

PERFORMANCE-BASED CONTRACT

This Performance-Based Contract is entered into by and between:

The Douglas County School District
Acting By and Through Its

District Staff
Contact Person: Ms. Holly Luna
CFO, Business Services
1638 Mono Avenue, Minden, Nevada 89423
(775) 782-5131 // hluna@dcsd.k12.nv.us

and

AMERESCO Inc.
Contact Person: Paul Ira C.E.M.
629 Isbell Road, Suite 360
Reno, NV 89509
(775) 826-1138 tel. / (775) 826-1139 fax
E-mail: pira@ameresco.com

In consideration of the terms and conditions attached hereto as Exhibit 1, the parties agree by signing this facing sheet below to be bound by the attached Exhibit 1.

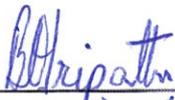
 _____ <u>Holly Luna</u> Name	<u>6/26/08</u> Date	<u>Douglas County School District,</u> Organization	<u>CFO</u> Title
 _____ <u>B N Tripathi</u> Name	<u>6-22-08</u> Date	<u>AMERESCO, Inc.</u> Organization	<u>Vice President</u> Title

Exhibit 1

**PERFORMANCE-BASED CONTRACT
TERMS AND CONDITIONS**

Table of Contents

1. <i>INCORPORATED DOCUMENTS</i>	5
2. <i>CONTRACT TERM</i>	5
3. <i>DEFINITIONS</i>	5
4. <i>ECMS/OCS MEASURES</i>	9
5. <i>OPERATION</i>	9
6. <i>ECMS/OCS MEASURES and COMMISSIONING REPORT</i>	11
7. <i>SAVINGS COVERAGE</i>	11
8. <i>GENERAL ANNUAL REPORT</i>	12
9. <i>WARRANTIES</i>	14
10. <i>REPREENATIONS and WARRANTIES of the DCSD</i>	15
11. <i>AFFIRMATIVE COVENANTS of the DCSD</i>	16
12. <i>REQUIRED DESIGN REVIEWS</i>	16
13. <i>LABOR</i>	16
14. <i>SITE WORKING CONDITIONS</i>	17
15. <i>TERMINATION of CONTRACT</i>	18
16. <i>TERMS of PAYMENT</i>	20
17. <i>INDEPENDENT CONTRACTOR</i>	22
18. <i>CASUALTY or CONDEMNATION of FACILITIES / FORCE MAJEURE</i>	
19. <i>NOTICES</i>	23
20. <i>INDEMNIFICATION</i>	23
21. <i>GOVERNING LAW; JURISDICTION</i>	24
22. <i>THE DCSD OWNERSHIP of PROPRIETARY INFORMATION</i>	24
23. <i>SEVERIBILITY</i>	24
24. <i>ASSIGNMENT/DELEGATION</i>	24

25. SUCCESSORS and ASSIGNS	25
26. INSURANCE	25
27. PRIOR AGREEMENTS / PROPRIETARY RIGHTS	25
28. EXCLUDED MATERIAL and ACTIVITIES	25
29. ANNOUNCEMENTS	26
30. CONFIDENTIAL BUSINESS INFORMATION	26
31. THIRD PARTY BENEFICIARIES	26
32. PHASING of PROJECT IMPLEMENTATION	26
33. MATERIALS and EQUIPMENT PURCHASING	28
34. ENVIRONMENTAL & TAX CREDITS	29

<u>Schedules</u>	<u>Description</u>
A	Building List
B	Standards of Operation and Comfort
C	Installment Purchase Cash Flow Analysis
D	Project Cost Summary
E	Payment Schedule
F	Project Schedule
G	Insurance
H	Prevailing Wage Rates

1. Incorporated Documents

This Contract incorporates the following attachments in descending order of constructive precedence; a Contractor's Attachment shall not contradict or supersede any Douglas County School District (DCSD) or State of Nevada specifications, terms or conditions without written evidence of mutual assent to such change appearing in this Contract:

- ATTACHMENT AA: Installment Purchase Agreement (Not applicable for this Project).
- ATTACHMENT BB: Negotiated Points (Not applicable for this Project).
- ATTACHMENT CC: RFP Number 110507, dtd November 5, 2007, and Amendments thereto.
- ATTACHMENT DD: Financial-Grade Operational Audit (Dated: May 27, 2008)
- ATTACHMENT EE: Contractor's Proposal (Not applicable for this Project)

2. Contract Term

This Contract shall be effective upon the approval of the Douglas County School District through the fifteen (15) Year anniversary date of the Project Acceptance completion date, unless sooner terminated by either party as specified in this Contract.

3. Definitions

- A. Accumulated Energy Savings ("Accumulated Energy Savings") means the DCSD facilities' total energy savings as outlined in Schedule C – Installment Purchase Cash Flow Analysis entitled 'Total Annual Savings' and shall include electric energy savings, gas energy savings, operational savings, maintenance savings, water consumption savings, and any other savings for the Project installed by the Contractor.
- B. Accumulated Realized Savings ("Accumulated Realized Savings") means the sum of the savings derived from the sum of Measured & Verified savings plus any Stipulated savings.
- C. Base Utility Rates ("Base Utility Rates") means the utility rates as described in the table in Attachment DD, used by Contractor, to calculate the ECM/OC Savings for the various ECM/OCS Measures.
- D. Capitalized Interest ("Capitalized Interest") means interest on the cost of money from the time the Project loan funds into escrow and the DCSD makes its first payment to the Contractor.
- E. Change Order ("Change Order") means a written agreement, issued after execution of this Contract, signed by the DCSD and the Contractor, changing the terms hereof or adding to, deducting from, or otherwise modifying the Project, or extending or modifying the date for Substantial Completion or Final Completion, adjusting the Contract Sum, or the Contract Term.
- F. Construction Interest ("Construction Interest") means interest on cost incurred by the Contractor on the Project from the beginning of the Project through the time the Contractor begins to receive progress payments. A bank (or other financing entity) 'construction interest' certification will be provided as part of the Project's 'open book pricing' summary and recapitulation at the end of the Project.

- G. The Douglas County School District (“**DCSD**”) means the local government entering into this Contract pursuant to NRS 332.360 and includes any School District activity identified herein, its officers, employees and immune contractor.
- H. Commissioning Plan (“**Commissioning Plan**”) is the Contractor’s plan, as described in Section F of Attachment DD (Financial Grade Audit), to start-up and check out equipment/systems installed under this Contract.
- I. Independent Contractor/Energy Services Company (“**Contractor**” or “**ESCO**”) means AMERESCO, Inc., the qualified service company hired by the DCSD pursuant to NRS 332.360 that performs services and/or provides goods for the DCSD under the terms and conditions set forth in this Contract.
- J. Division (“**Division**”) means the Facilities Division, DCSD.
- K. Direct Project Costs (“**Direct Project Costs**”) consist of labor, equipment and material required to perform the defined scope of work. It also includes the job site costs, permits, temporary services and utilities, disposal of materials, subcontracted design engineering, safety and security measures, subcontracted field supervision, subcontractor quality control, subcontractor bond cost, construction contingency, subcontractor administrative submittals for the Project and subcontractor overhead and profit for the project.
- L. Energy Cost Savings Measures (“**ECMs**”) / Operating Cost Savings Measures (“**OCS Measures**”) mean those measures, as defined in NRS 332.330, that result in savings of energy, water, or operating and maintenance costs set forth in Attachment DD.
- M. Equipment (“**Equipment**”) means all items of equipment provided to the DCSD pursuant to this Contract.
- N. Facilities (“**Facilities**”) mean any buildings, schools and/or grounds at which the Scope of Work of this Contract is to be performed.
- O. Final Commissioning Report (“**Final Commissioning Report**”) shall be provided to DCSD by the Contractor within 35 days of receiving DCSD’s comments and responses to the Contractor’s Initial Commissioning Report. DCSD’s comments and responses shall be provided to the Contractor within 30 days of receipt of Contractor’s Initial Commissioning Report. The Final Report will reflect what equipment/systems were commissioned, what occurred, any problems were encountered and steps taken to resolve the problem, all completed pre- and post- measurements and/or tests; and, will address any issues, questions or concerns previously raised by the DCSD.
- P. Fiscal Year (“**Fiscal Year**”) means the period beginning July 1st and ending June 30th of the following year.
- Q. Guaranteed Maximum Price (“**GMP**”) is that series of specified prices and total price of the Project, as set forth in Section 16(c), that the Contractor guarantees not to exceed without agreement by the Parties hereto.
- R. Indirect Project Costs (“**Indirect Project Costs**”) include Contractor’s design and engineering – including oversight of subcontracted engineering, construction management, project administration, contract administration, commissioning, initial M&V at construction, travel, overhead and profit. These costs are calculated as an overall percentage, as specified in Section 16(c), of the direct project costs. Bond premiums, Capitalized Interest, third party

consulting fees and permit costs will be considered pass through costs are not subject to mark-up; and, are not included in Indirect Project Costs.

