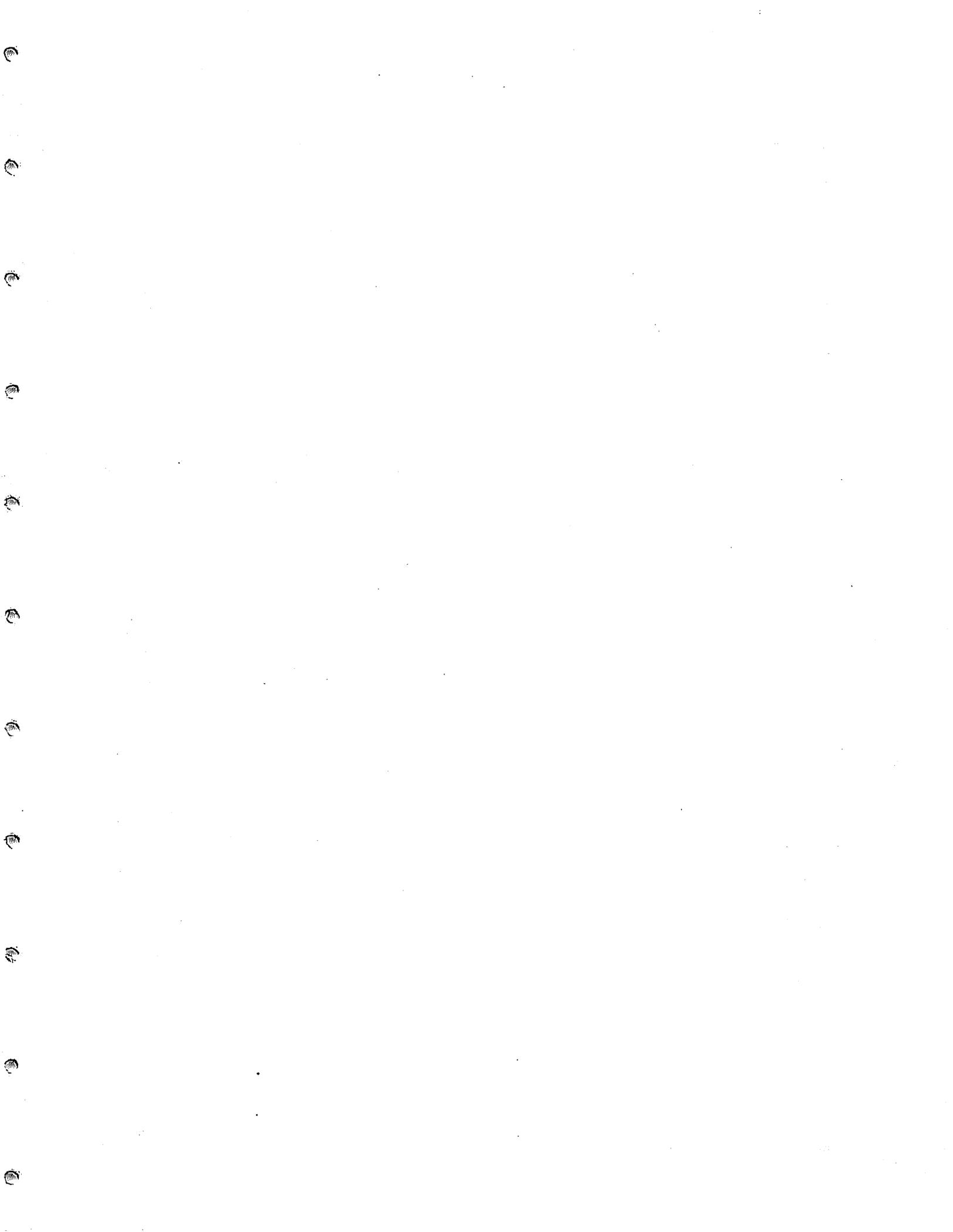


**Attachment A**  
**Requests for Proposal**



**DURHAM COUNTY  
NORTH CAROLINA**



**REQUEST FOR PROPOSALS  
(RFP NO. 11-014)**

**Guaranteed Energy Savings Performance Contracting**

**Due Date: January 11, 2011  
2:00 P.M.**



## REQUEST FOR PROPOSALS

### GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACTING (RFP No. 11-014)

ISSUE DATE: November 20, 2010

ISSUING DEPARTMENT: County of Durham Purchasing Division  
4<sup>th</sup> Floor / 200 E. Main Street  
Durham, NC 27701

Sealed proposals will be received, publicly opened and read on **January 11, 2011, until 2:00 P.M.**, to provide upgrades to selected facilities through a "Guaranteed Energy Savings Contract" as defined in NC G.S.143-64.17, sometimes also referred to as "Performance Contracting". The County is interested in contracting for a full range of energy services and energy-related capital improvements ("energy conservation measures" or "ECMs"), financed through a guaranteed energy savings contract at no capital cost to the Issuer.

All inquiries concerning the Scope of Services, Proposal Submission Requirements or Procurement Procedures should be directed to:

**Hilda W. Williams, Senior Buyer (919) 560-0054**  
**Purchasing Division**  
**[purchasinggroup@durhamcountync.gov](mailto:purchasinggroup@durhamcountync.gov)**

Proposals shall be mailed and/or hand delivered to the Issuing Department shown above, and the envelope shall bear the name and number of this Request for Proposals (RFP). It is the sole responsibility of the Bidder to ensure that its proposal reaches the Purchasing Division by the designated date and hour indicated above.

**In compliance with this Request for Proposals and to all the terms and conditions imposed herein, the undersigned offers and agrees to furnish the goods and services described in accordance with the attached signed proposal.**

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

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

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

(Signature Typed/Printed)

Phone: \_\_\_\_\_

By: \_\_\_\_\_

(Signature in Ink)

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## INSTRUCTIONS TO BIDDERS

1. In order for a proposal to be considered, it must be based on terms, conditions and specifications contained herein and must be a complete response to this RFP. **One (1) unbound original, seven (7) unbound copies and one (1) electronic version (CD or flash drive)** of the proposal shall be submitted to the Issuing Department. The original RFP shall be stamped **"ORIGINAL"**. The copies should consist of all documents that are included in the "Original" RFP. No other distribution of the proposal shall be made by the Bidder. Proposals shall be limited to **fifty (50) pages or less, must be double-sided on 8 ½ " x 11" sheets of recycled content paper**, and must be signed by an authorized representative. A letter of introduction, forms, reports, brochures, dividers, and detailed resumes are not counted in the fifty (50) double-sided pages requirement. Each proposal shall be a single volume with all relevant documentation. Pages should be numbered and sections tabbed appropriately. The County may elect to require oral presentations after receipt of the proposals.
2. **PRE-PROPOSAL CONFERENCE:** A Pre-Proposal Conference for interested ESCOs will be held at **9:30 A.M., on November 30, 2010**, in Durham County Commissioners' Chamber, Durham County Administrative Complex, 200 East Main Street, 2<sup>nd</sup> Floor, Durham, NC.

All communications between the Purchasing Division and prospective Bidders shall be in writing. Emailed questions will be accepted and can be sent to [purchasinggroup@durhamcountync.gov](mailto:purchasinggroup@durhamcountync.gov). Any inquires, requests for interpretation, technical questions, clarification, or additional information shall be directed to Hilda W. Williams, Senior Buyer, at the address listed on page one (1) of this solicitation. All questions concerning this RFP shall reference the RFP number, section number and paragraph. Questions and responses affecting the Scope of Services will be provided to all Bidders by issuance of an Addendum. **All questions shall be received by the Purchasing Division no later than 3:00 P.M., December 13, 2010; NO EXCEPTIONS.**

3. Sealed Proposals will be received until **2:00 P.M., on January 11, 2011**, at which time they will be publicly opened and read. Proposals shall be duly marked and/or identified with Bidder Name, Address and RFP number.
4. All Bidders shall complete and submit the Vendor Application/ W-9 Form. This information will be used to create or update the County's electronic vendor profile files.
5. Durham County hereby establishes the following goals for the expenditure of funds with M/WBE's.

Industry	Ethnicity/Race/Gender				
	African American	Asian American	Hispanic American	Native American	Women-Owned
Other Professional Services	7.20%	N/A	N/A	N/A	3.55%

Each Bidder shall make good faith efforts to subcontract the established percentage stated with small business concerns, owned and controlled by M/WBEs. The Bidders are required to submit information about participating M/WBEs with their Bid on the enclosed forms Affidavits A through C and Appendix E. The information shall include the name and address of each M/WBE, a description of the work to be performed by each, and the dollar value of the work to be performed by each. Any Bidder who fails to achieve the indicated M/WBE participation goal stated above is required to provide documentation demonstrating that good faith efforts were made in an attempt to meet the established goal. Any Bid that does not include M/WBE information and documentation may be considered non-responsive. A complete copy of the County's Minority and Women Business Enterprise ordinance may be obtained by contacting the Purchasing Division at (919) 560-0051.

An M/WBE is a business that is at least 51% owned and controlled by minority group members or women. An M/WBE is bona fide only if the minority group or female ownership interests are real and continuing and not created solely to meet the M/WBE requirement. In addition, the M/WBE shall itself perform satisfactory work or service or provide supplies under the contract and not act as a conduit. The contractual relationship shall be bona fide owned and controlled as: (1) a sole proprietorship legitimately owned by an individual who is a minority group member or female; (2) a partnership or joint venture controlled by minorities and/or females.; (3) a corporation or other entities controlled by minorities or females, and in which at least 51% of the voting

interests and 51% of the beneficial ownership interests are legitimately held by minorities and/or females. These persons shall control the management and operations of the business on a day-to-day basis:

A person who is a citizen or lawful permanent resident of the United States and who is:

a "Black American"; a person having origins in any of the black racial groups of Africa;

an "Hispanic American"; a person of Spanish culture with origins in Mexico, Central or South America, or the Caribbean, regardless of race;

a "Native American Indian tribe"; a federally recognized Indian tribe means an Indian tribe, or band, nation, rancheria, pueblo, colony, or other organized group or community, including any Alaska native village, which is recognized by the Secretary of the Interior on October 1, 1985 as having special rights and is recognized as eligible for service provided by the United States to Indians because of their status as Indians, a tribe that has a pending application for Federal recognition on October 1, 1985.

6. **Questions concerning M/WBE should be directed to Pamela Gales, Assistant Purchasing Manager, at (919) 560-0059.**
  7. Should a Bidder find discrepancies in, or omissions from the documents, or should be in doubt as to their meaning, he/she should at once notify the County, and a written addendum shall be issued. The County will not be responsible for any oral instructions. Acknowledgment of any addendum received shall be noted on the proposal in the attachment provided. In closing of a contract, any addendum issued shall become a part thereof.
  8. The Bidder shall not represent itself to be an agent of the County.
  9. **The following forms and information must be returned with your Bid Proposal.**
    - a. **Request for Proposal Form, Page 1**
    - b. **One (1) unbound original, seven (7) unbound copies and one (1) electronic version (CD or flash drive) of the Proposal**
    - c. **Proposal Form**
    - d. **Addendum Acknowledgement Form**
    - e. **Non-Collusion Affidavit**
    - f. **Vendor Application/W-9 Form**
    - g. **Responses to the Qualifications and Submission Requirements**  
**M/WBE Forms:**
      - Affidavit A and C** is required to be submitted with your bid/proposal if your company has M/WBE participation.
      - Affidavit B** is required if your company has no opportunity to sub-contract and will complete all work with their own work force. No other Affidavits must be returned.
- The apparent lowest responsible Bidder shall file within 30 days after the award of the contract a list of all identified subcontractors that the contractor (Bidder) will use on the project.

**The above information must be provided as required. Failure to submit these documents may be grounds for rejection of the proposal.**

**END OF INSTRUCTIONS TO BIDDERS**

## **PART I. GENERAL INFORMATION**

- I-1. PURPOSE.** This Request for Proposals (RFP) contains the information provided by the County and requirements for Energy Service Companies (ESCOs) Pre-Certified by the State of North Carolina to prepare and submit to the County a Preliminary Technical and Cost Proposal for a guaranteed energy savings performance contract. The specific responses requested are to be based on the assessment of the facilities selected by the Issuer to be evaluated by your firm as listed in Appendix I. The County reserves the right to consider additional energy conservation measures identified during the Investment Grade Audit for evaluation and inclusion in the project. This RFP, including any Addendum, contains the only instructions governing the proposals and material to be included therein; a description of the service to be provided by the successful bidder; general evaluation criteria; and other proposal requirements.
- I-2. OBJECTIVE:** The objective of the County in issuing this RFP is to upgrade facilities through a "Guaranteed Energy Savings Contract" as defined in NC G.S.143-64.17, sometimes also referred to as "Performance Contracting". The County is interested in contracting for a full range of energy services and energy-related capital improvements ("energy conservation measures" or "ECMs"), financed through a guaranteed energy savings contract at no capital cost to the Issuer, for the Project Sites listed in Appendix I. The services may include but are not limited to: (1) A preliminary technical scoping audit to be performed on the facilities identified in Appendix I, (2) An investment grade energy audit to be conducted on all Project Sites, (3) The design, acquisition, installation, modification, and maintenance of equipment, (4) The training of staff in the operation of existing and new equipment, (5) Savings which would not reduce consumption per se but are aimed at cost savings, such as fuel switching, demand reductions, on-site generation, utility bill auditing, utility rate changes, distribution upgrades etc.). ECMs must result in a guaranteed minimum energy savings with the ESCO payments linked to actual documented energy and cost reductions. **Any stipulated energy and/or operational cost savings that may be attributed to this project will be rigorously reviewed and, if agreed to, will be limited to those that can be thoroughly documented and approved by the County.**

No contract shall exceed 15 years in duration and must comply with applicable statutes, regulations, and procurement laws. The savings achieved by the installed projects must be sufficient to cover all project costs including annual maintenance and monitoring fees on an annual basis for the duration of the contract term. **The contract must provide that the savings in each year are guaranteed to the extent necessary to make payments under the contract during that year. ESCOs will be required to guarantee energy and cost savings on an annual basis. No credit for the achievement of savings above and beyond the annual guarantee will be credited to satisfy performance guarantees in other years of the contract. Annual reconciliation of the achieved savings will be required.**

- I-3. GUARANTEE REQUIREMENTS:** The Office of State Treasurer has determined that the following general types of security for the guaranteed energy savings would be acceptable, however specific instruments of security as part of a financing contract for energy conservation measures will need to be approved by the Office of the State Treasurer as per G.S. 142-64(a) for each guaranteed energy savings contract. These general types are:

1) **A corporate guarantee** by the qualified provider, or energy services company (ESCO), provided the ESCO have a long-term investment grade corporate rating from one or more of the national credit rating agencies. Currently, this would be a minimum rating of BBB from Standard and Poor's, Baa from Moody's Investors Service, or BBB from Fitch Ratings.

2) **A corporate guarantee** from the parent company of an ESCO which is owned as a subsidiary of the parent. The parent company would be required to maintain a long-term investment grade rating from one or more of the national credit rating agencies (see above.)

3) **An irrevocable letter of credit** from a financial institution which covers the entire term of the contract, without need of renewal.

4) **A surety bond** which covers the entire term of the contract, without need of renewal.

- 5) **Financing by the qualified provider** or ESCO in which the qualified provider or ESCO provides all financing required for the entire term of the contract. Financing may only be transferred or assigned to the extent that energy savings are realized, and State property may not be encumbered in any form as part of the financing.

All forms of security would be required to be in place at the initiation of the guaranteed energy savings contract covering the entire contract term and 100% of the total cost of the guaranteed energy savings contract. In the case of corporate guarantees, should the guarantor's credit rating drop below long-term investment grade, the guarantor is required to inform the governmental unit, the State Energy Office, and this Office within 30 days and replace the corporate guarantee with one of the other forms of security acceptable to Office of the State Treasurer.

**I-4. DESCRIPTION OF THE PROCUREMENT PROCESS:** The process for the procurement of these guaranteed energy services will proceed as follows:

1.) **SOLICITATION OF PROPOSALS.** The County shall issue a Request for Proposals to all ESCO's that have been pre-certified by the State Energy Office before entering into a guaranteed energy savings contract. Notice of the request shall be published at least 15 days in advance of the time specified for opening of the proposals in at least one newspaper of general circulation in the geographic area in which the facility or facilities are located. No guaranteed energy savings contract shall be awarded by the governmental unit unless at least two proposals have been received from qualified providers. Provided that if, after the publication of the notice of the request for proposals, fewer than two proposals have been received from qualified providers, the governmental unit shall again publish notice of the request. If as a result of the second notice, one or more proposals by the qualified providers are received, the governmental unit may then open the proposals and select a qualified provider even if only one proposal is received.

2.) **OPENING OF PROPOSALS.** Sealed Proposals for the **GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACTING (RFP 11-014)** will be received, publicly opened and read on **January 11, 2011 at 2:00 P.M., in the Durham County Purchasing Division's Conference Room, Durham County Administrative Complex, 200 East Main Street, 4th Floor, Durham, North Carolina 27701. No proposals will be accepted after the official time and date.**

Proposals shall be mailed and/or hand delivered to the Issuing Department listed below, and the envelope shall bear the name of the firm submitting the proposal and number of this Request for Proposals (RFP No. 11-014). It is the sole responsibility of the bidder to ensure that its proposal reaches the Purchasing Division by the designated date and hour indicated above.

**PROPOSALS SHALL BE SENT TO THE FOLLOWING ADDRESS:**

County of Durham Purchasing Division  
Attn: Hilda W. Williams, Senior Buyer  
4<sup>th</sup> Floor / 200 E. Main Street  
Durham, NC 27701

3.) **EVALUATION OF PROPOSALS.** Responding ESCOs shall conduct a preliminary scoping audit of the facilities listed in Appendix I. This preliminary audit will form the basis of the ESCO's written Preliminary Technical and Cost Proposals response to this RFP. Response must be in substantial conformity with the specifications and other conditions set forth in the RFP. The County through its designated representatives will review and evaluate the ESCO Preliminary Technical and Cost Proposals. The proposal must be evaluated by a licensed architect or a registered engineer. Evaluation shall be based on the criteria listed in Part IV.

4.) **CLIENT REFERENCE CHECKS.** The County, through its designated representatives, will review and evaluate the ESCO client references provided in response to this Request for Proposals in accordance with the evaluation criteria identified in Part IV.

5.) **SHORTLIST.** The County will select (shortlist) ESCOs on the basis of the rankings of the written proposal and the client references.

6.) **ORAL INTERVIEW.** Each shortlisted ESCO will be required to participate in an oral interview. The purpose of this session is to clarify specific aspects of the technical proposal and to answer questions posed by the evaluation team. These oral interviews may be tape recorded. ESCO responses given in the oral interview will be part of the overall evaluation, but the ESCO will not be allowed to vary the written proposal nor improve the competitive position of the bidder.

7.) **SELECTION OF ESCO TO DEVELOP THE PROJECT.** The County will select the best qualified ESCO to conduct an investment grade technical energy audit of the Project Sites listed in Appendix I and propose: (1) A complete set of ECMs, including all project costs, (2) A timetable for completing design, engineering bid specifications, and construction work, (3) A detailed description of services to be provided, specific financing arrangements and terms, (4) Projected energy and cost savings, (5) Special conditions offered by the ESCO. The non-selection of any proposal does not indicate a lack of merit; rather, the selection indicates the conclusion that such proposal is in the best interest of the governmental unit. If the results of the audit are not within ten percent (10%) of both the guaranteed savings contained in the proposal and the total proposal amount, either the Issuer or the ESCO may terminate the project without incurring any additional obligation to the other party. However, if the County terminates the project after the audit is conducted and the results of the audit are within ten percent (10%) of both the guaranteed savings contained in the proposal and the total proposal amount, the County shall reimburse the ESCO the fee indicated for the completed audit report as set forth in Attachment A. The results of the audit shall then become the property of the County. Upon approval and acceptance of the investment grade energy audit, the County shall not be liable for the payment of any amounts to the selected ESCO until a guaranteed energy savings contract is finalized and fully executed.

I-5. **TYPE OF CONTRACTS.** When a guaranteed energy savings contract is entered into as a result of this RFP, the Investment Grade Energy Audit Contract shall be in substantial conformity with the form located in Attachment I and the Energy Services Agreement located in Attachment J.

I-6. **REJECTION OF PROPOSALS.** The County reserves the right to reject any and all proposals received.

I-7. **INCURRING COSTS.** The County is not liable for any cost or expenses incurred by ESCOs in the preparation of their written responses or for attendance at any conferences and meetings related to this RFP.

I-8. **ERROR / CLARIFICATION.** When a proposal contains an obvious error or otherwise where an error is suspected, the circumstances may be investigated and then may be considered and acted upon. Any action taken shall not prejudice the rights of the public or other bidders. Where proposals are submitted substantially in accordance with this RFP but are not entirely clear as to the intent or to some particular fact where there are other ambiguities, clarification may be sought and accepted provided that, in doing so, no change is permitted in prices.

I-9. **PROPOSALS.** To be considered, proposals must be a complete response to the RFP. Proposals are to be straightforward, concise presentations without extraneous material. We request that material be printed double-sided on 8.5" x11" recycled content paper. Font size may be no smaller than 10 point. The ESCO shall make no other use of the proposal. An official authorized to bind the ESCO must sign the proposal. The proposal shall constitute a valid firm offer for 120 days after the opening of this proposal unless a different time is specifically set forth elsewhere in this RFP. The contents of the proposal of the selected ESCO will become part of its contractual obligations to the extent that the proposal does not conflict with provisions of this RFP.

I-10. **PRELIMINARY COST DATA.** Attachment B and Attachment B-1. The ESCO's Preliminary Cost Proposal sheets shall be bound, sealed, and submitted in a separate envelope marked "**Cost Sheets**" with the bidder's name and the Request For Proposal number (RFP No. 11-014) along with the Technical Proposal in a sealed envelope. Failure to meet this requirement may result in rejection of proposal.

I-11. **PAYMENT AND PERFORMANCE BOND.** The contractor shall be required to provide construction payment and performance bonds in conformance with NCGS Cap. 44-A and in the amount of 100% of the total financed project cost as shown on Attachment A-2.

**I-12 SITE VISITS.** Appendix I-B lists the schedule for the inspection tours of the buildings to be audited. Site representatives will be available to answer questions about the operation of the facilities.

To make arrangements, please contact:

Name: Don Hasselbach

Phone: (919) 560-0443

Interested ESCO's should notify the County's contact as noted above so that the County can plan accordingly for the facility tours.

**I-13. LATE OFFERS, MODIFICATIONS, OR WITHDRAWALS.** No late proposal, late modification, or late withdrawal shall be considered unless received before proposal opening. The bidder shall bear sole responsibility to have his/her proposal delivered on time, regardless of the mode of delivery used, including the U.S. Postal Service or any other delivery services available.

**I-14. CONTRACTOR RESPONSIBILITY.** The selected Performance Contractor will be required to assume total responsibility for all services and/or equipment offered in the Proposal. The selected contractor is responsible for obtaining all relevant permits and meeting all licensing requirements. The selected contractor will be considered the Prime Contractor and the sole point of contact with regard to all contractual matters.

**I-15. REFERENCES AND PROPRIETARY INFORMATION.** Submission of a response to this RFP grants permission to the County to make inquiries concerning the bidder and its officers to any persons or firms deemed appropriate by the County. Any proprietary information will be treated as provided for in N.C. Public Records Act. Data or information so identified will be used by the County solely for the purpose of evaluation and contract negotiations.

**I-16. NORTH CAROLINA PRODUCTS.** Where quality and availability allow, specifications shall be based on products manufactured by and services from North Carolina businesses. This special interest in North Carolina products is intended to encourage and promote their use, but shall not be exercised to the exclusion of other products or to prevent fair and open competition.

**I-17. PROPOSAL FUNDING.** Responding ESCOs shall be willing and able to arrange the capital investment required to fund this proposal. The cost of proposal generation and all other "up-front" costs shall be borne by the bidder at no obligation to the Issuer. The contract shall not include or allow for an investment grade audit that is paid using, or that encumbers, state funds, unless authorized under 143-64-17B. Total project cost will be financed under a guaranteed energy savings contract.

The Office of the Treasurer has estimated the cost of financing for this proposal as the percentage shown in Attachment B. This estimate shall not be binding upon the State and is subject to change by the Office of the Treasurer. The Treasurer may reject any potential contract if the actual cost of financing has exceeded the estimated cost of financing when the contract is submitted to the Office of the Treasurer for approval.

The ESCO shall submit two (2) options for financing:

(1) The ESCO shall include a total contract cost option using the Office of the Treasurer financing as described above. This is the basis for Attachment B.

(2) The proposal shall include a total contract cost option based on ESCO or third party financing at best available rate. This is the basis for Attachment B-1.

The proposed term of the contract shall be for a maximum of fifteen (15) years. The County shall own all installed equipment at the end of the agreement term if not sooner. Said equipment shall be free and clear of all liens and encumbrances upon transfer of ownership to the Issuer.

