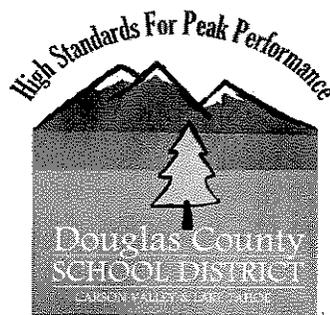


**REQUEST FOR PROPOSAL**  
For Operational Savings Performance Contracting Services

By



**Douglas County School District**

**RFP# 110507**

**Date Issued**  
**November 5, 2007**

# RFP For Operational Savings Performance Contracting Services

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## TABLE OF CONTENTS

### RFP

### ATTACHMENTS

<b>Attachment A:</b>	Site Visit Registration Form
<b>Attachment B:</b>	RFP Project Schedule
<b>Attachment C:</b>	General Conditions of the Contract for Construction
<b>Attachment D:</b>	Submittal Instructions
<b>Attachment E:</b>	ESCO Response
<b>Attachment F:</b>	Evaluation Criteria
<b>Attachment G:</b>	Technical Facility Profile
<b>Attachment H:</b>	Insurance and Bonding Requirements
<b>Attachment I:</b>	NRS 332.300 Through 332.440
<b>Attachment J:</b>	Energy Services Agreement Sample

## REQUEST FOR PROPOSALS

### Operational Savings Performance Contracting Services for Douglas County School District

#### **A: INTRODUCTION**

Douglas County School District (DCSD) is seeking proposals from qualified Energy Services Companies (ESCOs) to conduct a preliminary technical energy audit of facilities and implement an Operational Savings Performance Contract in order to identify and implement capital improvements to reduce energy and related costs in facilities such that annual cost savings are applied to annual payments for improvements.

Please note: A Request for Proposal process is different from an Invitation to Bid. DCSD expects ESCOs to propose creative, competitive solutions to the identified problem or need, as specified within this document.

#### **B: OVERVIEW**

DCSD seeks to maximize energy cost savings and related operational costs in order to pay for facility upgrades and services. To do so, DCSD is seeking proposals from pre-qualified ESCOs to provide energy, water, and maintenance saving retrofits for up to eighteen (18) district wide facilities. DCSD has the intention to award the contract to only one qualified proposer. DCSD intends to utilize a third party for all matters related to financing, rather than contracting for financing with the ESCO chosen.

Services and capital improvements will be financed through an operational savings performance contract which:

- Incurs no initial capital costs (with option for DCSD to provide initial capital if desired)
- Achieves significant long-term cost savings, as well as energy, water and waste usage and reductions
- Achieves a cost savings or performance guarantee (with DCSD option to eliminate part or all of the guarantee after one year of guaranteed performance)
- Maintains consistent and reasonable levels of occupant comfort
- Maintains consistent levels of building functionality
- Realizes additional benefits that may directly result from operational and energy-related services and capital improvements such as reduced maintenance needs and additional building improvements, etc.
- Maintains consistency with all applicable state and local codes and standards.
- As per NRS 332, the ESCO must pay the SPWB for the design review cost.
- The ESCO agrees to include in their proposal and project the cost for a Third Party Consultant to assist the DCSD in the review of all aspects of the RFP and the Project. The selected ESCOs shall include in the Financial Grade Operational Audit the full cost of the Third Party Consultant's costs. These costs will be a part of the overall Project cost. DCSD will provide the successful ESCO with their Project's respective cost for the Third Party Consultant, so as to be included in the Project's financials. Third Party Consultant costs are not subject to ESCOs mark-up.

## RFP FOR OPERATIONAL SAVINGS PERFORMANCE CONTRACTING

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The RFP and contracting process has five phases:

- **RFP Phase:** Through this RFP, an ESCO will be selected based on their written response including a preliminary proposal, **which shall include a Comprehensive Audit Report of all potential operating cost-savings measures that might be implemented at the selected three (3) DCSD facilities.** Proposals must also include a project scope, extended warranties (if any), preliminary cost, estimated savings, and cash flow. Interviews with the top candidates and a final reference check will follow the opening of the proposals. Finally, a Letter of Intent (LOI) to award will be issued to the selected ESCO.
- **Audit/ Project Development Phase/ Financing Phase/ Contract Phase:** The selected ESCO will perform a Financial-grade Operational Audit of all District facilities, and will submit an Audit Report and a Project Development Plan to the Douglas County School District. The selected ESCO and DCSD will negotiate the Project scope, all costs and the financial terms in a performance contract. (See Attachment J: Energy Services Agreement Sample for an example.) The DCSD will issue a Notice of Award. Once the Performance Contract is executed, DCSD will issue a Notice to Proceed.
- **Construction/Implementation:** Design review will be performed by the Nevada State Public Works Board. Designs must comply with all local building codes. Permitting will be performed by the DCSD Buildings and Maintenance department.
- **Commissioning Phase:** Upon completion of the construction, but prior to Project acceptance by DCSD, the ESCO will use commissioning to verify that the design intent has been implemented properly. Equipment submittals will be viewed and compared to design, and will be tested in the field to verify performance. The construction project will be commissioned to verify proper installation and proper operation and to demonstrate that the projected saving are in fact being achieved.
- **Measurement and Verification (M&V):** As part of the Financial-grade Operational Audit, the ESCO shall monitor the reductions in energy, water or other operating cost savings measures implemented under the performance contract, and shall at least once a year or at such intervals specified in the performance contract, prepare and provide a report to DCSD on the performance of the operating cost-savings measures. The performance contract must identify the methodology used to validate the cost savings identified by the qualified ESCO. The M&V Plan must follow established industry guidelines such as the guideline presented by Federal Energy Management Program (FEMP). The M&V Plan will provide the Measurement and Verification methodologies and the terms and conditions for the savings guarantee.

### **C: STATEMENT OF WORK**

#### **ESCO Services**

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

##### Audit and Project Development Phase

- Financial-grade Operational audit to evaluate costs and savings of a variety of energy-saving measures
- project development plan including financial analysis

##### Construction/Implementation/Financing Phase

- design services
- equipment procurement and purchasing
- construction management

## RFP FOR OPERATIONAL SAVINGS PERFORMANCE CONTRACTING

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- hazardous waste disposal or recycling
- ability to help find financing

### Commissioning/Guarantee/Monitoring Phase

- commissioning
- continuing operations and maintenance for all improvements
- staff training on routine maintenance and operation of systems
- training of occupants
- performance and cost guarantee of savings
- monitoring and verification for measurement and reporting of the performance and savings from improvements
- analysis and application for Energy Star Label
- monitoring and reporting of emissions reductions
- maintaining long-term, high-efficiency performance of buildings

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

- Mechanical Systems: Heating, ventilating and air conditioning (HVAC) systems, energy management and control systems, domestic hot water systems, refrigeration, distribution systems, etc.
- Plants: Distribution systems, cogeneration systems, etc.
- Lighting systems: Indoor and outdoor lighting systems, lighting controls, day lighting strategies.
- Building envelope systems: Windows, insulation, weatherization, etc. (It is recognized that window replacements are rarely cost-effective, but could be considered as part of a comprehensive plan.)
- Specialty Systems: Compressed air, industrial systems, power quality, electrical distribution, laundry equipment, kitchen equipment, renewable energy systems.
- Water and Sewage Systems: Automatic controls, low-flow faucet aerators, low-flow toilets, cooling tower modifications, and irrigation system controls or modifications.
- Renewable Energy Technologies: Wind, solar (including photovoltaic), and geothermal.
- Waste Reduction: Management of waste reduction measures including but not limited to modern equipment, such as trash compactors, to aid in a decrease of expenditures.

## **BUILDINGS AND FACILITIES**

Facilities identified for this work are listed in Attachment G: Technical Facility Profile. DCSD reserves the right to reduce the scope of work or conduct work in phases. Additional buildings and facilities may be included in the future under the same contract.

## **FINANCIAL-GRADE OPERATIONAL AUDIT**

- If selected, the ESCO agrees to perform a Financial-grade Operational Audit in accordance with the Scope Guidelines and Requirements described below. The ESCO agrees to complete the Financial-Grade Operational Audit and present to the Douglas County School District a final report according to the schedule in described in Attachment B: RFP Schedule, unless a longer period is negotiated with the DCSD.

## RFP FOR OPERATIONAL SAVINGS PERFORMANCE CONTRACTING

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- DCSD agrees to assist the ESCO in performing the Financial-grade Operational Audit in accordance with the Scope Guidelines and Requirements described below. DCSD agrees to work diligently to provide full and accurate information. The ESCO agrees to work diligently to assess the validity of the information provided and to confirm or correct the information as needed.
- The ESCO agrees to provide a Project Development Report with a proposal of Operational Savings Performance Contract terms and conditions, based on a recommended package of operational, energy and water saving measures proposed by the ESCO. The proposal will include details as specified in the Scope Guidelines and Requirements described below, and discuss project financing options.

### COMPENSATION TO THE ESCOs

- A negotiated fee for the Financial-grade Operational Audit shall be included in any resultant Energy Savings Performance Contract.
- Should an ESCO determine at any time during the Financial-grade Operational Audit that savings cannot be attained to meet the DCSD's terms as set forth in the RFP; the Audit will be terminated by written notice of the ESCO to DCSD. In this event this procurement shall be cancelled, and DCSD shall have no obligation to pay, in whole or in part, the negotiated amount. (See NRS 332.60.7, in Attachment I: NRS 332.300 thru 332.440)
- DCSD shall have no payment obligations in the event that an ESCOs final Financial-grade Operational Audit report does not contain a package of energy and/or water savings measures which, if implemented, will provide the DCSD with cash savings to meet the following terms: Sufficient to fund the DSCD payments of all costs and fees associated with the Operational Savings Performance Contract, including any annual fess to the ESCO, less any cash payment the DCSD may choose to contribute. (See NRS 332.60.7, in Attachment I: NRS 332.300 thru 332.440)
- The ESCO will include financial terms in their proposals. DCSD may choose to negotiate terms with a selected ESCO, or obtain its own financing.

### SCOPE GUIDELINES AND REQUIRMENTS

- Contract Term: Any resultant **Contract Term shall be no greater than 15 years** and cannot exceed the cost-weighted average lifetime of the equipment.
- Annual Guaranteed Cost Savings: The annual guarantee is required for at least the first year of the contract term. DCSD may require the guarantee for the entire term of the contract; however, the DCSD reserves the option to eliminate the guarantee at any time. The guarantee is based on cost savings attributable to all operational/energy saving measures, and must equal or exceed all Project costs each year during the contract period. Annual project costs include debt service, contractor fees, maintenance services, monitoring services, third party consultant fees, and other services. Annual cost savings beyond the guaranteed minimum savings will be held by DCSD, and will not be allocated to shortfalls in other years.
- Annual Savings Estimates: The utility, operational and maintenance cost savings for all measures must be estimated for each and every year during the contract period.

## RFP FOR OPERATIONAL SAVINGS PERFORMANCE CONTRACTING

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### **D: ESCO BACKGROUND AND REFERENCES**

ESCOs shall provide a company profile, to include:

- Company Ownership – If incorporated, the State in which the company is incorporated, and date of incorporation. **Please note: Due to time constraints, DCSD can only accept proposals from companies duly qualified to do business in the state of Nevada.**
- Disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigation pending which involves an ESCO or in which an ESCO has been judged guilty or liable. Any attempt to withhold information or not disclose all relevant information may cause an ESCO to be declared non-responsive for this solicitation, and the DCSD may remove the offender from the list of qualified ESCOs for future projects.
- Location(s) of the company offices, including the office that will be responsible for management of any project pertaining to DCSD.
- Name, address and telephone number of the ESCOs point of contact (POC) for a contract resulting in this RFP.
- Company background / history and why the ESCO is qualified to provide services described in this RFP.
- Length of time the ESCO has been providing services described in this RFP to the public and/or private sector and/or the Federal Government. (Please provide a brief description.)
- The ESCO's Dun and Bradstreet number.
- Resumes for the key staff members to be responsible for performance of any contract resulting from this RFP.
- A list of savings performance contracts or projects similar in size and scope that have been accomplished in the last five (5) years.

### **References**

ESCOs shall provide a minimum of three (3) references from similar savings performance contract projects performed for private, State and/or large local government clients within the last three (3) years. DCSD may contact any or all business references for validation of information submitted. Please submit reference information as directed below:

- Client Name
- Project description (to include project cost)
- Project dates (starting and ending)
- Client project manager name, telephone number, fax number and email address.

### **E: ADMINISTRATIVE INFORMATION**

**Site Visit.** DCSD has chosen three (3) District facilities to tour with interested ESCOs, to give the ESCOs an opportunity to view examples of District needs. (These Sites are listed below, with a suggestion of the energy efficiency measures that are a concern for the District.) The site meeting and tour at each of the chosen three (3) facilities will be held prior to the proposal due date with knowledgeable representatives available to answer questions about operation and maintenance practices, problems, concerns and future plans. Fill-out the Site Visit Registration Form in this RFP to register for the site visit and see more details.

## RFP FOR OPERATIONAL SAVINGS PERFORMANCE CONTRACTING

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### Sites Slated for Tour:

- Gardnerville Elementary School: Replacement / upgrade of electrical system  
Replacement / upgrade of HVAC system  
Replacement of single paned windows
- Carson Valley Middle School: Replacement / upgrade of electrical system  
Replacement / upgrade of HVAC system  
Replacement of single paned windows
- Douglas High School: Replacement / upgrade of electrical system  
Replacement / upgrade of HVAC system  
Replacement of single paned windows

**THE SITE VISIT IS MANDATORY. All ESCO's who wish to participate will tour the facility at the same time so each ESCO hears all questions and answers.**

**Review of Written Proposals.** Proposals must be prepared as described in Attachment D: ESCO Response. An evaluation team will review and score written proposals based on the evaluation criteria identified in Attachment E: Evaluation Criteria. Based on the overall score, proposals within the competitive range will be identified.

**Final Selection.** Final reference checks will be conducted with the apparent awardee (top-ranked ESCO) prior to making the final selection. An award will be made to the selected ESCO, with a Letter of Intent, allowing the selected ESCO to perform the Financial-grade Operational Audit.

Following successful completion of the Financial-grade Operational Audit the Energy Services Agreement (see Attachment J: Energy Services Agreement Sample) will be executed to implement the projects, and the ESCO will be required to submit a Written Savings Guarantee.

By submitting the proposal, the ESCO agrees to: use the Attachment J: Energy Services Agreement Sample as the basis for contract.

\*\*Subject to Change

Fax to: (775) 782-3162  
Attn: Holly Luna  
Phone: (775) 782-5131

**SITE VISIT REGISTRATION FORM**  
**for ESCOs Responding to RFP #110507**  
**for Douglas County School District**

DCSD invites you to attend a tour of facilities prior to responding to the RFP for Operational Savings Performance Contracting Services. This site visit is **mandatory**. A detailed list of sites to be visited, with a tentative schedule will be faxed to each ESCO upon receipt of this registration form.

**DATE:** November 27th, 2007  
**TIME:** 8:00 AM to 4:00 PM  
**LOCATION:** Douglas High School  
1670 HWY 88  
Minden, NV 89423  
\*All Parties Will Meet at Front Office

All interested ESCO's will tour a selection of the in-town schools on November 27th, 2007. ESCO's will tour each facility at the same time so that all respondents will hear the same questions, comments and answers.

**NO FOLLOW-UP TOURS OR ALTERNATIVE DATES FOR TOURS WILL BE ALLOWED UNLESS OFFERED TO ALL RESPONDENTS.**

<p>_____ <i>Yes, I plan to attend the site visit.</i></p> <p><i>Today's Date:</i> _____</p> <p><i>Name:</i> _____</p> <p><i>Company Name:</i> _____</p> <p><i>Mailing Address:</i> _____</p> <p>_____</p> <p><i>Phone:</i> _____ <i>Fax:</i> _____</p> <p><i>E-mail Address:</i> _____</p>
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## **ATTACHMENT B: RFP PROJECT SCHEDULE**

The following schedule is the proposed schedule, and may change during the project.

