



City of Jacksonville, Florida

Lenny Curry, Mayor

Procurement Division
Ed Ball Building
214 N. Hogan Street, Suite 800
Jacksonville, Florida 32202

ONE CITY. ONE JACKSONVILLE.

July 19, 2017

Ref: P-65-17 Guaranteed Energy Performance Contracting Services

Dear Consultant:

The Department of Public Works of the City of Jacksonville, Florida, will require the professional services of a consultant/firm to provide the referenced services. Attached is a copy of the Request for Proposal.

In order to establish a list of qualified, interested and available people, this letter is being directed to you. If interested in providing the specific services, please provide the City with the following:

- A) ONE (1) MANUALLY SIGNED ORIGINAL, TWO (2) HARD COPIES, AND SIX (6) EXACT COPIES on CD Rom/USB Flash Drives (in pdf format excluding your financials) of your proposal, unless additional copies are otherwise requested in the Request for Proposals, specifically stating your interest and any other specific information or statements called for in the enclosed Request for Proposals.
- B) Complete information about your firm and staff qualifications.
- C) A list of projects which indicate specific background and experience in the program area being considered.
- D) A quotation of proposed rates, fees or charges and other detailed cost proposal or cost breakdown information, if applicable.
- E) Please note: THREE (3) copies of the firm's financial statement (if required), may be submitted in sealed envelopes, each envelope clearly labeled "Pursuant to Section 119.071(1)(c), Florida Statutes, the document contained herein is exempt from the mandatory disclosure requirements of the Florida Public records Law. Accordingly it is not Subject to Public Inspection." Include your firm's name and the number of the project as shown above. In certain cases (roads and public works projects) may not be subject to the Public Records Law.

Please note:

- 1) Section 126.110 of the Purchasing Code requires that a public official who has a financial interest in a bid or contract make a disclosure at the time that the bid or contract is submitted or at the time that the public official acquires a financial interest in the bid or contract, including but not limited to the public official's name, public office or position held, bid or proposal number, and the position or relationship of the public official with the bidder or proposer.
- 2) A person or affiliate who has been placed on the State of Florida convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to

provide any goods or services to a public entity, may not submit a bid on a contract with public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity for a period of 36 months from the date of being placed on the convicted vendor list.

- 3) Collusion: The Proposer, by affixing his signature to this proposal agrees to the following: "Proposer certifies that this proposal is made without any previous understanding, agreement or connection with any person, firm, or corporation making a bid for the same service; and is in all respects fair, without outside control, collusion, fraud or otherwise illegal action."

Any questions regarding this RFP should be submitted via e-mail to Alex Baker at abaker@coj.net no later than 11:00 a.m., Wednesday, August 2, 2017. The answers to the questions received will be distributed in the form of an addendum shortly thereafter. The addendum will be located on the same website as the RFP at the following address: <http://www2.coj.net/rfp/rfpdefault.asp>

If any addenda are issued to this RFP, a good faith attempt will be made to deliver a copy to each of those Proposers who, according to the records of the Division of Procurement, has requested a copy of this RFP, and it will be posted on the Procurement website. However, prior to submitting a proposal, it shall be the responsibility of the Proposer to contact the City's Division of Procurement at abaker@coj.net to determine if addenda were issued and, if so, to obtain such addenda for attachment to their proposal.

Pay close attention to Grading Requirements (Attachment B) and Indemnifications and Insurance portions of the RFP and the newly added Errors & Omissions language.

Your proposal must clearly bear the RFP number (P-65-17) and must be received no later than 2:00 P.M. ET Wednesday, August 23, 2017, and directed to:

City of Jacksonville
Procurement Division
Attn: Professional Services Specialist
214 N. Hogan Street, Suite 105
Jacksonville, FL 32202

Your package/proposal must be date and time stamped upon receipt. If it "appears" in our offices after the deadline and there is no date/time stamp, it will be rejected.

Yours very truly,

Gregory Pease

Chief, Procurement Division
Chairman, Professional Services
Evaluation Committee

GP:

cc: Subcommittee Members
Council Auditor

Jeff Close, OGC
Melba Gray GAD
Subcommittee Members

Request for Proposals
For
Guaranteed Energy Performance Contracting Services
July, 2017



ONE CITY. ONE JACKSONVILLE.

CITY OF JACKSONVILLE
Procurement Division
Ed Ball Building
214 North Hogan Street, Suite 800 (8th Floor)
Jacksonville, Florida 32202
Phone: (904) 255-8800
Fax: (904) 255-8837

REQUEST FOR PROPOSALS

Guaranteed Energy Performance Contracting Services

RFP #: P-65-17

For

City of Jacksonville, Florida

SECTION 1

(Specific Information Regarding this RFP)

1.1 Introduction

The City of Jacksonville (“**Buyer**” or “**City**”) intends to hire a “Guaranteed Energy, Water, and Wastewater Performance Savings Contractor” as defined in the Guaranteed Energy, Water and Wastewater Performance Savings Contracting Act (“**Act**”), which the Florida Legislature created in Section 489.145, Florida Statutes (“**ESCO**” or “**Contractor**”), to:

- conduct an Investment Grade Energy Audit, as defined in the Act (“**IGA**”) pursuant to an Investment Grade Energy Audit Agreement (“**IGAA**”), of facilities; and
- implement a Guaranteed Energy, Water, Wastewater, and Performance Savings Contract (“**EPC**”), as also defined in the Act..

Pursuant to the Act and City Ordinance Code Chapter 126, the City of Jacksonville, FL is seeking proposals from interested ESCOs capable of providing the professional services described in Section 1.2 and Section 4 of this Request for Proposal (“RFP”) to identify and implement capital improvements to reduce energy and related costs in facilities such that annual cost savings are applied to annual payments for improvements and the financing of the improvements, all of which are subject to the limitations of this RFP and City Council approval.

Persons interested in submitting a response to this RFP (a “**Response**”) should carefully review this RFP for instructions on how to respond and for the applicable contractual terms. This RFP is divided into the following sections:

Section 1	Specific Information Regarding This RFP
Section 2	General Instructions
Section 3	General Terms and Conditions of Agreement
Section 4	Description of Services (as referenced in Section 1.2 below)
Attachment A	Response Format
Attachment B	Evaluation Matrix
Attachment C	Equal Business Opportunity Program Requirements EBO Form 1 – Consultant/Contractor Monthly Report EBO Form 2 – Good Faith Effort Documentation
Attachment D	Accuracy of Work
Attachment E	Sample Master Contract (“ Contract ”)
Attachment F	Investment Grade Energy Audit Agreement (“ IGAA ”)
Attachment G	Guaranteed Energy, Water, Wastewater Performance Savings Contract (“ EPC ”)
Attachment H	Financing Agreement (which is to be attached as Ex. L to the EPC)
Attachment I	Indemnification
Attachment J	Insurance Requirements
Form 1 -	Price Sheet – (To be used in negotiation of fees)
Form 2 -	Conflict of Interest Certificate

In the event of conflicting provisions, the following sections of this RFP will have priority in the order listed: Section 1, Section 4, Section 2, Section 3, the Attachments, and the Forms.

1.2 **Scope of Services.**

The City of Jacksonville is seeking proposals from ESCOs to enter into a master contract (“**Contract**”) to perform an IGA for Energy, Water, Wastewater Cost Savings, as defined in the Act, which are also guaranteed by the ESCO (“**Guaranteed Energy Savings**”). The selected ESCO must perform an IGA and prepare a detailed engineering and economic report (“**Report**”) which specifically identifies the energy, water, wastewater efficiency and conservation measures, as defined in the Act (“**ECM**”), which are recommended to be installed or implemented at facility(s) identified by Buyer (“**Facility(s)**”). The Report shall contain detailed projections of Guaranteed Energy Savings to be obtained at the Facility(s) as a result of the installation of the recommended ECMs, which are also all financially guaranteed by the ESCO. The results form the basis for negotiating a subsequent EPC and Financing Agreement, if applicable, under which the ESCO shall design, procure, install, implement, maintain and monitor such ECMs. The approval to enter into subsequent EPC and Financing Agreement are contingent on City Council approval.

For a complete description of the scope of services required under this RFP, please see Section 4.

1.3 **Term of Agreement.**

The initial term of the Contract commences upon execution of the Contract and continues for a three (3) year period. Buyer has the option to renew such agreement for up to two (2) additional one (1) year periods upon satisfactory performance by ESCO. The Contract is subject to early termination as set forth elsewhere in this RFP.

1.4 **Minimum Requirements for Contractors.**

Contractors must satisfy the following mandatory minimum requirements in order to have their Responses evaluated. By submitting a Response, Contractor warrants and represents that it satisfies these requirements. Failure to meet these requirements will result in the Response not being evaluated and being rejected as non-responsive:

1. L Licensed under F.S. 471, 481 or 489 to perform the services described in this RFP.
2. Contractor must have performed at least one similar contract in the last three (3) years. A similar contract is defined as Guaranteed Energy, Water and Wastewater Performance Savings Contract in excess of \$500,000 entered pursuant to the provisions in Section 489.145, Florida Statutes.
3. Must possess all other necessary licenses to do business in the State of Florida and Duval County

1.5 **Equal Business Opportunity Program**

It is an official policy of the City of Jacksonville to encourage the maximum participation of Jacksonville Small and Emerging Businesses (JSEBs) in its contract awards based upon availability. To participate as a JSEB on Buyer projects, a company must be certified as a JSEB with the City's Equal Business Opportunity Office.

This RFP and the resulting Contract are subject to requirements of the “Participation Percentage Plan, which is set forth on Attachment C. to this RFP. This RFP shall have a 5% participation goal under the Plan.

Contractors may contact Buyer's Equal Business Opportunity Office at 904-255-8840 or find the JSEB directory at www.jseb.coj.net Please contact the Contact Person identified above if you experience problems accessing it.

1.6 Documents Available for Inspection

During preparation of a response to this RFP, the following material is available for review by Contractors:

City Standard Detail Specifications

Arrangements for inspection should be made with the Contact Person identified in Section 1.12. Copies of documents will be furnished to the extent permitted by law.

1.7 Federal Funds.

Federal funds **Will Not** be used as part of this solicitation.

1.8 Pre-Bid Meeting.

There will be a pre-bid meeting scheduled for this RFP to include site visits to each potential facility where an IGA may be conducted.

Monday, July 31, 2017

11:00 – 12:00

Ed Ball Building

214 N. Hogan St., 10th Floor

Conference Room 5

Jacksonville, FL 32202

1.9 Response Due Date.

The deadline for submitting responses to this RFP is **Wednesday, August 23, 2017 at 2:00 p.m. ET.** Please see Sections 2.3 and 2.4 for more details.

1.10 Response Delivery Location.

Responses must be delivered to the following location:

City of Jacksonville

Procurement Division

Attn: Professional Services Specialist

214 N. Hogan Street, Room 105

Jacksonville, Florida 32202

1.11 Response Opening.

All Responses received shall be publicly announced and recorded at 2:00 PM on the Response Due Date at the Response Delivery Location (see Sections 1.9 and 1.10 above).

1.12 Contact Person.

Buyer's Contact Person for this RFP is:

Alex Baker – Professional Services Specialist

ABAKER@coj.net

Please refer to Section 2.9 for further information on who may and may not be contacted regarding this RFP.

1.13 Questions and Requests for Amendments. Any questions, requests for information or requests for amendments to this RFP must be submitted via e-mail to Alex Baker at abaker@coj.net **no later than 11:00 a.m. Wednesday, August 2, 2017**, in accordance with Section 2.2 of this RFP.

1.14 Special Instructions: The following special instructions shall apply to this RFP and shall supersede any conflicting provisions in Section 2 (General Instructions): **N/A**

1.15 Special Contract Terms: The following special contract terms shall apply to this RFP and shall supersede any conflicting provisions in Section 3 (General Terms and Conditions of Agreement):

Payment and Performance Bonds - If an Energy Performance Savings Contract is entered into as a result of an IGAA, the Contractor must post a 100 percent Payment and Performance Bond in accordance with the negotiated agreement and the provisions of section 489, Florida Statutes within 10 days of the Energy Performance Contract execution.

1.16 Project Schedule

Below is the current schedule of the remaining events that will take place in the selection process. The **City** reserves the right to make changes or alterations to the schedule as the **City** determines is in the best interests of the public. Contractors will be notified sufficiently in advance of any changes or alterations in the schedule. Unless otherwise notified in writing by the **City**, the dates indicated below for submission of items or for other actions on the part of a Proposer shall constitute absolute deadlines for those activities and failure to fully comply by the time stated shall cause a Proposer to be disqualified.

1	Advertising RFP	July 19, 2017
2	Pre-Bid Conference and Site Visits	July 31, 2017
2A	A site meeting and tour of the facilities will be held prior to the proposal due date. Knowledgeable representatives will be available to answer questions about operation and maintenance practices, problems, concerns and future plans The site visit is mandatory for all ESCOs who will later submit a proposal, because understanding of requirements and the technical approach will be evaluated in the proposal. All ESCOs will tour the facility at the same time so each ESCO hears all questions and answers.	TBD
2	Deadline for Submitting of RFP Questions	August 2, 2017,
3	Deadline for Submitting Response to: Finance and Administration Department Procurement Division City of Jacksonville, Florida Ed Ball Building, Suite 105 214 N. Hogan Street Jacksonville, FL 32202	August 23, 2017
4	Evaluation of Qualifications	TBD
5	Interviews, Selection Review and Ranking Recommendation by PSEC for Mayor approval to negotiate with number one.	TBD
8	Anticipated Award Date	TBD

10	Anticipated IGA report delivery	TBD
11	ESPC Contract Negotiations	TBD
12	ESPC and Financing Agreement approved by Council	TBD

Note: Dates are subject to change at the sole discretion of the City of Jacksonville

Section 2
General Instructions
(RFP for Design Professional Services)

Contents

- 2.1 Application of Chapter 126 and Other Laws**
- 2.2 Questions and Requests for Amendment to RFP**
- 2.3 Format/Content of Responses**
- 2.4 Submission of Responses**
- 2.5 Evaluation of Responses**
- 2.6 Negotiation and Award of Contract**
- 2.7 Terms of Agreement**
- 2.8 Public Meetings and Special Accommodations**
- 2.9 Ex-Parte Communication.**
- 2.10 Cost of Developing RFP Response**
- 2.11 Response Ownership.**
- 2.12 Public Records Law; Process For Protecting Trade Secrets and Other Information**
- 2.13 Multiple Responses from Same Contractor; No Collusion.**
- 2.14 Conflict of Interest.**
- 2.15 Convicted Vendor List**
- 2.16 Discriminatory Vendor List**
- 2.17 Contractor Representations**
- 2.18 Protests**
- 2.19 Definitions**

2.1 Application of F. S. 489.145, City Ordinance Code Chapter 126 and Other Laws. The selection of and contracting with an ESCO under the RFP will be in accordance with Section 489.145 Florida Statutes (the “Consultants’ Competitive Negotiation Act”), and Part 3 of Chapter 126, of the Jacksonville Ordinance Code. Other provisions of federal, state, county, and local laws, and administrative procedures, policies or rules may apply to the RFP and any claims or disputes arising hereunder. Lack of knowledge of the law or administrative procedures, policies, or rules by any Contractor shall not constitute a cognizable defense against their effect.

2.2 Questions and Requests for Amendment to RFP. If a Contractor (i) has questions about the RFP, (ii) finds discrepancies, omissions or ambiguities in the RFP, or (iii) believes any term or condition of the RFP is unreasonable, Contractor should request an amendment to the RFP. The request should reference the RFP section at issue and include any specific language that Contractor recommends using.

All requests for amendment must be submitted to the Contact Person in writing (via email), and, unless otherwise specified in **Section 1.13** of the RFP, be received by the Contact Person at least **ten (10) calendar days** before the Response Due Date. Questions and requests for amendments directed to the Contact Person or to any other Buyer personnel shall not constitute a formal protest of the RFP. Failure to request an interpretation or change will be considered evidence that Contractor understands and agrees to the provisions of the RFP.

The posting of a written amendment is the only official method by which interpretations, clarifications, changes or additional information will be given by Buyer prior to the opening of Responses. Any other interpretation, clarification, change or information will have no legal effect.

Buyer reserves the right to amend, cancel or reissue the RFP at its discretion. This includes the

right to change the Response Due Date and the Contract award date. Notice of all amendments and cancellations will be posted on Buyer's website (please contact the Contact Person if you are uncertain of the website address or if you experience problems accessing it). Contractor is responsible for monitoring this website for new or changing information.

2.3 Format/Content of Responses.

- A. If a Response Format is specified in the RFP, Contractors should follow that format.
- B. Responses should be prepared simply and economically, providing a straightforward, concise description of Contractor's ability to provide services sought by the RFP. Unnecessary brochures, artwork, expensive paper, and presentation aids are discouraged. Bindings and covers will be at Contractor's discretion.
- C. When responding to specific questions, please reprint each question in its entirety before the response.
- D. Responses shall be in ink or typewritten. All corrections must be initialed.
- E. Response shall be limited to a page size of 8½" x 11". Font size less than 11-points is discouraged. The Response shall be indexed and all pages sequentially numbered.
- F. **Except as may be specifically requested in the Response Format, Contractor may not impose any additional terms or conditions to any aspect of the RFP.** Buyer objects to and shall not be required to consider any additional terms or conditions submitted by Contractor, including any appearing in the Response. In submitting a Response, Contractor agrees that any additional terms or conditions shall have no force or effect. Any failure to comply with the terms and conditions of the RFP, including those specifying information that must be submitted with a Response, may result in rejection of the Response. **If Contractor desires a change or clarification to the terms or conditions of the RFP, Contractor must follow the process set forth in Section 2.2 ("Questions and Requests for Amendments").**
- G. Unless otherwise requested by Buyer, Contractors should make only one proposal for each RFP item. Multiple offerings, alternates (unless any are specifically requested by Buyer) and/or stipulations may be cause for rejection of a Response.
- H. Price offerings shall be **inclusive of ALL costs** (including but not limited to administrative cost for submission of all required paperwork on Buyer's behalf and any other costs) and will be the only compensation given to Contractor for the required services herein.
- I. All prices submitted under the RFP shall be indelible. The use of correction fluid or erasures to correct line item bid prices and/or quantities are not acceptable. Corrections must be by lineout of the incorrect figures, writing in of correct figures, and initialing of the corrections by the originator. Correction fluid or erasure corrected bids will be considered non-responsive for the corrected item(s) only, and may render the entire Response as nonresponsive.
- J. Failure to sign any form requiring a signature may be grounds for rejecting a Response.

2.4 **Submission of Responses.**

- A. The location and deadline for submitting Responses is set forth in Section 1 of the RFP. Contractors are fully responsible for meeting these requirements. Reliance upon mail or public carrier is at Contractor's risk. **Late bids will not be considered.**
- B. Contractor shall submit:
 - 1) One (1) original signed version of its Response clearly marked as "ORIGINAL." The Response must be signed by an officer or employee having authority to legally bind Contractor.
 - 2) Two (2) hard copies of the entire Response.
 - 3) Six (6) scanned copies (in .pdf format) of entire Response, each on a separate CD-ROM or USB Drive. Large files may be scanned as several separate PDF files.
 - 4) One (1) REDACTED scanned copy of the Response (if necessary pursuant to Section 2.12). This copy should be marked "Confidential – Trade Secret" or something comparable to alert the reader of Contractor's claim of a public records exemption.

All copies are to be placed in a sealed package. The outside must be marked with (i) the RFP title and number, and (ii) Contractor's name, address, contact person, and telephone number.

It is the sole responsibility of each Contractor to assure all copies are EXACT duplicates of the original Response. Photocopies or CD copies will be used for the purpose of evaluating the Responses. Any information contained in the original Response which has not been transferred to the CDs or photocopies will NOT be considered. The original document will be used solely for official record keeping and auditing purposes.

2.5 **Evaluation of Responses.**

- A. Buyer will determine the qualifications, interest and availability of Contractors by reviewing all Responses and, when deemed necessary in the sole discretion of Buyer, by conducting formal interviews of selected Contractors that are determined to be the best qualified based upon evaluation of the Responses.
- B. The determination of which Contractors are "best qualified" will be based upon the criteria set forth in Attachment B the RFP.
- C. Before making an award, Buyer reserves the right to seek clarifications, revisions, and information it deems necessary for the proper evaluation of Responses. Failure to provide any requested clarifications, revisions or information may result in rejection of the Response.
- D. Buyer reserves the right to accept or reject any and all Responses, or separable portions thereof, and to waive any minor irregularity, technicality, or omission if Buyer determines that doing so will serve Buyer's best interests. Buyer may reject any Response not submitted in the manner specified by the RFP.

2.6 **Negotiation and Award of Contract.**

- A. The process for contract negotiation and award is set forth in Section 489.145 Florida Statutes and Jacksonville Ordinance Code Sections 126.303 and 126.304. Generally, Buyer will evaluate and score based on the criteria set forth in Attachment B, ranking from highest score

to lowest score listing the top three scoring Contractors to which the City will conduct discussions regarding their qualifications, approach to the project, ability to furnish the required service. At the conclusion of discussions, the City will request to negotiate a Contract with the highest ranked Contractor.

- B. Once the City has obtained approval of the rankings, the City shall negotiate with the highest ranked Contractor fees and terms incorporated into the Contract that will serve as the basis for subsequent agreements to perform professional design services for an IGA at compensation that the Buyer determines is fair, competitive, and reasonable for the Project. Should the City be unable to negotiate satisfactory compensation with the highest ranked Contractor, the City will terminate negotiations with the highest ranked Contractor. The City shall then undertake negotiations with the second highest ranked Contractor for compensation which the City determines is fair, competitive and reasonable for the Project. Should the City be unable to negotiate satisfactory compensation with the second highest ranked Contractor, the City will terminate negotiations with the second highest ranked Contractor. The City shall then undertake negotiations with the third highest ranked Contractor, and should the City be unable to negotiate satisfactory compensation with the third highest ranked Contractor, the City may terminate this RFP and reissue the RFP in its sole discretion. Notwithstanding this 2.6(B), pursuant to Section 2.2 above, the City reserves the right to cancel or reissue this RFP at any time in its sole discretion.
- C. Once the City has negotiated satisfactory compensation for the Contract with one of the three top-ranked Contractors, the PSEC will forward a recommendation to the Mayor's Office for an award. The Contractor and the Buyer will, subsequent to the execution of the Contract, negotiate payment terms for each IGA performed by the Contractor in the IGAA, which shall include a clause that allows the cost of the IGA to be rolled into a subsequent EPC price. In addition, should the Buyer determine that it is in the Buyer's best interest not to enter into an EPC, the cost of the IGA shall become fully due and payable by the Buyer within sixty (60) days of delivery of the Report. On approval of the Report, that is part of the IGA, the Buyer shall negotiate an EPC and associated Financial Agreement, if applicable, and upon successful negotiations submit legislation for City Council approval. Buyer shall have no payment obligations under the Contract in the event that ESCO's final IGA and Report do not contain a package of ECMs which, if implemented, will provide the Buyer with cash savings sufficient to fund Buyer's payments of all costs and fees associated with the EPC, including 1) the fee associated with the IGA, 2) all monthly payments on a lease purchase agreement or any other finance structure used to finance the ECMs, 3) any annual fees for monitoring and maintenance incurred by the ESCO. Should the ESCO determine at any time during the IGA that savings cannot be attained to meet these terms, the IGA will be terminated by written notice by the ESCO to Buyer. In this event this Contract and applicable IGAA shall be cancelled and Buyer shall have no obligation to pay, in whole or in part, the ESCO fees for the applicable IGAA.
- D. Buyer may make an award of the Contract within sixty (60) days after the date of the Responses are due, during which period the Responses shall remain outstanding and shall not be withdrawn. Any Response that expresses a shorter duration may, in Buyer's sole discretion, be accepted or rejected. If award is not made within sixty (60) days, the Response shall remain outstanding until either the Contract is awarded or Buyer receives from Contractor written notice that the Response is withdrawn. [Note: Withdrawal of a Response may be requested within 72 hours (excluding State holidays, Saturdays and Sundays) after the date and time Responses are due. Buyer will not accept an amended Response after the date and time Responses are due.]

- E. Except as may otherwise be expressly set forth in the RFP, Buyer intends to award one contract, but reserves the right to enter into a contract with multiple Contractors or to reject all Responses.
- F. Based on the evaluation and negotiation results, Buyer shall electronically post a notice of intended award at Buyer's website. Please contact the Contact Person if you are uncertain of Buyer's website address or if you experience problems accessing it. Any person who is adversely affected by the decision shall file with Buyer a notice of protest in accordance with the Protest provisions of the RFP. Buyer does not intend to provide tabulations or notices of award by telephone.

2.7 Terms of Agreement. After award to the successful Contractor, Buyer and Contractor will promptly enter into a Contract incorporating the terms of the RFP, the successful Response, the IGAA (the IGAA is deemed a purchase order under the Contract) and other terms and conditions as may be agreed to between the parties. To the extent the Response contains exceptions to or modifications of the RFP, including but not limited to the Attachments to the RFP, such exceptions or modifications are stricken unless Buyer affirmatively accepts the exceptions or modifications in the Contract. The Contract will be substantially in the form set forth in an attachment to the RFP. Buyer will not be obligated to pay Contractor for the RFP services until the Contract is signed by both parties. Buyer retains the right to reject all bids and/or amend its notice of award at any time prior to the full execution of the Contract.

If the successful Contractor fails to perform the terms and conditions in the Contract, Buyer reserves the right to (i) issue a new RFP; (ii) reopen the RFP for the purpose of negotiating and awarding a second contract to another Contractor in accordance with the criteria and processes set forth herein; and/or (iii) take such other actions permitted by law.

2.8 Public Meetings and Special Accommodations. Any meetings of the RFP evaluation committee (i.e., the Professional Services Evaluation Committee), shall be noticed on Buyer's website and shall comply with Florida's Government in the Sunshine Laws. Please contact the Contact Person if you are uncertain of Buyer's website address or if you experience problems accessing it. Persons requiring a special accommodation because of a disability should contact the Contact Person identified in Section 1 at least forty-eight (48) hours prior to the meeting.

2.9 Ex-Parte Communications. Communications regarding the RFP by a potential vendor, service provider, bidder, lobbyist or consultant to city employees, staff, or hired consultants are prohibited. This prohibition includes communications with the Buyer's Office of General Counsel unless the Contact Person has authorized those communications in advance. Violations may result in the rejection/disqualification of a Response.

These prohibitions on ex-parte communications do not apply to the following:

- communications regarding the RFP to the Chief of the Procurement Division or the Contact Person, provided the communication is limited strictly to matters of process or procedure already contained in the RFP.
- communications with the Buyer's employee responsible for administering the Jacksonville Small Emerging Business Program, provided the communication is limited strictly to matters of programmatic process or procedures.
- communications with the Office of Inspector General and his/her staff regarding any perceived inefficiency, misconduct or abuse by Buyer's employees.

- communications at any pre-bid conferences.
- presentations before publicly noticed committee meetings.
- contract negotiations during any duly noticed public meeting.
- any duly noticed site visits to determine competency of bidders during the period between bid opening and issuance of the Chief of Procurement Division's written recommendation.
- communications that are necessary for, and solely related to, the ordinary course of business concerning Buyer's existing contract(s) for the materials or services addressed in the RFP.

The period for these prohibitions commences upon the advertisement of the RFP and terminates after the Chief of the Procurement Division issues a written recommendation to the corresponding awarding committee. If the awarding committee refers the Chief's recommendation back for further review, the prohibitions shall be reinstated until such time as the Chief issues a subsequent recommendation.

2.10 Cost of Developing RFP Response. All costs related to the preparation of Responses and any related activities are the sole responsibility of Contractor. Buyer assumes no liability for any costs incurred by Contractors throughout the entire selection process.

2.11 Response Ownership. All Responses, including attachments, supplementary materials, addenda, etc., shall become property of Buyer and shall not be returned to Contractor. Buyer will have the right to use any and all ideas or adaptation of ideas presented in any Response. Acceptance or rejection of a Response shall not affect this right.

2.12 Public Records Law; Process For Protecting Trade Secrets and Other Information. Article 1, Section 24, Florida Constitution, guarantees every person access to all public records, and Section 119.011, Florida Statutes, provides a broad definition of public records. As such, all responses to the RFP are public records unless exempt by law. If Contractor considers any portion of its Response to be exempt from disclosure under Florida law, Contractor must provide Buyer with a separate redacted copy of the Response and briefly describe in writing the grounds for claiming exemption from the public records law, including the specific statutory citation. Contractor shall be responsible for defending its determination that the redacted portions of its Response are confidential, trade secret or otherwise not subject to disclosure. Further, Contractor shall protect, defend, and indemnify Buyer for any and all claims arising from or relating to Contractor's determination that the redacted portions of its Response are confidential, trade secret or otherwise not subject to disclosure. If Contractor fails to submit a Redacted Copy with its Response in accordance with Section 2.4 above, Buyer is authorized to produce the entire Response in answer to a public records request.

In accordance with Section 119.0701, Florida Statutes, the Contractor shall:

- (a) Keep and maintain public records required by Buyer to perform the services; and
- (b) Upon request from Buyer's custodian of public records, provide Buyer with a copy of the requested records or allow records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, or as otherwise provided by law; and
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of this Contract if Contractor does not transfer the records to Buyer; and

- (d) Upon completion of this Contract, transfer to Buyer at no cost all public records in possession of Contractor or keep and maintain public records required by Buyer to perform the service. If Contractor transfers all public records to Buyer upon completion of this Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of this Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Buyer upon request from Buyer's custodian of public records in a format that is compatible with Buyer's information technology systems.

The above requirements apply to a "Contractor" as defined in Section, 119.0701, Florida Statutes.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE BUYER'S CUSTODIAN OF PUBLIC RECORDS AT (904) 630-7678; REQUEST@COJ.NET; CITY OF JACKSONVILLE, PUBLIC RECORDS REQUEST, 214 N. HOGAN STREET, SUITE 1180, JACKSONVILLE, FLORIDA 32202.

- 2.13 Multiple Responses from Same Contractor; No Collusion.** More than one Response from an individual, contractor, partnership, corporation or association under the same or different names is not permitted. Reasonable grounds for believing that a Contractor is involved in more than one Response for the same work will be cause for rejection of all Responses in which such Contractor is believed to be involved. Any or all Responses will be rejected if there is reason to believe that collusion exists between Contractors. Responses in which the prices obviously are unbalanced will be grounds for rejection.
- 2.14 Conflict of Interest.** Section 126.110 of the Jacksonville Ordinance Code requires that a public official who has a financial interest in a bid or contract make a disclosure at the time that the bid or contract is submitted or at the time that the public official acquires a financial interest in the bid or contract, including but not limited to the public official's name, public office or position held, bid or proposal number, and the position or relationship of the public official with the bidder or Contractor. The parties will follow the provisions of Section 126.110, Jacksonville *Ordinance Code*, with respect to required disclosures by public officials who have or acquire a financial interest in a bid or contract with Buyer, to the extent the parties are aware of the same. All Contractors must submit the Conflict of Interest Certificate attached to the RFP.
- 2.15 Convicted Vendor List.** A person or affiliate placed on the State of Florida convicted vendor list pursuant to Section 287.133, Florida Statutes, following a conviction for a public entity crime may not do any of the following for a period of 36 months from the date of being placed on the convicted vendor list:
- submit a bid on a contract to provide any goods or services to a public entity;
 - submit a bid on a contract with a public entity for the construction or repair of a public building or public work;
 - submit bids on leases of real property to a public entity;
 - be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and

- transact business with any public entity in excess of the Category Two threshold amount provided in Section 287.017, Florida Statutes.

2.16 Discriminatory Vendor List. An entity or affiliate placed on the State of Florida discriminatory vendor list pursuant to Section 287.134, Florida Statutes, may not:

- submit a bid on a contract to provide any goods or services to a public entity;
- submit a bid on a contract with a public entity for the construction or repair of a public building or public work;
- submit bids on leases of real property to a public entity;
- be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; or
- transact business with any public entity.

2.17 Contractor Representations. In submitting a Response, Contractor understands, represents, and acknowledges the following (if Contractor cannot so certify to any of following, Contractor shall submit with its Response a written explanation of why it cannot do so).

- Contractor currently has no delinquent obligations to the City of Jacksonville or any of its independent agencies.
- The Response is submitted in good faith and without any prior or future consultation or agreement with any other respondent or potential respondent;
- To the best of the knowledge of the person signing the Response, neither the Contractor, its affiliates, subsidiaries, owners, partners, principals or officers:
 - is currently under investigation by any governmental authority for conspiracy or collusion with respect to bidding on any public contract;
 - is currently under suspension or debarment by any governmental authority in the United States;
 - has within the preceding three years been convicted of or had a civil judgment rendered against it, or is presently indicted for or otherwise criminally or civilly charged, in connection with (i) obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; (ii) violation of federal or state antitrust statutes; or (iii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or
 - has within the preceding three-year period had one or more federal, state, or local government contracts terminated for cause or default.
- If this Agreement is for goods or services of \$1 million or more, the Buyer, pursuant to Section 287.135(3)(c), Florida Statutes, may terminate this Agreement at Buyer's option if Contractor:
 - (a). Is found to have submitted a false certification under Section 287.135(5), Florida Statutes;
 - (b). Has been placed on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel;
 - (c). Has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes; or

(d). Has been engaged in business operations in Cuba or Syria.

- Contractor has read and understands the RFP terms and conditions, and the Response is submitted in conformance with those terms and conditions.
- All representations made by Contractor to Buyer in connection with the RFP have been made after a diligent inquiry of its employees and agents responsible for preparing, approving, or submitting the Response.
- Contractor shall indemnify, defend, and hold harmless Buyer and its employees against any cost, damage, or expense which may be incurred or be caused by any error in the Response.
- All information provided by, and representations made by, Contractor are material and important and may be relied upon by Buyer in awarding the Contract.

2.18 Protests. Any protest concerning the RFP shall be made in accordance with the Procurement Protest Procedures established pursuant to Section 126.106(e) of the Jacksonville Ordinance Code. A full copy of the procedures is available on Buyer's website and can also be obtained by contacting Buyer's Contact Person. Please contact the Contact Person if you are uncertain of Buyer's website address or if you experience problems accessing it. Questions and requests made to the Contact Person shall not constitute formal Notice of Protest.

The Procurement Protest Procedures include the following provisions:

- a Protestant shall have 10 business days after the posting of a solicitation or 48 hours after the posted date and time of a pre-bid or pre-proposal conference, whichever is earlier, or 48 hours after the posting of an amendment, in which to file a written Notice of Protest in order to timely challenge the requirements, terms and/or conditions contained in bid or proposal documents, including without limitation any provisions governing or establishing: (i) the basis for making the award in question; (ii) evaluation criteria; (iii) equipment, product, or material specifications; (iv) proposed project schedules; (v) statements regarding participation goals or other equal opportunity measures; or (vi) other general solicitation or project requirements.
- a Protestant shall have 48 hours after either the posting or written notification of a decision or intended decision, whichever is earlier, in which to file a written Notice of Protest in order to timely challenge or seek relief from a recommended conclusion to any bid or proposal solicitation process, including without limitation: (i) a recommendation to reject a bid or proposal; (ii) a contract award; or (iii) the short-listing of bidders or proposers.
- A written Notice of Protest shall: (i) be addressed to the Chief [of Jacksonville's Procurement Division]; (ii) identify the solicitation, decision, or recommended award in question by number and title or any other language sufficient to enable the Chief to identify the same; (iii) state the timeliness of the protest; (iv) state Protestant's legal standing to protest; and (v) clearly state with particularity the issue(s), material fact(s) and legal authority upon which the protest is based.
- At the time of filing a timely Notice of Protest, a Protestant may request an extension of three (3) business days after the date its Notice of Protest is timely received, in which to provide supplemental protest documentation. Failure to do so or to timely submit the supplemental protest documentation shall constitute a waiver of any right to same.
- The timely filing of a Notice of Protest shall be accomplished when said notice is actually received by the Procurement Division within the applicable time limitation or period contained herein. Filing a notice may be accomplished by manual transfer via hand-delivery or mail to the Chief of Procurement Division at 214 North Hogan Street, Suite 800, Jacksonville, Florida 32202, or by electronic transfer via facsimile to (904) 255-8837. The responsibility and burden of

proof that its Notice of Protest has been timely and properly received shall rest with the Protestant, regardless as to the method of delivery employed.

