as an option.

ESCO shall collect and report project data, on behalf of Institution and with approval by Institution, as identified in **Schedule D: Data Collection and Reporting – Using eProject eXpress (eXP)** and as amended on the U.S. Department of Energy website <https://www.energy.gov/scep/slsc/eProject-express> and at the specified times.

eProject eXpress ("ePX") is a web-based tool managed on behalf of the Department of Energy by The University of California/Lawrence Berkeley National Laboratory (LBNL). eProject eXpress (ePX) provides a streamlined, tailored pathway for state and local governments to document, track, and demonstrate the ongoing value of their energy savings performance contracting (ESPC) projects and programs.

Based on information provided by the ESCO, the parties agree that the data required to be delivered to LBNL under this clause has commercial value whose disclosure would cause competitive harm to the commercial value or use of the data. LBNL intends to

withhold such data from disclosure under 10 C.F.R. 1004.3(e)(2). The use of this data is governed by the provisions of this contract. Unless compelled by a court of competent jurisdiction, there may be no release of this data to the public without the written consent of the Recipient and DOE. Aggregate data that does not identify project-specific metric information may be released as set forth in the contract. Other information required to be delivered under this contract, but not covered under this Commercially Valuable ESPC Project Data clause, shall be delivered in accordance with this contract.

ARTICLE 6. LOCATION AND ACCESS

Overview: The City is required to provide adequate space and protection for the installed equipment and authorizes the ESCO's access to the facility to perform routine and emergency operations.

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

ARTICLE 7. PERMITS AND APPROVALS; COORDINATION

Section 7.1. Permits and Approvals

Overview: As a standard construction practice, the ESCO is required to comply with all code requirements, pay all associated permit fees and provide the City with copies of each permit and license required to do the work. The City agrees to assist the ESCO to obtain all required permits and approvals.

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

Section 7.2. Coordination during Installation

Overview: As a standard practice, the City and ESCO will coordinate the equipment installation activities to avoid interfering with the City's business activities. If an installation requires interference, the ESCO must obtain the City's written approval to proceed. If a facility generates revenue for the City (e.g. civic center, theater, arena etc.) and scheduled

revenue-producing activities are interrupted due to the fault of the ESCO, either during project installation or operation, then a provision for the collection of damages may be negotiated.

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

ARTICLE 8. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL

The ESCO must ensure that construction and the procurement of such work related thereto is in compliance with applicable law, expressly including ARS § 34-150.

Section 8.1. Construction Schedule; Equipment Installation

Overview: The construction/installation will be managed in compliance with individual Owner requirements and governing statutes.

Construction and equipment installation shall proceed in accordance with the construction schedule approved by City and attached as **Schedule S (Construction and Equipment Installation Schedule)**. The ESCO must ensure that construction and the procurement of such work related thereto is in compliance with applicable law, expressly including ARS § 34-150.

Section 8.2. Systems Startup and Equipment Commissioning

Overview: The ESCO is required to conduct performance testing and verification of each system to ensure proper operation, as specified in its Commissioning Plan, **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**. The ESCO is required to notify the City when testing will take place to provide the City the right to be present during all tests.

The ESCO shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)** and prior to acceptance of the project by the City as specified in **Exhibit III (i) (Certificate of Acceptance)**. Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The ESCO shall provide notice to the City of the scheduled test(s) and the City and/or its designees shall have the right to be present at any or all such tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures as specified in **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**. The

Contractor shall be responsible for correcting and/or adjusting all deficiencies in Equipment operation that may be observed during system testing procedures. Prior to City acceptance ESCO shall also provide the City with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in **Schedule R (Equipment to be Installed by ESCO)**.

ARTICLE 9. EQUIPMENT WARRANTIES

Overview: This requires new equipment with minimum one-year warranties on parts and performance and requires new warranty replacement equipment with function for one year. Equipment warranties will be transferred to the City after project installation. The ESCO responsible for pursuing any necessary remedies during the warranty period. If the ESCO fails to exercise the warranty and damages occur, the ESCO is responsible for all costs of repair and any lost savings. The City handles maintenance after the warranty or first-year period.