- S. Initial Commissioning Report ("**Initial Commissioning Report**") shall be provided to DCSD by the Contractor at the completion of Project commissioning. The report will reflect what equipment/systems were commissioned, what occurred, if any problems were encountered and steps taken to resolve, and if any equipment/system commissioning had to be postponed, the reasons for, and the expected date the commissioning will occur.
- T. International Performance Measurement and Verification Protocol 2001 or IPMVP ("**IPMVP**") is a means by which one can establish reasonable assurance of equipment savings through stipulated values, measurements, and engineering calculations and/or modeling.
- U. Measurement and Verification Plan ("**M&V Plan**") is defined in Section E of Attachment DD (Financial Grade Audit).
- V. Measured and Verified Savings ("**M&V Savings**") measure the savings verified according to the M&V Plan.
- W. Open Book Pricing ("**Open Book Pricing**"), as defined in RFP No.110507, dated November 5, 2007, and further detailed below is the full disclosure of all costs by the Contractor, including all costs of subcontractors and vendors. The Contractor will maintain cost accounting records on authorized work performed, showing actual costs for labor and materials, or other basis requiring accounting records. Contractor will provide all documentation as prescribed in this Contract in two packages. The first package will reflect all design related costs (including all outsourced work); and will be provided at the end of the Design Phase of the Project. The second package will include a summary of the earlier provided Design Phase costs as well as all documented Construction Phase related costs.
- X. O&M ("**O&M**") means Operations and Maintenance.
- Y. Operating Cost Savings ("**OC Savings**") mean any expenses that are eliminated, avoided and stipulated more than one fiscal year as a result of the installation or modification of equipment, or services performed by the Contractor. 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. (NRS 332).
- Z. Project ("**Project**") means the work as outlined in ATTACHMENT DD Financial-grade Operational Audit (dated May 27, 2008) and the specific work outlined in this Contract.
- AA. Project Acceptance ("**Project Acceptance**") means the date the DCSD approves all items in the OCS Measures/ECMs at Substantial Completion. Final Project Acceptance will not be made until the Contractor has successfully demonstrated, through approved Commissioning protocols described in the M&V portion of Attachment DD, that all OCS Measures/ECMs are achieving all of the stated savings in the accepted Financial-grade Operational Audit.
- BB. Scope of Work ("**Scope of Work**") means the goods and services to be provided or performed by Contractor under this Contract; as well as any Change Orders to this Contract, the Request for Proposal #110507, dated November 5, 2007 and Amendments, and Attachment DD (the Financial-grade Operational Audit).

CC. Standards (“Standards”): Standards shall mean all applicable Federal, state and local laws, codes, statutes, regulations, zoning ordinances, land use development restrictions, building codes and governmental requirements of all kinds;

1. Standards will maintain consistency with all applicable state and local codes. Designs must comply with any DCSD adopted special building codes.
2. If two or more Standards are in conflict, the more stringent will apply, and if any provision of this Contract is more stringent than the applicable Standards, this Contract will govern.

DD. State of Nevada (“State”) means the State of Nevada and its Agencies identified herein.

EE. Stipulated Savings (“Stipulated Savings”) mean the savings that have been mutually agreed upon and stipulated to by the Contractor and the DCSD prior to or upon implementation of the OCS Measures/ECMs.

FF. Substantial Completion (“Substantial Completion”) means the time when the Work is sufficiently complete in accordance with the Contract so that the DCSD can occupy or utilize the space and/or equipment for its intended use. The date of Substantial Completion shall be documented by a written Certificate of Substantial Completion signed by the DCSD and the Contractor. The Certificate of Substantial Completion shall specifically identify any items of Work to be completed or corrected, the estimated costs of completion or correction of such Work, and shall establish the time for such completion and correction.

GG. Utility Rate Reduction (URR) Savings (“Utility Rate Reduction (URR) Savings”) mean those savings achieved through a reduction in fuel, refuse and water rates by one of the following means:

1. Reduced rate from local electric utility company, natural gas company, water, trash collection company, or fuel company,
2. Direct purchase of natural gas or electricity,
3. Bulk purchase of fuel, or
4. Putting the DCSD on alternative rates

HH. Work (“Work”) means all services, labor, materials, and equipment required to plan, design, develop, construct, install and commission each individual ECM/OCS Measure in accordance with this Contract.

4. ECMs/OCS Measures

A. The Douglas County School District (DCSD) authorizes the Contractor to design, implement, construct, install, commission and monitor the Project as further described in Attachment DD. The Contractor shall supply all labor, materials, equipment, management, and supervision necessary to design, install, and commission all ECMs/OCS Measures described in Attachment DD. The Contractor's responsibilities for the DCSD's facilities, as described in the OCS MEASURES/ECMs Matrix of Attachment DD (Financial Grade Audit), to accomplish the approved Scope of Work (on a Facility-by-Facility basis and not necessarily on a simultaneous basis), shall include:

- (1) Providing all necessary designs, plans, and specifications;
- (2) Selecting subcontractors (with final selection approval by the DCSD);
- (3) Awarding subcontracts;
- (4) Obtaining and evaluating submitted drawings on all equipment to be provided;
- (5) Progress inspections during installation;
- (6) Training the DCSD personnel on proper operation of the newly-installed equipment;
- (7) Final inspection and savings verification using the M&V Plan;
- (8) Commissioning or start-up of each item of equipment; and
- (9) Not later than one hundred and eighty (180) days after Project Acceptance the Contractor will provide a minimum of two (2) days of competency based training to DCSD personnel on the proper operation of the equipment.

B. The DCSD will provide the Contractor (including its employees, agents and Subcontractors) with reasonable access to all of the Facilities, as well as available information requested by the Contractor about the Facilities described in the ECM/OCS Measures Matrix in Attachment DD, and will cooperate with Contractor at all stages of the installation of the OCS Measures/ECMs and require employees of the DCSD to complete training with the Contractor. The DCSD represents and warrants that the DCSD is the owner or lessee of the Facilities, that it will be the owner/lessee at all times Work or services provided post installation are performed under this Contract, and that it will obtain and provide evidence of the consent of any mortgagee, owner, or other party who may have the right to disapprove any Work to be done on the Facilities.

5. Operation

OCS Measures/ECMs will be operated and maintained by the Contractor for the first three (3) years, beginning with the Substantial Completion and OCSM/ECM acceptance by the DCSD, in accordance with the plan agreed to in the Financial Grade Audit (Attachment DD). The DCSD has the right to extend the period of the Contractor operation and maintenance of the OCS Measures/ECMs beyond the initial three (3) years. The DCSD will operate and maintain all other OCS Measures/ECMs installed under this Contract, not specified as Contractor operated

and maintained, in a manner consistent with the manufacturer's or Contractor's recommended schedules and procedures, from the date of Substantial Completion and OCS Measure/ECM acceptance. For OCS Measures/ECMs not specified as Contractor operated and maintained, following the date of the Certificate of Substantial Completion of an ECM, the DCSD shall at its expense operate and maintain the equipment and all components which compromise the ECM and all other equipment which is attached thereto and/or is integral to the proper functioning of the ECM in good working order during the term of the Contract and repair any damage caused by DCSD's operating and maintaining the respective equipment. If, in a reasonable opinion of the Contractor, the DCSD does not reasonably operate, maintain, repair, or otherwise protect the OCS Measures/ECMs and/or maintain the facilities in good repair and good working condition, then the Contractor may equitably adjust the baseline for any increased energy usages at the facilities. Such adjustment shall be subject to DCSD approval, which shall not be unreasonably withheld, conditioned, or delayed.

In addition to any manufacturer's warranties applicable to the Equipment, the Contractor shall, during the first year beginning with the Substantial Completion and OCS Measure/ECM acceptance, repair or replace defective equipment and/or systems in accordance with Paragraph 9.B. – Warranties below, of this Contract. The DCSD will notify the Contractor in a timely manner and in any event within 48 hours upon determination of the existence of any malfunction, emergency, or dangerous condition affecting the equipment and/or systems. The DCSD will take or cause to be taken all steps and actions necessary to protect the Equipment during the duration of such emergency.

The Contractor will provide operation and maintenance manuals and other appropriate information regarding the equipment installed hereunder to the DCSD at or before the time of Substantial Completion. The DCSD 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.

Except in the case of emergency, the DCSD shall 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 written notification to the Contractor, which notification shall not be unreasonably withheld. After receiving the Contractor's written approval, the DCSD shall proceed as instructed. The DCSD 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 facility.

The DCSD shall notify the Contractor in writing prior to making any significant change(s) to the facilities that could reasonably be expected to have an effect on the energy usage at the facilities including, without limitation, changes in (i) the hours, days or time of year that the facilities are occupied or operated, (ii) the number of users of the facilities, (iii) the activities conducted at the facilities and (iv) the equipment, the facilities, or the size of the facilities. The DCSD shall notify the Contractor regarding increases, over time, in numbers and usage of "plug in" devices such as computers and printers. In the event that the Contractor receives such notification or otherwise determines that such a change has occurred, it will make the appropriate revisions to the schedules and attachments hereto or take such other action as may be provided for hereunder. The Contractor may also make retroactive adjustments where the DCSD has not provided timely notice and, in such instances, any payments made between the parties shall be retroactively reconciled to reflect the changed baseline. Anything in this Contract to the contrary notwithstanding, DCSD will not be obligated to report occupancy changes that are a result of normal DCSD business prior to their occurrence, but rather shall provide summary occupancy information periodically as requested by Contractor.

The DCSD shall be responsible for installing and maintaining telephone lines and all associated costs, including internet/Ethernet charges, for the energy management system's telephone and communication lines. The Contractor may use the DCSD's LAN for the purposes of the energy management system and the DCSD shall provide the Contractor with remote access for purposes for this Project.

The DCSD shall not move, alter or modify the ECMs or the measurement and verification systems or any components thereof without obtaining the Contractor's prior written approval which shall not be unreasonably withheld.

The DCSD shall procure and pay for all energy and fuel for the operation of the facilities.

6. ECMs/OCS Measures and Commissioning Report

- A. Once all of the OCS Measures/ECMs are implemented, an initial Commissioning Report will be completed. OCS Measures/ECMs will be monitored, measured, and calculated according to the M&V Plan. Acceptance by the DCSD will not occur until the ESCo has demonstrated that all stated savings are being achieved. A *Final Commissioning Report* shall be issued to the DCSD within sixty (60) calendar days after the Project Acceptance for all OCS Measures/ECMs. *Verified Accumulated Realized Savings* shall be compared to the *Accumulated Energy Savings* as part of the *Final Commissioning Report*. Should there be a shortfall between the *Accumulated Realized Savings* and the *Accumulated Energy Savings*, the Contractor will provide a detailed action plan describing those steps that will be taken to resolve and/or remedy any and all shortfalls.
- B. The DCSD will approve or provide exceptions to the *Final Commissioning Report* in writing within thirty (30) calendar days of receipt. Written approval of the *Final Commissioning Report* by the Parties will indicate that the Report and stated savings have been accepted in accordance with the Contract.