The ESCO must include two payment and performance security instruments. The first security instrument, a payment and construction performance bond, is to be conditioned for the faithful performance and

fulfillment of the installation of the Energy Conservation Measures and which shall be valid until the completion of the installation work with construction approved by the owner and accepted on behalf of the State.

The second security instrument shall be a written guarantee which will be contained in the contract which states that the annual energy or operational costs savings will meet or exceed the total cost of the contract including financing, installed equipment costs, contract security instruments required by the Office of State Treasurer, an annual fee for a third party engineer, and measurement and verification for the entire length of the contract period (up to maximum of 15 years). This guarantee instrument must be in a form and amount acceptable to the Office of State Treasurer and may include, but is not limited to, a performance bond, a letter of credit, an insurance policy, or a corporate guarantee of the Performance Contractor, or a corporate guarantee of the Performance Contractor's parent company, or financing of all costs for the full term of the contract.

**I-18. ANNUAL RECONCILIATION.** The Performance Contractor shall, on an annual basis, reimburse the agency for any shortfall in guaranteed energy savings projected in the contract. The energy savings shall be monitored continuously, reported quarterly, and reconciled on an annual basis, commencing twelve (12) months from the date that the energy conservation measures become fully operational, and the construction accepted on behalf of the State. The reconciliation period is to be no more that 60 days from the anniversary of project acceptance. In the event that the actual savings are less than the guaranteed savings, the Performance Contractor shall provide cash reconciliation of the difference within 30 days. A surplus in any one year shall not be carried forward or applied to a shortfall in any other year.

**I-19. INDEPENDENT CONSULTING ENGINEER.** The County has selected Heery International, who is a Professional Engineer or Architect licensed in North Carolina and who will evaluate the proposals based on the criteria stated in this RFP, to act as the County's representative,

The Performance Contractor shall include \$150,000 for a consulting engineer or architect, not affiliated with the Performance Contractor, and selected by the state agency. This cost shall be financed and paid from the savings for the contract life. This cost is for independent M&V and for Construction Administration.

**I-20. CONTRACT EXECUTION.** Contract execution by the successful company shall occur upon contract award. Such execution is contingent upon approval by the by the Local Government Commission (LGC) in the State Treasurer's Office and financing, or financing approval, by the State Treasurer.

## **PART II. INFORMATION REQUIRED FROM ESCOs**

Bidders must submit the following information.

Include one (1) unbound original, seven (7) unbound copies and one (1) electronic version (CD or flash drive) of the Technical Proposal and Cost Proposal as instructed below, clearly labeled with the name of the submitting bidder on the outside of the envelope and the RFP number (RFP No. 11-014).

Each attachment should be separately tabbed and easily recognizable to the reader.

### **II - 1. Technical Proposal:**

- **Attachment A: Preliminary Technical Proposal.** Provide complete responses to the information requested in Attachment A to this RFP.
- **Attachment A-1: Preliminary Technical Energy Audit Report.** This audit is to be conducted by your firm on the project sites identified in Appendix I.
- **Attachment A-2: ESCO's Preliminary Annual Cash Flow Analysis. (Using State Treasurer's Stated Interest Rate)**
- **Attachment A-3: ESCO's Preliminary Annual Cash Flow Analysis. (Using ESCO's stated Interest Rate)**

### **II - 2.**

**Attachment B and B-1: ESCO's Preliminary Cost Proposal.** The information requested in this section should be provided for the facilities listed in Appendix I and is required to determine the reasonableness of your cost proposal and economic analysis. ESCOs are required to submit the required information using the format found in Attachment B and Attachment B-1 to this RFP. The proposal shall not include costs or allowances for contingencies in the contract.

**NOTE:** Open book pricing is required. Describe your firm's approach and experience in providing open-book pricing. ESCOs will fully disclose all costs, including all costs of subcontractors and sub-tier vendors. The ESCO will maintain cost accounting records on authorized work performed showing actual costs for labor and materials, or other basis requiring accounting records. The ESCO will provide access to records and preserve them for a minimum of three years and for five years if any Federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by the County or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.

### **PART III. ANTICIPATED PROJECT SCHEDULE**

#### **County of Durham**

<b><u>Activity</u></b>	<b><u>Date</u></b>
Issue RFP	20 Nov 2010
Pre-Proposal meeting and initial site visits	30 Nov 2010 / 01 Dec 2010
Detailed Site Visits (to be arranged)	02-08 Dec 2010
Proposals Due	11 Jan 2011
Proposals Reviewed, Evaluated and Ranked	22 Feb 2011
Oral Interviews	01 Mar 2011
ESCO Selected	08 Mar 2011
Audit Contract Negotiated	29 Mar 2011
Technical Audit Completed	16 May 2011
Project Financing	28 June 2011
Contract Negotiations	19 July 2011
Board of Commissioners/City Council Approval	15 Aug 2011
SEO Review & Approval	05 Sep 2011
LGC Approval	05 Oct 2011
Contract Presented and Signed	02 Nov 2011

## PART IV. EVALUATION CRITERIA

Responses will be initially evaluated based on the completeness and quality of the information provided in Attachment A, ESCO's Preliminary Technical Proposal: Attachment A-1, Preliminary Technical Energy Audit Report; and Attachment B, and Attachment B - 1 ESCO's Preliminary Cost Proposals. Failure to provide any of the requested information may result in disqualification. ESCOs rankings, as a result of the evaluation of information provided in response to the RFP issued by the County, will be included in the overall scoring. The criteria listed below will be used in the evaluation of the Preliminary Technical and Cost Proposals and the responses of the shortlisted ESCOs during final selection interviews.

### IV-2. Project Management

<u>Criterion</u>	<u>Point Value</u>
Clarity, organization, and level of detail in written proposal.	5
Quality of communication skills of the ESCO's representatives at the oral interview.	5
Clarity and reasonableness of proposed milestones and timeline for project implementation.	3
Quality of proposed training for facility staff.	3
Quality of products proposed.	3
General reputation, reliability, working relationship and performance capabilities of the qualified providers, and location to project.	6
<b>Total:</b>	<b>25</b>

### IV-3. Technical Approach

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

### IV-4. Financial Approach

<u>Criterion</u>	<u>Point Value</u>
<del>Reasonableness of proposed financing arrangement and financial analysis assumptions proposed for this project.</del>	<del>5</del>
<del>Reasonableness of the project-specific Preliminary Cost Proposal.</del>	<del>3</del>
<del>Dollar value of projected energy savings.</del>	<del>3</del>
<del>Dollar value of projected operating savings and clarity of supporting documentation.</del>	<del>4</del>
<del>Reasonableness of investment grade energy audit costs.</del>	<del>3</del>
Subcontractor prices offered are reasonable	2
Markups fair and reasonable	5
Proposed costs of construction, financing, maintenance and training.	5
<b>Total:</b>	<b>30</b>

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

15

**Grand Total:**

**100**

#### **IV-5 Completeness**

**Each response will be reviewed prior to the selection process for completeness and adherence to format. A response will be considered complete if all requested sections are included in the proper order and properly completed. Incompleteness can cause an ESCO's proposal to be disqualified.**

The qualified ESCO shall provide a report as part of its proposal which shall be available for public inspection, summarizing estimates of all costs of installation, maintenance, repairs, debt service, and estimates of the amounts by which energy or operating costs will be reduced. The report shall contain a listing of the contractors and subcontractors to be used by the qualified ESCO with respect to all energy conservation measures.

#### **IV-6 Formal Evaluation of RFP Responses**

##### **A. Evaluation Process**

##### **A. Evaluation Process**

1. Evaluation criteria shall include those defined by G.S.143-64.17. Evaluation shall also include the following:
  - a. All criteria listed in section IV 1 through IV 5 of this RFP.
  - b. A process for annual third party measurement and verification of savings in accordance with the pre-defined and certified protocol found in 1 NCAC 41B.0510. The cost of this process shall be included in the total cost of the contract.
  - c. The contract shall include the total cost based on Office of Treasurer cost of financing estimate in proposal and shall allow the Qualified Provider to submit cost based on Qualified Provider or third party financing in the bid. The lowest price of all financing options provided by a single bidder shall be used as the basis for any price analysis for that bidder.
2. The County or their designees will formally evaluate each response. The evaluation process will objectively grade the responses on their merit and responsiveness to the needs of the County. Responses will be evaluated in light of the material and substantiating evidence presented in the response. The evaluation process may include verification of references, confirmation of financial information, and may also include interviews, site visits, or other information as directed by the County.

#### **IV-7 Final Selection**

The ESCO who is deemed by the County to provide the best overall program will be selected. The County reserves the right to reject any and all proposals received and is not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous.

#### **IV-8 Notification**

The County will notify each bidder of the successful ESCO.

## **PART V. PROJECT TERMS AND CONDITIONS**

These sections describe the minimum conditions the County will accept from the selected ESCO. Part V-1 defines the **Scope of Services** and Part V-2 defines **Key Contractual Provisions**. The terms and conditions in the ESCOs proposal will not overrule over conflicting provisions stated in this RFP.

### **V-1. SCOPE OF SERVICES--TECHNICAL REQUIREMENTS**

A. The selected ESCO shall prepare design documents (drawings and specifications) to implement the ECMs from the selected package of modifications. The design documents shall bear the seal of a registered architect or engineer licensed to practice in the state of North Carolina, who shall be the designer of record. The designer will be responsible for periodic inspections to ensure that the installation complies with the design and meets codes and regulations. The designer shall also furnish the Certificate of Compliance at the conclusion of the project. The design shall comply with all requirements imposed by codes, rules, and regulations and meet industry standards. The design shall be for institutional grade buildings and shall meet the requirements outlined in the following documents:

- The most recent version of the North Carolina Construction Manual published by the State Construction Office, North Carolina Department of Administration.
- Industry Standards. Except where more explicit or stringent requirements are stated, the design and construction shall meet or exceed all applicable industry standards.

The approved Performance Contractor shall submit design documents for review and comments to all appropriate authorities, including the following:

Local city or county code officials.

The documents shall also be evaluated by the professional engineer or licensed architect representing the Owner. The ESCO shall address and resolve all comments and obtain written evidence of approval from each reviewer. Any unresolved issues shall be referred to the County for final resolution. The County's decision shall be final and binding.

The approved ESCO shall apply for all permits and pay all associated fees for all of the ECMs being implemented. Work shall not proceed to the construction phase until all approvals, licenses and permits have been obtained.

- B. The County reserves the right of final approval of any selected equipment or modifications proposed. Only prior reviewed and approved equipment and modifications will be permitted. Review and approval shall be conducted by the County in a timely manner.
- C. The ESCO will be required to work with the current County's building management and maintenance personnel, coordinating construction and providing appropriate training in the operation of all retrofits. No equipment shall be installed that will require the hiring of additional personnel by the County unless contract negotiations produce an explicit exemption from this rule for a specific installation.
- D. ESCO must provide two (2) complete sets of reproducible "as built" and record drawings of all existing and modified conditions associated with the project, conforming to typical engineering standards. These should include architectural, mechanical, electrical, structural, and control drawings and operating manuals to be submitted within 30 days of the completed installation.
- E. The ESCO shall be responsible for the proper clean up and offsite removal of all packaging materials and all replaced or demolished materials or equipment. Recycling of construction, salvage, or demolition materials is encouraged. Should hazardous material be disposed of by the ESCO, the ESCO shall provide chain of custody documentation that proper disposal has in fact been provided.
- F. ESCOs shall use one of the measurement and verification methodologies listed in the United States Department of Energy's/FEMP's "M&V Guidelines: Measurement and Verification for Federal Energy

Projects (Version 2.2, 9/200)", or in the "International Performance Measurement & Verification Protocol" (Volume I, 4/2007), or in the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Guide 14 Measurement of Energy & Demand Savings (2002). If due to existing data limitations or the nonconformance of specific project characteristics, none of the methods listed in either of the referenced protocols is sufficient for measuring performance and verifying guaranteed savings, the ESCO, the State Energy Office, and the agency, shall agree on an alternative method that is compatible with one (1) of the three (3).

- G. Savings calculations will be based on current energy prices at the time of the proposal for Owner. Energy costs shall be escalated in accordance with the latest version of "Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis", U.S. Department of Commerce, NISTIR 85-3273-10 using indices for 2% inflation rate. **NOTE: The County shall provide a copy of up to three years' history of usage and billing for all utilities for the facilities.**
- H. All equipment installed should be compatible with existing systems at the facility, with manufacturer data on all equipment submitted to and approved by the County prior to installation.
- I. The ESCO shall be responsible for payment of any required taxes or fees associated with the execution of the guaranteed energy savings contract. The ESCO shall be responsible for compliance with all applicable codes, statutes and permitting requirements. All engineering, design, installation and construction work shall be done by persons or firms holding the legally required licenses.
- J. If any material is encountered that the ESCO believes to be asbestos, the ESCO will stop work in and on those areas affected and notify the County immediately and without delay. The County will then positively identify, control exposure to, and/or remove this asbestos under a separate contract with a contractor of the County's choosing which may include the ESCO. Alternatively the County may cancel the project, paying the ESCO any documented cost incurred over and above total payments made through the date of cancellation.
- K. The ESCOs will make a site visit at their own expense to generally familiarize themselves with site conditions. Should site conditions require special right of way, easements or other considerations, these considerations will be negotiated by the County and the ESCO.

**PART V-2. MINIMUM CONTRACTUAL PROVISIONS:**

- A. The contents of the RFP as well as the ESCO's proposal become part of the final contract. The County reserves the right of final approval over the Scope of Services and all end-use conditions. Only prior reviewed and approved equipment and modifications will be permitted by the County.
- B. The ESCO must carry the level of insurance required by the County for both the construction and operations phases. **(SET OUT IN ATTACHMENT C)**
- C. All drawings, reports and materials prepared by the ESCO in performance of the contract shall become the property of the County and shall be delivered to them as needed or within 30 days after construction is completed and accepted by the County that the project is fully installed and properly operating.
- D. The ESCO must secure all necessary licenses and permits and comply with all federal and state laws with respect to this project. All work completed under this contract must be in compliance with all building codes and appropriate accreditation, certification and licensing standards.
- E. The repayment obligation and term of the financing for this project must be arranged to coincide with the acceptance by the County attesting that the project is fully installed and operating.
- F. ESCO will be required to **guarantee energy and cost savings** on an annual basis. The guaranteed energy savings contract shall include a written guarantee that the annual energy or operational costs savings will meet or exceed the total cost of the contract, including financing, installed equipment costs, contract security instruments required by the Office of State Treasurer, annual fee for third party engineer, costs of maintenance and training, and measurement and verification for the entire length of the contract period (up to maximum of 15 years). This guarantee instrument must be in a form and amount acceptable to the Office of State Treasurer and may include; the form of a performance bond, letter of credit, insurance policy, or corporate guarantee of the ESCO, corporate guarantee of the ESCO's parent company, or financing of all costs for the full term of the contract.
- G. The ESCO shall, on an annual basis, reimburse the agency for any shortfall in guaranteed energy savings projected in the contract. The energy savings shall be monitored continuously, reported quarterly, and reconciled on an annual basis, commencing twelve (12) months from the date that the energy conservation measures become fully operational, and the construction accepted on behalf of the State. In the event that the actual savings are less than the guaranteed savings, the Performance Contractor shall provide cash reconciliation of the difference. No credit for the achievement of savings above and beyond the annual guarantee will be credited to satisfy performance guarantees in future years of the contract or applied to a shortfall in any other year. Annual reconciliation of the achieved savings will be required to be complete within 60 days including any shortfall.

# Qualifications & Submission Requirements

## ATTACHMENT A

### ESCO's PRELIMINARY TECHNICAL PROPOSAL

Each bidder is required to fully answer all questions in each category listed below. Provide your responses on 8 ½ " x 11" sheets of paper and number and title each answer to the corresponding category. Proposals are limited to 50 double-sided pages, excluding attachments. Font size should be no smaller than 10 point. All pages in your response to this Attachment should be numbered sequentially. Bidders must also include a Table of Contents which indicates the section and page numbers corresponding to the information included.

#### 1. PROJECT MANAGEMENT

##### 1.0 Project Summary (not to exceed 2 pages)

Summarize the Scope of Services (design, financial, operations, maintenance, training, etc.) offered by your firm for this project including the added value to the County of your firm's services.

##### 1.1 Project Team Members

Briefly describe the relevant experience, qualifications and educational background for each individual team member assigned to this project using the format provided below. Project Manager, Site Manager, Point of Contact, and a Professional Engineer Registered in North Carolina must be included in the team. Do not include individual resumes in lieu of this information.

<b>Name of Project Team Member:</b>	
<b>Current Job Title: Job responsibilities: Number of years with ESCO: Primary Office Location:</b>	
<b>Employment History Company Name: Primary job responsibilities: Number of years with firm:</b>	
<b>Educational Background List all academic degrees, certifications, professional affiliations, relevant publications and technical training.</b>	
<b>List all energy performance contracting projects this individual has been involved with during past 5 years. Include project location, type of facilities, year implemented and dollar value of installed project costs.</b>	
<b>Describe the specific role and responsibilities this individual had for each listed project.</b>	
<b>Provide a detailed description of the role and responsibilities this individual will have for the duration of this project.</b>	
<b>Describe any other relevant technical experience.</b>	
<b>Indicate the total years of relevant energy- related experience for this individual.</b>	

**Submit an organizational chart that clearly identifies the roles and relationships of all key team members.**

### **1.2 Project Work Plan and Milestones**

Based on your preliminary assessment, describe your firm's approach to the technical design of this project, including provisions such as construction documents, construction management, as-built drawings, maintenance manuals and your proposed management plan for accomplishing the work. Provide a project work plan to include all tasks and activities, along with a sample timeline of milestones necessary to implement all phases of the project.

### **1.3 Training Provisions**

Describe your firm's proposed approach to providing technical training for facility personnel. Indicate the proposed number of personnel to be trained and the type and frequency of training to be provided for the duration of the contract. Indicate how your firm will address any turnover of key facility personnel.

### **1.4 Project Financing**

Describe your firm's preferred approach to providing or arranging financing for this project. Describe the structure of the financing arrangement including: projected interest rate, financing term, repayment schedule, equipment ownership, security interest required, the responsibilities/liabilities of each party, and any special terms and conditions that may be associated with the financing of this project. Describe how construction will be financed. Include your firm's bonding references, including: company name, address, contact person, telephone number and information on your firm's maximum bonding capability for both construction bonding and savings guarantees.

### **1.5 Other Benefits**

Provide information on positive and/or negative impacts that the installation of recommended ECMs may have on air quality emissions reductions, waste reduction, health or other items not included in the Life Cycle Cost Analysis.

## **1.6 PROJECT HISTORY and CLIENT REFERENCES**

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

### **PROJECT HISTORY AND CLIENT REFERENCE FORM**

<b>Project Name and Location; Number of Buildings; Primary Use; Total square footage</b>	
<b>Project Dollar Amount (installed project costs); Source of Project Financing</b>	
<b>Primary ECMs Installed; ESCO Services Provided</b>	
<b>Construction Start &amp; End Dates</b>	
<b>Contract Start &amp; End Dates</b>	
<b>Dollar Value and Type of Annual Operational Cost Savings (if applicable) (e.g., outside maintenance contracts, material savings, etc.)</b>	
<b>Method(s) of Savings Measurement and Verification</b>	
<b>Provide CURRENT and ACCURATE telephone and FAX numbers of the owner(s)' representatives with whom your firm did business on this project. You should ensure that all representatives are familiar with this project.</b>	
<b>Describe the specific roles and responsibilities of ESCO personnel associated with the identified project. Limit your response to only those personnel who will be directly involved in Customer's project.</b>	
<b>ESCO Notes or Comments</b>	

Complete the following information for each of the projects listed.

**A. ANNUAL ENERGY SAVINGS DATA FORM**

Name of Project: \_\_\_\_\_ Name of ESCO: \_\_\_\_\_

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

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

**B. ANNUAL ENERGY SAVINGS DATA FORM**

Name of Project: \_\_\_\_\_ Name of ESCO: \_\_\_\_\_

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

## **2. SITE SPECIFIC**

### **2.0 Technical Site Assessment**

Based upon your preliminary technical energy audit and available information, discuss the site conditions, status of building systems, current operating procedures and potential cost-effective energy improvement opportunities. Describe any equipment modifications, installations or replacements at the facilities that you propose to implement and those which warrant further study. Describe any operational changes you would recommend.

### **2.1 Energy Baseline Calculation Methodology**

Describe the methods used to compute baseline energy use. Describe any computerized modeling programs used by your firm to establish baseline consumption. Describe the methods used to adjust the guaranteed level of savings from any material changes that occur due to such factors as weather, occupancy, facility use changes etc.

### **2.2 Project Commissioning**

Provide a proposed project-specific Commissioning Plan.

### **2.3 Procedure for Calculating Energy and Cost Savings**

Please summarize procedures, formulas and methodologies, including any special metering or equipment that your firm will use to measure and calculate energy savings for this project. Indicate any operational cost savings opportunities and how such savings are to be identified, documented and measured. Describe your firm's proposed approach to treatment of savings achieved during project implementation and before project completion and how those savings will be documented and verified.

### **2.4 Equipment Maintenance Plan**

Submit a proposed project-specific Maintenance Plan. Include a description of any major changes in operations or maintenance for this project that your company anticipates. Include a description of the types of maintenance services projected for this project. Address how you would approach the role of the Issuer's personnel in performing maintenance on the new and existing equipment. Discuss the relationship of maintenance services to the savings guarantee, any required duration of the maintenance agreement and what impact termination of maintenance prior to the end of the contract term would have on the savings guarantee.

### **2.5 Savings Measurement and Verification Plan**

Provide a project-specific Measurement and Verification Plan in conformance with PART V-1, F.

### **2.6 Investment Grade Energy Audit Cost**

Provide a "not to exceed" total dollar cost of the investment grade energy audit to the County to be used in the event that a performance contract is not negotiated.

### **2.7 Disposal/Recycling of Removed Materials**

Describe your firm's plans for the disposal and recycling of any equipment or materials removed from the premises as part of an ECM.

**ATTACHMENT A-1**

**PRELIMINARY TECHNICAL AUDIT REPORT**

This audit is to be conducted by your firm on the project sites identified in Appendix I. **At a minimum**, the following information required is required:

- Identification of preliminary ECMs
- Technical data and assumptions used in this analysis
- Methods used to develop baseline consumption
- Detailed energy and operational cost savings calculations
- Projected unit energy savings
- Methods for calculating and documenting operational cost savings
- Life cycle cost analysis for each ECM shown on Attachment A-1, which includes savings, costs and cash flow information for the project, calculated for the years of life expectancy of the system containing the ECM.
- The County expects the ESCOs to individually propose creative and innovative solutions to current energy and operational problems, with the exception of the following required items:
  - In order to make the evaluation process more objective, and to ease comparison of the submitted proposals, the ESCOs shall consider, at a minimum, the following list of ECMs:

<b>ECM No.</b>	<b>Facility</b>	<b>ECM Description</b>
1	Detention Center / Jail	Waterless Urinals (non-detention areas only)
2	Detention Center / Jail	Domestic Solar Hot Water
3	Operation Breakthrough	HVAC Controls
4	Roxboro Parking Deck	Lighting upgrade

**ECM Summary Table**

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

**ATTACHMENT A-2**

**ESCO'S PRELIMINARY ANNUAL CASH FLOW ANALYSIS  
 USING THE OFFICE OF THE STATE TREASURER'S STATED INTEREST RATE  
 STATE OF NORTH CAROLINA  
 GUARANTEED ENERGY SAVING CONTRACT**

Financed Project Costs:  
 Finance Term: 15 Years  
 Annual Interest Rate: 5.25%  
 Construction Months: \_\_\_\_\_  
 Annual Payment: \_\_\_\_\_  
 Principal: \_\_\_\_\_  
 Interest: \_\_\_\_\_

Escalation Rate by Utility/Fuel\*  
 Electric: 2.7%  
 Natural Gas: 2.7%  
 Steam: 2.7%  
 Water: 2.7%  
 Operations & Maintenance costs: 2.7%  
 Escalation Rate for Annual Fees: 2.7%

Yr.	Guaranteed Electric Cost Savings	Guaranteed Natural Gas Cost Savings	Guaranteed Water Cost Savings	Other Guaranteed Savings (Please Specify)	Guaranteed Operational Cost Savings	Total Guaranteed Cost Savings	Maintenance Monitoring, M&V, & Training Fees	Net Program Savings to Pay Debt Service	Interest Earnings to Project Fund	Net Debt Service	Net Savings	Guaranteed Cost Savings	Calculated Cost Savings
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
...													
15													
<b>Total</b>													

**ATTACHMENT A - 3**

**ESCO'S PRELIMINARY ANNUAL CASH FLOW ANALYSIS USING  
ESCO'S PROPOSED INTEREST RATE  
STATE OF NORTH CAROLINA  
GUARANTEED ENERGY SAVING CONTRACT**

Financed Project Costs: \_\_\_\_\_  
 Finance Term: 15 Years  
 Annual Interest Rate: \_\_\_\_\_  
 Construction Months: \_\_\_\_\_  
 Annual Payment: \_\_\_\_\_  
     Principal: \_\_\_\_\_  
     Interest: \_\_\_\_\_

Escalation Rate by Utility/Fuel  
     Electric: 2.7%  
     Natural Gas: 2.7%  
     Steam: 2.7%  
     Water: 2.7%  
 Operations & Maintenance costs: 2.7%  
 Escalation Rate for Annual Fees: 2.7%

Yr.	Guaranteed Electric Cost Savings	Guaranteed Natural Gas Cost Savings	Guaranteed Water Cost Savings	Other Guaranteed Savings (Please Specify)	Guaranteed Operational Cost Savings	Total Guaranteed Cost Savings	Maintenance Monitoring, M&V, & Training Fees	Net Program Savings to Pay Debt Service	Interest Earnings to Project Fund	Net Debt Service	Net Savings	Guaranteed Cost Savings	Calculated Cost Savings
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
...													
15													
Total													

**ATTACHMENT B**

**ESCO's PRELIMINARY COST PROPOSAL  
 ESCO's PRELIMINARY PROJECT CASH FLOW ANALYSIS  
 USING OFFICE OF STATE TREASURER'S STATED INTEREST RATE**

This Preliminary Cost Proposal and Preliminary Project Cash Flow Analysis forms shall be submitted in a separately sealed envelope along with the Preliminary Technical Proposal. Two analyses should be completed for the project using the State Treasurer's stated interest rate for Attachment B (see bottom of form) and the ESCO's proposed interest rate for Attachment B1 (see bottom of form B-1).