<b><u>ACTIVITY</u></b>	<b><u>DATE</u></b>
<b>Issue RFP</b>	<b>November 5, 2007</b>
<b>Mandatory Sites Visit</b>	<b>November 27, 2007</b>
<b>Cut off date for written inquiries by ESCOs</b>	<b>December 4, 2007</b>
<b>Written Answers to all Questions Submitted Faxed to ESCOs</b>	<b>December 11, 2007</b>
<b>RFP Due</b>	<b>December 17, 2007 2:00pm</b>
<b>Proposal Review and ESCO Interviews for Selection</b>	<b>December 19-20, 2007</b>
<b>Anticipated date for School Board to approve ESCO selection (Letter of Intent to be issued by January 14, 2008)</b>	<b>January 8, 2008</b>
<b>Time Frame for Selected ESCO to Conduct Financial-grade Operational Audit</b>	<b>January 22-25, 2008</b>
<b>Presentation of Financial-grade Operational Audit and Program Development Report</b>	<b>January 29, 2008</b>
<b>Anticipated Project Development Contract Start Date</b>	<b>February 1, 2008</b>

**Note: The dates put forth in this timeline represent a tentative schedule of events. DCSD reserves the right to modify these dates at any time, with appropriate notice to prospective ESCOs. DCSD also reserves the right to waive oral presentations.**

**\*\*Subject to Change**



**ATTACHMENT C: GENERAL CONDITIONS OF THE CONTRACT  
FOR CONSTRUCTION**

Primary focus of Douglas County School District is relative to building envelope. Additional energy saving improvements may be considered, but will be approved through a review process, including the Douglas County School District Board of Trustees. Once a contract is agreed upon, and terms of the contract are established, Douglas County School District will not accept any change orders to the contract.

**DCSD will be responsible for contacting the third party consultant (per NRS 332), and forwarding submittals to that third party consultant.**

\*\*Subject to Change



**ATTACHMENT D: SUBMITTAL INSTRUCTIONS**

**Due Date:**

ESCOs shall submit one copy of the proposal marked “Master”, along with three (3) identical hardcopies, and one CD containing an electronic PDF version of the proposal, on or before:

**December 17, 2007, by 2:00 p.m.**

**Late responses will not be accepted.**

**Faxed and emailed responses will not be accepted.**

Please send proposals to:

**Douglas County School District  
Business Services Dept.  
PO Box 1888  
Minden, NV 89423**

Proposals shall be clearly labeled in a sealed envelope or box as follows:

**REQUEST FOR PROPOSAL FOR:  
PERFORMANCE CONTRACT FOR ENERGY SAVINGS  
RFP#: 110507**

DCSD will not be held responsible for proposal envelopes mishandled as a result of the envelope not being properly prepared.

DCSD will accept questions and/or comments in writing, received by mail, fax, or email no later than December 4, 2007 by 2:00pm. Answers to all inquiries received will be faxed to all ESCOs no later than December 11, 2007 by end of business. Please provide company name, address, phone number, fax number, email address and contact person when submitting questions. Please direct all questions to:

Douglas County School District  
Holly Luna, Director of Business Services  
PO Box 1888  
Minden, NV 89423  
Fax: (775) 782-3162  
[Hluna@dcsd.k12.nv.us](mailto:Hluna@dcsd.k12.nv.us)

For ease of evaluation, the proposal should be presented in a format that corresponds to and references sections outlined within this RFP and should be presented in the same order. Responses to each section and sub-section should be labeled so as to indicate which item is being addressed. If complete responses cannot be provided without referencing supporting documentation, such documentation must be provided with the proposal and specific references made to the tab, page, section and/or paragraph where the supplemental information can be found.

RFP For Operational Savings Performance Contracting Services  
Attachment D: Submittal Instructions – Revision #1

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Late Proposals:

As a deadline has been issued for submission of proposals, and as proposals will be date and time stamped for accuracy, any proposal received after the due date and time will be returned unopened to the bidder.

Withdrawal of Proposal:

Proposers may request withdrawal of a posted, sealed proposal prior to the scheduled closing date and time provided the request for withdrawal is submitted to Douglas County School District in writing. No accepted proposals may be withdrawn for a period of sixty (60) calendar days after the scheduled closing date and time.

Rejection of Proposal:

DCSD reserves the right to reject any and all proposals received by reason of this request. Firms whose proposals are rejected will be notified in writing.

Disqualification of Proposer:

Proposers may be disqualified and rejection of proposals may be recommended to DCSD for any of (but not limited to) the following causes:

1. Failure to use the proposal form furnished by DCSD.
2. Lack of signature by an authorized representative on proposal form.
3. Failure to comply with the requirements of the proposal specifications.
4. Evidence of collusion among proposers.
5. Unauthorized alteration of proposal form.
6. Other, as prescribed by law.

Taxes:

DCSD is exempt from State Use Tax, State Retail Tax, and Federal Excise Tax. The proposal price must be net, exclusive of such taxes.

Federal, State and Local Laws:

All proposers shall comply with all Federal, State and Local laws relative to conducting business in the County of Douglas, including but not limited to licensing, labor and health laws, OSHA, and including NRS 338.10 through 338.180, as amended (<http://search.leg.state.nv.usisquery/irl2883/1/doc>), if applicable. The laws of the State of Nevada shall govern as to the interpretation, validity, and effect of this Request for Proposal, its award, and any contract entered into.

Warranties:

1. Commercial: The Proposer agrees that the item(s) furnished under this contract shall be covered by the most favorable commercial warranty(ies) the Proposer offers to any customer for such goods or services; but as a minimum, all work and all installed equipment and systems are warranted for a period of 1-Year from the Final Project acceptance, except where longer warranty periods are specifically required by the DCSD in the contract documents.
2. Price: The Proposer warrants that the price of the items set forth herein does not exceed those charged by the Proposer to any other customer purchasing

RFP For Operational Savings Performance Contracting Services  
Attachment D: Submittal Instructions – Revision #1

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the same item in like or comparable quantities under like terms and conditions.

\*\*Subject to Change



## **ATTACHMENT E: ESCO RESPONSE**

### **GENERAL INFORMATION**

Refer to "Administrative Information" in the body of the RFP for an overview of the process.

For further information, please contact:

Holly Luna, Director of Business Services  
Douglas County School District  
1638 Mono Avenue  
Minden, NV 89423

Phone: (775) 782-5131  
Fax: (775) 782-3162  
Email: [hluna@dcsd.k12.nv.us](mailto:hluna@dcsd.k12.nv.us)

***PLEASE FOLLOW THE FORMAT SHOWN ON THE FOLLOWING PAGES IN  
PREPARING YOUR RESPONSE***

### **ESCO PROFILE & APPROACH TO PROJECT**

- *Answer all questions or state "N/A" if not applicable.*
- *Please number and re-state each subheading or question, followed by your response. This improves clarity and makes it much easier to evaluate your proposal.*
- *Number all pages.*

#### **1. Site-Specific Approach**

##### **a. Project Scope**

- (1) Types of Services. Summarize the scope of services (auditing, design, construction, monitoring, operations, maintenance, training, etc.) offered for this project.
- (2) Potential Projects. Based on your preliminary assessment of the information provided, describe any equipment modifications, installations or replacements at the facility that your firm would consider installing as a part of this project. Address energy, water and operation and maintenance opportunities. Also describe any special features, renewable technologies, or advanced technologies that might be applicable. Describe your approach to achieve system compatibility and/or standardization of equipment in the facilities to be addressed.

- (3) Benefits. Describe the project specific benefits that will result from the opportunities addressed in #2 above.

**b. Project Management**

- (1) Management Approach. Briefly describe your firm's approach to managing this project.
- (2) Qualifications and Experience of Staff Assigned to this Project. Identify the individual who will have primary responsibility for each task and phase of the project. List name, title, intended role and responsibilities for the duration of the contract, educational background, specific qualifications related to role and responsibilities, past relevant experience, number of years of relevant experience, supervisory responsibilities if relevant, list of projects individual was associated with during the last five (5) years including type of project and project cost and resume. Also identify the percentage of projects completed on time or prior to deadline, as well as the percentage of projects finished at or under budget. Tasks and phases to address include technical analysis, engineering design, construction management, construction, training and post-contract monitoring. Indicate the percent of time each person is available to work on this project.
- (3) Subcontractors. Describe the nature of work that will likely be conducted by subcontractors. Describe your willingness to use local subcontractors or subcontractors specified by DCSD. Describe your process for selecting subcontractors; include your selection criteria used to make this selection.

**c. Technical and Construction Issues**

- (1) 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 DCSD activities such as: management of additional energy and operational saving projects, monitoring of installation and performance of ESCO projects, integration of other identified capital needs with ESCO projects which may or may not contain energy, water, and waste related saving opportunities.
- (2) Project Schedule. Propose a preliminary project schedule.
- (3) Operations and Maintenance. Describe any major changes in operations or maintenance of the facilities that your firm foresees based on the information provided. Briefly describe the maintenance responsibilities of both your firm and DCSD. Describe how your firm would provide appropriate training in operations and maintenance of installed improvements to DCSD Building Management and Maintenance personnel.

**2. Cost and Pricing**

**a. Cost of Audit.**

- (1) Describe your approach to auditing a facility. Ensure that your approach is consistent with the approach and requirements included in Attachment J: Energy Services Agreement Sample, unless exceptions were noted above.
- (2) State your firm's cost of the Financial-grade Operational Audit as a cost per square foot.

This cost will be evaluated on the basis of reasonableness, so an unrealistically high or low cost will be devalued in the evaluation process. The audit cost will be the reimbursable cost if no performance contract is negotiated after completion of the Financial-grade Operational Audit.

**b. Markup Costs and Fees.** Markup costs are disclosed to provide a typical project costing approach for a project of similar scope and size. The markups will also be used in the Technical Energy Audit Contract and subsequent Operational Savings Performance Contract. Markups can be negotiated downward. A substantial change in the scope and size of the project may necessitate renegotiation of the markups.

- (1) Provide markups for each category you use in your pricing structure (categories may include but are not limited to: overhead, profit, markups on subcontractors, equipment/supplies/rentals, self-performed work, design, construction management, warranty, commissioning, measurement and verification, contingency, training, or any other markup category used by ESCO.) ESCO's will further qualify these markups in the "Best Value" section below.
- (2) To clarify the use of these markups, describe how each markup is applied and when it is used.
- (3) Include two actual project examples to show how each of the markups are applied: i) a standard lighting upgrade and ii) typical boiler replacement (or other large equipment of your choice).
- (4) If contingency is a category, describe how excess contingency dollars will be used.

**c. Other Costs.** Describe other costs such as maintenance and monitoring agreements and describe how they may be applied. Also point out if these are annual costs and if they are required each year of the contract.

**d. Best Value.**

- (1) Describe how your approach to performance contracting delivers best value for the investment. This is an opportunity to point out how your company may be able to deliver a more cost-effective overall project due to corporate structure, relationships with vendors,

RFP For Operational Performance Contracting Services  
Attachment E: ESCO Response

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depth of experience and expertise, local relationships and experience, experience in similar types of facilities, knowledge of particular retrofits, etc.

- (2) Describe any utility rebates or other incentives that you can potentially provide and/or facilitate.

- e. **Open Book Pricing.** Open book pricing is required. Describe your firm's approach and experience in providing open-book pricing.

\*\*Subject to Change

## **ATTACHMENT F: RFP EVALUATION CRITERIA**

The criteria listed below will be used to evaluate written proposals. The scoring weight is listed for each criterion.

These criteria will be applied and interpreted solely at the discretion of DCSD. Proposals should include all necessary information that is pertinent to these evaluation criteria. Additional information required for proper assessment of proposals may be requested from the ESCO at the discretion of DCSD.

The Evaluation Team recognizes it is premature to place a major emphasis on projected financial benefits prior to the completion of the Financial-grade Operational Audit because the Audit will define the potential scope and cost benefit.

The criteria are not ranked in order of importance. The sub-criteria are of approximate equal weight.

### **1. SITE SPECIFIC APPROACH (Scoring Weight: 60%)**

- a. **Scope for This Project.** Understanding of existing building conditions, systems and operation and maintenance projects. Responsive to strategies in adapting control strategies, equipment and maintenance practices in response to changes in utility rates, technology, and building conditions in order to enhance project performance. Comprehensiveness and clarity of the technical approach to this project based on improvements likely to be included. Relevance and benefits of proposed retrofits for these facilities.
- b. **Project Management for This Project.** Management approach and relevant qualifications of key personnel assigned to the project involved in technical auditing and design, project management and construction, with respect to the size, scope and building type of this project.
- c. **Technical and Construction Issues.** Construction management, scheduling, operation and maintenance approach, and approach to compatibility/standardization of equipment.

### **2. COST AND PRICING (Scoring Weight: 40%)**

A qualifications-type analysis will be used to evaluate costs, with an emphasis on the approach to pricing and reasonableness of pricing. This will involve a combination of "price analysis" and "cost analysis" such that the project evaluation team will use judgment, knowledge and experience to determine reasonableness and consistency, and to evaluate costs based on established catalog and market prices, historical prices and independent cost estimates.

- a. **Financial-grade Operational Audit Phase: Cost of Audit.** Cost of the Financial-grade Operational Audit for the proposed scope of buildings. This cost will be evaluated on the basis of reasonableness for the size and scope of the project. An unrealistically low cost will be devalued.

RFP For Operational Savings Performance Contracting Services  
Attachment F: Evaluation Criteria

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- b. **Construction/Installation Phase: Markup Costs.** Consider reasonableness of markup costs. The markup costs are disclosed for two purposes:
- 1) To illustrate typical project costing approach for a project of similar scope and size and
  - 2) To establish costs for use in the subsequent Financial-grade Operational Audit. They are evaluated for the purpose of award and may be negotiated during contract negotiations based on the scope and magnitude of the project. These rates will be expected to be used in the Financial-grade Operational Audit and subsequent Operational Savings Performance Contract, however, scope and size of project may change and necessitate a change in the markups provided below. "Cost analysis" will be used to evaluate the markups for reasonableness. ESCO may use different customized categories or present an alternative pricing structure.
- Further consider reasonableness in the example and description of how markups are applied.
- c. **Other Costs.** Assess this in terms of added value.
- d. **Best Value.** Value for the investment.
- e. **Open Book Pricing.** Experience and willingness to provide open-book pricing.

\*\*Subject to Change

RFP For Operational Savings Performance Contracting Services  
Attachment G: Technical Facility Profile

**ATTACHMENT G: TECHNICAL FACILITY PROFILE**

The information in this technical facility profile is provided to inform the ESCO about the facilities. DCSD has approximately 6,500 Students in 12 schools.