7. Savings Coverage (Guarantee)

- A. Under the savings coverage (guarantee) the Contractor, subject to the DCSD satisfying its obligation under Section 5 above, will meet or exceed the level of *Accumulated Energy Savings*, as stated in the Financial-grade Operational, and will provide documentation to demonstrate the *Accumulated Realized Savings* achieved and reported in the *Final Commissioning Report*. Savings measurements and verification shall be defined and provided in the M&V Plan, as agreed to between the Parties. Approval and acceptance of the *Accumulated Energy Savings* by the Parties to this Agreement and a third party reviewer, if any, will be in writing.
- B. Subject to DCSD satisfying its obligation under Section 5 above, if *Accumulated Realized Savings* do not meet or exceed the proposed stated *Accumulated Energy Savings* at any time during the 15-Year Contract term, and the Contract has not been terminated, the Contractor shall repair, replace, adjust or re-engineer the OCS Measures/ECMs it has installed under this Contract that are not meeting the stated savings of the Financial-grade Operational Audit within 90 days, at no additional cost to the DCSD. The *Accumulated Realized Savings* shall then again be measured in accordance with the M&V Plan. If the *Accumulated Realized Savings* still fail to meet or exceed the *Accumulated Energy Savings* stated in the Financial-grade Operational Audit, and the Contractor has failed to remedy such non-conformance after receipt of written notice from the DCSD, the DCSD shall be entitled to recover from the Contractor a payment equal to the positive difference, if any, between the *Accumulated Energy Savings* and the *Accumulated Realized Savings*, or after a thirty (30) day written

notice to the Contractor, have the respective OCS Measure/ECM repaired, replaced, adjusted and/or re-engineered and re-installed by someone other than the Contractor to achieve the stated savings. All costs associated with the DCSD having the non-savings achieved OCS Measures/ECMs repaired, replaced, adjusted and/or re-engineered and re-installed shall be paid by the Contractor within 60-days of said work completion. The positive difference, if any, between the proposed stated *Accumulated Energy Savings* and the *Accumulated Realized Savings* will be calculated using the units, (Kwh, BTU, or Kw) multiplied by the Projected Utility Rate (Schedule Project Cash Flow) per year for the 15-Year term of the savings. Anything in this Contract to the contrary notwithstanding, Contractor shall not be required to repair, replace, adjust or re-engineer the OCS Measures/ECMs, or reimburse the DCSD for such costs if the anticipated costs for such repair, replacement, adjustment or re-engineering, inclusive of all costs previously incurred to repair, replace, adjust or re-engineer the OCS Measures/ECMs for the specific measure in question, exceeds the net-present value of the predicted annual shortfall associated with such OCS Measure/ECMs over the remainder of the 15-year term of this Contract using a 6% discount rate.

- C. Notwithstanding the provisions of paragraph 13D, Labor, should a disagreement arise as to the calculation of the *Accumulated Realized Savings*, and such cannot be resolved through good faith negotiations by the parties, unless the DCSD chooses to use a Third-Party Consultant employed in accordance with NRS 332, an independent accounting and/or engineering firm shall be engaged and paid by either Party to conduct a review and give an opinion on whether the calculation of annual dollar savings or deficiencies as prepared by Contractor is fairly stated in accordance with this Contract. The Parties will mutually agree upon the independent firm (if the parties cannot agree upon a firm, then each will designate a firm; and the two designated firms will identify a mutually agreeable third firm). The independent firm will include in its report any exceptions determined by its review. If a Third-Party Consultant is employed by the DCSD in accordance with NRS 332, said Consultant's determination of achieved stated savings will be used for all payment computations. The Contractor may appeal this decision to the DCSD Purchasing Division; and, if the DCSD's Purchasing Division deems a separate and independent accounting / engineering firm should be hired, then the above will be followed. Exercising the right to request a review will in no way affect the DCSD's obligation to make current payments pursuant to this Contract unless otherwise described herein. Any payments between the Parties necessary to resolve any irregularities identified in the review will be made within sixty (60) calendar days after submission of the review to the Parties. If the review determines that Contractor's preparation of the *Accumulated Realized Savings* was in error, the Contractor shall pay the entire cost of the review; however, if the Contractor's determination of the *Accumulated Realized Savings* is not in error, as determined by the independent firm, the DCSD shall pay for the entire cost of the review. In any case, the *Final Commissioning Report* will be changed to reflect the findings of the review; and the calculations of savings *Accumulated Realized Savings* will be modified, if necessary, and payments will be made as applicable.

8. General Annual Report

- A. The Contractor will prepare an Annual Report for Years 1,2,3, 5,10, and 15 subsequent to the anniversary date of the *Final Commissioning Report* pursuant to NRS 332.420. The Annual Report will outline the condition(s) of all OCS Measures/ECMs implemented, in accordance with the M&V Plan. The following process and procedures shall be used to prepare the Annual Report for the DCSD.

- (1) An Annual Report shall be supplied within sixty (60) calendar days after (i) the annual anniversary of the *Final* Commissioning Report, and (ii) delivery to the Contractor of all the utility billing information.
- (2) The Annual Report shall be provided to the DCSD for each years 1, 2, 3, 5, 10, 15 of the Contract Term, subsequent to the *Final* Commissioning Report.
- (3) Annual Report – Detailed Report Requirements.
 - i. The annual report is intended to provide the DCSD a status update of the OCS Measures/ECMs installed with respect to their condition, their expectation to provide energy savings, and documentation of any OCS Measures/ECMs that have been altered in nature or operation compared to Attachment DD.
 - ii. This report is to be considered a validation of savings and is to encourage the Contractor/DCSD to maintain OCS Measure/ECM integrity and further enhance energy savings.
- (4) The Annual Report will be structured and contain information as detailed below:
 - i. OCS Measures/ECMs where savings were ‘Stipulated’ savings the following requirements shall be met in the annual report;
 - ii. An inspection of the OCS Measure/ECM components will be completed at the DCSD. A random selection of at least 25% of components will be inspected.
 - iii. The Annual Report will contain the results of the inspection, including whether the OCS Measures/ECMs were observed to be in place, operating properly, and defining deficiencies observed during the inspection(s).
- (5) OCS Measures/ECMs where ‘Option A’ of the IPMVP was used, the following requirements shall be met in the Annual Report:
 - i. An inspection of the OCS Measure/ECM components will be completed by the DCSD. A random selection of at least 20% of components will be inspected.
 - ii. Spot measurements will be taken for the variable(s) used for ‘Option A’ verification and compared to the *Final* Commissioning Report.
 - iii. The Annual Report will contain the results of the inspection(s) and measurements including whether the OCS Measures/ECMs were observed to be in place, the measured value was consistent, the OCS Measures/ECMs were observed to be operating properly, and defining any deficiencies observed during the inspection(s) and measurement process.
- (6) OCS Measures/ECMs where ‘Option D’ of the IPMPV was used, the following requirements will be met in the Annual Report.
 - i. An inspection of the OCS Measure/ECM components will be completed at the DCSD. A random selection of at least 30% of components will be inspected.

- ii. Any spot measurements deemed reasonably necessary by the Measurement and Verification Professional (Certified Measurement and Verification Professional and Registered Professional Engineer), shall be taken.
 - iii. The Annual Report will contain the results of the inspection(s), including whether the OCS Measures/ECMs were observed to be in place, operating properly, and defining deficiencies observed during the inspection(s).
- (7) An annual review of the DCSD utility bills will be included in the Annual Report. The following requirements will be met in the Annual Report.
- i. The DCSD will supply annually electric, water, trash and gas bills to the Contractor no later than 10 calendar days after annual anniversary date of Project completion. The DCSD agrees that delay in the delivery of the billing collection will necessarily delay the annual report.
 - ii. Electric, water, trash and gas bills will be reviewed for the previous available twelve months. This data shall coincide with the required schedule for this Report.
 - iii. The bills will be reviewed and analyzed for;
 - a. Changes in rates;
 - b. Changes in weather;
 - c. Changes in operations or an expansion of the facility usage; and,
 - d. Changes due to observations and inspections covered herein.
 - iv. The Annual Report will contain a utility bill review analysis for the DCSD, describing the analysis and the overall expectations for future savings due to the OCS Measure/ECM implementation.

9. Warranties

- A. Unless otherwise expressly provided, all materials and equipment incorporated in the Work shall be new, free of faults and defects, and shall conform to the Contract. Upon request, the Contractor shall furnish satisfactory evidence as to the type and quality of materials and equipment. All materials and equipment used in the Work shall be subject to inspection and testing in accordance with accepted standards to ensure conformity with the requirements of the Contract, laws, ordinances, rules and regulations, or orders of any public authority having jurisdiction. Where specific certificates concerning materials and/or equipment are required, securing payment for the prompt delivery of such certificates shall be the responsibility of Contractor. Such certificates shall be executed by qualified firms acceptable to the DCSD, shall include all information required by the Contract, and shall clearly refer specifically to materials to be used in the Project. A list of all serial numbered items of equipment will be provided at the completion of construction. This list will reflect a description of the item, the serial number, the make and model of the item, and the location of the item. Should any items be replaced by the Contractor over the term of the Contract, the Contractor will append the initial list of serial numbered items as appropriate.
- B. Should the Work performed by Contractor pursuant to this Contract be found to be defective and such defect is reported to Contractor in writing within one year (or the period of guaranteed warranty for that specific item if other than one-year) from the date of Substantial

Completion of the respective OCS Measure/ECM, the Contractor agrees to repair or re-adjust such item, and if necessary, furnish and install without charge a similar item to replace it; provided, however, that the original item is returned to the Contractor and inspection discloses a defect therein. Notwithstanding any language in this Contract to the contrary, when the need for maintenance or repairs arises due to: (i) an error, misuse, abuse, omission, negligence or willful misconduct of the DCSD or any employee or other agent or invitee of the DCSD; or (ii) any act which would customarily be covered by standard forms of property or casualty insurance then, in each case, the Contractor may charge the DCSD for the reasonable and customary time and materials cost of the maintenance or repair (and such charges are in addition to all other payments due the Contractor under this Contract).