Attachments B and B-1 must be submitted together.

**ATTACHMENT B: PRELIMINARY COST PROPOSAL  
 USING OFFICE OF THE STATE TREASURER'S STATED INTEREST RATE  
 State of North Carolina  
 GUARANTEED ENERGY SAVING CONTRACT**

AGENCY NAME: \_\_\_\_\_ ESCO NAME: \_\_\_\_\_

TOTAL FINANCED PROJECT COSTS: \$ \_\_\_\_\_ ESTIMATED VALUE OF HARD COSTS<sup>1</sup>: \$ \_\_\_\_\_

Category of Service Fees	Estimated Percentage (%) of Hard Costs	Dollar (\$) Value of Service Fees
<b>Project Service Fees</b>		
Investment Grade Energy Audit		
Design Engineering Fees		
Construction Management		
System Commissioning		
First Year Training Fees		
Cost of Guarantee Security Instrument		
Third Party Owners Rep Fees		
Markup on subcontractor costs		
<b>Totals</b>		
<b>Annual Service Fees</b>		
Measurement and Verification		
Maintenance		
Equipment Performance Monitoring		
Yearly Training Services		
Markup on subcontractor costs		
<b>Totals</b>		

<sup>1</sup>The total value of Hard Costs is defined in accordance with standard AIA definitions which include:

- Labor Costs
- Subcontractor Costs
- Cost of Materials and Equipment, Temporary Facilities and Related Items
- Miscellaneous Costs such as Permits, Bonds, Taxes, Insurance, etc.

NOTE: ESCO mark-ups include all Mark-ups, Overhead, and Profit. Figures stated as a range (e.g. 2%-5%) will not be accepted.

The Office of the State Treasurer has estimated the cost of financing for this proposal to be 5.25%

**ATTACHMENT B-1**

**ESCO'S PRELIMINARY COST PROPOSAL  
USING ESCO'S PRELIMINARY PROJECT CASH FLOW ANALYSIS  
ESCO'S PROPOSED INTEREST RATE**

This Preliminary Cost Proposal and Preliminary Project Cash Flow Analysis forms shall be submitted in a separately sealed envelope along with the Preliminary Technical Proposal. Provide tabs for each section. Two analyses should be completed for the project using the State Treasurer's stated interest rate for Attachment B (see bottom of form) and the ESCO's proposed interest rate for Attachment B1 (see bottom of form).

Attachments B-1 and B must be submitted together.

**ATTACHMENT B-1: PRELIMINARY COST PROPOSAL  
USING ESCO'S PROPOSED INTEREST RATE  
State of North Carolina  
GUARANTEED ENERGY SAVING CONTRACT**

AGENCY NAME: \_\_\_\_\_ ESCO NAME: \_\_\_\_\_

TOTAL FINANCED PROJECT COSTS: \$ \_\_\_\_\_ ESTIMATED VALUE OF HARD COSTS<sup>1</sup>: \$ \_\_\_\_\_

Category of Service Fees	Estimated Percentage (%) of Hard Costs	Dollar (\$) Value of Service Fees
<b>Project Service Fees</b>		
Investment Grade Energy Audit		
Design Engineering Fees		
Construction Management		
System Commissioning		
First Year Training Fees		
Cost of Guarantee Security Instrument		
Third Party Owners Rep Fees		
Markup on subcontractor costs		
<b>Totals</b>		
<b>Annual Service Fees</b>		
Measurement and Verification		
Maintenance		
Equipment Performance Monitoring		
Yearly Training Services		
Markup on subcontractor costs		
<b>Totals</b>		

<sup>1</sup>The total value of Hard Costs is defined in accordance with standard AIA definitions which include: Labor Costs, Subcontractor Costs, Cost of Materials and Equipment, Temporary Facilities and Related Items, and Miscellaneous Costs such as Permits, Bonds, Taxes, Insurance, Mark-ups, Overhead and Profit, etc.

NOTE: Percentages shall include all mark-ups, overhead, and profit. Figures stated as a range (e.g. 2%-5%) will not be accepted.

ESCO's proposed interest rate available at the time of submission: \_\_\_\_\_ %

Financial Institution: \_\_\_\_\_ Address: \_\_\_\_\_

Contact person: \_\_\_\_\_ Title: \_\_\_\_\_ City, State, and ZIP \_\_\_\_\_ Phone #: \_\_\_\_\_ Email \_\_\_\_\_

**COUNTY OF DURHAM  
REQUIREMENTS FOR CERTIFICATE OF INSURANCE**

**VENDOR - IMPORTANT** - Work will not be permitted until the County of Durham receives an acceptable Certificate of Insurance. Give this information to your insurance agent/broker.

THE CONTRACTOR, AT ITS SOLE EXPENSE, SHALL PROVIDE AN ORIGINAL SIGNED CERTIFICATE OF INSURANCE.

1. WORKERS' COMPENSATION - STATUTORY LIMITS - EMPLOYERS' LIABILITY - \$1,000,000.
2. COVERAGE SHALL BE PROVIDED UNDER A COMPREHENSIVE GENERAL LIABILITY OR COMMERCIAL GENERAL LIABILITY AND AUTOMOBILE LIABILITY FORM OF INSURANCE, SUCH AS IS USUAL TO THE PRACTICE OF THE INSURANCE INDUSTRY, INCLUDING, BUT NOT LIMITED TO, ALL THE USUAL COVERAGE REFERRED TO AS:

- Comprehensive/Commercial Form;
- Premises/Operations Liability (M&C);
- Underground Explosion & Collapse Hazard;
- Products/Completed Operations;
- Blanket Contractual;
- Broad Form Property Damage;
- Personal Injury;
- Automobile Liability, Including Coverage for owned, non-owned, leased or hired vehicles, and
- Garage/Garage keepers, Bailers, or Ship keepers Liability, if applicable.

3. MINIMUM LIMITS OF PROTECTION MUST BE:

\$1,000,000 per occurrence /\$2,000,000 aggregate --- Bodily Injury Liability, and  
\$ 100,000 --- Property Damage Liability, or  
\$1,000,000 per occurrence /\$2,000,000 aggregate---Combined Single Limit Bodily Injury and Property  
Damage

5. POLICY PERIOD MUST COVER THE TERM OF CONTRACT.
6. THE COUNTY OF DURHAM SHALL BE GIVEN NOT LESS THAN 30 DAYS NOTICE OF ANY DECREASE IN LIMITS, CANCELLATION, EXPIRATION, OR RENEWAL OF THE POLICY.
- 6.A. A copy of the fully completed Endorsement must be provided. The Endorsement must name the County of Durham as an Additional Insured, identify the policy number and be signed by an authorized representative. The Certificate of Insurance and Endorsement must be submitted as one document.  
-- OR --
- B. The broker/agent submits a certified copy of the insurance policy.

**Send your Certificate of Insurance with endorsement to:  
County of Durham - Attn: Purchasing Division  
200 East Main Street, 4<sup>th</sup> Floor Durham, North Carolina 27701**



**LEGAL NOTICE**

**GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACTING**

**REQUEST FOR PROPOSALS  
(RFP NO. 11-014)**

Durham County Government is seeking proposals for services under a Guaranteed Energy Savings Contract from ESCOs that are pre-qualified with the State of North Carolina. A Pre-Proposal Conference will be held on November 30, 2010 at 9:30 A.M., in Durham County Commissioners' Chamber, 200 East Main Street, 2<sup>nd</sup> Floor, Durham, NC.

Proposals are due by 2:00 P.M., on January 11, 2011. The RFP can be obtained by emailing a request to [purchasinggroup@durhamcountync.gov](mailto:purchasinggroup@durhamcountync.gov), Attn: Hilda W. Williams or from the Purchasing Division, 200 E. Main St., 4<sup>th</sup> Floor, Durham, NC from 8:30 A.M., until 5:00 P.M., Monday-Friday.

**Publication Date: November 20, 2010**

ATTACHMENT E

## ADDENDUM ACKNOWLEDGEMENT

Receipt of the following Addendum/Addenda is/are acknowledged:

Addendum no. \_\_\_\_\_ Date \_\_\_\_\_

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

NON-COLLUSION AFFIDAVIT

State of North Carolina  
County of Durham

\_\_\_\_\_, being first duly sworn, deposes and says that:

1. He/She is the \_\_\_\_\_ of \_\_\_\_\_,  
the Bidder that has submitted the attached proposal;
2. He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
3. Such proposal is genuine and is not a **collusive** or **sham** proposal;
4. Neither the said Bidder nor any of its officers, partners, owners agents, representatives, employees or parties of interest, including this affidavit, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm or person to submit a **collusive** or **sham** proposal in connection with the contract for which the attached proposal has been submitted or to refrain from bidding in connection with such contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the attached proposal or of any other Bidder, or to fix any overhead, profit or cost element of the proposal price of any other Bidder or to secure through collusion, conspiracy, connivance or unlawful agreement any advantage against the County of Durham or any person interested in the proposed contract; and
5. The price or prices quoted in the attached proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affidavit.

\_\_\_\_\_  
*Signature of Bidder*

\_\_\_\_\_  
*Date*

Subscribed and sworn before me,  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

(SEAL)

\_\_\_\_\_  
TITLE

Notary Public  
My Commission Expires \_\_\_\_\_

## EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, handicap, age, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to race, handicap, age, color, religion, sex or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruiting advertising, layoff or termination rates of pay or other forms of compensation, and selection for training including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of the nondiscrimination clause.
- B. The contractor will in all solicitations or advertisements for employees placed by or on behalf of the contractor state that all qualified applicants will receive consideration for employment without regard to race, handicap, age, color, religion, sex, or national origin.
- C. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided advising the labor union or workers' representative of the contractor's commitments under the Equal Employment Opportunity section of this contract and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. In the event of the contractor's noncompliance with nondiscrimination clauses of this contract or with any such rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further County contracts.
- E. The contractor will include the provisions of this section in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Board of County Commissioners of the County of Durham, North Carolina so that such provisions will be binding such subcontractor or vendor.

ATTACHMENT H

**M/WBE FORMS**  
(Affidavits A-C and Appendix E)

**ATTACH TO BID**

**State of North Carolina AFFIDAVIT A - List of the Good Faith Effort**

**COUNTY OF DURHAM**

Affidavit of \_\_\_\_\_  
(Name of Offeror)

**I have made a good faith effort to comply under the following areas checked:**  
(A minimum of 5 areas must be checked in order to have achieved a "good faith effort")

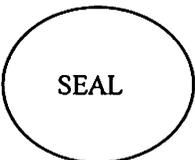
- 1-Contacted minority businesses that reasonably could have expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- 2-Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- 3-Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- 4-Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority business.
- 5-Attended prebid meetings scheduled by the public owner.
- 6-Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- 7-Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- 8-Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the Offeror's suppliers in order to help minority businesses in establishing credit.
- 9-Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- 10-Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cashflow demands.

In accordance with GS 143-128.2(d) the undersigned will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon execution of a contract with the Owner. Failure to abide by this statutory provision will constitute a breach of the contract.  
The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the Offeror to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

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



State of North Carolina, County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_  
Notary Public \_\_\_\_\_  
My commission expires \_\_\_\_\_

ATTACH TO BID – IF YOU ARE NOT UTILIZING SUBCONTRACTORS

State of North Carolina AFFIDAVIT B - Intent to Perform Contract with Own Workforce

COUNTY OF DURHAM

Affidavit of \_\_\_\_\_  
(Name of Offeror)

I hereby certify that it is our intent to perform 100% of the work required for  
the \_\_\_\_\_ contract.  
(Name of Project)

In making this certification, the Offeror states that the Offeror does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

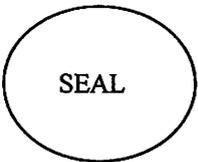
The Offeror agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Offeror to the commitments herein contained.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

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



State of North Carolina, County of \_\_\_\_\_  
Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
Notary Public \_\_\_\_\_  
My commission expires \_\_\_\_\_

**ATTACH TO BID - IF YOU HAVE M/WBE PARTICIPATION**

State of North Carolina **AFFIDAVIT C - Portion of the Work to be Performed by Minority Firms**

**COUNTY OF DURHAM**

Durham County Goals for M/WBE Participation in the Procurement of Goods, Services and Construction

Industry	Ethnicity/Race/Gender				
	African American	Asian American	Hispanic American	Native American	Women-Owned
Construction	2.61%	N/A	N/A	N/A	3.98%
Construction Subcontracting	14.67%	N/A	2.14%	N/A	10.76%
Professional Services (including Architecture and Engineering)	N/A	N/A	N/A	N/A	N/A
Other Professional Services	7.20%	N/A	N/A	N/A	3.55%
Goods/Supplies	N/A	N/A	N/A	N/A	12.05%

Affidavit of \_\_\_\_\_ I do hereby certify that on the \_\_\_\_\_  
 (Name of Bidder)

\_\_\_\_\_ (Project Name)

Project ID No. \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority businesses enterprises. Work will be subcontracted to the following firms listed below. Attach additional sheets if needed.

Firm Name(Street Address/Zip/Telephone)	*Minority Category	Work Description	Dollar Value	Percentage of Goal

\*Minority categories: Black, African American (B), Hispanic (H), Asian American (A), American Indian (I), Female (F)

**APPENDIX E**

**MWBE DOCUMENTATION FOR CONTRACT PAYMENTS**

Prime Contractor/Architect: \_\_\_\_\_

Address & Phone: \_\_\_\_\_

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

Pay Application #: \_\_\_\_\_ Period: \_\_\_\_\_

The following is a list of payments to be made to minority business contractors on this project for the above-mentioned period.

Firm Name	*Minority Category	Total Contract Amount	Amount Paid this Period	Total Payment Amount to date	Percentage of Work Completed	Scheduled Start Date	Scheduled End Date

\*Minority categories: Black, African American (B), Hispanic (H), Asian American (A), American Indian (I), Female (F)

Date: \_\_\_\_\_ Approved/Certified By: \_\_\_\_\_

Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

**\*THIS DOCUMENT MUST BE SUBMITTED WITH EACH PAY REQUEST & FINAL PAYMENT\***

**STATE OF NORTH CAROLINA  
GUARANTEED ENERGY PERFORMANCE CONTRACTING PROGRAM**

**INVESTMENT GRADE ENERGY AUDIT AGREEMENT**

This Energy Audit Agreement is entered into on \_\_\_\_\_, 2010, by and between the *Insert name of (State Agency or University (herein after called the Issuer))* \_\_\_\_\_ and \_\_\_\_\_ (the ESCO herein after called the "ESCO"). Issuer and the ESCO are referred to herein as the "Parties".

**WHEREAS**, the Issuer has issued a Request For Proposals (RFP) to select a Qualified ESCO for a guaranteed energy savings contract; and

**WHEREAS**, the ESCO submitted a response to the RFP and participated in a competitive evaluation procedure designed to select a Qualified ESCO; and

**WHEREAS**, the Issuer has accepted the ESCOs proposal selected the ESCO to complete the project; and

**WHEREAS**, the Issuer is responsible for the operation, management and maintenance of the Buildings and or Facilities (Herein after collectively referred to as Buildings) as identified in the RFP, Appendix I, (Project Sites); and

**WHEREAS**, a comprehensive energy use and savings analysis (the "Investment Grade Energy Audit") is required by the accepted RFP to be performed at the Buildings identified in the RFP, Appendix 1, (Project Sites) in order to verify the feasibility of the Energy Performance Contracting Project to provide for the installation and implementation of energy conservation measures (ECMs) at the Buildings; and

**WHEREAS**, if the ECMs are verified to be feasible, and if the amount of energy savings can be reasonably ascertained and guaranteed in an amount sufficient to cover all costs associated with an energy performance contracting project at the Facilities, the Parties have contracted to negotiate a final Energy Services Agreement (ESA) under which the ESCO shall design, procure, implement, provide training, offer maintenance services and monitor such energy conservation measures at the Buildings and or Facilities identified in the RFP;

**NOW THEREFORE**, the Parties agree as follows:

**ARTICLE 1  
SCOPE OF INVESTMENT GRADE ENERGY AUDIT**

The ESCO will perform the Investment Grade Energy Audit and prepare a detailed engineering and economic report (*herein after called* the "Report") which specifically identifies the energy improvements and operational changes which are recommended to be installed or implemented at the Buildings. The Report shall contain detailed projections of energy and cost savings to be obtained at the Buildings as a result of the installation of the recommended energy conservation measures (ECMs). The savings calculations must utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings for the Buildings, including accurate marginal cost for each unit of savings at the time the audit is performed; documented material and labor costs that may be actually avoided; adjustments to the baseline to reflect current conditions at the Buildings, 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 in detail the ESCO's plan for installing or implementing the measures in the Buildings, including all anticipated costs associated with such installation and implementation.

The ESCO's required tasks in performing the Energy Audit and preparing the Report:

**A. Collect General Information For Each Building.**

The ESCO shall collect detailed building information such as: size, age, construction type, condition and general use of each building except as provided below. The ESCO shall also collect and summarize building utility cost and consumption data for the most recent 36-month period. If after reasonable inquiry, the ESCO can demonstrate that less than 36 months of data is available, the ESCO with the written approval of the Issuer may collect such data is available, but in any event not less than 24 months of data. The ESCO shall evaluate the impact on utility cost and consumption for any energy measures currently being installed or currently contemplated to be installed by the Issuer in the building which will remain separate from the Energy Services Agreement throughout the duration of the ESA.

Issuers shall furnish (or cause its energy suppliers to furnish) all available records and data concerning energy and water usage for the building for the most current 36 month period, if available, including but not necessarily limited to, utility records, occupancy information, descriptions of any changes in the structure of the building 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, and description of energy management procedures presently utilized. The Issuer shall also furnish 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 contemplated to be installed by Issuer in the Building separate from the Energy Service Agreement throughout the duration of that agreement. Issuer shall also provide copies of drawings, equipment logs and maintenance work orders to the ESCO insofar as this information is readily available. The Issuer shall make available any FCAP, IES, or other survey reports available for that building.

**B. Inventory Existing Systems and Equipment.**

The ESCO shall compile an inventory based on a physical inspection of the major electrical and mechanical systems at the building, including:

- Cooling systems and related equipment
- Heating and heat distribution systems
- Automatic temperature control systems and equipment
- Air distribution systems and equipment
- Outdoor ventilation systems and equipment
- Kitchen and associated dining room equipment, if applicable
- Exhaust systems and equipment
- Hot water systems
- Electric motors 5 HP and above, transmission and drive systems
- Interior and exterior lighting
- Laundry equipment, if applicable
- Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.
- Other applicable energy using systems identified in the RFP or otherwise recognized.

The inventory shall address the following considerations:

1. The loads, proper sizing, efficiencies or hours of operation for each system (Where measurement costs, facility operating or climatic conditions necessitate, engineering estimates may be used, but for large fluctuating loads with high potential savings, appropriate measurements are required unless waived by the Issuer).
2. Current operating condition for each system.
3. Remaining useful life of each system, identifying or describing the method used to determine that remaining useful life.
4. Feasible replacement systems.

5. Hazardous materials and other environmental concerns.

The ESCO shall use data loggers and or other measurement and recording devices and conduct interviews with building operation and maintenance staff regarding the building's system operation, occupancy patterns and problems with comfort levels or equipment reliability.

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

The ESCO shall examine the most recent 36 months of utility bills except as previously noted in Article 1 – Section A and establish Base Year consumption for electricity, fossil fuels and water by averaging; or selecting the most representative contiguous 12 months. The ESCO shall consult with building staff and account for any unusual or anomalous utility bills which may skew Base Year consumption from a reasonable representation.

The ESCO shall estimate loading, usage and/or hours of operation for all major end uses representing more than 5% in aggregate of total Facility consumption including, but not limited to:

- Water
- Lighting
- Heating
- Cooling
- HVAC motors (fans and pumps)
- Plug load
- Kitchen equipment
- Other equipment
- Miscellaneous

Where loading or usage is highly uncertain The ESCO shall employ spot measurement and/or short term monitoring at its discretion, or at the request of Issuer. Reasonable applications of measurement typically include variable loads that are likely candidates for conservation measures, such as cooling equipment. The annual end use estimated consumption shall be reconciled with the annual Base Year consumption to within 5% for electricity (kWh), fossil fuels and water. The contribution to electric peak demand for each end use shall also be reconciled to within 5% of the annual Base Year peak. The "miscellaneous" category shall not be more than 10% and each component shall be separately set forth. The purpose of this is to place reasonable limits on potential savings.

**D. Develop List of Potential Energy Conservation Measures (ECMs).**

The ESCO shall:

1. Identify and propose potential ECMs for installation or implementation at the building including cut sheets on proposed equipment. For non-standard ECMs provide information regarding product site installations.
2. Provide a detailed estimate of the cost, savings and life expectancy of each proposed ECM. Prepare a Life Cycle Cost Analysis in accordance with State Construction Office guidelines as directed by the Issuer.
3. Specify operations and maintenance procedures of the building which will be affected by the installation/implementation of the proposed ECMs.
4. Provide analysis methodology, supporting calculations and assumptions used to derive baselines (e.g. lighting operating hours) and estimate savings. Provide the existing and proposed air and hot water temperatures, amount of outdoor air ventilation (CFMs) lighting and acoustic levels. Provide copies of the utility tariffs and commodity price histories used in savings

calculations. Manual calculations should disclose essential data, assumptions, formulas, etc. so that a reviewer could replicate the calculations based on the data provided.

5. For savings estimates using computer simulations, the ESCO shall provide access to the program and all inputs and assumptions used, if requested by the Issuer.
6. Provide a detailed preliminary savings Measurement and Verification plan for each proposed ECM.
7. Provide a detailed preliminary commissioning plan for the proposed ECMs.
8. Provide detailed calculations for any rate saving proposals.
9. Provide detailed supporting calculations for any proposed maintenance, material or other operational savings. Describe annual variances in savings from year to year (e.g. lighting, warranties).
10. Estimate any environmental costs or benefits of the proposed ECMs (e.g. disposal costs, avoided emissions, water conservation, etc.). Provide emissions reductions data for NOX, CO2 and SO2. Segment emissions data for direct site emissions reductions (e.g. fossil fuels) and indirect emissions reduction data (e.g. electricity/water).
11. For all proposed ECMs, the ESCO shall comply with all applicable state, federal and local codes and regulations in effect at the time of this analysis.

**This list shall be compiled and submitted to the Issuer within 120 (one hundred and twenty) days of the execution of this Energy Audit Agreement.**

**E. Select Final Recommended ECMs.**

The ESCO shall, in consultation with the Issuer, recommend specific ECMs from its preliminary compilation for installation and implementation at the Building and or Facility.

**F. Cost and Fee Estimates**

The ESCO shall provide detailed estimates of costs associated with the installation, implementation and commissioning of each of the ECMs proposed in the Audit including breakouts for labor, materials, and equipment. Open book pricing is required. ESCOs will fully disclose all costs, including all costs of subcontractors and sub-tier vendors. The ESCO will maintain cost accounting records on authorized work performed showing actual costs for labor and materials or other basis requiring accounting records. The ESCO will provide access to records and preserve them for a minimum of three years and for five years if any Federal funds are used in the Contract. The retention period runs from the date of payment for the relevant goods or services by the Issuer or from the date of termination of the Contract, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue. In addition, project cost data must be provided in the format included in Attachment B and B.1. ESCO Cost Proposal and Cash Flow Analysis.