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

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

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

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

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

ARTICLE 10. STANDARDS OF COMFORT

Overview: The ESCO is required to meet standards of comfort identified in **Schedule U (Standards of Comfort)** throughout the term of the contract. These standards are negotiated between the ESCO and the City to reflect realistic ranges of heating, cooling and hot water temperatures, lighting levels, chilled water requirements, etc.

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

ARTICLE 11. ENVIRONMENTAL REQUIREMENTS

Section 11.1. Excluded Material and Activities

Overview: The ESCO is not responsible for identifying, handling or working on hazardous materials encountered. In the event the ESCO discovers such materials, the ESCO will stop work and notify the City. The City is responsible for corrective action at its expense. Neither the ESCO's stoppage of work nor the City's discovery are grounds for default. If work can commence, any lost time will be added to the time schedule. The ESCO is responsible for any hazardous materials related to equipment it brings to the site.

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

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

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

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

Overview: The ESCO is required to have an agreement with an approved PCB ballast disposal company and approved lamp recycling firm that will properly handle transport, recycle, and incinerate, providing information for site handling and a Certificate of Destruction. The City must sign a manifest of ownership.

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

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

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

ARTICLE 12. TRAINING BY ESCO

Overview: The ESCO must train facility personnel prior to the Certificate of Acceptance and may continue training post-installation.

The ESCO shall conduct the training program described in **Schedule V (ESCO's Training Responsibilities)** hereto. The training specified in **Schedule V (ESCO's Training Responsibilities)** must be completed prior to acceptance of the Equipment installation. The ESCO shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software. Such training shall be

provided at no additional charge to the City and shall have no effect on prior acceptance of Equipment installation.

POST-CONSTRUCTION PHASE

ARTICLE 13. EQUIPMENT SERVICE

Section 13.1. Actions by ESCO

Overview: Maintenance and service responsibilities of the ESCO and the City are specified in **Schedule BB (ESCO's Maintenance Responsibilities)** and **Schedule CC (City's Maintenance Responsibilities)**. When the City causes additional maintenance or repair to the equipment, the City will be charged by the ESCO for the cost of the required maintenance or repair.

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

Section 13.2. Malfunctions and Emergencies

Overview: The City is required to notify the ESCO of any situation that could impact equipment performance. The impacts cover both pre-existing and newly installed equipment that relate to system performance, including equipment malfunction or modification, interruption of power supply or any emergency situation. If the City delays in notifying the ESCO and doesn't correct the situation, it will be treated as a Material Change and the baseline will be adjusted accordingly. If the City makes an effort to assess the situation and incorrectly determines it doesn't have an impact, then the ESCO will not fault the City, although an adjustment to the baseline and/or savings may still be warranted.

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

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

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

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

Section 13.3. Actions by City

Overview: The City may not make any changes to the operation and maintenance of the equipment without the prior written notification to the ESCO, unless in an emergency when the ESCO cannot be reasonably notified or unless otherwise indicated in **Schedule CC (City's Maintenance Responsibilities)**. In the case of such emergency, the City should follow instructions provided by the ESCO for emergency action.

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

ARTICLE 14. MODIFICATION, UPGRADE OR ALTERATION OF THE EQUIPMENT

Section 14.1. Modification of Equipment

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

Section 14.2. Upgrade or Alteration of Equipment

Overview: This terms and conditions are described under which the ESCO may make changes to the equipment, operating procedures or take other energy savings actions. The City needs to approve any changes. The ESCO has the right to make changes to achieve efficiency savings. Any replaced equipment must be new and have the potential

to produce at least as much or more savings. For computer software, licensing provisions apply.

ESCO shall at all times have the right, subject to the City's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Project Site(s), provided that: (i) the ESCO complies with the standards of comfort and services set forth in **Schedule U (Standards of Comfort)** herein; (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the guaranteed energy and cost savings at the Project Site(s) and; (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the ESCO.

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

ARTICLE 15. MATERIAL CHANGES

Overview: Material Change is defined as any condition other than weather that affects building energy use by more than the negotiated percentage (see above discussion).