- C. On all systems installed pursuant to this Contract, the Contractor will provide, at no charge during the one-year (or otherwise stated) warranty period, any labor required to repair or replace defective equipment or parts. Such labor does not include normal maintenance requirements, but does cover adjustment of controls, air balancing and correction of mechanical difficulties if such adjustments are due to defective equipment and/or improper installation.
- D. The Contractor shall assign to the DCSD warranties made by equipment or component manufacturers, and, at the DCSD's request shall prosecute warranty claims against the applicable manufacturer in the DCSD's name.
- E. **THE CONTRACTOR DISCLAIMS ALL IMPLIED AND EXPRESSED WARRANTIES NOT PROVIDED FOR IN THIS CONTRACT INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

10. Representations, Warranties and Covenants of the Douglas County School District

- A. The DCSD hereby warrants and represents to the Contractor that: (i) the DCSD has provided the Contractor with all records heretofore requested by the Contractor and the information set forth therein is, and all information in other records to be subsequently provided by the DCSD pursuant to this Contract will be, true and accurate in all material respects; and (ii) the DCSD presently intends to continue throughout the term of this Contract the use of the Facilities in a manner similar to its present use or use contemplated by this Contract.
- B. The DCSD will provide Contractor with copies of any successor or additional contracts for the management or servicing of pre-existing equipment or equipment installed under this Contract, which may be executed from time to time hereinafter, within thirty (30) business days after execution thereof.

11. Affirmative Covenants of the DCSD

- A. The parties agree that said OC/ECM savings will not likely be obtained unless certain procedures and methods of operation designed for utility conservation will be implemented and followed by the DCSD on a regular, consistent basis. The DCSD agrees that it will adhere to, follow, and implement the procedures and methods of operation and maintenance set forth in this Contract and the Schedules hereto.
- B. The DCSD agrees that the Contractor shall have the right, with prior notice, to inspect the Facilities to determine if the DCSD is complying and shall have complied with its obligations as set forth above, so long as it does not materially affect the DCSD's regular course of business.

12. Required Design Reviews

The design of the Project shall comply with all applicable standards, codes, and local, state and federal statutes; and the Contractor shall be responsible for timely obtaining of all required reviews and approvals of the DCSD and all state and local governmental authorities having jurisdiction over the Project and shall secure all building permits, building code inspections and shall pay all fees and charges relating there to. Obtaining such approvals of other governmental authorities shall be a condition of the DCSD's OCS Measure/ECM acceptance.

13. Labor

- A. The Contractor shall comply with, and ensure all Subcontractors are in compliance with any and all applicable labor laws and regulations, including, but not limited to, NRS chapter 338 and NRS chapter 608 and the regulations promulgated thereto and with the overtime provisions of NRS 338.020. The Contractor shall ensure that all employees on the Project are paid in accordance with the Prevailing Wage Rates as approved by the State of Nevada Labor Commission for the area or place of the Work. Contractor shall be subject to the remedies and any penalties set forth in NRS 338.060 and NRS 338.070. The Contractor will provide Certified Payrolls for all of its workers and all of its subcontractors. The Certified Payrolls will be provided to the DCSD on a monthly basis for review and as part of the Open-Book Pricing of the Contractor.
- B. For purpose of building code compliance, the DCSD Facilities Division is the 'Building Official' for the Project. When acting as the Building Official, the Division, or its duly appointed representative, shall have the authority to issue cease work orders with respect only to the portion of the Work affected. The Contractor shall immediately comply with any cease work order and ensure that its Subcontractors and suppliers also comply with the order. In addition to any other penalty allowed by this Contract or provided by law, the Division may impose an administrative penalty upon any person violating such a cease work order after written notice in an amount not to exceed \$500 per day. Any person objecting to a cease work order may bring an action in district court. No right of action exists in favor of any person by reason of any action or failure to act on the part of the Division or any officers, employees, or agents of the DCSD in carrying out the provisions of this paragraph. A breach of this paragraph shall constitute a material breach of contract.
- C. The Parties agree that any disputes concerning the terms and conditions of this Contract that cannot be resolved after consultation and discussion between the parties shall be submitted and finally settled by binding arbitration as set forth below and governed by the Uniform Arbitration Act of 2000, NRS 38.206 to 38.248.

D. The Parties agree that the Contractor and its consultants, Subcontractors or other parties involved in the Project, may be joined in the mediation, binding arbitration or litigation, at the request of either Party. Unless otherwise agreed in writing, Contractor shall carry on the Work and maintain its progress during any claims and controversies, and DCSD shall continue to make payments to Contractor in accordance with the terms of this Contract. The arbitrator shall have the right to award to the prevailing party its reasonable attorney's fees, court costs, and other related expenses. This section must be included in all agreements with Contractor and Subcontractors.

(1) **MEDIATION OF DISPUTES.** Notwithstanding the requirement that disputes arising out of this Contract shall be subject to arbitration, all claims, disputes, and other matters in question between the parties to this Contract, arising out of or relating to this Agreement or the breach thereof, shall be first submitted to non-binding mediation prior to initiation of any arbitration unless the parties mutually agree otherwise, or one party fails to respond to a Notice requesting mediation for (15) fifteen calendar days after the request is made. The cost of said mediation shall be split equally between the parties. This Agreement to mediate shall be specifically enforceable under the prevailing laws of the State of Nevada.

(2) **ARBITRATION.** With regard to binding arbitration, the following is applicable:

- i. **Arbitration Panel.** Unless the parties mutually agree to one (1) arbitrator, the arbitration shall be conducted by a panel of arbitrators with expertise in construction matters selected by agreement of the DCSD and the Contractor. The DCSD and the Contractor shall equally pay all fees and costs of the arbitration. Not more than one member of the arbitration panel shall be an architect, engineer or other design professional and not more than one member shall be an attorney and not more than one member shall be a contractor.
- ii. **Notice of Demand.** A written Notice demanding arbitration shall be given to the other party to this Contract within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding has expired.
- iii. **Parties.** Either Party may join the Contractor and any subcontractor(s) as parties to any arbitration proceeding to the extent they may be involved, directly or indirectly, in the subject of dispute. The Contractor shall obtain the Agreement and Consent from any subcontractor(s) to be joined by the DCSD in any arbitration.
- iv. **Award.** The arbitration award shall be final and binding as to all parties joined in the proceedings and judgment upon the award may be entered.
- v. **Work Continuance and Payment.** Unless otherwise agreed in writing, the Contractor shall continue the Work and maintain the approved schedules and the DCSD shall continue with payments during any arbitration proceedings.

14. Site Working Conditions

A. Unless expressly authorized in advance by the DCSD, Work necessary to be performed after regular working hours, on weekends or legal holidays, shall be performed without additional expense to the DCSD as an anticipated part of the Contractor's Financial Grade Audit (Attachment DD).

- B. The DCSD will provide the Contractor, at no additional cost, the following:
- (1) A level staging area for material within the boundaries of the DCSD.
 - (2) Office space suitable for two work stations with three phone lines. With the cost of phone calls to be paid by Contractor.
 - (3) Keys to all buildings and facility rooms, except for restricted areas (where access will be provided by the DCSD on a pre-coordinated basis).
 - (4) Parking for eight (8) vehicles.
- C. The Contractor shall at their own expense provide locked fencing around the staging area.
- D. The Contractor will return the Staging Area to its preconstruction condition upon completion of the Project.

15. Termination of Contract

- A. In the event of termination by either party, Contractor and the DCSD will continue to be responsible for their respective payment obligations accrued under this Contract, prior to the effective date of termination.
- B. Termination for Non-appropriation. The continuation of this Contract beyond the current Fiscal Year is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the DCSD and/or Federal sources. The DCSD may terminate this Contract, and, subject to the provisions of Subparagraph A of this paragraph, the Contractor waives any and all claim(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the DCSD's funding from the DCSD and/or Federal sources is not appropriated or is withdrawn, limited, or impaired.
- C. Termination for Default or Breach. A default or breach may be declared with or without termination. Subject to Section 15(d), this Contract may be terminated upon written notice by the non-defaulting Party describing the default or breach to the other party as follows:
- (1) Contractor Defaults:
 - i. If the Contractor fails to provide or satisfactorily perform any of the material conditions of this Contract within the time requirements specified in this Contract or within any granted extension of those time requirements; or
 - ii. If any material state, county, or Federal license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation to be held by the Contractor to provide the goods or services required by this Contract is denied, revoked, debarred, excluded, terminated, suspended, lapsed, or not renewed; or
 - iii. If the Contractor becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the bankruptcy court; or
 - iv. If it is found by the DCSD that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by the

Contractor, or any agent or representative of the Contractor, to any officer or employee of the DCSD or the State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, or making any determination with respect to the performing of such Contract; or

- v. If it is determined by the DCSD that the Contractor has failed to disclose a material conflict of interest relative to the performance of this Contract.
- vi. If the Contractor defaults in any payment or any other obligation to the DCSD under this Contract.

(2) The DCSD Defaults

- i. If the DCSD breaches any material duty under this Contract and any such breach impairs the Contractor's ability to perform or otherwise causes damage to the Contractor; or
- ii. If the DCSD defaults in any payment or any other obligation to the Contractor under this Contract.

D. Time to Correct. Termination upon a declared default or breach may be exercised only after service of formal written notice as specified in subparagraph C of this paragraph, and the subsequent failure of the defaulting party within thirty (30) calendar days after receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared default or breach has been corrected, or, if additional time is required for correction, showing the amount of time reasonably required, together with a description of the actions to be taken and the time by which the default or breach shall be corrected.