The ESCO shall also provide estimates of monthly costs associated with sustaining the project performance including breakouts for maintenance fees, monitoring fees, and training fees.

**G. Savings Estimates**

The Issuer has endeavored to provide the ESCO with sufficient general and specific guidance in this Article 11 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 ESCO should seek written guidance from the Issuer. The Issuer reserves the right to reject items claimed as savings which are not in the Issuer's utility budget line or which have been claimed contrary to the guidance given in this

agreement or contrary to written guidance given to the ESCO. The Issuer also reserves the right to reject the ESCO's calculations of savings when it determines that there is another more suitable or preferable means of determining or calculating such savings.

For the purposes of completing the Cash Flow Analysis in Attachment B and B-1, the following items will be allowed as savings or in the development of savings:

- Escalation rates of \_\_\_\_\_ % for natural gas<sup>1</sup>
- Escalation rates of \_\_\_\_\_ % for electricity
- Escalation rates of \_\_\_\_\_ % for oil
- Escalation rates of \_\_\_\_\_ % for steam
- Escalation rates of \_\_\_\_\_ % for water
- Escalation rates of \_\_\_\_\_ % for other fuel type (specify)
- Escalation rates of \_\_\_\_\_ % for operation and maintenance cost savings
- Escalation rates of \_\_\_\_\_ % for material/commodity cost savings
- Escalation rates of \_\_\_\_\_ % for allowable labor savings

It should be noted that the base value for each fuel and water unit will not devalue in the event of any rate decrease. The Issuer reserves the right to impose ceiling rates for fuel escalations.

The following items will not typically be credited as savings derived from a proposed EGM: Issuer's in-house labor cost, Issuer's deferred maintenance cost and offset of future Issuer's capital costs.

The ESCO may seek in writing, permission to include such items from the Issuer on a case-by-case basis. However, the final determination of allowable savings in each case considered shall reside with Issuer.

#### H. Report Format.

The ESCO shall prepare a two-volume report as follows:

Each volume should be submitted using 8 ½ " x 11" sheets of paper and a font size no smaller than 10 point. The pages in each volume should be numbered sequentially, include a Table of Contents and tabbed with the visible titles of corresponding Schedules (Volume 1) or Sections (Volume 2).

Volume 1 of 2 shall include the presentation of information in the following Schedules required for the Guaranteed Energy Services Agreement (GESA) to the extent the information has been developed during the course of performing the audit. Schedules may be finalized during negotiations, prior to execution of the ESA.

##### Schedules

Schedule A	Equipment to be installed by the ESCO
Schedule B	Description of Premises; Pre-Existing Equipment Inventory
Schedule C	Energy Saving Guarantee
Schedule D	Compensation to the ESCO
Schedule E	Baseline Energy Consumption
Schedule F	Savings Measurement & Calculation Formulae; Methodology to Adjust Baseline
Schedule G	Construction and Installation Schedule
Schedule H	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule I	Standards of Comfort
Schedule J	The ESCO's Maintenance Responsibilities
Schedule K	Issuer's Maintenance Responsibilities
Schedule L	Facility Maintenance Checklist
Schedule M	The ESCO's Training Responsibilities
Schedule N	Installment Payment Schedule

<sup>1</sup>It should be noted that the base rate value for each fuel and water unit will not devalue in the event of any rate decrease. The customer reserves the right to impose ceiling rates for fuel escalations.

- Schedule O Proposed Final Project Cost & Proposed Final Project Cash Flow Analysis (See Attachment B at the end of this Energy Audit Agreement)
- Schedule P Current and Known Future Capital Projects at the Premises; Methodology to Adjust Baseline for Changes in Building Use or Operating Hours
- Schedule Q Insurance and Bonds
- Schedule R Warranties (including Equipment)
- Schedule S [FINANCING AGREEMENT] (Optional)

**Exhibits (Volume 1)**

- Exhibit I Performance Bond/Construction Bond
- Exhibit II (i) Certificate of Acceptance—Technical Audit
- Exhibit II (ii) Certificate of Acceptance—Installed Equipment
- Exhibit III Equipment Warranties

**Volume 2 of 2** shall include all of the information required in Section D and the Sections below, and presented in the following format:

1. **Executive Summary:** Provide an executive summary which describes the buildings, measures evaluated, analysis methodology, results and a summary table presenting the cost and savings estimates for each recommended measure. Include a summary of the recommended measures and costs using the table format provided below.

	<u>ECM</u>	<u>TOTAL COST</u>	<u>ENERGY COST SAVINGS</u>	<u>SIMPLE PAYBACK</u>
<u>1.</u>				
<u>2.</u>				
<u>3.</u>				
<u>TOTALS</u>				

2. **Measures Not Evaluated:** Include a discussion of measures not evaluated in detail and the explanation of why a detailed analysis was not performed.
3. **Baselines:** Provide a summary of all utility bills, consumption baselines and how they were established, and end use reconciliation with respect to the baselines including a discussion of any unusual characteristics and findings.
4. **ECM Summaries:** Provide detailed descriptions for each ECM including analysis method, supporting calculations (may be submitted in appendices), results, proposed equipment and implementation issues. Provide a financial analysis for each proposed ECM (See Section F).
5. **Cost and Savings Estimates:** Conclusions, observations and caveats regarding cost and savings estimates.
6. **Appendices:** Provide thorough appendices which document the data relied upon to prepare the analysis and how that data was collected.

**Submission of the Report.**

The Report shall be completed within 120 (one hundred and twenty) days of the date of execution of this Energy Audit Agreement. The not-to-exceed cost for the completed Energy Audit and Report will be \_\_\_\_\_.

**ARTICLE 2**  
**ENERGY SERVICES AGREEMENT (ESA)**

Upon the verification of the final Energy Savings under this agreement, the ESCO is obligated to execute an ESA under which the ESCO shall design, install and implement energy conservation measures which the Parties have agreed to and provide certain training, maintenance and monitoring services as agreed to by both Parties. However, nothing in this Agreement should be construed as an obligation on any of the Parties to execute such an ESA. The precise terms and provisions of such an ESA shall be set forth in a separate agreement.

**ARTICLE 3**  
**PAYMENT**

Payment to the ESCO for services performed in connection with the Energy Audit Agreement shall be made by the Issuer only in accordance with the provisions of Article 4 herein.

**ARTICLE 4**  
**TERMINATION**

**A. By the ESCO:**

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

- (i) The ESCO determines that it cannot guarantee a minimum savings in energy costs through the implementation of an energy performance contracting project at the Buildings and or Facilities; or
- (ii) The ESCO determines that even though it can guarantee a savings in energy costs, that amount would be insufficient to cover the costs associated with performing the Audit, installing energy conservation measures and related training, maintenance and monitoring services.

In the event the ESCO terminates the Agreement pursuant to Section 4 A (i) or (ii) the Issuer shall not be obligated to pay any amount to the ESCO for services performed or expenses incurred by the ESCO in performing the Energy Audit and Report required under this Agreement. The ESCO shall provide the Issuer with any Audit documents (preliminary notes, reports or analysis) which have been produced or prepared prior to the effective date of the termination. The ESCO will return any documents or information that was provided by the Issuer.

Termination under this section shall be effective upon the Issuer's receipt of written notification from the ESCO stating the reason for the termination and all documents which support termination pursuant to 4 A (i) or 4 A (ii) herein.

**B. By the Issuer:**

The Issuer may terminate this Agreement:

- (i) If the ESCO fails to complete the Energy Audit and deliver the Report to the Issuer by the date established in Article 1 l. above; or fails to obtain a written extension of that date from the Issuer. Termination under this subsection B (i) shall be effective upon the ESCO's receipt of written notification from the Issuer that the deadline for submission of the Energy Audit and Report has past. In this event, the Issuer shall not be obligated to pay any amount to the ESCO for services performed or expenses incurred by the ESCO in performing the Energy Audit and preparing the Report required under this Agreement. The ESCO shall provide the Issuer with any Audit documents (preliminary notes, reports or analysis) which have been produced or prepared prior to the effective date of the termination. The ESCO will return any documents or information that was provided by the Issuer.

- (ii) If, prior or subsequent to the completion of the Energy Audit or Report, the **ESCO** notifies the **Issuer** in writing that it is unable to guarantee a sufficient level of savings pursuant to Article 4 A (i) or (ii) above, termination under this subsection B (ii) shall be effective upon Company's receipt of written notification of termination from the **Issuer**. In this event, the **Issuer** shall not be obligated to pay any amount to the **ESCO** for services performed or expenses incurred by the **ESCO** in performing the Energy Audit and preparation of the Report required under this Agreement. The **ESCO** shall provide the **Issuer** with any Audit documents (preliminary notes, reports or analysis) which have been produced or prepared prior to the effective date of the termination. The **ESCO** will return any documents or information that was provided by the **Issuer**.
- (iii) If, prior or subsequent to the completion of the Energy Audit or Report, the **Issuer** notifies the **ESCO** Company in writing that it has elected to terminate this Agreement and not enter into an ESA, the **Issuer** shall reimburse the **ESCO** for either the actual expenses incurred or the percent of the Audit and Report completed as of the effective date of the termination, the amount being determined as fair and equitable by the **Issuer**. Termination under this subsection B (iii) shall be effective upon the **ESCO** receipt of written notification from the **Issuer**.

The **ESCO** agrees to provide the **Issuer** with any records of expenses incurred and any preliminary notes, reports or analyses which have been produced or prepared prior to the effective date of the termination. Such documentation shall be used by the **Issuer** to determine the extent of work completed by the **ESCO** prior to termination and shall become the property of the **Issuer**.

If after completion and acceptance of the Energy Audit, the **Issuer** does not enter into an ESA with the **ESCO** within 60 (sixty) days after written acceptance of the Energy Audit, the **Issuer** agrees to reimburse the **ESCO** for the cost of the Energy Audit as detailed herein. Termination under this subsection B (iii) shall be effective upon the **ESCO** receipt of written notification from the **Issuer**. The Energy Audit and Report will become the property of the **Issuer**.

It is clearly understood by both parties hereto that, if the Parties successfully negotiate and execute an Energy Services Agreement, no payment shall be due for the Energy Audit or Report under the terms of this Agreement. This Agreement shall automatically terminate upon the execution of an ESA by the **ESCO** and the **Issuer** for a guaranteed energy performance contracting project at the Building and or Facilities. It is further understood that provisions for payment for the Energy Audit shall be incorporated into the ESA.

## **ARTICLE 5**

### **STANDARD TERMS AND CONDITIONS**

#### **Section 1. Agreement Term**

The Agreement term shall commence on the date the Agreement is executed by the **Issuer** and end on \_\_\_\_\_, unless earlier terminated pursuant to the provisions of Article 4 hereof. Notwithstanding, the **ESCO** shall adhere to the deadlines set forth in Article 1 regarding the completion and submittal of the list of ECMs and the Report.

#### **Section 2. Materials, Equipment, and Supplies**

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

#### **Section 3. Patent and Copyright Responsibility**

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

#### **Section 4. Customer Access to Records**

The Issuer shall have the right, throughout the term of this Agreement and for a minimum of \_\_\_\_ years following completion of the Agreement, to inspect, audit and obtain copies of all books, records, and supporting documents which the ESCO is required to maintain according to the terms of this Agreement.

**Section 5. Personnel**

All personnel necessary for the effective performance of the Energy Audit shall be employed by the ESCO, and its designated subcontractors shall be qualified to perform the services required under this Agreement, and shall in all respects be subject to the rules and regulations of the ESCO governing staff members and employees. Neither the ESCO, its designated subcontractors, nor its personnel shall be considered to be agents or employees of the Issuer.

**Section 6. Compliance with Applicable Law**

In performance of its obligations pursuant to this Agreement, the ESCO shall comply with all applicable provisions of federal, state, and local law. All limits or standards set forth in this Agreement to be observed in the performance required under this Agreement are minimum requirements, and shall not affect the application of more restrictive federal, state, or local standards applied to the performance of the Agreement.

**Section 7. 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 8. Assignment**

This Agreement may not be assigned by the ESCO without the prior written consent of the Issuer.

**Section 9. Federal Taxpayer Identification Number and Legal Status Disclosure**

Under penalty of perjury, the ESCO certifies that \_\_\_\_ - \_\_\_\_\_ is the ESCO Company's correct Federal Taxpayer Identification Number and that the ESCO is doing business as a Corporation.

**Section 10. Governing Law**

This Agreement shall be governed by and construed only in accordance with the laws of the State of North Carolina.

**Section 11. Agreement**

The following documents are incorporated in, and made a part of, this Agreement:

- Attachment A – Building and or Facility's Recommended ECMs (Optional)
- Attachment B – ESCO Cost Proposal and Project Cash Flow Analysis

**NOTE:** The Issuer shall include all required policy provisions, and shall also include the following attachments.

- Attachment I - Drug Free Workplace Provisions
- Attachment II - Equal Employment Opportunity Clause
- Attachment III - Certification of Capacity to Contract
- Attachment IV- Americans with Disabilities Act
- Attachment V- Certifications

**Section 12. Project Management**

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

For Issuer: \_\_\_\_\_

For ESCO: \_\_\_\_\_

**Section 13. Amendments**

This Agreement and Attachments referenced in Section 11 herein constitute the entire Agreement between the Parties. No amendment hereof shall be effective until and unless reduced to writing and executed by the Parties.

**ARTICLE 6  
EXECUTION**

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 200\_.

Issuer \_\_\_\_\_

ESCO \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

By: \_\_\_\_\_

By: \_\_\_\_\_

## ATTACHMENT B

### ESCO's COST PROPOSAL

#### COST PROPOSAL

### GUARANTEED ENERGY PERFORMANCE CONTRACTING PROJECT

ISSUER'S NAME: \_\_\_\_\_ ESCO NAME: \_\_\_\_\_

VALUE OF HARD COSTS<sup>1</sup>: \$ \_\_\_\_\_

Category of Service Fees	Estimated Percentage (%) of Hard Costs	Dollar (\$) Value of Service Fees
<b>Project Service Fees</b>		
Investment Grade Energy Audit		
Design Engineering Fees		
Construction Management		
System Commissioning		
Equipment Initial Training Fees		
Contingency Costs		
Third Party Owners Rep Fees		
Construction Interest		
<b>Totals</b>		
<b>Annual Service Fees</b>		
Measurement and Verification		
Maintenance		
Performance Monitoring		
On-going Training Services		
<b>Totals</b>		

<sup>1</sup>The total value of Hard Costs is defined in accordance with standard AIA definitions which include:

- Labor Costs
- Subcontractor Costs
- Costs of Materials and Equipment, Temporary Facilities and Related Items
- Miscellaneous Costs such as Permits, Bonds Taxes, Insurance, etc.

**NOTE:** Percentages should include all mark-ups, overhead, and profit. Figures stated as a range (e.g. 2%-5%) are not acceptable.

**ESCO's ANNUAL PROJECT CASH FLOW ANALYSIS  
GUARANTEED ENERGY PERFORMANCE CONTRACTING PROJECT**

Financed Project Costs: \_\_\_\_\_  
 Finance Term: \_\_\_\_\_  
 Annual Interest Rate: \_\_\_\_\_  
 Construction Months: \_\_\_\_\_  
 Annual Payment: \_\_\_\_\_

Escalation Rate by Savings Category\*  
 Electric: \_\_\_\_\_ Other (specify): \_\_\_\_\_  
 Natural Gas: \_\_\_\_\_  
 Steam: \_\_\_\_\_  
 Water: \_\_\_\_\_  
 Escalation Rate for Annual Fees: \_\_\_\_\_

Yr.	Electric Cost Savings	Natural Gas Cost Savings	Other Fuel Cost Savings	Water Cost Savings	Other (Please Specify)	Operational Cost Savings	Total Cost Savings	Maintenance Monitoring, M&V, & Training Fees	Guaranteed Cost Savings	Financing Payment	Net Savings
1											
2											
3											
4											
5											
6											
7											
8											
9											
10											
11											
12											
Total											

**STATE OF NORTH CAROLINA  
ENERGY SERVICES AGREEMENT  
GUARANTEED ENERGY PERFORMANCE CONTRACTING PROGRAM**

This Energy Services Agreement, referred to herein as "Agreement" or "ESA", entered into \_\_\_\_\_, 201\_\_, by and between the \_\_\_\_\_, referred to herein as the "ISSUER" and \_\_\_\_\_ with offices located at \_\_\_\_\_, referred to hereafter as the "ESCO" for the purpose of providing energy conservation measures (ECMs), consisting of services, systems and facilities designed to reduce energy consumption and costs in buildings owned and operated by the ISSUER which are described herein as the "Premises."

**RECITALS**

WHEREAS, the ESCO was selected by the ISSUER as a qualified provider to provide services, herein after called the "Work" which will result in decreased energy consumption and costs, and which services may include but are not limited to the following: energy use analyses, the design, delivery and installation of ECMs which consist of systems and devices for the Premises, guarantee of energy savings, the training of designated ISSUER's employees, and the maintenance and monitoring of the ECMs as provided herein and measurement, verification and reporting of energy savings, financing of the project if herein provided and;

WHEREAS, under separate agreement with the ISSUER, the ESCO has performed a comprehensive Energy Audit and has prepared an Energy Audit Report which has been approved and accepted by the ISSUER as evidenced by the Energy Audit Report and ISSUER's Acceptance Certification as set forth in Exhibit II (i); and

WHEREAS, the ESCO has agreed to guarantee a level of monetary savings to be achieved as the result of the professional and other services to be provided under this Agreement; and

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

**ARTICLE 1: THE ESCO'S RIGHTS AND RESPONSIBILITIES**

1.1 Independent Company Status. The ESCO is an independent Contractor and in providing its services under this Agreement, shall not represent otherwise.

1.2 Legal Responsibility. The ESCO shall perform the Work and all other services required by this Agreement. The ESCO shall assure that all of the Work is accomplished in a workmanlike manner and that all services which require the exercise of professional skills or judgment shall be accomplished by professionals qualified and competent in the applicable discipline and licensed as required in the State of North Carolina. All Project Documents as set forth in paragraph 3.3 and which are required to be prepared by the ESCO shall be in accord with all applicable codes, standards and regulations and shall be prepared by qualified personnel. Where required by North Carolina law, Project Documents shall bear the stamp or seal of architects or engineers licensed in the State of North Carolina. The ESCO shall remain responsible for all services performed, whether by the ESCO or its subcontractors or others on its behalf, throughout the term of this Agreement.

The ESCO shall be liable to the Issuer for any failure and any expense or any expenses resulting from failure to comply with the terms of this agreement. Any review, approval, acceptance or payment for any and all of the ESCO's performance by the ISSUER shall not relieve the ESCO of its responsibility for the Work. This provision in no way limits the ISSUER'S rights and defenses against the ESCO either under this Agreement or otherwise in law or in equity.

1.3 Insurance. The ESCO shall purchase, maintain and provide evidence of insurance coverage of the types, in the amounts and for the periods specified in Schedule Q. Subsequent to the Commencement Date described in paragraph 5.1 hereof, the ISSUER shall be responsible for providing insurance coverage on the ECMs.

The **ESCO** may not commence performance of the Work or other services under this Agreement until all required insurance is obtained and evidence of it is received and approved by the **ISSUER**, but the failure of the **ISSUER** to obtain such evidence from the **ESCO** before permitting the **ESCO** to commence the Work shall not be deemed to be a waiver by the **ISSUER**, and the **ESCO** shall remain under a continuing obligation to obtain and maintain the required coverage and to supply evidence of coverage in accordance with Schedule Q.

The **ESCO's** failure to obtain or keep such insurance in force shall constitute an Event of Default under this Agreement within the meaning of Article 11, and in addition to the remedies provided therein, the **ISSUER** reserves the right to stop the Work until evidence of the requisite coverage is provided. The **ESCO** shall require all subcontractors performing any portion of the Work to carry the insurance required in Schedule Q and the **ESCO** may, at its option, provide the coverage for any or all subcontractors, and, if so, the evidence of insurance submitted shall so indicate. The **ESCO** and each of its subcontractors agree that each insurer shall waive any rights of subrogation against the **ISSUER**.

The **ESCO** shall timely renew the required insurance as necessary to keep such coverage in effect for the periods specified in Schedule Q and shall supply the **ISSUER**, not less than sixty (60) days prior to any expiration or renewal dates for such insurance policies, with evidence of all required insurance including updated replacement Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage, as was provided by the Certificates of Insurance, amendatory riders or endorsements originally supplied. The **ISSUER** shall be a named additional insured in any policy of insurance required by this agreement.

The **ESCO** expressly understands and agrees that any insurance protection furnished by the **ESCO** hereunder shall in no way limit its responsibility to indemnify and save harmless the **ISSUER** under the provisions of this Agreement.

1.4 Performance and Labor and Material Payment Bonds. The **ESCO** shall, prior to commencing the Work, deliver to the **ISSUER** a Performance Bond and a Labor and Material Payment Bond in conformity with N.C. General Statute Chapter 44-A, Article 3.

1.5 Cooperation with the ISSUER's Consultants. The **ISSUER** reserves the right to designate authorized representatives or to retain consultants at its expense, including an Architect/Engineer, to act on its behalf with respect to administering the performance required under this Agreement throughout its term. The **ISSUER** and its representatives and consultants shall at all times have access to the Work. The **ESCO** agrees to cooperate with any representative of, or consultant retained by, the **ISSUER**.

1.6 Joint and Several Liability. Each and every obligation or undertaking herein to be fulfilled or performed by the **ESCO** shall be the joint and several obligation of the **ESCO** and any authorized successors or assigns.

1.7 Miscellaneous. Other rights and responsibilities of the **ESCO** are set forth throughout this Agreement and in the Project Documents described in paragraph 3.3 hereof and are included under other titles, articles, sections and headings for convenience. It is the responsibility of the **ESCO** to familiarize itself with all provisions of this Agreement and the Project Documents in order to understand fully the entirety of its rights and responsibilities hereunder.

## ARTICLE 2: THE ISSUER'S RIGHTS AND RESPONSIBILITIES

### 2.1 Project Administration.

2.1.1 Issuer's Responsibility. The ESCO shall be primarily responsible for the administration and monitoring of the performance of the Work. The ISSUER's personnel designated in paragraph 10.9 shall be the principal point of contact between the ISSUER and the ESCO relative to the performance required under this Agreement.

2.2 Responsibilities of the Issuer. Tasks to be performed by the ISSUER in the administration and coordination of this Agreement include, but are not limited to the following areas:

- (i) Review and approve required insurance coverage and bonds to ensure compliance with the terms of this Agreement;
- (ii) Review and approve the ECM Submittals required under 2.3 hereof within \_\_\_\_ ( ) business days after receipt by the ISSUER of such ECM submittals to ensure:
  - (a) That the design and installation of the ECMs appears to be consistent with the ECMs contemplated in the ESCO's investment grade audit.
- (iii) Attend project meetings.

2.3. ECMs Submittals. ECMs submittals are in sufficient detail to allow the ISSUER to complete the reviews described in paragraph 2.2, and shall include:

- i) Date and revision dates.
- ii) Project Number and Title.
- iii) Stamp or seal of the preparer of the ECM submittal, and the Company's certification that it has reviewed and approved the submittal as to its accuracy and compliance with the provisions of this Agreement.
- iv) Drawings, plans, specifications, shop drawings, product data, and where appropriate or reasonably required, product samples.

At the request of the ISSUER, and where appropriate or required, the ESCO shall provide on-site "mock-ups" and demonstrations of the ECMs at the Premises which shall also be construed as ECM submittals under the provisions of this paragraph. The ISSUER may also request additional materials, documents, or information.

After receipt of the submittals, the ISSUER shall, within a reasonable time, complete its review of the submittals and provide written approval of the submittal or if the submittal has been disapproved, written explanation as to the reason therefore. Upon disapproval the ESCO shall submit a revised submittal within ten (10) business days to the ISSUER for review and approval. The ESCO shall be responsible for any delays caused by rejection of incomplete or inadequate submittals. The ESCO may not commence any of the Work which requires the submittals without written approval by the ISSUER.

The ESCO's responsibility for errors, omissions, deviation from existing conditions, or deviation from the Project Documents in submittals is not relieved by the ISSUER'S review and approval thereof.

### 2.4 Drawings, Specifications and Surveys Provided by the Issuer

(a) The ISSUER shall provide the ESCO with such surveys as it may have describing the physical characteristics, legal limitations and utility locations for the site of the Work. All such information furnished by the ISSUER is furnished without any representation as to the accuracy of such information.

(b) The **ISSUER** will make available for review by the **ESCO** such working drawings, specifications, surveys and "As-Built" drawings concerning the Premises which are available and which relate to work being performed by other Companies at the Premises. All such information furnished by the **ISSUER** is furnished without any representation as to the accuracy of such information;

(c) All drawings, specifications, surveys and copies thereof furnished by the **ISSUER** are and shall remain **ISSUER's** property.