Section 15.1. Material Change Defined

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

- (i) manner of use of the Project Site(s) by the City; or
- (ii) hours of operation for the Project Site(s) or for any equipment or energy using systems operating at the Project Site(s); or
- (iii) Permanent changes in the comfort and service parameters set forth in **Schedule U (Standards of Comfort)**; or

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

Section 15.2. Reported Material Changes; Notice by City

Overview: The City is required to notify the ESCO in writing of any actual or planned changes to the facility which would impact utility use by more than the specified percentage. In the event of an emergency or situation that would prevent advance notification, the City has a specified number of hours to inform the ESCO that a Material Change has occurred.

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

Section 15.3. Other Adjustments

Overview: If all building conditions and operations stay the same, utility use will not vary more than the negotiated percentage during any month when compared to the baseline use for that month and after adjustments for weather are made. When a variation occurs, the ESCO will determine the cause of the deviation and report findings to the City. The ESCO and the City will determine what adjustments will be made to the baseline as described in **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)**.

As agreed in **Section 15.1** the City will alert ESCO of materials changes as known. Both parties have a vested interest in meeting the guaranteed savings of the Contract. As such, the ESCO will work with the City to investigate, identify and correct any changes that prevent the guaranteed savings from being realized. As a result of such investigation, ESCO and the City shall determine what, if any, adjustments to the baseline

or savings will be made in accordance with the provisions set forth in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Report Requirements)** and **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)**. Any disputes between the City and the ESCO concerning any such adjustment shall be resolved in accordance with the provisions of **Schedule JJ (Alternative Dispute Resolution Procedures)** hereto.

ARTICLE 16. PERFORMANCE BY ESCO

Section 16.1. Corrective Action; Accuracy of the Services

Overview: The ESCO is directed to protect the Project Site(s) and repair any damage caused by the ESCO and absorb the costs. The ESCO is solely responsible for the technical professional accuracy of all work performed under this Contract including work done by subcontractors or others.

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

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

Section 16.2. Annual Reporting Requirements; Annual ENERGY STAR Rating

Overview: At the end of each annual guarantee period, the ESCO will submit a report as required in **Schedule C (C.4 Annual M&V Reporting Requirements)**. The ESCO will provide an ENERGY STAR score for each eligible facility for each year of the guarantee period if applicable.

ADMINISTRATION

ARTICLE 17. OWNERSHIP OF CERTAIN PROPRIETARY RIGHTS; EXISTING EQUIPMENT

Section 17.1. Ownership of Certain Proprietary Property Rights

Overview: This addresses the ESCO's proprietary rights over customized (or exclusive) software and grants the City a continuing license (at no charge) to use and operate the project without violating any ESCO's proprietary rights.

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

Section 17.2. Ownership of Existing Equipment

Overview: The City retains ownership of all existing equipment and the ESCO will notify the City of any equipment and materials to be replaced. If the City chooses to keep the equipment to be replaced, the ESCO will be notified and the City responsible for identifying the location of where the property is to be stored or relocated. The ESCO is responsible for all equipment and materials to be disposed (excepting hazardous waste or environmentally sensitive materials as described above).

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

ARTICLE 18. PROPERTY/CASUALTY/INSURANCE; INDEMNIFICATION

Section 18.1 Insurance.

Overview: The City's insurance requirements include damages to equipment or property, indemnification and liabilities.

The ESCO is obligated to continue to obtain and maintain at all times during the term of this Agreement the same insurance coverage outlined in the Base Contract. The insurance coverage outlined in the Base Contract shall apply to this Contract, any and all Investment Grade Audits and Project Developments, and any related Energy Service Performance Contracts.

Prior to commencement of work under this Contract, ESCO will be required to provide the City with current certificates of insurance specified above. These certificates shall

contain a provision that coverages afforded under the policies will not be canceled or changed until at least thirty (30) days' prior written notice has been given to the City.

Section 18.2. Damages to Equipment or Property.

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

Section 18.3. Indemnification.

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

Section 18.4. Liabilities.

The City shall not be liable for any special, incidental, indirect, punitive or consequential damages, arising out of or in connection with this Contract.

The City, as a public entity supported by tax monies, in execution of its public trust, cannot agree to waive any lawful or legitimate right to recover monies lawfully due it. Therefore, the ESCO agrees that it will not insist upon or demand any statement whereby the City agrees to limit in advance or waive any right the City might have to recover actual lawful damages in any court of law under applicable law.