The following is a Building List of School Sites:

SCHOOL	BUILDINGS	ADDRESS	YEAR CONST.	ANNUAL ELECTRIC COST	ANNUAL GAS COST
CC MENELEY (CCMES)	MAIN = 53, 751 2 PORTABLE CLASSROOMS @ 1,440 EA.	1446 MUIR GARDNERVILLE (89460)	ORIGINAL = 1980	(2006) \$71,321	(2006) \$18,138
GARDNERVILLE ELEMENTARY SCHOOL (GES)	HERITAGE = 12,082 MAIN BLDG = 44,618* PDC PORTABLE = 1,848	1290 TOLER GARDNERVILLE (89410)	HERITAGE = 1909, MAIN = 1966*	(2006) \$62,386	(2006) \$27, 125
JACKS VALLEY ELEMENTARY SCHOOL (JVES)	MAIN = 51,740	701 JACKS VALLEY RD. MINDEN (89423)	1981	(2006) \$69,506	(2006) \$20,193
MINDEN ELEMENTARY SCHOOL (MES)	MAIN – 41,800	1170 BALER ST. MINDEN (89423)	1995	(2006) \$64,038	(2006) \$22,875
PINION HILLS ELEMENTARY SCHOOL (PHES)	MAIN – 51,300	1479 STEPHANIE WY MINDEN (89423)	1995	(2006) \$60,534	(2006) \$17,059
GENE L. SCARSELLI ELEMENTARY SCHOOL (SES)	MAIN = 53,739	699 LONG VALLEY RD GARDNERVILLE (89460)	1986	(2006) \$76,972	(2006) \$25, 224
ZEPHYR COVE ELEMENTARY SCHOOL (ZCES)	MAIN = 39,039*	226 WARRIOR WAY ZEPHYR COVE (89448)	1962*	(2006) \$31,471	(2006) \$20,233
CARSON VALLEY MIDDLE SCHOOL (CVMS)	MAIN = 94, 802 OLD GYM = 5,500	1477 HWY 395 GARDNERVILLE (89410)	MAIN = 1957* OLD GYM = 1945	(2006) \$111, 707	(2006) \$49,385
PAU-WAU-LU MIDDLE SCHOOL (PWLMS)	MAIN = 103,000	701 LONG VALLEY RD GARDNERVILLE (89460)	MAIN = 1993	(2006) 124,590	(2006) \$34,499
KINGSBURY MIDDLE SCHOOL (KMS)	MAIN = 34,510 PORTABLE = 1,440	1900 ECHO DR ZEPHYR COVE (89448)	MAIN = 1976*	(2006) \$61,499	(2006) \$21,384
DOUGLAS HIGH SCHOOL (DHS)	MAIN = 85,876*	1670 HWY 88 MINDEN (89423)	MAIN = 1976*	(2006) \$231, 527	(2006) \$86, 949
GEORGE WHITTELL HIGH SCHOOL (WHS)	MAIN = 51,368	240 WARRIOR WAY ZEPHYR COVE (89448)	MAIN = 1959*	(2006) \$71,099	(2006) \$42, 041

\*Indicates additional construction on building, or additional buildings added at a later date.

Please refer to detailed information on these sites at end of Attachment G.

**Not included on this list are the District Support Facilities, which may be included in the project scope.**

RFP For Operational Savings Performance Contracting Services  
Attachment G: Technical Facility Profile

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Listed below are details explaining modifications to existing site facilities, or additional buildings constructed at a later date:

Gardnerville Elementary School (GES)

The original building at this site is known as the Heritage Building, built in 1909, and which is still in use, although in dire need of refurbishing and upgrading. From 1967 through 1970, two additional buildings were added to allow for additional classroom space. In 2003, a library/classroom addition took place, which now connects the two buildings built in the late 1960's. The District hopes to continue a Remodeling/Expansion project that was begun with the addition of the library/classrooms in 2003, once funds are available, to increase student capacity.

Zephyr Cove Elementary School (ZCES)

Zephyr Cove Elementary consists of one building, originally constructed in 1962. However, over the years, additions have been added, including extra classrooms added in 1967, an addition in 1980 which consisted of a multi-purpose room, library, restrooms and more classrooms. In 1993, a music room and storage room were added to the facility. Finally, in 1999 three more classrooms and supplementary restrooms were added.

Carson Valley Middle School (CVMS)

CVMS is comprised of 5 separate buildings. The oldest building is the "Old Gym", constructed in 1945. In 1957, Building A was created, and includes the school offices, gymnasium, and some classrooms. Then in 1966, Building B was added, containing additional classrooms. In 1985, Building C was built, for extra classroom space as well. Finally in 1988, Building D was constructed, and included the Library, Music Rooms, a Multi-purpose room and cafeteria.

Kingsbury Middle School (KMS)

While the original KMS building was constructed in 1976, by 1979 six extra classrooms and a library were added. This school also has a modular classroom which is being used as a Music room.

Douglas High School (DHS)

DHS is the largest facility in the district, and is comprised of five buildings, along with six portable classrooms. The original building was constructed in 1976, and was much smaller than it is now. In 1979, the Vocational Building was added towards the rear of the campus. In 1985-86, a Science wing was added to the main building, adding four classrooms. In 1991-92, two portables were brought in to add additional classroom space during a period of increased enrollment. Major additions were added in 1994, including a new smaller gymnasium added to the main building, a library and classroom addition (separate building in the middle of the campus), an additional classroom wing housing 16 classrooms and known as the 400 hall, as well as a music room and drama room added to the front of the main building.

RFP For Operational Savings Performance Contracting Services  
Attachment G: Technical Facility Profile

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George Whittell High School (WHS)

Whittell High's original building was built in 1959. In 1967-68, a classroom wing was added onto the original building. Then in 1975-76, four extra classrooms were added on. Again in 1979-80, additions were constructed including a Multi-purpose room, a band room, offices, and a vocational shop building (the vocational shop is separate from the original building). Finally, in 1998, a library was added to the original school building. This year, the District is completing construction on a bus storage facility at the rear of the campus as well.

\*\*Subject to Change



## ATTACHMENT H: INSURANCE AND BONDING REQUIREMENTS

**To ensure compliance with the contract documents, proposers should forward the following insurance requirements to their Insurance Agent prior to proposal submittal.**

1. Format / Time:

The successful ESCO shall provide owner with Certificates of Insurance for coverage's as listed below, and endorsements affecting coverage required by this proposal within **10 calendar days** after the award by the Owner. All policy certificates and endorsements shall be signed by a person authorized by that insurer and who is licensed by the State of Nevada in accordance with NRS 680A.300. All required aggregate limits shall be disclosed and amounts entered on the certificate of insurance, and shall be maintained for the duration of the contract and any renewal periods.

2. Best Key Rating:

The Owner requires insurance carriers to maintain during the contract term, a Best Key Rating of A or higher, which shall be fully disclosed and entered on the certificate of insurance.

3. Owner Coverage:

The Owner, its officers and employees must be expressly covered as additional insured's except on workers' compensation insurance coverages. The successful ESCO's insurance shall be primary as respects the Owner, its officers and employees.

4. Endorsement / Cancellation:

The successful ESCO's general liability insurance policy shall be endorsed to recognize specifically the successful ESCO's contractual obligation of additional insured to Owner and must note that the Owner will be given 30 calendar days advance notice by certified mail "return receipt requested" of any policy changes, cancellations, or any erosion of insurance limits.

5. Deductibles:

All deductibles and self insured retentions shall be fully disclosed in the Certificates of Insurance and may not exceed **\$10,000** without the express written permission of the Owner. Deductibles and self-insurance retentions shall be declared in the certificate(s) of insurance. All deductibles / retentions are the sole responsibility of the ESCO to pay.

6. Aggregate Limits:

If aggregate limits are imposed on bodily injury and property damage, then the amount of such limits must not be less than **\$2,000,000**.

7. Commercial General Liability:

Subject to paragraph 6 of this attachment, the successful ESCO shall maintain limits of no less than **\$2,000,000** combined single limit per occurrence for bodily injury (including death), personal injury, and property damages. Commercial General Liability coverage shall be on a "per occurrence" basis only, not claims made, and be provided either on a Commercial General Liability or a Broad Form Comprehensive General Liability (including a Broad Form CGL endorsement) insurance form.

RFP For Operational Savings Performance Contracting Services  
Attachment H: Insurance and Bonding Requirements

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8. Automobile Liability:

Subject to paragraph 6 of this attachment, the successful ESCO shall maintain limits of no less than **\$2,000,000** combined single limit per occurrence for bodily injury and property damage, to include, but not to be limited to, coverage against all insurance claims for injuries to persons or damages to property which may arise from services rendered by successful ESCO and **any auto** used for the performance of services under this contract.

9. Workers' Compensation:

The successful ESCO shall obtain and maintain for the duration of this contract, a work certificate and/or a certificate issued by an insurer qualified to underwrite workers' compensation insurance in the State of Nevada, in accordance with Nevada Revised Statutes, regardless of whether the successful ESCO has any employees, and regardless of whether the insurer has determined that the successful ESCO is exempt from the provisions of the workers' compensation statutes.

10. Failure to Maintain Coverage:

If the successful ESCO fails to maintain any of the insurance coverages required herein, Owner may withhold payment, order the successful ESCO to stop the work, declare the successful ESCO in breach, suspend or terminate the contract, assess liquidated damages as defined herein, or may purchase replacement insurance or pay premiums due on existing policies. Owner may collect any replacement insurance costs or premium payments made from the successful ESCO or deduct the amount paid from any sums due the successful ESCO under this contract.

11. Additional Insurance:

The successful ESCO is encouraged to purchase any such additional insurance, as it deems necessary.

12. Damages:

The successful ESCO is required to remedy all injuries to persons and damage or loss to any property of the Owner, caused in whole or in part by the successful ESCO, its subcontractors or anyone employed, directed or supervised by successful ESCO.

13. Cost:

The successful ESCO shall pay all associated costs for the specified insurance. The cost shall be included in the proposal price.

14. Insurance Submittal Address:

All insurance certificates requested shall be sent to:

Douglas County School District

Business Services

PO Box 1888

Minden, NV 89423

Within **10 calendar days** after award by the Owner.

15. Insurance Form Instructions:

The successful ESCO's Insurance Company representative must fill in the following information:

RFP For Operational Savings Performance Contracting Services  
Attachment H: Insurance and Bonding Requirements

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- a. Insurance Broker's company name, complete address, contacts name, phone and fax numbers.
- b. Successful ESCO's name, complete address, phone and fax numbers.
- c. Insurance Company's Best Key Rating.
- d. Commercial General Liability (Per Occurrence)
  - (1) Policy Number
  - (2) Policy Effective Date
  - (3) Policy Expiration Date
  - (4) General Aggregate (\$2,000,000)
  - (5) Products – Completed Operations Aggregate (\$2,000,000)
  - (6) Personal & Advertising Injury (\$1,000,000)
  - (7) Each Occurrence (\$1,000,000)
  - (8) Fire Damage (\$50,000)
  - (9) Medical Expenses (\$5,000)
- e. Automobile Liability (Any Auto)
  - (1) Policy Number
  - (2) Policy Effective Date
  - (3) Policy Expiration Date
  - (4) Combined Single Limit (\$1,000,000)
- f. Workers' Compensation
- g. Description: Name of Contract (must be identified on the initial insurance form and each renewal form).
- h. Certificate Holder: (The certificate Holder is named as an additional insured.)
  - Douglas County School District
  - ATTN: Business Services
  - PO Box 1888
  - Minden, NV 89423
- i. Nevada Resident Agent Signature

16. Bid Bond (to be submitted with proposal package):

A 5% Bid Bond is required with your proposal submission. Any proposals not including a bid bond shall be disqualified.

17. Performance Bond:

Upon award of contract, the successful bidder shall request that their Insurance Agent issues a Performance Bond, in the amount of contract awarded, to DCSD within **10 calendar days** of notice of award by Owner (per NRS 332.105 Bidders' bonds).



**ATTACHMENT I: NRS 332.300 THROUGH 332.440**

**PERFORMANCE CONTRACTS FOR OPERATING COST-SAVINGS MEASURES**

**NRS 332.300 Definitions.** As used in NRS 332.300 to 332.440, inclusive, unless the context otherwise requires, the words and terms defined in NRS 332.310 to 332.350, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 2003, 3049)

**NRS 332.310 “Building” defined.** “Building” means any structure, building or facility, including any equipment, furnishings or appliances within the structure, building or facility, that is owned or operated by a local government. The term includes, without limitation, occupied and unoccupied structures, buildings and facilities, and any other improvements owned or operated by a local government that incur operating costs.

(Added to NRS by 2003, 3049)

**NRS 332.320 “Operating cost savings” defined.** “Operating cost savings” means any expenses that are eliminated or avoided on a long-term basis as a result of the installation or modification of equipment, or services performed by a qualified service company. The term does not include any savings that are realized solely because of a shift in the cost of personnel or other similar short-term cost savings.

(Added to NRS by 2003, 3049)

**NRS 332.330 “Operating cost-savings measure” defined.** “Operating cost-savings measure” means any improvement, repair or alteration to a building, or any equipment, fixture or furnishing to be added or used in a building that is designed to reduce operating costs, including those costs related to electrical energy and demand, thermal energy, water consumption, waste disposal and contract-labor costs, and increase the operating efficiency of the building for the appointed functions that are cost-effective. The term includes, without limitation:

1. Procurement of low-cost energy supplies, including electricity and natural gas.
2. Procurement of cost savings as a result of outsourcing energy needs for electrical power, heating and cooling.
3. Operational or maintenance labor savings resulting from reduced costs for maintenance contracts as provided through reduction of required maintenance or operating tasks, including, without limitation, replacement of filters and lighting products, and equipment failures.
4. Investment in equipment, products and materials, and strategies for building operation, or any combination thereof, designed to reduce energy and other utility expenses, including, without limitation:
  - (a) Costs for materials and labor required to replace old equipment with new, more efficient equipment.
  - (b) Storm windows or doors, caulking or weather stripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated windows or doors, reductions in glass area, and other modifications to windows and doors that will reduce energy consumption.
  - (c) Automated or computerized energy control systems.
  - (d) Replacement of, or modifications to, heating, ventilation or air-conditioning systems.
  - (e) Replacement of, or modifications to, lighting fixtures.
  - (f) Improvements to the indoor air quality of a building that conform to all requirements of an applicable building code.
  - (g) Energy recovery systems.
  - (h) Systems for combined cooling, heating and power that produce steam or other forms of energy, for use primarily within the building or a complex of buildings.
  - (i) Installation of, or modifications to, existing systems for daylighting, including lighting control systems.
  - (j) Installation of, or modification to, technologies that use renewable or alternative energy sources.
  - (k) Programs relating to building operation that reduce operating costs, including, without limitation, computerized programs, training and other similar activities.
  - (l) Programs for improvement of steam traps to reduce operating costs.
  - (m) Devices that reduce water consumption in buildings, for lawns and for other irrigation applications.

RFP For Operational Savings Performance Contracting Services  
Attachment I: NRS 332.300 through 332.440

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(n) Any additional improvements to building infrastructures that produce energy and operating cost savings, significantly reduce energy consumption or increase the operating efficiency of the buildings for their appointed functions, provided that such improvements comply with applicable building codes.

(o) Trash compaction and waste minimization.

5. Investment in educational programs relating to occupational behavior that are designed to reduce the consumption of energy or water, or both, and the generation of waste.

(Added to NRS by 2003, 3049)

**NRS 332.340 “Performance contract” defined.** “Performance contract” means a contract between a local government and a qualified service company for the evaluation, recommendation and implementation of one or more operating cost-savings measures.

(Added to NRS by 2003, 3050)

**NRS 332.350 “Qualified service company” defined.** “Qualified service company” means a person with a record of established projects or a person with demonstrated technical, operational, financial and managerial capabilities to design and carry out operating cost-savings measures and other similar building improvements, and who has the ability to secure necessary financial measures to ensure related guarantees for operating cost savings.

(Added to NRS by 2003, 3050)

**NRS 332.360 Purpose of contract; procedure for selection of qualified service company by local government; operational audit required; third-party consultant.**

1. Notwithstanding any provision of this chapter and chapter 338 of NRS to the contrary, a local government may enter into a performance contract with a qualified service company for the purchase and installation of an operating cost-savings measure to reduce costs related to energy, water and the disposal of waste, and related labor costs. Such a performance contract may be in the form of an installment payment contract or a lease-purchase contract. Any operating cost-savings measures put into place as a result of a performance contract must comply with all applicable building codes.

2. The local government shall determine those companies that satisfy the requirements of qualified service companies for the purposes of NRS 332.300 to 332.440, inclusive. The local government shall prepare and issue a request for qualifications to not less than three potential qualified service companies.

3. In sending out a request for qualifications, the local government:

(a) Shall attempt to identify at least one potential qualified service company located within this state; and

(b) May consider whether and to what extent the companies to which the request for qualifications will be sent will use local contractors.

4. The local government shall use objective criteria to determine those companies that satisfy the requirements of qualified service companies. The objective criteria for evaluation must include the following areas as substantive factors to assess the capability of such companies:

(a) Design;

(b) Engineering;

(c) Installation;

(d) Maintenance and repairs associated with performance contracts;

(e) Experience in conversions to different sources of energy or fuel and other services related to operating cost-savings measures provided that is done in association with a comprehensive energy, water or waste disposal cost-savings retrofit;

(f) Monitoring projects after the projects are installed;

(g) Data collection and reporting of savings;

(h) Overall project experience and qualifications;

(i) Management capability;

(j) Ability to access long-term financing;

(k) Experience with projects of similar size and scope; and

(l) Such other factors determined by the local government to be relevant and appropriate to the ability of a company to perform the project.