2.5 Ownership, Dissemination and Publication of Documents. The drawings, specifications, reports, renderings, models, electronic media and all such other documents to be prepared and furnished by the **ESCO** pursuant to this Agreement, shall be and remain the property of the **ISSUER** .

2.6 Interpretation of Agreement. The **ISSUER** shall have the authority to make a binding determination of questions of fact that arise in relation to the interpretation of this Agreement and the **ESCO's** performance hereunder. The **ESCO** shall proceed diligently with the performance of this Agreement and in accordance with the **ISSUER'S** decision. Continuation of the Work shall not be construed as a waiver of any other rights accruing to the **ESCO**.

### **ARTICLE 3: THE ENERGY CONSERVATION PROJECT (THE "PROJECT")**

3.1 Project Defined. The **ESCO** shall design, procure, fabricate and install the energy conservation measures specified in Schedule A and provide training, commissioning, maintenance and monitoring and all other services specified in this Agreement and the Project Documents set forth in paragraph 3.3 at the Premises described in Schedule D.

3.2 Energy Audit Report. The Energy Audit Report prepared by the **ESCO** and accepted by the **ISSUER** contains specific recommendations and documentation concerning the energy conservation measures, systems and services to be provided at the Premises and is incorporated herein by reference. The Schedules and Project Documents referenced in paragraph 3.3 shall govern in the event of any inconsistencies between the Energy Audit Report and the provisions of this Agreement.

3.3 Project Documents. The Project Documents include:

- The executed ESA
- The Energy Audit Report
- Accepted Submittals specified in paragraph 2.3.
- Certificates of Insurance
- Executed Performance Bond and Labor and Material Payment Bond

The Project Documents also include the following Schedules which are incorporated herein and made a part of this ESA when approved by the **ISSUER** and **ESCO**:

Schedule A	Equipment to be installed by the <b>ESCO</b>
Schedule B	Description of Premises; Pre-Existing Equipment Inventory
Schedule C	Energy Saving Guarantee
Schedule D	Compensation to the <b>ESCO</b>
Schedule E	Baseline Energy Consumption
Schedule F	Savings Measurement & Calculation Formulae; Methodology to Adjust Baseline
Schedule G	Construction and Installation Schedule
Schedule H	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule I	Standards of Comfort
Schedule J	The <b>ESCO's</b> Maintenance Responsibilities
Schedule K	<b>Issuer's</b> Maintenance Responsibilities
Schedule L	Facility Maintenance Checklist
Schedule M	The <b>ESCO's</b> Training Responsibilities
Schedule N	Installment Payment Schedule

Schedule O	Proposed Final Project Cost & Proposed Final Project Cash Flow Analysis (See Attachment B at the end of this Energy Audit Agreement)
Schedule P	Current and Known Future Capital Projects at the Premises; Methodology to Adjust Baseline for Changes in Building Use or Operating Hours
Schedule Q	Insurance and Bonds
Schedule R	Warranties (including Equipment)
Schedule S	[FINANCING AGREEMENT] (Optional)

Attachment A Sample Construction Process language

3.3.1 Review of Project Documents; Notification to the Issuer. The ESCO shall carefully review all Project Documents, including all addenda, whether prepared by the ESCO, its subcontractors or furnished by the ISSUER for errors, inconsistencies or omissions relative to the performance of the Work. Upon completion of its review of the Project Documents, and prior to commencing the Work, the ESCO shall provide written notice to the ISSUER that (i) there are no inconsistencies in the Project Documents pertaining to the performance of the Work at the Premises or conflicts with existing conditions on the Project.; or, (ii) specifying the nature of any conflicts or inconsistencies noted from the ESCO's review of the Project Documents. All Work to be performed under this Agreement by the ESCO or its subcontractors which the Project Documents indicate is in conflict with the Project Documents or the existing conditions shall be brought to the attention of the ISSUER before the Work is commenced.

3.3.2 Correction of Conflicting Work. In the event that the ESCO fails to properly prepare or review Project Documents or commences the Work without providing notice to the ISSUER of any inconsistency or conflict it discovers in the Project Documents, the ESCO shall, upon written direction from the ISSUER, remove all such Work or portion thereof so conflicting, and rebuild it as directed at no additional cost to the ISSUER.

**ARTICLE 4: IMPLEMENTATION OF THE ENERGY CONSERVATION PROJECT ("THE WORK")**

4.1 Description of the Work. The design, procurement, fabrication, installation and commissioning of the ECMs specified in Schedule A and any training services described in Schedule J, which are integral to the operation of the ECMs, are referred to in this Agreement as the "Work." The maintenance, monitoring, and savings measurement and verification services detailed in Schedules G and O and the any Post-Acceptance Training services detailed in Schedule J, performance of which does not commence until after the Commencement Date of this agreement but not part of the Work.

4.2 Performance of the Work. Construction and equipment installation shall proceed in accordance with the provisions contained in this agreement and the project installation schedule approved by ISSUER and attached hereto as Schedule K.

4.3 Systems Startup/Commissioning. The ESCO shall conduct a thorough and systematic performance test of each element and total system of the installed ECMs in accordance with Schedule O. The ESCO shall provide advance written notice of at least ten (10) business days to the ISSUER of the scheduled test(s). The ISSUER shall have the right to designate representatives to be present at any or all such tests including representatives of the manufacturers of the ECMs. The ESCO shall demonstrate that all ECMs installed comply with the requirements of the Project Documents. The ESCO shall test all components and systems of the installed ECMs. The ESCO, or its subcontractor(s), shall correct or adjust all deficiencies in operation of the ECMs.

**ARTICLE 5: EXECUTION AND COMMENCEMENT DATES AND TERM; INTERIM PERIOD; FISCAL FUNDING**

5.1 Execution and Commencement Dates. Contract execution is contingent upon receipt of the required State of North Carolina approvals and financing. The Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by the ISSUER and ESCO shall have delivered a written Notice to the ISSUER that (i) it has completed the installation and commissioning and commenced operating all of the energy conservation measures specified in Schedule A; (ii) no Event of Default under Article 11 exists; and,

(iii) the Energy Savings Guaranty set forth in Schedule B is in full force and effect; and the **ISSUER** has inspected and accepted said installation and operation as evidenced by the Certification of Acceptance as set forth in Exhibit II (ii). Compensation payments due to ESCO for project monitoring, savings measurement and verification, reporting and maintenance services under this Contract as set forth in Schedule C shall begin no earlier than \_\_\_\_\_ days from the Commencement Date as defined herein.

5.2. Term of Contract; Interim Period. Subject to the following sentence, the term of this Agreement shall be 12 years measured beginning with the Commencement Date. Nonetheless, the Agreement shall be effective and binding upon the parties immediately upon its execution. The period from contract execution until the Commencement Date shall be known as the "Interim Period". Energy savings achieved during the interim period will be fully credited to the **ISSUER**. (OPTIONAL)

5.3. Nonappropriation of Funds. In the event insufficient **ISSUER** or other funds are appropriated and budgeted in any fiscal period for which payments are due **ESCO** under this Agreement, then the **ISSUER** will, not less than \_\_\_ days prior to end of such applicable fiscal period, in writing, notify the **ESCO** of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were made without penalty or expense to the **ISSUER** of any kind whatsoever, except as to the portions of payments herein agreed upon for which the **ISSUER** and/or other funds shall have been appropriated and budgeted or are otherwise available.

## **ARTICLE 6: ANNUAL SAVINGS GUARANTY; ANNUAL RECONCILIATION; COMPENSATION TO ESCO**

6.1 Annual Energy Savings Guaranty. The **ESCO** has formulated and guaranteed the level of cost savings as provided for in Schedule B, which will be achieved each year as a result of the performance by **ESCO** of the services specified in this Agreement utilizing the Methods of Savings Measurement and Verification set forth in Schedule N.

6.2 Annual Review, Reconciliation and Reimbursement. Cost savings achieved at the Premises shall be reported, reconciled and verified pursuant to the provisions of Schedule N. If said annual review, reconciliation and verification of energy savings discloses that the **ESCO** has failed to achieve the annual guaranteed energy savings and operating cost savings set forth in Schedule B, the **ESCO** will pay the **ISSUER** or the **ISSUER'S** designee, as may be directed by the **ISSUER**, the difference between the annual amount guaranteed and the amount of actual annual cost savings achieved at the Premises. The **ESCO** shall remit such payments to the **ISSUER** not later than thirty (30) days of written demand therefore by the **ISSUER**.

6.3 ESCO Compensation for the Work. **ISSUER** will pay **ESCO** for the performance of the work the grand total Contract Sum of \$\_\_\_\_\_. Payments to the **ESCO** for the Work shall be made by the **ISSUER** in the amounts and in accordance with Schedule C hereto. The amount specified as Compensation for the Work is inclusive of all costs and fees to be paid for the Work pursuant to this Agreement including any training services provided prior to acceptance of the project by **ISSUER** and as provided for in Schedule J.

6.4. Payments to Company. Thirty (30) calendar days shall be allowed for the **ISSUERS** inspection and approval of the goods, equipment and services for which any Application For Payment is made.

6.5 Progress Payments Against Contract Sum. Based upon Application For Payment submitted to the **ISSUER** by **ESCO**, upon approval by **ISSUER**, **ISSUER** shall make progress payments to the **ESCO** against the account of the Contract Sum, as provided for in Schedule C and in accordance with the following:

(a) Within \_\_\_\_\_ ( ) Calendar Days from the **ISSUER'S** inspection and approval of the goods and services for which any application for payment is submitted by **ESCO**, **ISSUER** shall pay, or cause to be paid to **ESCO**, 90% of that portion of the Contract Sum. The full 10% retainage shall be retained until completion of the work.

(b) The **ISSUER** may, upon request or at its discretion, furnish to a Subcontractor, if practicable, information regarding the percentages of completion of the amount applied for by **ESCO** and the action taken thereon by the **ESCO** on account of Work done by such Subcontractor.

(c) No Certificate for a progress payment, nor any progress payment, nor any partial or entire use of occupancy or the project by the **ISSUER** shall constitute an acceptance of any work not in accordance with the provisions of this agreement, schedules and Project Documents.

6.6 Final Installation Payment Against Contract Sum. Within \_\_\_\_\_ ( ) days from the Commencement Date set forth in Article 5, the **ISSUER** shall pay or cause to be paid to **ESCO** the entire unpaid balance of then Contract Sum, less the amount of any sums which continue to be retained to satisfy the cost of performing any change in the work which is the subject of any claim or dispute and which has not yet been satisfactorily performed by **ESCO**.

6.2 Maintenance, Monitoring, Savings Measurement and Verification and any Post-Acceptance Training Fees. Payment to the **ESCO** for maintenance, monitoring, savings measurement, verification and reporting, and Post-Acceptance Training services performed after the Commencement Date shall be made by the **ISSUER** pursuant to and in accordance with Schedule C.

## ARTICLE 7: ACCEPTANCE

7.1 Acceptance of the Work. Acceptance of the Work shall occur when the requirements of this article are met and the **ESCO's** performance of the entire scope of the Work is complete, in accordance with the Project Documents so that the **ISSUER** can utilize all the installed ECMs for their intended use and the Energy Savings Guaranty provided by **ESCO** under paragraph 6.1 and Schedule B becomes effective and the **ISSUER** has inspected and accepted said installation and operation as evidenced by the Certification of Acceptance as set forth in Exhibit II (ii).

7.2 Required Acceptance Submittals by the Company. The **ESCO** shall submit the following documents to the **ISSUER** with its notice of Final Completion:

- (a) All Project Record Documents as described in paragraph 3.5;
- (b) The **ESCO** shall submit lien waivers, sworn statements, guarantees, full releases or other evidence reasonably satisfactory to the **ISSUER** that there are no liens, claims or stop notices pending, filed or threatened against the **ISSUER**, the **ESCO**, the Work or the ECMs whatsoever.
- (c) Certificates of compliance for all ECMs which require local government inspection;
- (d) Asbestos abatement compliance records, if applicable;
- (e) Any other documentation reasonably required by the Issuer.

7.3 Any retainage amounts will be paid upon acceptance by **ISSUER** of the work. .

## ARTICLE 8: THE ENERGY CONSERVATION MEASURES

8.1 ECM Warranties. The **ESCO** warrants that all ECMs designed, procured, fabricated and installed pursuant to this Agreement are new, in good and proper working condition and are of merchantable quality and fit for the particular purposes of enabling the **ISSUER** to reduce energy consumption and operating cost. The **ESCO** further warrants that the ECMs are protected by appropriate written warranties covering all parts and equipment performance for the periods specified in Schedule R and Exhibit III. The **ESCO** shall deliver to the **ISSUER** for inspection and approval all such written warranties and shall pursue rights and remedies against the manufacturer and each prior seller of the ECMs under the warranties in the event of equipment malfunction, improper or defective function, or defects in parts, workmanship or performance. The **ESCO** shall be responsible for managing all warranty activity during the warranty periods set forth in Schedule R and Exhibit III and shall notify the **ISSUER** whenever defects in equipment, parts or performance occur which give rise to such rights and remedies and that those rights

and remedies are exercised by the **ESCO**. The cost of any damage, loss or claims by any person arising out of the use or operation of the ECMs or damage to the ECMs and their performance, including damage to other property and equipment of the **ISSUER** or the Premises, due to the **ESCO's** failure to exercise its warranty rights shall be borne solely by the **ESCO**.

All warranties shall be transferable and extend to the **ISSUER**. The warranties shall specify that only new, and not reconditioned, parts may be used and installed when repair is necessitated by malfunction. The **ESCO** additionally warrants that all workmanship, materials, and equipment used in conjunction with the ECMs will be in conformance with the Project Documents and free from defects for the period, commencing with the date of the beneficial use of each ECM to the **ISSUER** and continuing for the period set forth in Schedule R and Exhibit III.

## 8.2 Correction of Warranted Work.

(a) Commencing with the date of beneficial use of each ECM to the **ISSUER** and continuing for the warranty periods set forth in Schedule R and Exhibit III for each ECM, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Project Documents, the **ESCO** shall correct or replace all faulty, defective or nonconforming Work, or malfunctioning portions thereof, in accordance with the timeframes set forth in 8.2(c). The **ISSUER** shall give the **ESCO** written notice as soon as practical if the Issuer has reason to believe that any portion of the work is nonfunctional, or otherwise nonconforming. After receipt of written notice from the **ISSUER** to correct such fault or defect, whether it was observed before or after acceptance of the Work, the **ESCO** will correct the Work unless the **ISSUER** has given the **ESCO** a written waiver of the specific fault or defect. Notice may be given by telephone in the event of an emergency situation. The **ESCO** shall bear all costs of replacing or correcting such faulty, defective or nonconforming Work.

(b) Prior to acceptance, The **ESCO** shall, at its own expense, remove from the Premises all portions of defective and nonconforming Work which **ESCO** is obligated to replace or correct under this paragraph 8.2 unless removal has been waived in writing by the **ISSUER**. If the **ESCO** fails to correct faulty, defective or nonconforming Work as provided in this Section within twenty-four (24) hours after notice, in the case of emergency conditions, or within five (5) business days in other cases after the **ESCO's** receipt of written notice from the **ISSUER** of such faulty, defective or nonconforming Work, the **ISSUER** may correct such work at the **ESCO's** expense including costs incurred due to the removal of faulty, defective or non-conforming and removal and storage of equipment or materials left at the Premises by the **ESCO**.

(c) Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation which the **ESCO** might have under the Project Documents. The establishment of the time period set forth in paragraph 8.2(a) above, relates only to the specific obligation of the **ESCO** to correct the Work and has no relationship to the time within which its obligation to comply with the Project Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the **ESCO's** liability with respect to its obligations other than to specifically correct the Work. Notwithstanding the provisions of this paragraph 8.2, the **ESCO** shall, on demand made by the **ISSUER**, at any time within the ten (10) year period following Acceptance, promptly repair or replace all defective or non-conforming work resulting from fraudulent misrepresentation, fraudulent concealment or gross negligence by the **ESCO** or its subcontractors in the performance of the Work.

8.3 Location and Access. The **ISSUER** shall provide sufficient space at the Premises for the installation and operation of the ECMs for the term of this Agreement, including access to office space with a telephone line, if necessary to allow the **ESCO** to perform required maintenance, monitoring and training services. The **ISSUER** shall provide access to the Premises for the **ESCO** and its employees or subcontractors to install, adjust, inspect, maintain and repair the ECMs in accordance with the terms of this Agreement during regular business hours, or such other reasonable hours as may be requested by the **ESCO** and acceptable to the **ISSUER**. The **ESCO's** access to correct any emergency condition shall not be unreasonably restricted by the **ISSUER**.

8.4 ESCO Maintenance and Monitoring Responsibilities for ECMs. The **ESCO** shall be responsible for providing the maintenance, monitoring, repairs, and adjustments to the ECMs as set forth in Schedule G. All replacements of and alterations or additions to the ECMs by the **ESCO** shall become part of the ECMs and shall become the property of the **ISSUER**. Any replacements of and alterations or additions made by the **ESCO** to the

**ISSUER's** pre-existing equipment, or equipment acquired by the **ISSUER** during the term of this Agreement, shall become part of said equipment and be owned by the **ISSUER**. The **ESCO** shall be compensated for such maintenance and monitoring services pursuant to Schedule C hereof. In the event of the **ESCO's** failure to provide required maintenance, service, repairs and adjustments to the ECMs, as provided in Schedule G or if an Event of Default exists pursuant to Article 11, the **ISSUER** may withhold fees due to the **ESCO** for such services until such repairs or adjustments are completed or such Event of Default is cured. The **ISSUER** shall notify the **ESCO** in writing when any payments are so withheld. The withholding of fees by the **ISSUER** under this paragraph 8.4 shall not release the **ESCO** from its obligation to provide the Energy Savings Guaranty pursuant to paragraph 6.1 and Schedule B hereof.

**8.5 ISSUER Operating and ECMs Maintenance Responsibilities.** The **ISSUER** shall be responsible for providing the maintenance, monitoring, service, repairs and adjustments to the ECMs as set forth in Schedule H. Except as set forth in Schedule H, the **ISSUER** shall not move, modify, remove, adjust, alter or change in any material way the ECMs, or any part thereof, during the term of this Agreement, without prior written approval of the **ESCO**, except in the event of an occurrence reasonably deemed by the **ISSUER** or the **ESCO** to constitute a bona fide emergency. The **ISSUER** acknowledges that substantial and long term deviations, from the operating conditions set forth in the Schedules to this Agreement may constitute a material change in accordance with paragraph 9.3 hereof. In addition to the responsibilities set forth in Schedule H, the **ISSUER** shall use its best efforts to maintain the Premises in good repair and to protect and preserve the ECMs in good repair and condition in accordance with applicable manufacturers' recommendations which shall be provided to the **ISSUER** by the **ESCO** and to maintain the operating conditions of all non ECM mechanical systems and energy related systems located at the Premises. The **ESCO** shall notify the **ISSUER** of any improper maintenance or repair as soon as **ESCO** has notice thereof. The **ISSUER** acknowledges that improper repairs or maintenance of the ECMs not seasonably corrected after notice may constitute a Material Change in accordance with paragraph 9.3, and that the provisions of paragraph 9.5 may be applicable.

**8.6 Training by the ESCO.** The **ESCO** shall conduct the training program described in Schedule J hereto.

**8.7 ECMs Upgrades; Alterations.** The **ESCO** shall have the right, at all times during the term of this Agreement, subject to the **ISSUER's** written approval, to modify or replace any of the ECMs or install additional ECMs and to revise any procedures for the operation of the ECMs or implement other procedures at the Premises provided that: (i) such actions by the **ESCO** do not result in modifying the standards of comfort and service set forth in Schedule I without the express written approval of the **ISSUER**; (ii) such modifications or additions to, or replacements of the ECMs, and any operational changes, or new procedures are necessary to enable the **ESCO** to achieve the energy savings guaranteed by the **ESCO** at the Premises and (iii) any costs incurred relative to such modifications, additions or replacements of the ECMs, or operational changes or new procedures shall be the responsibility of the **ESCO**. All modifications, additions or replacements of the ECMs or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the **ISSUER** for approval, which shall not be unreasonably withheld, and incorporated into this Agreement provided that any replacement ECM shall be new and have equal or better potential to reduce energy consumption at the Premises than the ECM being replaced. The **ESCO** shall continuously update all ECM software unless the **ESCO** certifies to the **ISSUER** that a specific update would lower the savings that are realized from that **ECM**. All replacements of and alterations or additions to the ECMs shall become part of the ECMs described in Schedule A and shall become the property of the **ISSUER**.

**8.8 Malfunction and Emergencies.** The **ISSUER** shall use its best efforts to notify the **ESCO** or its designee within forty-eight (48) hours after the **ISSUER's** actual knowledge of the occurrence of:

8.8.1 Any material malfunction in the operation of the ECMs or any related nonECM energy-related equipment or systems;

8.8.2 Any material interruption or alteration of the energy supply to the Premises;

8.8.3 Any material alteration or modification in the ECMs or their operation; and

8.8.4 Any material alteration, modification or change in the Premises or the use of the Premises.

8.9 Responsibility for Certain ECM Malfunctions. The **ESCO** agrees to compensate the **ISSUER** for business expenses, damages to real or personal property, lost profits, lost revenues, resulting from ECM malfunction due solely or in part to nonperformance or error by the **ESCO**.

8.10 Ownership of Certain Proprietary Property Rights. The **ISSUER** shall acquire no ownership interest in any software, formulas, patterns devices, secret inventions or processes, or copyright, patents, and other intellectual and proprietary rights or similar items of property which are or may become used in connection with the ECMs. The **ESCO** shall grant, or otherwise lawfully furnish, to the **ISSUER** a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the **ISSUER** to continue to operate, maintain, and repair the ECMs in a manner that will maximize energy consumption reductions beyond the expiration of this Agreement for at least twice the useful life of each ECM..

## **ARTICLE 9: THE PREMISES**

9.1 Description of the Premises. The Premises in which the ECMs are to be installed and services are to be provided by the **ESCO** under this Agreement are described in Schedule D.

9.2 Ownership of Existing Property. The Premises and all equipment and materials existing at the Premises at the time of execution of this Agreement shall remain the property of the **ISSUER**.

9.3 Material Change Defined. A Material Change shall include any change in or to the Premises, not covered by Schedule B, whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the **ISSUER** to increase or decrease annual costs of energy usage. Actions by the **ISSUER** which may result in a Material Change which is subject to this paragraph 9.3, include, but are not limited to the following:

- 9.3.1 Changes in the manner of use of the Premises by the **ISSUER**; or
- 9.3.2 Changes in the hours of operation for the Premises or for any equipment or energy using systems operating at the Premises; or
- 9.3.3 Permanent changes in the comfort and service conditions set forth in Schedule I; or
- 9.3.4 Changes in the occupancy of the Premises; or
- 9.3.5 Changes in the structure of the Premises; or
- 9.3.6 Changes in the types and quantities of equipment used at the Premises; or
- 9.3.7 Modification, renovation or construction at the Premises; or
- 9.3.8 The **ISSUER**'s failure to provide maintenance of the ECMs pursuant to paragraph 8.5 hereof; or
- 9.3.9 Any significant damage to the Premises or the ECMs caused by fire, flood, or other casualty or any condemnation affecting a significant portion of the Premises; or
- 9.3.10 The permanent or temporary closing of a building at the Premises; or

9.4 Reporting of Material Changes: Notice by Customer. The **ISSUER** shall use its best efforts to deliver to the **ESCO** a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises no less than thirty (30) days before any actual or proposed Material Change is implemented. Where Material Changes result because of a bona fide emergency or other situation which precludes advance notification, the **ISSUER** shall give notice as soon as reasonably possible after the event constituting the Material Change occurred or was discovered by the **ISSUER** to have occurred.

9.5 Reported Material Changes; Adjustments to Baseline/Benchmarks. Any changes in energy usage which occur as the result of a Reported Material Change shall be timely reviewed by the **ESCO** and the **ISSUER** to determine what, if any, adjustments to the Baseline/Benchmarks set forth in Schedule E are necessitated by such Material Change(s). The **ESCO** and the **ISSUER** agree that any adjustments made to the Baseline/Benchmarks shall be in accordance with generally accepted engineering principles.

9.6 Unreported Material Changes. Upon and after the Commencement Date and in the absence of any reported Material Change(s) in the Premises or in their operations, if energy savings deviates more than \_\_\_\_ (\_\_\_%) percent during any month from projected energy savings for that month, after adjustment for normal deviations from climatic conditions, then the **ESCO** shall timely review such changes to ascertain the cause of such deviation. The **ESCO** shall report its findings to the **ISSUER** in a timely manner. The **ESCO** and the **ISSUER** may determine what, if any, adjustments to the Baseline/Benchmarks set forth in Schedule E are necessary.