ARTICLE 19. CONDITIONS BEYOND CONTROL OF THE PARTIES

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

ARTICLE 20. EVENTS OF DEFAULT

Section 20.1. Events of Default by City

Overview: This addresses failure to pay the ESCO, the City's material failure to comply with the contract, and false or misleading representation.

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

- (i) any failure by the City to pay ESCO any sum due for a service and maintenance period of more than ___ days after written notification by ESCO that the City is delinquent in making payment and provided that ESCO is not in default in its performance under the terms of this Contract; or

- (ii) any other material failure by the City to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for _____ days after notice to the City demanding that such failures to perform be cured or if such cure cannot be effected in _____ days, the City shall be deemed to have cured default upon the commencement of a cure within _____ days and diligent subsequent completion thereof;
- (iii) any representation or warranty furnished by the City in this Contract which was false or misleading in any material respect when made.

Section 20.2. Events of Default by ESCO

Overview: This addresses standards of comfort, if not corrected, false or misleading representation or warranty, failure to install equipment or comply with the contract, lien upon the equipment by any subcontractor of the ESCO, ESCO bankruptcy, and failure to pay the City.

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

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

ARTICLE 21. REMEDIES UPON DEFAULT

Section 21.1. Remedies upon Default by the City

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

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

Section 21.2. Remedies Upon Default by ESCO

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

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

ARTICLE 22. ASSIGNMENT

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

Section 22.1. Assignment by ESCO

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

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

Section 22.2. Assignment by City

Overview: The City is allowed to transfer or assign this contract to a new building owner or occupant. The City and the assignee remain responsible to the ESCO for the City's obligations as specified in the contract.

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

ARTICLE 23. REPRESENTATIONS AND WARRANTIES

Overview: Each party has the requisite authority and ability to enter into this contract.

Each party warrants and represents to the other that:

- (i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
- (ii) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

ARTICLE 24. ADDITIONAL REPRESENTATIONS OF THE PARTIES

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

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

performed prior to City acceptance and the installed equipment will be compatible with existing equipment and building systems.

The City hereby warrants, represents and promises that:

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

ESCO hereby warrants, represents and promises that:

- (i) before commencing performance of this Contract:
 - (a) it shall have become licensed or otherwise permitted to do business in the State of _____
 - (b) it shall have provided proof and documentation of required insurance and bonds pursuant to this Contract;
- (ii) it shall make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;
- (iii) it shall use qualified subcontractors who are qualified, licensed and bonded in this state to perform the work so subcontracted pursuant to the terms hereof;
- (iv) The Equipment will meet or exceed the provisions set forth in **Section 8.2 (Systems Start Up and Equipment Commissioning)** and in **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**.
- (v) The Equipment is or will be compatible with all other Project Site(s) mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation or operation;
 - (v) that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Contract.

ARTICLE 25. MICELLANEOUS DOCUMENTATION PROVISIONS

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

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

Section 25.2. Further Documents

Overview: Both parties will provide documents necessary to affect contract provisions.

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

Section 25.3. City's Responsibilities

Overview: Both the ESCO and the City are protected through a method for the ESCO to supervise the City's compliance with routine and preventive maintenance activities performed by the City. A checklist will be developed for newly installed and pre-existing equipment.

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

(a) Methods of Operation by the City

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

(b) City Maintenance Responsibilities

The City agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on **Schedule CC (City's Maintenance Responsibilities)**, to be attached hereto and made a part hereof after City's approval, such approval not to be unreasonably withheld, conditioned or delayed.

(c) Inspection of Project Site(s)

The City agrees that ESCO shall have the right once a month, with prior notice, to inspect Project Site(s) to determine if the City is complying, and shall have complied with its obligations as set forth in **Section 25.3(b)**. For the purpose of determining the City's said compliance, the checklist to be set forth at **Schedule DD (Facility Maintenance**

Checklist) as completed and recorded by ESCO during its monthly inspections, shall be used to measure and record City's said compliance. The City shall make the Project Site(s) available to ESCO for and during each monthly inspection, and shall have the right to witness each inspection and ESCO's recordation on the checklist. The City may complete its own checklist at the same time. ESCO agrees to not interfere with the City operations during any monthly inspection.