RFP For Operational Savings Performance Contracting Services  
Attachment I: NRS 332.300 through 332.440

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→ In determining whether a company satisfies the requirements of a qualified service company, the local government shall also consider the financial health of the company as evidenced by its financial statements and ratings and whether the company holds the appropriate licenses required for the design, engineering and construction to be completed.

5. The local government shall compile a list of those companies that it determines satisfy the requirements of qualified service companies. If the local government is interested in entering into a performance contract, the local government shall notify each appropriate qualified service company and coordinate an opportunity for each such qualified service company to:

(a) Perform a preliminary and comprehensive audit and assessment of all potential operating cost-savings measures that might be implemented within the buildings of the local government, including any operating cost-savings measures specifically requested by the local government; and

(b) Submit a proposal and make a related presentation to the local government for all such operating cost-savings measures that the qualified service company determines would be practicable to implement.

6. The local government shall:

(a) Evaluate the proposals and presentations made pursuant to subsection 5; and

(b) Select a qualified service company,

→ pursuant to the provisions of this chapter for evaluating and awarding contracts.

7. The qualified service company selected by the local government pursuant to subsection 6 shall prepare a financial-grade operational audit. Except as otherwise provided in this subsection, the audit prepared by the qualified service company becomes, upon acceptance, a part of the final performance contract and the costs incurred by the qualified service company in preparing the audit shall be deemed to be part of the performance contract. If, after the audit is prepared, the local government decides not to execute the performance contract, the local government shall pay the qualified service company that prepared the audit the costs incurred by the qualified service company in preparing the audit if the local government has specifically appropriated money for that purpose.

8. The local government shall retain the professional services of a third-party consultant with the requisite technical expertise to assist the local government in reviewing the operating cost-savings measures proposed by the qualified service company and may procure sufficient funding from the qualified service company, through negotiation, to pay for the third-party consultant. Such a third-party consultant must be certified by the Association of Energy Engineers as a "Certified Energy Manager" or hold similar credentials from a comparable nationally recognized organization. A third-party consultant retained pursuant to this subsection shall work on behalf of the local government in coordination with the qualified service company.

(Added to NRS by 2003, 3051)

**NRS 332.370 Financing and structure of performance contract.**

1. A performance contract may be financed through a person other than the qualified service company.

2. A performance contract may be structured as:

(a) A performance contract that guarantees operating cost savings, which includes, without limitation, the design and installation of equipment, the operation and maintenance, if applicable, of any of the operating cost-savings measures and the guaranteed annual savings which must meet or exceed the total annual contract payments to be made by the local government, including any financing charges to be incurred by the local government over the life of the performance contract. The local government may require that these savings be verified annually or over a sufficient period that demonstrates savings.

(b) A shared-savings contract which includes provisions mutually agreed upon by the local government and qualified service company as to the negotiated rate of payments based upon operating cost savings and a stipulated maximum consumption level of energy or water, or both energy and water, over the life of the contract.

(Added to NRS by 2003, 3052)

**NRS 332.380 Period over which payments become due.**

1. A performance contract must provide that all payments, other than any obligations that become due if the contract is terminated before the contract expires, must be made over time.

2. Except as otherwise provided in this subsection, a performance contract, and the payments provided thereunder, may extend beyond the fiscal year in which the performance contract becomes effective for

RFP For Operational Savings Performance Contracting Services  
Attachment I: NRS 332.300 through 332.440

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costs incurred in future fiscal years. The performance contract may extend for a term not to exceed 15 years. The length of a performance contract may reflect the useful life of the operating cost-savings measure being installed or purchased under the performance contract.

3. The period over which payments are made on a performance contract must equal the period over which the operating cost savings are amortized. Payments on a performance contract must not commence until the operating cost-savings measures have been installed by the qualified service company.

(Added to NRS by 2003, 3053)

**NRS 332.390 Prevailing wage requirement.** If a performance contract entered into pursuant to NRS 332.300 to 332.440, inclusive, requires the employment of skilled mechanics, skilled workmen, semiskilled mechanics, semiskilled workmen or unskilled labor to perform the performance contract, the performance contract must include a provision relating to the prevailing wage as required pursuant to NRS 338.020 to 338.090, inclusive.

(Added to NRS by 2003, 3053)

**NRS 332.400 Rights of local government and qualified service company if insufficient money appropriated by local government to make payments.** Notwithstanding any provision of NRS 332.300 to 332.440, inclusive, to the contrary, a performance contract entered into pursuant to NRS 332.300 to 332.440, inclusive, must include a clause that sets out the rights of the local government and the qualified service company if the local government does not appropriate sufficient money for payments to be continued under the performance contract.

(Added to NRS by 2003, 3053)

**NRS 332.410 Reinvestment of savings realized under contract.** A local government may reinvest any savings realized under a performance contract whenever practical into operating cost-savings measures provided the local government is satisfying all its other obligations under the performance contract.

(Added to NRS by 2003, 3053)

**NRS 332.420 Monitoring of cost savings attributable to operating cost-savings measures.**

1. During the term of a performance contract, the qualified service company shall monitor the reductions in energy or water consumption and other operating cost savings attributable to the operating cost-savings measure purchased or installed under the performance contract, and shall, at least once a year or at such other intervals specified in the performance contract, prepare and provide a report to the local government documenting the performance of the operating cost-savings measures.

2. A performance contract must identify the methodology that the local government will use to validate the cost savings identified by the qualified service company.

3. A qualified service company and the local government may agree to make modifications in the calculation of savings based on:

(a) Subsequent material changes to the baseline consumption of energy or water identified at the beginning of the term of the performance contract.

(b) A change in utility rates.

(c) A change in the number of days in the billing cycle of a utility.

(d) A change in the total square footage of the building.

(e) A change in the operational schedule, and any corresponding change in the occupancy and indoor temperature, of the building.

(f) A material change in the weather.

(g) A material change in the amount of equipment or lighting used at the building.

(h) Any other change which reasonably would be expected to modify the use of energy or the cost of energy.

(Added to NRS by 2003, 3053)

**NRS 332.430 Information concerning performance contract provided to Office of Energy.** A qualified service company shall provide to the Office of Energy within the Office of the Governor information concerning each performance contract which the qualified service company enters into pursuant to NRS 332.300 to 332.440, inclusive, including, without limitation, the name of the project, the local government for which the project is being carried out and the expected operating cost savings. The

RFP For Operational Savings Performance Contracting Services  
Attachment I: NRS 332.300 through 332.440

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Office of Energy may report any energy savings realized as a result of such performance contracts to the United States Department of Energy pursuant to 42 U.S.C. § 13385.

(Added to NRS by 2003, 3054)

**NRS 332.440 Financial mechanisms to guarantee operational cost savings are realized.** A performance contract must include appropriate financial mechanisms determined to be necessary by the city or county treasurer, as appropriate, to guarantee that operating cost savings are realized by the local government if the actual cost savings do not meet the predicted cost savings.

(Added to NRS by 2003, 3054)



**ENERGY SERVICES AGREEMENT**  
**BY AND BETWEEN**  
**DOUGLAS COUNTY SCHOOL DISTRICT**  
**AND**  
**CONTRACTOR**

**DRAFT**

**TABLE OF CONTENTS**

<b><u>SECTION</u></b>	<b><u>DESCRIPTION</u></b>
1	Scope of Services
2	Ownership of ECMs
3	Financial Services
4	Compensation and Payment
5	Term
6	Guarantee of Energy Savings
7	Right of Entry/Space
8	Changes in Work
9	Warranties
10	CUSTOMER Role and Responsibilities
11	Defaults by CUSTOMER and CONTRACTOR
12	Remedies for Defaults
13	Arbitration
14	Termination
15	Insurance
16	Indemnification
17	Agreement Interpretation and Performance
18	Privileged and Proprietary Information
19	Severability
20	Assignments and Subcontracting
21	Waiver
22	Force Majeure
23	Contract Documents
24	Notices
25	Records

RFP For Operational Savings Performance Contracting Services  
Attachment J: Energy Services Agreement Sample

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26	Representations and Warranties
27	Independent Contractor
28	Additional Representation and Warranties of Customer
29	Absence of Fraud or Collusion
30	Negligent/Wrongful Acts
31	Further Documents and Events
32	Non-Appropriation
33	Third Party Beneficiaries
34	Notifications of Governmental Action-Occupational Safety And Health
35	References
36	Approval
ATTACHMENT A	Property Description
ATTACHMENT B	Scope of Services
ATTACHMENT C	Equipment Lease Documents
ATTACHMENT D	Notice to Proceed
ATTACHMENT E	Delivery and Acceptance Certificate
ATTACHMENT F	Guaranty of Energy Cost Savings
ATTACHMENT G	Contract Cost and Annual Services
ATTACHMENT H	Change Order Form
ATTACHMENT I	Maintenance Services
ATTACHMENT J	CONTRACTOR Installed Equipment
ATTACHMENT K	Standards of Service (TBD)
ATTACHMENT L	Modifications to Technical Energy Audit Documentation
ATTACHMENT M	Form of CUSTOMER's Approval of Sample or Specifications

**ENERGY SERVICES AGREEMENT**  
**BY AND BETWEEN**  
**DOUGLAS COUNTY SCHOOL DISTRICT**  
**AND**  
**CONTRACTOR**

**THIS ENERGY SERVICES AGREEMENT** (the "Agreement") is entered into this \_\_\_ day of \_\_\_\_\_ 2007, by and between Douglas County School District, having its principal place of business located at 1638 Mono Ave, Minden, NV 89423 (hereinafter referred to as "CUSTOMER") and CONTRACTOR, \_\_\_\_\_ (hereinafter referred to as "CONTRACTOR"). The parties to this Agreement will be collectively referred to as the "Parties" and individually as a "Party."

**WHEREAS**, CUSTOMER wishes CONTRACTOR to perform a project ("Project") consisting of certain energy conservation services and installations (the "Scope of Services") at the CUSTOMER's buildings described in Attachment A (the "Property"), and CONTRACTOR wishes to perform such services;

**WHEREAS**, CUSTOMER owns the Property; and

**WHEREAS**, N.R.S. 332 legislation provides the authority for public agencies or instrumentalities such as CUSTOMER to contract for energy services under such terms as described in State or local regulations.

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

**SECTION 1                    SCOPE OF SERVICES**

(a) Financial-grade Operational Audit: Upon signature of this Agreement by the Parties, CONTRACTOR will begin performance of a Financial-grade Operational Audit in accordance with the Scope of Work described below [or in attached scope exhibit – current draft appears at the end of this document]. CONTRACTOR agrees to complete the Financial-grade Operational Audit and present to the CUSTOMER a final report within ninety (90) calendar days from the execution of this Agreement.

The CUSTOMER agrees to assist CONTRACTOR in performing the Financial-grade Operational Audit by working diligently to provide full and accurate information. CUSTOMER agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

The primary purpose of the Financial-grade Operational Audit is to identify specific areas where Energy Conservation Measures ("ECMs") can provide the CUSTOMER with long-term energy savings and define a program for installation of such ECMs.

The audit report shall include a scope of work (the "Construction Work") for installation of ECMs in accordance with the terms of this Agreement. The Parties have established a not-to-exceed cost of \$ \_\_\_\_\_ for the Construction Work. The Construction Work will be funded based on energy savings achieved by the ECMs, and additional work beyond the not-to-exceed cost does not affect the CUSTOMER's capital expense.

(b) Audit Review: The CUSTOMER's representatives shall meet with CONTRACTOR to review the Financial Grade Energy Audit and agree upon the scope of Construction Work. CONTRACTOR shall document: (i) the scope of work, (ii) the corresponding energy cost savings guaranteed by CONTRACTOR, and (iii) a payment schedule, by preparing Attachments to this Agreement (Attachments B, F and G, respectively). The CUSTOMER shall issue and authorize a Notice to Proceed, substantially in the form of Attachment D.

(c) Construction Work: Upon delivery by the CUSTOMER to CONTRACTOR of the Notice To Proceed, CONTRACTOR shall furnish all labor, materials and equipment and perform all work required for the completion of the Construction Work including the installation of the ECMs. If CONTRACTOR does not receive a Notice to Proceed from CUSTOMER within (90) days of delivery of the Audit described in section 1(a) above, the contract price shall be adjusted to reflect additional costs incurred by CONTRACTOR as a result of such delay. CUSTOMER and CONTRACTOR shall mutually plan the scheduling of the construction work. The construction work will be planned to minimize the interruption of the daily routine of CUSTOMER's staff and students except as permitted in writing by CUSTOMER. CONTRACTOR will list installed ECMs on Attachment J attached hereto and made a part hereof at the time that construction is complete. Attachment J may be modified as provided for herein.

(d) Disposal: CONTRACTOR, at its cost, shall be responsible for disposal of all non-hazardous equipment and materials which are rendered useless and removed as a result of the installation of the ECMs pursuant to this Agreement. In addition, CONTRACTOR shall, at its cost, cause all lamps and PCB-contaminated ballasts, if any, which have been rendered useless and removed as a result of the installations of the ECMs to be transported and disposed of via recycling and incineration, respectively. All other existing PCB-contaminated ballasts, lamps and any other hazardous substances, however, remain the responsibility of CUSTOMER and CONTRACTOR shall assume no liability in connection with their removal, handling, transportation, and/or disposal.

(e) Asbestos: Unless explicitly and specifically identified in Attachment B, CONTRACTOR's Scope of Services is predicated on the viability of this Project without any asbestos abatement being required by CONTRACTOR. In the event that (i) CONTRACTOR encounters any friable asbestos which is in the immediate vicinity of CONTRACTOR's work, or (ii) CONTRACTOR determines that its work will result in the disturbance of asbestos material, or (iii) CONTRACTOR determines that the presence of asbestos material will impede CONTRACTOR's work, CONTRACTOR will notify CUSTOMER of the same and CUSTOMER will, at its cost, cause the asbestos to be promptly and properly removed, enclosed, encapsulated or otherwise abated in accordance with applicable laws and regulations, or alternatively, CUSTOMER, at its cost, may provide written test reports showing that asbestos in that area has been properly removed, enclosed encapsulated or otherwise abated in accordance with applicable laws. In the event CONTRACTOR cannot determine whether any particular material does or does not contain asbestos, CUSTOMER, upon CONTRACTOR's written request, will, at its cost, promptly perform tests or cause tests to be performed in order to determine whether or not such material contains asbestos and/or whether there are unacceptable levels of airborne particulate material containing asbestos or provide such a test report. Under no circumstances, shall CONTRACTOR be required to handle asbestos.

(f) Maintenance: To the extent provided for in Attachment I - "Maintenance Services," CONTRACTOR will service and maintain the equipment that is specifically identified therein, at a cost to the CUSTOMER which is provided for in Section 4 and Attachments G, for the Term of this Agreement. Except for ECMs (or other equipment) which are to be maintained by CONTRACTOR, CUSTOMER shall be responsible for servicing and maintaining the ECMs (and such other equipment) at its own cost.

(g) Measurement & Verification: To the extent provided for in Attachment F – “Determination of Energy Cost Savings” - CONTRACTOR will also supply such ongoing Measurement & Verification services to the CUSTOMER which may be agreed upon between the Parties at an annual fee to be set forth in Section 4 and Attachment G.

(h) Compliance with Law: CONTRACTOR shall comply with and obtain, at its expense, all licenses and permits required by Federal, state and local laws in connection with the installation of the ECMs. To the extent that CONTRACTOR agrees to perform operations and/or maintenance of specified ECMs or other equipment, it shall comply with and obtain, at its expense, all licenses and permits which may be required by Federal, state and local laws in connection with the operation and/or maintenance of such specified ECMs. In the event that CONTRACTOR can not procure any such license or permit in light of a requirement that CUSTOMER is required to do so, CUSTOMER will procure the same. CONTRACTOR shall pay the required prevailing wage rates for work in connection with this Project to the extent required by Nevada law.