E. Winding Up Affairs Upon Termination. In the event of termination of this Contract for any reason, the parties agree that the provisions of this paragraph survive termination:

- (1) The Parties will account for and properly present to each other all claims for fees and expenses incurred under this Contract and pay those which are undisputed and otherwise not subject to set off under this Contract. Neither Party may delay performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination;
- (2) The Contractor will satisfactorily complete Work in progress at the agreed rate (or a pro rata basis if necessary) if so requested by the DCSD;
- (3) The Contractor will execute such documents as are reasonably necessary and in such form and substance as reasonably acceptable to the Contractor and take any actions necessary to effectuate an assignment of this Contract if so requested by the DCSD;
- (4) The Contractor shall preserve, protect and promptly deliver into the DCSD's possession all proprietary information in accordance with Paragraph 22.

F. Remedies. Except as otherwise provided for by law or this Contract, the rights and remedies of the Parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages, and to a prevailing Party's reasonable attorneys' fees and costs. It is specifically agreed that reasonable

attorneys' fees shall include without limitation \$300 per hour for DCSD-employed attorneys. The DCSD may set off consideration against any unpaid obligation of the Contractor to any DCSD agency.

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY SET FORTH IN THIS CONTRACT, THE CONTRACTOR SHALL NOT BE LIABLE TO THE DOUGLAS COUNTY SCHOOL DISTRICT OR ANY THIRD PARTY FOR INDIRECT OR CONSEQUENTIAL DAMAGES.

16. Terms of Payment

- A. Within 30 days of receipt of an invoice from the Contractor, the DCSD will submit an invoice, payment request form, and schedule of values to the lender, if applicable. The DCSD shall have thirty (30) working days from the date of receipt of said invoices to notify the Contractor in writing of any irregularity in the billing. Nevertheless, the DCSD shall pay to the Contractor the entire amount of the invoice less disputed amounts (disputed in good faith), subject to adjustment once the disputed amount is finally resolved. The DCSD shall pay or cause to be paid to the Contractor all undisputed amounts within thirty (30) days after receipt of each invoice.
- B. The Contractor may submit applications for payment for the value of Work performed during the preceding period monthly specified in the OCS Measure/ECM Matrix in Attachment DD. Applications for payment for any ongoing services including measurement and verification shall be monthly in arrears, commencing on the date of Substantial Completion.
- C. The Contractor has based the proposed cost and pricing upon, and the DCSD having accepted the Financial-grade Operational Audit based upon, 'guaranteed maximum pricing'. To ensure that The DCSD's best interests are served, the following 'guaranteed maximum pricing' is made a part of the Contract:
- (1) GMP for the overall Project shall not exceed \$4,989,758.00, including the Financial Grade Audit, and the Performance and Payment bonds provided by AMERESCO;
 - (2) Design Package cost shall not exceed \$174,314.00;
 - (3) Direct Project costs, excluding subcontracted design, disposal, and subcontractor bonding, shall not exceed \$3,288,950.00;
 - (4) Construction Management (CM) costs shall not exceed \$164,448.00;
 - (5) Contractor Overhead shall not exceed \$478,740.00; and,
 - (6) Contractor Profit shall not exceed \$398,950.00.
 - (7) The Indirect Project Costs shall equal 47.99% of the Direct Project Costs.

Contractor shall invoice monthly for Direct Project costs, Indirect Project costs, and any pass through costs.

- D. The cost of bonds, interest, and permits are considered 'pass-through' costs; and as such are not subject to Contractor profit.
- E. Payments due the Contractor which are not paid when due shall bear interest from the date due at the rate of one and one-half percent (1½%) per month, compounded daily, and calculated on the unpaid amount from the date it was due until paid.
- F. In the event the Contractor fails to achieve Project Acceptance on any OCS Measure/ECM, on or before the agreed date for Project Acceptance in Schedule F, Installation Schedule, the DCSD shall be entitled to 'setoff' or 'recover' from the Contractor a sum of \$50 per day for any incomplete OCS Measure/ECM, as liquidated damages, for each day Project Acceptance is delayed. It is agreed that such sum is an amount reasonably estimated to compensate the DCSD for damages that may be caused by delay in the use of the Project and not as a penalty and that Project schedule float is owned by neither the Contractor nor the DCSD. All OCS Measures/ECMs completed by the Project Acceptance date in Schedule F, Installation Schedule will not be subject to a daily damage fee.
- G. If the Contractor is delayed at any time in the progress of the Work by an act or by negligence of the DCSD, the DCSD's employees, separate contractors employed by the DCSD, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the DCSD pending arbitration, or by limited or denied facility access for any reason, or by other causes which the DCSD and the Contractor agree may justify delay, then the date of Project Acceptance shall be reasonably extended by Change Order. Delays less than one full day will be counted as a full day lost.
- H. Forty five (45) calendar days after Design completion, and then again after Project Acceptance by the DCSD, the Contractor will prepare and present a full accounting of Project costs subject to the 'Open-Book' provisions of the RFP and NRS 332; against which any Progress Payments will be made. Using Schedule D - Project Cost Summary and the other items within the Financial Grade Audit (Attachment DD), the DCSD shall receive expense and refund accounting for the following:
- (1) Certified Payrolls for the Contractor and all subcontractors;
 - (2) Fully documented Contractor Project burdens;
 - (3) All vendor purchase orders (POs);
 - (4) All Contractor subcontracts with any Modifications issue against;
 - (5) Fully documented Contractor overhead recovery costs;
 - (6) Fully document construction management costs;
 - (7) Bank construction interest certification;
 - (8) Fully documented 'pre-approved' contingency costs;
 - (9) Any Project savings on the accumulated total of total Direct Cost Labor & Materials and associated Overhead Recovery Costs and Fees.
 - (10) Any Project savings on the accumulation of the following: Training, Bonds / Insurance, Permitting, Detail Study, Quality Control / Contract Management.

17. Independent Contractor

- A. The Contractor is associated with the DCSD only for the purposes and to the extent specified in this Contract, and in respect to performance of the contracted services pursuant to this Contract, the Contractor is and shall be an independent contractor and, subject only to the terms of this Contract, shall have the sole right to supervise, manage, operate, control, and direct performance of the details incident to its duties under this Contract. Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for the DCSD whatsoever with respect to the indebtedness, liabilities, and obligations of Contractor or any other party.
- B. The Contractor shall be solely responsible for, and the DCSD shall have no obligation with respect to: (1) withholding of income taxes, FICA or any other taxes or fees; (2) industrial insurance coverage; (3) participation in any group insurance plans available to employees of the DCSD; (4) participation or contributions by either the Contractor or the DCSD to the Public Employees Retirement System; (5) accumulation of vacation leave or sick leave; or (6) unemployment compensation coverage provided by the DCSD. Contractor shall indemnify and hold the DCSD harmless from, and defend the DCSD against, any and all losses, damages, claims, costs, penalties, liabilities, and expenses arising or incurred because of, incident to, or otherwise with respect to any such taxes or fees. Neither the Contractor, nor its employees, agents nor representatives shall be considered employees, agents, or representatives of the DCSD. The DCSD and the Contractor shall evaluate the nature of services and term negotiated in order to determine "independent contractor" status and shall monitor the Work relationship throughout the term of the Contract to ensure that the independent contractor relationship remains as such. To assist in determining the appropriate status (employee or independent contractor), Contractor represents as follows:

		<u>Contractor's Initials</u>	
		YES	NO
1.	Does the DCSD have the right to require control of when, where and how the independent contractor is to work?	_____	_____ BA
2.	Will the DCSD be providing training to the independent contractor?	_____	_____ BA
3.	Will the DCSD be furnishing the independent contractor with worker's space, equipment, tools, supplies or travel expenses?	_____	_____ BA
4.	Are any of the workers who assist the independent contractor in performance of his/her duties employees of the DCSD or the State of Nevada?	_____	_____ BA
5.	Does the arrangement with the independent contractor contemplate continuing or recurring work (even if the services are seasonal, part-time, or of short duration)?	_____	_____ BA
6.	Will the DCSD incur an employment liability if the independent contractor is terminated for failure to perform?	_____	_____ BA
7.	Is the independent contractor restricted from offering his/her services to the general public while engaged in	_____	_____ BA

this work relationship with the Douglas County School District?

18. Casualty or Condemnation of Facilities / Force Majeure

Neither Party shall be deemed to be in violation of this Contract if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, act of public enemy, acts of terrorism, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event the intervening cause must not be through the fault of the party asserting such an excuse, and the excused party is obligated to promptly perform in accordance with the terms of the Contract after the intervening cause ceases.

19. Notices

Any notice required or permitted to be given under this Contract shall be sufficient if in writing, and if personally delivered or sent by facsimile with written confirmation of receipt or registered or certified mail, postage prepaid, return receipt requested to either party at its address specified on the facing sheet to this Contract. Notices sent by facsimile or personal delivery shall be effective when received with written confirmation of receipt. Notices sent by mail shall be effective upon the third business day following its deposit in the United States Mail.

20. Indemnification

Subject to Section 15(f) and to the fullest extent permitted by law, the Contractor shall indemnify, hold harmless and defend, not excluding the DCSD's right to participate, the DCSD from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, to the extent arising out of any alleged negligent or willful acts or omissions of the Contractor, its officers, employees and agents which result in personal injury (including loss of life) or tangible property damage or loss. The indemnity provided for in this paragraph shall not extend or apply to liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs to the extent they result from the indemnity's negligence, act, omission or fault.

The Contractor's liability in contract for direct damages under this Contract shall in all cases be limited to the sum of the payments received by the Contractor hereunder. The Contractor's liability in tort (including negligence) will, in all cases, be limited to the proceeds of insurance maintained by the Contractor pursuant to the requirements of this Contract.

To the fullest extent permitted by law, and without waiving any NRS Chapter 41 liability limitations it is entitled to assert, the DCSD shall indemnify, hold harmless and defend, not excluding the Contractor's right to participate, the Contractor from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, to the extent arising out of any alleged negligent or willful acts or omissions of the DCSD, its officers, employees and agents which result in personal injury (including loss of life) or tangible property damage or loss. The indemnity provided for in this paragraph shall not extend or apply to liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs to the extent they result from the indemnity's negligence, act, omission or fault.