2.19 Definitions

- **“Buyer”** means the City of Jacksonville, a consolidated municipal corporation and political subdivision existing under the State of Florida, including its Departments and Divisions specifically the Division of Procurement of the Central Operations Department and the Department of Public Works.
- **“ESCO - Guaranteed Energy, Water, Wastewater Performance Savings Contractor”** means any company, firm, partnership, corporation, association, joint venture, or other legal entity that is (i) as defined under the Act, (ii) certified under s. 489.119, Florida Statutes, and under section 235.215, F.S. and (iii) pursuant to the Act, is licensed to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or is certified under s. 471.023, Florida Statutes, to practice or to offer to practice engineering; or certified under s. 481.219, Florida Statutes, to practice or to offer to practice architecture; or certified under s. 481.319, Florida Statutes, to practice or offer to practice landscape architecture; and which has the capability, in all respects, to fully perform all contract requirements and has a business integrity and reliability which will assure good faith performance.
- **“Investment Grade Energy Audit (IGA)”** means as defined in the Act, as required for an ASHRAE Level III audit, and is a detailed account of energy , water and wastewater use that contains cost savings analysis of potential energy, water and wastewater savings opportunities. The IGA defines a project proposal of bundled ECMs, with a financing plan, as well as implementation and savings verification plans.

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Section 3
General Terms and Conditions of Agreement

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3.1. Provision of Services. Contractor shall provide Buyer with all of the services and deliverables described in the RFP, the Response and the resulting Contract and IGAA (collectively, the "Services"). If any services, functions or responsibilities are not specifically described in the RFP, the Response or the resulting Contract but are necessary for the proper performance and provision of the Services, they shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described herein.

3.2. Relationship of the Parties. In performance of the Services, Contractor shall be acting in the capacity of an independent contractor and not as an agent, employee, partner, joint venture or associate of Buyer. Contractor shall be solely responsible for the labor, supplies, materials, means, methods, techniques, sequences and procedures utilized to perform the Services in accordance with the Contract.

3.3. Buyer's Right to Make Changes. Buyer may unilaterally require, by written order, changes altering, adding to, or deducting from the Services ("Changes"), provided that such Changes are within the general scope of the Contract. Buyer will make an equitable adjustment in the Contract price or delivery date if the Change materially affects the cost or time of performance. Such equitable adjustments require the written consent of Contractor, which shall not be unreasonably withheld. The Parties will cooperate with each other in good faith in discussing the scope and nature of the Change, the availability of Contractor personnel, the expertise and resources to provide such Change, and the time period in which such Change will be implemented.

3.4. Service Warranties. Contractor warrants that the Services shall be performed and delivered in a professional, first-class manner in accordance with the Contract and the standards prevailing in the industry. Contractor shall also undertake the following actions without additional consideration during the term of the Contract and for one year thereafter: (i) promptly making necessary revisions or corrections to resolve any errors and omissions on the part of Contractor; and (ii) conferring with Buyer for the purpose of interpreting any of the Services or information furnished. Acceptance of the Services by Buyer shall not relieve Contractor of these responsibilities. The warranties and covenants in this paragraph will extend to all subcontractors as well.

The foregoing warranties and covenants shall not apply (i) with respect to any portions of the Service that have been produced by anyone other than Contractor or its subcontractors; (ii) to any modifications made by anyone other than Contractor or its subcontractors or without Contractor's specific prior written consent; or (iii) to any use of the Service in a manner or for any purpose other than those contemplated in the Contract. **EXCEPT AS EXPRESSLY STATED IN THE CONTRACT, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CONTRACTOR'S WARRANTIES EXTEND SOLELY TO BUYER.**

3.5. Buyer Will Assist Contractor. At Contractor's request, Buyer will provide reasonable assistance and cooperation to Contractor, including the supply of any data and information necessary for Contractor to provide the Services. Buyer will also designate a Contract Manager who will, on behalf of Buyer, work with Contractor and administer the Contract in accordance with its terms.

3.6. Location Requirements for Services. Unless otherwise stated in the RFP or the Response, the majority of the Services shall be performed within Duval County, Florida and no Services will be performed outside of the United States. These restrictions may be modified in writing if Buyer determines, in its sole discretion, that the restrictions impose an undue burden on Contractor's ability to perform the Services as contemplated in the Contract.

3.7. Use of Subcontractors; Flow-Down Provisions. Except to the extent the use of subcontractors is disclosed in the Response or consented to in writing by Buyer, Contractor shall not be allowed to subcontract

or assign any of its duties and obligations hereunder. In all cases, Contractor will be responsible for the acts or omissions of its subcontractors. Contractor will ensure that all relevant contractual obligations will flow down to the subcontractors and will be incorporated into the subcontracts (including the obligations relating to insurance, indemnification, delays, intellectual property rights, public records, non-discrimination, audits, security, location of services, termination, transition assistance, warranties, and the manner in which the Services are to be performed).

3.8. Meetings and Reports. Contractor must attend all meetings and public hearings relative to the Services where its presence is determined to be necessary and requested by Buyer and Contractor can reasonably schedule its appearance. Unless otherwise agreed, Contractor shall provide a monthly report summarizing Contractor's performance. Contractor shall provide other periodic reports respecting the Services as Buyer reasonably requests.

3.9. Ownership of Works.

(a) As used in Sections 3.9 and 3.10, the term "Work" shall mean each deliverable, drawing, design, specification, rendering, notebook, tracing, photograph, reference book, equipment, expendable equipment and material, negative, report, finding, recommendation, data and memorandum of every description, shared with or delivered to Buyer pursuant to the Contract.

(b) With the exception of Contractor's pre-existing intellectual capital and third-party intellectual capital as described in Section 3.10 below, Buyer shall own all right, title and interest, including ownership of copyright (limited to the extent permitted by the terms of any governing licenses), in and to each Work including, but not limited to, software, source code, reports, deliverable, or work product developed by Contractor specifically for Buyer in connection with the Contract, and derivative works relating to the foregoing. The use of these Works in any manner by Buyer shall not support any claim by Contractor for additional compensation.

(c) Each Work, and any portion thereof, shall be a "work made for hire" for Buyer pursuant to federal copyright laws. Any software, report, deliverable, or work product as used in connection with the Work, but previously developed by Contractor specifically for other customers of Contractor or for the purpose of providing substantially similar services to other Contractor customers, generally shall not be considered "work made for hire", so long as the foregoing are not first conceived or reduced to practice as part of the Work. To the extent any of the Works are not deemed works made for hire by operation of law, Contractor hereby irrevocably assigns, transfers, and conveys to Buyer, or its designee, without further consideration all of its right, title and interest in such Work, including all rights of patent, copyright, trade secret, trademark or other proprietary rights in such materials. Except as provided in the foregoing sentences, Contractor acknowledges that Buyer shall have the right to obtain and hold in its own name any intellectual property right in and to the Work. Contractor agrees to execute any documents or take any other actions as may reasonably be necessary, or as Buyer may reasonably request, to perfect or evidence Buyer's ownership of the Work.

3.10. Intellectual Property.

(a) Contractor grants to Buyer an irrevocable, perpetual, royalty free and fully paid-up right to use (and such right includes, without limitation, a right to copy, modify and create derivative works from the subject matter of the grant and the right to sublicense all, or any portion of, the foregoing rights to an affiliate or a third party who provides service to Buyer) Contractor's intellectual property (including, without limitation, all trade secrets, patents, copyright and know-how) that is contained or embedded in, required for the use of, that was used in the production of or is required for the reproduction, modification, maintenance, servicing, improvement or continued operation of any applicable unit of Work.

(b) If the Work contains, has embedded in, or requires for the use of, any third party intellectual property, or if the third party intellectual property is required for the reproduction, modification, maintenance, servicing, improvement or continued operation of the Work, Contractor shall secure for Buyer an irrevocable, perpetual, royalty free and fully paid-up right to use all third party intellectual property. Contractor shall secure such right at its expense and prior to incorporating any third party intellectual property (including, without limitation, all trade secrets, patents, copyright and know-how) into any Work, including, without limitation, all drawings or data provided under the Contract, and such right must include, without limitation, a right to copy, modify and create derivative works from the subject matter of the grant of the right and a right to sublicense all or any portion of the foregoing rights to an affiliate or a third party service provider. This subparagraph does not apply to standard office software (e.g., Microsoft Office).

(c) Should Buyer, or any third party obtaining such Work through Buyer, use the Work or any part thereof for any purpose other than that which is specified in the Contract, it shall be at Buyer's and such third party's sole risk.

3.11. Software Development Processes and Standards. To the extent any software is developed, modified, or otherwise procured under the Contract, Contractor will use commercially-accepted software development and documentation processes and standards.

3.12. Limitation of Warranty for Buyer-Furnished Software. In lieu of any other warranty expressed or implied herein, Buyer warrants that any programming aids and software packages supplied for Contractor use as Buyer-furnished property shall be suitable for their intended use on the system(s) for which designed. In the case of programming aids and software packages acquired by Buyer from a commercial source, such warranty is limited to that set forth in the contractual document covering the product(s). Should Buyer furnish Contractor with any programming aids or software packages that are found not to be suitable for their intended use on the system(s) for which designed, Contractor shall notify Buyer and supply documentation regarding any defects and their effect on progress on the Contract. Buyer will consider equitably adjusting the delivery performance dates or compensation, or both, and any other contractual provision affected by the Buyer-furnished property in accordance with the procedures provided for in Section 3.3 above ("Buyer's Right to Make Changes").

3.13. Loss of Data. If any Buyer data or record is lost or corrupted due to the negligence of Contractor or any of its subcontractors or agents, Contractor shall be responsible for correcting and recreating all production, test, acceptance and training files or databases affected which are used in the provision of services, at no additional cost to the Customer in the manner and on the schedule set by Buyer. This remedy shall be in addition to any other remedy Buyer may be entitled to by law or the Contract.

3.14. Purchase Orders. If the Contract requires a Service to be ordered by Buyer via purchase order, Contractor shall not deliver or furnish the Service until a Buyer transmits a purchase order. All purchase orders shall bear the Contract or solicitation number, shall be placed by Buyer directly with Contractor, and shall be deemed to incorporate by reference the Contract. Any discrepancy between the Contract terms and the terms stated on the Contractor's order form, confirmation, or acknowledgement shall be resolved in favor of terms most favorable to Buyer.

3.15. Best Pricing for Comparable Services to Other Government Entities. Compensation for the Services shall be as set forth in the Contract. During the Contract term, if Contractor offers better pricing to other government entities for substantially the same or a smaller quantity of Services upon the same or similar terms of the Contract ("Better Pricing"), then the price under the Contract shall be immediately reduced to the better price. Buyer may require Contractor to certify on an annual basis that Better Pricing (as defined above) does not exist.

3.16. Invoicing and Payment.

(a) Unless otherwise specified in the RFP, payment to Contractor for Services shall be made on a monthly basis for the Services provided by Contractor for the preceding month. Invoices shall contain the Contract number, purchase order number if applicable, and the appropriate vendor identification number. Buyer may require any other information from Contractor that Buyer deems necessary to verify its obligation to pay under the Contract. Payments will be made to Contractor approximately forty-five (45) days after receipt and acceptance of a proper invoice. Buyer does not pay service charges, interest or late fees unless required by law.

(b) To the extent Contractor's fees include reimbursement for travel or travel-related expenses, such travel and travel-related expenses shall be subject to and governed by the provisions and limitations of Chapter 106, Part 7, Jacksonville Ordinance Code.

(c) Buyer's obligations to make payment are contingent upon availability of lawfully appropriated funds for the Services.

3.17. Taxes. Buyer is generally exempt from any taxes imposed by the State of Florida or the Federal Government. Exemption certificates will be provided upon request. Contractor shall not include any state, local and federal taxes in any prices quoted to Buyer.

3.18. Right of Setoff. Buyer may, in addition to other remedies available at law or equity and upon notice to Contractor, retain such monies from amounts due Contractor as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted in good faith by Buyer (or any other local government entity or authority located in Duval County, Florida) against Contractor.

3.19. Retention of Records / Audits.

(a) Contractor must establish and maintain books, records, contracts, sub-contracts, papers, financial records, supporting documents, statistical records and all other documents pertaining to the Contract (collectively, the "Records"), in whatsoever form or format (including electronic storage media) is reasonable, safe and sufficient.

(b) Contractor must retain all Records for a minimum period of three (3) years after the final payment is made under the Contract. If an audit has been initiated and audit findings have not been resolved at the end of the three (3) year period, the Records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of the Contract, at no additional cost to Buyer. Records shall be retained for longer periods when the retention period exceeds the time frames required by law or ordinance.

(c) At all reasonable times for as long as the Records are maintained, Contractor must allow persons duly authorized by Buyer (including Buyer's auditor and inspector general offices), and to have full access to and the right to examine, copy or audit any of the Records, regardless of the form in which kept. Contractor will not charge Buyer for any setup, supervision or space in connection with the examination and audit. Photocopying charges will not exceed the actual and reasonable cost of the copies to Contractor, and Buyer shall be permitted to bring its photocopying equipment if Buyer so desires.

(d) Contractor must comply with and cooperate in any audits or reports requested by Buyer, and must ensure that all related party transactions are disclosed to the auditor.

(e) Contractor must permit Buyer to interview any of Contractor's employees, subcontractors and subcontractor employees to assure Buyer of the satisfactory performance of the terms and conditions of the Contract. Unless the parties agree otherwise or Buyer is willing to pay for the employee's reasonable travel expenses, the interviews will be conducted at the employee's primary place of work. Contractor will

not charge Buyer for any employee time unless the interview time for that employee exceeds eight (8) hours in a calendar year.

(f) Following any audit or review, if performance of Contractor is, in the opinion of Buyer, deficient, Buyer will deliver to Contractor a written report of the deficiencies and request for development by Contractor of a corrective action plan. Contractor hereby agrees to prepare and submit, to Buyer, said corrective plan within ten (10) days of receiving Buyer's written report. Thereafter, Contractor must correct all deficiencies in the corrective action plan within a reasonable time after Buyer's receipt of the corrective action plan.

(g) All reports and other information provided by Contractor pursuant to this Section shall be submitted under penalties of perjury, under Section 837.06, Florida Statutes.

(h) Contractor must include the aforementioned audit, inspection, investigation and record-keeping requirements in all subcontracts and Contract assignments.

(i) Contractor agrees to reimburse Buyer for the reasonable costs of investigation incurred by Buyer for audits, inspections and investigations that uncover a material violation of the Contract. Such costs shall include the salaries of investigators, including overtime, travel and lodging expenses, and expert witness and documentary fees. Contractor shall not be responsible for any costs of investigations that do not uncover a material violation of the Contract.

3.20. Indemnification. See attachment "I"

3.21. Insurance. See attachment "J"

3.22. Buyer's Right to Suspend Work. Buyer may in its sole discretion suspend any or all activities under the Contract by providing a written notice to Contractor at least five (5) days in advance that outlines the particulars of suspension. Within ninety (90) days of providing such notice, or within any longer period agreed to by Contractor, Buyer shall either (1) authorize the resumption of work, at which time activity shall resume, or (2) terminate the Contract in accordance with the applicable termination provisions. Suspension of work shall not entitle Contractor to any additional compensation. The parties will reasonably amend any schedules relating to performance of the Services to reflect the suspension of work hereunder. Contractor shall not be entitled to receive compensation for any work it performs after being excused from providing it hereunder.

3.23. Buyer's Right to Terminate for Convenience. Buyer reserves the right to terminate the Contract at any time and for any reason by giving written notice to Contractor. If the Contract is terminated for convenience as provided herein, Buyer will be relieved of all further obligations other than payment for that amount of Services actually performed to the date of termination. Access to any and all work papers will be provided to the Buyer after the termination of the Contract. The parties understand and agree that Contractor shall not have a reciprocal right to terminate the Contract for convenience (except as stated in the IGAA), it being understood that Buyer's payment for Services forms the consideration for Contractor not having this right. In the event of Buyer's termination of the Contract, Buyer (in its sole discretion) may also require Contractor to provide the Transition Services as set forth in Section 3.26 below.

3.24. Buyer's Remedies Upon Contractor Default. Any one or more of the following events, if not cured within ten (10) calendar days after Contractor's receipt of written notice thereof, shall constitute an "Event of Default" on the part of Contractor: (1) Contractor fails to perform the Services within the time specified in the Contract or any extension, (2) Contractor fails to maintain adequate progress, thus endangering performance of the Contract, (3) Contractor fails to honor any other material term of the Contract, or (4) Contractor fails to

abide by any statutory, regulatory, or licensing requirement. Buyer may extend the 10-day cure period in its discretion.

In addition, the following shall constitute an immediate Event of Default with no right cure: (i) Contractor is found to have made a false representation or certification in its Response, or (ii) Contractor has been placed on the list maintained under Section 287.135, Florida Statutes, of companies with activities in Sudan or in Iran Petroleum Energy Sector.

Upon an "Event of Default" on the part of Contractor, Buyer will be entitled to terminate the Contract and pursue such other remedies available at law or equity, including the recovery of any re-procurement costs and delay damages. The rights and remedies available to Buyer under the Contract are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by a party, shall be deemed to be in exclusion of any other.

If, after termination, it is determined that Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience.

3.25. Contractor Remedies Upon Buyer Default. Buyer shall be in default if Buyer fails to honor any material term of the Contract, and such failure is not cured within forty-five (45) calendar days after receipt of written notice thereof from Contractor. In the event of Buyer's default, Contractor will be entitled to terminate the Contract and pursue such other remedies available at law or equity as it deems appropriate. **Except as expressly provided elsewhere in the Contract, Contractor will not be entitled to recover any lost profits or consequential damages.** The rights and remedies available to Contractor under the Contract are distinct, separate and cumulative remedies, and no one of them shall be deemed to be in exclusion of any other.

3.26. Transition Services. At any time prior to the date the Contract expires or terminates for any reason (the "Termination Date"), Buyer may request Contractor to provide reasonable transition assistance services ("Transition Assistance"). Contractor shall provide such Transition Assistance until such time as Buyer notifies Contractor that Buyer no longer requires such Transition Assistance, but in no event for more than 180 days following the Termination Date.

Transition Assistance shall mean any services, functions or responsibilities that are ordinarily or customarily provided to a purchaser to ensure that the services provided to that purchaser by a contractor are fully transitioned in a smooth and efficient manner to a new service provider (either Buyer itself or a third party contractor). Transition Assistance includes the development and implementation of a detailed transition plan. To the extent that Transition Assistance will involve third parties hired by Buyer, those third parties shall cooperate with Contractor in its provision of Transition Assistance and sign any reasonable non-disclosure agreements required by Contractor.

Transition Assistance rendered before the Termination Date shall be provided at no additional cost to Buyer. Transition Assistance rendered after the Termination Date shall be provided at the rates negotiated by the parties prior to the rendering of such service, which rates shall not exceed the standard market rates that Contractor charges to government entities for comparable services; provided however, that if Buyer terminates the Contract because of a breach by Contractor, then (i) the Transition Assistance shall be provided at no cost to Buyer, and (ii) Buyer will be entitled to any other remedies available to it under law. Contractor may withhold Transition Assistance after the Termination Date if Buyer does not provide reasonable assurance that the charges for such Transition Assistance will be paid to Contractor in accordance with the invoicing and payment provisions of the Contract.

3.27. Force Majeure, Notice of Delay, and No Damages for Delay. Neither party shall be responsible for delays in performance if the delay was beyond that party's control (or the control of its employees, subcontractors or agents). Contractor shall notify Buyer in writing of any such delay or potential delay and describe the cause of the delay either (1) within ten (10) calendar days after the cause that creates or will create the delay first arose, if Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within five (5) calendar days after the date Contractor first had reason to believe that a delay could result. Based upon such notice, Buyer will give Contractor a reasonable extension of time to perform; provided, however, that Buyer may elect to terminate the Contract in whole or in part if Buyer determines, in its sole judgment, that such a delay will significantly impair the value of the Contract to Buyer. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. **THE FOREGOING SHALL CONSTITUTE CONTRACTOR'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** No claim for damages, other than for an extension of time, shall be asserted against Buyer. Contractor shall not be entitled to an increase in the Contract price or payment of any kind from Buyer for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever.

3.28. No Waiver. The delay or failure by a party to exercise or enforce any of its rights under the Contract shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. Unless otherwise agreed in writing, Buyer's payment for the Services shall not release Contractor of its obligations under the Contract and shall not be deemed a waiver of Buyer's right to insist upon strict performance hereof.

3.29. Qualification of Contractor Employees, Subcontractors, and Agents. All Contractor employees, subcontractors and agents performing work under the Contract shall be properly trained and qualified. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors and agents performing work under the Contract must comply with all reasonable administrative requirements of Buyer and with all controlling laws and regulations relevant to the services they are providing under the Contract. Buyer may conduct, and Contractor shall cooperate in, a security background check or other assessment of any employee, subcontractor or agent furnished by Contractor. Buyer may refuse access to, or require replacement of, any personnel for reasonable cause.

Contractor shall take all actions necessary to ensure that Contractor's employees, subcontractors and agents are not considered employees of Buyer. Such actions include, but are not limited to, ensuring that Contractor's employees, subcontractors and agents receive payment and any legally mandated insurance (e.g., workers' compensation and unemployment compensation) from an employer other than Buyer.

As a condition to providing services to Buyer, Contractor (and any subcontractor) will enroll and participate in the federal E-Verify Program within thirty days of the effective date of the Contract. Proof of enrollment and participation will be made available to Buyer upon request.

3.30. Security Procedures. Contractor and its employees, subcontractors and agents shall comply fully with all generally applicable security procedures of the United States, the State of Florida and Buyer in performance of the Contract. Buyer agrees that any security procedures imposed by Buyer specifically for the Contract will be reasonable and will not impose any unreasonable costs or hardships.

3.31. Restrictions on the Use or Disclosure of Buyer's Information. Contractor shall not use, copy or disclose to third parties, except in connection with performing the Services, any information obtained by Contractor or its agents, subcontractors or employees in the course of performing the Services, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of Buyer. At Buyer's request, all information furnished by Buyer will be returned to Buyer

upon completion of the Services. Contractor shall not be required to keep confidential any information that has already been made publicly available through no fault of Contractor or that Contractor developed independently without relying on Buyer's information. To ensure confidentiality, Contractor shall take appropriate steps as to its employees, agents, and subcontractors, including the insertion of these restrictions in any subcontract agreement. The warranties of this paragraph shall survive the Contract.

3.32. Protection of Contractor's Trade Secrets and Other Confidential Information. All documents received by Buyer in connection with this Agreement are subject to Chapter 119, Florida Statutes (the "Florida Public Records Law"). Any specific information that Contractor claims to be a trade secret or otherwise exempt from the Florida Public Records Law must be clearly identified as such by Contractor on all copies furnished to Buyer. Buyer agrees to notify Contractor of any third-party request to view such information, but it is Contractor's obligation to obtain a court order enjoining disclosure. If Contractor fails to obtain a court order enjoining disclosure within five (5) business days of Contractor's receiving notice of the request, Buyer may release the requested information. Such release shall be deemed for purposes of the Contract to be made with Contractor's consent and will not be deemed to be a violation of law, including but not limited to laws concerning trade secrets, copy right or other intellectual property.

3.33. Assignment. Each party binds itself and its respective successors and assigns in all respects to all of the terms, conditions, covenants and provisions of the Contract. Contractor shall not sell, assign or transfer any of its rights (including rights to payment), duties or obligations under the Contract without the prior written consent of Buyer. In the event of any assignment, Contractor shall remain liable for performance of the Contract unless Buyer expressly waives such liability. Buyer may assign the Contract with prior written notice to Contractor of its intent to do so. Nothing herein shall be construed as creating any personal liability on the part of any officer, employee or agent of Buyer.

3.34. Notice and Approval of Changes in Ownership. Because the award of the Contract may have been predicated upon Contractor's ownership structure, Contractor agrees that any transfer of a substantial interest in Contractor by any of its owners shall require Buyer's prior written approval, which approval shall not be unreasonably withheld or unreasonably delayed. By execution of the Contract, Contractor represents that it has no knowledge of any intent to transfer a substantial interest in Contractor. A substantial interest shall mean at least 25% of the voting shares in Contractor. This section shall not apply to (i) transfers occurring upon the incapacitation or death of an owner; (ii) transfers associated with an initial public offering on the NYSE or NASDAQ markets; or (iii) transfers to a company whose stock is publicly traded on the NYSE or NASDAQ markets.

3.35. Assignment of Antitrust Claims. Contractor and Buyer recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by Buyer. Therefore, Contractor hereby assigns to Buyer any and all claims under the antitrust laws of Florida or the United States for overcharges of goods, materials or services purchased in connection with the Contract.

3.36. Equal Employment Opportunity. The Equal Opportunity clause in Title 41, Part 60-1.4 of the Code of Federal Regulations (Paragraphs 1 through 7 of President's Executive Order 11246), the provisions of the Equal Opportunity for Individuals with Disabilities Act in 42 U.S.C. Section 12112, the Listing of Employment Openings for Veterans Clause in Title 41, Part 50-260.2 of the Code of Federal Regulations and the Disabled Veterans and Veterans of the Vietnam era Clause in Title 41, Part 60-250.5 of the Code of Federal Regulations, are incorporated herein by reference if and to the extent applicable. If Contractor is exempt from any of the above cited terms, written evidence of such exempt status must be provided to Buyer.

3.37. Other Non-Discrimination Provisions. As required by Section 126.404, Jacksonville Ordinance Code, contractor represents that it has adopted and will maintain throughout the term of this contract a policy of nondiscrimination or harassment against any person with regard to race, color, sex (including pregnancy), sexual orientation, gender identity or expression, religion, political affiliation, national origin,

disability, age, marital status, veteran status, or any other impermissible factor in recruitment, hiring, compensation, training, placement, promotion, discipline, demotion, transfers, layoff, recall, termination, working conditions and related terms and conditions of employment.. Contractor agrees that, on written request, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Community Relations Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the non-discrimination provisions of the Contract; *provided however*, that Contractor shall not be required to produce, for inspection, records covering periods of time more than one (1) year prior to the effective date of the Contract. Contractor agrees that, if any of the products or Services to be provided pursuant to the Contract are to be provided by a subcontractor, the provisions of this Section shall be incorporated into and become a part of the subcontract.

3.38. Prompt Payment to Subcontractors and Suppliers. The following is required by Chapter 126, Part 6, Jacksonville Ordinance Code; provided however, if Contractor does not use JSEB or MBE subcontractors, as identified below, this Section 3.38 shall not apply:

(a) *Generally.* When Contractor receives payment from Buyer for labor, services or materials furnished by subcontractors and suppliers hired by Contractor, Contractor shall remit payment due (less proper retainage) to those subcontractors and suppliers within fifteen (15) calendar days after Contractor's receipt of payment from Buyer. Nothing herein shall prohibit Contractor from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its subcontractors and suppliers. In the event of such dispute, Contractor may dispute the disputed portion of any such payment only after Contractor has provided notice to the Buyer and to the subcontractor or supplier whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and (iv) be delivered to Buyer and said subcontractor or supplier within ten (10) calendar days after Contractor's receipt of payment from Buyer. Contractor shall pay all undisputed amounts due within the time limits imposed by this Section.

(b) *Jacksonville Small and Emerging Business Enterprise and Minority Business Enterprise Participation.* Notwithstanding Chapter 126, Part 6 of the Jacksonville Ordinance Code, Contractor shall pay all contracts awarded with certified Jacksonville Small and Emerging Business Enterprises ("JSEB") and Minority Business Enterprises ("MBE"), as defined therein, their pro rata share of their earned portion of the progress payments made by Buyer under the Contract within seven (7) business days after Contractor's receipt of payment from Buyer (less proper retainage). The pro-rata share shall be based on all work completed, materials and equipment furnished, or services performed by the certified JSEB or MBE at the time of payment. As a condition precedent to progress and final payments to Contractor, Contractor shall provide to Buyer, with its requisition for payment, documentation that sufficiently demonstrates that Contractor has made proper payments to its certified JSEB's or MBE's from all prior payments Contractor has received from Buyer. Contractor shall not unreasonably withhold payments to certified JSEB's and MBE's if such payments have been made to Contractor. If Contractor withholds payment to its certified JSEB's or MBE's, which payment has been made by Buyer to Contractor, Contractor shall return said payment to Buyer. Contractor shall provide notice to Buyer and to the certified JSEB's or MBE's whose payment is in dispute, which notice shall: (i) be in writing; (ii) state the amount in dispute; (iii) specifically describe the actions required to cure the dispute; and (iv) be delivered to Buyer and said JSEB's or MBE's within five (5) calendar days after Contractor's receipt of payment from Buyer. Contractor shall pay all undisputed amounts due within the time limits imposed in this Section. The failure to pay undisputed amounts to the JSEB's or MBE's within seven (7) business days shall be a breach of the Contract, compensable by one per-cent (1%) of the outstanding invoice being withheld by Buyer, not as a penalty, but as liquidated damages to compensate for the additional contract administration by Buyer.

(c) *Third Party Liability.* The Prompt Payment requirements hereunder shall in no way create any contractual relationship or obligation between Buyer and any subcontractor, supplier, JSEB or MBE or

any third party or create any Buyer liability for Contractor's failure to make timely payments hereunder. However, Contractor's failure to comply with the Prompt Payment requirements shall constitute a material breach of Contractor's contractual obligations to Buyer. As a result of said breach, Buyer, without waiving any other available remedy it may have against Contractor, may: (i) issue joint checks; and (ii) charge Contractor a 0.2% daily late payment charge or the charges specified in said Chapter 126 of the Jacksonville Ordinance Code for JSEB's or MBE's and in Chapter 218, Florida Statutes, for non-JSEB's or MBE's, whichever is greater.

3.39. Conflicts of Interest. Contractor acknowledges that Section 126.112 of the Jacksonville Ordinance Code requires that a public official who has a financial interest in a bid or contract make a disclosure at the time that the bid or contract is submitted or at the time that the public official acquires a financial interest in the bid or contract, including but not limited to the public official's name, public office or position held, bid or proposal number, and the position or relationship of the public official with the bidder or contractor.

3.40. Contingent Fees Prohibited. In conformity with Section 126.306, Jacksonville Ordinance Code: Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure the Contract and that it has not paid or agreed to pay any person, company, corporation, individual or contractor, other than a bona-fide employee working solely for Contractor, any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of the Contract. For the breach or violation of these provisions, Buyer shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

3.41. Truth in Negotiation Certificate. Pursuant to Section 126.305, Jacksonville Ordinance Code, the execution of the Contract by Contractor shall be deemed to be a simultaneous execution of a Truth-In-Negotiation Certificate, whereby Contractor states that the wage rates and other factual unit costs supporting the compensation hereunder are accurate, complete and current at the time of contracting. Further Contractor agrees that the compensation hereunder shall be adjusted to exclude any significant sums where Buyer determines the contract price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs, provided that any and all such adjustments shall be made within one (1) year following the completion date of the Contract.

3.42. Compliance with Applicable Laws. Contractor (and any subcontractors) must comply with all applicable federal, state and local laws, rules and regulations as the same exist and as may be amended from time to time, including, but not limited to:

- Chapter 119, Florida Statutes (the Florida Public Records Law);
- Section 286.011, Florida Statutes (the Florida Sunshine Law);
- Chapter 602, Jacksonville Ordinance Code (the Jacksonville Ethics Code);
- Chapter 126, Jacksonville Ordinance Code (the Jacksonville Purchasing Code); and
- All licensing and certification requirements applicable to performing the Services.

3.43. Cooperative Purchasing. Pursuant to their own governing laws, and subject to the agreement of Contractor, other entities may be permitted to make purchases at the terms and conditions contained herein. These purchases are independent of the agreement between Buyer and Contractor, and Buyer shall not be a party to such transactions.

3.44. Warranty of Ability to Perform. Contractor warrants that (i) it is ready, willing and able to perform its obligations under the Contract, and (ii) to the best of Contractor's knowledge, there are no pending or threatened actions, proceedings, investigations or any other legal or financial conditions that would in any way prohibit, restrain, or diminish Contractor's ability to satisfy its Contract obligations. Contractor shall

immediately notify Buyer in writing if its ability to perform is compromised in any manner during the term of the Contract.

3.45. Warranty of Authority to Sign Contract. Each person signing the Contract warrants that he or she is duly authorized to do so and to bind the respective party to the Contract.

3.46. Governing State Law/Severability/Venue/Waiver of Jury Trial. The rights, obligations and remedies of the parties as specified under the Contract shall be interpreted and governed in all aspects by the laws of the State of Florida. Should any provision of the Contract be determined by the courts to be illegal, unenforceable or in conflict with any applicable law, the validity of the remaining provisions shall not be impaired. Venue for litigation of the Contract shall be exclusively in courts of competent jurisdiction located in Jacksonville, Duval County, Florida. The parties waive any and all rights to a jury trial with respect to disputes arising under the Contract.

3.47. Construction. Both parties acknowledge that they have had the opportunity to provide meaningful input into the terms and conditions contained in the Contract. Therefore any doubtful or ambiguous provisions contained herein shall not be construed against the party who physically prepared the Contract. Article headings appearing herein are inserted for convenience or reference only and shall in no way be construed to be interpretations of text.

Section 4 Description of Services and Deliverables

The Buyer is seeking proposals to select a Contractor to perform for an IGA on one or more Facility(s). The Contractor will perform an IGA and prepare a detailed engineering and economic Report which specifically identifies the EMCs, financing for the ECMs and operational changes which are recommended to be installed or implemented at the Facility(s). The Report shall contain detailed projections of Guaranteed Energy Savings to be obtained at the Facility(s) as a result of the installation of the recommended ECMs, all of which must be guaranteed by the Contractor. The savings calculations must utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings for the Facility(s), i.e.: utilize: accurate marginal cost for each unit of savings at the time the audit is performed; documented material and operational costs actually avoided; adjustments to the baseline to reflect current conditions at the Facility(s) compared to the historic base period; calculations which account for the interactive effects of the recommended ECMs; etc. The Report shall clearly describe how utility tariffs and/or rebates were used to calculate savings for all ECMs. The Report shall describe the Contractor's plan for installing or implementing the measures in the Facility(s), including all anticipated hard and soft costs associated with such installation and implementation. The results form the basis for negotiating a subsequent EPC and Financing Agreement under which the Contractor shall design, procure, install, implement, maintain, monitor and finance the recommended ECMs.

The approval to enter into subsequent EPC and Financing Agreements will be contingent on City Council approval.

The Buyer reserves the right to not select any of the facilities below for an IGA or one or more facilities.

The IGA may be performed at any one or more of the following facilities including but not limited to:

1	Ed Ball	214 Hogan Street N
2	ST James	117 Duval Street W
3	Police Memorial Building	501 Bay Street E
4	Claude J. Yates	231 Forsythe Street E
5	Jake Godbold	407 Laura Street N
6	Pretrial Detention Facility	500 Adams Street E
7	Main Library	303 N. Laura St.
	Other Facility(s) added by the Buyer	

The Contract is a stand-alone master agreement intended as the preliminary step to establish the general terms and conditions. The IGAA is intended to add a specific Facility to the Contract with an overall intent of the Contract and IGAA to identify a package of measures that could be implemented through an EPC in which efficiency savings pay for the entire cost of the ECMs for a particular Facility. The services shall include a detailed energy audit presenting the optimized project including long-term sustainable energy efficiency and upgrades commercially acceptable to the Buyer. In the determination of the ECMs the ESCO agrees to assume full responsibility to identify all requirements to execute such ECMs. The ESCO is to provide an IGA that quantifies the size, scope, payback, and firm cost for each ECM that may be financed through the EPC. The Buyer will not be responsible for any capital investments upfront and it is the awarding ESCO's responsibility to provide funding to mitigate any requirements for addressing any and all identified ECMs agreed upon by the Buyer.

GENERAL SCOPE

The energy savings contractor (ESCO) will:

- a) Conduct and report on detailed site surveys of the Facility added to the Contract with an IGAA including all utilities and all energy systems identified for ECMs and identify the size, scope, and payback of energy conservation measures by a documented analysis of various conservation opportunities.
- b) Examine all utility data to check for accuracy against actual bills and data printouts in order to confirm that baseline data is accurate & complete; document baseline and projected utility data for use in the performance guarantee of the Contract. The accuracy of the baseline consumption, savings projections, and capital budget are of the essence of the IGA and the subsequent EPC.
- c) Present a thorough description of each recommended ECM including, but not limited to, conceptual summary, equipment and material specifications, plans, schematics or detail sketches as appropriate, cost, useful life, savings in utility consumption and expense, maintenance and operating expenses, assurances that the original design performance shall be maintained throughout the useful life of the equipment and systems installed, monitoring requirements, impact, if any, of each measure on the buildings, other building systems and occupants, and payback. This information shall be prepared consistent with the RFP/RFQ and with Facility Profile.
- d) Summarize any ECMs that are rejected and state the reasons for rejection. The ESCO shall be prepared to provide backup data, calculations, and other information as requested by the Buyer but need not include this detail in the Energy Audit.
- e) Prepare a detailed operational plan showing the sequence of operations for the work to be performed.
- f) Prepare sufficient design, plans, equipment, material and other detail suitable as specifications for work to be performed under the subsequent EPC.

2. GUARANTEED SAVINGS CALCULATIONS

- a) Annual guaranteed energy and cost savings is required for the entire financing term. The guarantee is based on cost savings attributable to all energy saving measures, and must equal or exceed all project costs each year during the contract period. Annual project costs include debt service, ESCO fees, maintenance services, monitoring services, and other services.
- b) Excess savings or annual cost savings beyond the guaranteed minimum savings will be retained by Buyer, and will not be allocated to shortfalls in other years.
- c) The annual savings for all measures must be estimated for each year during the contract period.