Section 25.4. Waiver Of Liens

Overview: The ESCO will provide a Waiver of Liens from each vendor, including the material manufacturer and laborer in supply, as well as installation and servicing of each piece of equipment.

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

ARTICLE 26. CONFLICTS OF INTEREST

Overview: This confirms that neither party – employee nor agent – has a conflict of interest.

Section 26.1. Conflicts of Interest

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

ARTICLE 27. COMPLETE CONTRACT

Overview: The executed contract with its attachments is complete and may not be amended except by written contract.

This Contract, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Contract shall constitute the entire Contract

between both parties and this Contract may not be amended, modified, or terminated except by a written Contract signed by the parties.

ARTICLE 28. APPLICABLE LAW AND COMPLIANCE WITH LAWS

Overview: The laws of the state and jurisdiction apply.

This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of Arizona. The Parties agree to comply with all Federal, State, and Local laws, regulations, and ordinances, expressly including but not limited to ARS § 34-105 and the Phoenix City Code as applicable.

The venue and jurisdiction of any dispute resulting from this Contract shall be deemed to be in State or Federal Court in Maricopa County, Arizona.

ARTICLE 29. INTERPRETATION OF CONTRACT

Overview: The City has authority to determine questions of fact in relation to interpretation of the contract, subject to dispute resolution procedures in the attached schedule.

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

ARTICLE 30. NOTICE

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

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

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

CONTRACT ATTACHMENT I: Schedules, Exhibits, and Appendices

Below are examples of possible Schedules, Exhibits, and Appendices. The Parties will be expected to discuss, negotiate, and finalize appropriate attachments in accordance with the needs for specific projects.

Schedules

Savings Guarantee

Schedule A Savings Guarantee

Schedule B Baseline Energy Consumption; Methodology to Adjust Baseline

Schedule C Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements

Schedule D-G Left blank for optional schedules

Payments and Schedule

Schedule H Final Project Cost & Project Cash Flow Analysis

Schedule I Financing Agreement and Payment Schedule

Schedule J Compensation to ESCO for Annual Services

Schedule K Rebates, Incentives and Grants

Schedule L-P Left blank for optional schedules

Design and Construction Phase

Schedule Q Description of Project Site(s)

Schedule R Equipment to be Installed by ESCO

Schedule S Construction and Installation Schedule

Schedule T Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment

Schedule U Standards of Comfort

Schedule V ESCO's Training Responsibilities

Schedule W-AA Left blank for optional schedules

Post-Construction

Schedule BB ESCO's Maintenance Responsibilities

Schedule CC City's Maintenance Responsibilities

Schedule DD Facility Maintenance Checklist

Schedules EE – II Left blank for optional schedules

Administration

Schedule JJ Alternative Dispute Resolution Procedures

Schedule KK – OO Left blank for optional schedules

Optional Schedules

Pre-Existing Service Contracts

Energy Savings Projections

Facility Changes Checklist

Current and Known Capital Projects at Facility

Exhibits

Exhibit I Performance Bond

Exhibit II Labor and Material Payment Bond *if required*

Exhibit III (i) Certificate of Acceptance—Investment Grade Audit Report

Exhibit III (ii) Certificate of Acceptance—Installed Equipment

Exhibit IV Equipment Warranties

Optional Exhibits

Manifest of Ownership

Minority and Woman-Owned Business Certification

Certification that Financing Term is no Longer than the Aggregated Equipment Lifetime

Notice of Substantial Completion

Notice to Proceed with Construction Phase

Record of Reviews by City

Appendices

Appendix A RFP for ESCO Solicitation

Appendix B ESCO's Proposal Response

Appendix C Base Contract

Appendix D Investment Grade Audit and Project Development Contract

Appendix E Investment Grade Audit Report

Additional Minimum Standard Contract Clauses

Recommended IGAA & ESA Mandatory Terms & Conditions

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

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

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

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

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

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

Inflation and Escalation Rates. Any general inflation rates and/or escalation rates will be pre-approved by Owner and mutually agreed upon.