21. Governing Law; Jurisdiction

This Contract and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada, without giving effect to any principle of conflict-of-law that would require the application of the law of any other jurisdiction. The Parties consent to the jurisdiction of (the Ninth Judicial District Court, Douglas County, Nevada) for enforcement of this Contract.

22. The DCSD Ownership of Proprietary Information

- A. All drawings and specifications prepared by the Contractor solely for this Project, and with the DCSD funds, shall remain the property of the Contractor until Project Acceptance has been made by the DCSD, at which time said documents shall become the property of the DCSD.
- B. Upon payment in full by the DCSD to the Contractor of all amounts due under this Contract through the acceptance of the Project OCS Measures/ECMs, any reports, histories, studies, tests, manuals, instructions, photographs, negatives, blue prints, plans, maps, data, system designs, computer code (which is intended to be consideration under the Contract), or any other documents or drawings, prepared or in the course of preparation by the Contractor (or its subcontractors) in performance of its obligations under this Contract shall be the exclusive property of the DCSD and all such materials shall upon written request be delivered into the DCSD's possession by the Contractor upon completion and acceptance of the Project OCS Measures/ECMs; or upon termination or cancellation of this Contract. The Contractor shall not use, willingly allow, or cause to have such materials used for any purpose other than performance of the Contractor's obligations under this Contract without the prior written consent of the DCSD. Notwithstanding the foregoing, the DCSD shall have no proprietary interest in any materials licensed for use by the DCSD that are subject to patent, trademark or copyright protection.

23. Severability

If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

24. Assignment/Delegation

To the extent that any assignment of any right under this Contract changes the duty of either Party, increases the burden or risk involved, impairs the chances of obtaining the performance of this Contract, attempts to operate as a novation, or includes a waiver or abrogation of any defense to payment by the DCSD, such offending portion of the assignment shall be void, and shall be a breach of this Contract. The Contractor shall neither assign, transfer nor delegate any rights, obligations or duties under this Contract without the prior written consent of the DCSD. The DCSD acknowledges that the Contractor may provide the Work and services under this Contract through Subcontractors, and such shall not be considered to be a breach of this paragraph.

25. Successors and Assigns

The obligations of this Contract shall be binding on the successors and assigns of the DCSD and/or the Contractor.

26. Insurance

The insurance requirements are set forth in Schedule G.

27. Prior Agreements, Proprietary Rights

This Contract supersedes the terms and conditions of any prior agreements, understandings, or representations, oral or written, between the parties, excepting the incorporated documents to this Contract. The DCSD will not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secrets, or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the OCS Measures/ECMs.

28. Excluded Material and Activities

A. The DCSD recognizes that in connection with the Work, installation and/or service or maintenance of equipment and/or systems at the DCSD's facilities, the Contractor may encounter, but is not responsible for, any Work relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, or (ii) mold, materials containing mold, or the existence, use, detection, removal, containment or treatment thereof, or (iii) pollutants, hazardous wastes, hazardous materials, contaminants (collectively "Hazardous Materials"), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof, with the exception of Hazardous Material Removal specified in the ECM Matrix in Attachment DD. The materials and activities listed in the foregoing sentence are hereinafter referred to as "Excluded Materials and Activities". The DCSD agrees that if the Contractor's performance of any Work under this Contract involves Excluded Materials and Activities, upon receipt of any and all appropriate funding and approval, the DCSD will perform or arrange for the performance of such Work and will bear the sole risk and responsibility therefore. In the event the Contractor discovers or determined that the Work will comprise Hazardous or Excluded Materials, the Contractor will immediately cease Work, remove all Contractor personnel or subcontractors from the site, and notify the DCSD. The DCSD will be responsible to handle such Materials at the DCSD's expense or appropriately compensate the Contractor for the removal of same. The Contractor will undertake no further Work at the facility except as authorized by the DCSD in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the DCSD(s) will not constitute a default by the DCSD.

B. To the extent permitted by law, the DCSD agrees to release, indemnify, defend, and hold harmless the Contractor, its assigns, consultants, contractors, shareholders, officers, directors, agents, employees and affiliates, from and against all costs, claims, damages, or liability arising out of such Work related to Excluded Materials and Activities performed by or for the DCSD, excepting only such costs, claims, damages, or liability as are the result of any act or omission of the Contractor; provided that the Contractor gives the DCSD written notice within ten (10) business days after receipt of notice of such claim or suit, that the DCSD has the sole authority to defend or settle the claims, and that the Contractor

cooperates fully with the DCSD in defending or settling such claims. The Contractor may participate in such defense at its own expense; in no event will the DCSD be liable for the Contractor's attorney's fees or other litigation expenses in such action. The Contractor does not take title to any such materials, nor does it assume any responsibility for the transportation, handling or disposal of such property. The Contractor will be solely responsible for any hazardous or other materials that it may bring to the Site, including without limitation; those listed in Paragraph A above, that it may bring to the site.

29. Announcements

Neither Party will issue a press release publicizing or disclosing any affiliation with the other under this Contract, nor the terms hereof, without the written consent of the other. Notwithstanding the foregoing, the Contractor may include a reference to the Project in its portfolio of projects.

30. Confidential Business Information

- A. Each Party recognizes that, in connection with its role in the performance of Services under this Contract, it shall be given access to information by the other Party, including proprietary information or trade secrets of such Party that are valuable because they are not generally known to the public or in the industry ("Confidential Business Information"). To the extent permitted by law, neither Party shall, whether during the term of this Contract or thereafter for a period of three (3) years, directly or indirectly disclose any item of the other Party's *Confidential Business Information* to any third party, use any such item for its own benefit or for the benefit of any third party, or permit any third party hereto to so use or disclose said *Confidential Business Information*, without the prior express written consent of the disclosing Party, until such time as the *Confidential Business Information* shall have properly become known to the general public. Nothing herein shall preclude the DCSD from disclosing information to third-party engineering consultants retained by the DCSD to evaluate the Work and recommendations of the Contractor, or otherwise consult with the DCSD, provided that such third-party engineering consultants execute a written agreement with the Contractor and the DCSD binding them to the same requirements as the DCSD listed throughout this Contract for the treatment of any and all confidential information. For purposes of this Contract, the term "*Confidential Business Information*" is defined in NRS 332.
- B. The Contractor shall keep confidential all information, in whatever form, produced, prepared, observed or received by the Contractor to the extent that such information is confidential by law or otherwise required by this Contract.

31. Third Party Beneficiaries

There are no parties intended to be benefited by this Contract other than the DCSD and the Contractor, and accordingly, all third-party beneficiaries are expressly disclaimed.

32. Phasing of Project Implementation

The Parties agree that the award and scope of work contemplated under this Contract includes:

- **ECM-1: Lighting System Improvements:** The linear fluorescent lighting systems in the DCSD have been partially converted to 32-watt T8 lamps and instant start electronic ballasts with some rooms having higher than recommended light levels. The retrofit of the lighting

systems occurred between 2001 and 2003. Many areas still have the “old style” T12 linear fluorescent lighting system with magnetic ballasts.

AMERESCO proposes to replace the existing lamps with a new 28-watt T8 fluorescent lamp. The new premium efficiency lamps have a different mixture of phosphors that allow them to consume less energy and produce the same initial light level. Over the life of the lamp, the 28-watt unit maintains its light levels better than the 32-watt lamp and the T12 lamp it will replace. AMERESCO confirmed the ballasts installed in the schools will support the new lamp and the magnetic ballasts will be replaced with instant start electronic ballasts. New high efficient compact fluorescent lamps or ceramic metal halide lamps will replace interior incandescent lamps in the common areas and interior HID fixture types.

- **ECM-2: Install Lighting Controls:** AMERESCO is proposing to install new occupancy sensors in the classrooms, gymnasiums, libraries, restrooms, and administrative areas of the schools. Our initial site visits indicated few sensors were installed. In addition, AMERESCO is proposing a new daylight harvesting system for the fixtures adjacent to the skylights for the PWLMS multi-purpose room. These controls will turn off the lights during periods when ambient lighting is high. The sensors proposed will have sensitivity and duration adjustments for reliable operation.
- **ECM-3: Upgrade Gymnasium Lighting:** The gymnasiums at the high schools and the middle schools are presently illuminated using HID lighting fixtures mounted at 20 feet above the floor. AMERESCO proposes to replace the HID fixtures with new fixtures having six lamps. The lamps will be 32-watt, 4-foot, fluorescent lamps powered by electronic ballasts. The fixtures will be installed on a one-for-one basis. CVMS large gym is currently illuminated with six-lamp T-5 fluorescent hi-bay fixtures and no changes will be made to these fixtures. The “old gym” at CVSM has HID recessed fixtures and will be changed to 150-watt ceramic metal halide can kits.
- **ECM-4: Upgrade Energy Management System:** Ameresco will upgrade the EMS at 10 of the 11 schools. EMS upgrades are not included at Pau-Wau-Lu Middle School. The scope will include a new Tridium Niagara AX non-proprietary web-based front-end with graphical displays and quick-view screens on a new front-end work station computer terminal. The front-end will communicate with each school’s system via a new Tridium Jace controller with network access. The District will be able to schedule the HVAC equipment at each school from one location. Ameresco will also review the existing control sequences and optimize the sequence of operation of the HVAC systems.
- **ECM-6: Install Vending Machine Controls:** The high schools have several vending machines located throughout the buildings and the middle and elementary schools have few to none. None of the observed machines has controls on them. AMERESCO will install vending machine controls on all of the units.
- **ECM-7: Install New Energy Star Transformers:** AMERESCO proposes to replace the existing step-down transformers at the schools with the newest technology, energy-efficient transformers. All of the transformers are dry-type indoor transformers that step-down 480-volt (V) power to 208Y/120V power. Tie-ins to the existing primary and secondary power feeds will be required. Implementation of this ECM will result in electrical energy and demand savings.
- **ECM-8: Install Trash Compactors:** AMERESCO proposes to install trash compactors at several of the schools to reduce the cost paid to the waste management company. AMERESCO

will pour concrete pads, set the compactors, and run electrical service to them. American Trash Management will monitor the compactors for the District.