3. ALLOWABLE COST AND SAVINGS FACTORS

- a) Allowable payment sources:
 - o Energy cost savings.
 - o Material/commodity savings, including scheduled replacement of parts.
 - o Outside labor cost savings, including maintenance contracts. Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented.
- b) Negotiable payment sources:
 - o Offset of Buyer future capital cost
 - o Outside incentive funds (utility incentives, grants, etc.)
 - o Escalation rates for electricity, and material/commodity cost savings. These are rates used in cash flow projections for project development purposes. *NOTE: Use historical data and/or federal government guidelines on utility escalation rates to ensure reasonableness.*
 - o Interest rates (municipal tax-exempt rates for public institutions)
 - o Buyer cash outlay (at Buyer's sole discretion)

4. EXISTING CONDITIONS

The ESCO will document the existing conditions of the facilities. The Buyer will allow the ESCO reasonable access to facility staff to ensure understanding of existing systems and opportunities. The ESCO will work diligently to assess validity of information provided and confirm or correct the information as needed.

5. ESTABLISH BASELINE CONSUMPTION

- The ESCO will establish base year consumption by examining utility bills for up to the past three years for electricity. Present base year consumption in terms of energy units (kWh), in terms of dollars. Describe the process used to determine the base year (averaging, selecting most representative contiguous 12 months, etc.).
- The ESCO will estimate loading, usage and/or hours of operation for all major end uses of total facility consumption including, but not limited to: Lighting
- The ESCO will reconcile annual end-use estimated consumption with the annual base year consumption. This reconciliation will place reasonable “real-world” limits on potential savings.
- The ESCO will propose adjustments to the baseline for energy saving measures that will be implemented in the future.

6. CONDUCT COMPREHENSIVE DETAILED ENERGY AUDIT ANALYSIS

In analyzing the savings and costs for each energy, the ESCO will:

- Follow the engineering principle(s) and methodologies to calculate energy savings consistent with any nationally-recognized authority;
- Consider technologies in a comprehensive approach;
- Utilize assumptions, projections, and baselines that best represent the true value of future energy or operational savings, including: accurate marginal costs for each unit of savings at the time the IGA is performed; documentation of material and labor cost savings; adjustments to the baseline to reflect current conditions at the Facility; and, calculations that account for the interactive effects of the recommended measures;
- Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use; and,
- Develop a preliminary measurement and verification plan for each measure based on the Buyer’s preference.

7. PREPARE A DRAFT TECHNICAL ENERGY AUDIT REPORT.

To provide an engineering and economic basis for negotiating an EPC between the Buyer and the ESCO, the report shall include:

A. Overview

1. Summary table of recommended ECMs, with itemization for each measure of total design and construction cost, annual maintenance costs, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life;
2. Summary of annual energy use by fuel type and costs of existing or base year condition;
3. Calculation of cost savings expected if all recommended ECMs are implemented, and total percentage savings of total facility energy cost;
4. Description of the existing Facility;
5. Summary description of measures, including estimated costs and savings for each;
6. Discussion of ECMs considered but not investigated in detail;
7. Discussion of utility rebates, historic building aid, or other rebate and incentive options; and,

8. Conclusions and recommendations

B. Facility Profile: Description of Facility

C. Base year energy use:

Description and itemization of current billing rates, including:

- Schedules;
- Energy type;
- Native units (kWh); and
- Average price per unit.

D. Full description of each ECM including:

- 1) Existing conditions;
- 2) Recommended equipment and how it will function;
- 3) Operation and maintenance procedures affected by installation/implementation;
- 4) The plan for installing or implementing the recommendation;
- 5) Savings calculations
 - Base year energy use and cost;
 - Post-retrofit energy use and cost;
 - Savings estimates including analysis methodology, supporting calculations and assumptions used; annual savings estimates (the cost savings for all ECMs must be estimated for each year during the contract period and savings must be achieved each year, not reported as average annual savings over the term of the EPC);
 - Percent cost-avoidance projected;
 - Description and calculations for any proposed rate changes
 - Explanation of how savings interactions between ECMs is calculated;
 - Operation and maintenance savings, including detailed calculations and description;
 - If using computer simulation, include a short description and state key input data. The Buyer will require a hardcopy of printouts and electronic documentation of the analysis conducted; and,
 - If using manual calculations, formulas, assumptions and key data shall be stated. The Buyer will require a hardcopy of printouts and electronic documentation of the analysis conducted.

6) Cost estimates and avoided costs

The ESCO will provide a detailed scope of the construction work needed, suitable for cost estimating. Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting counts.

- Engineering/design costs;
- Contractor/vendor estimates for labor, materials, and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities;
- Permit costs;
- Construction management fees;
- Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.);
- Financing costs; and,
- Avoided costs including utility or other rebates, subsidies, and or third-party aid.

7) Other

- Estimate of average useful service life of equipment
- Preliminary commissioning plan

- Impacts that the facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc.; and,
- Compatibility with existing systems.

8) Rebates, subsidies, and Incentives.

Provide a detailed discussion of the ESCO's plan to secure on behalf of, or in conjunction with the Buyer, all available rebates, subsidies and third-party aid for each ECM and the over project. Discuss which rebates, subsidies and/or third-party aid the ESCO will guarantee and whether any additional rebates, subsidies and/or third-party aid will accrue to the benefit of the Buyer.

9) Measurement and Verification Plan.

Provide a detailed description of the measurement and verification plan (following the Federal Energy Management Measurement and Verification Guidelines) and the approach employed for each ECM to demonstrate realized savings that are sustainable over the useful life of the ECM. The plan shall include definitions of terminology and the methods and procedures for reconciling the verified saving to the guaranteed savings.

10) Financial Summary

Provide a cash flow analysis listing the annual energy and O&M savings, the annual lease or finance payments, and the annual M&V, maintenance, and other costs, any rebates and/or third-party aid, and the net annual cash flow. List interest rate and applicable energy cost escalation rates.

11) Appendices

Complete appendices that document the data used to prepare the analyses, including a description of how data were collected.

E. Optimize IGA

The ESCO will meet with the Buyer and present the technical and economic findings of the IGA and Report. Such meeting will enable the Buyer to collaborate on optimizing the ECM selection based on its requirements and preferences. Upon completion of the optimization process, the ESCO shall update and revise the IGA and Report to reflect the optimized EMS project, including an updated financial summary as described above.

F. ECM Installation Schedule

For each ECM provide a proposed implementation schedule. Include the following milestones:

- Design completed;
- Permits;
- Submittals (plans and specifications);
- Equipment/Material acquisition;
- Mobilization;
- Installation;
- Clean up;
- Startup/Testing;
- Final inspection
- Post installation submittals; and,
- Training

(Remainder of page intentionally left blank)

Attachment A – Response Format

To maintain comparability and facilitate the evaluation process, Responses shall be organized in the manner set forth below. Tab delineations for each of the five sections would be helpful.

- 1) **Title Page:** Include RFP Title, RFP Number, Contractor's full name, address, phone number.
- 2) **Cover Letter:** Include the following:
 - RFP Title and Number
 - Contractor's full name, address and phone number.
 - Names of the persons who will be authorized to make representations for the Contractor, their titles, addresses (including email address) and telephone numbers.
 - Contractor's Federal Employer ID Number.
 - Acknowledgement that (i) the Response is based on the terms set forth in the RFP and all amendments thereto posted on Buyer's website as of the date of the Response, and (ii) the Contractor will be responsible for monitoring Buyer's website for subsequent amendments and for either maintaining, amending or withdrawing the Response prior to the Response Due Date based on those subsequent amendments.
 - Signature of Authorized Representative.
- 3) **Required Forms.** Attach all forms identified in Section 1 or in Attachments C or E, each signed by an authorized representative. Examples of the forms that may be required include:
 - Conflict of Interest Certificate.
 - Business References.
 - Equal Business Opportunity Program Forms (if required in Attachment C).
- 4) **Proof of Minimum Requirements.** Responses will ONLY be accepted from companies meeting the minimum requirements in Section 1 of the RFP. Contractor must provide clear documentation that they meet the minimum requirements.
- 5) **Statement of Qualifications.** This portion of the Response will be used to provide the information Buyer needs to evaluate how well the Contractor meets the criteria listed in Attachment B – Evaluation Criteria. Failure to provide adequate information on any criterion will result in lower scores and could result in rejection of the Response as non-responsive. Please divide this portion of the Response into ten subsections (one subsection for each of the listed criteria).
- 6) **Schedule of Proposed Rates for IGA.** See Form 1

Attachment B- Evaluation Matrix

The evaluations will be based upon the following criteria, and Contractors are requested to provide, as a minimum, the information listed under each criterion. **Failure to provide adequate information on any criterion will result in lower scores and could result in rejection of the proposal as non-responsive.** The response to each of the criterion will be evaluated relative to the other responses received and will be awarded a score of one through the maximum points shown below for each criterion. Contractors are encouraged to arrange their responses in a format that will offer ready review and evaluation of each criterion.

Note : Information provided in the following criteria should pertain to previous work related to Energy Performance Contracting as applicable.

1. COMPETENCE.

a. Key Personnel Backgrounds and location. (15 points maximum score)

Indicate the number of full-time personnel employed by the Contractor and the availability and location of adequate personnel to perform the Services. Provide the names, resumes and location of the key personnel to be assigned to projects. List all areas of expertise related to energy, water and wastewater conservation measures for the types of facilities covered by this RFP. Describe the nature of work to be performed by subcontractors and identify any subcontractors and location of subcontractors expected to be involved in the engineering, design and construction of the project.

b. Contractor's History and Past Performance with Similar Projects. (15 points maximum score)

Describe the Contractor's professional and/or technical experience and past performance with the type of projects described in this RFP. List all energy savings performance contracts performed for government entities under Section 489.145, Florida Statutes, in the past five (5) years. (Note: if the Proposal is submitted by a branch office or division of a parent company, indicate the number of projects that have been managed directly by the specific branch or division). Projects that have been managed by individuals who will be specifically assigned to this project should also be included and identified. If projects were managed by team members or sub-contractors or employees while employed by other firms, *clearly indicate* the name of the company that was responsible for that project. Include the following information on each project:

- i. Project Identification. Name of the project owner, type of project and exact location
- ii. Project Dates. Actual construction start and end dates
- iii. Project Size. Number of buildings, total square footage, total contract amount and the total project capital cost
- iv. Type of Improvements. Type of retrofits and operational improvements related to energy, water and other cost savings
- v. Projected Annual Savings. State the projected annual energy, water and O&M savings (therms, kWh, kW, gallons, etc..)
- vi. Guaranteed Savings. State the amount of the guarantee. Describe how the guarantee functioned and if your firm was required to pay funds to meet the guarantee.
- vii. Actual Annual Savings. State the actual annual energy, water and O&M savings (therms, kWh, kW, gallons, etc...). Also describe if savings were measured or stipulated.
- viii. Financing. Describe whether the improvements were financed and with whom.
- ix. Technical Design Personnel. Include name(s) of primary technical design personnel.
- x. Project Schedule. Indicate if the project was completed on schedule. If not, please explain.

- xi. Comments. Comment on any special features, services, conditions, etc.
- xii. References. Name and contact information of the owner(s) representatives who can serve as references.

2. RECENT, CURRENT AND PROJECTED WORKLOADS. (5 points maximum score)

Provide the number and size of the projects recently and currently being performed and projected to be performed. Discuss the ability to deliver Buyer's projects on a timely basis under current and projected workload conditions.

3. FINANCIAL RESPONSIBILITY. (15 points maximum score)

Describe form of business, i.e., proprietorship, partnership, corporation; years in business; changes in ownership; bank reference(s); past, present, pending and/or threatened legal proceedings within any forum; and any other information the Contractor may wish to supply to demonstrate financial responsibility. Include financial statements or annual reports for each of the last three years. Attach the most recent Statement of Financial Condition, including balance sheet, income statement and statement of cash flows, dated within the past twelve (12) months. Provide the name, address, and telephone number of firm(s) that prepared the financial statements. Failure to provide all listed information and documentation will result in score less than maximum for this criterion.

4. ABILITY TO OBSERVE AND ADVISE WHETHER PLANS AND SPECIFICATIONS ARE BEING COMPLIED WITH. (5 points maximum score)

Describe any relevant Quality Control procedures and other abilities of Contractor and assigned personnel to observe and monitor compliance with plans and specifications for work similar to the work described in the RFP. Specifically list any energy savings performance contracts that have canceled and/or non-appropriated and list the reasons. Provide a list of any such contracts that have past or pending lawsuits, arbitration or litigation.

5. PAST AND PRESENT RECORD OF PROFESSIONAL ACCOMPLISHMENTS WITH CITY AGENCIES AND OTHERS. (5 points maximum score)

Provide a list of projects performed in the last five (5) years for the City of Jacksonville or any of its Independent Authorities (JEA, JAXPORT, Jacksonville Aviation Authority, Duval County School Board, etc.) that are similar in nature to the scope of work for this RFP. Points will be awarded to those firms that have satisfactorily performed work for the City, its using agencies or other private entities in the past.

6. PROXIMITY TO THE PROJECT. (5 points maximum score)

Document the location of Contractor's corporate headquarters, which, if located in Jacksonville, Florida, no further information is required and maximum points will be awarded. If Contractor's corporate headquarters are not located in Jacksonville, Florida, please document the location and the nature of business of Contractor's branch office(s), if any, that are closest to Jacksonville, Florida, the number of employee assigned thereto and the period of continuous existence thereof. Additionally, Contractors are requested to demonstrate, define and provide examples of their ability to provide the Services contemplated herein in a manner comparable to having a local office in Jacksonville, Florida or to show that a local office is not necessary to satisfactorily perform the Services, in which event maximum points may be awarded.

7. PAST AND PRESENT COMMITMENT TO SMALL AND MINORITY BUSINESSES AND CONTRIBUTIONS TOWARD A DIVERSE MARKET PLACE. (5 points maximum score)

Describe the Contractor's past and present commitment to minority, women-owned, small and emerging businesses. Responses should include, without limitation, statements that document the Contractor's: (i) commitment to diversity among the directors, officers, members and/or employees that make up its firm; (ii) commitment to diversity within its community and beyond; (iii)

commitment to and/or utilization of minority, women-owned, small and emerging businesses on past projects; and (iv) commitment to and/or utilization of minority, women-owned, small and emerging businesses, certified JSEBs in particular, for the design, engineering or construction phases of the Contract.

8. ABILITY TO DESIGN AN APPROACH AND WORK PLAN TO MEET THE PROJECT REQUIREMENTS. (30 points maximum score)

Describe the Contractor's understanding of the requirements of this RFP and its ability, approach and/or plan to satisfy the same in complete compliance with all applicable federal, state and local laws, statutes, ordinances, rules and regulations. For maximum points, the following should be addressed:

a. Audit

- i. Technical Site Analysis. Describe your general approach to auditing a facility. What is involved? How is customer involved? Methodical approach? Level of expertise involved? Information and resources needed from customer?
- ii. Sample Technical Approach. Submit a sample investment grade technical audit conducted by your firm for a similar project. This audit must include detailed energy and economic calculations.

b. Design / Construction

- i. Engineering Design. Describe your firm's approach to the technical design of this project.
- ii. Standards of Comfort. Describe standards of comfort and functionality that are generally used for light levels, space temperatures, ventilation rates, etc. in the intended Facilities.

c. Engineering Analysis

- i. Baseline Calculation Methodology. Describe in detail the methodology your firm normally uses to compute baseline of energy and water use as well as performance.
- ii. Adjustment to Baseline Methodology. Describe the method(s) used to adjust the energy, water and O&M baseline due to such factors as weather and facility use changes. Describe the factors that would necessitate adjustment.
- iii. Savings Calculation. List all procedures, formulas and methodologies including special metering or equipment which you firm will use to calculate energy, water and O&M savings. Include assumptions made in the calculations.
- iv. Dollar Savings Calculations. Describe the procedure to assign dollar values to the savings. Include energy savings as well as maintenance or material savings.
- v. Cost Savings Guarantee Calculations. Describe your firm's procedures and schedule for measuring financial performance of projects. Describe how the guarantee provisions work in the event that project results vary from projections. Also, describe how excess savings can be documented.
- vi. Billing and Invoices. Describe your standard billing procedures and attach a sample invoice.
- vii. Identify proposed timeline from execution of contract to completion of project. Include key milestones such as design completion, financing and completion of construction.

9. An overall willingness to meet both time and budget requirements for the project. (10 Points maximum score)

In an effort to remain consistent with Chapter 287, Florida Statutes, responding to this evaluation criterion necessitates that a proposer include statements and references demonstrating that the proposer met both time and budget requirements on projects of similar size and scope that were completed by the proposer within the past five years and that the proposer is meeting both time and budget requirements on projects of similar size and scope that are currently being performed by the proposer ("Reference Projects"). As part of its response to this evaluation criterion, the proposer:

1. must submit an expressed statement of its overall willingness to meet both time and budget requirements for the project in question; and
2. should submit, without limitation, project narratives, schedules, cost and fee summaries and owner references for any Reference Projects.

During contract negotiations, successful proposers will be required to provide a Schedule of Proposed Rates on Form 1 Price List attachment referenced on Attachment "A". Such rates and costs will be used in the negotiation of fees and shall remain in effect throughout the length of the contract, except such rates may be adjusted when an amendment to the original agreement is being negotiated; provided any increases in rates shall not exceed actual increases in the CPI since the date of response to the RFP. Unless specifically identified otherwise on the form, rates for subconsultants also shall not exceed those shown on the form.

Proposed Overhead rate is limited to 175% of direct labor. Proposed overhead rates in excess of 175% shall conform to Federal Acquisition regulations as established by a governmental audit certified to by Certified Public Accountant. However, under no circumstance shall the overhead rate exceed 200%. Profit rate shall only be applied to direct labor plus overhead. No mark-up or profit shall be paid on non-labor related costs. Reimbursables or on services provided by subconsultants or others.

10. **THE VOLUME OF CURRENT AND PRIOR WORK PERFORMED FOR USING AGENCIES SHALL BE CONSIDERED A MINUS FACTOR.** Provide a list of all local government projects including the professional engineering fees associated with ESCO contracts awarded for each on which Contractor has been awarded during the past five (5) years. Include only those projects on which Contractor was the Prime Contractor (do not delete fees paid to subcontractors or others). Such list shall include all work for the City of Jacksonville and its various "using agencies," which is defined in the Jacksonville Ordinance Code as "a department, division, office, board, agency, commission or other unit of Buyer and independent agency required by law or voluntarily requesting to utilize the services of the [Procurement] Division"; and on projects undertaken with others that are similar in nature to the size and scope of professional services and/or work required for the project solicitation herein. If the Contractor has not performed work for any of these agencies during the past five (5) years, the response should so clearly state. The minus factor methodology for this criteria will be based on the fees awarded. The higher the volume of fees the lower the score, less volume of fees the higher the score. **(10 points maximum score)**

Attachment C – Equal Business Opportunity Program Requirements

EQUAL BUSINESS OPPORTUNITY PROGRAM PARTICIPATION PERCENTAGE PLAN FOR JACKSONVILLE SMALL AND EMERGING BUSINESSES

A. POLICY

Pursuant to Part 6 of Chapter 126, Jacksonville Ordinance Code, the City of Jacksonville encourages the utilization and participation of Jacksonville Small and Emerging Businesses (JSEBs) in its contract awards based upon availability. It is the City's intent in adopting this program to reflect the philosophy with regard to enhancing participation of JSEBs in all areas of procurement.

Please be advised that, in order to be counted toward meeting the participation percentage goal defined herein, all JSEBs shall be certified by the City in accordance with Part 6 of Chapter 126, Jacksonville Ordinance Code, AT THE TIME OF BID OPENING.

In the event bidders/proposers are unable to obtain bids from JSEB subcontractors that equal or exceed the percentage established in the participation goals, shall at minimum, submit, at the time of bid opening a Notice of Intent to Submit the Good Faith Effort Form (EBO Form 4). This is outlined in the Good Faith Effort category in Section J.

B. JSEB OBLIGATION

Bidders/proposers are required to make all efforts reasonably possible to ensure that JSEBs have a full and fair opportunity to compete for performance on this project. Contractors shall not discriminate on the basis of race, ethnicity, national origin or gender in the award and performance of the work under this contract.

C. ELIGIBILITY

1. To be considered eligible for contract award, the Contractor shall include with the bid/proposal an original EBO Form 1(Schedule of Subcontractor/Sub-consultant Participation), showing:

- a. Total percentage of JSEB work or procurement that the Prime Contractor intends to award;
- b. The identification of the JSEB as being a subcontractor, service organization, manufacturer, or supplier;

2. In addition, each certified JSEB must submit to the prime contractor a Letter of Intent (see Section 3 of specification documents) to perform a specific task related to the project for which he or she is licensed to perform and has been certified by the City in that category. The Letter of Intent must include the JSEB subcontractor's name, the scope of work to be performed, and the dollar value of the work to be performed by the JSEB (the information contained in the Letters of Intent must reflect the information contained in the bidder's Schedule of Subcontractor/Subconsultant Participation). Copies (or faxes) of the original Letters of Intent signed by the JSEB subcontractors or suppliers may be submitted at the time of the scheduled bid opening but must be submitted within 48 hours after the scheduled bid opening to the Chief of Procurement, 214 N Hogan Street, Suite 800 Jacksonville, FL 32202. . Failure to submit the Letter(s) of Intent within 48 hours after the scheduled bid opening may result in the bid in question being rejected as non-responsive.

- a. All JSEBs must be subcontracted in the area that they are licensed and certified, in accordance with the requirements of Part 6, Chapter 126, Jacksonville Ordinance Code.

D. COMPLIANCE

All bidders, proposers or subcontractors participating in this project are hereby notified that failure to fully comply with the City's JSEB policy as set forth herein shall constitute a breach of contract which may result in termination of the contract or such other remedy as deemed appropriate by the Owner. Such penalties as outlined in Section 126.201, Jacksonville Ordinance Code, will apply.

E. PARTICIPATION GOALS

The following goals apply to this contract and submissions of a bid by a prospective contractor shall constitute full acceptance of all conditions outlined in the bid documents, Chapter 126, Jacksonville Ordinance Code, and the prospective contractor's bid proposal.

The attainment of JSEB participation goals established for this contract will be: (i) based upon JSEBs certified by the City AT THE TIME OF BID OPENING in accordance with Part 6 of Chapter 126, Jacksonville Ordinance Code; and (ii) measured as a percentage of the total dollar value of the contract or, in the case of alternates, the percentage is calculated on the base bid for the purpose of the award; however, the contractor is expected to make every attempt to meet or exceed the stated goals when the alternates are awarded. The goal established for this contract is:

5% TO BE PERFORMED BY CITY CERTIFIED JSEBs AT THE TIME OF BID OPENING (ANY COMBINATION)

F. CONTRACT AWARD

The City proposes to award the contract to the responsive, responsible bidder submitting a reasonable bid, provided: (i) the bidder has met the goals for JSEB participation; or (ii) if unable to meet the goals, the bidder has timely submitted an acceptable Good Faith Effort Statement and supporting documentation that demonstrates, pursuant to Part 6 of Chapter 126, Jacksonville, Ordinance Code, a sufficient attempt to meet the JSEB participation goals as established herein. Bidders are advised that the City has sole discretion and authority to determine if any bidder has made a "Good Faith Effort." The City reserves the right to reject any or all bids submitted. The City will have discretion to reject any bid or exclude a prospective bidder from submitting a bid who has been non-responsive to JSEB program requirements without satisfactory justification accepted by the Chief of Procurement. Rejections hereunder may be timely protested pursuant to the city's Procurement Protest Procedures, a copy of which is included as part of these bid documents.

G. SUBCONTRACT CLAUSE

1. All bidders hereby agree to incorporate the JSEB participation, policy, goals, conditions and instructions in all agreements that offer JSEB participation subcontracting opportunities.
2. If a change order presents further subcontracting opportunity beyond current subcontracting, the prime contractor shall make positive efforts to further include JSEB participation.
3. The JSEB prime contractor shall perform at least 25% of the total amount of the work to be performed under this Contract with its own workforce. Subletting of any Work under this Contract shall not relieve the JSEB prime contractor of its full responsibility for the proper and timely performance and for its selection of Subcontractor (s).

H. POST AWARD REQUIREMENTS

After the award of the contract, failure on the part of the successful contractor to subcontract with JSEBs at a percentage level equal to or higher than stated on EBO Form 1, may put the contractor in violation and is subject to penalties outlined in Chapter 126, Jacksonville Ordinance Code.

I. PAYMENT OF SUBCONTRACTORS

Prime contractors shall certify in writing that ALL subcontractors and suppliers have been paid for work and materials from previous progress payments received (less any retainage) as a condition precedent to prior to receipt of any further progress payments. Prime contractors shall be obligated to pay subcontractors within 3 days of receipt from the City of funds, and must confirm payment to the City. Prime contractor shall have a continuing obligation to pay all subcontractors and suppliers equal to the amount of work and materials furnished on this project at the direction of the prime contractor and for which amount prime contractor includes in its request or application for payment that it submits to the city in order to induce payment for the same; otherwise, within 10 business days after receiving written notice from the city, prime contractor shall return to the city any and all amounts it has been paid by the city that prime contractor failed to pay its subcontractors or suppliers in contradiction to information contained in a corresponding request or application for payment submitted by prime contractor. Additionally, failure to comply with the requirements of this section may result in penalties imposed upon prime contractor, including without limitation those outlined in Chapter 126, Jacksonville Ordinance Code.

J. GOOD FAITH EFFORTS

Bidders who are unable to meet the stated JSEB participation goals set forth herein are required to submit to the Chief of Buying and Administration Division: (i) a Notice of Intent to Submit a Good Faith Effort Statement at the time of bid opening; and (ii) a completed Good Faith Effort Form (EBO Form 4) and all supporting documentation within 48 hours after the scheduled bid opening, that demonstrate all of the bidder's efforts in the solicitation of subcontractors to meet the JSEB participation goals on this project, which will be evaluated in accordance with the factors outlined in Part 6 of Chapter 126, Jacksonville Ordinance Code, including without limitation §§ 126.613 and 126.614.

Failure to submit the Good Faith Effort Statement and supporting documentation within 48 hours after the scheduled bid opening: (i) shall constitute a waiver of any right to have the same considered; and (ii) may result in the bid in question being rejected as non-responsive.

NOTE: The City will investigate and verify information submitted in determining Good Faith Effort, and, among other factors, will compare the same with the performance of other bidders in their attempt to meet the participation goals defined herein.

K. EXCLUSIONARY AGREEMENTS

Agreements between any bidder/proposer and a JSEB in which the JSEB promises not to provide subcontracting quotations to other bidders are prohibited, and may result in both the bidder/proposer and the JSEB being subject to the penalties outlined in Chapter 126, Jacksonville Ordinance Code.

L. JOINT VENTURE SUBMITTAL

For Capital Improvement, contractors submitting as Joint Venture must be certified as a joint venture at the time of bid opening. Information concerning submitting a bid as a Joint Venture may be obtained from the Equal Business Opportunity office, 214 N Hogan Street, Suite 800, Jacksonville, FL 32202, (904)255-8840. Failure to meet the deadline for certification as a Joint Venture may deem a proposal non-responsive.

M. SUBSTITUTIONS

1. The contractor cannot make changes to the Schedule of Participation or substitute subcontractors named in the Schedule of Participation without the prior written approval of the JSEB Administrator upon recommendation of the Ombudsman. Unauthorized changes or substitutions shall be a violation of this chapter, and may constitute grounds for rejection of the bid or proposal or cause termination of the executed contract for breach, the withholding of payment and/or subject the contractor to contract penalties or other sanctions.
2. All requests for changes or substitutions of the subcontractors named in the Schedule of Participation shall be made to the Ombudsman with a copy to the JBA Administrator in writing, and shall clearly and fully set forth the basis for the request. A contractor shall not substitute a subcontractor or perform the work designated for a subcontractor with its own forces unless and until the Administrator approves such substitution in writing. A contractor shall not allow a substituted subcontractor to begin work until both the JBA Administrator and the City's project manager have approved the substitution.
3. The facts supporting the request must not have been known nor reasonably should have been known by either party prior to the submission of the Schedule of Participation. Bid shopping is prohibited. The contractor must bring this dispute to the Ombudsman for resolution.
4. The Administrator's final decision whether to permit or deny the proposed substitution, and the basis therefore, will be communicated to the parties in writing by the Administrator, with a copy to the CAO.
5. If the City requires the substitution of a subcontractor listed in the Schedule of Participation, the contractor shall undertake Good Faith Efforts to fulfill the Schedule of Participation if the Project Specific Goals would not otherwise be met. If the Goal(s) cannot be reached and Good Faith Efforts have been made, the contractor may substitute with non-JSEBs.
6. If a Contractor plans to hire a subcontractor on any scope of work that was not previously disclosed in the Schedule of Participation, the contractor shall obtain the approval of the JBA Administrator to modify the Schedule of Participation and must make Good Faith Efforts to ensure that JSEBs have a fair opportunity to bid on the new scope of work.
7. Changes to the scopes of work shall be documented by the User Department at the time they arise, to establish the reasons for the change and the effect on achievement of the Project Specific Goal(s).

N. JSEB MONTHLY REPORT

A completed JSEB Monthly Report (See EBO Form 3) will be included with each pay request. Prime Contractor is required to maintain records of the JSEB Monthly Reports for three (3) years.

O. CALCULATION OF JSEB PARTICIPATION

1. Credits toward the JSEB goal will be based on the percentage of work actually performed by JSEBs.
2. If a certified JSEB bidder bids as a prime contractor, it will meet the established goal by virtue of being a certified JSEB; nevertheless, JSEBs who bid as prime contractors are encouraged to make every attempt to subcontract with other JSEBs.
3. Subject to the requirements of Part 6 of Chapter 126, Jacksonville Ordinance Code, credit towards the JSEB goal allowed for a joint venture involving a JSEB will be equal to the same percentage as the

percentage of ownership and control of the JSEB participants in the joint venture. The eligibility of a JSEB joint venture will be determined on a project-by project basis. A joint venture must be certified as a JSEB joint venture at the time of bid opening in order for the participation of the JSEB partner to be counted towards the JSEB goal requirement. The JSEB partner's share in the ownership, control, management responsibilities, risks and profits of the joint venture must be at least twenty-five percent (25%) and the JSEB partner must be responsible for a clearly defined portion of the work to be performed.

4. The EBO office will accept participation from certified JSEB companies that are certified at the time of bid opening, and that are immediately subordinate to subcontractors and sub-consultants, toward meeting percentage goals.

5. The EBO office will accept 100% of purchase price for materials from JSEB suppliers towards meeting JSEB percentage goals.

P. PENALTIES

Severe penalties, including without limitation those outlines in Chapter 126, Jacksonville Ordinance Code, may apply to non-compliance with the Equal Business Opportunity Program and other violations of applicable federal, state and local laws statutes, ordinances, rules and regulations.

EBO FORM 1
CITY OF JACKSONVILLE
EQUAL BUSINESS OPPORTUNITY PROGRAM
CONSULTANT AND CONTRACTOR'S MONTHLY REPORT

PRIME CONTRACTOR NAME: _____ PROJECT TITLE: _____

PROFESSIONAL SERVICES (RFP) NO. _____ - OR - CITY BID NO. _____

CURRENT CONTRACT TOTAL AMOUNT \$ _____ CITY CONTRACT NO. or PO NO. _____

INVOICE INFORMATION					
INVOICE NO.:		CURRENT INVOICE \$:			
FOR PERIOD ENDING DATE:		CUMULATIVE INVOICED \$:			
		CONTRACT % COMPLETE:			
CONTRACT GOAL TRACKING					
JSEB GOAL \$:		JSEB GOAL %:			
PRIOR MONTH CUMULATIVE JSEB \$:					
PRIOR MONTH CUMULATIVE NON- JSEB \$:		<u>FORMULA FOR CURRENT MONTH %:</u> <u>CUMULATIVE \$ / CUMULATIVE \$ INVOICED</u>			
CUMULATIVE JSEB \$:		CUMULATIVE JSEB % :			
CUMULATIVE NON- JSEB \$:		CUMULATIVE NON- JSEB % :			
JSEB SUBCONTRACTORS TO BE PAID FROM THIS INVOICE					
COMPANY NAME	FEDERAL I.D. NO.	ZIP CODE	JSEB TYPE ¹	TYPE OF WORK ²	\$ THIS PAYMENT
Use Sheet 2 if additional lines are needed.					TOTAL
NON-JSEB SUBCONTRACTORS TO BE PAID FROM THIS INVOICE					
COMPANY NAME	FEDERAL I.D. NO.	ZIP CODE	Type	TYPE OF WORK ²	\$ THIS PAYMENT
			N/A		
			N/A		
			N/A		
			N/A		
Use Sheet 3 if additional lines are needed.					TOTAL

¹JSEB (Jacksonville Small Emerging Business)

²TYPE OF WORK: Examples: Catering, Clerical, Consulting, Engineering, Hauling, Janitorial, Masonry, Site Clearing, Technical Support, etc...

EBO: Form 2

JSEB GOOD FAITH EFFORT DOCUMENTATION

The intent of this form is to document the good faith effort attempts made by the apparent low bidder in soliciting JSEB firms to meet the JSEB project goal. Please note that the project goal will not be waived and the contractor must make efforts to achieve the goal throughout the life of the contract.

Every work type where there is a certified JSEB, the apparent low bidder must submit the form as follows:

1 available JSEB - must contact 1 JSEB

2-5 available JSEB - must contact 3 JSEBs minimum

6-7 available JSEBs - must contact 4 JSEBs minimum

8-9 available JSEBs - must contact 5 JSEBs minimum

10 or more available JSEBs - must contact 6 JSEBs minimum

All information submitted on this form is subject to audit by the JSEB Office

Date Submitted: _____ Bid Number: _____ Agency: _____

Contractor Name: _____ Company Address: _____

City _____ State: _____ Zip code: _____ Phone: _____

Goal Percentage: _____ Commitment Percentage: _____ Unattained Percentage: _____

I certify that the information contained in this good faith effort documentation form is true and correct to the best of my knowledge. I further understand that any willful falsification, fraudulent statement or misrepresentation will result in appropriate sanctions which may involve debarment and/or prosecution under applicable State and Federal laws.

Bidder/Authorized Representative Signature: _____

Representative Title: _____ Date: _____

Witness: _____ Date: _____

ATTACHMENT D

ERRORS & OMISSIONS PROCEDURES

SIGNATURE REQUIRED

PROCUREMENT-DIVISION



ERRORS & OMISSIONS PROCEDURES

RFP #: P-65-17

Title of RFP: TITLE OF PROJECT

Acknowledge Receipt by Return of Signed Copy with Proposal

Proposers' Signature

Title

Company Name

Date

ATTACHMENT 'D'

5.12 ACCURACY OF WORK; LIABILITY FOR ERRORS AND OMISSIONS

5.12.01. The CONSULTANT shall be responsible for the accuracy of its work, including work by any subcontractors, and shall promptly make necessary revisions or corrections resulting from errors and omissions on the part of the CONSULTANT or subcontractors without additional compensation. Acceptance of the work by the BUYER shall not relieve the CONSULTANT of the responsibility for subsequent corrections of any such errors and the clarification of any ambiguities.

5.12.02. At any time during the construction of the Project provided for by the Contract Documents or during any phase of work performed by others based on data furnished by the CONSULTANT under this Agreement, the CONSULTANT shall confer with the BUYER for the purpose of interpreting the information furnished and/or to correct any errors and/or omissions made by the CONSULTANT. The CONSULTANT shall prepare all drawings or data to correct its errors and/or omissions without added compensation, even though final payment may have already been received therefor.

5.12.03. The CONSULTANT shall be and shall remain liable, in accordance with applicable law, for all damages to the BUYER caused by the CONSULTANT's breach of contract or its negligent performance of any of the services furnished under this Agreement. The CONSULTANT shall not be responsible for (i) any time delays in the Project caused by circumstances beyond the CONSULTANT's control, or (ii) any additional construction costs, other than the "Recoverable Damages" defined below, that would have been incurred by the BUYER if the Contract Documents had been properly prepared in the first place. However, the CONSULTANT will be liable to the BUYER for the following damages associated with such breach of contract or negligent performance ("Recoverable Damages"):

- any retrofit expenses (such as the cost to remove installed work), intervening increases in the cost of the labor, supplies or building components, and any other avoidable costs resulting from the breach or negligent performance that are not otherwise recoverable under this Agreement; and
- liquidated damages equal to 20% of the cost of any Change Order issued to the CONTRACTOR to perform the work necessary to correct the breach or negligent performance. This payment shall not constitute a penalty, but rather is the parties' reasonable estimate of the amount necessary to compensate the BUYER for (i) increased administrative/oversight costs of BUYER staff, (ii) recovery of the "builder's premium" for Change Orders that the BUYER cannot competitively bid out, and (iii) the damages resulting from the fact that BUYER will need to pull funding from other BUYER-budgeted projects to cover the costs of the Change Order; and
- any other damages available to the BUYER at law or in equity.