(i) Taxes: Notwithstanding any other provision herein, CUSTOMER shall be responsible for all taxes arising from or in connection with CUSTOMER's participation in this Agreement and the benefits to CUSTOMER hereunder. CUSTOMER shall reimburse CONTRACTOR for any taxes, permits or fees not in effect on the date of this Agreement, but for which CONTRACTOR may become liable during the Term of this Agreement. If CUSTOMER is a tax-exempt entity, it shall cooperate reasonably with CONTRACTOR to ensure purchases of materials or equipment required under this Agreement enjoy any reasonable favorable tax considerations available under applicable State or local law or regulation.

(j) Non-Discrimination: CONTRACTOR agrees not to knowingly or willfully discriminate against any employee, or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex, race, disability, color, religion, national origin, Vietnam era military service or ancestry in accordance with applicable Federal, State or local laws.

(k) Standards of Service and Comfort: CUSTOMER shall operate the ECMs in a manner that shall provide the standards of service and comfort provided for in Attachment K hereto (to be attached).

(l) Specifications: Prior to beginning the work hereunder, CONTRACTOR may provide (or CUSTOMER, at its option, may reasonably request to have CONTRACTOR written specification of, any ECMs to be installed. CUSTOMER shall furnish its written approval or disapproval of each such written specification within ten (10) working days following its receipt of written notice by CONTRACTOR of completion of each such sample installation or the provision of such written specifications to CUSTOMER. CUSTOMER's approval of such specifications shall be in substantially the form of Attachment \_\_ hereto. If CUSTOMER disapproves any such ECM, CONTRACTOR shall have the right to provide a substitute ECM which conforms to the applicable specifications or is equivalent to any applicable sample provided and approved by CUSTOMER hereunder, for CUSTOMER's approval. In the event CUSTOMER approves the substitute ECMs (in writing), CONTRACTOR shall revise the Attachments to reflect each such substitution, subject to CUSTOMER's written approval of each revised Attachment. In the event that CUSTOMER does not approve or disapprove of any ECM(s) within ten (10) working days following CONTRACTOR 's written notice to CUSTOMER that the written specification is ready for inspection, CUSTOMER shall be deemed to have given its approval. If, however, CUSTOMER again does not approve of any such substituted ECMs or specifications, the Parties hereby agree to negotiate a mutually acceptable solution. CUSTOMER shall not unreasonably withhold any approval provided for herein.

(m) Duties, Obligations and Responsibilities of CONTRACTOR:

(i) All labor furnished under this Agreement shall be competent to perform the tasks undertaken, that all materials and equipment provided shall be new and of appropriate quality, and that the completed work shall comply with the requirements of this Agreement.

(ii) CONTRACTOR shall maintain the Project site in a reasonably clean condition during the performance of the construction work.

(iii) CONTRACTOR shall thoroughly and regularly clean the Project site of all non-hazardous debris, trash and excess material or equipment.

(iv) At all times relevant to this Agreement, CONTRACTOR shall permit CUSTOMER or any of its representatives to enter upon the Project site to review or inspect the construction work without formality or other procedure.

(v) CONTRACTOR will provide equipment manuals and other appropriate information regarding equipment installed hereunder to CUSTOMER at or about the time of Substantial Completion.

**SECTION 2 OWNERSHIP OF ECMS**

Ownership of and title to the ECMS referenced in Schedule E(1) to each Delivery and Acceptance Certificate (Attachment E) will automatically transfer to the CUSTOMER upon both: (a) the delivery of each such Delivery and Acceptance Certificate and Schedule E(1) by CUSTOMER to CONTRACTOR, the execution and delivery of which shall not be unreasonably withheld or delayed, and (b) completion of all CUSTOMER's payment obligations to CONTRACTOR, excluding payment obligations related to maintenance or other annual services hereunder.

Subject and subordinate to Lessors rights pursuant to the Lease, as defined below, CONTRACTOR under this Agreement shall be entitled to all rights, benefits and remedies afforded a secured party under law with respect to the equipment installed pursuant to this Agreement, including but not limited to those under the Uniform Commercial Code, as adopted in the \_\_\_\_\_ of \_\_\_\_\_ or any other applicable state ("Code"). CONTRACTOR shall retain such security interest in the ECMS, pursuant to this Agreement, for equipment installed hereunder until CUSTOMER shall have accepted the same and title has transferred to CUSTOMER. If requested by CONTRACTOR in connection therewith, CUSTOMER agrees to provide to CONTRACTOR appropriate financing statements and other documents necessary in order for CONTRACTOR and/or any bank, lender or financial institution to whom CONTRACTOR has assigned any interest in this Agreement, to perfect said subordinate security interest in the ECMS.

**SECTION 3 FINANCIAL SERVICES**

(a) Energy Performance Contract Municipal Lease and Option to Purchase Agreement

(i) CUSTOMER hereby represents and warrants to CONTRACTOR that CUSTOMER intends to enter into a lease ("Lease") with a third party lessor. CUSTOMER's obligation to make payments pursuant to the Lease will commence on the date that funds are deposited in the Escrow Fund ("Commencement Date").

(ii) CUSTOMER acknowledges and understands that the amount of the Lease

payments will be subject to current market conditions at the time of final credit approval and that the effectiveness of the Lease will be subject to final credit approval. CUSTOMER further acknowledges that its responsibility for the payments described in this Agreement is in no way contingent on the effectiveness of the Lease.

#### **SECTION 4                      COMPENSATION AND PAYMENT**

(a) During the period beginning on the date of CONTRACTOR receives the Notice to Proceed and continuing through the Date of Substantial Completion with respect to each Phase, CUSTOMER will make monthly progress payments to CONTRACTOR based upon the portion of the Project completed at the end of each month, as respectively provided for in Attachment G for which payment is being made. CUSTOMER shall (within five (5) days of receipt) execute and deliver to CONTRACTOR completed forms E-1 (Attachment E-1) upon completion by CONTRACTOR of each ECM. A Final Delivery and Acceptance Certificate (Attachment E-2) shall be executed by CUSTOMER upon final completion of the ECMs. CUSTOMER shall not unreasonably withhold or delay the execution of any Delivery and Acceptance Certificate, which shall be deemed approved by CONTRACTOR if CUSTOMER has not taken action with respect to any Certificate within ten (10) days of its receipt thereof. For the purposes of this Agreement the term "Substantial Completion" shall mean that the subject ECM has been demonstrated by CONTRACTOR to be operating in a manner consistent with its manufacturer's intended use. For the purposes of this Agreement, the terms "Final Completion" or "Final Acceptance" shall mean that CONTRACTOR has fulfilled all of its construction obligations for all ECMs installed under this Agreement. This shall include the completion of all punchlist items and the submission of all required documentation.

(b) During the month following each successive twelve (12) month period beginning with the first day of the month following the date on which the CUSTOMER executes a Final Delivery and Acceptance Certificate (Attachment E-2), CUSTOMER shall pay the annual maintenance and measurement and verification (M&V) service fees (collectively, the "Performance Period Fee") set forth in Attachment G.

(c) Thirty (30) days after the date of an invoice on account of work done by CONTRACTOR, CUSTOMER shall pay CONTRACTOR 95% of the value of CONTRACTOR's work. The remaining 5% retained shall be held as additional security for the faithful performance by CONTRACTOR of all the work required under this Agreement and shall be paid to CONTRACTOR within thirty (30) days after Final Acceptance.

(d) Amounts not paid to CONTRACTOR on or before the due dates specified in Sections 4(a)-(c) above will accrue interest at the rate of the prime interest rate plus four (4) percent for the number of days following the due date until such time as such amount due has been paid in full.

(e) The services provided for hereunder may overlap one another. In that regard, the payments to be made by CUSTOMER to CONTRACTOR with respect to one or more services shall be in addition to one another.

(f) CUSTOMER may purchase an extended warranty from CONTRACTOR on all ECMs and related equipment installed under this Agreement for an amount to be mutually determined.

#### **SECTION 5                      TERM**

The Term of this Agreement shall begin on the date above first written and shall end on that date which is exactly \_\_\_\_ ( ) years from the first day of the month following the date of execution of

the Delivery and Acceptance Certificate (Attachment E-2) upon Substantial Completion of this Project by the CUSTOMER, unless terminated prior to such date, as provided for in Section 12 and/or Section 14 and/or Section 32 of this Agreement. If not otherwise terminated as provided for herein, the Term of this Agreement shall terminate simultaneously with any termination of the CUSTOMER's Lease described in Section 3 above. Notwithstanding the foregoing, nothing in this Section 5 shall relieve the CUSTOMER from paying amounts, which accrued prior to such termination of this Agreement, when due under this Agreement.

**SECTION 6                      GUARANTEE OF ENERGY SAVINGS**

CONTRACTOR will guarantee to the CUSTOMER the amount of energy savings determined in accordance with Attachment F, "Guaranty of Energy Cost Savings".

**SECTION 7                      RIGHT OF ENTRY/SPACE**

During the Term of this Agreement, CUSTOMER shall provide CONTRACTOR, and its employees, agents and subcontractors, including any utility which provides or may provide any payment under this Agreement, access to the Property for the purpose of fulfilling CONTRACTOR's obligations under this Agreement. CUSTOMER shall provide mutually satisfactory space for the installation and operation of the ECMs and shall protect such equipment in the same careful manner that CUSTOMER protects its property. Additionally, CUSTOMER shall provide CONTRACTOR remote electronic access to the Energy Management System (if required) during the Term of this Agreement. CONTRACTOR shall obey and abide by any and all reasonable rules of CUSTOMER relative to the Property as they would directly relate to CONTRACTOR's performance of its obligations under this Agreement.

**SECTION 8                      CHANGES IN WORK**

The quantity, quality, dimensions, type or other characteristics of the ECMs may be changed only by written consent of the CUSTOMER and CONTRACTOR (and, where required by the Lease, the Lessor), via the execution of a Change Order Form (Attachment H). In addition, the Scope of Services may be reduced or expanded to include other significant energy efficiency measures and facilities not included within the ECMs listed on Attachment B (and, following Substantial Completion, listed on Attachment J) by the execution of such a Change Order Form.

**SECTION 9                      WARRANTIES**

(a) CONTRACTOR warrants that the design, engineering, and installation services it performs will be performed consistent with good engineering practices and that such work is warranted to be free from defects in materials and workmanship for a period of one (1) year from the date of execution of the Delivery and Acceptance Certificate by the CUSTOMER with respect to Substantial Completion. Any manufacturers' warranties which exceed this one (1) year period shall be assigned to CUSTOMER to the extent allowed by the manufacturer. Except as provided above, CONTRACTOR MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO THE VALUE, DESIGN, AND CONDITION OR FITNESS FOR USE OR PARTICULAR PURPOSE AND MERCHANTABILITY, REGARDING THE ECMs OR ANY SERVICES PROVIDED HEREUNDER.

(b) CUSTOMER may purchase extended warranty coverage for any and all equipment installed under this Agreement as long as the annual cost of the project inclusive of the extended warranty coverage does not exceed the guaranteed savings value should this agreement be subject to rules or laws requiring annual savings to exceed annual costs. Payment of such shall be in accordance with Section 4(d) and Attachment G.

**SECTION 10                    CUSTOMER ROLE AND RESPONSIBILITIES**

(a)    Operations:    The CUSTOMER shall operate the equipment installed hereunder in accordance with the manufacturers' recommendations and the procedures supplied to the CUSTOMER by CONTRACTOR.

(b)    Maintenance:    The CUSTOMER shall, at its expense, maintain the Property in good working order during the Term of this Agreement. Except as may otherwise be provided for in Attachment I, the CUSTOMER will maintain, at CUSTOMER's expense: (i) the equipment and all other components which comprise the ECMs (following the date of Substantial Completion), and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of the ECMs.

(c)    Malfunctions:    The CUSTOMER will notify CONTRACTOR immediately in the event of any malfunction in the operation of the ECMs or the equipment installed hereunder.

(d)    Protection of ECMs:    Except in the case of emergency, the CUSTOMER will not remove, move, alter, turn off or otherwise significantly affect the operation of the equipment installed hereunder or the operation of the ECMs, or any individual part thereof, without the prior approval of CONTRACTOR, which approval shall not be unreasonably withheld. After receiving CONTRACTOR's approval, CUSTOMER shall proceed as instructed. CUSTOMER shall act reasonably to protect the ECMs from damage or injury, if, due to an emergency, it is not reasonable to notify CONTRACTOR before acting. CUSTOMER agrees to protect and preserve the facility envelope and the operating condition of all ECMs, mechanical systems, and other energy consuming systems located on the Property.

(e)    Measurement & Verification System:    CUSTOMER shall not alter, move, modify or otherwise change the measurement and verification system or any component thereof without the written consent of CONTRACTOR unless such action is in accordance with operating procedures provided by CONTRACTOR.

(f)    Adjustment to Baseline: If, in the reasonable opinion of CONTRACTOR, the CUSTOMER does not reasonably protect the ECMs and/or maintain the Property in good repair and good working condition, then CONTRACTOR will equitably adjust the baseline, as referenced in Attachment F, for any increased energy usages at the Property.

(g)    Changes to Property:    The CUSTOMER will notify CONTRACTOR in writing at least thirty (30) days prior to making any change to the Property that would significantly affect the energy usage at the Property, including but not limited to changes in the hours or days that the Property is occupied or operated, the number of occupants (including, but not limited to, staff, faculty and students), the activity conducted, the equipment, or the size of the Property. In the event CONTRACTOR receives such notification or otherwise determines that such a change has occurred, it will make the appropriate revisions to the Attachments or take such other action as may be provided for hereunder.

(h)    Energy Usage Data:    The CUSTOMER will make available to CONTRACTOR, on a monthly basis for the Term of this Agreement, copies of all energy bills, energy usage data, and any and all other such documentation maintained by the CUSTOMER, as requested by CONTRACTOR, which is necessary for CONTRACTOR to determine and satisfy all of its obligations under this Agreement.

(i)    Insurance and Risk of Loss or Damage: Without limiting any of its obligations or liabilities under this Agreement, the CUSTOMER will, at its expense, provide and maintain at all times during the Term of this Agreement, sufficient insurance against the loss or theft of or damage to the ECMs, ECM-related equipment and all components installed hereunder, for the full

replacement value thereof.

CUSTOMER assumes all risk of loss of or damage to the ECMs from any cause whatsoever except to the extent that such loss or damage was caused by the negligence of CONTRACTOR. In the event of damage to any item of the equipment installed hereunder or ECMs, CUSTOMER will promptly notify CONTRACTOR and immediately place the same in good repair with the proceeds of any insurance received applied to the cost of such repair. If CUSTOMER determines that any item of the ECMs is lost, stolen, confiscated, destroyed or damaged beyond repair, CUSTOMER will replace the same with like equipment in good repair in a timely fashion.

If, following CUSTOMER's execution of the Delivery and Acceptance Certificate to be provided upon Substantial Completion and subsequent to CUSTOMER's complete payment to CONTRACTOR in accordance with Section 4(a), as that amount may then have been modified in accordance with this Agreement, any fire, flood, other casualty, or condemnation renders a majority of the Property incapable of being occupied and renders the ECMs or the equipment installed hereunder inoperable and, in the case of a casualty, the affected portion of such ECMs or equipment is not reconstructed or restored within one hundred and twenty (120) days from the date of such casualty, CONTRACTOR and/or CUSTOMER may terminate this Agreement by delivery of a written notice to the other Party. Upon such termination, CUSTOMER shall pay CONTRACTOR any amounts, or pro-rata portions thereof, accrued under Section 4(b)-(e), Attachment G and the applicable Termination Value, if any, set forth on Attachment L or in Section 4. CONTRACTOR shall not be responsible for any savings deficiencies resulting from ECMs being rendered useless for the period of time prior to reconstruction of the ECM. The savings guaranty will be adjusted to account for the unavailability of the ECM.

(j) Telephone/Broadband: CUSTOMER is responsible for installing and maintaining either telephone lines or providing broadband access to the energy management system via CUSTOMER's Local Area Network (LAN). CUSTOMER is responsible for all associated costs for the energy management system's telephone lines or broadband access.