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

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

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

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

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

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

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

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

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

Exhibit G – Arizona Revised Statutes § 34-105

(ATTACHED)

Arizona Revised Statutes Annotated
Title 34. Public Buildings and Improvements
Chapter 1. Employment of Special Services
Article 1. General Provisions (Refs & Annos)

A.R.S. § 34-105

§ 34-105. Guaranteed energy cost savings contracts; definitions

Effective: September 29, 2021

[Currentness](#)

A. An agent may contract for the procurement of a guaranteed energy cost savings contract with a qualified provider.

B. An agent may enter into a guaranteed energy cost savings contract with a qualified provider if the agent determines that the amount the agent would spend on the energy cost savings measures recommended in the proposal would not exceed the amount to be saved in energy costs over the expected life, according to the manufacturer's equipment standards, of the energy cost savings measures implemented, the term of the financial agreement or twenty-five years, whichever is shortest, after the date that installation or implementation is complete, if the recommendations in the proposal are followed. An agent shall retain the cost savings achieved by a guaranteed energy cost savings contract, and these cost savings may be used to pay for the contract and project implementation.

C. An agent shall use objective criteria in selecting the qualified provider, including the cost of the contract, the energy savings, the net projected energy savings, the quality of the technical approach, the quality of the project management plan, the financial solvency of the qualified provider and the experience of the qualified provider with projects of similar size and scope. An agent shall state each criterion with its relevant order of importance in the request for proposal.

D. In selecting a contractor to perform any construction work related to performing the guaranteed energy cost savings contract, the qualified provider may develop and use a prequalification process for contractors. These prequalifications may require the contractor to demonstrate that the contractor is adequately bonded to perform the work and that the contractor has not failed to perform on a prior job.

E. The selected qualified provider shall perform a study in order to establish the exact scope of the guaranteed energy cost savings contract, the fixed cost savings guarantee amount and the methodology for determining actual savings. The agent shall review and approve this report before the actual installation of any equipment. The qualified provider shall transmit a copy of the approved study to the department of administration.

F. The guaranteed energy cost savings contract shall require that in determining whether the projected energy savings calculations have been met, the energy costs savings shall be computed by comparing the energy baseline before installation or implementation of the energy cost savings measures with the energy consumed after

installation or implementation of the energy cost savings measures. The qualified provider and the agent may agree to make modifications to the energy baseline only for any of the following:

1. Changes in utility rates.
2. Changes in the number of days in the utility billing cycle.
3. Changes in the square footage of the facility.
4. Changes in the operational schedule of the facility.
5. Changes in facility temperature.
6. Significant changes in the weather.
7. Significant changes in the amount of equipment or lighting utilized in the facility.
8. Significant changes in the nature or intensity of energy use such as the change of classroom space to laboratory space.

G. The information to develop the energy baseline shall be derived from historical energy costs or actual energy measurements or shall be calculated from energy measurements at the facility where energy cost savings measures are to be installed or implemented. The baseline shall be established before the installation or implementation of energy cost savings measures.

H. When submitting a proposal for the installation of equipment, the qualified provider shall include information on the projected energy savings associated with each proposed energy cost savings measure.

I. An agent, or two or more agents, may enter into a financing agreement with a qualified provider or the financial institution, trustee or paying agent for the purchase and installation or implementation of energy cost savings measures. The guaranteed energy cost savings contract may provide for payments over a period of not more than the expected life, according to the manufacturer's equipment standards, of the energy cost savings measures implemented, the term of the financial agreement or twenty-five years, whichever is shortest. The contract shall provide that all payments, except obligations on termination of the contract before its expiration, shall be made pursuant to the terms of the agreement. If an agent purchases the energy cost savings measure, the qualified provider shall guarantee that the energy cost savings meet or exceed the agent's total cost of purchase.