ATTACHMENT E

MASTER SERVICES CONTRACT
BETWEEN
[THE CITY OF JACKSONVILLE]
AND
INSERT CORPORATE NAME OF CONTRACTOR
FOR
INSERT SUMMARY OF SERVICES TO BE PERFORMED

THIS MASTER SERVICES CONTRACT ("Contract"), is made and entered into this ____ day of _____, 201__ (the "Effective Date"), by and between the CITY OF JACKSONVILLE (the "CITY"), a municipal corporation existing under the Constitution and the laws of the State of Florida, and _____ (the "CONTRACTOR"), a _____ corporation authorized to transact business in Florida and with its principal offices at _____.

WHEREAS, the CITY (as the "Buyer") issued a Request for Proposal No. _____ (the "RFP") for certain services described in the RFP (the "Services"); and

WHEREAS, based on CONTRACTOR'S response to the RFP dated _____, consisting of ____ pages (the "Response"), the CITY has negotiated and awarded this Contract to CONTRACTOR;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained below, the parties agree as follows:

1. **Contract Structure.** This Contract shall serve as a master agreement between the parties. This Contract sets forth the basic terms that shall apply to the performance of IGA, as defined in the RFP, services by Contractor during the term of this Contract. Specific terms that shall apply to a particular facility ("Facility") and the performance of particular IGA services ("Services") shall be set forth in an IGAA, as defined in the RFP, substantially in the form of Attachment F to the RFP or in some other document mutually agreed upon between the parties. Each such IGAA shall reference this Contract and shall be governed by the terms and conditions herein. In the event of a conflict between an IGAA and this Contract, the terms and conditions of this Contract shall control, unless the IGAA expressly states that the terms and conditions of the IGAA shall control. Specific terms in an IGAA shall not affect any other IGAA under this Contract without explicit agreement of the parties.

2. **Performance of Services.** The Services will be performed by CONTRACTOR as specified in the RFP and the Response.

2. **Compensation.** CONTRACTOR will be paid by the CITY for the Services as stated in each IGAA [as follows: _____] or [as specified on the Price Sheets attached as Exhibit ____].

3. **Maximum Indebtedness.** As required by Section 106.431, *Ordinance Code*, the CITY's maximum indebtedness, for all products and services under this Contract shall be a fixed monetary amount not-to-exceed _____ (\$_____).

4. **Term.** The initial term of this Contract shall commence on the Effective Date and shall expire on _____, unless sooner terminated by either party in accordance with the terms of the RFP. This Contract may be renewed for up to _____ additional one (1) year periods by (i) the CITY, at its sole discretion, upon written notice to CONTRACTOR at least sixty (60) days prior to end of the then-current term, or (ii) upon the mutual agreement of the parties.

5. **Contract Documents.** This Contract consists of the following documents which are hereby incorporated as if fully set forth herein and which, in case of conflict, shall have priority in the order listed:

- This document, as modified by any subsequent signed amendments
- Any amendments to the RFP
- Specific Information Regarding The RFP (Section 1 of the RFP)
- Description of Services and Deliverables (Section 4 of the RFP)
- General Instructions to Respondents (Section 2 of the RFP)
- General Contract Conditions (Section 3 of the RFP)
- Any IGAA
- The Response, provided that any terms in the Response that are prohibited under the RFP shall not be included in this Contract.

6. **Notices.** All notices under this Agreement shall be in writing and shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

As to the CITY:

As to the CONTRACTOR:

7. **Contract Managers.** Each Party will designate a Contract Manager during the term of this Contract whose responsibility shall be to oversee the Party's performance of its duties and obligations pursuant to the terms of this Contract. As of the Effective Date, CITY'S Contract Manager is [Insert Name and Address] , and the CONTRACTOR'S Contract Manager is [Insert Name and Address] . Each Party shall provide prompt written notice to the other Party of any changes to the Party's Contract Manager or his or her contact information; provided, such changes shall not be deemed Contract amendments and may be provided via email.

8. **Entire Agreement.** This Contract constitutes the entire agreement between the parties hereto for the Services to be performed and furnished by the CONTRACTOR. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party or any representative of either party, which is not expressed herein shall be binding. CONTRACTOR may not unilaterally modify the terms of this Contract by affixing additional terms to materials delivered to the CITY (e.g., "shrink wrap" terms accompanying or affixed to a deliverable) or by including such terms on a purchase order or payment document. CONTRACTOR acknowledges that it is entering into this Contract for its own purposes and not for the benefit of any third party.

9. **Amendments.** All changes to, additions to, modifications of, or amendment to this Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

10. **Counterparts.** This Contract, and all amendments thereto, may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

[Remainder of page left blank intentionally. Signature page follows immediately.]

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first above written.

ATTEST:

CITY OF JACKSONVILLE

By _____
James McCain, Jr.
Corporation Secretary

By _____
Lenny Curry
Mayor

In accordance with the *Ordinance Code*, of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and un-impounded balance in the appropriation sufficient to cover the foregoing agreement; and that provision has been made for the payment of monies provided therein to be paid.

Director of Finance
CITY Contract Number: _____

Form Approved:

Office of General Counsel

ATTEST:

INSERT NAME OF CONTRACTOR.

By _____
Signature

By _____
Signature

Type/Print Name

Type/Print Name

Title

Title

**ATTACHMENT F
TO
REQUEST FOR PROPOSALS FOR ENERGY PERFORMANCE CONTRACTING
SERVICES (“RFP”).**

**NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT, THE TERMS AND
CONDITIONS OF THE RFP SHALL CONTROL AND OVERRIDE THE TERMS AND
CONDITIONS OF THIS AGREEMENT.**

**BUYER HAS ATTEMPTED TO POINT OUT BELOW THE MAJOR DIFFERENCES
BETWEEN THE RFP AND THIS AGREEMENT BUT IT IS THE RESPONSIBILITY OF
CONTRACTOR TO KNOW AND UNDERSTAND THE DIFFERENCES BETWEEN THE
RFP AND THIS AGREEMENT.**

[MODEL] ENERGY AUDIT AGREEMENT

This Energy Audit Agreement (“Agreement”), effective the last date signed below, is by and between the [agency], an agency of the State of Florida with an office at [address] (the “**Agency**”) and [company] with an office at [address] (the “**Company**”) (each a “**Party**” and collectively the “**Parties**”).

Whereas, the Company is party to the state term contract procured by the State of Florida, Department of Management Services, ITN No. DMS 973-320-08-1, Comprehensive Energy Strategy, which enables the Company to perform work under the Guaranteed Energy Performance Savings Contract Act, codified at section 489.145 of the Florida Statutes; and

Whereas, the Agency is responsible for the operation, management and maintenance of the facilities identified on Attachment A to this Agreement (the “**Facility(s)**”); and

Whereas, a comprehensive investment grade technical energy audit (the “**Energy Audit**”) and savings analysis (the “**Report**”) must be performed at the Facility in order to determine the feasibility of entering into a guaranteed energy performance savings contract (“**Energy Performance Contract**”) to provide for the installation and implementation of energy conservation measures (“**ECMs**”) at the Facility; and

Whereas, if the ECMs are demonstrated to be feasible, and if the amount of energy cost savings can be reasonably ascertained and guaranteed in an amount sufficient to cover all costs associated with an energy performance contracting project at the Facility(s), the Parties intend to negotiate an Energy Performance Contract under which the Company shall design, procure, install, implement, maintain and monitor such ECMs at the Facility(s);

Therefore, the Parties agree as follows:

Article 1: Scope of Energy Audit

The Company will perform the Energy Audit and prepare the Report that specifically identifies the energy improvements and operational changes which are recommended to be installed or implemented at the Facility(s). The Report shall contain detailed projections of energy and cost savings to be obtained at the Facility(s) as a result of the installation of the recommended ECMs. The savings calculations must utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings for the Facility(s) (i.e., accurate marginal cost for each unit of savings at the time the audit is performed; documented material and operational costs actually avoided; adjustments to the baseline to reflect current conditions at the Facility(s) compared to the historic base period; calculations which account for the interactive effects of the recommended ECMs; etc.). The Report shall clearly describe how utility tariffs were used to calculate savings for all ECMs. The Report shall describe the Company's plan for installing or implementing the ECMs in the Facility(s), including all anticipated costs associated with such installation and implementation. The primary purpose of the Report is to provide an engineering and economic basis for negotiating an Energy Performance Contract between the Agency and the Company; however, the Agency shall be under no obligation to negotiate such a contract.

The Company shall perform the following tasks in performing the Energy Audit and preparing the Report:

A. Collect General Facility(s) Information

The Company shall collect general Facility(s) information such as: size, age, construction type, condition and general use of the Facility(s). The Company shall also collect and summarize Facility(s) utility cost and consumption data for the most recent 24-36 month period. The Company shall evaluate the impact on utility cost and consumption of any energy initiatives currently being installed or currently planned to be installed by the Agency in the Facility(s) which will remain separate from the Energy Performance Contract throughout the duration of that agreement.

The Agency shall make available (or cause its energy suppliers to make available) all available records and data concerning energy and water usage for the Facility(s) for the most current 24-36 month period, if available, including: Utility records; occupancy information; descriptions of any changes in the structure of the Facility(s) or its heating, cooling, lighting or other systems or energy requirements; descriptions of all major energy and water consuming or energy and water saving equipment used in the Facility(s); any comfort problems, code deficiencies and description of energy management procedures presently utilized. The Agency shall also make available a record of any energy related improvements or modifications that have been installed during the past three years, or are currently being installed or are currently planned to be installed by the Agency in the Facility(s) separate from the energy service agreement throughout the duration of that agreement. The Agency shall also make available copies of drawings, equipment logs and maintenance work orders to the Company.

B. Analyze Existing Systems and Equipment

The Company shall compile an analysis based on a physical inspection of the major electrical and mechanical systems at the Facility(s), including:

1. Cooling systems and related equipment
2. Heating and heat distribution systems
3. Automatic temperature control systems and equipment
4. Air distribution systems and equipment
5. Outdoor ventilation systems and equipment
6. Kitchen and associated dining room equipment, if applicable
7. Exhaust systems and equipment
8. Hot water systems
9. Electric motors 5 HP and above, transmission and drive systems
10. Interior and exterior lighting
11. Laundry equipment, if applicable
12. Building Envelope
13. Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.
14. Other major energy using systems, if applicable.

The analysis shall address the following considerations:

1. the loads, efficiencies or hours of operation for each system (where Facility(s) operating or climatic conditions necessitate, engineering estimates may be used, but for large fluctuating loads with high potential savings appropriate measurements are required unless waived by the Agency); and
2. current operating condition for each system.

The Company shall conduct interviews with Facility(s) operation and maintenance staff regarding the Facility(s)'s mechanical systems operation, occupancy patterns and problems with comfort levels or equipment reliability.

C. Establish Base Year Consumption and Reconcile with End Use Consumption Estimates

The Company may, upon recommendation by the Agency, analyze loading, usage and/or hours of operation for all major end uses representing more than 5% of total Facility(s) consumption including, but not limited to:

1. Lighting
2. Heating
3. Cooling
4. HVAC motors (fans and pumps)
5. Plug load
6. Kitchen equipment
7. Other equipment
8. Miscellaneous

Where loading and/or usage are highly uncertain, the Company shall employ spot measurement and/or short term monitoring at its discretion, or at the request of the Agency.

Reasonable applications of measurement typically include variable loads that are likely candidates for conservation measures, such as cooling equipment. The Company shall consult with Facility(s) staff and account for any unusual or anomalous utility bills which may skew Base Year consumption from a reasonable representation.

Baseline Development: The Company shall develop the Agency's Baseline model as part of the Audit. The Company and the Agency shall mutually agree on the Baseline model prior to final contract approval by the Agency. The Baseline model shall represent pre-existing energy consumption for all end uses within the building(s), not just those end uses affected by the Company's proposed Conservation Measures.

The Baseline model shall be developed with a whole-building simulation approach using one of the following commercially-available energy simulation software packages:

- Carrier HAP
- Trane TRACE
- Elite (EZDOE)
- DOE-2 and variations (requires prior Agency approval)

The Company shall use the same energy simulation software to develop the projected energy cost savings that was used to develop the Baseline. Projected energy consumption must be modeled using the same weather data and operating conditions as the established Baseline model.

The Baseline model shall reflect all energy-related effects of the current design features of the building(s) such as, but not limited to, quantity and type of glass, building orientation with respect to the physical site, overall wall and roof thermal resistance values, ventilation air requirements, humidity level, occupancy, and actual operating schedules. The Baseline model shall incorporate the energy-related effects of all renovations and/or modifications to the building envelope, internal spaces, and energy-consuming systems subsequent to the date of original construction.

The Baseline model shall be developed in accordance with recommendations and methods promulgated by professional societies and governmental organizations such as:

- *The Federal Energy Management Program's M&V Guidelines: Measurement and Verification for Federal Energy Management Projects v.3.0*
- *The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE)*

Baseline Calibration: The Baseline model shall be developed and calibrated with the assistance of utility bill data for no less than the immediately preceding 24-month period in order to develop an energy baseline model that is suitable for Agency consideration. A detailed description of all existing Baseline conditions, development methods, calibration procedures, adjustments, and assumptions for each building must be provided.

D. Develop List of Potential ECMs

The Company shall:

1. identify and propose potential ECMs for installation or implementation at the Facility(s), including water conservation measures
2. estimate the cost, savings and life expectancy of each proposed ECM; specify Facility(s) operations and maintenance procedures which will be affected by the installation/implementation of the proposed ECMs;
3. provide analysis methodology, supporting calculations and assumptions used to estimate savings, which shall be based on the life cycle cost calculations described in section 255.255 of the Florida Statutes. Parties may reduce financing amount by grants, rebates, or capital funding. However, pursuant to Florida Statute 489.145 (4)(j), grants, rebates, or capital funding shall not be applied to life cycle cost calculations.
4. provide a life cycle cost analysis of at least three (3) alternate system/equipment schemes for potential ECMs that involve replacing major energy-consuming equipment in accordance with the *Florida Energy Modeling Program (FEMP)* available from DMS.
5. calculate projected energy cost savings as the difference between Baseline energy costs and the costs that are expected to result from the proposed ECMs.
6. provide access to the computer simulation program and all inputs and assumptions used, if requested by the Agency.
7. provide a preliminary commissioning plan for the proposed ECMs
8. provide detailed calculations for any rate savings proposals
9. provide detailed supporting calculations for any proposed maintenance or other operational savings;
10. estimate any environmental costs or benefits of the proposed ECMs (e.g., disposal costs, avoided emissions, water conservation, etc.)
11. comply with all applicable state, federal and local codes and regulations in effect at the time of this analysis for all proposed ECMs.

E. Select Final Recommended ECMs

The Company shall, in consultation with the Agency, recommend specific ECMs from its preliminary compilation for installation and implementation at the Facility(s).

F. Establish Measurement & Verification Methods

Measurement & Verification of cost savings shall be performed using a methodology from *The Federal Energy Management Program's M&V Guidelines: Measurement and Verification for Federal Energy Management Projects v.3.0* and account for actual savings as required in § 489.145(3)(d)(2) Florida Statutes. Actual savings are to be measured against the Baseline in the Company's Annual Reconciliation. The Company shall state which of the

following Measurement & Verification methods will be used in the Company's Annual Reconciliation:

- Method A: Stipulated savings from maintenance or outside contracts shall show the origin and signed agreement of acceptance by the Agency.
- Methods B, C, and D: Only verifiable data will be accepted. Degree Day and related data sources shall be identified and agreed to in the audit document.
- All Measurement & Verification Methods: The Auditor and Agency shall agree to the exact Measurement & Verification method for each audit on an individual CM basis and stipulate it in the Audit.
- Each Audit: Each audit shall include the names of the Auditor, Agency, and review person(s) as well as the phone number, email address, and credentials of each team member.

G. Provide Cost and Fee Estimates

The Company shall provide detailed estimates of all costs and fees associated with the installation and implementation of the ECMs including:

1. engineering/design costs for individual ECMs
2. contractor/vendor estimates for individual ECM material and labor unit costs
3. company construction management fees for the project
4. overhead and profit
5. commissioning costs for individual ECMs
6. contingency costs
7. initial training costs
8. annual service fees including:
 - measurement and verification
 - maintenance
 - performance monitoring
 - ongoing training services
9. other costs/fee (specify)

H. Develop Savings Estimates

The Agency has endeavored to provide the Company with sufficient general and specific guidance in this Article 1 to develop the savings estimates for the Report. In the event that questions arise as to the calculation of savings or whether certain items will be allowed as savings, the Company shall seek written guidance from the Agency. Agency's rejection of certain calculations of savings or rejection of certain items as allowable savings in the Report shall be at the risk of the Company.

The following items will be allowed as savings or in the development of savings:¹

- Agency material/commodity cost

¹. Unless otherwise agreed in writing, projected escalation rates shall tie to the Consumer Price Index. The value of fuel and water unit savings shall be escalated using actual rate increases as they occur over the term of the contract. The base rate value for each fuel and water unit shall not devalue in the event of any rate decrease.

- Outside maintenance labor cost (if applicable)
- Agreed escalation rates for natural gas
- Agreed escalation rates for electricity
- Agreed escalation rates for water
- Agreed escalation rates for material/commodity cost savings
- Agreed escalation rates for allowable labor savings

The following items will not be allowed as savings or in the development of savings without prior Agency approval:

- Agency in-house labor cost
- Agency deferred maintenance cost
- Offset of future Agency capital cost

I. Deliver the Report

The Company shall complete and deliver the Report to the Agency by _____ (if blank, then ninety (90) days from the effective date of this Agreement), in the following format:

1. An executive summary which describes the Facility(s), ECMs evaluated, analysis methodology, results and a summary table presenting the cost and savings estimates for each ECM.
2. A discussion of ECMs not evaluated in detail and the explanation of why a detailed analysis was not performed.
3. A summary of all utility bills, Base Year consumption and how it was established, and end use reconciliation with respect to the Base Year including a discussion of any unusual characteristics and findings.
4. Detailed descriptions for each ECM including analysis method, supporting calculations (may be submitted in appendices), results, proposed equipment and implementation issues.
5. Conclusions, observations and caveats regarding cost and savings estimates.
6. Thorough appendices which document the data relied upon to prepare the analysis and how that data was collected. The appendices will include schedules A, B, E and F to the potential Energy Performance Contract.

Acceptance of the Report by the Agency if ECMs are Feasible. The Agency shall conduct and complete a technical review within sixty (60) days of its receipt of the Report, unless otherwise stated in Attachment A. The Agency shall accept the Report if the recommended ECMs are feasible and the projected energy cost savings are equal to or greater than the total projected costs of the design and installation of the recommended ECMs. If the Agency determines that one or more of the recommended ECMs is not feasible, the Agency shall give the Company written notice of any and all said objections, in detail, within fourteen (14) days after completing its technical review of the Report. The Company shall correct the Report and submit a revised draft within twenty-one (21) days of said notification. The Agency shall have fourteen (14) days from receipt of the revised Report to notify the Company if any objections have not been corrected. This re-submission process

shall continue until (1) the date all material concerns are resolved and the Report is accepted, or (2) the dispute is otherwise resolved.

Article 2: Energy Performance Contract

The Parties intend to negotiate an Energy Performance Contract under which the Company shall design, install and implement ECMs and provide certain maintenance and monitoring services. However, nothing in this Agreement should be construed as an obligation on any of the Parties to execute such an Energy Performance Contract. The terms and provisions of such an Energy Performance Contract shall be set forth in a separate agreement. This Agreement shall automatically terminate upon the Parties' execution of an Energy Performance Contract relating to the Facility(s).

Article 3: Payment

TO THE EXTENT THE RFP CONTAINS ANY INCONSISTENT TERMS WITH OF THE FOLLOWING PROVISION, THE RFP SHALL CONTROL.

The Parties understand and intend that the Company's costs for services performed under this Agreement (1) shall be included in the total project cost, (2) shall not be paid for under this Agreement, and (3) shall be paid for only under the Energy Performance Contract, if any, from savings generated by implemented ECMs. The Company is undertaking work under this Agreement completely at risk for payment and in consideration of the Agency's good faith intention to negotiate the potential Energy Performance Contract with the Company. The Company understands and agrees that its only source for payment for this Energy Audit is as part of the potential Energy Performance Contract and is contingent upon realization of energy cost savings being equal to or greater than the total cost of the design and installation of the Company's recommended ECMs. The Company further understands that the Agency may implement all or part of a recommended EMC without liability to the Company (or its subcontractors or suppliers) if there are extenuating circumstances (e.g., a sudden or imminent equipment failure) and the Agency would have taken similar measures regardless of the Company's recommendation.

Article 4: Termination

TO THE EXTENT THE RFP CONTAINS ANY INCONSISTENT TERMS WITH OF THE FOLLOWING PROVISION, THE RFP SHALL CONTROL.

A. By Company:

The Company may terminate this Agreement prior to the completion of the Energy Audit and Report or subsequent to the completion of the Energy Audit and Report if:

- (i) It determines that it cannot guarantee a minimum amount of energy and cost savings through the implementation of an energy performance contracting project at the Facility(s); or
- (ii) It determines that even though it can guarantee a minimum amount of energy and cost savings in energy costs, that amount would be insufficient to cover the costs associated with performing this analysis, installing ECMs and related maintenance and monitoring services.

Termination under this section shall be effective upon the Agency's receipt of written notification from the Company stating the reason for the termination and all supporting

documents. The Company shall provide the Agency with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.

B. By Agency:

The Agency may terminate this Agreement:

- (i) If the Company fails to complete the Energy Audit and deliver the Report to the Agency within the time established in Article 1, above; or fails to obtain a written extension of that time from the Agency. Termination under this subsection B (i) shall be effective upon the Company's receipt of written notification from the Agency that the deadline for submission of the Report has passed. The Company shall provide the Agency with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.
- (ii) If, prior or subsequent to the completion of the Energy Audit, the Company notifies the Agency in writing that it is unable to guarantee a sufficient level of savings pursuant to subsection 4 A (i) or (ii) above. Termination under this subsection B (ii) shall be effective upon the Company's receipt of written notification from the Agency. The Company shall provide the Agency with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.

C. By Either Party:

Either Party may terminate this Agreement, when the Party deems it to be in its best interest to do so, by providing the other Party thirty (30) days written notice of its intent to do so. Termination shall be effective thirty (30) days after receipt of the written notice.

Article 5: Standard Terms and Conditions

Section 1. Agreement Term

This Agreement term shall commence on the effective date of the Agreement and end on [date], unless earlier terminated pursuant to the provisions of Article 4 hereof.

Section 2. Appropriations

Obligations of the Agency shall cease immediately without penalty if in any fiscal year covered by the Agreement term, the Legislature or the Agency fails to appropriate, reappropriate or otherwise make available funds for this Agreement. The Agency shall provide written notification to the Company of any impending change in the status of appropriations which may affect this Agreement of which it has notice.

Section 3. Materials, Equipment and Supplies

The Company shall provide or cause to be provided all facilities, materials, equipment and supplies necessary to perform the Energy Audit and prepare the Report.

Section 4. Subcontractor Disclosure

As of the execution date of this Agreement, the following subcontractors are expected to perform material work (i.e., greater than 5% of the total work) pursuant to this Agreement:

[subcontractor]
[address]

If, during the term of this Agreement, the Company retains subcontractors to perform material work pursuant to this Agreement who were not disclosed, the Company shall so notify the Agency in writing.

Section 5. Patent and Copyright Responsibility

The Company agrees that any material or design specified by the Company or supplied by the Company pursuant to this Agreement shall not knowingly infringe any patent or copyright, and the Company shall be solely responsible for securing any necessary licenses required for patented or copyrighted material utilized by the Company in the performance of the Energy Audit and preparation of the Report.

Section 6. Release and Indemnity

TO THE EXTENT THE RFP CONTAINS ANY INCONSISTENT TERMS WITH OF THE FOLLOWING PROVISION, THE RFP SHALL CONTROL.

The Company agrees to assume all risk of loss and to indemnify and hold the State of Florida (including the Agency and all other agencies, branches and subdivisions), and its officers, agents and employees harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fines or judgments, including costs, attorneys' and witnesses' fees, and expenses incident thereto, for injuries to persons (including death) and for loss of, damage to or destruction of property (including property of the State) because of the Company's negligent or intentional acts or omissions. In the event that any demand or claim is made or suit is commenced against the Agency, the Agency shall give prompt written notice thereof to the Company and the Company shall have the right to compromise or defend the same to the extent of its own interest. The Company further agrees to maintain adequate insurance to protect the State and the Agency against such risks. The Company also agrees to indemnify and hold the State harmless should any goods or services provided by the Company infringe upon the patent, copyright or trade secret of another.

Section 7. Lobbying, Integrity, and Retention of Records

Pursuant to section 216.347 of the Florida Statutes, the Company may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency. In addition, the Company shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or agreements of any kind. Upon request of the Agency's Inspector General, or other authorized State official, the Company shall provide any type of information the Inspector General deems relevant to the Company's integrity or responsibility. Such information may include, but shall not be limited to, the Company's business or financial records, documents, or files of any type or form that refer to or relate to the Agreement. The Company shall retain such

records for the longer of (1) three years after the expiration of the Agreement or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dliis.dos.state.fl.us/barm/genschedules/gensched.htm>). Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the Agency for the recovery of any funds paid by the Agency under the Agreement for which adequate books, records, and supporting documents are not available to support their purported disbursement. The Company agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the Company's compliance with the terms of this or any other agreement between the Company and the State which results in the suspension or debarment of the Company. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Company shall not be responsible for any costs of investigations that do not result in the Company's suspension or debarment.

Section 8. Dispute Resolution

The Agency and the Company recognize and acknowledge that efforts should always be made to avoid or prevent disputes through effective partnering, good communications, and joint decision making; and that timely requests for clarification and for information will help ensure a better understanding of issues and problems and lead to the elimination of doubts, uncertainties, and ambiguities. Nevertheless, the Agency and the Company also recognize that disputes may develop between them and, in such event, wish to establish procedures to be followed to resolve such disputes in the shortest possible time and at the least possible expense to the Agency and the Company.

Any conflict or dispute between the Agency and the Company shall be resolved in accordance with the procedures specified in this Agreement, which shall be the sole and exclusive procedures for the resolution of any such disputes. This Agreement establishes successive steps of conflict prevention and alternative dispute resolution prior to litigation, completion of which shall be conditions precedent to the right to commence litigation over any dispute arising out of or relating to the Agreement. The successive steps are: (1) informal negotiations between project-level management personnel; (2) formal negotiations between executive-level management, initiated by written notice and completed within thirty days, or longer as mutually agreed; and (3) mediation, initiated by written notice. Except as otherwise agreed by the Parties in a mediation contract, all mediation proceedings shall be conducted in accordance with this Agreement and, where applicable, the then-current Model Procedure for Mediation of Business Disputes published by the Center for Public Resources (CPR), 366 Madison Avenue New York, NY 10017, (212) 949-6490 (<http://www.cpradr.org>). If the Agency and the Company have not agreed within ten (10) business days of the request for mediation on the selection of a neutral mediator willing to serve, then the Parties agree that a mediator shall be selected by the Florida Conflict Resolution Consortium (FCRC), Florida State University, Tallahassee, (850) 644-6320 (<http://consensus.fsu.edu>). The appointment by FCRC of a qualified mediator shall be binding on both Parties, and both Parties shall promptly cooperate with the appointed mediator to effectuate mediation.

Any action legal or equitable action arising out of or relating to this Agreement shall be brought in the appropriate state court in Leon County, Florida, and not elsewhere, and shall be governed by Florida law. The threshold issue for determination shall be whether the Party bringing the action has complied with the alternative dispute resolution processes specified above.

Notwithstanding any provision to the contrary, neither Parties shall excluded from recovering any special, consequential, or punitive damages.

Section 9. Personnel

All Company employees, subcontractors, or agents performing work under this Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, the Company shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Agreement must comply with all security and administrative requirements of the Agency. The Agency may conduct, and the Company shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the Company. The Agency may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the Agency's security or other requirements. Such approval shall not relieve the Company of its obligation to perform all work in compliance with the Agreement. The Agency may reject and bar from any facility for cause any of the Company's employees, subcontractors, or agents.

The Company, together with its agents, subcontractors, officers and employees, shall have and always retain under the Agreement the legal status of an independent contractor, and in no manner shall they be deemed employees of the Agency or deemed to be entitled to any benefits associated with such employment. During the term of the Agreement, the Company shall maintain at its sole expense those benefits to which its employees would otherwise be entitled to by law, including health benefits, and all necessary insurance for its employees, including workers' compensation, disability, and unemployment insurance, and provide the Agency with certification of such insurance upon request. The Company remains responsible for all applicable federal, state, and local taxes, and all FICA contributions.

Section 10. Compliance with Applicable Law

In performing this Agreement, the Company shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Chapter 60A-1 of the Florida Administrative Code govern the Agreement. By way of further non-exhaustive example, the Company shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Agreement termination. The Agency may cancel the Agreement if the Company refuses to allow public access to all records made or received by the Company in conjunction with the Agreement, unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1) of the Florida Statutes.

Section 11. Waivers

No right of either party hereto shall be deemed to have been waived by non-exercise thereof, or otherwise, unless such waiver is reduced to writing and executed by the party entitled to exercise such right.

Section 12. Assignment

Neither Party may assign this Agreement without the prior written consent of the other Party, which shall not be unreasonably withheld.

Section 13. Capacity to Contract

Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective Party to the Agreement. The Company warrants that it is in good standing and legally authorized to transact business in Florida. The Company warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the Company's ability to satisfy its Agreement obligations. The Company warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The Company shall immediately notify the Agency in writing if its ability to perform is compromised in any manner during the term of the Agreement.

Section 14. Confidential Information

Each Party may have access to confidential information made available by the other Party (see particularly, but not exclusively, subsection 119.07(ee) and section 119.071 of the Florida Statutes). Each Party shall protect such confidential information in the same manner as it protects its own confidential information of like kind. Disclosure of any confidential information received by the Agency will be governed by the Public Records Act, chapter 119 of the Florida Statutes.

Section 15. Convicted or Discriminatory Vendors

A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list: submitting a bid on a contract to provide any goods or services to a public entity; submitting a bid on a contract with a public entity for the construction or repair of a public building or public work; submitting bids on leases of real property to a public entity; being awarded or performing work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and transacting business with any public entity in excess of the Category Two threshold amount (\$25,000) provided in section 287.017 of the Florida Statutes.

An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, sub-contractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

Section 16. Project Management

All necessary and ordinary communications, submittals, approvals, requests and notices related to Project work shall be issued or received by:

[agency]
[address]
[telephone]
[facsimile]
[email]

[company]
[address]
[telephone]
[facsimile]
[email]

Either Party may change its point of contact by written notice to other Party's then-current designated contact, which shall not constitute a formal amendment to this Agreement.

Section 17. Modification of Terms

The Agreement contains all the terms and conditions agreed upon by the Parties. The Agreement may only be modified or amended upon mutual written agreement of the Parties. No oral agreements or representations shall be valid or binding upon the Agency or the Company.

Section 18. Execution in Counterparts

The Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 19. Severability

If a court deems any provision of the Agreement void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions shall remain in full force and effect.

SO AGREED:

STATE OF FLORIDA
DEPARTMENT OF _____

By: [name], Secretary

Date

[Company]

By:
Its:

Date

Attachment A
to Energy Audit Agreement

Name of Facility: _____

Address: _____

Facility Manager: _____

**ATTACHMENT G
TO
REQUEST FOR PROPOSALS FOR ENERGY PERFORMANCE CONTRACTING
SERVICES (“RFP”).**

**NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT, THE TERMS AND
CONDITIONS OF THE RFP SHALL CONTROL AND OVERRIDE THE TERMS AND
CONDITIONS OF THIS AGREEMENT.**

*GUARANTEED ENERGY, WATER, AND
WASTEWATER PERFORMANCE SAVINGS
CONTRACT*

By and Between

[COMPANY]

and

[AGENCY]

[Date]

[insert Project/Facilities Name]

[These are preparer instructions - delete this section from the final version.]

Purpose of this Model: *This document provides standard language approved by the Departments of Management Services (DMS) and Financial Services (DFS) who are tasked with approving the contract, and a checklist for the preparer of a proposal package to provide, when identifying and documenting the project scope and requirements for Guaranteed Energy, Water, and Wastewater Performance Savings projects.*

How to use this Model: *Use this model to prepare a proposal for a Guaranteed Energy, Water, and Wastewater Performance Savings Contract (the “Contract”). Due to the diversity of needs in proposals, each Agency should have the proposal thoroughly reviewed by their engineering and legal staff before submitting any drafts to DMS and DFS.*

When submitting proposals to DFS, please supply the following documentation in a proposal package: *Investment Grade Energy Audit , Cash Flow Charts; proposed Contract including all schedules; Approval by the Head of the Agency; Benchmark Cost of Capital & Minimum Rate of Return and Document Supporting Recurring Funds Requirement; Agency Measurement & Verification Plan to Monitor Cost Savings; proposed financing documentation including either Application for Consolidated Equipment Financing Program for Conservation Measures, or the Documentation of Quotes from Three or More Lenders if the Company is providing a proposed lender (see Appendices C -E below)*

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GUARANTEED ENERGY, WATER, AND WASTEWATER PERFORMANCE SAVINGS CONTRACT

This Guaranteed Energy, Water, and Wastewater Performance Savings Contract (this “Contract”) is made and entered into as of the day last signed below, at _____, in the County of _____, State of Florida, by and between _____ (“Company”), having its principal offices at _____, and _____ (“Agency”) with its principal offices at _____, for the purpose of installing certain equipment, and providing other services designed to reduce energy or water consumption, wastewater production, or energy related operating costs for Agency.

RECITALS

WHEREAS, on _____, 20XX [*currently 1/1/2008*], the Company and the Florida Department of Management Services entered into State Term Contract No. [*currently 973-320-08-1*], authorizing Company to perform work for Agency and other eligible users under the “Guaranteed Energy, Water, and Wastewater Performance Savings Contract Act” as set forth in § 489.145, Florida Statutes (the “Act”); and

WHEREAS, pursuant to the State Term Contract, Agency obtained from Company an Audit that (i) recommends certain Conservation Measures at the Facilities, (ii) summarizes the costs of those Conservation Measures, and (iii) provides an estimate of the amount of cost savings resulting from those Conservation Measures; and

WHEREAS, Agency finds that the amount it would spend on the Conservation Measures will not likely exceed the amount of the cost savings for up to twenty (20) years after the date of installation, based on the calculations required under the Act; and

WHEREAS, the qualified provider or providers give a written guarantee that the cost savings will meet or exceed the costs of the system and the actual cost savings must meet or exceed the estimated cost savings provided in the executed contract; and

WHEREAS, all selection criteria, notice requirements, certifications and approvals set forth in the Act have been satisfied or obtained; and

WHEREAS, Company has made an assessment of the energy, water and/or wastewater performance characteristics of the facilities and existing Equipment described in Schedule B, which Agency has approved; and

WHEREAS, the Parties desire that Company install the Conservation Measures at the Facilities in accordance with and subject to the terms set forth in this Contract.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Agency and Company agree as follows:

SECTION 1. DEFINITIONS.

Section 1.1 Definitions. The following terms have the meanings specified below unless the context clearly requires otherwise:

“Agency” means the governmental entity which has entered into this Contract, or any governmental entity succeeding to the powers and duties of any of the foregoing pursuant to law or governmental reorganization.

“Annual Excess Savings” means the amount of any actual annual Cost Savings that exceeds total annual contract payments made by Agency under this Contract for such calendar year pursuant to § 489.145(3)(d)(2).

“Annual Reconciliation” means a determination pursuant to § 489.145(5)(e), Florida Statutes, and Section 5.3 of this Contract, as to whether a shortfall in annual Cost Savings or an excess in annual Cost Savings exists based on the provisions of Company’s written savings guarantee reflected in Schedule C (Savings Guarantee) with savings calculated according to Schedule F (Savings Calculation Formula).

“Baseline” means Agency’s fuel, energy or water consumption, wastewater production for each CM Group. The initial Baseline shall be for each month of the calendar year preceding the year this Contract is entered and is set forth in Schedule H (Baseline). To the extent the Baseline may be adjusted, it shall be adjusted in accordance with Schedule H.

“Commencement Date” means, with respect to each CM Group, the first day of the calendar month after which all of the following events have occurred: (i) all schedules are in final form and accepted by Agency; (ii) Company has delivered a notice to Agency that it has completed all of the CMs in a CM Group in accordance with the provisions of Schedule G (Construction and Installation Schedule); and (iii) Agency has inspected and accepted said installation and operation as evidenced by an executed Certificate of Acceptance as set forth in Schedule P.

“Company” means the contractor identified in the first paragraph of this Contract. .