(k) Protection: CUSTOMER shall at all times act reasonably to protect the ECMs from damage, theft or injury to the same extent and in the same manner in which it protects its other property.

(l) Alteration: CUSTOMER agrees not to move, alter or change the ECMs in any way that causes a reduction in the level of efficiency or savings generated by any ECM or the equipment installed hereunder without obtaining CONTRACTOR's prior written approval which shall not be unreasonably withheld.

(m) Storage: CUSTOMER will provide reasonable rent free space for CONTRACTOR, or any of its subcontractors, to mobilize and store its supplies, tools and equipment during installation of the ECMs or other activities by CONTRACTOR within the Property pursuant to this Agreement for which such storage may be required. Said storage space shall be provided with locking capacity acceptable to CONTRACTOR. Only CONTRACTOR or any of CONTRACTOR's subcontractors, and the CUSTOMER's assigned personnel shall have access to the storage. CUSTOMER assumes no responsibility nor will CUSTOMER provide any additional security for the storage provided.

(n) Fuel: CUSTOMER shall procure and pay for all energy and fuel for the operation of the Property.

**SECTION 11                    DEFAULTS BY CUSTOMER AND CONTRACTOR**

(a) CUSTOMER shall be in default under this Agreement upon the occurrence of any of the following:

- (i) CUSTOMER fails to pay when due any amount to be paid under this Agreement and such failure continues for a period of five (5) working days after notice of overdue payment is delivered by CONTRACTOR to the CUSTOMER;
- (ii) CUSTOMER fails to perform or meet any of its required duties or obligations under this Agreement and fails to cure such failure and the effects of such failure within thirty (30) days of receipt of written notice of default, unless such failures and effects cannot be completely cured within thirty (30) days after said written notice, in which case a default shall exist only if CUSTOMER does not commence and diligently pursue to cure such failure and effects as soon as possible;
- (iii) CUSTOMER goes into receivership, or makes an assignment for the benefit of creditors whether voluntary or involuntary, or a petition is filed by or against the CUSTOMER under any bankruptcy, insolvency or similar law and such petition is not dismissed within sixty (60) days.

(b) CONTRACTOR shall be in default under this Agreement upon the occurrence of the following:

- (i) CONTRACTOR fails to perform or meet any of its required duties or obligations under this Agreement and fails to cure such failure or effects of such failure within thirty (30) days of receipt of written notice of default, unless such failure or effects cannot be completely cured within thirty (30) days after said written notice, in which case a default shall exist only if CONTRACTOR does not commence and diligently pursue to cure such failure as soon as possible.

**SECTION 12                    REMEDIES FOR DEFAULTS**

(a) In the event CUSTOMER defaults under this Agreement, CONTRACTOR may, without limiting any other remedy available under this Agreement or common law, take one or more of the following actions:

- (i) stop its work under this Agreement until the amount owing is received or the outstanding Owner obligation satisfied. The contract performance time and compensation will be adjusted to reflect any delay and/or additional costs caused by such suspension;
- (ii) without recourse to legal process, terminate this Agreement by delivery of written notice of termination; and
- (iii) Institute mediation and arbitration proceedings pursuant to the provisions of Section 13 below.

(b) In the event CONTRACTOR defaults under this Agreement, CUSTOMER may terminate this Agreement and bring an action in law for direct damages.

**SECTION 13                    ARBITRATION**

In the event of any dispute whatsoever between the Parties, they shall exhaust every reasonable

effort to settle or dispose of the same, including a discussion of the matter between senior executives of each Party.

Any controversy or claim arising out of or relating to this Agreement or the breach thereof, not adjusted or disposed of by mutual agreement between the Parties, shall be first mediated as a condition precedent to arbitration. If the parties cannot agree upon a mediator or mediation procedure, they shall proceed under the Mediation Rules and Procedures of the American Arbitration Association. Any dispute not settled by mediation shall be resolved by arbitration under the Commercial Arbitration Rules then obtaining of the American Arbitration Association, judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof, and arbitration decision shall be final and binding on the Parties. Unless otherwise agreed, mediation and arbitration proceedings shall be filed in the Regional office of the American Arbitration Association nearest the Project. All arbitrators shall be bound by the terms of this Agreement. The expenses of any arbitration shall be borne equally by the Parties to the arbitration, provided that each Party shall pay for and bear the cost of its own experts, evidence, and counsel.

#### **SECTION 14                    TERMINATION**

(a) At any time after the CUSTOMER has executed the Delivery and Acceptance Certificate to be provided upon Substantial Completion, CUSTOMER may terminate this Agreement upon thirty (30) days written notice to CONTRACTOR, provided that CUSTOMER has paid to CONTRACTOR: (a) all amounts due, subject to Section 32, as set forth in Section 4 and on Attachment G (other than amounts due for future performance by CONTRACTOR).

(b) The CUSTOMER may terminate this Agreement for convenience prior to issuance of the Notice to Proceed described in Section 1(c) above. Upon such termination, the CUSTOMER shall pay CONTRACTOR the amount of \$ \_\_\_\_\_ in liquidated damages to compensate CONTRACTOR for the cost performing the Financial Grade Operational Audit. The Parties agree that it would be extremely difficult to accurately determine the amount of damages suffered by CONTRACTOR as a result of the CUSTOMER's termination; that the liquidated damage amount specified herein constitutes a fair and reasonable amount to be received by CONTRACTOR as agreed and liquidated damages for the CUSTOMER's termination; and receipt of such liquidated damages by CONTRACTOR shall not constitute a penalty or a forfeiture.

(c) If, within two (2) years of the CUSTOMER's termination of this Agreement prior to the Notice to Proceed, the CUSTOMER proceeds with installation of ECMs of a type or design similar to those proposed by CONTRACTOR's energy audit, then the CUSTOMER shall pay CONTRACTOR the amount of \$ \_\_\_\_\_ in liquidated damages to compensate CONTRACTOR for use of CONTRACTOR's concepts, systems and trade secrets, and for CONTRACTOR's development and lost opportunity costs for this Project. The Parties agree that it would be extremely difficult to accurately determine the amount of damages suffered by CONTRACTOR as a result of the CUSTOMER's termination and subsequent use of CONTRACTOR's work product; that the liquidated damage amount specified herein constitutes a fair and reasonable amount to be received by CONTRACTOR as agreed and liquidated damages for the CUSTOMER's termination; and receipt of such liquidated damages by CONTRACTOR shall not constitute a penalty or a forfeiture.

#### **SECTION 15                    INSURANCE**

Without limiting any of its obligations or liabilities under this Agreement, CONTRACTOR shall provide and maintain at its expense the following minimum insurance coverage's where reasonable market availability for such insurance exists:

(a) Workers' Compensation and Employer's Liability Insurance at the level required by law.

- (b) Comprehensive General Liability Insurance, including contractual liability: Bodily Injury per person, \$1 million; Bodily Injury per occurrence, \$1 million; Property Damage per occurrence, \$1 million; Personal Injury per occurrence, \$1 million; and Excess Liability, \$5 million.
- (c) Comprehensive Automobile Liability Insurance, including owned, non-owned and hired automotive equipment: Bodily Injury per person, \$1 million; Bodily Injury per occurrence, \$1 million; Property Damage per occurrence, \$1 million; and Excess Liability, \$5 million.
- (d) Payment and Performance Bond. CONTRACTOR shall within thirty (30) days of execution of this Agreement, deliver to the CUSTOMER Performance and Payment Bonds in a sum equal to the contract price with sureties satisfactory to the CUSTOMER, conditioned upon the faithful performance by CONTRACTOR, for the implementation of the ECMs as it may be from time to time modified by Change Orders, such bonds to be in such form and otherwise to contain such provisions as are reasonably satisfactory to the CUSTOMER. CONTRACTOR shall deliver to CUSTOMER the Payment and Performance Bond prior to commencement of any construction work in respect of this Agreement. The Payment and Performance Bonds required hereunder shall expire upon final acceptance of all ECMs required under this Agreement, and shall not secure any energy savings which may be guaranteed by CONTRACTOR under this Agreement.
- (e) CUSTOMER will provide and maintain insurance as described in Section 10 (i), naming CONTRACTOR as additional named insured and waiving subrogation. CONTRACTOR shall be primary on such insurance.

**SECTION 16                      INDEMNIFICATION AND LIMIT OF LIABILITY**

- (a) Except as otherwise expressly provided herein, no Party nor its respective officers, directors, agents, employees, parent, subsidiaries or affiliates or their officers, directors, agents or employees shall be liable, irrespective of whether such claim of liability is based upon breach of warranty, tort, (including negligence, whether of any of the Parties to this Agreement or others), strict liability, contract, operation of law or otherwise, to any other Party, or its parent, subsidiaries, affiliates, officers, directors, agents, employees, successors or assigns, or their respective insureds, for incidental, indirect, punitive or consequential damages, connected with or resulting from performance or non-performance of this Agreement, or anything done in connection therewith including, without limitation, claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Agreement), and increased expense of, reduction in or loss of power generation production or equipment used therefore.
- (b) Notwithstanding any other provision of this Agreement, CONTRACTOR's, its officers, employees, agents, affiliates, or subcontractors' aggregate liability in contract, tort, or otherwise, without limitation, under this Agreement, shall in all cases be limited to the sum of the payments received by CONTRACTOR pursuant to Section 4 of this Agreement.
- (d) CONTRACTOR agrees to defend, indemnify and hold CUSTOMER harmless from and against any and all claims for damages sustained by third parties arising by reason of bodily injury or damage to third party property caused by CONTRACTOR's negligent physical acts (or the negligent physical acts of any sub-contractor hired by CONTRACTOR) or willful misconduct. To the extent that any such damages are covered by the Comprehensive General Liability Insurance policy that is maintained by CONTRACTOR, CONTRACTOR shall not be required to indemnify CUSTOMER in excess of the Contract Cost in Attachment G. CONTRACTOR, however, in no event shall be obligated to indemnify CUSTOMER to the extent that any injury or damage is caused by the negligence of CUSTOMER or any entity for which CUSTOMER is legally responsible.

(e) CUSTOMER agrees to defend, indemnify and hold harmless CONTRACTOR, its officers, agents and employees, from and against any and all claims, liabilities, actions, demands, judgments, losses, costs, expenses (including reasonable attorneys' fees), suits, actions or damages ("claims") arising by reason of bodily injury, death or damage to property sustained by any person or entity to the extent caused by or sustained as a result of the negligence, willful misconduct or other wrongful act of CUSTOMER, its officers, agents, subcontractors or employees. CUSTOMER, however, in no event shall be obligated to defend CONTRACTOR to the extent that any injury or damage is caused by the negligence of CONTRACTOR or any entity for which CONTRACTOR is legally responsible.

#### **SECTION 17                    AGREEMENT INTERPRETATION AND PERFORMANCE**

The interpretation and performance of this Agreement, and the interpretation and enforcement of the rights of the Parties hereunder, shall be in accordance with and controlled by the laws of the Commonwealth of Massachusetts. In the event of any ambiguity or conflict in meaning, the terms of this Agreement shall not be construed against the drafting Party based upon that Party's having drafted this Agreement. All lawsuits commenced under this Agreement shall be brought in that State Court having jurisdiction over matters arising in the county in which this contract shall be performed.

#### **SECTION 18                    PRIVILEGED AND PROPRIETARY INFORMATION**

(a) CONTRACTOR's systems, means, cost, and methodologies of evaluating, implementing, accomplishing and determining energy savings and the terms of the Agreement for this Project shall be considered privileged and proprietary information. CUSTOMER shall use the same level of effort to protect and safeguard such information as it employs to safeguard its own confidential information. CUSTOMER shall not disclose such proprietary information without the express written consent of an officer of CONTRACTOR unless required to do so by statute or regulation. When any request for disclosure of such information is made under any applicable freedom of information law ("FOIL"), CUSTOMER will provide prompt verbal and written notice to CONTRACTOR such that CONTRACTOR will have the opportunity to timely object under FOIL should it desire to object to such disclosure of that information in whole or in part. In the event that CUSTOMER is required to make a filing with any agency or other governmental body, which includes such information, CUSTOMER shall notify CONTRACTOR and cooperate with CONTRACTOR in order to seek confidential treatment of such information included within any such filing or, if all such information cannot be protected from disclosure, to request that CUSTOMER be permitted to redact portions of such information, as CONTRACTOR may designate, from that portion of said filing which is to be made available to the public.

(b) CONTRACTOR's energy audit, drawings, specifications and other documents are Instruments of Service for use solely with respect to this Project. Upon complete execution of this Agreement, CONTRACTOR grants the CUSTOMER a nonexclusive license to reproduce CONTRACTOR's Instruments of Service solely for purposes of maintaining and using the Project, provided the CUSTOMER complies with all obligations, including prompt payment of all sums when due, under this Agreement. The CUSTOMER shall not assign or transfer any portion of this license without CONTRACTOR's written consent. CONTRACTOR's Instruments of Service may not be used for future additions or alterations to this Project without CONTRACTOR's written consent. Any unauthorized use of CONTRACTOR's Instruments of Service shall be at the CUSTOMER's sole risk and without liability to CONTRACTOR.

#### **SECTION 19                    SEVERABILITY**

In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement.

**SECTION 20**                    **ASSIGNMENTS AND SUBCONTRACTING**

(a) CONTRACTOR may elect to use subcontractors in meeting its obligations hereunder. CUSTOMER shall approve all significant subcontractors and outside professionals in advance, which approval shall not be unreasonably withheld or delayed.

(b) CUSTOMER shall not assign, transfer, or otherwise dispose of this Agreement, the ECMs, or any interest therein, or sublet or lend the ECMs or permit the ECMs to be used by anyone other than the CUSTOMER and CUSTOMER's employees without the prior express written consent of CONTRACTOR (or, if applicable, the Lessor) such consent not to be unreasonably withheld. If CUSTOMER transfers ownership or its interest in the Property, the CUSTOMER will terminate this Agreement as provided for in Section 14.

(c) CONTRACTOR shall not assign this Agreement in whole or in part to any other party without first obtaining the consent of CUSTOMER, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, CONTRACTOR may assign, without obtaining the consent of CUSTOMER, its rights and obligations under this Agreement in whole or in part to any affiliated or associated company of CONTRACTOR and its rights for payments under this Agreement to any financial institution, lender or investor in connection with a leasing or financing arrangement for the ECMs. CONTRACTOR will notify CUSTOMER thirty (30) days prior to any such assignment.

**SECTION 21**                    **WAIVER**

The failure of either Party to require compliance with any provision of this Agreement shall not affect that Party's right to later enforce the same. It is agreed that the waiver by either Party of performance of any other terms of this Agreement or of any breach thereof will not be held or deemed to be a waiver by that Party of any subsequent failure to perform the same or any other term or condition of this Agreement or any breach thereof.

**SECTION 22**                    **FORCE MAJEURE**

(a) If either Party shall be unable to carry out any part of its obligations under this Agreement (except CUSTOMER's obligation to make payments when due) due to causes beyond its control ("Force Majeure"), including but not limited to an act of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders or restraints of any kind of the government of the United States or any state or any of their departments, agencies, or officials, or any other civil governmental, transportation delays, military or judicial authority, war, blockage, insurrection, riot, sudden action of the elements, fire, explosion, flood, earthquake, storms, drought, landslide, or explosion or nuclear emergency, this Agreement shall remain in effect but the affected Party's obligations shall be suspended for a period equal to the disabling circumstances, provided that:

(i) the non-performing Party gives the other Party prompt written notice describing the particulars of the Force Majeure, including but not limited to the nature of the occurrence and its expected duration, and continues to furnish timely regular reports with respect thereto during the period of Force Majeure;

(ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(iii) no obligations of either Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;

(iv) the non-performing Party uses reasonable efforts to remedy its inability to perform; and

(v) the Term of this Agreement, at CONTRACTOR's option, shall be extended for a period equal to the number of days that the Force Majeure prevented the non-performing Party from performing.