## **ARTICLE 10: GENERAL TERMS AND CONDITIONS**

10.1 Assignment. The **ESCO** acknowledges that the **ISSUER** is induced to enter into this Agreement by, among other things, the professional qualifications of the **ESCO**. The **ESCO** agrees that neither this Agreement nor any right or obligation hereunder may be assigned in whole or in part, without the prior written approval of the **ISSUER**

10.2 Duty to Indemnify. The **ESCO** shall defend, indemnify, keep and save harmless the **ISSUER** and its agents and employees against all suits, claims, damages, losses and expenses, including attorney's fees, caused by, growing out of, or incidental to, the wrongful or negligent performance of the Work under this Agreement by the **ESCO** or its subcontractors to the full extent as allowed by the laws of the State of North Carolina. The **ISSUER** shall promptly notify the **ESCO** of any suits or claims. The **ESCO**, at its sole expense, to settle or defend and control the defense of any suit based upon such claim or claims. In the event of any such injury (including death) or loss or damage, or claims therefore, the **ESCO** shall give prompt notice to the **ISSUER**. The **ESCO's** subcontractors shall include a substantially identical indemnity and shall include the **ISSUER** as a named indemnitee parties as to whom indemnification is due under their subcontracts.

10.2.1 Effect of Statutory Limitations. In the event of any claim against the **ISSUER** or against any of its officials or employees, in either their personal or official capacities, made by any direct or indirect employee or agent of the **ESCO** or of any subcontractor, the **ESCO's** indemnification obligation shall not be affected by any limitation on the amount or type of damages, compensation or benefits payable to said employee or agent contained in any other type of employee benefit act.

10.2.2 Intellectual Property Claims Indemnification. The **ESCO** shall protect, defend, indemnify and hold the **ISSUER** harmless against and from any and all claims, judgments, amounts paid in settlement, costs and expenses, including attorneys' fees relating to alleged patent, trademark or copyright infringement, misappropriation of proprietary rights, or trade secrets or similar claims, resulting from actions taken by the **ESCO** in connection with this Agreement.

10.3 No Waiver. The failure of **ISSUER** or the **ESCO** 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 Agreement in the event of a continuing or subsequent default on the part of the **ISSUER** or the **ESCO**.

10.4 Severability. It is agreed that the illegality or invalidity of any term or clause of this Agreement, shall not affect the validity of the remainder of this Agreement and this Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein provided that the remaining portions of the agreement shall be construed to effectuate as nearly as possible apparent intent of the term or clause

10.5 Complete Agreement; Amendments. This Agreement, when executed, together with all Project Documents and Schedules referred to in paragraph 3.3 and any other exhibits or attachments referred to in this

Agreement, shall constitute the entire agreement between the Parties and this Agreement may not be amended or modified except by a written agreement signed by the Parties hereto.

10.6 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 Agreement.

10.7 Applicable Law. This Agreement and the construction and enforceability thereof shall be interpreted under the laws and solely in the courts of the State of North Carolina.

10.8 Notices. All notices required under this Agreement shall be in writing and shall be deemed properly served if delivered in person to the individual to whom it is addressed or, three (3) days after deposit in the United States mail, if sent postage prepaid by United States registered or certified mail, return receipt requested, Shown as:

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10.10 Termination for Convenience by the Issuer. Subsequent to the Acceptance Date, this Agreement may be terminated at the sole discretion of the **ISSUER** in accordance with the provisions of this paragraph 10.10.

The **ISSUER** shall provide written notice 30 days in advance **ESCO**. The termination shall become effective on the last day of said guaranty period. The **ESCO's** obligation to report, reconcile and verify the energy savings achieved during the guaranty period proceeding termination remains in full force and effect, as does its obligation, pursuant to paragraph 6.2 of this Agreement, to remit payment to the **ISSUER** in the event that the energy savings have not been achieved at the level guaranteed by the **ESCO**. If the end of the notice period does not coincide with the end of the annual guaranty period all calculations of payments shall be prorated.

The termination of this Agreement by the **ISSUER** shall release the **ESCO** from its obligation to provide maintenance, monitoring and training services after the effective date of termination, as well as its obligation to provide the Energy Savings Guaranty after the termination date. Termination by the **ISSUER** shall release it from the obligation to make any payments to the **ESCO** for maintenance, monitoring and training services after the termination date, provided, however, that the **ISSUER** is responsible for payment for maintenance, monitoring and training services performed in accordance with the terms of this Agreement prior to the termination date.

#### **ARTICLE 11: EVENTS OF DEFAULT OR BREACH; TERMINATION; RIGHT TO OFFSET**

11.1 If the **ISSUER** considers it to be in its best interests, it may elect not to declare default or to terminate this Agreement in the event of breach or default by the **ESCO**. The parties acknowledge that this provision is solely for the benefit of the **ISSUER** and that if the **ISSUER** permits the **ESCO** to continue to perform the Work and other services despite a breach or default, the **ESCO** shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall the **ISSUER** waive or relinquish any of its rights.

11.2 The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any breach or default shall impair any such right or power nor shall it be construed as a waiver of any breach or default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

11.3 Right to Offset. Any additional costs incurred by the **ISSUER** in the event of termination of this Agreement for breach or default or otherwise resulting from the **ESCO's** performance or non-performance under this Agreement, and any credits due to or overpayments made by the **ISSUER** may be offset by use of any payment due for the Work or other services completed before the termination for a breach or default or before the exercise of any remedies. If such amount offset is insufficient to cover such excess costs, the **ESCO** shall be liable for and promptly remit to the **ISSUER** the difference upon written demand therefor. This right to offset is in addition to and not a limitation of any other remedies available to the **ISSUER**.

## ARTICLE 12: REPRESENTATIONS AND WARRANTIES

### 12.1 Each party warrants and represents to the other that:

- (a) It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- (b) Its execution, delivery, and performance of this Agreement have been duly authorized, executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (c) 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.

### 12.2 Representations and Warranties by the Issuer. The **ISSUER** hereby warrants and represents to the **ESCO** that:

- (a) It will provide throughout the term of this Agreement (or cause its energy suppliers to furnish) to the **ESCO**, upon its request, copies of all available records and data concerning energy usage for the Premises including but not limited to the following data: utility records and rate schedules; occupancy information; descriptions of any major changes in the structure or use of the buildings or heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Premises; descriptions of energy management procedures presently utilized; and any prior energy analyses of the Premises. The **ISSUER** shall make knowledgeable employees and agents available for consultations and discussions with the **ESCO** concerning energy usage of the Premises.
- (b) The **ISSUER** has not entered into any leases, contracts or agreements with other persons or entities regarding the leasing of energy efficiency equipment or the provision of energy management services for the Premises or with regard to maintaining any of the energy related equipment located in the Premises.

### 12.3 Representations and Warranties by the ESCO. The **ESCO** represents and warrants the following to the **ISSUER** (in addition to the other representations and warranties contained in the Project Documents), as an inducement to the **ISSUER** to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement and the Final Completion of the Work.

- (a) That it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Agreement;
- (b) That it and each of its employees, agents and subcontractors of any tier are competent to perform its obligations under this Agreement;
- (c) That it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- (d) That it is authorized to do business in the State of North Carolina and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Premises;
- (e) That its execution of this Agreement and its performance thereof is within its duly authorized powers; and
- (f) That its duly authorized representative has visited the Premises, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Project Documents.

**ARTICLE 13: APPLICABLE LAWS**

13.1 ESCO's Failure to Comply with Statutory and Regulatory Requirements. The **ESCO**, and its subcontractors shall comply with all laws, rules regulations and codes applicable to performance of the Work and the maintenance, monitoring and training services to be performed pursuant to Article 6. Except where expressly required by applicable laws and regulation, the **ISSUER** shall not be responsible for monitoring the **ESCO's** compliance with any laws or regulations. When the **ESCO** observes conflicting regulatory requirements, it shall notify the **ISSUER** in writing immediately. If the **ESCO** performs any of the Work or other services required by this Agreement knowing or having reason to know that the Work or such services are contrary to such laws, rules and regulations, the **ESCO** shall pay all costs arising there from.

**ARTICLE 14: RIGHT TO AUDIT.**

The **ISSUER** shall have the right to have access to and audit all of the **ESCO's** records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. In addition, the **ISSUER** or its authorized representative shall have access to the **ESCO's** facilities and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

IN WITNESS WHEREOF, the Parties have executed this Energy Services Agreement by their authorized signatures as of this \_\_\_ day of \_\_\_\_\_, 200\_\_.

**THE ISSUER : THE ESCO:**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

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

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

## ATTACHMENT A

### SAMPLE CONSTRUCTION PROCESS PROVISIONS (OPTIONAL)

A.1.1 Description of the Work. The design, procurement, fabrication, installation and commissioning of the ECMs specified in Schedule A and the Training services described in Schedule J, which are integral to the operation of the ECMs, are referred to in this Agreement as the "Work." The maintenance, monitoring, and savings measurement and verification services detailed in Schedules G and N and the any Post-Acceptance Training services detailed in Schedule J, performance of which does not commence until after the Commencement Date, are not part of the Work.

A.1.2 Supervision of the Work. The ESCO shall supervise and direct the performance of the Work using its best skill, attention and judgment. The ESCO shall be solely responsible for site safety and for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement.

A.1.3 Rejection of the Work by the ISSUER. The ISSUER may reject any sequences or procedures proposed by the ESCO in connection with the Work which might constitute or create a hazard to the Premises, or to persons or property, or which deviate from the Project Documents or will result in schedule delays or additional costs to the ISSUER. This provision shall not be construed to mean that Work which is not rejected is therefore approved.

A.1.4 Responsibility for the Work. The ESCO shall not be relieved of its obligations to perform the Work in accordance with the Project Documents by reason of observations or inspections, tests or approvals by any person or entity except as expressly agreed to in writing by an authorized representative of the ISSUER.

A.1.5 Coordination of the Work. The ESCO shall consult with the personnel designated by the ISSUER in order to coordinate the Work, including installation of any ECM, and to provide appropriate training in the operation of any ECM. The ESCO shall not permit any act which will interfere with the performance of the ISSUER's business activities at the Premises without the prior written approval of the ISSUER. The ESCO shall consult with the ISSUER regarding the coordination of the Work with any other work being performed by other Companies at the Premises.

A.1.6 Sufficient Workforce. The ESCO shall furnish a competent and adequate staff as necessary for the proper administration, coordination and supervision of the Work; organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; and ensure that an adequate force of skilled workmen are available to complete the Work in accordance with all requirements of this Agreement.

A.1.7 Project Manager. The ESCO shall employ a competent project manager who shall be responsible for the coordination of the Work, and who shall be authorized to commit the ESCO with regard to manpower, schedule, coordination and cooperation. The project manager shall not have less than two years of documented experience in responsible field supervision for projects of comparable size and complexity. The ESCO shall give the ISSUER advance written notice if it intends to remove or replace the project manager. In the event the project manager fails to perform its duties under this Agreement the ESCO shall provide a competent replacement.

A.1.8 Harm to Structure of the Premises. The ESCO shall perform the Work under this Agreement and install the ECMs in such a manner so as not to harm the structural integrity of the Premises or their operating systems, except as specifically described in the Project Documents which have been approved by the ISSUER. The ESCO shall repair and restore to its condition immediately preceding the performance of the Work, any area of damage caused by its performance under this Agreement which has not been so described in the Project Documents and approved by the ISSUER.

A.1.9 Responsibility for Damages. The ESCO shall be responsible for all loss or damage to the Work, the Premises, or to improvements or personal property thereon and the work of other Companies caused by the ESCO's performance of the Work.

A.1.11 Verification of Dimensions and Existing Conditions. The **ESCO** is responsible for becoming knowledgeable of the conditions of the Premises relating to the performance of the Work and the conditions under which the Work is to be performed, All dimensions and existing conditions have been verified by the **ESCO** during the energy audit conducted at the Premises by actual measurement and observation. All discrepancies between the requirements of the Project Documents and the existing conditions or dimensions shall be reported to the **ISSUER** as soon as they are discovered. Failure to verify and report prior to the commencement of work shall constitute the **ESCO's** acceptance of existing conditions as fit for the proper execution of the Work under this Agreement,

A.1.12 Changed Conditions. Should the **ESCO** encounter subsurface or latent physical conditions at the site which differ materially from those indicated in the Project Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, the **ESCO** shall give written notice to the **ISSUER** before any such condition is disturbed or further disturbed. No claim of the **ESCO** under this provision will be allowed unless the **ESCO** has given the required notice. The **ISSUER** will promptly investigate and, if it is determined that the conditions materially differ from those which **ESCO** should reasonably have been expected to discover or anticipate, the **ISSUER** may approve such changes in the Project Documents as are necessary. If such changed conditions cause an increase or decrease in the **ESCO's** cost or time of performance, the parties may negotiate a mutually acceptable solution.

## A.2 The Issuer's Right to Carry Out the Work.

A.2.1 In the event that the **ESCO** neglects or fails to carry out the Work in accordance with this Agreement and the Project Documents, the **ISSUER** may correct such deficiencies after giving twenty (20) business days written notice to the **ESCO** and its surety. This shall be without prejudice to any other remedy the **ISSUER** may have. **ISSUER** may deduct from the payments to be made to the **ESCO** for the Work, pursuant to paragraph 6.1 hereof and of Schedule C, the amount of all costs incurred in correcting deficiencies made necessary by such neglect or failure. If such payments to be made to the **ESCO** are not sufficient to cover such amount, the **ESCO** shall be liable in such amount to the **ISSUER**.

A.2.2 Emergencies. In case of bona fide emergencies as determined by the **ISSUER** involving public health or public safety or to protect against further loss or damage to the **ISSUER's** property or to prevent or minimize serious disruption of **ISSUER** services or to insure the integrity of **ISSUER's** records, the **ISSUER** may cause such Work as is necessary to be performed without prior notice to the **ESCO** or its surety.

A.2.3 Right to Reject or Stop the Work. The **ISSUER** may reject any of the Work which does not conform to the Project Documents. If the **ESCO** fails to correct defective Work or fails to supply labor, materials or equipment in accordance with the Project Documents or to execute the Work in a workmanlike manner, the **ISSUER** may order the **ESCO** to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

A.2.4 Right to Terminate the ESCO's Performance of the Work. If the **ESCO** fails or refuses to prosecute the Work with such diligence as to allow completion of the Work substantially in accordance with the Project Installation Schedule, or commits a material breach of any other provision of this Agreement or the Project Documents, and provided that such breach continues for thirty (30) days after written notice to the **ESCO** demanding that such breach be cured or if cure cannot be effected in such thirty (30) days, **ESCO's** failure to propose and commence a cure acceptable to the **ISSUER** within such thirty (30) days, the **ISSUER** may terminate the **ESCO's** right to proceed with the Work as specified herein. In no event shall the **ISSUER** have any obligation to compensate the **ESCO** for delays arising pursuant to the **ESCO's** failure or refusal to complete the Work and damages arising in connection therewith.

In such case, the **ISSUER** will give the **ESCO** and its surety written notice of intention to terminate the **ESCO's** right to complete the Work and the reason therefore and, unless within seven (7) business days the delay or violation shall cease or a cure acceptable to the **ISSUER** for correcting the situation is proposed, the **ISSUER** may issue a termination notice to such effect for the **ESCO** and its surety. Thereupon, the surety will be given the opportunity to complete the Work in accordance with the Project Documents. Such completion may include, but not be limited to, the use of a completing **ESCO**, satisfactory to the **ISSUER**, pursuant to a written takeover agreement, the payment of a sum of money required to allow the **ISSUER** to complete the Work, or other arrangements agreed to by the **ISSUER** and the surety.

If within seven (7) business days following the issuance of the termination notice, the surety fails to notify the **ISSUER** that it intends to exercise its right to undertake the Work, the **ISSUER** may take over the Work, exclude the **ESCO** from the Premises and take possession of all of the **ESCO's** tools, appliances, equipment and machinery at the Premises and use the same to the full extent they could have been used by the **ESCO** (without liability for trespass or conversion), incorporate into the Work all materials and equipment stored at the Premises and finish the Work as the **ISSUER** may deem expedient.

In the event the **ISSUER** terminates the **ESCO's** right to complete the Work under this paragraph A.2(d), the **ESCO** shall not be entitled to receive further payments until a Certificate of Acceptance has been delivered pursuant to paragraph 5.3 hereof specifying the amount, if any, payable to the **ESCO** pursuant. If the **ISSUER's** expenses in completing the Work exceed the **ESCO's** Compensation for the Work, the **ESCO** shall pay the difference to the **ISSUER** upon demand therefore.

Provided further, that a Certificate of Acceptance directing payment to the **ESCO** for any portion of the Work be issued only if the notification required pursuant to Article 7 has been delivered by the **ESCO**. If the **ESCO** is not able to deliver such notification, the **ISSUER** shall not execute and deliver a Certificate of Acceptance and may terminate this Agreement in accordance with the provisions of Article 11 and may pursue any and all remedies provided therein.

**A.3 Permits and Approvals.** The **ESCO** shall obtain and pay for all necessary permits and approvals for the design, installation and operation of the ECMs. The **ISSUER** shall exercise its best efforts to assist the **ESCO**. The ECMs and the operation of the ECMs by the **ESCO** shall at all times conform to all applicable codes.

The **ESCO** shall furnish copies of each permit or license which is required to perform the Work to the **ISSUER** before the **ESCO** commences the portion of the Work requiring such permit or license.

If the **ESCO** observes that any of the Project Documents are at variance with permits or licenses granted, or laws, ordinances, codes, rules or regulations of governmental authorities, the **ESCO** shall promptly notify the **ISSUER** in writing and shall make any necessary changes, subject to the approval thereof by the **ISSUER** in accordance with the terms of this Agreement. If the **ESCO** performs any Work which is contrary to any permit or license granted, or any applicable laws, ordinances, codes, rules or regulations, the **ESCO** shall make changes as required to comply therewith and shall bear all costs arising therefrom.

**A.4 Royalties and Patents.** The **ESCO** shall pay all royalties and license fees due to third parties in connection with the Work.

**A.5 Project Schedule.** The **ESCO** shall consult with the **ISSUER** concerning the development of a detailed Project Installation Schedule and, recognizing that time is of the essence of this Agreement, shall perform the Work in such manner and with such sufficient equipment and forces to complete the Work in accordance with Schedule K.

**A.6 Subcontracts and Subcontractors.** The **ESCO** shall have the right to have any of the services to be provided by the **ESCO** under this Agreement accomplished by subcontractors pursuant to written subcontracts between the **ESCO** and such subcontractors.

The **ESCO** shall, upon entering into any agreement with a subcontractor, furnish the **ISSUER** with an executed copy thereof. All subcontracts shall be subject to, consistent with, and in conformance with all applicable State and federal laws, rules, regulations and codes, and shall contain provisions that require all services to be performed in strict accordance with the requirements of this Agreement and shall provide that the subcontractors are subject to all the terms of this Agreement. Provided that such agreements do not prejudice any of the **ISSUER's** rights under this Agreement, such agreements may contain different provisions than are provided herein with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the Work.

The **ESCO** shall not grant or allow to exist any lien or security interest for labor or material or otherwise on the ECMs, the Premises or any other property owned by the **ISSUER**.

A.7 Interim Savings; and Utility Rebates.

- (a) Interim Savings. Interim Savings as defined in Article 4 belong to the **ISSUER**.
- (c) Utility Rebates. Utility rebates secured or obtained due to the installation of the ECMs at the Premises belong to the **ISSUER**.

A.8 Hazardous Materials.

(a) The **ESCO** acknowledges that compliance with the National Emission Standard for Hazardous Air Pollutants as promulgated by the United States Environmental Protection Agency pursuant to Section 112 of the Clean Air Act is a continuing obligation requiring any and all demolition or renovation activity completed by or on behalf of the **ISSUER**, to conform to the standards for such activity as set forth in 40 CFR 61.145. The **ESCO** shall observe all notification procedures established by the United States and North Carolina Environmental Protection agencies in the execution of the Work under this Agreement.

(b) In the event that the **ESCO** or any of its subcontractors encounters any hazardous substance or material covered by the Act in the performance of the Work, the existence of which has not previously been disclosed to the **ESCO** by the **ISSUER**. The **ESCO** shall, before disturbing such materials, immediately notify the **ISSUER** of the location thereof. The **ESCO** shall advise the **ISSUER** as to whether it is feasible to re-route the Work as to avoid such materials. If such re-routing is reasonably feasible, the **ESCO** shall do so without additional compensation hereunder.

If such re-routing or avoidance is not reasonably feasible in the judgment of the **ISSUER** and such material must be disturbed or relocated to complete the Work, and if (i) removal or containment of the hazardous substance or material cannot be effectuated without a cessation of the Work; or (ii) applicable law, rule or regulation requires cessation of the Work, or (iii) continuation of the Work exposes any person to a substantial risk, the **ESCO** may suspend its performance of the Work without penalty until the substance or material is removed or contained by the **ISSUER**.

(c) The following options are available to the **ISSUER** in the event that undisclosed hazardous materials are encountered in the performance of the Work by the **ESCO** or its subcontractors:

- (i) If feasible, the **ISSUER** may direct the **ESCO** to modify the scope of the Work to eliminate portions of the Work affected by the undisclosed hazardous substance or material.
- (ii) The **ISSUER** may terminate this Agreement upon payment to the **ESCO** of the amount due for services or materials and equipment supplied by the **ESCO** prior to suspension of the Work, including damages caused by the delay as prescribed by the Act. Provided, however, that the **ISSUER** shall not be liable for damages or other costs or expenses incurred by the **ESCO** if the existence of the hazardous substance or material was disclosed to the **ESCO** by the **ISSUER** or, if as a result of the **ESCO's** review of the Project Documents, including any Asbestos Management Plan developed for the Premises and its investigation of the Premises, the **ESCO** should reasonably have been expected to discover or anticipate the existence of the hazardous substance or material and the **ESCO** could have developed the scope of the Work in such a manner as to avoid said hazardous substance or material.

(d) The **ESCO** and the **ISSUER** agree that any work relating to (i) asbestos, material containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, or (ii) pollutants, hazardous wastes, hazardous materials, contaminants (collectively "Hazardous Materials") or the storage, handling, use, transportation, treatment or the disposal, discharge, leakage, detection removal or containment thereof which is not specifically provided for in this Agreement, is the responsibility of the **ISSUER**. Notwithstanding the foregoing, the

**ESCO** will utilize due diligence in order to determine whether the Work will require the removal of PCB ballasts and whether asbestos is likely to be encountered in the performance of the Work. **ESCO** shall provide the **ISSUER** with an estimate for the cost of removal and disposition of PCB ballasts and asbestos it expects may be encountered in the performance of the Work and shall allow for an amount equal to the estimated cost of removal and disposal in the Guaranteed Savings detailed in Schedule B.

If an Asbestos Management Plan has been developed for the Premises, the **ISSUER** shall make said plan available for the **ESCO's** review and inspection throughout the Interim Period.

**A.9 Material and Workmanship.**

(a) The **ESCO** shall ensure that all materials used by the **ESCO** and its subcontractors and workmanship performed or caused to be performed by the **ESCO** in connection with the Work meets or exceeds all applicable codes and is performed in a workmanlike manner. Where conflicts exist between applicable codes, the more stringent provision shall apply;

(b) The **ESCO** shall ensure that all equipment and materials to be used in the Work for which Underwriters Laboratory labeling services is provided shall be UL labeled;

(c) The **ESCO** shall obey the following list of codes where applicable:

- 1) Applicable construction and electrical code;
- 2) Underwriters Laboratories (UL);
- 3) Insulated Power Cable Engineers Association (IPCEA);
- 4) National Electrical Code (NEC);
- 5) National Electrical Manufacturers Association (NEMA);
- 6) American National Standards Institute (ANSI); and
- 7) Institute of Electrical and Electronic Engineers (IEEE).

d.) The **ESCO** shall be responsible, at its sole cost, for the disposal of all equipment and materials removed or replaced through its performance of the Work in accordance with all applicable laws and regulations regarding such disposal, except those items designated by the **ISSUER** as nondisposable. The cost of disposal to be performed by the **ESCO** is included in the **ESCO** compensation for the Work set forth in Schedule C.

**A.10 Warranty of Materials.** The **ESCO** warrants that all materials and equipment installed as part of the Work will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the Project Documents. All work not so conforming to these requirements may be considered defective. If required by the **ISSUER** the **ESCO** shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of paragraph 8.1 below. This warranty of materials, equipment and workmanship is separate from, independent of, and in addition to any other guarantees in this Agreement or any other warranties in this Agreement or required by the Project Documents.