“Conservation Measure” or **“CM”** means each of the facility alterations or equipment purchases set forth in Schedule A, together with any training programs incidental to this Contract, which reduces energy or water consumption, wastewater production, or energy-related operating costs at the Facilities. CMs may only include, and this contract is void as to any other measures than, items listed in § 489.145 (3) (b) Florida Statutes.

“Cost Savings” means the measured reduction in the cost of fuel, energy, water consumption, or wastewater production, and stipulated operation and maintenance, if applicable, created from the implementation of one or more Conservation Measures when compared with the established Baseline. The Cost Savings shall be determined in accordance with the formulas and methodologies set forth in Schedule F, which will include a minimum real return on investment calculation and a specification of a benchmark cost of capital described in Schedule S (Specification of a Benchmark Cost of Capital, Minimum Rate of Return).

“Equipment” means all items of property described in the Schedule A (Conservation Measures to Be Installed by Company) and any other items of property pursuant to § 489.145(3)(b) Florida Statutes.

“Facilities” means the state-owned facilities as described in the first paragraph of this Contract and reflected on Schedule B, (Pre-existing Equipment Inventory). A Facility must be a distinct auditable unit, measurable by the FEMP standards referenced in Section 5.2.

“Fiscal Year” means the annual period from July 1st through June 30th.

“CM Group” means each group of CMs or other deliverables as listed in Schedule A. A CM Group may not be smaller than an auditable unit or greater than a facility. With respect to each CM Group, this Contract, together with Agency Certificate of Acceptance, and the fully executed Description of Facilities relating thereto, shall constitute a separate contract relating to each CM Group. With respect to any CM Group, the payment due from Agency to either Company, or a Lender under any Financing Agreement, on each payment date is shown in the Schedule D (Compensation to Company and Deliverables), or Schedule L (Financing Agreement), completed for such CM Group.

“Guarantee” means Company’s guarantee reflected on Schedule C (Savings Guarantee), whereby Company guarantees that the savings will meet or exceed the costs of the CMs and the estimated cost savings established under this Contract.

“Interim Period” means the period from the date the contract is signed until the Commencement Date.

“Investment Grade Energy Audit” or **“Audit”** means the detailed energy, water and/or wastewater audit performed by Company, along with an accompanying analysis of the Conservation Measures, and their costs, savings, and benefits prior to entry of this Contract. The Audit includes a narrative describing and justifying the need for the CMs. The Audit is attached as Appendix B and has been accepted by Agency as set forth in Schedule N (Certificate of Acceptance Investment Grade Audit).

“Legally Available Funds” means funds duly appropriated or otherwise legally available for the purpose of making payments under this Contract.

“Non-Appropriation” means the failure of an appropriation or availability of the Governing body of Agency or the Legislature to appropriate money for any Fiscal Year sufficient for the continued performance by Agency of all of Agency 's obligations under this Contract as evidenced by the passage of a final budget which does not include funding sufficient to pay all payments due.

“Parties” means both the Agency and the Company collectively.

“Savings Calculation Formula” means the Company’s Savings Calculation Formula reflected on Schedule F.

“State Agency” means each state department, departmental unit described in § 20.04, Florida Statutes, commission, regional planning agency, board, district, and authority.

“Term” means the term of this Contract as set forth in Section 3 of this Contract.

SECTION 2. INCORPORATION OF OTHER DOCUMENTS

Section 2.1. This Contract incorporates and makes a part hereof the following documents, listed in their order of precedence in the event of a conflict between any of their terms and conditions:

- 1- This Contract
- 2- All Schedules and Appendixes listed in the Table of Contents
- 3- The State Term Contract [*currently 973-320-08-1*] (Appendix A)
- 4- The Investment Grade Energy Audit (Appendix B)

Section 2.2. Investment Grade Energy Audit. Company has, under separate agreement, submitted the complete Investment Grade Energy Audit and analysis of the Facilities attached as Appendix B and dated _____, which have been approved and accepted by Agency as set forth in Schedule N (Certificate of Audit Acceptance Investment Grade Energy Audit). The Investment Grade Energy Audit includes all Conservation Measures agreed upon by the parties.

Section 2.3 The contract shall now also contain,

(a) Supporting information required by § 216.023(4)(a)9 Florida Statutes, in § 287.063(5) Florida Statutes and § 287.064(11) Florida Statutes. For contracts approved under this section, the criteria at a minimum, include the Schedule S, specification of a benchmark cost of capital and minimum real rate of return on energy, water, or wastewater savings against which proposals have been evaluated.

(b) Documentation supporting recurring funds requirements in § 287.063(5) Florida Statutes and § 287.064(11) Florida Statutes. (Schedule T)

(c) Approval by the head of the agency or his or her designee. (Schedule U)

(d) An agency measurement and verification plan to monitor Cost Savings (Schedule V)

Section 2.4 Useful Life and Replacement. Company shall provide for the replacement or the extension of the useful life of the equipment during the term of the contract. The useful life of each CM is identified in Schedule A (Conservation Measures to be Installed by Company and Description of Facilities).

SECTION 3. TERM OF CONTRACT

Section 3.1 Initial Term; Interim Period. Each CM Group shall have its own individual Term. The Term shall begin on the date this Contract becomes fully executed and, subject to the renewal provision in Section 3.2 and the termination provisions in Section 7, shall expire at the end of Fiscal Year in which the Commencement Date occurred. The Contract shall be effective and binding upon the parties immediately upon the date it is last signed, and the period from such contract execution until the Commencement Date shall be known as the Interim Period.

Section 3.2 Renewals. The Term shall automatically renew for each successive Fiscal Year subject to the agency making sufficient annual appropriations based upon continued realized savings [*see § 489.145 (5)(g)*]; provided, however, the Term shall not extend beyond the earlier of (i) ____ [*up to 20 years*]; (ii) the effective date of termination under Section 7 of this Contract; or (iii) twenty (20) years after the Commencement Date.

SECTION 4. SCOPE OF WORK

Section 4.1 Installation of CMs

(a) Company shall install the CMs in the Facilities pursuant to specifications in Schedule A (CMs) and Appendix B (IGEA). Construction and installation shall proceed in accordance with the Construction Schedule approved by Agency and attached hereto as Schedule G (Construction and Installation Schedule). Agency is not obligated to make any payments to the Company until Schedule P (Agency Certificate of Acceptance of CM) has been issued to the Company.

(b) Company shall perform all tasks/phases under this Contract in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the Standards of Comfort set forth in Schedule I and the Construction Schedule specified in Schedule G (Construction and Installation Schedule). Company shall repair and restore to its original condition any area of damage caused by Company's performance under this Contract. Agency reserves the right to direct Company to take certain corrective action if the structural integrity of the Facilities or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by Company's performance of the work shall be borne by Company.

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

Section 4.2 Acceptance of CMs.

(a) When Company considers the CM Group to have been substantially completed in accordance with all contractual requirements, Company shall provide Agency with a written request for Schedule P (Agency Certificate of Acceptance of CM). Within ten (10) business days from receipt of Company's written request, Agency will make an inspection to determine whether the CM Group installation is complete. If Agency determines the CM Group installation is not complete, Agency will provide Company with a specific material performance deficiency list of all items that must be corrected or completed before Agency would consider the CMs complete. An executed Certificate of Acceptance or deficiency list will be provided to Company within fifteen (15) business days from receipt of Company's written request. If Company receives a deficiency list and once Company has completed all items on the deficiency list, Company can request a second inspection by Agency to verify the CM Group to be installed is complete. Again the re-inspection shall occur within ten (10) business days and a written response within fifteen (15) business days. When the CM Group to be installed is considered completed, and Agency has received from Company all appropriate certificates of title, Agency will provide the Company Schedule P (Agency Certificate of Acceptance of CM), which shall establish the Commencement Date.

(b) The Parties intend that an Agency Certificate of Acceptance of CM will be executed for each CM Group installation as soon as the installation is complete and beneficial use is provided. However, it is anticipated and agreed that Agency may require use of some installed and completed CMs prior to the completion of all CMs. In such situations, the Parties will conduct acceptance inspections and Certificates of Acceptance of CM as described above, for that CM Group to be installed which is being operated and Agency is receiving beneficial use.

Except as specified in Schedule K (Company's Maintenance), any maintenance and repairs due to ordinary wear and tear caused by such use will be made at the expense of Agency.

Section 4.3 Maintenance. Company shall provide service, repairs, and adjustments to the CMs pursuant to Schedule K (Company's Maintenance Responsibilities and Training). Agency shall incur no cost obligations to Company for service, repairs, and adjustments, except as set forth in Schedule D (Compensation to Company and Deliverable); provided, however, that when the need for Company maintenance or repairs principally arises due to the negligence or willful misconduct of Agency or any employee or other agent of Agency, and Company can so demonstrate such causal connection, Company may charge Agency for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds. Failure to use the appropriate technical requirements as identified in Schedule A (Conservation Measures to be Installed by Company & Description of Facilities) and Appendix B (Investment Grade Energy Audit) will result in automatic task rejection and may not be invoiced or paid until correction of the task. Failure to complete the required duties as outline in this Contract (including but not limited to Sections 4, 5, 8, 10 and Schedule K) may result in the rejection of the invoice.

Section 4.4 Records and Data

(a) Agency has furnished or shall furnish (or cause its suppliers to furnish) to Company, upon its request, all of its records and complete data concerning energy or water usage and energy/water-related maintenance for the Facilities described in Schedule B (Pre-existing Equipment Inventory). During the Term, Agency will provide Company copies of all energy and water bills relevant to CMs on a regular basis so that Company may provide the Cost Savings report identified in subsections 4.4(b) and 5.3 below.

(b) The reports to be issued by Company to Agency are more particularly delineated in Schedule D, Deliverables. At a minimum, Company shall provide an annual Cost Savings and reconciliation report calculated in accordance with Schedule F (Savings Calculation Formula).

(c) Company shall also furnish Agency with a full set of diagrams, instructions, manuals, reports and other documentation needed to maintain and operate the CMs.

(d) If this Contract is terminated for any reason, all finished or unfinished documents, data, studies, correspondence, reports and any other products prepared for the purpose of performing this Contract, shall be made available to, or delivered to, Agency for its use before any additional payments are made for any reason.

(e) Company shall be subject to audit by the State or its designee. Agency shall have the right upon reasonable notice to have its employees or agents inspect all of the books and records of the Company relating to this Contract at Company's principal place of business during Agency's normal business hours.

(f) If Agency receives a public records request related to the Contract, Company shall be solely responsible for taking whatever action it deems appropriate to legally protect its claim of exemption from the public records law.

Section 4.5 Training. Company shall conduct the training program described in Schedule K (Company's Maintenance Responsibilities and Training) hereto. The training specified in Schedule K (Company's Maintenance Responsibilities and Training) must be completed prior to acceptance of the CM. Company shall provide ongoing training whenever needed with respect to updated or altered equipment, including upgraded software as defined by the software manufacturer. Such training shall be provided at no additional cost to Agency.

Section 4.6 Permits and Approvals. Company shall be responsible for obtaining all governmental permits and approvals as may be required for installation of the CMs and for the performance of its obligations hereunder. Agency shall cooperate with Company in obtaining all such permits and approvals. In no event shall Agency, however, be responsible for payment of any permit fees. The equipment and the operation of the equipment by Company shall at all times conform to all federal, state and local code requirements. Company shall furnish copies of each permit or license which is required to perform the work to Agency before Company commences the portion of the work requiring such permit or license.

SECTION 5. PAYMENTS TO COMPANY

Section 5.1 Energy, Water, and Wastewater Performance Savings Guarantee. Company has formulated and provided a written Guarantee that the Cost Savings will meet or exceed the costs of the Conservation Measures and the estimated cost savings set forth in the Audit pursuant to § 489.145(4)(c), Florida Statutes, and that the amount of any actual annual savings meet or exceed total annual contract payments made by the agency for the contract pursuant to § 489.145(3)(d)(2), Florida Statutes. Any provisions providing for deemed savings are void and there will be no stipulation as to savings amounts achieved other than operating, maintenance, and cost avoidance as allowed, if applicable. The Guarantee is attached as Schedule C, providing the annual level of Cost Savings to be achieved as a result of the Conservation Measures provided for in this Contract and in accordance with the Savings Calculation Formula as set forth in Schedule F, which is calculated in compliance with Florida law. The Guarantee is set forth in annual increments for the term of the Contract as specified in Schedule C and has been structured so as to be sufficient to cover any and all annual payments required to be made by the Agency as set forth in Schedule D (Compensation to Company) and Schedule L (Financing Agreement if applicable).

Section 5.2 Measuring Cost Savings. The Parties will measure the Cost Savings using the cost savings formula set forth in Schedule F and the monitoring and verification plans set forth in Schedule V. Company will ensure that the reported Cost Savings have in fact been recognized or the provisions of Sec. 5.3 will apply. In the case of energy-related CMs, the Cost Savings shall be based on the Federal Energy Management Program's (FEMP) *M&V Guidelines: Measurement and Verification for Federal Energy Management Projects version 3.0*. Monitoring and Verification of savings shall be calculated using a methodology from the Federal Energy Management Program's (FEMP,) *M&V Guidelines: Measurement and Verification for Federal Energy Management Projects version 3*, that provides for actual savings, as provided in Section 489.145(3)(d)(2), Florida Statutes, to be measured yearly against the Baseline. Any adjustments to the Baseline are subject to Agency approval, must be substantiated by actual measurements, and may not be based solely on computer-based simulations.

Section 5.3 Annual Reconciliation.

(a) Reconciliation Reports. Pursuant to § 489.145(5)(e), Florida Statutes, Company is required to provide to Agency an annual reconciliation of the Cost Savings. Within sixty (60) days after each year from the Commencement Date, Company will deliver to Agency's Contract Manager, identified in Section 19.9 below, an Annual Reconciliation report for such calendar year, reflecting the amount guaranteed and the amount of actual Cost Savings achieved. Upon delivery of the report and all supporting documentation, Agency will have thirty (30) business days to accept or reject the report. Agency shall provide written notice of such rejection, within the stated acceptance period, specifying the basis of the deficiency. Company shall have twenty (20) business days to cure such deficiency and deliver to Agency a corrected reconciliation report. If the Agency fails to reject any report (including corrected reconciliations) within 60 business days of receipt of all required documentation, Agency shall be deemed to have accepted the Annual Reconciliation contained in the report as of the final day of the 60th business day period, unless a longer acceptance period is mutually agreed upon in writing. Company shall provide copies of the reports to the Department of Management Services and the Chief Financial Officer to validate that savings have occurred. The Annual Reconciliation report verification requirements of the Agency's Measurement and Verification plan (M&V Plan) is in the form attached, see Schedule V (Agency Measurement & Verification Plan to Monitor Cost Savings).

(b) Annual Shortfalls. If the Annual Reconciliation reveals a shortfall in guaranteed Cost Savings, Company is liable for such shortfall and shall pay to Agency the amount of the shortfall, together with interest equal to that provided in any financing agreement from the time the Annual Reconciliation first revealed a shortfall and the time of repayment. Agency shall submit to Contractor a written statement as to the amount of the shortfall (Agency Shortfall Payment Demand) to the extent the Annual Reconciliation or an Agency M&V Plan review reveals such shortfall, which may be incorporated into the Agency's response to Company's Annual Reconciliation. Company shall remit such payments to Agency within sixty (60) days of written notice by Agency of such monies due. If Company fails to make such payment to Agency within ____ days after demand therefore, Agency may offset the amount due against payments required under Schedule D, or in the event of third-party financing, demand payment pursuant to the security instrument identified in Schedule C (Savings Guarantee).

(c) Annual Excess Savings. Annual Excess Savings shall be distributed as follows: (1) ____% shall first be applied to reimburse Company for any payment Company made to Agency under the Annual Shortfall provisions in Section 5.4(b) for previous years (but not subsequent years), (2) then to prepay the amounts due pursuant to Schedule D (Compensation to Company) or, if applicable, Schedule L (Financing Agreement), and if no such payments are due, (3) then to the Parties as follows: _____[no less than 50% to Agency]. *[For determining if sharing any savings is appropriate, follow the Auditor General's Guidelines, ATTACHMENT 4, SHARE-IN-SAVINGS (SIS) CONTRACT GUIDELINES to Audit No. 2004-112, Audit Report of the Auditor General, online at http://www.state.fl.us/audgen/pages/pdf_files/2004-112.pdf.*

Section 5.4 Agency Payment. Agency shall either (i) pay Company as set forth in Schedule D (Compensation to Company and Deliverables), to the extent of actual annual savings in accordance with the Act, or (ii) pay the Lender pursuant to Schedule L (Financing Agreement), if applicable. All other payment and contract provisions of § 287.058 (1) Florida Statutes, are incorporated herein by reference. In the event Agency fails to make payment within forty (40) days of the due date, Agency shall pay, as late charges, any interest assessed for

untimely payment. The interest rate will be the rate set pursuant to Section 55.03, Florida Statutes. Agency shall not be required to begin any payments to Company under this Contract unless and until an Agency Certificate of Acceptance of CM ☐as set forth in Schedule L has been issued. Agency shall pay Company pursuant to § 215.422 Florida Statutes. The Parties agree that (i) at least one twentieth of the price must be paid within two years from the Commencement Date by Agency, using straight-line amortization for the term of the loan, (ii) the remaining costs are to be paid at least quarterly, not to exceed a 20 year term, based on life cycle cost calculations, and (iii) the Cost Savings are guaranteed to the extent necessary to make payments.

Section 5.5 Financing. In the event the Parties have agreed to a separate Financing Agreement with a third party, incorporated herein as Schedule L (Financing Agreement), Agency is financing the acquisition, which constitutes Agency's source of funding for its obligations under this Contract. Company may not assess any late fees for an Agency failure to deliver the completed documents to the Lender unless Company has provided all invoices and other documentation required under Schedule L (Financing Agreement) on a timely basis to Agency.

Section 5.6 Current Expense. Agency's obligations hereunder constitute a current expense that is payable exclusively from Legally Available Funds and shall not be construed to be debt, liability or obligation within the meaning of any applicable constitutional or statutory limitation or requirement. Neither Agency nor the State nor any political subdivision or agency thereof has pledged any of its full faith and credit or its taxing power to make any payments under this Contract.

Section 5.7 Baseline Costs. Actual savings are measured against baseline costs, the expenses that the Agency would have incurred had the delivery order not been implemented. The parties agree that baseline costs shall be calculated using the Baseline set forth in Exhibit H, which has been based on the Federal Energy Management Program's (FEMP) *M&V Guidelines: Measurement and Verification for Federal Energy Management Projects version 3.0*. Details of the Monitoring and Verification methodology shall be agreed upon by the Parties and documented in Schedule F.

SECTION 6. FISCAL FUNDING

Section 6.1 Annual Appropriations. Agency is an agency of the State and Agency's performance and obligation to pay under this Contract is contingent upon an annual appropriation. Agency, as an agency of the State, is subject to the appropriation of funds by the governing body of Agency in an amount sufficient to allow continuation of its performance in accordance with the terms and conditions of this Contract for each and every Fiscal Year following the Fiscal Year in which the Contract is in effect.

Section 6.2 Agency's Intent to Request Appropriations and Make Payments. Agency intends for this Contract to continue until all payments contemplated under Section 5 have been satisfied. Agency agrees to direct the person within such Agency in charge of preparing Agency's budget to include in the budget request for each Fiscal Year the payments becoming due in such Fiscal Year. The Parties acknowledge that appropriation for such payments is a governmental function that Agency cannot contractually commit the governing body of Agency to perform and this Contract does not constitute such a commitment. However, Agency reasonably believes that money in an amount sufficient to make all Payments can and will

lawfully be appropriated and made available to permit continued utilization of the CM in the performance of its essential functions during the applicable Terms.

Section 6.3 Notice of Non-Appropriation. Agency shall, upon learning that sufficient funds will not be available to continue its full and faithful performance under this Contract, provide prompt written notice to Company of such event ("Notice of Non-Appropriation").

Section 6.4 Return of Equipment. Upon termination for Non-Appropriation under Section 7.1 or 7.2, Agency shall no longer be responsible for the payment of any additional payments coming due in succeeding Fiscal Years. However, Company may by written notice to Agency, and, if Agency is a State Agency, also to the Chief Financial Officer (CFO), request that Agency, within thirty (30) days of such written notice, cause all equipment in a CM Group that Agency is no longer responsible for the payment of (together with all documents necessary to transfer legal and beneficial title thereto to Company) to be delivered to Company or Company's designee at a place in the State designated by Company.

Section 6.5 Company's Rights if Equipment is Not Returned. The Parties agree that there is no intention to create under this Contract a right in Company to dispossess Agency involuntarily of the legal title to or the use of the CMs or any underlying equipment. Company hereby irrevocably waives any right to specific performance of Agency's covenant to transfer legal title to and return possession of the equipment to Company. If Agency fails or refuses to voluntarily transfer such equipment to Company as provided in Section 6.4, then Company shall have the right, to the extent permitted by law, to obtain a judgment against Agency from Legally Available Funds for compensatory damages in the amount of the then applicable Principal Balances as shown on the applicable Schedule D (Compensation to Company and Deliverables). If the equipment or any portion of it has been destroyed or damaged beyond repair, Agency shall pay the applicable Principal Balance of the damaged or destroyed equipment as set forth in the Schedule relating thereto to Company only to the extent not covered by any insurance obtained by Agency.

Section 6.6 No Waiver of Sovereign Immunity. Nothing herein shall be construed as waiving the sovereign immunity of the State of Florida or any agency or instrumentality thereof.

Section 7. TERMINATION

Section 7.1 Termination for Non-Appropriation. This Contract shall immediately terminate with respect to each CM Group for which a Non-Appropriation has occurred. The termination shall be effective as of the last day for which funds were appropriated and Company may then pursue its rights under Section 6 above. However, in the event that the appropriations have not been adopted by the governing body of Agency prior to the expiration of a Fiscal Year, and the Notice of Non-Appropriation is not yet due under Section 6.3, the Term will be deemed extended and renewed pending the enactment of such appropriations act. If any payments are due under this Contract during such period, such Term will be extended and renewed only if: (a) an interim or emergency budget implemented by the governing body of Agency pending enactment of a final budget makes available to Agency money that may legally be used to make payments during such period; or (b) sums are otherwise available to make such payments.

Section 7.2 Company Option to Terminate Balance of CMs. In the event of a termination under Section 7.1 above, Company may elect to terminate this Contract with respect

to all, but not less than all, of the remaining CMs. This election shall be made by written notice to Agency within thirty (30) days after the Non-Appropriation has occurred and shall be effective upon the last day of the Fiscal Year for which funds were not appropriated. Upon the effective date of the termination, Agency shall pay to Company any payments and other amounts that are due and have not been paid at or before the end of its then current Fiscal Year with respect to this Contract. In the event of termination of this Contract as provided in this Section, Agency shall comply with Sections 6.4 and 6.5 regarding the return of equipment.

Section 7.3 Termination Upon Default. This Contract is also subject to termination upon the occurrence of an event of default, as provided in Section 14 below.

Section 7.4 Effect of Termination. No CM Group Schedule shall be executed after any termination due to Non-Appropriation or Event of Default.

SECTION 8. WARRANTIES

Section 8.1 Equipment Warranties. Company covenants and agrees that all materials and equipment to be installed as part of this Contract shall be new, in good and proper working condition and protected by appropriate original equipment manufacturer (OEM) written warranties covering all parts and equipment performance. Company further agrees to deliver to Agency for inspection and approval, all such written warranties and to obtain extended OEM warranties for a minimum of ____ [at the discretion of Agency], and which shall be attached and set forth as Schedule Q (Equipment Warranties).

All warranties shall be transferable and extend to Agency. The warranties shall specify that only new, and not reconditioned parts, may be used and installed when repair is necessary. The warranties shall be in force for a minimum of one year from the Commencement Date.

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

Section 8.2 Labor Warranties. Company warrants that all work performed under this Contract complies with customary, reasonable and prudent standards of care in accordance with standards in the industry and are performed in a professional manner and consistent with Agency supplied specifications and standards.

SECTION 9. INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 9.1 Indemnification by Company. Company shall hold and save Agency, the State of Florida, its officers, agents, and employees harmless against claims by third parties resulting from Company's breach of this Contract or Company's negligence.

Section 9.2 Indemnification by Agency. Both Parties recognize that Agency, as an agency of the State of Florida, is prohibited from entering into indemnification agreements. Subject to that prohibition, the Parties agree that Company shall not be responsible for damages resulting solely and exclusively from Agency's negligence.

Section 9.3 Limitation of Liability: Neither Party shall be liable to another for special, indirect, consequential or punitive damages, even if the Party has been advised that such damages are possible. No Party shall be liable for lost profits, lost revenue, or lost operating savings. Notwithstanding the foregoing, nothing in this section will be construed to limit any of the remedies afforded to Agency under Rule 60A-1.006(3), Florida Administrative Code.

SECTION 10. OWNERSHIP

Section 10.1 Ownership of Certain Proprietary Property Rights. Agency shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the CM. Company shall grant to Agency all rights for the duration of this Contract for any and all software or other intellectual property rights necessary for Agency to continue to operate, maintain, and repair the CM in a manner that will yield maximal consumption reductions.

Section 10.2 Ownership of Existing Equipment. Ownership of the equipment and materials presently existing at the Facilities at the time of execution of this Contract shall remain the property of Agency even if it is replaced or its operation made unnecessary by work performed by Company pursuant to this Contract. Company shall be responsible for the disposal of all equipment and materials designated by Agency as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

Section 10.3 Ownership of Installed Equipment; Risk of Loss. Upon the issuance of a Certificate of Acceptance for a CM Group, Agency shall have all legal title to and ownership of all underlying equipment and Company shall take all actions necessary to vest such title and ownership in Agency. Prior to this date, the risk of loss or damage to all items shall be the responsibility of Company, unless loss or damage results from negligence by Agency, and Company shall be responsible for filing, processing and collecting all damage claims.

Section 10.4 Patent and Copyright. Company, without exception, shall indemnify and save harmless Agency and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process or article supplied by Company. Company has no liability when such claim is solely and exclusively due to the combination, operation or use of any article supplied hereunder with equipment or data not supplied by Company or is based solely and exclusively upon Agency's alteration of the article. Agency will provide prompt written notification of a claim of copyright or patent infringement and will afford Company full opportunity to defend the action and control the defense. Further, if such a claim is made or is pending Company may, at its options and expenses procure for Agency the right to continue use of, replace or modify the article to render it noninfringing. (If none of the alternatives are reasonably available, Agency agrees to return the article on request to Company and receive reimbursement, if any, as may be determined by a court of competent jurisdiction.) If Company uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the negotiated prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

SECTION 11. FACILITIES MAINTENANCE AND EQUIPMENT SERVICES

Section 11.1 Conservation Procedures. Agency agrees that it shall adhere to, follow and implement the conservation procedures and methods of operation to be set forth on Schedule J (Agency's Maintenance Responsibilities).

Section 11.2 Changes to CMs and Facilities by Agency. To the extent Company is responsible for maintenance under Section 4.3, Agency shall not move, remove, modify, alter, or change in any way the CMs or any part thereof without the prior written approval of Company, which consent shall not be unreasonably withheld, except as set forth in Schedule J (Agency's Maintenance Responsibilities). Notwithstanding the foregoing, Agency may take reasonable steps to protect a CM if, due to an emergency, it is not possible or reasonable to notify Company before taking any such actions. In the event of such an emergency, Agency shall take reasonable steps to protect the CM from damage or injury and shall follow instructions for emergency action provided in advance by Company. Agency agrees to maintain the Facilities in good repair and to protect and preserve all portions thereof that may in any way affect the operation or maintenance of the CM. If Company contends that Agency is not performing maintenance responsibilities in accordance with Schedule J (Agency's Maintenance Responsibilities), or that Agency has made any other material changes, including a change in manner of use, hours of operation for the equipment, permanent changes in the comfort and service parameters, occupancy or structure of the Facilities, types and quantities of equipment at the Facilities, then Company shall submit a report to Agency and Agency shall determine what, if any, adjustments to Baseline will be made.

Section 11.3 Changes to CMs by Company. Notwithstanding anything to the contrary in this Contract or elsewhere, Company shall at all times have the right, subject to Agency's prior written approval, which approval shall not be unreasonably withheld, to change the CM, revise any procedures for the operation of the equipment or implement other saving actions in the Facilities, provided that (i) such modifications or additions to, or replacement of the CM, and any operational changes, or new procedures are necessary to enable Company to achieve the savings at the Facilities and; (ii) any cost incurred relative to such modifications, additions or replacement of the CM, or operational changes or new procedures shall be the responsibility of Company. All modifications, additions or replacements of the CM or revisions to operating or other procedures shall be made by written amendment to this Contract pursuant to § 255.258 Florida Statutes.

SECTION 12. PROPERTY/CASUALTY/INSURANCE

Section 12.1 Insurance. At all times during the Term, Company shall maintain in full force and effect all insurance coverages customary for companies in its industry of comparable size, including: (1) Workmen's Compensation Insurance sufficient to cover all of the employees of Company working to fulfill this Contract, and (2) Casualty and Liability Insurance on the CMs Contractor delivers and Liability Insurance for its employees and the possession, operation, and service of the underlying equipment. The limits of such insurance shall be not less than _____ for injury to or death of one person in a single occurrence and _____ for injury to or death of more than one person in a single occurrence and _____ for a single occurrence of property damage. Such policies shall name Agency as an additional insured.

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

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

The policies for Bodily Injury and Property Damage Liability Insurance shall be written to include Contractual Liability Insurance to protect Company against claims from the operations of subcontractors. Certificates of Company's insurance containing evidence of the Hold Harmless Clause protecting the State shall be filed with the State and shall be subject to its approval for adequacy of protection.

Section 12.2 Damage. Company shall be responsible for (i) any damage to the equipment to be installed or to any other property on the Facilities and (ii) any personal injury where such damage or injury occurs as a result of Company's performance under this Contract, but only to the extent caused by the acts or omissions of Company

Section 12.3 Insurance Policy Guarantee. In the event an insurance policy is selected to support the Schedule C, Guarantee, such policy shall be in an amount equal to the amount of the Guarantee during the remaining term of the Guarantee Period. It shall name the state as a beneficiary and shall provide that payment shall be made to Agency upon presentation to the Insurer of one or more Agency Shortfall Payment Demands. It shall provide that the Insurer may conclusively rely as to the completeness and accuracy of all statements in such Agency Shortfall Payment Demands. The Insurer shall not be required to make any inquiry, inspection or investigation in connection therewith. In the event a dispute as to an Annual Reconciliation shortfall is resolved in Company's favor, Company will first reimburse the Insurer from the funds it receives.

SECTION 13. BOND

Section 13.1 Agency shall be provided with the following bonds, within 30 days of the date of this Contract:

(a) Construction Bond: Company shall furnish Agency a Construction Bond, substantially in the form provided in Schedule M (Performance Bond), in the amount of \$ [total retrofit costs]. The Construction Bond shall remain in effect until the CM is accepted by Agency as provided in Schedule P (Agency Certificate of Acceptance of CM).

(b) Surety Bond: In the event a surety bond is selected to support the Schedule C Guarantee, Company shall furnish Agency a surety bond equal to the amount of the Guarantee during the remaining term of the guarantee period. As security for payment under Company's guarantee, Company shall provide to Agency such surety bond provided by an institution assigned one of the two highest policyholder ratings accorded insurers by A.M. Best & Company or any comparable service. Each surety bond shall be payable to Agency, or available to be drawn upon by it upon failure of Company to make payment in accordance with Section 5.4. If a disbursement is made under the surety bond, it shall be the obligation of Company, and not Agency, to reimburse the provider of the instrument. Company shall at all times maintain the surety bond in effect in an amount sufficient to cover the amount of the Guarantee during the remaining term of the guarantee period.

Section 13.2 Bond Provisions. The following provisions shall apply to the bonds in this Section:

(a) Agency shall be named as the beneficiary of the bonds. Company's bonds shall provide that the insurer or bonding company shall pay losses suffered by Agency directly to Agency. Company or its insurer shall provide Agency thirty (30) days prior written notice that the bond(s) has been renewed together and of any attempt to cancel or to make any other material changes in the status, coverage or scope of the required bond or of Company's failure to pay bond premiums. The cost of bonds shall be reflected as a project cost and included in the Conservation Measures to be installed.

(b) Company shall follow § 255.05 "Bond of contractor constructing public buildings; form; action by materialmen" of the Florida Statutes.

(c) No payments shall be made to Company until the bond is in place as per § 255.05 Florida Statutes.

(d) To be acceptable to Agency as surety for performance bonds, the surety company shall:

(i) Have a currently valid Certificate of Authority, issued by the State of Florida, Department of Financial Services, authorizing it to write surety bonds in the State of Florida

(ii) Have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.

(iii) Be in full compliance with the provisions of the Florida Insurance Code

(iv) Have a minimum Best's Policyholder Rating of A- or Performance Index Rating of VI from Best's Key Rating Guide.

SECTION 14. EVENTS OF DEFAULT

Section 14.1 The following are events of default under this Contract:

(a) Any failure by either Party to pay any payment required to be paid when due. A State Agency's failure to pay for reason of Non-Appropriation shall not constitute an event of default, and shall be governed by Section 6 of this Contract.

(b) Any failure by either Party to observe and perform any material covenant, condition or agreement on its part to be observed or performed hereunder or under this Contract, other than as referred to in Clause (a) of this Section.

(c) Company initiates a proceeding in any court, seeking liquidation, reorganization, debt arrangement, dissolution, winding up, appointment of trustee, receiver, custodian, or the like for substantially all of its assets, and such proceeding continues undismissed, unstayed and in effect for a period of 60 consecutive days; or an order for relief is entered in an involuntary case under the federal bankruptcy laws or other similar laws now or hereafter in effect.

SECTION 15. REMEDIES UPON DEFAULT

Section 15.1 Opportunity to Cure Defaults. Each Party shall have a period of forty (40) days after being notified of an event of default to cure said default, provided that the Party has not already failed to cure a default under the terms of this Contract.

Section 15.2 Remedies upon Default by Agency. If a default by Agency is not cured in accordance with Section 15.1, Company may, without a waiver of other remedies which exist in law or equity, exercise all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by Agency, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy.

Section 15.2 Remedies Upon Default by Company. If a default by Company is not cured in accordance with Section 15.1, Agency shall have the following remedies in law or equity:

(a) Agency may exercise any and all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred in exercise of its remedy,

(b) Agency may take any and all steps necessary to cure Company's default including the hiring or contracting of third parties to fulfill Company's obligations. In the event Agency takes any action to effect such cure, Company shall be obligated to reimburse Agency for Agency's costs and expenses, including cost of cover pursuant to Fla. Admin. Code Rule 60A-1.006 (3).

(c) [insert liquidated damages, if any]

SECTION 16. ASSIGNMENT

Section 16.1 Assignment by Company. Company acknowledges that Agency is induced to enter into this Contract by, among other things, the professional qualifications of Company. Company agrees that neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of Agency; provided Company can without prior approval from Agency assign this Contract to its parent or affiliate companies.

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

Section 16.2 Assignment by Agency. Agency may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Facilities or an interest therein subject to the prior written approval of Company. If Company rejects new assignee Agency will continue to make the payments associated with the facility or Agency can pay the remaining principal on the loan for the equipment installed in that facility. Notwithstanding the foregoing, Agency's rights and responsibilities may be transferred in the event that the agency/department

that originally executed this Contract is transferred, moved or absorbed by another State of Florida entity to such succeeding entity.

SECTION 17. ARBITRATION

Any dispute, controversy, or claim arising out of or in connection with, or relating to this Contract, or any breach or alleged breach hereof, may, upon the agreement of both Parties, be submitted to and settled by arbitration in the State of Florida, in conformance with the rules of the American Arbitration Association then in effect for commercial disputes (or at any other place or under any other form of arbitration mutually acceptable to the Parties).

The expenses of the arbitration shall be borne equally by the Parties to the arbitration, provided that each Party shall pay for and bear the cost of its own experts, evidence, and counsel.

SECTION 18. REPRESENTATIONS AND WARRANTIES

Section 18.1 Mutual Representations. Each Party warrants and represents to the other that:

(a) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

(b) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

(c) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or

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

Section 18.2 Agency Representations. Agency hereby warrants and represents that:

(a) it has provided or shall provide timely to Company, all records relating to energy and/or water usage and energy/water-related maintenance of Facilities requested by Company and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and

(b) it has not entered into any leases, contracts or agreements with other persons or entities regarding the leasing of efficiency equipment or the provision of energy/water management services for the Facilities or with regard to servicing any of the related equipment located in the Facilities except as disclosed to Company.

Section 18.3 Company Representations. Company hereby warrants and represents that:

(a) before commencing performance of this Contract it shall have (i) become licensed or otherwise permitted to do business in the State of Florida, and (ii) provided proof and documentation of required insurance pursuant to Section 12, and (iii) made available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;

(b) it shall use qualified subcontractors and delegees, licensed and bonded in this state to perform the work so subcontracted or delegated pursuant to the terms hereof;

(c) it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to perform its obligations under this Contract.