(b) Any decision by the CUSTOMER to close or change the use of the facilities or ECMs at the Property shall not constitute a Force Majeure excusing CUSTOMER's performance under this Agreement.

**SECTION 23**                    **CONTRACT DOCUMENTS**

(a) Upon execution of this Agreement by both Parties, this Agreement and its Attachments will constitute the entire Agreement between the Parties relating to the subject matter hereof, and supersedes all proposals, previous agreements, discussions, correspondences, and all other communications, whether oral or written, between the Parties relating to the subject matter of this Agreement.

(b) Headings are for the convenience of reference only and are not to be construed as a part of the Agreement.

(c) This Agreement may not be modified or amended except in writing signed by the Parties.

**SECTION 24**                    **NOTICES**

All notices and other communication under this Agreement (other than regularly scheduled payments) shall be deemed properly given upon receipt if delivered in person or sent by electronic facsimile with regular mail follow-up or sent by overnight delivery service or sent by registered mail, return receipt requested and postage prepaid, addressed as follows:

**To: CUSTOMER**  
Humboldt County School District  
310 E. Fourth Street  
Winnemucca, NV 89455

Attention: David Jensen  
Finance Director

**To CONTRACTOR:**

Attention:

Either Party may change such address from time to time by written notice to the other Party.

**SECTION 25**                    **RECORDS**

To assist CONTRACTOR in its performance of this Agreement, CUSTOMER shall (to the extent it has not already done so) furnish (or cause its energy suppliers to furnish) to CONTRACTOR, upon its request, accurate and complete data (kept by CUSTOMER or CUSTOMER's energy suppliers in the regular course of their respective businesses) concerning energy usage for the existing facilities at the Property, including the following data for the most current thirty-six (36) month period: utility records, occupancy information; descriptions of any changes in building structure or heating, cooling or other systems or energy requirements; descriptions of all energy consuming or saving equipment used on Property; descriptions of all energy management procedures presently utilized.

**SECTION 26                      REPRESENTATIONS AND WARRANTIES**

Each Party warrants and represents to the other that:

- (a) It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- (b) Its execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, as to CONTRACTOR, its organic instruments and, as to CUSTOMER, by all requisite municipal, board, or other action and are not in breach of any applicable law, code or regulation; this Agreement has been duly executed and delivered by the signatories so authorized, and constitutes each Party's legal, valid and binding obligation;
- (c) Its execution, delivery, and performance of this Agreement shall not result in a breach or violation of, or constitute a default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- (d) 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 adversely affect its ability to perform hereunder.
- (e) The persons executing this Agreement are fully authorized by law to do so.
- (f) In addition, CUSTOMER warrants and represents to CONTRACTOR that CUSTOMER has obtained or shall obtain all necessary governmental, legal, administrative and any other approval necessary for it to enter into this Agreement.

**SECTION 27                      INDEPENDENT CONTRACTOR**

Nothing in this Agreement shall be construed as reserving to CUSTOMER any right to exercise any control over or to direct in any respect the conduct or management of business or operations of CONTRACTOR on the Property. The entire control or direction of such business and operations shall be in and shall remain in CONTRACTOR, subject only to CONTRACTOR's performance of its obligations under this Agreement. Neither CONTRACTOR nor any person performing any duties or engaged in any work on the Property on behalf of CONTRACTOR shall be deemed an employee or agent of CUSTOMER.

Nothing in this Section shall be deemed to be a waiver of the CUSTOMER of the right to use its property. The CUSTOMER and CONTRACTOR are independent of one another and shall have no other relationship relating to or arising out of this Agreement. Neither Party shall have or hold itself out as having the right or authority to bind or create liability for the other by its intentional or negligent act or omission, or to make any contract or otherwise assume any obligation or responsibility in the name of or on behalf of the other Party.

**SECTION 28**                    **ADDITIONAL REPRESENTATIONS AND WARRANTIES OF CUSTOMER**

CUSTOMER hereby warrants and represents to CONTRACTOR that:

- (a) CUSTOMER presently intends to continue to use the Property in a manner reasonably similar to its present use;
- (b) CUSTOMER does not presently contemplate any changes to the electrical and thermal consumption characteristics of the Property as these existed during the base period except as may have been disclosed to CONTRACTOR by CUSTOMER in writing prior to the execution of this Agreement;
- (c) CUSTOMER has provided CONTRACTOR with all records heretofore requested by CONTRACTOR and, in that regard, CONTRACTOR acknowledges that it has received base period data from CUSTOMER which appears to be complete as of the date of this Agreement, and that the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement shall be, true and accurate in all material respects except as may be disclosed by CUSTOMER in writing;
- (d) CUSTOMER has not entered into any contracts or agreements for the Property with persons or entities other than CONTRACTOR regarding the provision of the energy services referenced herein.

**SECTION 29**                    **ABSENCE OF FRAUD OR COLLUSION**

CONTRACTOR hereby certifies, by its execution of this Agreement, that no official or employee of CUSTOMER has any pecuniary interest in this Agreement or in the expected profits to arise here from, and that this Agreement is made in good faith without fraud or collusion with any other person involved in the bidding process.

**SECTION 30**                    **NEGLIGENT/WRONGFUL ACTS**

It is understood and agreed that neither Party to this Agreement shall be liable for any negligent or wrongful acts, either of commission or omission, chargeable to the other, unless such liability is imposed by law, and that this Agreement shall not be construed as seeking to either enlarge or diminish any obligation or duty owed by one Party against the other or against third parties.

**SECTION 31**                    **FURTHER DOCUMENTS AND EVENTS**

The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement, in that regard, it being understood and agreed that CONTRACTOR covenants and agrees to execute or procure the execution of all documents reasonably required to release any lien held by CONTRACTOR or its assignees upon the termination of this Agreement and payment of all amounts required to be paid by CUSTOMER to CONTRACTOR, pursuant to this Agreement, including but not limited to the Termination Value, if any. It being further agreed and understood that CUSTOMER agrees to execute all documents which may be reasonably required by an entity which provides funds for any financing contemplated herein and to cooperate with CONTRACTOR in obtaining such funds.

It being further understood that CUSTOMER agrees to execute all documents which may be reasonably required to obtain all licenses, permits and governmental approvals required by CONTRACTOR for installation and operation of the ECMs. CONTRACTOR's obligations

hereunder are also subject to obtaining any such licenses, permits and governmental approvals.

**SECTION 32                    NON-APPROPRIATION**

Reserved.

**SECTION 33                    THIRD PARTY BENEFICIARIES**

Except as may be specifically provided for in this Agreement, the Parties hereto do not intend to create any rights for, or grant any remedies to, any third party beneficiary of this Agreement.

**SECTION 34                    NOTIFICATIONS OF GOVERNMENTAL ACTION - OCCUPATIONAL SAFETY AND HEALTH**

The Parties agree to notify each other as promptly as is reasonably possible upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act or any other provision of Federal, State or Local law, relating in any way to the undertakings of either Party under this Agreement.

**SECTION 35                    REFERENCES**

Unless otherwise stated all references to a particular Attachment or to Attachments herein are to the referenced Attachment or Attachments which are attached to this Agreement and all such referenced Attachments are incorporated by reference within this Agreement. All references herein to a Section shall refer to a Section of this Agreement unless this Agreement specifically provides otherwise.

**SECTION 36                    Approval**

This Agreement shall not be executory until all necessary State or local approvals are obtained.

**IN WITNESS WHEREOF**, the duly authorized officers or representatives of the Parties have set their hand on the date first written above with the intent to be legally bound.

**CUSTOMER**

**CONTRACTOR,**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**ATTACHMENTS:**

**ATTACHMENT A - PROPERTY DESCRIPTION**

**ATTACHMENT B - SCOPE OF SERVICES**

**ATTACHMENT C – EQUIPMENT LEASE DOCUMENTS**

**ATTACHMENT D - NOTICE TO PROCEED**

**ATTACHMENT E - DELIVERY AND ACCEPTANCE CERTIFICATE**

**ATTACHMENT F - DETERMINATION OF ENERGY COST SAVINGS**

**ATTACHMENT G - CONTRACT COST AND ANNUAL SERVICES**

**ATTACHMENT H - CHANGE ORDER FORM**

**ATTACHMENT I - MAINTENANCE SERVICES**

**ATTACHMENT J – CONTRACTOR INSTALLED EQUIPMENT**

**ATTACHMENT K – STANDARDS OF SERVICE (To Be Provided)**

**ATTACHMENT L – MODIFICATIONS TO TECHNICAL ENERGY AUDIT DOCUMENTATION**

**ATTACHMENT M - FORM OF CUSTOMER'S APPROVAL OF SAMPLE OR SPECIFICATIONS**

**ATTACHMENT A**

**PROPERTY DESCRIPTION**

**TO BE DETERMINED**

DRAFT

**ATTACHMENT B**

**SCOPE OF SERVICES**

**Description of the Financial-grade Operational Audit contents.**

**List scope of audit services.**

**DESCRIPTION OF THE ENERGY EFFICIENCY MEASURES  
AND THE EQUIPMENT**

The following is a brief description of the ECMs and related equipment to be installed by CONTRACTOR at the Property.

[Description]

CONTRACTOR's Technical Energy Audit ("TEA") dated \_\_\_\_\_, as amended by Attachment L is hereby incorporated in its entirety by reference.

**ATTACHMENT C**

**EQUIPMENT LEASE DOCUMENTS**

(TO BE PROVIDED)

DRAFT

**ATTACHMENT D**

**NOTICE TO PROCEED**

CONTRACTOR

**Subject: Notice to Proceed**

Dear \_\_\_\_\_:

In accordance with Section 1(a) of our Energy Services Agreement dated \_\_\_\_\_, 200\_, the CUSTOMER hereby submits to CONTRACTOR, ("CONTRACTOR") this **Notice to Proceed** in relation to the Scope of Services defined in the aforementioned Agreement, for CUSTOMER, dated \_\_\_\_\_, 200\_.

Sincerely,

**CUSTOMER**

\_\_\_\_\_  
(Name)  
(Title)

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

**ATTACHMENT E-1**

**DELIVERY AND ACCEPTANCE CERTIFICATE  
UPON SUBSTANTIAL COMPLETION**

CUSTOMER hereby acknowledges receipt of the Energy Efficiency Measure(s) (the "ECM(s)") described in the applicable Attachment B to the Energy Services Agreement (the "Agreement") between CUSTOMER and CONTRACTOR, as fully installed and in good working condition, which are listed and attached hereto. CUSTOMER hereby accepts the ECM(s) listed hereto after full inspection thereof as satisfactory for all purposes of the Agreement to which this Attachment F is attached and the Lease executed by CUSTOMER and Lessor, CONTRACTOR. CUSTOMER agrees to make the related payment(s) to CONTRACTOR as set forth in Section 4 of the Agreement.

Substantial Completion Date: \_\_\_\_\_

ECM(s): \_\_\_\_\_

Date Accepted by CUSTOMER: \_\_\_\_\_

Accepted for: **CUSTOMER**

Accepted by: \_\_\_\_\_

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

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

Note: ECMs to which this Delivery and Acceptance Certificate relates is attached hereto as Schedule E(1).

**ATTACHMENT E-2**

**FINAL DELIVERY AND ACCEPTANCE CERTIFICATE  
FINAL ACCEPTANCE OF PROJECT**

CUSTOMER hereby acknowledges Final Acceptance of all Energy Conservation Measures (the "ECMs") described in the applicable Attachment B to the Energy Services Agreement (the "Agreement") between CUSTOMER and CONTRACTOR. The date of Final Acceptance is the date certified by the CUSTOMER that the Work has been installed, functionally tested and all punchlist items completed in accordance with the Contract Documents, so that the CUSTOMER has possession of the Work and can use it for its intended use. CUSTOMER hereby accepts the ECMs listed hereto after full inspection thereof as satisfactory for all purposes of the Agreement. CUSTOMER agrees to make the required payment(s) to CONTRACTOR as set forth in Section 4 and Attachment G of the Agreement.

Date Accepted by CUSTOMER: \_\_\_\_\_

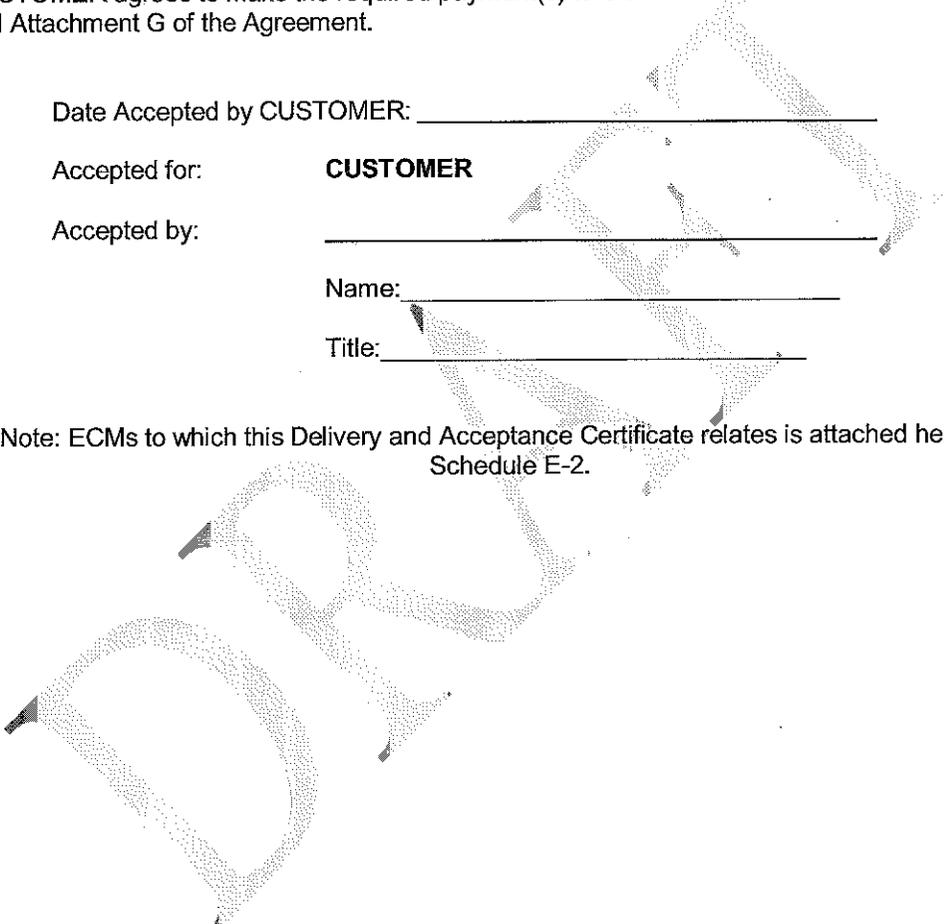
Accepted for: **CUSTOMER**

Accepted by: \_\_\_\_\_

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

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

Note: ECMs to which this Delivery and Acceptance Certificate relates is attached hereto as Schedule E-2.



## **ATTACHMENT F**

### **GUARANTY OF ENERGY COST SAVINGS**

#### **1. DEFINITIONS**

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

"Baseline Period" is the period of time that defines the Baseline Usage and is representative of the facilities operations, consumption, and usage that is used as the benchmark for determining cost avoidance.

"Baseline Usage" is the calculated energy usage of the Facilities prior to the implementation of the ECMs.

"Baseline Demand" is the calculated energy demand of a piece of equipment or a site prior to the implementation of the ECMs. Baseline physical conditions, such as equipment counts, nameplate data, and control strategies, will typically be determined through building occupancy, energy end-use survey and plug load surveys of the Facilities.

"Cumulative Excess Verified Savings" is the total amount of Excess Verified Savings based on the results of the Measurement & Verification Plan in the Guaranteed Savings Reconciliation Report carried over to subsequent Guaranty Periods.

"Energy and Operational Cost Avoidance Guarantee Practices" are those practices identified in The Schedule of Savings, intended to achieve avoided costs in energy and/or operating expenses.

"Energy Costs" may include the cost of electricity and fuels to operate HVAC equipment, cogeneration system, facility mechanical and lighting systems, and energy management systems, and the cost of water and sewer usage, as applicable.