- **ECM-9: DHS Bldg 500 HVAC Retrofit:** AMERESCO proposes to install two new natural gas fired heating only rooftop units in the same locations as the units that were removed and to tie them into the abandoned building perimeter ductwork. The existing system and newly installed rooftop heating units will be controlled by additional controls added to the existing Alerton control system.
- **ECM-10: Exterior Lighting:** AMERESCO proposes to replace the 28-400-watt metal halide lamps and ballasts in the parking lot with an appropriate number of energy saving lamp fixtures utilizing induction lighting technology. AMERESCO also proposes to remove the existing lighting bollards along the walk ways and replace them with acorn style fixtures using induction lighting technology. Both parking lot and walk way lighting will be designed to provide lighting levels as recommended by the Illuminating Engineering Society of North America. New 8-foot poles will also be installed for post top mounting of these fixtures. This will result in less fixtures being used along the walkway and will help prevent in vandalism of these fixture. AMERESCO recommends the school zone and pedestrian flashers be retrofitted with LED modules and photovoltaic panels where practical.

Work will begin upon funding and a notice to proceed from the DCSD.

33. Materials & Equipment Purchasing

- A. **Purchasing Agent.** Notwithstanding any other provision of this Contract (including, but not limited to, paragraph 17 above), the DCSD hereby appoints the Contractor as the DCSD's agent for the purchase of materials and equipment required pursuant to this Contract. The Contractor hereby agrees to act as purchasing agent to purchase such materials and equipment for, and on behalf of the DCSD. The DCSD shall be bound by the Contractor's purchases of materials and equipment made on behalf of the DCSD; provided, however, that the Contractor is acting consistent with the provisions of this Contract, unless the materials and/or equipment are found to be defective, deficient, or do not meet the requirements of the design parameters.
- B. **Disclosure of Agency Relationship.** The Contractor, acting as purchasing agent, shall disclose its role as purchasing agent to all third parties from whom the Contractor, on behalf of the DCSD, purchases materials and equipment. All purchase orders must identify the DCSD as the purchaser and the Contractor as the DCSD's purchasing agent. The Contractor must execute purchase orders for such materials and equipment only as agent for the DCSD and not for its own behalf. The following language should be included with each purchase order:

"Without limiting the availability of any other statutory, judicial, or administrative exemptions, exclusions, or deductions otherwise available to limit, exempt, or exclude the application of the any Nevada state or local taxes of any kind, the items covered by this purchase order are being purchased by the DCSD for its own purposes. AMERESCO Inc. is acting solely as the purchasing agent for the DCSD in executing this purchase order and is not acquiring any ownership interest in the items that are the subject of this purchase order".

- C. Transfer of Title. Upon installation and acceptance, the DCSD will be the sole owner and title holder of all materials and equipment purchased by the Contractor for, and on behalf of the DCSD. Acceptance shall not be unreasonably withheld or delayed. The Contractor shall not hold an ownership interest in the purchased materials and equipment once the same are installed and accepted. Consistent with the DCSD's ownership of such materials and equipment, the DCSD shall maintain full control over, and reserves the right to use, the materials and equipment as it pleases.
- D. Purchase Price. The DCSD, as owner and title holder of the materials and equipment purchased, installed and accepted on its behalf by the Contractor, shall solely be responsible for the purchase price of such materials and equipment, unless Contractor's purchase was not required pursuant to this Contract. Acceptance shall not be unreasonably withheld or delayed.
- E. Risk of Loss. The DCSD maintains the risk of loss with respect to all materials and equipment purchased by the Contractor for, and on behalf of the DCSD once the materials are and/or equipment is installed and accepted in/on the Project. Acceptance shall not be unreasonably withheld or delayed.
- F. Indemnification. Notwithstanding anything in this Contract to the contrary, the DCSD shall indemnify and hold the Contractor harmless from, and defend Contractor against, any and all losses, damages, claims, costs, penalties, interest, liabilities, and expenses, including reasonable attorney's fees, arising or incurred because of, incident to, or otherwise with respect to, any Nevada state or local sales or use tax liability asserted or assessed by any vendor or supplier the Nevada Department of Taxation or any other taxing authority with respect to the materials and equipment purchased by Contractor for, and on behalf of, the DCSD.

34. Environmental & Tax Credits

The Contractor shall have the right to all environmental, energy, tax, financial, and electrical-related attributes, rights, credits, benefits and characteristics associated with or arising out of the transactions contemplated by this Contract or associated with the ECMS or with the energy, capacity or other electrical savings created under this Contract, howsoever created or recognized in the United States, any political subdivision thereof or any foreign jurisdiction (other than dollar savings realized by the DCSD from reductions in its energy use or other operating costs). The DCSD shall provide the Contractor all reasonable assistance in perfecting its rights to such attributes, rights, credits, benefits and characteristics.

* * * * *

Schedule A: List of Facilities

DCSD Facilities

BUILDINGS/SCHOOLS	Area (sf)
Douglas High School	181,341
Gardnerville Elementary School	58,548
Carson Valley Middle School	100,302
C.C. Meneley Elementary School	56,631
Jacks Valley Elementary School	51,740
Minden Elementary School	41,800
Pinion Hills Elementary School	51,300
Gene L. Scarselli Elementary School	53,739
Zephyr Cove Elementary School	39,039
Pau-Wau-Lu Middle School	103,000
George Whittell High School	51,368
District Office	10,800
Building Maintenance	4,500
Vehicle Maintenance	7,500
Transportation	1,680
Food Services	7,825
Computer Services	1,848
Total	822,961

Schedule B: Standards of Operation and Comfort

Existing and Proposed Setpoints

School	Existing Setpoints				New Setpoints			
	Occ Htg	Occ Clg	Unocc Htg	Unocc Clg	Occ Htg	Occ Clg	Unocc Htg	Unocc Clg
JVES	75	75	68	90	70	75	60	90
PHES	75	75	70	85	70	75	60	90
MES	74	75	70	90	70	75	60	90
GES	78	75	70	90	70	75	60	90
CCMES	72	75	70	90	70	75	60	90
GLSES	74	75	68	90	70	75	60	90
ZCES	68	75	68	90	70	75	60	90
PWLMS	72	75	70	90	70	75	60	90
CVMS	72	75	68	90	70	75	60	90
DHS	74	75	68	90	70	75	60	90
GWHS	75	75	68	90	70	75	60	90

**Douglas County School District
Proposed HVAC Equipment Operating Schedule**

School	Daily Run Schedule														Setpoints			
	Sunday		Monday		Tuesday		Wednesday		Thursday		Friday		Saturday		Occ Htg	Occ Clg	Unocc Htg	Unocc Clg
	ON	OFF	ON	OFF	ON	OFF	ON	OFF	ON	OFF	ON	OFF	ON	OFF				
JVES	OFF	OFF	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	OFF	OFF	70	75	60	90
PHES	OFF	OFF	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	OFF	OFF	70	75	60	90
MES	OFF	OFF	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	OFF	OFF	70	75	60	90
GES	OFF	OFF	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	OFF	OFF	70	75	60	90
CCMES	OFF	OFF	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	OFF	OFF	70	75	60	90
GLSES	OFF	OFF	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	OFF	OFF	70	75	60	90
ZCES	OFF	OFF	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	7:00	17:00	70	75	60	90
PWLMS	OFF	OFF	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	OFF	OFF	70	75	60	90
CVMS	OFF	OFF	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	7:00	17:00	70	75	60	90
DHS	OFF	OFF	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	7:00	17:00	70	75	60	90
GWHS	OFF	OFF	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	6:00	20:00	7:00	17:00	70	75	60	90

Note: During the Winter months (Nov-Feb) the following schools start time on Mondays may be 4:30 AM.