SECTION 19. MISCELLANEOUS

Section 19.1 Waiver of Liens. Company will obtain and furnish to Agency a Waiver of Liens from each vendor, material manufacturer and laborer in the supply, installation and servicing of each CM. Should liens or claims be filed against the Facilities by reason of Company's acts or omissions, Company shall cause same to be discharged by bond or otherwise within ten (10) days after filing.

Section 19.2 Compliance with Law and Standard Practices. Company shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of Agency relative to the Facilities.

Company shall not use, store, dispose of or otherwise handle any Hazardous Substance (as defined in 42 U.S.C. Sections 9601, 9603, 6921, 7412, 49 U.S.C. Sections 1802 and 33 U.S.C. Sections 1321 and 1317 as now or hereinafter amended) or Hazardous Material in or on the Facilities except in a lawful manner and so as not to cause Agency any cost, loss, obligation or liability or expose Agency to any claim or suit with respect to same. "Hazardous Materials" shall mean petroleum, or any fraction thereof, asbestos, polychlorinated biphenyls, or any other substance identified either as a "hazardous substance", "hazardous waste", "pollutant", "contaminant" or other similar term in any applicable federal, state or local law or regulation, as such law or regulations may be now or hereafter amended.

Section 19.3 Independent Capacity of Company. The Parties agree that Company, and any agents and employees of Company, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of Agency.

Section 19.4 No Waiver. The failure of Company or Agency to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of Company or Agency.

Section 19.5 Severability. In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable or unconscionable.

Section 19.6 Complete Contract. This Contract, including all Schedules, Exhibits and Appendices attached hereto, when executed, shall constitute the entire Contract between both Parties and this Contract may not be amended, modified, or terminated except by a written Contract signed by the Parties.

Section 19.7 Further Documents. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

Section 19.8 Applicable Law. This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of Florida.

Section 19.9 Notice. Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, or delivered to a nationally recognized express mail service, postage prepaid to the address shown below or to such other persons or addresses as are specified by similar notice. Agency's Contract Manager for this project will serve as liaison for the ongoing administration of this Contract and the resolution of any problems related thereto.

TO COMPANY: <Company Name, Attention:, Complete address.>

TO AGENCY: <Agency Name, Attention:, Contract Manager Complete address.>

Section 19.10 Statutory Notices and Requirements. Agency shall consider the employment by any Company of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this Contract. An entity or affiliate who has been placed on the public entity crimes list or the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a Company, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity pursuant to limitations under Chapter 287 Florida Statutes.

Wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto will be adjusted to exclude any significant sums by which Agency determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of this Contract.

Company warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Company to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Company any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, Agency shall have the right to terminate this Contract

without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

Section 19.11 Public Records. Agency shall have the right of unilateral cancellation for refusal by Company to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes and made or received by Company in conjunction with this Contract.

Section 19.12 Force Majeure. Neither Party will be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in the United States; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party ("Force Majeure Events"); provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. Performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay, provided that in the event Company is delayed in its performance by reason of such cause, no such extension shall be made unless notice thereof is presented by Company to Agency in writing within ten (10) business days after the start of the occurrence of such delay, no payment shall be made by Agency for any fees or expenses incurred by Company by reason of such delay, and Company shall use best efforts to perform its obligations during such period of delay, and notify Agency of its abatement or cessation.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers on the date last executed below

COMPANY:

AGENCY:

By: _____
[Signature]

By: _____
[Signature]

Title: _____
(Corporate Seal)

Title: _____

Date: _____

Date: _____

Schedule A
Conservation Measures to Be Installed by Company and Description of Facilities

Instructions: List the name and address of each facility where Conservation Measures will be implemented. The Investment Grade Audit must clearly describe work to be performed and consistently refer to facilities as referenced here. For each facility or building, indicate whether it is owned or leased. If leased, indicate the name of the Lessor (person or entity leased from). Conservation Measures (CM) and CM Groups must be referenced consistently throughout the Contract, including Appendix B (Investment Grade Audit).

Facility Name:	
Address:	
Owned by the State or Leased?	

List Conservation Measures to be installed at this facility:

Ref. in App. B	CM	Group	Description of Conservation Measure (i.e.: Energy Efficient Lighting)	Useful Life of the Equipment

Schedule B
Pre-existing Equipment Inventory

Facility Name:	
Address:	
List of Equipment:	

[Include current known capital projects at the Facilities. Any contracts with third parties related to the Facilities which impact the audit and estimated savings are to be addressed in, and attached to, the IGEA]

Schedule C
Savings Guarantee

Company has formulated and hereby guarantees the following annual levels of savings to be achieved as a result of the installation and acceptance of the Conservation Measures in the amounts guaranteed and for the Guarantee Periods stated below. Pursuant to § 489.145 (3)(c) Florida Statutes, there will be no stipulation as to savings amounts achieved other than operating, maintenance, and cost avoidance as allowed, if applicable. Savings must equal the entire cost of the project, not just the amount financed. This Savings Guarantee is supported by [check one] (a) [] a letter of credit; (b) [] unconditional corporate guaranty in the form attached as Schedule R; (c)[] a surety bond; or (d) [] insurance policy, a copy of which is attached hereto and incorporated herein.

The Savings Guarantee is set forth in annual increments for the term of the Contract, pursuant to Section ____, as follows:

Year	Energy, Water or Wastewater Savings (Escalated at ____%)	Operating Savings (Escalated at ____ %)	Avoided Cost Savings	Total Annual Savings
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
Total				

(Note: Must be structured to be sufficient to cover any and all annual payments. Actual savings achieved will be calculated pursuant to Section____)

For value received, the undersigned guarantees the payment of any amounts due Agency, its agents or assigns, for any failure to achieve these levels.

Company:

By: _____

[Signature]

Title: _____

Date: _____

Schedule D
Compensation to Company and Deliverables

Instructions: List all deliverables as indicated below. Deliverables may be summarized by Conservation Measure or CM Group. The deliverables and payment schedule must comply with Contract Section 3 and 4 and any other applicable Contract sections. Costs for operations, maintenance, or training (not incidental to a conservation measure), may not be financed and must be listed separately under “Service and Maintenance Costs”.

Deferred (Financed) Costs

CM	Group	Description of Deliverable	Cost
		Total	

Costs Paid from Available Budget

CM	Group	Description of Deliverable	Cost
		Total	

Service and Maintenance Costs

Ref. in App. C	Year	Measurement and Verification	Maintenance	Other (Training, Warranties, etc)	Total
	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9				
	10				

Schedule E
Compensation and Deliverables Required in Other Related Contracts

Instructions: List amounts that must be paid by Agency to entities other than Company in order for Conservation Measures in this Contract to be fully implemented, including estimated financing charges. Attach any contracts with entities other than Company as Appendix D. If financing is provided by Company or a third party entity as an alternative to the financing program administered by the Florida Department of Financial Services, complete the Model Financing Agreement and attach as Schedule L. If financing will be provided through the Department of Financial Services Consolidated Equipment Financing Program (“Guaranteed Savings CEFP”), complete the application for Guaranteed Energy, Water, and Wastewater Performance Savings Contract Financing and attach as Appendix E. Please see Appendix E.

Costs

Ref. in App. C	CM	Group	Description of Deliverable from entity other than Company (refer to the section in the third party contract of the minimum performance standard)	Cost

Estimated Finance Charges

Costs to be Financed (from Schedule C)	
Bond Counsel Fee	
Other (Describe)	
Total Costs to be Financed	
Amount per Payment	
Number Payments per Year	
Total Annual Payments	

Schedule F
Savings Calculation Formula

Cost Savings under this Contract shall be determined according to the following formula:

$$\text{Cost Savings} = (\text{Baseline Costs} - \text{Post Installation Costs}) \pm \text{Adjustments}$$

The following definitions and methodologies shall apply:

A. **Baseline Costs.** The estimated costs of fuel, energy or water consumption or wastewater production that would have been incurred in the CMs had not been installed or implemented. Baseline Costs shall be the product of (i) the Baseline amounts set forth in Exhibit H; and (ii) the Utility Rates as defined below.

B. **Post-Installation Costs.** Post-Installation Costs shall be the cost of fuel, energy or water consumption or wastewater production resulting from the installation and implementation of the CMs. Post-Installation Costs shall be the product of (i) the actual amount of fuel, energy or water consumption or wastewater production during the applicable time period, and (ii) the Utility Rates as defined below; together with

- the stipulated operation and maintenance cost savings resulting from the implementation and installation of the CMs. These cost savings have been negotiated and agreed upon by the parties and there is no need to verify the agreed savings. **[list the stipulated cost savings here, if any];**
- the minimum real return on investment and the cost of capital as described in Schedule S. In accordance with Section 489.145(4)(j), the return on investment and the cost of capital calculations shall not apply to any grants, rebates or capital funding.

C. **Utility Rates.** The Utility Rates shall be the greater of (i) the base period utility unit costs set forth in Exhibit H and escalated at ____% per year after the year in which this Contract is entered; or (ii) the actual utility unit costs for the year in which the Cost Savings are measured. In no event shall the Utility Rate be lower than base year utility rate with appropriate escalation.

D. **Adjustments.** § 489.145 (4)c Florida Statutes, requires that any Baseline adjustments must be specified in the contract. The parties agree that Baseline adjustments are authorized only to the extent authorized in section 11 and/or Schedule H (Baseline) of the Contract.

I. E. Other. The parties acknowledge that § _____ :

1. Agency is to confirm & document estimated avoided operation, maintenance costs, if any.
2. Agency is to confirm & document real savings: agency must either be spending or planning to spend.
3. Agency is to verify & document that the funds used for payments were appropriated for energy.
4. Agency is to document that savings are calculated from the date of installation of each measure. (§ 489.145 (4)(c)) Florida Statutes.

5. Agency is to document that costs of installation are less than calculated savings based on life cycle cost calculations based on § 255.255. (§ 489.145(4)(c)) Florida Statutes
6. Agency is to document that calculating the life cycle costs excludes grants rebates or capital funding (§ 489.145(4)(g)) Florida Statutes

Schedule G
Construction and Installation Schedule

Instructions: List construction or installation dates as indicated below for all deliverables by Company. Additional documentation, such as a flowchart, may be attached. The Description must be consistent with deliverables shown on Schedule D.

CM	Group	Description	Estimated Start Date	Estimated Completion Date

Estimated Date when all work will be completed by Company	
---	--

Schedule H
Baseline

3. [Attach Baseline Calculations and Utility Rates here.]

Baseline Development. The Baseline model will be developed as part of the Audit and will be used by the parties to mutually agree on the final Baseline. The Baseline model will represent pre-existing energy consumption for all end uses within the Facilities, not just those end uses affected by the CMs.

For energy savings CMs, the Baseline model will be developed with a whole-building simulation approach using one of the following commercially available energy simulation software packages:

- Carrier HAP
- Trane TRACE
- Elite (EZDOE)
- DOE-2 and variations (requires Agency approval)

The Company shall use the same energy simulation software used to develop the Baseline to develop the estimated cost savings. Projected energy consumption must be modeled using the same weather data and operating conditions as the established Baseline model.

The Baseline model shall reflect all energy-related effects of the current design features of the Facilities, including but not limited to quantity and type of glass, building orientation with respect to the physical site, overall wall and roof thermal resistance values, ventilation air requirements, humidity level, occupancy, and actual operating schedules. The Baseline model shall incorporate the energy-related effects of all renovations and/or modifications to the building envelope, internal spaces, and energy-consuming systems subsequent to the date of original construction.

The Baseline model shall be developed in accordance with recommendations and methods promulgated by professional societies and government organizations, such as:

- The Federal Energy Management Program's (FEMP) *M&V Guidelines: Measurement and Verification for Federal Energy Management Projects version 3.0*.
- The American Society of Heating, Refrigerating, and Air Conditioner Engineers (ASHRAE).

Baseline Calibration. The Baseline model will be developed and calibrated with the assistance of utility bill data for no less than the immediately preceding 24-month period in order to be suitable for Agency consideration. A detailed description of all existing Baseline conditions, development methods, calibration procedures, adjustments, and assumptions for each of the Facilities must be provided.

Baseline Adjustments. Adjustments to the Baseline model and the Baseline itself shall only reflect changes in energy or water consumption, or wastewater production, resulting from changes in weather, occupancy, and other substantiated factors (such as the modification or replacement of energy-consuming equipment performed by the Agency outside the scope of the Contract). Adjustments shall not reflect any changes that result from the CMs. A complete description of all Adjustments must be included in the Annual Reconciliation Report.

4. Other. The parties acknowledge that:

1. Agency is required to document that baseline costs are calculated based on FEMP guidelines (Model Contract § 5.2) and to have an audit trail back through the FEMP data and data on which calculations are based.
2. The Baseline may contain operational cost-saving measures and may include allowable cost avoidance if determined appropriate by the Chief Financial Officer.
3. Florida Statute §255.254 mandates a Life Cycle Cost Analysis (LCCA) for new or major renovated facilities 5,000 square feet or greater as well as when any state agency must replace or supplement major energy-consuming equipment in existing state-owned or leased facilities. The LCCA must be computed by either an architect or engineer who is licensed/registered in the State of Florida. All data in the LCCA shall be in accordance with the Florida Energy Modeling Program published by the Florida Department of Management Services.

Schedule I
Standards of Comfort

The Equipment will be maintained and operated in a manner that will provide the Standards of Comfort for heating, cooling, hot water, and lighting as described below:

Schedule J
Agency's Maintenance Responsibilities

Schedule K
Company's Maintenance Responsibilities and Training

Schedule L
Financing Agreement

[The Financing Agreement shall be in the form of the Financing Agreement Model unless financing will be provided through the Consolidated Equipment Financing Program, then in the form provided by the Division of Bond Finance (see Appendix E for Application)]

[*Financing solicitation clarifications:*

- option to prepay is required, and without any form of prepayment penalty*
- unconditional payment obligation is not allowed*
- *payment amortization schedule must match the CM Contract schedule*
- not include maintenance and personal services in tax-free financing*
- comply with capital expenditure limits and useful life limits on tax-free financing]*

Schedule M
Performance Bond
[Substantially in the form attached]

PERFORMANCE BOND

THIS BOND IS ISSUED SIMULTANEOUSLY WITH LABOR AND MATERIAL
PAYMENT BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND
FAITHFUL PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENT: that , , , ,
as Principal, hereinafter called Company, and, (SURETY NAME ADDRESS AND PHONE
NUMBER)

as Surety, hereinafter called Surety, are held and firmly bound unto the Department of [insert
Agency] of the State of Florida as Obligee, hereinafter called Owner, for the use and benefit of
claimants as herein below defined, in the amount of () for the payment whereof Company and
Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

WHEREAS,

Company has by written agreement dated, entered into a contract with Owner for , , , Project
Number in accordance with Drawings and Specifications prepared by , , , which contract is by
reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Company
shall promptly and faithfully perform said Contract and all obligations thereunder, then this
obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Company shall be, and declared by Owner to be in default under the Contract, the
Owner having performed Owner's obligations thereunder, the surety may promptly remedy the
default, in accordance with Section 255.05, Florida Statutes, or shall promptly

- 1) Complete the Contract in accordance with its terms and conditions, or 2) Obtain a bid or bids
for completing the Contract in accordance with its terms and conditions, and upon
determination by Surety of the lowest responsible bidder or, if the Owner elects, upon
determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange
for a Contract between such bidder and Owner, and make available as work progresses (even
though there should be a default or a succession of defaults under the Contract or Contracts
of completion arranged under this paragraph) sufficient funds to pay the cost of completion
less the balance of the Contract price; but not exceeding, including other costs and damages
for which the Surety may be liable hereunder, the amount set forth in the first paragraph
hereof. The term "balance of the Contract price", as used in this paragraph, shall mean the
total amount payable by Owner to Company under the Contract and any amendments thereto,
less the amount properly paid by Owner to Company.

No right of action shall accrue on this bond to or for the use of any person or corporation other
than the Owner named herein or the heirs, executors, administrators or successors of the Owner.
The time within which the Owner can institute an action on this bond against the Surety or
Company shall be determined by the time periods of § 95.11(3)(c) Florida Statutes.

SIGNED AND SEALED THIS

(Signature of Witness)

(Signature of Company) (Seal)

(Signature of Witness)

(Signature of Attorney-In-Fact) (Seal)

(Type Name)

(Signature of Witness)

(Signature of Florida Resident Agent)

(Type Name & Date of Birth)

Power of Attorney attached hereto.

NOTES CONCERNING SURETY AND EXECUTION

A. SURETY COMPANY REQUIREMENTS

To be acceptable to Agency, a Surety Company shall comply with all of the requirements of the Contract.

B. EXECUTION OF BOND

1. Enter the Surety Company's name and address on each copy of the Bond in the space provided.
2. Enter the Effective Date of the Contract in the space provided on each copy of the Bond.
3. Enter the date of execution on each copy of the Bond in the space provided. This date must be the same as the date shown on the Contract.
4. Have each copy of the Bond signed by the same person that signed the Contract on behalf of Company. Type in that person's name and title in the place provided on each copy of the Bond, and have one other individual witness that person's signature on each copy of the Bond. Also, have Company's Corporate Seal affixed to each copy of the Bond beside that person's signature (No Facsimiles are acceptable).
5. Have each copy of the Bond signed by the person authorized to sign on behalf of the Surety Company. Type in that person's name in the place provided on each copy of the Bond, and have one other individual witness that person's signature on each copy of the Bond. Also, have the Surety Company's Corporate Seal affixed to each copy of the Bond beside that person's signature (No Facsimiles are acceptable).
6. Have each copy of the Bond signed by a Florida Resident Agent (Reference Chapters 624.425 and 624.426 of the Florida Statutes). Type in that person's name and Social Security number in the place provided on each copy of the Bond and have one other individual witness that person's signature on each copy of the Bond. This may be the same person indicated in B.5 above, if this person is a Florida Resident Agent and is also authorized to sign on behalf of the Surety Company as Attorney-In-Fact.
7. Each copy of the Bond must have a Power of Attorney attached indicating that the person in B.5 above is authorized to sign on behalf of the Surety Company.
8. Each copy of the Power of Attorney must have the Surety Company's Corporate Seal and a Notary Seal either manually affixed or they may utilize facsimile reproductions of the same.
9. If the date of execution of the Power of Attorney is not the same as the date shown on the Contract, then the Power of Attorney must be certified to still be in effect on the Effective Date of the Contract.
10. If the Bond is being backed by the Small Business Administration, then a certified true and correct copy of the Surety Bond Guarantee Agreement, SBA Form 990, must be attached to each copy of the Bond.

Certificate of Acceptance Investment Grade Audit

Schedule O
Projected Cash Flow

Schedule P
Agency Certificate of Acceptance

I, the undersigned, hereby certify that I am the duly qualified and acting officer of Agency identified below and, with respect to the above-referenced Conservation Measures Schedule dated _____, _____ to the Contract dated as of _____, by and between Agency and _____ ("Company"), represent and warrant that:

1. The equipment described in Schedule A purchased from [Company] , and properly invoiced, has been delivered and installed in accordance with Agency's Specifications, is in good working order and is fully operational and properly functioning and has been fully accepted by Agency on the ____ day of _____, ____.

2. Agency certifies that it has inspected the installation and operation of the Conservation Measure's listed on Schedule A, pursuant to Contract Section ____ and that it finds the equipment listed on Schedule A is fully and properly functioning.

AGENCY: _____

Signature: _____

Title: _____

Date: _____

Schedule Q
Equipment Warranties

Schedule R
Unconditional Corporate Guarantee

5.

6. Guaranty Agreement By [Guarantor]

This Guaranty Agreement (the “Guaranty”), dated effective as of _____, is made and entered into by _____, a _____ corporation (“Guarantor”).

WHEREAS, _____ [guaranteed performance savings company] (the “Company”), and _____ (the “Agency”), have entered into or are contemplating entering into an Guaranteed Performance Savings Contract(referred to herein as the “Contract”); and Guarantor will directly or indirectly benefit from the transactions to be entered into between Company and Agency.

NOW THEREFORE, in consideration of Agency entering into the Contract, Guarantor hereby covenants and agrees as follows:

1. GUARANTY. Subject to the provisions hereof, (a) Guarantor hereby irrevocably and unconditionally guarantees the timely payment when due of the obligations of Company to pay for any shortfalls of guaranteed savings (the “Obligations”) to Agency under the Contract, and (b) to the extent that Company shall fail to pay any Obligations, Guarantor shall promptly pay to Agency the amount due on Agency’s demand therefore. This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under the Guaranty shall be subject to the following:

(a) Guarantor’s liability hereunder shall be and is specifically limited to payments of the Obligations expressly required to be made under the Contract (even if such payments are deemed to be damages) and, except to the extent specifically provided in the Contract, in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive, tort, or any other damages, costs, or attorney’s fees; and

(b) the aggregate amount covered by this Guaranty shall not exceed the total equal to the amount of the Guarantee during the remaining term of the Guarantee Period as reflected in Schedule C, Savings Guarantee, incorporated in the Contract.

2. DEMANDS AND NOTICE. If Company fails or refuses to pay any Obligations, whether or not such obligations are the subject of a bona fide dispute pursuant to the underlying Contract, Agency shall notify Company in writing of the manner in which Company has failed to pay and demand that payment be made by Company. If Company’s failure or refusal to pay continues for a period of fifteen (15) days after the date of Agency’s notice to Company, and Agency has elected to exercise its rights under this Guaranty, Agency shall make a demand upon Guarantor (hereinafter referred to as a “Payment Demand”). A Payment Demand shall be in writing and shall contain a copy of Agency’s demand that payment be made by Company and a specific statement that Agency is calling upon Guarantor to pay under this Guaranty. A Payment Demand satisfying the foregoing requirements shall be required with respect to Obligations before Guarantor is required to pay such Obligations hereunder and shall be deemed sufficient notice to Guarantor that it must pay the Obligations. A single written Payment Demand shall be

effective as to any specific default during the continuance of such default, until Company or Guarantor has cured such default, and additional written demands concerning such default shall not be required until such default is cured. The Guarantor shall not be required to make any inquiry, inspection or investigation in connection therewith.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty, when executed and delivered, will constitute a valid and legally binding agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity. Agency shall have the right to require Company to appoint a successor or alternative instrument supporting Company's Guarantee, acceptable to Agency, in the event of any one or more of the following circumstances, uncorrected for more than thirty (30) days: entry of an order for relief under Title 11 of the United States Code; the making by Guarantor of a general assignment for the benefit of creditors; the appointment of a general receiver or trustee in bankruptcy of Guarantor's business or property; or action by Guarantor under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation; unless within the specified thirty (30) day period, Guarantor (including its receiver or trustee in bankruptcy) provides to Agency adequate assurances, reasonably acceptable to Agency, of its continuing ability and willingness to fulfill its obligations under this Guaranty.

4. SETOFFS AND COUNTERCLAIMS. Without limiting Guarantor's own defenses and rights hereunder, Guarantor represents and warrants that its obligations to make payments pursuant to a Payment Demand shall not be subject to or limited by any rights, setoffs, counterclaims and other defenses to which Company or any other affiliate of Guarantor is or may be entitled to arising from or out of the Contract, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Company, provided however, that Agency agrees that Guarantor shall be entitled to recover any payments made by Guarantor to Agency pursuant to a Payment Demand if, as a result of a resolution of any bona fide dispute under the Contract concerning such payment or the Obligations, it is finally determined that Agency was not entitled to receive such payment or make such Payment Demand, and Agency agrees that it shall make promptly repay such amounts to Guarantor, pursuant to § 215.422 Florida Statutes, after the date of Guarantor's notice to Agency that such repayment is due. An Agency shall not be liable for such payment to both the Guarantor and Company arising from the same dispute.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Agency.

6. WAIVERS AND TERMINATION. Guarantor hereby waives (a) notice of acceptance of this Guaranty; (b) presentment and demand concerning the liabilities of Guarantor, except as expressly hereinabove set forth; and (c) any right to require that any action or proceeding be brought against Company or any other person, or except as expressly hereinabove set forth, to require that Agency seek enforcement of any performance against Company or any other person, prior to any action against Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of Agency in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Contract.

This Guaranty shall terminate on _____ 12:00 midnight eastern standard time. Guarantor may terminate this Guaranty by providing written notice of such termination to Agency and upon the effectiveness of such termination, Guarantor shall have no further liability hereunder except as provided by the last sentence of this paragraph. No such termination shall be effective until the appointment of a successor or alternative instrument supporting Company's Guarantee, or until all Obligations of Company have been fulfilled. No such termination shall affect Guarantor's liability with respect to any Transaction (as defined in the Contract) entered into prior to the time the termination is effective, which Transaction shall remain guaranteed pursuant to the terms of this Guaranty.

7. NOTICE. Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by telegram or telecopier, as follows:

To Guarantor:

To Agency:

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telegram or telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by telegram or telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

8. ASSIGNMENT. Neither Guarantor nor Agency shall assign this Guaranty without the express written consent of the other party.

9. MISCELLANEOUS. **THIS GUARANTY SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE**

STATE OF FLORIDA. This Guaranty shall be binding upon Guarantor, its successors and assigns and inure to the benefit of and be enforceable by Agency, its successors and assigns. The Guaranty embodies the entire agreement and understanding between Guarantor and Agency and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, but it is effective as of the date first above written.

[GUARANTOR]

By:

Name:

Title:

Schedule S
Benchmark Cost of Capital, Minimum Rate of Return

Attach supporting information pursuant to § 489.145 (6) Florida Statutes, which requires supporting information required by § 216.023(4)(a)9. in § 287.063(5) and § 287.064(11) Florida Statutes:

§ 216.023(4)(a)9 Florida Statutes, Supporting information for any proposed consolidated financing of deferred-payment commodity contracts including guaranteed energy performance savings contracts. Supporting information must also include narrative describing and justifying the need, baseline for current costs, estimated cost savings, projected equipment purchases, estimated contract costs, and return on investment calculation.

Schedule T
Document Supporting Recurring Funds

Attach copies of the specific appropriation page or other documentation as evidence that the Legislature has designated recurring funds appropriated for payment of the obligation.

§ 287.063(5) Florida Statutes, For purposes of this section, the annualized amount of any such deferred payment commodity contract must be supported from available recurring funds appropriated to the agency in an appropriation category, as defined in chapter 216, that the Chief Financial Officer has determined is appropriate or that the Legislature has designated for payment of the obligation incurred under this section.

§ 287.064 (11) Florida Statutes, For purposes of consolidated financing of deferred payment commodity contracts under this section by a state agency, the annualized amount of any such contract must be supported from available recurring funds appropriated to the agency in an appropriation category, as defined in chapter 216, which the Chief Financial Officer has determined is appropriate or which the Legislature has designated for payment of the obligation incurred under this section.

Schedule U
Head of the Agency Approval

Schedule V
Agency Measurement & Verification Plan (“M&V Plan”) to Monitor Cost Savings

Insert Agency’s M&V plan to explain how Agency plans to determine whether the required reconciliation obligations are being met.

Unless otherwise agreed, cost savings will be measured and verified using one of the following methodologies from the Federal Energy Management Program’s (FEMP), *M&V Guidelines: Measurement and Verification for Federal Energy Management Projects version 3.0*:

- FEMP type “A” Verifications: Stipulated savings from maintenance or outside contracts shall show the origin and signed agreement of acceptance by the Agency.
- FEMP TYPE B, C, D Verifications: Only verifiable data will be accepted, Degree Day data sources shall be identified and agreed to in the audit document.

The minimum expectations will include, but are not limited to, reconciliation reports (M&V Reports) and support documentation verifying that the amount of any actual annual savings meet or exceed total annual contract payments made by the agency [*§489.145 (3) d2*], confirming that the cost savings will meet or exceed the costs of the system, and estimated cost savings provided in the Contract [*§489.145 (4)c*]. The M&V Reports are required to use the Annual Report Outline from FEMP, *M&V Guidelines: Measurement and Verification for Federal Energy Management Projects version 3.0*. At a minimum, the M&V Reports requires the following:

- List of the name(s) of the auditor(s) and of the Agency audit review person or team, together with their phone numbers, email addresses and credentials.
- Copies of the data supporting the calculation of actual costs and actual computed costs:
 1. All utility bills,
 2. All meter readings of the Contractor of actual costs
 3. All samplings of usage
 4. All stipulated usage based on spot actual measurements as described in the formula
 5. Explanations of how the data was input into the formula to derive the reconciliation results in each M&V Report

Explain how Agency plans to determine if the M&V Reports accurately reflect savings or if there are shortfalls. Contract Section 5.4 requires repayment or setoff for shortfall not repaid.

7. Reconciliation/Shared savings guidelines:

1. Actual savings are measured against baseline costs (§ 489.145 (3)d2. Model § 4.9) (Verification of billings with the Company)
2. From Agency energy bills, Company is to calculate and report the actual Cost Savings achieved for each Annual Reconciliation (M&V Report). Then Agency is to confirm & document accuracy of reconciliation each year. (The annual actual savings calculation must be reported to Agency, with supporting data, in individual units as broken down for the payment schedule, but may be combined for the entire Facility for purposes of the reconciliation)

3. Agency is to document accuracy of claimed shared savings each calendar year. Identify the Agency personnel responsible for the annual reconciliation.
4. Reconciliation must be per auditable Conservation Measure.
5. Savings shall exceed payments to Company or shortfall is due.
6. A subsequent year's savings can be used to make up for earlier shortfalls, but not subsequent shortfalls.
7. Determination of shared savings/shortfall must comply with Florida accounting practices.
8. M&V Plans should provide that the Agency is to confirm receipt of, and accuracy of, the following documentation from the Company in an Agency evaluation report each year of M&V Activities and Verified Savings for Each Year, to include but not limited to the following :
 - a. *an overview of what was done and how savings are generated;*
 - b. *any changes in project scope between the final proposal (including any relevant delivery order modifications) and as-built conditions;*
 - c. *data by cost savings, energy units, energy cost/unit, and other savings values as applicable;*
 - i. *include all fuels/commodities for project, such as: electric energy, electric demand, natural gas, fuel oil, coal, water, etc.;*
 - d. *the performance period rate adjustment factors for energy and water and an analysis of whether they were applied correctly, and if so, how they were used properly;*
 - e. *Does the yearly Reconciliation Report provide actual energy and water rates at site for same period; Does it detail verified savings for energy conservation measure for each performance year.*
 - f. *a description of the impact in changes between the final proposal (including any relevant delivery order modifications) and as-built conditions based on post-installation M&V results reported in the initial Reconciliation Report;*
 - g. *confirmation that M&V activities match declared FEMP M&V option;*
 - h. *sufficiency of Company's explanation of why changes occurred in savings values , if expected cost savings vary by 10% or more from proposed savings;*
 - i. *sufficiency of Company's description of any data manipulation or analysis that was conducted prior to applying savings calculations; Did the reviewer verify the math in the savings calculations?*
 - j. *were the Company's detail measurements, monitoring, and inspections conducted in accordance with M&V plan:*
 - i. *include measurement equipment used, equipment calibration documentation, dates/times of data collection or inspections, names of personnel, and documentation of State of Florida witnessing, details to confirm adherence to sampling plan;*
 - ii. *Include all post-installation measured values, periods of monitoring and durations and frequency of measurements, description of data format (headings, units, etc.);*
 - k. *Detailed performance deficiencies that need to be addressed by the Company to the State of Florida and the impact on generation of savings;*
 - l. *documentation requirements to demonstrate completion of the deliverable; and*
 - m. *remedies for failure to provide deliverables and other services and deliverables such as installation, maintenance, provision of records and data,*

training, timely obtaining required permits, and providing warranties.

9. Acceptance is a prerequisite for payment per auditable Conservation Measure. (§ 489.145(5)b)
10. A Conservation Measure must be the same group for guaranteed savings calculations, acceptance and releases of funds/distribution for payments per auditable unit.
11. Payment must comply with Florida accounting practices.
12. Training must be completed prior to acceptance of a Conservation Measure. (Model § 8).

Appendix A
State Term Contract No.: [currently 973-320-08-1]

Appendix B
Investment Grade Energy Audit

Appendix C

[Three quotes are required as part of the proposal but not the contract]

Documentation of Quotes from Three or More Lenders (if applicable)

Appendix D
Other contracts with entities other than Company

[Attach contracts referenced in Schedule E]

Appendix E
Application for Guaranteed Energy, Water, and Wastewater Performance Savings Contract
Financing (“Guaranteed Savings CEF”)

*[form to be inserted; include either this form (if using “Guaranteed Savings CEF”), or the
Documentation of Quotes from Three or More Lenders (if the Company is providing a proposed
lender)]*

ATTACHMENT H
TO
REQUEST FOR PROPOSALS FOR ENERGY PERFORMANCE CONTRACTING SERVICES
("RFP").

NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT, THE TERMS AND
CONDITIONS OF THE RFP SHALL CONTROL AND OVERRIDE THE TERMS AND
CONDITIONS OF THIS AGREEMENT.

<h2>FINANCING AGREEMENT</h2>

SCHEDULE L

By and between
[Agency]
and
[Lender]

ATTACHMENT I INDEMNIFICATION

Contractor shall hold harmless, indemnify, and defend the City of Jacksonville and City's members, officers, officials, employees and agents (collectively the "Indemnified Parties") from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. General Tort Liability, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties' performance of the Contract, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this Contract contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the Contract; and

3. Intellectual Property Liability, to the extent this Contract contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services as contemplated in this Contract, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Services, or any product generated by the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within 60 days, for the Indemnified Parties a license, authorizing the continued use of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to Buyer, so that the Service or product is non-infringing.

If an Indemnifying Party exercises its rights under this Contract, the Indemnifying Party will (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to the Contract or otherwise. Such terms of indemnity shall survive the expiration or termination of the Contract.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.

ATTACHMENT J INSURANCE REQUIREMENTS

Without limiting its liability under this Contract, Contractor shall at all times during the term of this Contract procure prior to commencement of work and maintain at its sole expense during the life of this Contract (and Contractor shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

Schedule	Limits
Worker's Compensation Employer's Liability	Florida Statutory Coverage \$ 1,000,000 Each Accident \$ 1,000,000 Disease Policy Limit \$ 1,000,000 Each Employee/Disease

This insurance shall cover the Contractor (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers' Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers' Compensation Act, where appropriate, coverage is to be included for the Federal Employers' Liability Act, USL&H and Jones, and any other applicable federal or state law.

Commercial General Liability	\$2,000,000	General Aggregate
	\$2,000,000	Products & Comp. Ops. Agg.
	\$1,000,000	Personal/ Advertising Injury
	\$1,000,000	Each Occurrence
	\$ 50,000	Fire Damage
	\$ 5,000	Medical Expenses

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management. An Excess Liability policy or Umbrella policy can be used to satisfy the above limits.

Automobile Liability	\$1,000,000	Combined Single Limit
(Coverage for all automobiles, owned, hired or non-owned used in performance of the Contract)		

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Professional Liability	\$1,000,000 per Claim and Aggregate
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Any entity hired to perform professional services as a part of this contract shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Contract and with a three year reporting option beyond the annual expiration date of the policy.

Builders Risk/Installation Floater**%100 Completed Value of the Project**

Such insurance shall be on a form acceptable to the CITY's Office of Insurance and Risk Management. The Builder's Risk policy shall include the SPECIAL FORM/ALL RISK COVERAGES. The Builder's Risk and/or Installation policy shall not be subject to a coinsurance clause. A maximum \$10,000 deductible for other than windstorm and hail. For windstorm and hail coverage, the maximum deductible applicable shall be 2% of the completed value of the project. Named insured's shall be: CONTRACTOR, the CITY, and respective members, officials, officers, employees and agents, the ENGINEER, and the PROGRAM MANAGEMENT FIRM(S) (when program management services are provided). The City of Jacksonville, its members, officials, officers, employees and agents are to be named as a loss payee.

Additional Insurance Provisions

- A. Additional Insured: All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the City of Jacksonville and City's members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.
- B. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of the City of Jacksonville and its members, officials, officers employees and agents.
- C. Contractor's Insurance Primary. The insurance provided by the Contractor shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by the City or any City members, officials, officers, employees and agents.
- D. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Contract shall remain the sole and exclusive responsibility of the named insured Contractor. Under no circumstances will the City of Jacksonville and its members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Contract.
- E. Contractor's Insurance Additional Remedy. Compliance with the insurance requirements of this Contract shall not limit the liability of the Contractor or its Subcontractors, employees or agents to the City or others. Any remedy provided to City or City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Contract or otherwise.
- F. Waiver/Estoppel. Neither approval by City nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide insurance as required under this Contract.
- G. Certificates of Insurance. Contractor shall provide the City Certificates of Insurance that shows the corresponding City Contract Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current

certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.