J. The guaranteed energy cost savings contract shall include a written guarantee of the qualified provider that the energy cost savings will meet or exceed the costs of the energy cost savings measures over the expected life, according to the manufacturer's equipment standards, of the energy cost savings measures implemented, the term

of the financial agreement or twenty-five years, whichever is shortest, except as provided in subsection I of this section. The qualified provider shall:

1. For the term of the contract, prepare a measurement and verification report on an annual basis in addition to an annual reconciliation of savings.
2. Reimburse the agent for any shortfall of guaranteed energy cost savings on an annual basis.
3. Use the international performance and measurement and verification protocol standards or the federal energy management program standards to validate the savings guarantee.

K. The agent may obtain any required financing as part of the original competitive sealed proposal process from the qualified provider or a third-party financing institution.

L. A qualified provider that is awarded the contract shall give a sufficient bond to the agent for its faithful performance of the equipment installment.

M. This section does not apply to the construction of new buildings.

N. An agent may use a simplified energy performance contract for projects less than \$500,000. Simplified energy performance contracts are not required to include an energy savings guarantee and shall comply with all requirements in this section except for the requirements that are specifically related to the energy savings guarantee and the measurement and verification of the guaranteed savings.

O. An agent may elect to use a shorter capital repayment schedule than required pursuant to this section.

P. For the purposes of this section:

1. “Agent” has the same meaning prescribed in § 34-101 but also includes a community college district organized under title 15, chapter 12,¹ the department of administration and the Arizona board of regents.
2. “Construction” means the process of building, altering, repairing, improving or demolishing any structure or building, or other public improvements of any kind to any real property. Construction does not include the routine operation, routine repair or routine maintenance of existing structures, buildings or real property.
3. “Energy baseline” means a calculation of the amount of energy used in an existing facility before the installation or implementation of the energy cost savings measures.
4. “Energy cost savings” means one or both of the following:

(a) An estimated reduction in net fuel costs, energy costs, water costs, stormwater fees, or other utility costs, or related net operating costs, including costs for anticipated equipment replacement and repair, from or as compared to an established baseline of those costs.

(b) An estimate revenue increase associated with additional facility use or the use of improved meters or other measuring devices due to improvements included in the guaranteed energy cost savings contract.

5. “Energy cost savings measure” means a training program or facility alteration designed to reduce energy consumption and may include one or more of the following, and any related meters or other measuring devices:

(a) Insulating the building structure or systems in the building.

(b) Storm windows or doors, caulking or weather stripping, multiglazed windows or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption.

(c) Automated or computerized energy control systems.

(d) Heating, ventilating or air conditioning system modifications or replacements, including ground source heat pumps.

(e) Replacing or modifying lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made.

(f) Indoor air quality improvements to increase air quality that conform to the applicable state or local building code requirements.

(g) Energy recovery systems.

(h) Installing a new or retrofitting an existing day lighting system.

(i) Procurement of low-cost utility supplies of all types, including electricity, natural gas, propane and water.

(j) Devices that reduce water consumption and water costs or that reduce sewer charges.

(k) Rainwater harvesting systems.

(l) Combined heat and power systems.

(m) Renewable and alternative energy projects and renewable energy power service agreements.

(n) Self-generation systems.

(o) Any additional building systems and infrastructure that produce energy, or that provide utility cost savings not specifically mentioned in this paragraph, if the improvements meet the life cycle cost requirement and enhance building system performance or occupant comfort and safety.

(p) Geothermal.

6. “Life cycle cost” means the sum of the present values of investment costs, capital costs, installation costs, energy costs, operating costs, maintenance costs and disposal costs and utility rebates over the life of the project, product or measure as provided by federal life cycle cost rules, regulations and criteria contained in the United States department of energy federal energy management program “guidance on life-cycle cost analysis” required by executive order 13423, January 2007.

7. “Qualified provider” means a person or a business that is experienced in designing, implementing or installing energy cost savings measures, that has a record of established projects or measures of similar size and scope, that has demonstrated technical, operational, financial and managerial capabilities to design and operate cost savings measures and projects and that has the financial ability to satisfy guarantees for energy cost savings.

Credits

Added by [Laws 2012, Ch. 230, § 9](#). Amended by [Laws 2012, Ch. 306, § 9](#); [Laws 2021, Ch. 39, § 5](#).

Footnotes

1 Section 15-1401 et seq.

A. R. S. § 34-105, AZ ST § 34-105

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of May 29, 2024.