1. PWLMS
2. CVMS
3. DHS
4. GWHS

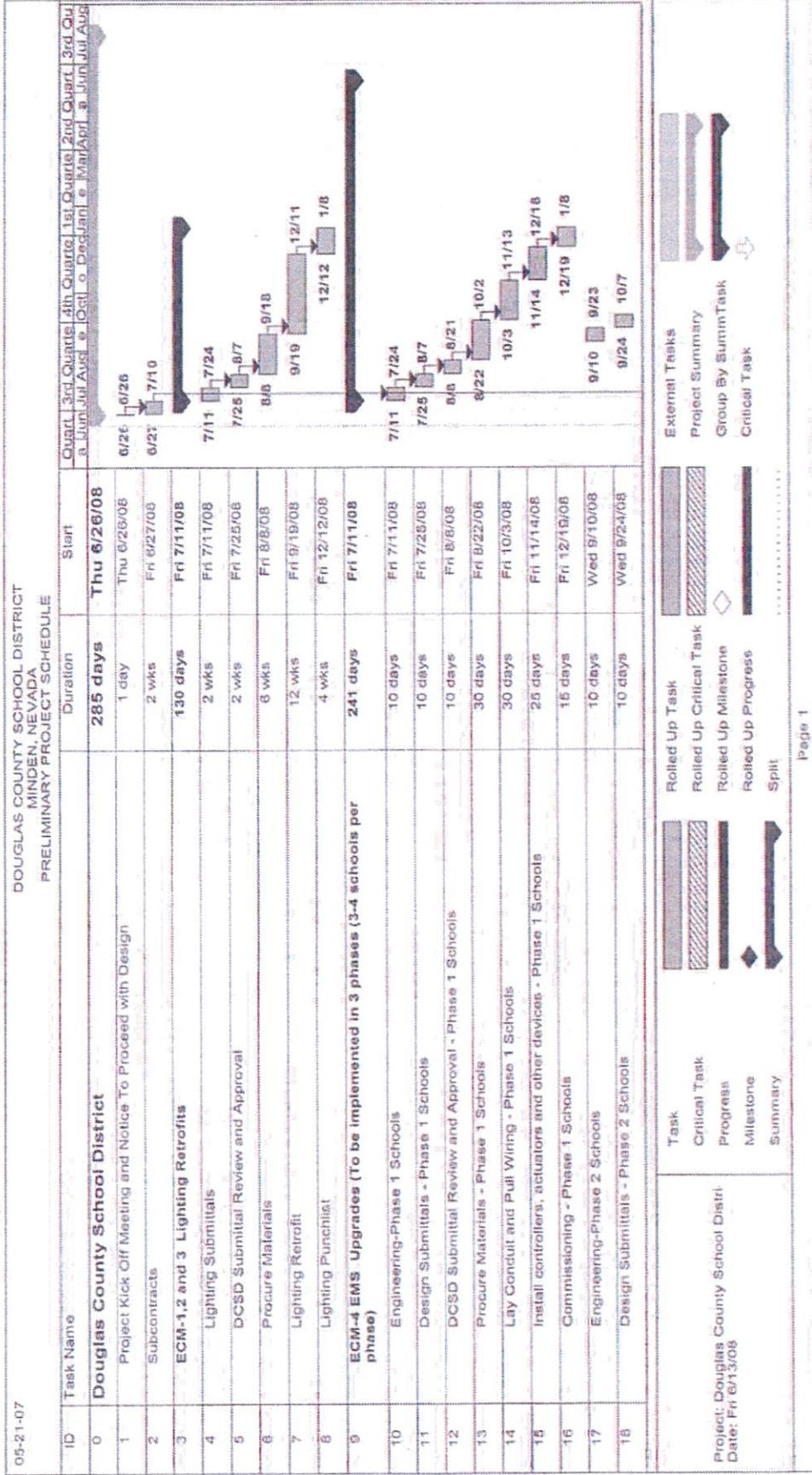
Schedule D: Project Cost Summary

			TOTAL CONSTRUCTION COST	FEES	AWERESC O MARK UP	TOTAL COST	SIMPLE PAYBACK
Project Summary							
	1	Lighting System Improvements	\$800,854	\$170,601	\$213,742	\$1,185,297	8.2
	2	Install Lighting Controls	\$162,354	\$34,592	\$43,325	\$240,281	10.0
	3	Upgrade Gymnasium Lighting	\$58,821	\$12,529	\$15,898	\$87,048	6.1
	4	Upgrade Energy Management System & Recommission Buildings	\$1,263,733	\$289,174	\$337,241	\$1,890,148	27.6
	5	Computer Power Management	\$75,233	\$16,025	\$20,077	\$111,335	1.9
	6	Install Vending Machine Controls	\$4,332	\$921	\$1,158	\$6,411	1.7
	7	Install New Energy Star Transformers	\$378,189	\$78,851	\$98,788	\$555,828	9.4
	8	Install Trash Compactors	\$209,301	\$44,562	\$55,853	\$309,716	3.7
	9	DHS Bldg 500 HVAC Retrofit	\$180,676	\$21,444	\$26,868	\$329,068	N/A
	10	DHS Exterior Lighting	\$243,357	\$51,835	\$64,942	\$360,134	47.6
Project Summary - All Buildings			\$3,288,950	\$700,544	\$877,680	\$4,867,184	10.52

Schedule E: Payment Schedule

DOUGLAS COUNTY SCHOOL DISTRICT PROJECT 03117											
SCHEDULE OF VALUES											
A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		E THIS PERIOD	F MATERIAL STORED (NOT I.R.D. OF E)	G TOTAL COMPLETED & STORED TO DATE		H BALANCE TO FINISH (C - G)	I RETAINAGE IF APPLICABLE 10%	
			FROM PREVIOUS APPLICATIONS	APPLICATIONS			(D + E + F)	(%)			
1	Lighting System Improvements	\$ 1,185,207					\$ -		\$ 1,185,207	\$ -	
2	Install Lighting Controls	\$ 240,261					\$ -		\$ 240,261	\$ -	
3	Upgrade Gymnasium Lighting	\$ 87,048					\$ -		\$ 87,048	\$ -	
4	Upgrade Energy Management System & Recommission Buildings	\$ 1,870,148					\$ -		\$ 1,870,148	\$ -	
5	Computer Power Management	\$ 111,335					\$ -		\$ 111,335	\$ -	
6	Install Vending Machine Controls	\$ 6,411					\$ -		\$ 6,411	\$ -	
7	Install New Energy Star Transformers	\$ 547,828					\$ -		\$ 547,828	\$ -	
8	Install Trash Compactors	\$ 308,736					\$ -		\$ 308,736	\$ -	
9	DHS Bldg 500 HVAC Retrofit	\$ 148,986					\$ -		\$ 148,986	\$ -	
10	DHS Exterior Lighting	\$ 360,134					\$ -		\$ 360,134	\$ -	
11	Pass-Through Costs									\$ 48,588	
12	Ameresco Bond Costs Investment Grade Audit	\$ 48,588 \$ 74,066							\$ 48,588 \$ 74,066	\$ -	
ORIGINAL CONTRACT TOTAL:		\$ 4,989,758	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,989,758	\$ -	
								0.00%			\$ -

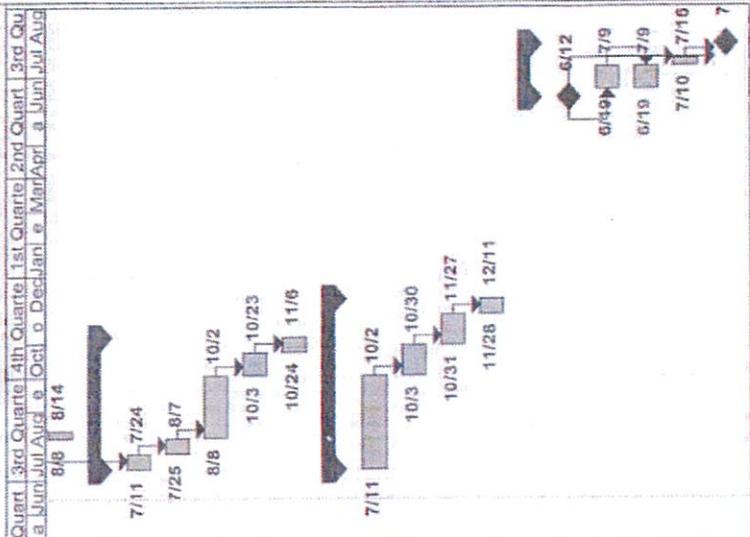
Schedule F: Project Schedule



05-21-07

DOUGLAS COUNTY SCHOOL DISTRICT
MINDEN, NEVADA
PRELIMINARY PROJECT SCHEDULE

ID	Task Name	Duration	Start
38	Commissioning	1 wk	Fri 8/8/08
39	ECM-7 Energy Star Transformers	85 days	Fri 7/11/08
40	Design Submittals	2 wks	Fri 7/11/08
41	DCSD Submittal Review and Approval	10 days	Fri 7/25/08
42	Procure Materials	8 wks	Fri 8/8/08
43	Installation	3 wks	Fri 10/3/08
44	Commissioning	2 wks	Fri 10/24/08
45	ECM-8 Install Trash Compactors	110 days	Fri 7/11/08
46	Procure Materials	12 wks	Fri 7/11/08
47	Concrete Pads/Fencing	4 wks	Fri 10/3/08
48	Electrical Installation	4 wks	Fri 10/31/08
49	Start Up and Commissioning	2 wks	Fri 11/28/08
50	Project Closeout and Completion	34 days	Fri 8/12/09
51	Substantial Completion	0 days	Fri 8/12/09
52	Punch List Completion	3 wks	Fri 6/19/09
53	Documentation	3 wks	Fri 6/19/09
54	Final Inspection & Acceptance	1 wk	Fri 7/10/09
55	Project Complete	0 days	Thu 7/30/09



Project: Douglas County School District
Date: Fri 6/13/08

	Task		Rolled Up Task		External Tasks
	Critical Task		Rolled Up Critical Task		Project Summary
	Progress		Rolled Up Milestone		Group By Summary Task
	Milestone		Rolled Up Progress		Critical Task
	Summary		Split		

Schedule G: Insurance

The Contractor will determine the insurance requirements for the subcontractors and will verify coverage.

FORMAT/TIME

The Contractor shall provide Owner with Certificates of Insurance for coverages 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.

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.

OWNER COVERAGE

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

ENDORSEMENT/CANCELLATION

The Contractor's general liability insurance policy shall be endorsed to recognize specifically the Contractor'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.

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 Contractor to pay.

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**.

COMMERCIAL GENERAL LIABILITY

Subject to paragraph 6 of this attachment, the Contractor shall maintain limits of no less than **\$1,000,000** 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.

AUTOMOBILE LIABILITY

Subject to paragraph 6 of this attachment, the Contractor shall maintain limits of no less than **\$1,000,000** combined single limit per occurrence for bodily injury and property damage, to include, but not be limited to, coverage against all insurance claims for injuries to persons or damages to property which may arise from services rendered by Contractor and **any auto** used for the performance of services under this contract.

WORKERS' COMPENSATION

The Contractor 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 Contractor has any employees, and regardless of whether the insurer has determined that the Contractor is exempt from the provisions of the workers' compensation statutes.

FAILURE TO MAINTAIN COVERAGE

If the Contractor fails to maintain any of the insurance coverages required herein, Owner may withhold payment, order the Contractor to stop the work, declare the Contractor 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 Contractor or deduct the amount paid from any sums due the Contractor under this contract.

ADDITIONAL INSURANCE

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

DAMAGES

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

COST

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

INSURANCE SUBMITTAL ADDRESS

All Insurance Certificates requested shall be sent to the Douglas County School District, Attn: Holly Luna, 1638 Mono Avenue, Minden, NV 89423, within **10 calendar days** after the award by the Owner.

INSURANCE FORM INSTRUCTIONS

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

- A. Insurance Broker's company name, complete address, contact name, phone, and fax numbers.
- B. Contractor'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: Finance Department
1638 Mono Avenue
Minden, Nevada, 89423
- I. Nevada Resident Agent Signature

Schedule H: Prevailing Wage Rates