- I. Notice. The Contractor shall provide an endorsement issued by the insurer to provide the City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, the Contractor, as applicable, shall provide said a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.
- J. Survival. Anything to the contrary notwithstanding, the liabilities of the Contractor under this Contract shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.
- L. Special Provisions: Prior to executing this Agreement, Contractor shall present this Contract and Attachment G & H to its Insurance Agent affirming: 1) That the Agent has personally reviewed the insurance requirements of the Contract Documents, and(2) That the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Contractor.

Form 1 – Price Sheet

NAME OF CONSULTANT _____

Proposal Number _____

SCHEDULE OF PROPOSED PRICES/RATES

1. Flat Fee (payable upon completion of project or upon completion of listed deliverables):

2. If charges are based on hours worked, the hourly direct labor rates (without Fringe Benefits) are:

Principal (Partner or Senior Officer): \$_____hr.

Project Manager (Responsible Professional): \$_____hr.

3. Other Direct Project Costs per Unit (please specify)

4. Estimated percentage of total fee to be performed by sub-contractors _____%

5. Please provide any other relevant rates that may apply to this project including average direct hourly labor rates for other categories of proposed personnel

FORM 2
CONFLICT OF INTEREST CERTIFICATE

RFP No. _____

Bidder must execute either Section I or Section II hereunder relative to Florida Statute 112.313(12). Failure to execute either Section may result in rejection of this bid proposal.

SECTION I

I hereby certify that no official or employee of the City or independent agency requiring the goods or services described in these specifications has a material financial interest in this company.

Signature

Company Name

Name of Official (Type or Print)

Business Address

City, State, Zip Code

SECTION II

I hereby certify that the following named City official(s) and employee(s) having material financial interest(s) (in excess of 5%) in this company have filed Conflict of Interest Statements with the Supervisor of Elections, 105 East Monroe Street, Jacksonville, Duval County Florida, prior to bid opening.

Name	Title or Position	Date of Filing
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_____	_____	_____
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_____	_____	_____
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Signature

Company Name

Name of Official (Type or Print)

Business Address

City, State, Zip Code

PUBLIC OFFICIAL DISCLOSURE

Section 126.110 of the Purchasing Code requires that a public official who has a financial interest in a bid or contract make a disclosure at the time that the bid or contract is submitted or at the time that the public official acquires a financial interest in the bid or contract. Please provide disclosure, if applicable, with bid.

Public Official _____

Position Held: _____

Position or Relationship with Bidder: _____

CITY OF JACKSONVILLE



PROCUREMENT DIVISION

214 N. Hogan Street – 8th floor, Jacksonville, Florida 32202
(904) 255-8800-Ph; (904) 255-8837-Fax; www.coj.net

PROCUREMENT PROTEST PROCEDURES

126.106(e) PROTEST PROCEDURES

- 126.106(e)(1) Purpose and Scope
- 126.106(e)(2) Definitions
- 126.106(e)(3) Timely Notice of Protest
- 126.106(e)(4) Extension Request / Supplemental Protest Documentation
- 126.106(e)(5) Delivery
- 126.106(e)(6) Process
- 126.106(e)(7) Protest Hearing Rules and Procedures
- 126.106(e)(8) Independent Agency, Board or Delegated Authority

126.106(e)(1) Purpose and Scope

(a) These protest procedures are promulgated pursuant to § 126.106(e) of the Jacksonville Ordinance Code (the “Code”), which authorizes the Chief of the Procurement Division (the “Chief”) to “prepare and publish rules and regulations governing bid protests.” In the event a court of competent jurisdiction declares any provision of these Procurement Protest Procedures to be unconstitutional, invalid, or otherwise unenforceable, then all remaining provisions shall be severable, valid and enforceable regardless of the invalidity of any other provision.

(b) In accordance with the procedures contained herein, any person or entity that is adversely affected by a decision or an intended decision concerning a solicitation, solicitation documents, award, or any other process or procedure prescribed in the Code and who has standing to protest said decision or intended decision under Florida law (the “Protestant”), must timely file a written Notice of Protest seeking to challenge the decision or intended decision. The issue(s) raised and the information contained in the Notice of Protest and any supplemental documentation filed in accordance with § 126.106(e)(4), hereof, must clearly identify and explain the factual and legal basis for any relief sought, and shall be the only

issue(s) and information the Protestant may present for consideration before the applicable committee.

126.106(e)(2) Definitions

For the purpose of these Bid Protest Procedures, the following definitions are provided:

(a) “Competitive solicitation” or “solicitation” shall include without limitation an invitation to bid, competitive sealed bid, multi-step competitive sealed bid, competitive sealed proposal, or a request for proposals and/or qualifications.

(b) “Posting” means the notification of solicitations, decisions or intended decision, or other matters relating to procurement on a centralized Internet website, by placing the same on the bulletin board(s) designated by the Procurement Division for this purpose, or as may be consistent with § 126.102(m) of the Code.

(c) “Exceptional purchase” means any purchase excepted by law or rule from the requirements for competitive solicitation, including without limitation purchases pursuant to §§ 126.107, 126.206, 126.207, 126.211, 126.307, 126.309, 126.311, 126.312, or 126.313 of the Code.

(d) "Electronic transfer" is limited solely to facsimile transmissions that appear legibly on paper at the place of filing.

(e) "Final Agency Action" means a final decision that results from a proceeding hereunder, and includes actions which are affirmative, negative, injunctive, or declaratory in form.

(f) "Procurement process" has the same meaning as "contract solicitation or award process."

126.106(e)(3) Timely Notice of Protest

(a) **Recommendations of Award and/or Bid Rejection.** A Protester shall have 48 hours after either the posting or written notification of a decision or intended decision, whichever is earlier, in which to file a written Notice of Protest in order to timely challenge or seek relief from a Procurement Division recommended award of an exceptional purchase or an award or recommended conclusion to any bid or proposal solicitation process, including without limitation: (i) a recommendation to reject a bid or proposal; (ii) a contract award; or (iii) the short-listing of bidders or proposers.

(b) **Bid/Proposal Specifications and/or Requirements.** A Protester shall have 10 business days after the posting of a solicitation or 48 hours after the posted date and time of a pre-bid or pre-proposal conference, whichever is earlier, or 48 hours after the posting of an addendum, in which to file a written Notice of Protest in order to timely challenge the requirements, terms and/or conditions contained in bid or proposal documents, including without limitation any provisions governing or establishing: (i) the basis for making the award in question; (ii) evaluation criteria; (iii) equipment, product, or material specifications; (iv) proposed project schedules; (v) statements regarding participation goals or other equal opportunity measures; or (vi) other general solicitation or project requirements.

(c) **Computation of Time** - The computation of the time limitations or periods contained herein shall be governed by and shall be pursuant to Florida Rule of Civil Procedure 1.090(a). Failure to file a written Notice of Protest within the applicable time limitation or period shall constitute a waiver of any right, remedy, or relief available hereunder.

(d) **Form and Content of the Notice of Protest** - A written Notice of Protest shall: (i) be addressed to the Chief; (ii) identify the solicitation, decision, or recommended award in question by number and title or any other language sufficient to enable the Chief to

identify the same; (iii) state the timeliness of the protest; (iv) state Protester's legal standing to protest; and (v) clearly state with particularity the issue(s), material fact(s) and legal authority upon which the protest is based.

126.106(e)(4) Request for Extension to File Supplemental Protest Documentation

At the time of filing a timely Notice of Protest hereunder, a Protester may request an extension of three (3) business days after the date its Notice of Protest is timely received, in which to provide supplemental protest documentation. Failure to do so or to timely submit the supplemental protest documentation shall constitute a waiver of any right to the same.

126.106(e)(5) Delivery

The timely filing of a Notice of Protest shall be accomplished when said notice is actually received by the Procurement Division within the applicable time limitation or period contained herein. Filing a notice may be accomplished by manual transfer via hand-delivery or mail to the Chief of Procurement at 214 N. Hogan Street, 8th floor, Jacksonville, Florida 32202 or by electronic transfer via facsimile to (904) 255-8837. The responsibility and burden of proof that its Notice of Protest has been timely and properly received shall rest with the Protester, regardless as to the method of delivery employed.

126.106(e)(6) Process

(a) Upon receipt of a timely filed written Notice of Protest, the Chief or his/her designee shall schedule and provide notice of the time, date and place that the protest will be heard. The protest will be heard before the General Governmental Awards Committee ("GGAC"), the Professional Services Evaluation Committee ("PSEC"), or the Competitive Sealed Proposal Evaluation Committee ("CSPEC"), whichever is applicable. The Chief or his/her designee shall have the discretion to proceed with the solicitation or contract award process in question or to suspend the same pending the resolution of the protest. To the extent the Chief or his/her designee decides to exercise his/her discretion not to suspend the solicitation or contract award process pending the resolution of the protest, the Chief or his/her designee shall set forth in writing the particular facts and/or circumstances upon which his/her decision is based.

(b) Those persons or entities, other than the Protester, who will be directly affected by the resolution of the protest shall be given notice of the protest hearing, and the Notice of Protest and any supplemental protest

documentation shall be made available to them upon a written request for the same.

(c) When a Notice of Protest is filed pursuant to § 126.106(e)(3)(b), hereof, the Chief or applicable awards committee chairperson shall have the discretion to direct that the solicitation in question not be opened pending the resolution of the protest.

126.106(e)(7) Protest Hearing Rules and Procedures

(a) Hearings hereunder shall be heard before the applicable committee, and shall begin with a general statement of the rules and procedures prescribed herein by a representative of the committee, followed by a general statement of the facts by a representative of the Procurement Division. Representatives of the Protestant, limited solely to its owners, officers, employees and/or legal counsel, will then be required to present its case based solely upon the issue(s) and information contained in the Notice of Protest and any timely submitted supplemental protest documentation. Those persons or entities, other than the Protestant, who have legal standing and will be directly affected by the resolution of the protest will be given an opportunity to be heard and to present information before the committee, which will be followed by a statement and the presentation of information from the Procurement Division and other governmental representatives. The Protestant must establish by the preponderance of the evidence that the protest should be granted based upon the law, facts and information presented. The committee is entitled to ask questions of any party at any time during the hearing.

(b) For hearings hereunder, the formal rules of evidence pursuant to the Florida Evidence Code may be

relaxed at the sole discretion of the presiding chairperson of the applicable committee. Hearsay evidence may be admissible and used to supplement or explain other evidence.

(c) Unless otherwise provided by the Code, the burden of proof shall rest with the Protestant. The standard of proof for proceedings hereunder shall be whether a Procurement Division recommendation or the decision or intended decision in question was clearly erroneous, arbitrary or capricious, fraudulent, or otherwise without any basis in fact or law. In any protest proceeding challenging a decision or intended decision to reject all bids, proposals, or replies, the standard of review shall be whether the decision or intended decision is illegal, arbitrary, dishonest, or fraudulent.

(d) A majority vote of the members of the applicable committee shall be required to grant a protest, hereunder; otherwise, the protest shall be denied, and, upon execution by the Mayor or his designee, said vote and/or decision of the applicable awards committee shall be posted and shall represent final agency action.

126.106(e)(8) Independent Agency, Board or Delegated Authority

If a protest is filed and the solicitation is for the benefit of an independent agency, board, or delegated authority that has its own established procurement procedure and does not use the City's procurement process and/or protest procedures, then the person or entity protesting must follow the protest procedures of that independent agency, board, or delegated authority.

CERTIFICATE OF ADOPTION AND IMPLEMENTATION

The preceding Procurement Protest Procedures are hereby adopted this 1st day of October, 2011, by the undersigned Chief of Procurement for immediate implementation, and will remain in full force and effect until such time as they may be formally revised, amended, supplemented, superseded, or abolished.

Procurement Division



Gregory Pease, Chief
City of Jacksonville
214 N. Hogan Street, 8th floor
Jacksonville, Florida 32202
(904) 255-8800 – Phone
(904) 255-8837 – Facsimile
gpease@coj.net



City of Jacksonville, Florida

PROCUREMENT DIVISION

ONE CITY. ONE JACKSONVILLE.

Addendum Number: **One (1)**
Proposal Number: **P-65-17**
Title of RFP: **Guaranteed Energy Performance Contracting Services**
Due Date and Time: Wednesday, July 31, 2017, 2:00 P.M. EDT

This addendum is issued for the information of proposers on the above titled project. This addendum will take precedent over the original RFP should there be any discrepancies noted.

The following change has been made to the above referenced Request for Proposal.

The Pre-Proposal meeting scheduled for Monday, July 31, 2017, has been changed from Non-Mandatory to **Mandatory**.

A MANDATORY PRE-PROPOSAL MEETING HAS BEEN SCHEDULED for:

Monday, July 31, 2017, at 11:00 am
Ed Ball Building
214 N. Hogan Street, 10th Floor, Conference Room 5
Jacksonville, FL 32202.

FAILURE TO ATTEND THE MANDATORY PRE-PROPOSAL MEETING SHALL RESULT IN THE DISQUALIFICATION OF THE PROPOSER.

Date: July 19, 2017

Alex Baker
Professional Services Specialist

PLEASE SIGN AND RETURN ADDENDUM WITH ENTIRE PROPOSAL PACKAGE IN A SEALED ENVELOPE.

Proposers' Signature

Title

Company Name

Date



City of Jacksonville, Florida

PROCUREMENT DIVISION

ONE CITY. ONE JACKSONVILLE.

Two (2)

Proposal Number: **P-65-17**
Title of RFP: **Guaranteed Energy Performance Contracting Services**

Due Date and Time: Wednesday, July 31, 2017, 2:00 P.M. ET

This addendum is issued for the information of proposers on the above titled project. This addendum will take precedent over the original RFP should there be any discrepancies noted.

The following change has been made to the above referenced Request for Proposal.

The Due Date for the above referenced RFP has been changed from Wednesday, August 23, 2017 to **Wednesday, August 30, 2017, 2:00 pm**

Date: August 8, 2017

Alex Baker
Professional Services Specialist

PLEASE SIGN AND RETURN ADDENDUM WITH ENTIRE PROPOSAL PACKAGE IN A SEALED ENVELOPE.

Proposers' Signature

Title

Company Name

Date



City of Jacksonville, Florida

PROCUREMENT DIVISION

ONE CITY. ONE JACKSONVILLE.

Addendum No.. **THREE (3)**

Proposal Number: **P-65-17**

Title of RFP: **Guaranteed Energy Performance Contracting Services**

Due Date and Time: Wednesday, August 30, 2017, 2:00 P.M. ET

This addendum is issued for the information of proposers on the above titled project. This addendum will take precedent over the original RFP should there be any discrepancies noted.

Attached are questions received and the answers to those questions.

Date: August 16, 2017

Alex Baker
Professional Services Specialist

PLEASE SIGN AND RETURN ADDENDUM WITH ENTIRE PROPOSAL PACKAGE IN A SEALED ENVELOPE.

Proposers' Signature

Title

Company Name

Date

**Guaranteed Energy Performance Contracting Services
RFP # P-65-17**

ADDENDUM #3

Questions & Responses:

1. Can you please provide the names and titles of the people of the selection committee.
Response: Section 126.302 (a) of the Purchasing Code states the PSEC (Professional Services Evaluation Committee) is made up of
 - a. The Chief of Procurement or his designee who will serve as Chair**
 - b. One representative from the Finance Department**
 - c. One representative from the Office of General Counsel**
 - d. Two representatives from the using agency who will also serve as the PSEC subcommittee.**

2. Section 2.6 Negotiation and Award of Contract (Page 9)
 - a. Subsection C states "...should the Buyer determine that it is in the Buyer's best interest not to enter into an EPC, the cost of the IGA shall become fully due and payable by the Buyer within sixty(60) days of delivery of the Report." Then further down the paragraph, the document states "Buyer shall have no payment obligation under the Contract in the event the ESCO's final IGA and Report do not contain a package of ECM's which, if implemented, will provide the Buyer with cash savings sufficient to fund Buyer's payment of all costs and fees associated with the EPC, including 1) the fee associated with the IGA, 2) all monthly payments on a lease purchase agreement or any other finance structure used to finance the ECMs, 3) any annual fees for monitoring and maintenance incurred by the ESCO."

 - b. The first statement appears to be in conflict with the second statement, in that the first statement establishes a fee for service relationship between the Buyer and the ESCO, while the second statement establishes an assumption of risk by the ESCO. Could the City comment and clarify their position on this conflict?
Response: The ESCO final IGA report must contain a package of ECM's that will provide the city with cash savings sufficient to fund all costs. In the event the ESCO final report cannot provide a savings the city shall have no payment obligations.

 - c. Within the second statement, there are several criteria for establishing that an implemented project would cover all cost associated with implementation, monitoring, and maintenance. What is not stated are the many variables which go into these criteria, such as term of finance, level of maintenance, M&V approach, which all significantly affect the total cost of project delivery and could make a viable project unviable or vice versa, depending on the variables which are included in the project. Could the City comment and clarify any minimum standards or expectation they have with regard to these variables and the process if a project's viability is affected by these selections? As an option,

could the City limit this language to indicate that as long as a developed project is compliant with the conditions established in FS 489.145, that the ESCO would have met the development obligation to be paid for the IGA effort?

Response: Terms of finance, level of maintenance, M&V approach will be negotiated in the EPC. It is the City's expectation that the ESCO final report would contain ECM's that meets all criteria in providing energy savings sufficient to fund the project that is in compliance with the conditions established in FS 489.145.

3. Section 3 General Terms and Conditions of Agreement (Page 20)

- a. Subsection 3.17 Taxes states, "Exemption certificates will be provided upon request. Contractor shall not include any state, local, and federal taxes in any pricing quoted to Buyer."
- b. Tax Exemption certificates are typically applicable when a tax exempt Buyer is directly purchasing materials from a material vendor. In that a EPC contract is a lump sum design/build contract, the ESCO is legally responsible for the payment of all sales, use, or other taxes associated with the procurement of the materials used in the implementation of the project.
- c. Typically, the means for a tax exempt Buyer to take advantage of their tax exempt status within a lump sum implementation contract is to execute an Owner Direct Purchase (ODP) program, where the Buyer issues a purchase order to the material vendor directly, without the inclusion any sales or use taxes. Additionally the Buyer issues a deductive change order to the ESCO for the value of the ODP purchased materials and the associated sales and use taxes, which were included in the ESCO's final proposal and contract for the project.
- d. Could the City comment and clarify their position on the mechanism to allow them to legally take advantage of their tax exempt status in the purchase of materials for the EPC project?

Response: In instances where it benefits the City, the City may elect to enter into a direct purchase and thus use its tax exempt status. If the funding used for the direct purchase is encumbered by the contract between the City and the Vendor, a deductive change order will be issued to reflect that change to the contract.

4. Section 4 Description of Services and Deliverables (Page 28)

- a. Section 4 states at the bottom of page 28, "The Buyer will not be responsible for any capital investments upfront and it is awarding ESCO's responsibility to provide funding to mitigate any requirements for addressing any and all identified ECM's agreed upon by the Buyer."
- b. It appears this section is stating that the City's expectation is for the project to be ESCO funded and financed, which is not typical with these kind of contracts. Typically government entities will seek a third party provided municipal lease to finance an EPC project so they might take advantage of their

tax exempt status and finance at a lower cost of funds. If the ESCO provides project financing, the transaction would have to be taxable, since the ESCO is not a tax exempt entity, and would result in a high cost of funds.

- c. Could the City comment and clarify their position on its willingness to utilize 3rd party municipal lease financing in addition to ESCO provided financing?

Response: Please see the Response to 2c above which is repeated here: Terms of finance, level of maintenance, M&V approach will be negotiated in the EPC. It is the City's expectation that the ESCO final report would contain ECM's that meets all criteria in providing energy savings sufficient to fund the project that is in compliance with the conditions established in FS 489.145.

5. Section 7 Prepare A Draft Technical Energy Audit Report (Page 32)

- a. Subsection 8) Rebates, subsidies, and Incentives, second sentence states, "Discuss which rebates, subsidies and/or third-party aid the ESCO will guarantee and whether any additional rebates, subsidies, and/or third-party aid will accrue to the benefit of the Buyer."

- b. It appears that the City is asking the ESCO to guarantee rebates from the local utility, which is not really feasible. The ESCO can estimate rebates based on published program guides, but there is no mechanism with the local utility. For the City of Jacksonville, this is further complicated by the fact that all of the City facilities are within the local service area of JEA, which is a municipal utility, and not within the service area of an Investor Owned Utility (IOU). IOUs are governed by the Public Service Commission (PSC) and as such cannot change or eliminate rebate and incentive programs without PSC approval. Municipal utilities, on the other hand, do not report to the PSC and as such have much more flexibility to remove or modify existing rebate and incentive programs at any time.

Response: Any ECM by the ESCO that qualifies for energy savings rebates shall be the responsibility of the ESCO to qualify and submit on behalf of the City.

- c. Since the ESCO is at the mercy of JEA for the availability of any particular rebate or incentive, which are subject to change, could the City comment and clarify their position on the expectation that the ESCO guarantee utility rebates and incentives?

Response: If the ECM's provided qualify for any rebates it is the ESCO's responsibility to submit the application on behalf of the City.

6. Attachment B Evaluation Matrix, Subsection 9 (Page 37)

- a. The last paragraph of the section is confusing and concerning in several matters:
 - i. It appears the last sentence is incomplete and should be included with the prior sentence.
 - ii. It is unclear whether the City intends this section to be applicable to the IGA only or the IGA and the EPC implementation contract.
 - iii. With the specialization of labor and the unique talents required to conduct and deliver an IGA, it is not unusual for an ESCO to utilize

specialty sub-consultants in the project. The ESCO is responsible for the execution of this work and typically assumes the financial guarantee risk for the performance of the systems defined in this work. It does not seem equitable to require an ESCO to assume responsibility or risk associated with the work of a sub-consultant without the ability to apply appropriate compensation.

- b. Could the City comment and clarify their position on these matters, regarding the application of markup and profit to the use of sub-contractors or sub-consultants?

Response: The last sentence within this criteria should read as follows: "No mark-up or profit shall be paid on non-labor related costs, reimbursables, or on services provided by subconsultants or others." Rates for subconsultants and the prime must conform to the stipulations required within the RFP.

7. Attachment F (Model) Energy Audit Agreement (Page 60)

- a. Article 3 Payment states, "The Company is undertaking work under this Agreement completely at risk for payment and in consideration of the Agency's good faith intention to negotiate the potential Energy Performance Contract with the Company. The Company understands and agrees that its only source for payment for this Energy Audit is as part of the potential Energy Performance Contract and is contingent upon realization of energy cost savings being equal to or greater than the total cost of the design and installation of the Company's recommended ECMs."
- b. Article 3 of Attachment F appears to be in further conflict with Section 2.6 referenced above in Item 1. Section 2.6 initially establishes a fee for service relationship for the development cost of the IGA and then transitions the relationship into an assumption of risk by the ESCO for the viability of a project based upon given criteria, though those criteria are under defined as stated in Item 1 above.
- c. Article 3 of Attachment F appears to further transition the relationship between the Buyer and ESCO to one of complete assumption of risk, not only for the viability of the project based upon given criteria, but also based upon the willingness of the Buyer to move forward with a viable project. Could the City comment and clarify their position for payment to the ESCO for the IGA, once the ESCO completes the substantial effort required by the audit, if the City elects to not move forward to an EPC contract for a viable project?

Response: If the city decides to not move forward with an EPC the city is obligated to pay for the IGA as described in section 2.6 C.



City of Jacksonville, Florida

PROCUREMENT DIVISION

ONE CITY. ONE JACKSONVILLE.

Addendum No.. **FOUR (4)**
Proposal Number: **P-65-17**
Title of RFP: **Guaranteed Energy Performance Contracting Services**
Due Date and Time: Wednesday, August 30, 2017, 2:00 P.M. ET

This addendum is issued for the information of proposers on the above titled project. This addendum will take precedent over the original RFP should there be any discrepancies noted.

Attached are questions received and the answers to those questions.

Date: August 22, 2017

Alex Baker
Professional Services Specialist

PLEASE SIGN AND RETURN ADDENDUM WITH ENTIRE PROPOSAL PACKAGE IN A SEALED ENVELOPE.

Proposers' Signature

Title

Company Name

Date

**Guaranteed Energy Performance Contracting Services
RFP # P-65-17**

ADDENDUM #4

Questions & Responses:

1. Section 1.16 – Project Schedule, item 2A: Per the Pre-Bid meeting the site visits were revised to non-mandatory and took place on July 31, 2017. No additional site visits will occur prior to the RFP submittal date of 8/23/17.
Correct
2. Section 1.16 – Project Schedule: Per the Pre-Bid meeting, numbers 6 & 7, were omitted. The events outlined are accurate and the numbering sequence is to be revised.
Correct
3. Section 4, Description of Services and Deliverables (pg. 28): 2nd sentence uses acronym “EMCs.” We believe the City intended to use the acronym “ECMs” for energy conservation measures.
4. Section 4, Description of Services and Deliverables, General Scope, #3 Allowable Cost and Savings Factors (pg. 29): Per Pre-Bid meeting, **energy cost savings to be revised to utility cost savings** (in accordance with FS 489.145). This amendment will affect the language in the following areas/pages of Section 4:
 - a. #5 Establish Baseline Consumption (pg. 30)
 - b. #6 Conduction Comprehensive Detailed Energy Audit Analysis (pg. 30)
 - c. #7 Prepare a Draft Technical Energy Audit Report (pg. 30).**Correct. The ESCO will need to examine utility bills as indicated in Section 4 #5 to meet the requirements of Section 4 #5,6,&7.**
5. Attachment B – Evaluation Matrix, #6 Proximity to the Project: Per the Pre-Bid meeting, respondents should list branch offices with physical location(s) with number of employee(s) closest to Jacksonville, FL and should not include non-commercial/business addresses or P.O.Box locations. **Correct. Companies with local branch offices located in or near the Jacksonville area will need to list location and the number of employees assigned to that office as indicated in Attachment B #6.**
6. Attachment A – Response Format #3, Required Forms: Please provide the format or sample form to be completed for business references, or should respondents **-consider the information listed in Attachment B, 1.b.xii and Attachment B, 9.2 as appropriate to complete this requirement.**
7. Attachment B – Evaluation Matrix, # 9, A Willingness to Meet Both Time and Budget Requirements for the Project: Per the Pre-Bid meeting, please provide clarification in regards to the City’s expectations for respondents related to proposed overhead rates, non-labor related costs and reimbursables or services provided by sub-consultants. **As stated, during contract negotiations, successful proposers will be required to provide a schedule of proposed rates and costs which shall remain in effect throughout the length of the contract.**

PUBLIC NOTICE
'Revised' AGENDA
PROFESSIONAL SERVICES EVALUATION COMMITTEE MEETING
Thursday, October 26, 2017, 10:00 a.m.
Eighth Floor, Conference Room 851
Jacksonville, FL 32202

Committee Members: Gregory Pease, Chairman
Patrick Greive, Member, Treasury
Jeff Close, Member, OGC

Subcommittee Members	ITEM #	TITLE & ACTION	MOTION	CONTR EXP	OUTCOME
Michael Thomas Ed. Randolph	P-16-13	Contract Amendment No. 7 Contract Management & Maintenance/Caretaker Support for Cecil Commerce Center Office of Economic Development	That Contract No. 7846-02 between the City of Jacksonville and VT Griffin Services Inc., for the Contract Management/Caretaker Maintenance Support for Cecil Commerce Center is amended to: (i) amend Exhibit 'D' to reduce the scope of Over and Above Services to reflect the actual work performed to date; (ii) decrease the Over and Above Services balance in 3.1.2 of the contract by \$915,454.28 and reallocate those funds to Section 3.1.1 for Management and Maintenance/caretaker Support Services; (iii) decrease the maximum indebtedness by \$156,864.07 to a new total maximum of \$7,457,497.62 . All other terms and conditions shall remain the same except for such changes as the Office of General Counsel may deem appropriate to ensure compliance with the City's Ordinances, Procurement policies and procedures and applicable Federal and State laws."	07/31/18	
Dinah Mason William Joyce	P-51-17	Contract Amendment No. 1 Debris Monitoring and Management Planning & Operation Department of Public Works	That Contract No. 7420-13 between the City of Jacksonville and Eisman & Russo, Inc., for Debris Monitoring and Management Planning & Operations is amended to increase the maximum indebtedness by \$5,000,000.00 to a new not-to-exceed total maximum of \$10,000,000.00. All other terms and conditions shall remain the same except for such changes as the Office of General Counsel may deem appropriate to ensure compliance with the City's Ordinances, Procurement policies and procedures and applicable Federal and State laws.	09/01/19	
Jill Enz Duane Kent	P-08-17	Fee & Contract Negotiations (deferred 10/19/17) Professional Design Services for Lonnie Miller Park Amenities Department of Public Works	That the City of Jacksonville enter into a contract with Pond & Company Corporation for the Professional Design Services for Lonnie Miller Park Amenities by: (i) incorporating the attached Scope of Services identified as Exhibit 'A' and the Contract Fee Schedule identified as Exhibit 'B'; (ii) providing a lump-sum Design Fee in the amount of \$135,240.04; and not-to-exceed limits for: Public Involvement of 4,404.40; Survey for \$22,850.00; Civil Engineering for \$49,884.44; Geotechnical/Environmental for \$16,200.00; Natural Resources for \$5,198.71; Electrical Engineering for \$28,196.58; Irrigation Design for \$4,675.00; Structural Design for \$1,900.53; and Permitting for \$773.00; (iii) proving a not-to-exceed maximum indebtedness to the City in the amount of \$269,322.70; and (iv) providing a period of service from date of execution of the		

			contract to project completion. All other terms and conditions are per the RFP and the city's standard contract language.		
Jeff Foster Will Williams	P-07-10	Contract Amendment No. 13 Trail Ridge Landfill Expansion Permitting and Design Department of Public Works/Solid Waste Division	That Contract No. 6354-13 between the City of Jacksonville and CDM Smith, Inc., for Trail Ridge Landfill Expansion Permitting and Design is amended to: (i) incorporate the attached Scope of Work identified as Exhibit 'Y'; (ii) incorporate the attached Contract Fee Summary identified as Exhibit 'Z'; (iii) increase the maximum indebtedness by \$528,634.00 to a new not-to-exceed total maximum of \$8,929,291.00. All other terms and conditions shall remain the same except for such changes as the Office of General Counsel may deem appropriate to ensure compliance with the City's Ordinances, Procurement policies and procedures and applicable Federal and State laws.	To Project Completion	
Tom Fallin Roy Birbal	P-65-17	Subcommittee Report Guaranteed Energy Performance Contracting Services Department of Public Works	It is the consensus of the committee that of the six (6) companies responding to the Request for Proposal (RFP) all were found to be responsive, interested, qualified and available to provide the services. The ranking of first, second and third, designates the order of qualification of these companies to perform the required services and alphabetically they are: 3) Ameresco, Inc. 2) Honeywell, Inc. 1) Johnson Controls, Inc. We recommend the above list is forwarded to the Mayor for final selection so that fee & contract negotiations may begin with <u>Johnson Controls, Inc.</u> , the number one ranked firm.		
Dennis Steele Michael Chao	P-71-17	Subcommittee Report Asbestos Abatement Consulting Services Neighborhoods Department/Municipal Code Compliance Division	It is the consensus of the committee that of the four (4) companies responding to the Request for Proposal (RFP) all were found to be responsive, interested, qualified and available to provide the services. The ranking of first, second and third, designates the order of qualification of these companies to perform the required services and alphabetically they are: 2) Aerostar SES, LLC 1) Apex Companies, LLC 3) AMEC Foster We recommend the above list is forwarded to the Mayor for final selection so that fee and contract negotiations may begin with <u>Apex Companies, LLC</u> , the number one ranked firm.		
Stephanie Burch Julie Adamson	P-02-18	Approval to Advertise Property Donation - Project Proposal per Ordinance 122.466 (c) Neighborhoods Department	That the committee review/approve advertisement for property donation per Ordinance 122.466		
MEETING ADJOURNED: _____					

CC: Council Auditor
Subcommittee Members



ONE CITY. ONE JACKSONVILLE.

City of Jacksonville, Florida

Lenny Curry, Mayor


Department of Public Works
Engineering & Construction Management Division
214 N. Hogan Street, 10th Floor
Jacksonville, FL 32202
(904) 255-8762
www.coj.net

October 24, 2017

TO: Gregory W. Pease, Chairman
Professional Services Evaluation Committee

THRU: John P. Pappas, P.E.
Director

FROM: Tom Fallin, P. E., Chief
Engineering and Construction Management Division

Roy Birbal, Chief
Public Buildings 

SUBJECT: P-65-17 Energy Performance Contracting Services

The subcommittee received Six (6) proposals for evaluation for the subject project and found all to be responsive, interested, qualified and available to provide the services required by the RFP.

The proposals were evaluated using the criteria outlined in the Purchasing Code as augmented by the RFP (see attached matrix).

Based on the above, the following firms listed alphabetically were determined to be the most qualified of those submitting proposals. The ranking of first, second, and third designates the order of qualification of these firms to perform the required services.

3. Ameresco, Inc.
2. Honeywell, Inc.
1. Johnson Controls, Inc.

We recommend that the above list be forwarded to the Mayor for approval and that shortlist interviews be scheduled.

JPP/lw

Attachment: Scoring Matrix

cc: Lori West, PW Contract Specialist

[illegible]



City of Jacksonville, Florida

Lenny Curry, Mayor

Procurement Division
Ed Ball Building
214 N. Hogan Street, Suite 800
Jacksonville, Florida 32202

ONE CITY. ONE JACKSONVILLE.

November 6, 2017

Mr. Justin Newbern
Johnson Controls, Inc.
4820 Executive Park Court, Suite 109
Jacksonville, FL 32216

Ref: **P-65-17 Guaranteed Energy Performance Contracting Services**
Department of Public Works

Dear Consultant:

The Honorable Lenny Curry, Mayor of the City of Jacksonville, Florida, has approved the selection of your firm for the above referenced project. Fee and Contract negotiations with the Professional Services Evaluation Committee (PSEC) are now in order. The following subcommittee members are the persons you will deal with directly in these negotiations, and they will contact you soon to discuss your fee proposal:

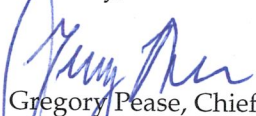
Subcommittee Members:

Thomas Fallin

Roy Birbal

The City of Jacksonville appreciates your interest in doing business with the city and we look forward to working with you.

Sincerely,


Gregory Pease, Chief

Procurement Division

Chairman, Professional Services
Evaluation Committee

GP/rb

cc: Subcommittee Members
Council Auditor

FINANCE & ADMINISTRATION DEPARTMENT

214 N. Hogan Street, Suite 800 | Jacksonville, FL 32202 | Phone: 904.255.8800 Fax: 904.255.8837 | www.coj.net

**MASTER SERVICES CONTRACT
BETWEEN
THE CITY OF JACKSONVILLE
AND
JOHNSON CONTROLS, INC.
FOR
GUARANTEED ENERGY PERFORMANCE CONTRACTING SERVICES**

THIS MASTER SERVICES CONTRACT FOR GUARANTEED ENERGY PERFORMANCE CONTRACTING SERVICES ("Contract") is made and entered into this 14 day of March, 2018 (the "Effective Date"), by and between the CITY OF JACKSONVILLE (the "CITY"), a municipal corporation existing under the Constitution and the laws of the State of Florida, and

JOHNSON CONTROLS, INC. (the "CONTRACTOR" or "JCI"), a Wisconsin corporation authorized to transact business in Florida and with an office at 4820 Executive Park Court, Ste. 109, Jacksonville, FL 32216.

WHEREAS, the CITY issued a Request for Proposal No. P-65-17 (the "RFP") for certain services described in the RFP; and

WHEREAS, based on CONTRACTOR'S response to the RFP dated August 30, 2017 (the "Response"), the CITY has negotiated and awarded this Contract to CONTRACTOR;

WHEREAS, the CONTRACTOR is party to the state term contract procured by the State of Florida, Department of Management Services, ITN No. 24-973-320-X, Contract No. 973-320-08-1, Comprehensive Energy Strategy, which enables the CONTRACTOR to perform work under the Guaranteed Energy, Water, and Wastewater Performance Savings Contracting Act, codified at section 489.145 of the Florida Statutes; and

WHEREAS, the CITY is responsible for the operation, management and maintenance of the facilities as described in Article 1 of this Contract (the "Facility(s)"); and

WHEREAS, an IGA (as defined in the RFP) and savings analysis (the "Report") must be performed at the Facility(s) in order to determine the feasibility of entering into a guaranteed energy performance savings contract (the "Energy Performance Contract" or "EPC") to provide for the installation and implementation of energy conservation measures ("ECMs") at the Facility; and

WHEREAS, if the ECMs are demonstrated to be feasible, and if the amount of energy, water, and operational cost savings can be reasonably ascertained and guaranteed in an amount sufficient to cover all costs associated with an energy performance contracting project at the Facility(s), the Parties intend to negotiate an Energy Performance Contract under which the CONTRACTOR shall design, procure, install, implement, maintain and monitor such ECMs at the Facility(s);

NOW THEREFORE, in consideration of the premises and the mutual covenants contained below, the parties agree as follows:

Article 1. Contract Structure. This Contract shall serve as a master agreement between the parties. This Contract sets forth the basic terms that shall apply to the performance of the IGA services by Contractor during the term of this Contract. Specific terms that shall apply to a particular Facility and the performance of particular IGA services ("Services") shall be set forth in an IGAA, as defined in the RFP, substantially in the form of Attachment F to the RFP or in some other document mutually agreed upon between the parties. Each such IGAA shall reference this Contract and shall be governed by the terms

and conditions herein. In the event of a conflict between an IGAA and this Contract, the terms and conditions of this Contract shall control unless the IGAA expressly states that the terms and conditions of the IGAA shall control. Specific terms in an IGAA shall not affect any other IGAA under this Contract without explicit agreement of the parties.