**A.11 Responsibility for Materials.** The **ISSUER** does not assume any responsibility for the availability of any controlled materials or other materials and equipment required for the Work. However, **ISSUER** reserves the right to review and approve the quality and standards for all materials. The **ESCO** shall be responsible for the contracted quality and standards of all materials, components or completed Work furnished by the **ESCO** pursuant to the terms hereof. Materials, components or completed Work which fails to comply with this Agreement and the Project Documents may be rejected by the **ISSUER** and shall be replaced by the **ESCO** at no cost to the **ISSUER**. The **ESCO** shall remove from the Premises within a reasonable time any materials or components so rejected at the entire expense of the **ESCO**, after written notice has been delivered by the **ISSUER** to the **ESCO** that such materials or components have been rejected. \

A.12 Inspections.

(a) All materials and equipment and each part of the detail of the Work shall be subject at all times to inspection by the **ISSUER** or its designated representatives or consultants, and the **ESCO** will be held strictly to the true intent of this Agreement and the Project Documents with regard to quality of materials, workmanship, and the diligent execution of the Work.

(b) The **ESCO** shall allow the **ISSUER** access to all parts of the Work, and shall furnish such information and assistance as is required to make a complete and detailed inspection or inspections.

(c) All material and equipment installed as part of the Work must be inspected, tested and approved in accordance with the Project Documents and this Agreement prior to its use.

(d) The **ESCO** shall, if the **ISSUER** requests, remove or uncover such portions of the finished Work as the **ISSUER** may direct. After the examination, the **ESCO** shall restore said portion of the Work to the standard required by this Agreement and the Project Documents. If the Work thus exposed or examined proves acceptable, the expenses of uncovering or removing and the replacing of the parts removed shall be the responsibility of the **ISSUER** and such uncovering, removing and replacing shall be deemed to be an excusable event of delay, if a delay in completion is caused thereby. If the Work so exposed or examined has not been performed in accordance with the Project Documents, the expense of uncovering, removing and replacing any portion of the Work necessary to comply with this Agreement and the Project Documents shall be borne by the **ESCO** and requests for a time extension or claims for delay will not be granted.

(e) Upon written request by the **ESCO**, the **ISSUER** shall schedule preliminary inspections of the Work as soon as practicable after notification by the **ESCO** that major ECMs or systems are substantially installed. If such Work is not acceptable to the **ISSUER** at the time of such preliminary inspections, the **ESCO** will be provided written notice as to the particular defects to be remedied before the Work will be accepted. The date such Work is approved by the **ISSUER**, shall be the date of beneficial use to the **ISSUER** for the applicable ECM, relative to the commencement of the warranty period set forth in Schedule R for such ECM.

Notwithstanding the foregoing, the Certificate of Acceptance shall not be executed until a final inspection has been performed.

A.13 Project Meetings. The **ESCO** shall provide for regularly scheduled project meetings in the Project Installation Schedule, and shall give timely advance written notice and agenda of such meetings to the **ISSUER**. The **ESCO** shall record minutes and distribute copies of minutes of meetings to the **ISSUER** within five (5) business days after each meeting. The **ESCO** shall schedule additional project meetings if requested by the **ISSUER**.

ATTACHMENT K

NO PROPOSAL REPLY FORM

TO: Durham County  
Purchasing Division  
200 East Main Street, 4th Floor  
Durham, NC 27701

PROPOSAL #: RFP No. 11-014

PROPOSAL TITLE: Guaranteed Energy Savings  
Performance Contracting

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received an invitation, but does not wish to submit a proposal, state their reason(s) below and return to this office. This information will not preclude receipt of future invitations unless you request removal from the Bidders' List by so indicating below, or do not return this form or bona fide proposal.

Unfortunately, we must offer a "No Proposal" at this time because:

- \_\_\_\_\_ 1. We do not wish to participate in the proposal process.
- \_\_\_\_\_ 2. We do not wish to submit a proposal under the terms and conditions of the Request for Proposal document. Our objections are:  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ 3. We do not feel we can be competitive.
- \_\_\_\_\_ 4. We cannot submit a Proposal because of the marketing or franchising policies of the manufacturing company.
- \_\_\_\_\_ 5. We do not wish to sell to the Durham County. Our objections are:  
\_\_\_\_\_  
\_\_\_\_\_
- \_\_\_\_\_ 6. We do not sell the items/services on which Proposals are requested.
- \_\_\_\_\_ 7. Other: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
FIRM NAME

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PHONE

\_\_\_\_\_ We wish to remain on the Bidders' List.

\_\_\_\_\_ We wish to be deleted from the Bidders' List.

ATTACHMENT L

**LIVEABLE WAGE POLICY**

This Request for Proposal (RFP) is subject to the County of Durham Living Wage Policy and any implementing regulations. The Policy which is effective July 1, 2004 requires among other things, that unless specific exemptions apply, all Contractors and subcontractors providing services to the County of Durham are required to pay all employees performing these services a living wage as defined below.

This provision shall additionally require that the Contractor furnish a copy of the Contractor's and subcontractor's payroll on at least a quarterly basis showing the wages paid to employees who perform work under the contract with the County. Misrepresentation during the procurement or contracting process in order to secure the contract may disqualify a Contractor and subcontractor from further consideration in the procurement or contracting process.

Failure to comply once a contract has been awarded may in addition to all other remedies for breach, result in being barred from receiving any other contract with the County for a period of up to three (3) years.

**Definitions:**

- a) "Living Wage" for purposes of service contracts, is defined to be a wage paid at an hourly rate of not less than seven and one-half percent (7.5%) above the poverty level, as defined by the Bureau of Census, for a family of four. The Living Wage rate according to the policy of Durham County is currently \$11.40.
- b) "Contractor" means a person or entity that enters into a service contract with the County.
- c) "Subcontractor" means any person or entity that enters into a contract with the Contractor to assist the Contractor in the performance of a service contract with the County.
- d) "Service contract" means a contract for services entered or to be entered into by the County with another person or entity. A service contract specifically does not include:
  - 1) a contract subject to Federal or State laws or Grant that would preclude application of the living wage requirements, such as payment to the lowest bidder, a particular rate of payment for services, or payment by the unit of service;
  - 2) a contract between the County and another governmental entity;
  - 3) a contract between the County and a non-profit corporation which is exempt from income tax pursuant to Section 501(C)(3) of the Internal Revenue Code;
  - 4) any contract exempted by the County Manager when determined that compliance with this policy will result in the loss of an essential service to the County.

The Purchasing Division of the Finance Department shall monitor the compliance by the Contractor with the provisions of this policy.

ATTACHMENT M



Vendor Application

IT IS CRITICAL TO THE COUNTY THAT YOU COMPLETE ALL DATA - PLEASE PRINT OR TYPE  
(A W-9 FORM IS REQUIRED AND MUST BE SUBMITTED WITH THIS FORM)

1. Vendor Name: \_\_\_\_\_

Do you require a 1099? Yes \_\_\_ No \_\_\_

2. Mailing address for payments: \_\_\_\_\_  
\_\_\_\_\_

3. Mailing address for purchase orders, proposals and bids: \_\_\_\_\_  
\_\_\_\_\_

4. Contact Person \_\_\_\_\_ Phone #: \_\_\_\_\_  
Fax #: \_\_\_\_\_

5. In what City and State is your firm licensed? \_\_\_\_\_  
If licensed in NC, indicate County (for tax purposes) \_\_\_\_\_

6. Indicate your firm's organizational type:  
Individual \_\_\_ Partnership \_\_\_ Corporation \_\_\_ Governmental Agency \_\_\_ Other \_\_\_\_\_

7. Is your firm a large business? Yes \_\_\_ No \_\_\_      8. Is your firm a small business? Yes \_\_\_ No \_\_\_

9. Is your firm 51 percent or more owned and operated by a woman? Yes \_\_\_ No \_\_\_  
If yes, with what governmental agencies are you certified? \_\_\_\_\_

10. Is your firm 51 percent or more owned and operated by a minority? Yes \_\_\_ No \_\_\_  
If yes, with what governmental agencies are you certified? \_\_\_\_\_

Identify appropriate minority group:  
Black American \_\_\_ Native American \_\_\_ Hispanic \_\_\_ Asian/Pacific \_\_\_ Asian Indian \_\_\_

11. Is your firm incorporated? Yes \_\_\_ No \_\_\_  
12. Is your firm a not-for-profit concern? Yes \_\_\_ No \_\_\_  
13. Is your firm a handicapped business concern? Yes \_\_\_ No \_\_\_

14. Give a brief description of goods or services your firm provides:  
\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_ Title: \_\_\_\_\_  
Print name: \_\_\_\_\_ Date: \_\_\_\_\_

If you have any questions concerning this form, call Durham County Purchasing Division - (919) 560-0051.

Return to: County of Durham Purchasing Division      or      Fax to: 919-560-0057  
200 E Main St., 4th Floor  
Durham, NC 27701

## Request for Taxpayer Identification Number and Certification

**Give form to the  
 requester. Do not  
 send to the IRS.**

<b>Print or type See Specific instructions on page 2.</b>	Name (as shown on your income tax return)	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ ..... <input type="checkbox"/> Exempt payee <input type="checkbox"/> Other (see instructions) ▶	
	Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
	City, state, and ZIP code	
	List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number
: : : :
or
Employer identification number
: : : :

**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

#### Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

- The U.S. grantor or other owner of a grantor trust and not the trust, and
- The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

**Foreign person.** If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

**Example.** Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-8.

**What is backup withholding?** Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

**Payments you receive will be subject to backup withholding if:**

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 3 for details),
3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate Instructions for the Requester of Form W-9.

Also see *Special rules for partnerships* on page 1.

## Penalties

**Failure to furnish TIN.** If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

**Civil penalty for false information with respect to withholding.** If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

**Criminal penalty for falsifying information.** Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

**Misuse of TINs.** If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

## Specific Instructions

### Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

**Sole proprietor.** Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

**Limited liability company (LLC).** Check the "Limited liability company" box only and enter the appropriate code for the tax classification ("D" for disregarded entity, "C" for corporation, "P" for partnership) in the space provided.

For a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line.

For an LLC classified as a partnership or a corporation, enter the LLC's name on the "Name" line and any business, trade, or DBA name on the "Business name" line.

**Other entities.** Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

**Note.** You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

### Exempt Payee

If you are exempt from backup withholding, enter your name as described above and check the appropriate box for your status, then check the "Exempt payee" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following payees are exempt from backup withholding:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),

2. The United States or any of its agencies or instrumentalities,

3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,

4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or

5. An international organization or any of its agencies or instrumentalities.

Other payees that may be exempt from backup withholding include:

6. A corporation,

7. A foreign central bank of issue,

8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,

9. A futures commission merchant registered with the Commodity Futures Trading Commission,

10. A real estate investment trust,

11. An entity registered at all times during the tax year under the Investment Company Act of 1940,

12. A common trust fund operated by a bank under section 584(a),

13. A financial institution,

14. A middleman known in the investment community as a nominee or custodian, or

15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 15.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 9
Broker transactions	Exempt payees 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt payees 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup>	Generally, exempt payees 1 through 7 <sup>2</sup>

<sup>1</sup>See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup>However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, and payments for services paid by a federal executive agency.

## Part I. Taxpayer Identification Number (TIN)

**Enter your TIN in the appropriate box.** If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-member LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

**Note.** See the chart on page 4 for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at [www.ssa.gov](http://www.ssa.gov). You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at [www.irs.gov/businesses](http://www.irs.gov/businesses) and clicking on Employer Identification Number (EIN) under Starting a Business. You can get Forms W-7 and SS-4 from the IRS by visiting [www.irs.gov](http://www.irs.gov) or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

**Note.** Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

**Caution:** A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

## Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt payees, see *Exempt Payee* on page 2.

**Signature requirements.** Complete the certification as indicated in 1 through 5 below.

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

## Secure Your Tax Records from Identity Theft

Identity theft occurs when someone uses your personal information such as your name, social security number (SSN), or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

Call the IRS at 1-800-829-1040 if you think your identity has been used inappropriately for tax purposes.

Victims of identity theft who are experiencing economic harm or a system problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

**Protect yourself from suspicious emails or phishing schemes.** Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to [phishing@irs.gov](mailto:phishing@irs.gov). You may also report misuse of the IRS name, logo, or other IRS personal property to the Treasury Inspector General for Tax Administration at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at: [spam@uce.gov](mailto:spam@uce.gov) or contact them at [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft) or 1-877-IDTHEFT(438-4338).

Visit the IRS website at [www.irs.gov](http://www.irs.gov) to learn more about identity theft and how to reduce your risk.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>3</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship or disregarded entity owned by an individual	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Disregarded entity not owned by an individual	The owner
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup>List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup>Circle the minor's name and furnish the minor's SSN.

<sup>3</sup>You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

<sup>4</sup>List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships* on page 1.

**Note.** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

## Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

# APPENDIX I

## FACILITIES TO BE ANALYZED

No	Name	Location	Building SF
1	Detention Center / Jail	217 South Mangum Street	290,919
2	Durham Center Access	309 Crutchfield Street	20,819
3	Fire Marshall's Office	2422 Broad Street	5,915
4	General Services Complex	310 South Dillard Street	10,387
5	Homeless Shelter	412 Liberty Street	17,816
6	Main Fueling Station	402 Ramseur Street	N/A
7	Operation Breakthrough	215 Seminary Street	13,370
8	Roxboro Parking Deck	100 Roxboro Street	N/A
9	Stanford L Warren Library	1201 Fayetteville Street	9,200
10	Youth Home	2432 Broad Street	10,325
<i>Total Square Footage</i>			<b>373,751 SF</b>

## FACILITIES TO BE ANALYZED

Building Name: Detention Center / Jail  
Address of Building or Complex: 217 South Mangum Street

Total Floors: 7  
Building Age: 14 years Built in: 1996 Addition: N/A Age: N/A  
Number of Buildings: 1

Building Type: Detention Center / Jail  
Building Total Square Footage: 290,919 sq. ft.  
Additions/Renovations: N/A  
Describe Renovations: N/A

Operating Schedule: Daily: 24 hrs / 7 days a week Weekend: 24 hrs / 7 days a week  
Electric Meter for Building: Yes  
Gas Meter for Building: Yes  
Water Meter for Building: Yes  
Steam Meter for Building: None  
Chilled Water Meter for Building: None

### Issues to be Addressed by Performance Contract

Major Equipment Repairs to be considered by ESCO as part of ECM development:

1. Boiler 2 Fire Box had to be welded due to a factory defect, which was covered under warranty. (Superior Boilers Model #4-5-1276L-GP)
2. Chillers 1 & 2 – upgraded to solid state starters. (York Chillers Model #YDTJCB 350 Ton)
3. Chiller 1 – Rebuilt purge unit
4. Chiller 2 – Rebuilt Compressor  
Note: Chillers were exposed to the weather on the construction site for an extended period of time and had to be re-tubed before startup.
5. AHU 1 Supply Fan – Joy Axial Vane Fan failed and was rebuilt (2) times. Drive motor was rewound and refurbished.
6. AHU 2A Supply Fan – Joy Axial Vane Fan failed and was converted to fixed pitch VFD.
7. AHU 3A Supply Fan – Joy Axial Vane Fan failed (2) times and was converted to fixed pitch VFD after the 2<sup>nd</sup> failure.
8. Quincy 325 Air Compressor – Both stages replaced multiple times.
9. BAC Cooling Towers – Both motors and bearings replaced due to lighting strike.
10. Heat Transfer Package (potable hot water) – Both tube bundles (water heaters 1&2) were removed and cleaned. Water Heater #1 Series 25 main valve was rebuilt.
11. Heat Transfer Package (VAV converters) – Series 2000 valves on both units were replaced. Unit #1 Series 1510 pumps were rebuilt.
12. Reheat Actuators (VAV units) – Fail and are replaced on an ongoing basis.
13. Make-up Air Unit, MAU-2, is out of service.

### Special Needs or Circumstances

1. ESCO is encouraged to consider a Solar Hot Water option for this facility.
2. ESCO is encouraged to consider a Waterless Urinal option in the general non-detention areas only.
3. ESCO is encouraged to consider installing a Periscope energy monitoring system by ActiveLogix for this facility.
4. No Occupancy Sensors are desired for this facility.

## FACILITIES TO BE ANALYZED

Building Name: Durham Center Access  
Address of Building or Complex: 309 Crutchfield Street

Total Floors: 1  
Building Age: 34 years Built in: 1976 Addition: N/A Age: N/A  
Number of Buildings: 1

Building Type: Mental Health Facility\*\*  
Building Total Square Footage: 20,819 sq.ft.  
Additions/Renovations: Renovation in 2008/2009

Describe Renovations: Lighting was upgraded to CFL's, T-8's and electronic ballasts. The HVAC was partially upgraded from pneumatic to DDC with off-site control and monitoring capabilities. The Chiller was replaced with a more efficient chilled water system utilizing VFD fan and pump controls. The main AHU's remain original but have been upgraded with VFD's for the supply and return fan motors.

Operating Schedule: Daily: 24 hrs / 7 days a week Weekend: 24 hrs / 7 days a week  
Electric Meter for Building: Yes  
Gas Meter for Building: Yes  
Water Meter for Building: Yes  
Steam Meter for Building: None  
Chilled Water Meter for Building: None

### Issues to be Addressed by Performance Contract

1. Upgrade existing pneumatic controls to DDC.

### Special Needs or Circumstances

1. ESCO is encouraged to consider installing a Periscope energy monitoring system by Activelogix for this facility.

\*\*This facility houses both voluntary and involuntary confinement. Security and patient confidentiality are very highly regarded requirements.

## FACILITIES TO BE ANALYZED

Building Name: Fire Marshal's Office  
Address of Building or Complex: 2422 Broad Street

Total Floors: 1  
Building Age: 30 years Built in: 1980's Addition: 2004 Age: 6 years  
Number of Buildings: 1

Building Type: Emergency management office and Command Center  
Building Total Square Footage: 5,915 sq.ft.  
Renovations: Renovated in 1988 from the Youth Home to the Animal Control Office. Then in 2001, the building was renovated from the Animal Control Office to the Fire Marshal's office. The HVAC and lighting are original.  
Additions: Added on the Command Center in 2004 – The new HVAC equipment is energy-efficient and a De-Humidification System was installed.

Operating Schedule: Daily: 8:30am-5:00pm\*\* Weekend: Closed\*\*  
Electric Meter for Building: Yes  
Gas Meter for Building: Yes  
Water Meter for Building: Yes  
Steam Meter for Building: No  
Chilled Water Meter for Building: No

### Issues to be Addressed by Performance Contract

1. Occupants complain of large temperature swings in office spaces.

### Special Needs or Circumstances

1. ESCO is encouraged to consider installing a Periscope energy monitoring system by Activelogix for this facility.

\*\* Normal operations are Monday thru Friday, 8:30am – 5:00pm. As the Fire Marshal, additional operational hours are not uncommon to deal with incidents. However, no normal after hours operations are scheduled. For normal operations, security is of interest to the Fire Marshal.

## FACILITIES TO BE ANALYZED

Building Name: General Services Complex

Address of Building or Complex: 310 South Dillard Street

Total Floors: 2

Building Age: 17 years Built in: 1993 Addition: N/A Age: N/A

Number of Buildings: 1

Building Type: Office building with various workshops/spaces\*\*.

Building Total Square Footage: 10,387 sq. ft.

HVAC and Lighting Additions/Renovations: In 2008, the main AHU was replaced and the 2<sup>nd</sup> floor controls were upgraded to Andover DDC Controls with off-site control and monitoring capabilities. The building is on a daily occupancy schedule. As lighting is replaced, it is upgraded to T-8's with electronic ballasts and CFL's.

Operating Schedule: Daily: 6:00am – 5:00 pm Weekend: Closed

Electric Meter for Building: Yes

Gas Meter for Building: Yes

Water Meter for Building: Yes – but is not operational

Steam Meter for Building: None

Chilled Water Meter for Building: None

### **Issues to be Addressed by Performance Contract**

1. Occupants complain of hot/cold issues.
2. Upgrade to all DDC controls.

### **Special Needs or Circumstances**

1. ESCO is encouraged to consider installing a Periscope energy monitoring system by ActiveLogix for this facility.

\*\*General Services is the main facility for Buildings, Grounds and Solid Waste Operations.

## FACILITIES TO BE ANALYZED

Building Name: Homeless Shelter  
Address of Building or Complex: 412 Liberty Street

Total Floors: 1  
Building Age: 38 Built in: 1972 Addition: N/A Age: N/A  
Number of Buildings: 1

Building Type: Homeless Shelter / Community Shelter\*\*  
Building Total Square Footage: 17,816 sq.ft.  
HVAC and Electrical Additions/Renovations: The HVAC Systems (6) were replaced in 2002. In 2008, a new Automatic Transfer Switch and Generator were installed for the facility.

Operating Schedule: Daily: 24 hrs /7 days a week Weekend: 24 hrs /7 days a week  
Electric Meter for Building: Yes  
Gas Meter for Building: Yes  
Water Meter for Building: Yes  
Steam Meter for Building: None  
Chilled Water Meter for Building: None

### **Issues to be Addressed by Performance Contract**

1. Request by Building Director to install occupancy sensors and lighting controls.

### **Special Needs or Circumstances**

1. ESCO is encouraged to consider installing a Periscope energy monitoring system by Activelogix for this facility.

\*\*The Homeless Shelter is a 178 bed facility used to house singles and couples with or without children. Food is prepared and served at the neighboring church, off-site. Security is addressed by the Urban Ministries of Durham, the contractor operating the facility.

## FACILITIES TO BE ANALYZED

Building Name: Main Fueling Station

Address of Building or Complex: 402 Ramseur Street

Total Floors: N/A

Building Age: 15 years Built in: 1995 Addition: N/A Age: N/A

Number of Buildings: N/A

Facility Type: County gasoline pumps

Facility Total Square Footage: Outside facility

Additions/Renovations: N/A

Describe Renovations: N/A

Operating Schedule: Daily: 24 hrs /7 days a week Weekend: 24 hrs /7 days a week

Electric Meter for Building: Yes

Gas Meter for Building: No

Water Meter for Building: No

Steam Meter for Building: No

Chilled Water Meter for Building: No

### Special Needs or Circumstances

1. The main fueling station is used around the clock for gasoline fueling of County vehicles.
2. Around the end of December 2008, the County shifted the pumps, one light pole and the canopy lighting to the General Services building. This enabled them to support the pump station automatically by a generator that was installed. The majority of the pump station is now powered through General Service's electric meter.
3. The current lighting data for the gas pumps reflects two lights that are mounted on two Duke Energy poles and they own the light fixtures. The light fixtures are not UL approved, by Duke Energy's description. From a security standpoint, adequate lighting must be maintained by the County.
4. ESCO is encouraged to consider installing a Periscope energy monitoring system by Activelogix for this facility.

## FACILITIES TO BE ANALYZED

Building Name: Operation Breakthrough  
Address of Building or Complex: 215 Seminary Street

Total Floors: 1  
Building Age: 15 years Built in: 1995 Addition: N/A Age: N/A  
Number of Buildings: 1

Building Type: Daycare / Early Learning Center\*\*  
Building Total Square Footage: 13,370 sq. ft.  
HVAC Additions/Renovations: The HVAC Systems (3) were replaced in 2005.

Operating Schedule: Daily: 8:00am – 5:00 pm Weekend: Closed  
Electric Meter for Building: Yes  
Gas Meter for Building: Yes  
Water Meter for Building: Yes  
Steam Meter for Building: None  
Chilled Water Meter for Building: None

### Issues to be Addressed by Performance Contract

1. No controls are being utilized for the building and the systems are running around the clock. There is only one (1) thermostat on each side of the building.

### Special Needs or Circumstances

1. ESCO is encouraged to consider installing a Periscope energy monitoring system by Activelogix for this facility.

\*\*This facility operates as an early learning center for young children. Therefore, security is important to safeguard the children.

## FACILITIES TO BE ANALYZED

Building Name: Roxboro Parking Deck  
Address of Building or Complex: 100 Roxboro Street

Total Floors: 4 Levels  
Building Age: 30 years Built in: 1980's Addition: N/A Age: N/A  
Number of Buildings: 1

Building Type: Parking Deck  
Building Total Square Footage: Unknown  
Additions/Renovations: N/A  
Describe Renovations: N/A

Operating Schedule: Daily: 8:00am – 5:00pm Weekend: Closed  
Electric Meter for Building: Yes  
Gas Meter for Building: No  
Water Meter for Building: No  
Steam Meter for Building: No  
Chilled Water Meter for Building: No

### Issues to be Addressed by Performance Contract

1. Upgrade lighting.

### Special Needs or Circumstances

1. The parking deck is separated into four (4) levels. The ground level (level 1) and level 2 are leased parking spaces and level 3 and level 4 (top level) are used for parking county vehicles. Leased spaces are typically used during normal business hours but are empty after hours and weekends. The county vehicle spaces are used throughout the week and weekend.
2. The electric meter for the parking deck supplies the deck fluorescent lighting and an emergency help call box. The County has also recently added a number of wall pack lighting fixtures to increase the lighting levels.
3. ESCO is encouraged to consider installing a Periscope energy monitoring system by Activelogix for this facility.