"ECM" the Energy Conservation Measure (ECM) is the installation of equipment or systems, or modification of equipment or systems as described in Attachment B.

"Excess Verified Savings" is the amount of Verified Savings minus Guaranteed Savings in a Guaranteed Period.

"Facilities" shall mean those described in Attachment A.

"F.E.M.P." shall mean the Federal Energy Management Program of the U.S. Department of Energy and its Measurement and Verification Guidelines for Federal Energy Projects (DOE/GO 10096-248, February 1996, or later versions). The F.E.M.P. guidelines classify measurement & verification approaches as Option A, Option B, Option C, and Option D.

"First Guarantee Period" is defined as the period beginning on the first (1<sup>st</sup>) day of the month following the date of execution of the Delivery and Acceptance Certificate (Attachment E-2) upon Substantial Completion of this Project by the CUSTOMER and ending on the day prior to the first (1<sup>st</sup>) twelve-month anniversary thereof.

"Guarantee Period" is defined as the First Guarantee Period and each of the successive twelve (12) month periods commencing on the anniversary of the commencement of the First Guarantee Period throughout the Term of this Agreement.

"Guaranteed Savings" is defined as the amount of avoided Energy and Operational Costs guaranteed to the CUSTOMER in each Guarantee Period.

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

"IPMVP" shall mean the International Performance Measurement and Verification Protocol and its Measurement and Verification Guidelines for energy savings performance contract projects. The IPMVP guidelines classify measurement & verification approaches as Option A, Option B, Option C, and Option D.

"Measurement and Verification Plan" (M&V Plan) is defined as the plan providing details on how the Guarantee Savings will be verified.

"Operational Costs" shall include the cost of operating and maintaining the Facilities, such as, but not limited to, the cost of inside and outside labor to repair and maintain Covered Systems and Equipment, the cost of custodial supplies, the cost of replacement parts, the cost of deferred maintenance, the cost of lamp and ballast disposal, and the cost of new capital equipment as defined for each ECM in Section 4, Schedule of Values.

"Term" shall be \_\_\_\_\_ (X) years from acceptance.

"Verified Savings" is defined as the summation of avoided Energy and Operational Costs as determined by the Measurement & Verification Plan for the Facilities in each Guarantee Period as a result of the ECMs provided by CONTRACTOR as well as Excess Verified Savings, if any carried forward from previous years.

## 2. TERM AND TERMINATION

2.1 Guarantee Term. The Term of this Guarantee shall commence on the first (1<sup>st</sup>) day of the month following the date of execution of the Final Delivery and Acceptance Certificate (Attachment E-2) upon Substantial Completion of this Project by the CUSTOMER and shall terminate at the end of \_\_\_\_\_ years unless terminated earlier as provided for herein.

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

## 3. SAVINGS GUARANTEE

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

Year	\$ Amount


3.1.1 Additional Savings. Additional energy and/or operational cost avoidance that can be demonstrated as a result of CONTRACTOR's efforts that result in no additional costs to CUSTOMER beyond the costs identified in this Agreement will be included in the Guarantee Savings Reconciliation Report for the applicable Guarantee Period (s).

3.1.2 Savings Prior to Final Retrofit Acceptance. All energy and operational cost avoidance realized by CUSTOMER and as calculated through the Measurement & Verification Plan that result from activities undertaken by CONTRACTOR prior to Final Acceptance may be applied to the Verified Savings for the First Guaranty Period.

3.1.3 Cumulation of Savings. The Guaranteed Savings in each Guarantee Period are considered satisfied if the Verified Savings for such Guarantee Period equals or exceeds the Guaranteed Savings for such Guarantee Period.

3.1.4 Savings Shortfalls. In the event that the Verified Savings in any Guarantee Period is less than the Guaranteed Savings required for that Guarantee Period, after giving credit for any Excess Verified Savings carried forward from previous Guarantee Periods, CONTRACTOR shall, upon receipt of written demand from CUSTOMER, compensate CUSTOMER the amount of any such shortfall, limited by the value of the guarantee, within thirty (30) calendar days. Resulting compensation shall be CONTRACTOR's sole liability for any shortfall in the Guaranteed Savings.

3.2 Savings Reconciliation Documentation. CONTRACTOR will provide CUSTOMER with a Guarantee Savings Reconciliation Report after each Guarantee Period within 120 days. CUSTOMER will assist CONTRACTOR in generating the savings reconciliation report by providing CONTRACTOR's receipt thereof, together with access to relevant records relating to such Energy and Operating Costs. CUSTOMER will also assist CONTRACTOR by permitting access to any energy billing information, maintenance records, drawings, or other data deemed necessary by CONTRACTOR to generate the said report. Data and calculations utilized by CONTRACTOR in the preparation of its Guarantee Savings Reconciliation Report will be made available to CUSTOMER, along with such explanations and clarifications as CUSTOMER may reasonably request.

3.2.1 Acceptance of Guarantee Savings Reconciliation Report. At the end of each Guarantee Period, CUSTOMER will have forty-five (45) days to review the Guarantee Savings Reconciliation Report and provide written notice to CONTRACTOR of non-acceptance of the Guarantee Savings Reconciliation Report for that Guarantee Year. Failure to provide written notice within forty-five (45) days of the receipt of the Guarantee Savings Reconciliation Report shall constitute the deemed acceptance of the Report and its findings by the CUSTOMER.

3.2.2 Guarantee Savings Reconciliation. Verified Savings will be determined in accordance with the methodology(s), operating parameters, formulas, and constants as described below and/or defined in the Measurement & Verification Plan and/or additional methodologies defined by CONTRACTOR that may be negotiated with CUSTOMER at any time. Actual savings reduction in utility bills may vary from the Verified Savings for reasons outside of CONTRACTOR's control including but not limited to: changes in energy and other utility rates and tariffs, changes in CUSTOMER operating schedules and usage patterns, changes in CUSTOMER loads due to addition or reductions in energy and water consuming devices,

changes in weather, impacts due to the operations of ECMs, impacts due to the maintenance of ECMs maintained by CUSTOMER, and additions to and/or reduction in facility space usage. For the purposes of calculating any shortfalls or excesses of Verified Savings versus Guaranteed Savings, the Measurement & Verification Plan will be utilized.

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

3.2.4 Guarantee Adjustment. CONTRACTOR's Guaranteed Savings obligations under this Agreement are contingent upon: (1) CUSTOMER following the operations and maintenance requirements for the ECMs in accordance with the Agreement; (2) no alterations or additions being made by the CUSTOMER without prior notice and written agreement of the Parties; (3) CUSTOMER sending all current utility bills to CONTRACTOR within two (2) weeks after receipt; and (4) CONTRACTOR'S ability to render services not being impaired by circumstances beyond its control. To the extent that the CUSTOMER defaults or fails to perform fully any of its obligations under this Agreement, CONTRACTOR may, in its sole discretion, adjust the Guaranteed Savings obligation; provided, however, that no adjustment hereunder shall be effective unless CONTRACTOR has first provided the CUSTOMER with written notice of CUSTOMER's default(s) or failure(s) to perform and CUSTOMER has failed to cure its default(s) and failure(s) to perform within thirty (30) days after receipt of such notice.

3.2.5 Energy Rates. TO BE DETERMINED.

#### 4. MEASUREMENT & VERIFICATION PLAN

4.1 Measurement and Verification. CONTRACTOR and the CUSTOMER agree that the Verified Savings will be determined using the following Measurement and Verification Plan. Through this plan, the Guaranteed Savings generated by the ECMs installed in the Facilities will be verified found in CONTRACTOR's Technical Energy Audit dated \_\_\_\_\_, as amended by Attachment L, and incorporated herein by reference.

Measurement & Verification Plan: CONTRACTOR and the CUSTOMER agree that the Verified Savings by ECM will be determined using the following Measurement & Verification plans further described in this section. Through this plan, the guaranteed savings generated by the ECMs installed in the Facilities will be validated. The M&V methodologies proposed for these ECMs are based on the version 2.2 of the F.E.M.P. Measurement and Verification Guidelines. The objective of the plan is to quantify the actual electrical and fossil fuel and compare those to the specific Baseline Usage for each Facility, the difference of which is the Verified Savings.

During the term of the Agreement, CONTRACTOR will make adjustments to energy savings due to changes in building occupancy, weather data, and utility rate schedules, etc. The unit costs of energy will be applied to the energy savings calculated by this M&V plan. Current utility cost will be used as a basis for determining the unit cost, with floor and ceiling prices set by baseline rate information, presented herein this Attachment.

4.2 M&V Descriptions: TO BE DETERMINED

**ATTACHMENT G**

**CONTRACT COST AND ANNUAL SERVICES**

- (a) CUSTOMER agrees to pay to CONTRACTOR, the amount equal to the Project Cost, as listed below, in accordance with the terms described in Section 4 of the Agreement. The proposed monthly progress payments shall be substantially the same as those found in Schedule G-1, Proposed Progress Payments, attached hereto.

Project Cost = \$00,000

Proposed Monthly Progress Payments are attached hereto as Schedule G-1.

- (b) Maintenance Fee: CUSTOMER shall pay CONTRACTOR for annual (monthly) Maintenance Fee provided under this Agreement that the Parties mutually agree to have CONTRACTOR perform. CUSTOMER agrees to pay the annual (monthly) Maintenance Fee as provided for in the proposal same change recommended with respect such agreed upon services.
- (c) Measurement & Verification Fee: CUSTOMER shall pay CONTRACTOR for annual (monthly) services provided under this Agreement that the Parties mutually agree to have CONTRACTOR perform. CUSTOMER agrees to pay the annual (monthly) Measurement & Verification fee as provided for in the proposal with respect such agreed upon services same change recommended.

Year 1 M&V Fee:  
Year 2 M&V Fee:  
XXXXXXXX

- (d) Performance Period Fee: The annual performance period fee shall be the sum of the Maintenance Fee and the Measurement and Verification Fee. CUSTOMER agrees to pay the following Performance Period Fees.

<u>Year</u>	<u>Annual Amount</u>
1	
2	
3	
4	
5	

**ATTACHMENT H**

**CHANGE ORDER FORM**

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

Change Request No. \_\_\_\_\_  
\_\_\_\_\_

CUSTOMER: \_\_\_\_\_  
Department: \_\_\_\_\_

Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_ Site: \_\_\_\_\_

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

**I. REQUEST**

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

(a) Requested by \_\_\_\_\_ Of \_\_\_\_\_

(b) Description of change \_\_\_\_\_  
\_\_\_\_\_

**II. AGREEMENT**

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

Payment shall be made on the basis of:

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

An extension of contract time of \_\_\_\_\_ calendar days to \_\_\_\_\_ is requested.

CONTRACTOR \_\_\_\_\_ by \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_

CUSTOMER APPROVAL: \_\_\_\_\_ Date: \_\_\_\_\_

CUSTOMER	Contract Award		\$
	Previous Additions		\$
	Previous Deductions		\$
By: _____		Net Total	\$
Title: _____		This Change	\$
	Total		\$

**ATTACHMENT I**

**MAINTENANCE SERVICES**

Maintenance services provided by CONTRACTOR are limited to annual oversight activities as described in the M&V Plan in the Technical Energy Audit dated \_\_\_\_\_, as amended by Attachment L. Oversight activities are limited to annual confirmation that the CUSTOMER continues to operate, maintain, and repair the ECMs in a manner consistent with contract requirements to ensure the persistence of guaranteed savings over the term of the Project. CONTRACTOR shall submit an annual report indicating the results of its maintenance oversight functions.

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**ATTACHMENT J**

**CONTRACTOR INSTALLED EQUIPMENT**

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**ATTACHMENT K**

**STANDARDS OF SERVICE**

DRAFT

**ATTACHMENT L**

**NEGOTIATED MODIFICATIONS TO TECHNICAL ENERGY AUDIT DOCUMENTATION**

DRAFT

**ATTACHMNT M**

**FORM OF CUSTOMER'S APPROVAL OF SAMPLE OR SPECIFICATIONS**

DRAFT

## Investment Grade Audit Scope Outline

### Detailed Energy Audit Plan

CONTRACTOR will present a comprehensive plan for developing and completing the IGA Scope of Services at a kickoff meeting with the CUSTOMER. At this meeting, the parties will agree on tasks, roles and responsibilities and finalize a schedule to complete the audit. The audit process comprises several phases and tasks, described below.

### Initial Evaluation and Analysis

Initial tasks typically include the following:

- Review of available facility blue prints and specifications provided by the CUSTOMER to become familiar with the facility systems and equipment.
- Interview operating personnel and occupants to get a better understanding about the building systems and operations, and to discuss any issues or problems that need to be addressed as part of the overall solutions that the study presents.
- Obtain a list of preferred contractors if available.
- Obtain detailed operating schedule on equipment and facility.
- Gather most recent utility cost (gas, electric, water and refuse).
- Gather detailed current and future years O&M and Capital budget plans.
- Gather information and copies of existing Maintenance and Service Contracts.
- Obtain letter of authorization from CUSTOMER releasing utility data to CONTRACTOR.
- Obtain CUSTOMER calendar.
- Perform an initial walk through of the facilities to become familiar with the building systems and equipment and to compare the actual systems with the original design.
- Perform preliminary analysis of the feasibility of potential measures.

### On Site Field Audit

During a planned site visit, a team of CONTRACTOR energy professionals will survey each facility and gather necessary information in order to perform the engineering and energy evaluation. Tasks that CONTRACTOR will complete during the field visit include:

- Inventory energy related equipment
- Document nameplate data of all equipment
- Document locations and verifying print/layout maps
- Photograph existing equipment
- Conduct isolated monitoring where appropriate
- Interview staff and maintenance personnel
- Obtain operating schedules, procedures and system configurations

### Utility Tariff Analysis

CONTRACTOR will perform utility analyses of each facility using past energy history, to determine the monthly electric and gas consumption and demand profiles, and compare the energy use indices of the facility with similar facilities in the same geographic location. This step

provides important preliminary information about the potential for energy savings at each facility. Tasks that CONTRACTOR will complete during the analysis include:

- Perform utility bill analysis
- Establish base year consumption
- Interview CUSTOMER personnel on billing issues and anomalies
- Integrate base year utility analysis into a Measurement & Verification (M&V) plan.
- Develop a 10-year rate forecast by fuel type (electric, gas, water)

#### Energy Analysis

CONTRACTOR will complete a comprehensive energy analysis of the selected facilities using the information provided by the CUSTOMER, the data gathered during the on-site field audit, and the results of the utility tariff analysis. Results of the energy analysis will determine the annual energy savings by each piece of equipment for each facility. Tasks that CONTRACTOR will complete during the energy analysis include:

- Determine energy savings methodology by ECM
- Perform savings evaluation
- Document assumptions and detailed calculations
- Develop Operating Standards for all equipment by ECM
- Develop M&V plan by ECM for implementation

Savings methodologies will be in accordance with the Measurement & Verification Plan supporting all calculations and assumptions.

#### Cost Benefit Analysis

CONTRACTOR will complete a cost benefit analysis to demonstrate the financial impacts to the CUSTOMER for implementing the proposed solutions. Project costing will include, but is not limited to, the following:

- Equipment and Installation Costs
- Engineering Costs
- Detailed Design Costs
- Construction Management Costs
- Commissioning Costs
- Project Development Costs
- Measurement & Verification Costs
- Administrative Costs
- Project Contingency Costs
- Overhead and Fees
- Taxes
- Construction Interest

#### Project Management Plan

CONTRACTOR will prepare a project plan for implementation that will include the following:

- Project Installation
- Construction Scope of Work
- Equipment Specification/Cut Sheets
- Project Schedule

Measurement and Verification Plan

The Measurement and Verification (M&V) process will document the energy savings achieved and the savings realized. CONTRACTOR will develop an M&V plan to measure specific parameters against established baselines. The plan will include a measurement time period, the energy savings calculation methodology, savings adjustment methodology utilizing the International Performance Measurement and Verification Protocol (IPMVP) approach, and the equipment required. The M&V Plan will accommodate the specific energy conservation measure being evaluated.

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