Article 2. This Contract consists of the following documents, which are hereby incorporated as if fully set forth herein and which, in case of conflict, shall have priority in the order listed:

- This document, as modified by any subsequent signed amendments
- Any amendments to the RFP
- Specific information regarding the RFP (Section 1 of the RFP)
- Description of Services and Deliverables (Section 4 of the RFP)
- General Instructions to Respondents (Section 2 of the RFP)
- General Contract Conditions (Section 3 of the RFP)
- Any IGAA
- The Response, provided that any terms in the Response that are prohibited under the RFP shall not be included in this Contract

Article 3. Performance of IGA. The IGA will be performed by CONTRACTOR as specified in the RFP and the Response. The scope of the IGA will be as follows:

The CONTRACTOR will

- Perform the IGA
- Prepare a Report that specifically identifies the energy, water, and wastewater improvements and operational changes which are recommended to be installed or implemented and detailed measurement and verification plan for each measure
- Deliver a Draft version of the *"Implementation Contract"* for negotiation of final terms and conditions with the CITY.

As outlined in Section 4, Description of Services & Deliverables of the RFP, Facilities and associated ECMs will be selected by the CITY. The facilities, timeline, compensation, and project contacts will be specified on a phased basis through written agreement (task order) between the CITY and CONTRACTOR.

The CITY shall provide facility information in order for the CONTRACTOR to calculate the compensation for a given phase's IGA in accordance with the following format.

Facility Name	Facility Type	Address	Gross Square Footage
---------------	---------------	---------	----------------------

The Report shall contain detailed projections of energy and cost savings to be obtained at the Facility(s) as a result of the installation of the recommended ECMs. The savings calculations must utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings for the Facility(s) (i.e., accurate marginal cost for each unit of savings at the time the audit is performed; documented material and operational costs actually avoided; adjustments to the baseline to reflect current conditions at the Facility(s) compared to the historic base period; calculations which account for the interactive effects of the recommended ECMs). The Report shall outline projects which:

- Fund the facility improvements utilizing energy, operational, maintenance, and capital cost avoidance savings over a maximum period of 20 years per FL State Statute 489.145.
- Develop ECMs which will lower the CITY's operating costs and/or improve facility operating conditions.

Allowable project savings and funding are as follows:

- Electrical consumption (kWh), Electrical Demand (kW, on- and off-peak), Potable water consumption (kgal or ccf), Sewer consumption (kgal or ccf), Reclaimed usage (kgal), Natural gas consumption (Therms), and Chilled Water (ton-hours) and associated fees and taxes
- Utility marketing, distribution, and/or delivery costs
- CITY material/commodity costs
- Outside Maintenance Labor Costs
- Existing contract cost savings throughout the project term or other cost savings attributable to the CITY's behavioral modifications, facility operating schedule or efficiency plan
- Escalation rates for utilities and commodities shall be the greater of 3% annually or the actual utility rates
- Escalation rates for maintenance and material shall be the greater of 3% annually or the Consumer Price Index (CPI)
- Utility rate structure adjustments (rate category change)
- Deferred maintenance reduction and/or emergency repair costs
- Capital Improvement Budget funds, capital contribution funds, and/or offset of future CITY costs
- Utility Provider and/or State or Federal rebates or grants

The Report shall clearly describe how utility tariffs were used to calculate savings for all ECMs. The Report shall describe the CONTRACTOR's plan for installing or implementing the ECMs in the Facility(s), including all anticipated costs associated with such installation and implementation. The primary purpose of the Report is to provide an engineering and economic basis for negotiating an Energy Performance Contract between the CITY and the CONTRACTOR; however, the CITY shall be under no obligation to negotiate such a contract.

The CONTRACTOR shall perform the following tasks in performing the IGA and preparing the Report:

A. Collect General Facility(s) Information

The CONTRACTOR shall collect general Facility(s) information such as: size, age, construction type, condition and general use of the Facility(s). The CONTRACTOR shall also collect and summarize Facility(s) utility cost and consumption data for the most recent 36 month period. The CONTRACTOR shall evaluate the impact on utility cost and consumption of any energy initiatives currently being installed or currently planned to be installed by the CITY in the Facility(s) which will remain separate from the Energy Performance Contract throughout the duration of that agreement for those ECMs under consideration.

The CITY shall make available (or cause its energy suppliers to make available) all records and data concerning utility usage and billed amounts for the Facility(s) for the most current 36 month period, if available, including: Utility records; occupancy information; descriptions of any changes in the structure of the Facility(s) or its heating, cooling, lighting or other systems or energy requirements; descriptions of all major energy and water consuming or energy and water saving equipment used in the Facility(s); any comfort problems, code deficiencies and description of energy management procedures presently utilized. The CITY shall also make available a record of any energy, water, and operational related improvements or modifications that have been installed during the past three years, or are currently being installed or are currently planned to be installed by the CITY in the Facility(s) separate from the Energy Performance

Contract throughout the duration of that agreement. The CITY shall also make available copies of drawings, equipment logs and maintenance work orders to the CONTRACTOR. (See Exhibit 1)

B. Analyze Existing Systems and Equipment

The CONTRACTOR shall compile a condition assessment (e.g. good, fair, poor) based on a physical inspection of the major electrical, mechanical, and plumbing systems at the Facility(s) for the development of a recommended ECM list, including:

1. Cooling systems and related equipment;
2. Heating and heat distribution systems;
3. Automatic temperature control systems and equipment;
4. Air distribution systems and equipment;
5. Outdoor ventilation systems and equipment;
6. Kitchen and associated dining room equipment, if applicable;
7. Exhaust systems and equipment;
8. Hot water systems;
9. Electric motors 5 HP and above, transmission and drive systems;
10. Interior and exterior lighting;
11. Laundry equipment, if applicable;
12. Building Envelope;
13. Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.; and,
14. Other major energy, water, wastewater systems and/or systems/conditions which impact operational costs and budgeting of the CITY, if applicable.

The analysis shall address the following considerations:

- a. The loads, efficiencies or hours of operation for each system (where Facility(s) operating or climatic conditions necessitate, engineering estimates may be used, but for large fluctuating loads with high potential savings appropriate measurements are required unless waived by the CITY); and
- b. Current operating condition for each system.

The CONTRACTOR shall conduct interviews with Facility(s) operation and maintenance staff regarding the Facility(s)'s mechanical systems operation, occupancy patterns and problems with comfort levels or equipment reliability.

C. Establish Base Year Consumption and Reconcile with End Use Consumption Estimates

The CONTRACTOR may, where practical and cost-effective based upon the ECMs under consideration, analyze loading, usage and/or hours of operation for all major end uses representing more than 5% of total Facility(s) consumption including, but not limited to:

1. Lighting
2. Heating
3. Cooling
4. HVAC motors (fans and pumps)
5. Plug load
6. Kitchen equipment
7. Other equipment
8. Miscellaneous

Where loading and/or usage are highly uncertain, the CONTRACTOR shall employ spot measurement and/or short term monitoring at its discretion, or at the request of the CITY. Reasonable applications of measurement typically include variable loads that are likely candidates for conservation measures, such as cooling equipment. The CONTRACTOR shall consult with Facility(s) staff and account for any unusual or anomalous utility bills which may skew Base Year consumption from a reasonable representation.

Baseline Development: The CONTRACTOR shall develop the CITY's Baseline model as part of the Audit. The CONTRACTOR and the CITY shall mutually agree on the Baseline model prior to final contract (EPC) approval by the CITY. Where practical and cost-effective based upon the ECMs under consideration, the Baseline model shall represent pre-existing energy consumption for all end uses within the Facility(s). Straight-line calculations in accordance with industry standards may be utilized for water conservation measures, lighting conservation measures or for ECMs where the anticipated impact on utility or budgetary costs are less than 10%. Operational savings and any capital cost avoidance savings shall be calculated in accordance with F.S. 489.145.

Where appropriate, the Baseline model shall be developed with a whole-facility simulation approach using one of the following commercially-available energy simulation software packages:

- Carrier HAP
- Trane TRACE
- Retscreen 4
- eQuest
- DOE-2 and variations

The CONTRACTOR shall use the same energy simulation software to develop the projected energy cost savings that was used to develop the Baseline. Projected energy consumption must be modeled using the same weather data and operating conditions as the established Baseline model.

The Baseline model shall reflect all energy-related effects of the current design features of the Facility(s) such as, but not limited to, quantity and type of glass, facility orientation with respect to the physical site, overall wall and roof thermal resistance values, ventilation air requirements, humidity level, occupancy, and actual operating schedules. The Baseline model shall incorporate the energy-related effects of all renovations and/or modifications to the building envelope, internal spaces, and energy-consuming systems subsequent to the date of original construction.

The Baseline model shall be developed in accordance with recommendations and methods promulgated by professional societies and governmental organizations, i.e. industry standards, such as:

- *The Federal Energy Management Program's M&V Guidelines: Measurement and Verification for Federal Energy Management Projects v.3.0*
- *The American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE)*
- *International Performance Measurement and Verification Protocol January 2012*

Baseline Calibration: The Baseline model shall be developed and calibrated with the assistance of utility bill data for no less than the immediately preceding 36-month period in order to develop an energy baseline model that is suitable for CITY consideration. A detailed description of all existing Baseline conditions, development methods, calibration procedures, adjustments, and assumptions for each facility must be provided.

D. Develop List of Potential ECMs

The CONTRACTOR shall:

1. Identify and propose potential ECMs for installation or implementation at the Facility(s), including water conservation measures;
2. Estimate the cost, savings and life expectancy of each proposed ECM;
3. Specify Facility(s) operations and maintenance procedures which will be affected by the installation/implementation of the proposed ECMs;
4. Provide analysis methodology, supporting calculations and assumptions used to estimate savings, which shall be based on the life cycle cost calculations described in section 255.255 of the Florida Statutes. Parties may reduce financing amount by grants, rebates, or capital funding. However, pursuant to Florida Statute 489.145 (4)(j), grants, rebates, or capital funding shall not be applied to life cycle cost calculations;
5. Calculate projected energy cost savings as the difference between Baseline energy, water, and operational costs and the costs that are expected to result from the proposed ECMs;
6. Provide access to the computer simulation program and all inputs and assumptions used if requested by the CITY;
7. Provide a preliminary commissioning plan for the proposed ECMs;
8. Provide detailed calculations for any rate savings proposals;
9. Provide detailed supporting calculations for any proposed maintenance or other operational savings;
10. Estimate any environmental costs or benefits of the proposed ECMs (e.g., disposal costs, avoided emissions, water conservation); and
11. Comply with all applicable state, federal and local codes and regulations in effect at the time of this analysis for all proposed ECMs.

E. Establish Measurement & Verification Methods

Measurement & Verification of cost savings shall be performed using a methodology from the *International Performance Measurement and Verification Protocol January 2012* and account for actual savings as required in Florida Statute 489.145(3)(d)(2). Actual savings are to be measured against the Baseline in the CONTRACTOR's Annual Reconciliation. The CONTRACTOR shall state which of the following Measurement & Verification methods will be used in the

CONTRACTOR's Annual Reconciliation, and the City Auditor or City Designee shall agree to the exact Measurement & Verification method for each audit on an individual ECM basis and stipulate in the Audit. Furthermore, Degree Day and related data sources shall be identified and agreed to in the audit document:

- Option A: Retrofit Isolation : Key Parameter Measurement. Measurement of Key Variables may be short term or continuous, depending on ECM.
- Option B: Retrofit Isolation : All Parameter Measurement. Measurements of All Variables may be short term or continuous, depending on ECM.
- Option C: Whole Facility : For projects where weather explains variation in usage, changes in the facility outside of the contract are not expected, and savings are at least 10% of the impacted meter, a Whole Facility or Utility meter approach may be considered.
- Option D: Calibrated Simulation. This Option may be considered when a model can be calibrated to the utility bills.

F. Provide Cost and Fee Estimates

The CONTRACTOR shall provide detailed estimates of all costs and fees associated with the installation and implementation of the ECMs including:

1. Engineering/design costs
2. CONTRACTOR/vendor estimates for individual ECM material and labor unit costs
3. CONTRACTOR construction management fees for the project
4. Overhead and profit
5. Commissioning costs for individual ECMs
6. Contingency costs
7. Initial training costs
8. Annual service fees including:
 - Measurement and verification
 - Maintenance
 - Performance monitoring
 - Ongoing training services

G. Select Final Recommended ECMs, Report & Draft Implementation Contract

The CONTRACTOR shall, in consultation with the CITY, recommend specific ECMs from its preliminary compilation for installation and implementation at the Facility(s) and deliver (1) electronic copy of the report and associated appendices (equipment data, calculations, specifications, drawings) in .PDF format and a draft implementation contract in editable format such as Microsoft Word.

Article 4. Compensation. CITY agrees to pay to CONTRACTOR the sum for a given phase (task order) within sixty (60) days after the delivery to the CITY of the documentation described in Article 1 of this Contract. However, CITY will have no obligation to pay this amount if:

1. CONTRACTOR and the CITY enter into the Energy Performance Contract within sixty (60) days after the delivery of the documentation described under Article 1 of this Contract to the CITY. Costs for the Report will be transferred to the total cost of the Energy Performance Contract and be subject to the payment terms outlined in the Energy Performance Contract.
2. The project benefits do not offset the cost of the overall project with a payback period of 20 years or less. Project benefits shall include, but not be limited to utility cost avoidance, negotiated

utility rate reductions, operating and maintenance cost avoidance, capital cost avoidance and utility revenue increases.

As per State Law and the RFP, this Agreement may be amended to include additional Facilities and associated ECMs as outlined in Section 4, Description of Services & Deliverables, of the RFP through a written agreement between CONTRACTOR and the CITY, which shall, among other things, e.g. project timeline, amend the compensation to CONTRACTOR for the additional development costs incurred as a result of scope of work additions. Written agreement for such additional Facilities can be performed through an existing investment grade audit agreement or via a separate standalone agreement.

The compensation to the CONTRACTOR for the services performed under the investment grade audit agreement shall be based upon the categories of work described in the table below.

Category A – This price is applicable to a scope of work for a given project phase where the aggregate gross square footage (GSF) for the selected facilities is $\geq 500,000$.

Category B – This price is applicable to a scope of work for a given project phase where the aggregate gross square footage (GSF) for the selected facilities is $< 500,000$. Audit fees shall be calculated individually by facility and aggregated for the total audit fee.

Category C – This price category is applicable for third-party consulting services for specialized or ad hoc services where it is necessary for the CONTRACTOR to acquire services of third party vendors such as a consultant or subcontractor. The services which may be included under this category include, but are not limited to, creation of design documents by architects or engineers, certified indoor air quality or airflow testing, ground penetrating radar, or emerging technologies where third party subject matter expertise is required, such as micro-grid, fuel cell, etc.

<u>Facility Type</u>	<u>Price/GSF</u>	<u>Notes</u>
<i>Category A</i>		
General (All Facility Types)	\$ 0.12	Pricing shall be lump sum
<i>Category B</i>		
<u>Facility Type</u>	<u>Price/GSF</u>	<u>Notes</u>
Correctional/Judicial	\$ 0.25	Pricing shall be lump sum of the aggregate Price/GSF for selected facilities. All facilities, regardless of primary function, less than 10,000 GSF shall be calculated at the "Buildings Less than 10,000 GSF" rate.
Parks/Recreational (facility area only for costing)	\$ 0.05	
Administrative/Office Buildings/Support Facilities	\$ 0.10	
Buildings Less than 10,000 GSF	\$ 0.75	
Library	\$ 0.10	
Clinics	\$ 0.12	
Law Enforcement	\$ 0.15	
<i>Category C</i>		
<u>Activity Type</u>	<u>Unit Price &/or Man Hours</u>	<u>Notes</u>

Third-Party Consulting Services	See Exhibit 3	Per Exhibit 3
---------------------------------	---------------	---------------

Article 5. Timeline. It is the intent and commitment of all parties identified in this Agreement to work diligently, and cause others under their direction to work diligently, toward meeting a chronological order of events or objectives. The project timeline will be established by mutual agreement of the parties for each phase (task order) based upon the Facility(s) included and the ECMs considered. The format for the timeline for each phase shall be as follows:

- Signed Task Order for Services
- CONTRACTOR to complete Audit and provide Report
- Finalize and execute Implementation Contract
- Complete implementation and begin System operation

Article 6. Maximum Indebtedness. As required by Section 106.431, *Ordinance Code*, the CITY's maximum indebtedness for all products and services under this Contract shall be a fixed monetary amount not-to-exceed **FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00)**.

Article 7. Term. The initial term of this Contract shall commence on the Effective Date and shall expire on February 28, 2021, unless sooner terminated by either party in accordance with the terms of the RFP.

This Contract may be renewed for up to two (2) additional one (1) year periods by (i) the CITY, in its sole discretion, upon written notice to CONTRACTOR at least sixty (60) days prior to end of the then-current term, or (ii) upon the mutual agreement of the parties.

Article 8: Standard Terms and Conditions

A. Appropriations

Obligations of the CITY shall cease immediately without penalty if in any fiscal year covered by the Contract term, the Legislature or the CITY fails to appropriate, re-appropriate or otherwise make available funds for this Contract. The CITY shall provide written notification to the CONTRACTOR of any impending change in the status of appropriations which may affect this Contract of which it has notice.

B. Patent and Copyright Responsibility

The CONTRACTOR agrees that any material or design specified by the CONTRACTOR or supplied by the CONTRACTOR pursuant to this Contract shall not knowingly infringe any patent or copyright, and the CONTRACTOR shall be solely responsible for securing any necessary licenses required for patented or copyrighted material utilized by the CONTRACTOR in the performance of the IGA and preparation of the Report.

C. Materials, Equipment and Supplies

The CONTRACTOR shall provide or cause to be provided all facilities, materials, equipment and supplies necessary to perform the IGA and prepare the Report.

D. Indemnification/Insurance

CONTRACTOR shall indemnify CITY as set forth in Attachment "I" to the RFP. CONTRACTOR shall maintain throughout the life of this Contract the insurance coverages set forth in Attachment "J" to the RFP.

E. Lobbying, Integrity, and Retention of Records

Pursuant to section 216.347 of the Florida Statutes, the CONTRACTOR may not expend any State funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency. In addition, the CONTRACTOR shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or agreements of any kind. Upon request of the Agency's Inspector General, or other authorized State official, the CONTRACTOR shall provide any type of information the Inspector General deems relevant to the CONTRACTOR's integrity or responsibility. Such information may include, but shall not be limited to, the CONTRACTOR's business or financial records, documents, or files of any type or form that refer to or relate to the Contract. The CONTRACTOR shall retain such records for the longer of (1) three years after the expiration of the Contract or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dlis.dos.state.fl.us/barm/genschedules/gensched.htm>). Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the CITY for the recovery of any funds paid by the CITY under the Contract for which adequate books, records, and supporting documents are not available to support their purported disbursement. The CONTRACTOR agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of the CONTRACTOR's compliance with the terms of this or any other agreement between the CONTRACTOR and the State which results in the suspension or debarment of the CONTRACTOR. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The CONTRACTOR shall not be responsible for any costs of investigations that do not result in the CONTRACTOR's suspension or debarment.

F. Dispute Resolution

The CITY and the CONTRACTOR recognize and acknowledge that efforts should always be made to avoid or prevent disputes through effective partnering, good communications, and joint decision making, and that timely requests for clarification and for information will help ensure a better understanding of issues and problems and lead to the elimination of doubts, uncertainties, and ambiguities. Nevertheless, the CITY and the CONTRACTOR also recognize that disputes may develop between them. In such event, the Parties shall be entitled to pursue any and all remedies in equity and law.

Any legal or equitable action arising out of or relating to this Contract shall be brought in the appropriate state court in Duval County, Florida, and not elsewhere, and shall be governed by Florida law.

Notwithstanding any provision to the contrary, neither Party shall be excluded from recovering any special, consequential, or punitive damages.

G. Personnel

All CONTRACTOR employees, subcontractors, or agents performing work under this Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, the CONTRACTOR shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under the Contract must comply with all security and administrative requirements of the CITY. The CITY may conduct, and the CONTRACTOR shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by the CONTRACTOR. The CITY may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with the CITY's security or other requirements. Such approval shall not relieve the CONTRACTOR of its obligation to perform all work in compliance with the Contract. The CITY may reject and bar from any Facility for cause any of the CONTRACTOR's employees, subcontractors, or agents.

The CONTRACTOR, together with its agents, subcontractors, officers and employees, shall have and always retain under the Contract the legal status of an independent CONTRACTOR, and in no manner shall they be deemed employees of the CITY or deemed to be entitled to any benefits associated with such employment. During the term of the Contract, the CONTRACTOR shall maintain at its sole expense those benefits to which its employees would otherwise be entitled by law, including health benefits and all necessary insurance for its employees, including workers' compensation, disability, and unemployment insurance, and provide the CITY with certification of such insurance upon request. The CONTRACTOR remains responsible for all applicable federal, state, and local taxes, and all FICA contributions.

H. Compliance with Applicable Law

In performing this Contract, the CONTRACTOR shall comply with all laws, rules, codes, ordinances, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and authority. By way of non-exhaustive example, Chapter 287 of the Florida Statutes and Chapter 60A-1 of the Florida Administrative Code govern the Contract. By way of further non-exhaustive example, the CONTRACTOR shall comply with section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Contract termination. The CITY may cancel the Contract if the CONTRACTOR refuses to allow public access to all records made or received by the CONTRACTOR in conjunction with the Contract unless the records are exempt from section 24(a) of Article I of the State Constitution and section 119.07(1) of the Florida Statutes.

I. Waivers

No right of either party hereto shall be deemed to have been waived by non-exercise thereof, or otherwise, unless such waiver is reduced to writing and executed by the party entitled to exercise such right.

J. Assignment

Neither Party may assign this Contract without the prior written consent of the other Party, which shall not be unreasonably withheld.

K. Capacity to Contract

Each person signing this Contract warrants that he or she is duly authorized to do so and to bind the respective Party to the Contract. The CONTRACTOR warrants that it is in good standing and legally authorized to transact business in Florida. The CONTRACTOR warrants that, to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish the CONTRACTOR's ability to satisfy its Contract obligations. The CONTRACTOR warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. The CONTRACTOR shall immediately notify the CITY in writing if its ability to perform is compromised in any manner during the term of the Contract.

L. Confidential Information

Each Party may have access to confidential information made available by the other Party (see particularly, but not exclusively, subsection 119.07(ee) and section 119.071 of the Florida Statutes). Each Party shall protect such confidential information in the same manner as it protects its own confidential information of like kind. Disclosure of any confidential information received by the CITY will be governed by the Public Records Act, chapter 119 of the Florida Statutes.

M. Convicted or Discriminatory Vendors

A person or affiliate placed on the convicted vendor list following a conviction for a public entity crime is prohibited from doing any of the following for a period of 36 months from the date of being placed on the convicted vendor list: submitting a bid on a contract to provide any goods or services to a public entity; submitting a bid on a contract with a public entity for the construction or repair of a public building or public work; submitting bids on leases of real property to a public entity; being awarded or performing work as a CONTRACTOR, supplier, subcontractor, or consultant under a contract with any public entity; and, transacting business with any public entity in excess of the Category Two threshold amount (\$35,000) provided in section 287.017 of the Florida Statutes.

An entity or affiliate placed on the discriminatory vendor list pursuant to section 287.134 of the Florida Statutes may not submit a bid on a contract to provide any goods or services to a public entity; may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids on leases of real property to a public entity; may not be awarded or perform work as a CONTRACTOR, supplier, sub-contractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

Article 9. Notices. All notices under this Contract shall be in writing and shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

As to the CITY:

Jim Lange
Public Buildings Division
555 West 44th Street
Jacksonville, Florida 32208

As to the CONTRACTOR:

Mary-Suzanne Powell
Johnson Controls, Inc.
6600 Congress Avenue
Boca Raton, Florida 33487

Either Party may change its point of contact by written notice to other Party's then-current designated contact, and such change shall not constitute a formal amendment to this Contract. Furthermore, project contracts shall be established for each phase (task order) in this format as outlined in Exhibit 2.

Article 10. Contract Managers. Each Party will designate a Contract Manager during the term of this Contract whose responsibility shall be to oversee the Party's performance of its duties and obligations pursuant to the terms of this Contract. As of the Effective Date, CITY'S Contract Manager is Jim Lange (904.255.4340 (o); 904.476.3288 (c); 904.630.5415 (F); jlange@coj.net), and the CONTRACTOR'S Contract Manager is Mary-Suzanne Powell (954.538.7893 (o); 786.452.2862 (c); 904.733.3335 (f); marysuzanne.powell@jci.com). Each Party shall provide prompt written notice to the other Party of any changes to the Party's Contract Manager or his or her contact information; provided, such changes shall not be deemed Contract amendments and may be provided via email.

Article 11. Entire Contract. This Contract constitutes the entire agreement between the parties hereto for the IGAs to be performed and Reports to be furnished by the CONTRACTOR. No statement, representation, writing, understanding, agreement, course of action or course of conduct made by either party or any representative of either party which is not expressed herein shall be binding. CONTRACTOR may not unilaterally modify the terms of this Contract by affixing additional terms to materials delivered to the CITY (e.g., "shrink wrap" terms accompanying or affixed to a deliverable) or by including such terms on a purchase order or payment document. CONTRACTOR acknowledges that it is entering into this Contract for its own purposes and not for the benefit of any third party.

Article 12. Amendments. All changes to, additions to, modifications of, or amendments to this Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

Article 13. Counterparts. This Contract and all amendments hereto may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

Article 14. Severability. If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable, and all other provisions shall remain in full force and effect.

Article 15. Other Agencies. The parties mutually agree that this Agreement to form may be utilized by the CITY or any other "Agency", as defined by F.S. 489.145 or F.S. 1013.23, to enter their own Project Development Agreement with JCI. Other agencies electing to utilize this agreement shall negotiate their specific scope, terms, conditions, and additional schedules, directly with JCI in all respects. CITY will in no way be liable for the other agency's agreement.

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first above written.

ATTEST:

By James R. McCain, Jr.
James McCain, Jr.
Corporation Secretary

CITY OF JACKSONVILLE

By Lenny Curry
Lenny Curry
Mayor

Sam E. Mousa
Chief Administrative Officer
For: Mayor Lenny Curry
Under Authority of:
Executive Order No. 2015-05

In accordance with the Ordinance Code of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and un-impounded balance in the appropriation sufficient to cover the foregoing agreement; and that provision has been made for the payment of monies provided therein to be paid.

Director of Finance

CITY Contract Number:

9572-05

Form Approved:

James R. McCain, Jr.
Office of General Counsel

JOHNSON CONTROLS, INC.

By Mary-Suzanne Powell
Signature
Mary-Suzanne Powell
Type/Print Name
Area General Manager
Title

Exhibit 1 – Information Requested of the City for Investment Grade Audit Services

#	Description	Completed
1.	<p>Utility Bills information for each site including: electricity, natural gas, water/sewer, telephone (if not VOIP) and other utilities such as fuel (fuel oil, biomass etc.), steam and chilled water/hot water, etc. as applicable</p> <p>-36 months required – Most recent consecutive monthly data important to analysis</p> <p>-Copies of bills provide both usage and cost/rates which is important to analysis</p>	
2.	<p>Hazardous Materials – copies of all Lead Paint surveys and Asbestos surveys.</p> <p>*Signed "JCI Certification regarding Asbestos- Containing Materials"</p>	
3.	<p>Overall facility information including:</p> <p>A. Specific conditioned area square footage</p> <p>B. Access to mechanical, electrical and architectural drawings.</p> <p>JCI might need to check out drawings for photocopying during project</p>	
4.	<p>Current Service Contract Information for equipment applicable to this project (can be discussed to identify which equipment)</p>	
5.	<p>Specific Information from Past 2 Year's Operational Budget for purposes of showing savings including:</p> <p>A. Parts Costs (Filters, Motors, etc.)</p> <p>B. M&R Costs</p>	
6.	<p>List of deferred maintenance items and/or list of service requests and/or external service costs</p>	
7.	<p>3 or 5 year capital improvement plan to understand improvements already planned</p>	
8.	<p>Mechanical Schedules of Major Equipment (copy) & access to energy management system and trending (viewer level at minimum)</p>	
9.	<p>List of any major mechanical or electrical systems purchased over past 4 years for the included buildings.</p>	
10.	<p>Building renovation, addition or demolition plans for the included buildings within the next 5 years.</p>	
11.	<p>Any additional information that you think is relevant to this project.</p>	

Exhibit 2

Phase 1 – Task Order for Services, as part of

GUARANTEED ENERGY PERFORMANCE CONTRACTING SERVICES

THIS TASK ORDER for IGA Services, as part of GUARANTEED ENERGY PERFORMANCE CONTRACTING SERVICES (“Contract”), is made and entered into this ____ day of _____, 201__ (the “Effective Date”), by and between the CITY OF JACKSONVILLE (the “CITY”), a municipal corporation existing under the Constitution and the laws of the State of Florida, and

JOHNSON CONTROLS, INC. (the “CONTRACTOR” or “JCI”), a Wisconsin corporation authorized to transact business in Florida and with an office at 4820 Executive Park Court, Ste. 109, Jacksonville, FL 32216.

WHEREAS, the CITY and CONTRACTOR mutually agreed to terms, conditions, and parameters set forth in the MASTER SERVICES CONTRACT BETWEEN THE CITY OF JACKSONVILLE AND JOHNSON CONTROLS, INC. FOR GUARANTEED ENERGY PERFORMANCE CONTRACTING SERVICES;

NOW THEREFORE, the parties agree to develop a guaranteed energy performance contract utilizing the parameters outlined below:

Part 1: Facilities. The facilities where the IGA is to be performed are as follows:

Facility Name	Facility Square Footage (SF)
JOHN E. GOODE PRETRIAL DETENTION (JAIL) FACILITY	629,000
ED BALL BUILDING	505,444
CITY HALL AT ST JAMES	392,150
MAIN LIBRARY	351,375
POLICE MEMORIAL BUILDING	207,677
CLAUDE J. YATES BUILDING	103,628
JAKE GODBOLD CITY HALL ANNEX	60,786
Total	2,250,060

Part 2: Timeline. The timeline on which the IGA is to be performed is as follows:

- Signed Task Order for Services
- CONTRACTOR to complete Audit and provide Report
- Finalize and execute Implementation Contract
- Complete implementation and begin System operation

These timeframes may be modified by subsequent work plans approved by the parties.

Part 3: Compensation. The compensation to the CONTRACTOR for the IGA for the facilities outlined above is as follows:

Category A			
<u>Facility Type</u>	<u>Price/GSF</u>	<u>Square Footage</u>	<u>Subtotal</u>
General (All Facility Types)	\$ 0.12	2,250,060	\$270,007
Category B			
<u>Facility Type</u>	<u>Price/GSF</u>	<u>Square Footage</u>	<u>Subtotal</u>
Correctional/Judicial	\$ 0.25	N/A	\$0
Parks/Recreational (facility area only for costing)	\$ 0.05	N/A	\$0
Administrative/Office Buildings/Support Facilities	\$ 0.10	N/A	\$0
Buildings Less than 10,000 GSF	\$ 0.75	N/A	\$0
Library	\$ 0.10	N/A	\$0
Clinics	\$ 0.12	N/A	\$0
Law Enforcement	\$ 0.15	N/A	\$0
Category C			
<u>Activity Type</u>	<u>From Exhibit 3</u>	<u>Subtotal</u>	
Third-Party Consulting Services	N/A	\$0	
Total Compensation for Investment Grade Audit Services			\$270,007

Part 4: Project Contacts. The CITY and CONTRACTOR primary contacts for this task order for investment grade audit services are as follows:

As to the CITY:

Jim Lange
Public Buildings Division
555 West 44th Street
Jacksonville, Florida 32208

As to the CONTRACTOR:

Mary-Suzanne Powell
Johnson Controls, Inc.
6600 Congress Avenue
Boca Raton, Florida 33487

Exhibit 3 – Contract Fee Summary for Category C Activities

<u>PART I - GENERAL</u>				
1. Project		3. Proposal Number/ Amendment		
3. Name of Consultant		4. Date of Proposal		
<u>PART II - LABOR RELATED COSTS</u>				
5. Direct Labor	Hourly Rate	Estimated Hours	Estimated Cost	TOTAL
Principal	\$76.81	0	\$0.00	
Project Manager	\$64.84	0	\$0.00	
Senior Engineer	\$52.91	0	\$0.00	
Project Engineer	\$45.33	0	\$0.00	
Engineer II	\$42.81	0	\$0.00	
Engineer I	\$37.87	0	\$0.00	
Senior Designer	\$44.61	0	\$0.00	
CADD/Computer Tech	\$30.58	0	\$0.00	
Engineering Intern	\$27.49	0	\$0.00	
Project Coordinator	\$32.31	0	\$0.00	
Secretary/Clerical	\$18.50	0	\$0.00	
TOTAL DIRECT LABOR		0 Hours		\$0.00
6. Overhead (Combined Fringe Benefit & Administrative)			165.46%	\$0.00
7. SUBTOTAL: Labor + Overhead (Items 5 & 6)				\$0.00
8. PROFIT: Labor Related Costs (Item 7) x			13.0%	\$0.00
<u>PART III - OTHER COSTS</u>				
9. Miscellaneous Direct Costs				
			\$0.00	
			\$0.00	
			\$0.00	
MISCELLANEOUS DIRECT COSTS SUB-TOTAL				\$0.00
10. SUBCONTRACTS (Lump Sum)				
			\$0.00	
			\$0.00	
			\$0.00	
SUB-CONTRACT SUB-TOTAL				\$0.00
TOTAL LUMP SUM AMOUNT (Items 5, 6, 8, 9 and 10)				\$0.00
11. REIMBURSABLE COSTS (Limiting Amount)				
			\$0.00	
			\$0.00	
			\$0.00	
SUB-TOTAL REIMBURSABLES				\$0.00
<u>PART IV - SUMMARY</u>				
TOTAL AMOUNT FOR CATEGORY C SERVICES (Lump Sum Plus Reimbursable Expenses) (Items 5, 6, 8, 9, 10 and 11)				\$0.00



City of Jacksonville, Florida

Lenny Curry, Mayor

Procurement Division
Ed Ball Building
214 N. Hogan Street, Suite 800
Jacksonville, Florida 32202

ONE CITY. ONE JACKSONVILLE.

February 15, 2018

The Honorable Lenny Curry, Mayor
City of Jacksonville
4th Floor, St. James Building
Jacksonville, FL 32202

Dear Mayor Curry:

Ref: P-65-17 Guaranteed Energy Performance Contracting Services
Department of Public Works

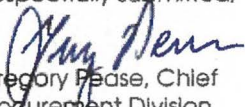
The Professional Services Evaluation Committee met today in Board Room 851 on the eighth floor of the Ed Ball Building, for the purpose of concluding fee and contract negotiations with the number one ranked company for the above-captioned project.

The following motion/recommendation was adopted:

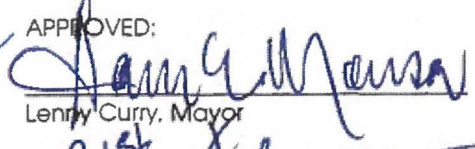
That the City of Jacksonville enters into an agreement with Johnson Controls, Inc., for Guaranteed Energy Performance Contracting Services that: (i) incorporates the attached Master Services Contract identified as Exhibit 'A'; (ii) no funding is encumbered at this time and that a funding source will be determined at a future date with a not-to-exceed cost applicable thereto; (iii) provides a not-to-exceed maximum indebtedness in the amount of \$500,000.00; and (iv) provides a contract expiration date of February 28, 2021, with two (2) one-year renewal options remaining. All other terms and conditions are per the RFP and the City's standard contract language.

If the foregoing meets your approval, we respectfully request your signature and return to my office.

Respectfully submitted,


Gregory Pease, Chief
Procurement Division
Chairman, Professional Services
Evaluation Committee

APPROVED:


Lenny Curry, Mayor

This 15th day of February 2018

GP: ab

cc: Council Auditor
Jeff Close OGC
Melba Gray, GAD
Subcommittee Members

Sam E. Mousa
Chief Administrative Officer
For: Mayor Lenny Curry
Under Authority of:
Executive Order No. 2015-05

180253