## FACILITIES TO BE ANALYZED

Building Name: Stanford L Warren Library  
Address of Building or Complex: 1201 Fayetteville Street

Total Floors: 2  
Building Age: 94 years Built in: 1916 Addition: 1949-1950 Age: N/A  
Number of Buildings: 1

Building Type: Library\*\*  
Building Total Square Footage: 9200 sq. ft.  
Additions/Renovations: 1968, 1984-1985 and 2004-2006  
Describe Renovations: Plumbing, Electrical and HVAC during 2004-2006

Operating Schedule: Monday, Tuesday and Thursday: 9:00am – 9:00 pm  
Wednesday: 9:00am – 6:00 pm  
Friday: 2:00pm – 6:00 pm  
Saturday: 9:30am – 6:00 pm

Electric Meter for Building: Yes  
Gas Meter for Building: Yes  
Water Meter for Building: Yes  
Steam Meter for Building: None  
Chilled Water Meter for Building: None

### Issues to be Addressed by Performance Contract

1. The Direct Exchange Cooling/Gas Heating Roof Top Units are currently operating constantly (24 hours a day, 7 days a week).
2. Insulation of Building Envelope and Roof may need to be verified.

### Special Needs or Circumstances

1. ESCO is encouraged to consider installation of a BAS (Controls) system for this facility.
2. ESCO is encouraged to consider installing occupancy sensors/lighting controls.
3. ESCO is encouraged to consider installing a Periscope energy monitoring system by Activelogix for this facility.

\*\*Please note that this Library is the second Black library of the State and was opened to the public on August 14, 1916.

## FACILITIES TO BE ANALYZED

Building Name: Youth Home

Address of Building or Complex: 2432 Broad Street

Total Floors: Main level with unoccupied basement

Building Age: 21 years Built in: 1989 Addition: N/A Age: N/A

Number of Buildings: 1

Building Type: Juvenile Detention

Building Total Square Footage: 10,325 sq. ft.

HVAC Additions/Renovations: The HVAC systems (4) were installed in 1983. These are all split-units with the condenser units on the backside of the building and the air handlers in the basement. The main condenser unit was replaced in 2007. As lighting is replaced, it is replaced with T-8's with electronic ballasts.

Operating Schedule: Daily: 24 hrs /7 days a week Weekend: 24 hrs /7 days a week

Electric Meter for Building: Yes

Gas Meter for Building: Yes

Water Meter for Building: Yes

Steam Meter for Building: No

Chilled Water Meter for Building: No

### Issues to be Addressed by Performance Contract

1. Ventilation and air circulation is of poor quality at the facility. There is little to no air flow in the holding cells and intake area and other areas of the building have numerous floor supply grilles covered. The skylight located in the front lobby is covered by the occupants in an attempt to keep the building from overheating due to the sunlight.

### Special Needs or Circumstances

1. ESCO is encouraged to consider installing a Periscope energy monitoring system by Activelogix for this facility.

\*\*This Youth Home is a 15-bed maximum security juvenile detention facility.

# APPENDIX I-A

## FACILITY UTILITY DATA ACCESS

All facility utility records and transaction histories will be available electronically to provide paperless access during the proposal period. Instructions for accessing the FTP project site are listed below.

- Open Internet Explorer.
- In the Address bar enter <http://ftp.heery.com>.
- A new window should appear prompting you for a User Name and Password.
- Type in 10102-00 and 10102-00 respectively. (Both are all numbers)
- Check the checkbox next to the disclaimer and then click Login.
- You should now be logged in to the Public FTP Account.
- Double click the folder labeled "Database" in the "remote system".
- Download the folders for the utility records needed.

Note: Information is provided by the Facility and also by the type of service.

For other pertinent information and records not listed on the FTP site, please contact:

Name: Don Hasselbach

Phone: (919) 560-0443

# APPENDIX I-B

## FACILITY TOUR SCHEDULE

Initial facility tours will be conducted on November 30, 2010 following the Pre-Proposal Meeting for the Detention Center/Jail, General Services Complex, Main Fueling Station, Roxboro Parking Deck, and the Stanford L. Warren Library. Tours for the remaining locations will be held the following day on December 1, 2010 according to the schedule listed below. A maximum of two (2) representatives per ESCO will be allowed to participate in the site tours.

Name	Location	Time
General Services Complex	310 South Dillard Street	11:00-11:45am
Main Fueling Station	402 Ramseur Street	11:45-12:00pm
	<i>Lunch</i>	12:00-1:15pm
Roxboro Parking Deck	100 Roxboro Street	1:15-1:45pm
Detention Center / Jail	217 South Mangum Street	2:00-4:00pm
Stanford L Warren Library	1201 Fayetteville Street	4:15-5:00pm
<b>December 1, 2010</b>		
Homeless Shelter	412 Liberty Street	9:00-9:45am
Operation Breakthrough	215 Seminary Street	10:00-10:45am
Durham Center Access	309 Crutchfield Street	11:00-12:00pm
	<i>Lunch</i>	12:00-1:15pm
Fire Marshall's Office	2422 Broad Street	1:15-2:00pm
Youth Home	2432 Broad Street	2:00-2:45pm

**CONTRACT BETWEEN THE WYOMING BUSINESS COUNCIL,  
INVESTMENT READY COMMUNITIES DIVISION,  
STATE ENERGY OFFICE  
AND  
(insert ESCo Name)**

This Contract is made and entered into by and between the Wyoming Business Council State Energy Office, an agency of the State of Wyoming (Council), whose address is 214 West 15<sup>th</sup> Street, Cheyenne, WY 82002; and (Contractor), whose address is .

WHEREAS: Council, through its Wyoming Energy Conservation Improvement Program (WYECIP), used a state-approved Request For Proposal (RFP) process to select Energy Service Companies (ESCOs) to provide as-needed energy performance contracting services; and

WHEREAS: Council will maintain a list of pre-qualified ESCOs that are eligible for final selection by the WYECIP participants to provide performance contracting services.

NOW, THEREFORE, the parties agree as follows:

1. **Purpose of Contract.** The purpose of this Contract is to provide Contractor the ability to participate in the WYECIP program for development and implementation of Energy Performance Contracting (EPC) projects, to ensure the program's standard processes, procedures, and documentation will be used and to obligate Contractor to follow and adhere to the guidelines, rules, and provisions of the program.

2. **Term of Contract.** This Contract shall be for an initial one-year term and shall commence on \_\_\_\_\_ or upon the date the last signature is affixed hereto, whichever is later, and shall terminate on \_\_\_\_\_, unless otherwise amended or terminated in accordance with the terms and conditions specifically provided herein. All services shall be completed during this term.

Following the initial one-year term, this Contract may be extended by mutual agreement of the Council and Contractor to a maximum of an additional three one year renewals. There is no right or expectation of renewal and any renewal will be determined upon the mutual agreement of the Parties.

3. **Consideration.** In consideration for entering into this Contract, Contractor shall be eligible for participation in the WYECIP and Council's energy conservation efforts shall be promoted.

4. **Responsibilities of Contractor.** The responsibilities of the Contractor shall include, but are not necessarily limited to:

- A. Promote WYECIP when marketing directly to an eligible Agency (Agency);
- B. Engage the Council when a potential energy performance contract project is identified;
- C. Direct the Agency to contact WYECIP to execute an Agency Agreement with Council;
- D. Assign members to the Contractor project team including project development, engineering, project management, Measurement and Verification specialists, and upper management personnel;
- E. Ensure appropriate Contractor personnel attend project development meetings dependent upon the subject matter to be discussed;
- F. Prepare and execute contracts with the Agency substantially in the form of the most current version of the WYECIP Standard Contract documents to the extent mutually agreed by all concerned;
- G. Perform and complete the Investment Grade Audit, and other project development activities in accordance with the WYECIP Standard Investment Grade Audit and Project Development Contract incorporated herein by reference;
- H. Work with the Agency and the Council to develop/refine project parameters;
- I. Provide project proposals, designs, and reports;
- J. Ensure recommendations of the Council during reviews are addressed;
- K. ~~Assist the Agency with arrangements for project financing;~~
- L. Provide construction project management;
- M. Perform measurement and verification activities as mutually agreed by all concerned;
- N. ~~Assist the Agency with preparing annual reports for the Council on project cost status, savings achieved, and square footage impacted by the project.~~

5. **Responsibilities of Council.** The responsibilities for the Council include, but are not necessarily limited to:

- A. Help eligible Agencies identify potential EPC projects;
- B. Execute an Agency Agreement with Agencies electing to utilize the WYECIP for project development and implementation support;

- C. Require Agencies using WYECIP support to use an ESCo that has been pre-qualified by the WYECIP and has executed this WYECIP ESCo Contract with the Council;
- D. Provide the WYECIP Standard Contract documents;
- E. Review audits, proposals, calculations, contracts, and reports;
- F. Assist with oversight of project development;
- G. Provide monitoring of the project implementation;
- H. Review measurement and verification of savings.

6. **Special Provisions.**

**A. Compliance Requirements.** Contractor's performance will be continually monitored and evaluated by the Council for compliance with WYECIP guidelines, requirements, process, and documentation. Contractor shall practice and uphold the highest levels of ethical and industry standards in all matters under this program. Should Contractor be deemed non-compliant during any time while this contract is in effect, the Council will notify Contractor in writing and the Council and Contractor will discuss issues deemed non-compliant. The Council will offer the Contractor the opportunity to take corrective measures, which shall be provided to the Council in writing by the Contractor. Contractor will at that time enter a defined probationary period during which, if Contractor again becomes non-compliant, will be terminated from the WYECIP program for cause as provided in Section 7 of this Contract without regard to any time remaining in the Contractor's contract term.

**B. Cost and Pricing Elements.** Contractor agrees that, for each Project, it will not exceed the maximum cost for performing an Investment Grade Audit and maximum project Cost and Pricing Elements for pre-defined categories illustrated in the tables and the Open Book Pricing requirement included in Exhibit 1, which will be attached and made a part of each Investment Grade Audit and Energy Performance Contract. The Contract Sum will be subject to adjustment as set forth in Section 2.7.3 of the Energy Performance Contract for each project.

**C. Adherence to WYECIP Requirements.** Contractor shall engage in a good faith effort to promote the WYECIP, to the extent such effort is not inconsistent with or in violation of any and all Federal or state laws, rules or regulations (including Federal securities laws), applicable to Contractor, and shall adhere to its guidelines, requirements, and provisions.

**D. Standard Contract Documents.** Contractor agrees to use and adhere to the WYECIP Standard Investment Grade Audit and Project Development Contract and the

WYECIP Standard Energy Performance Contract, Attachments B and C, which are attached and made a part of this Contract to the extent the same are mutually agreeable.

**E. Eligible Agencies.** Agencies eligible for participation in the WYECIP consist of State Agencies, County & Municipal Governments, Higher Education Facilities, Public School Districts, Hospitals, and other Non-Profit entities that have executed a WYECIP Agency MOU with the Council.

**F. Contractor Requirements.** Contractor shall, before commencing performance of this Contract, become licensed or otherwise permitted to do business in the State of Wyoming and shall provide proof and documentation of all required insurance and bonds pursuant to this Contract.

**G. Local Subcontractors.** Contractor shall survey and solicit qualified locally available subcontractors for consideration for performing work under this Contract.

7. **General Provisions.**

**A. Amendments.** Any changes, modifications, revisions or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.

**B. Applicable Law/Venue.** The construction, interpretation and enforcement of this Contract shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming. The parties acknowledge and agree that this subsection does not waive, limit, or otherwise affect or reduce the full operation and effect of the provision in this Contract relating to the State's and the Council's full retention of all rights of sovereign immunity.

**C. Assignment/Contract Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Council.

**D. Audit/Access to Records.** Upon reasonable advance written request, the Council and any of its representatives shall have access to any books, documents, papers, and records of the Contractor that are pertinent to this Contract. The Contractor shall, within 14 calendar days after receiving written instruction from the Council, provide to any independent auditor, accountant, or accounting firm, all books, documents, papers and records of the Contractor that are pertinent to this Contract. The Contractor shall cooperate fully with any such independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by the Council.

**E. Award of Related Contracts.** The Council may undertake or award supplemental or successor contracts for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Council in all such cases.

**F. Compliance with Laws.** The Contractor shall keep informed of and comply with all applicable federal, state and local laws and regulations in the performance of this Contract.

**G. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the Council for its release.

**H. Entirety of Agreement.** This Contract, consisting of \_\_\_\_ ( ) pages, Exhibit 1, consisting of \_\_\_\_ ( ) pages, Attachment A, consisting of two (2) pages, Attachment B, consisting of \_\_\_\_ ( ) pages, and Attachment C, consisting of \_\_\_\_ ( ) pages represents the entire and integrated Contract between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

**I. Ethics.** Contractor shall comply with any and all ethical standards governing Contractor's profession, and any applicable statutes, rules, regulations or standards governing contracting with a state agency.

**J. Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be effective only after it is reduced to writing and executed by all parties to this Contract. Any agreement to extend the term of this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, if the duties of either party will be different during the extension than they were under the original Contract, a detailed description of those duties.

**K. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the non-performing party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or

negligence of the non-performing party.

**L. Indemnification.** The Contractor shall indemnify, defend and hold harmless the State, the Council, and their officers, agents, employees, successors and assignees from any and all claims, lawsuits, losses and liability arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including but not limited to any claims, lawsuits, losses or liability arising out of Contractor's malpractice.

**M. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract, and shall not be considered an employee of the State of Wyoming for any purpose. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract, and shall be solely responsible for the payment of all federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents and/or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Council, or to incur any obligation of any kind on the behalf of the State of Wyoming or the Council. The Contractor agrees that no health/hospitalization benefits, workers' compensation and/or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents and/or employees as a result of this Contract.

**N. Kickbacks.** The Contractor certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Contractor breaches or violates this warranty, the Council may, at its discretion, terminate this Contract without liability to the Council, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

**O. No Finder's Fees.** No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract shall be paid by either party.

**P. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail or delivery in person. Any change of address must be provided in writing to both parties.

**Q. Notice and Approval of Proposed Sale or Transfer of the Contractor.** The Contractor shall provide the Council with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notice provision of the Contract. If the Council determines that the proposed merger, consolidation, sale or transfer of assets is not consistent with the continued satisfactory performance of the Contractor's obligations under this Contract, then the Council may, at its option,

terminate or renegotiate the Contract.

**R. Order of Precedence.** In the event of any inconsistencies between the terms of this Contract and any attachment or document referenced herein, the descending order of precedence for purposes of determining which terms shall govern is as follows: this Contract, the Council's WYECIP Program Documents, Contractor's RFP response, the Council's RFP.

**S. Ownership of Documents/Work Product/Materials.** All documents, reports, records, field notes, data, samples, specimens, and materials of any kind developed for Agency's under the WYECIP (Work Product) are at all times the property of the Agency, provided that Council shall have a non-revocable, royalty-free license to use those documents, reports, records, field notes, data, samples, specimens, and materials related to the WYECIP. All other documents are at all times the property of the Council. The Contractor hereby grants to the Council and the Agency a perpetual, irrevocable, royalty-free license to use any and all of Contractor's intellectual property or similar proprietary rights associated with Contractor's Work Product which may be required to use, operate, or maintain the Work Product for its intended purpose. Such license shall continue subsequent to any termination of this Contract.

**T. Patent or Copyright Protection.** The Contractor recognizes that certain proprietary matters or techniques maybe subject to patent, trademark, copyright, license or other similar restrictions, and warrants that work performed by the Contractor or its subcontractors will not violate any such restriction. The Contractor shall defend and indemnify the Council for any violation or alleged violation of such patent, trademark, copyright, license or other restrictions.

**U. Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed under the terms of this Contract, and the Wyoming State Auditor shall not draw warrants for payment on this Contract, until this Contract has been reduced to writing and approved as to form by the Office of the Attorney General.

**V. Publicity.** Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, shall identify the Council as the sponsor and shall not be released without prior written approval from the Council.

**W. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

**X. Sovereign Immunity.** The State of Wyoming and the Council do not waive sovereign immunity by entering into this Contract and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all

other applicable law.

**Y. Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state and local law, including but not limited to federal and social security taxes, workers' compensation, unemployment insurance and sales taxes.

**Z. Termination of Contract.** This Contract may be terminated, without cause, by either party upon thirty (30) days written notice. The Council may terminate this Contract immediately for cause if the Contractor fails to perform in accordance with the terms and conditions of this Contract or upon a finding by the Council of non-compliance in accordance with Section 6 of this Contract.

**AA. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties and obligations contained in this Contract shall operate only between the parties to this Contract, and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

**BB. Time is of the Essence.** Time is of the essence in all provisions of this Contract.

**CC. Titles Not Controlling.** Titles of paragraphs are for reference only, and shall not be used to construe the language in this Contract.

**DD. Waiver.** No term or condition of this Contract shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties.

**EE. Workers' Compensation and Unemployment Insurance.** The Contractor shall provide to the Council proof of workers' compensation and unemployment coverage for all its employees who are to work on the project described in this Contract. Certificates of good standing in each of the Wyoming Workers' Compensation and Unemployment Insurance programs shall serve as sufficient proof if the Contractor is statutorily required to participate in those programs. If the Contractor's coverage is under a program different from the coverage provided by the Wyoming Department of Employment, proof of coverage shall be satisfied in manner to be determined sufficient in the discretion of the Council.

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## EXHIBIT 1

### COST AND PRICING ELEMENTS

#### 1. Project Costing

Percentage of project costs shall not exceed the maximums established in the table below. Cost for performing the Investment Grade Audit and maximum project percentages for pre-defined categories shall be per the following schedules.

#### 2. Investment Grade Audit and Project Development Pricing

The following pricing structure shall determine the cost of performing Investment Grade Audits.

Tiered WYECIP IGA Pricing (\$/sq ft)		Facility Size (sq-ft)		
		Under 250K	250-500K	500K+
Distance from Cheyenne, Wyoming	Under 150 miles	\$ 0.250	\$ 0.225	\$ 0.200
	151 - 360 miles	\$ 0.275	\$ 0.250	\$ 0.225
	Over 360 miles	\$ 0.300	\$ 0.275	\$ 0.250

	<b>Project Budget</b>	<i>Estimated Percent of Total Project Price</i>	<i>Actual Percent of Total Project Price</i>	<i>Price/Cost</i>	<i>How is range applied/final value derived</i>
	<b>Base/Construction Costs</b>				
a	Subcontractor Costs (Contractor Costs to ESCo)	N/A	N/A		N/A
b	Other Direct Purchases of Equipment & Materials, (Supplier Costs to ESCo)	N/A	N/A		N/A
c	Design				
d	Project Management				
e	Permits				
f	Performance Bond				
g	Commissioning				
h	Training				
i	Construction Measurement and Verification				
sum (a:i)	j <b>Sum Project Direct Costs</b>				N/A
	k Overhead Percent				
	l Profit Percent				
Sum (j:l)	m <b>PROJECT PRICE SUB TOTAL w/OH &amp;P</b>				N/A
	n Investment Grade Audit and Project Proposal	N/A	N/A		N/A
	o Contingency				
Sum (m:o)	p <b>TOTAL PROJECT PRICE</b>				N/A

NOTES: \* For WYECIP base agreement and RFP responses, a range is acceptable if justified.

### 1. Annual Costs

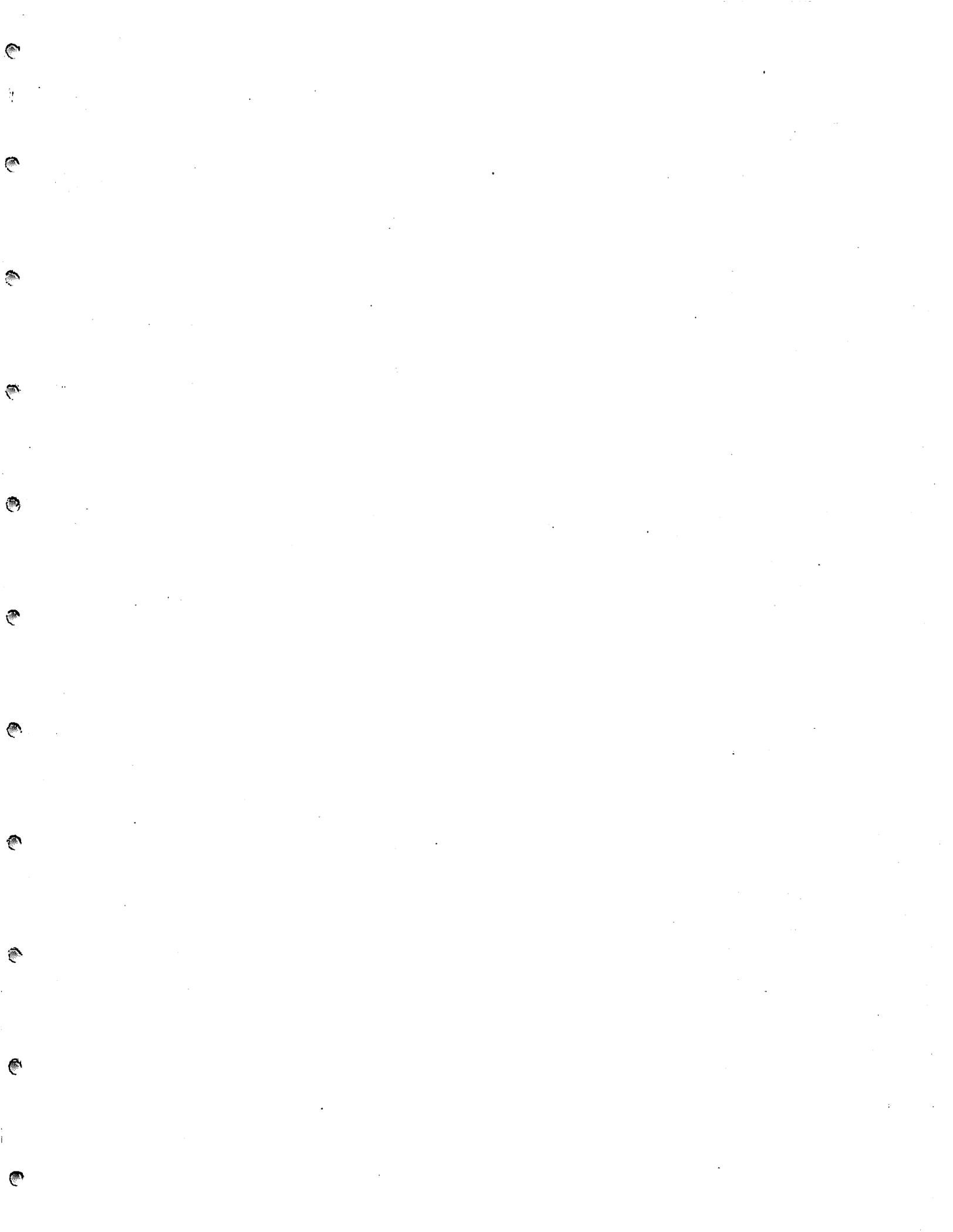
Provide a description of cost determination for Warranty, Measurement and Verification, and Maintenance below. Costs for all projects shall not exceed the maximums established in the table below.

CATEGORY OF ANNUAL COST	How Prices Determined	Years Applied (One-time, Annual, etc)
Warranty		
Measurement and Verification		
Maintenance		
Other:		

Agencies may choose to negotiate cost and pricing elements with Contractor on a project-by-project basis for reductions as dictated by individual agency or project requirements. Contractor may also propose costs depending upon individual project considerations or their own internal business approach.

### 3. Open Book Pricing

Open book pricing is full disclosure by the Contractor to the Agency of all costs for materials, labor, and services received during the subcontractor solicitations, equipment bids, project development, implementation, and performance period phases. The Contractor shall include the Agency in final equipment and subcontractor selection. Open book pricing will be required such that the Contractor will fully disclose all costs to the Agency, including all costs of subcontractors and vendors. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices to ensure the Contractor's prices are reasonable and acceptable and that overhead and profit are being properly applied.



**REQUESTS FOR QUALIFICATIONS-  
GUARANTEED ENERGY SAVINGS**

The City of Huntington, West Virginia is requesting sealed proposals for a Guaranteed Energy Savings Contract. Proposals will be received until 11:30 A.M., November 03, 2010 at the Office of the City Clerk, Room 16, City Hall, 800 Fifth Avenue at which time proposals received will be publicly opened and read aloud. Proposal forms and specifications may be obtained at the Office of the Director of Purchasing, 800 Fifth Avenue, Lower Level, Room L3, City Hall, Huntington, West Virginia. The City of Huntington, West Virginia reserves the right to reject any or all proposals.

City of Huntington  
Darryl Miller  
Purchasing Director

PAPER: Herald-Dispatch  
10-19-10  
10-26-10

Cabell Standard  
10-19-10  
10-26-10

**REQUEST FOR QUALIFICATIONS**

**FOR**

**A GUARANTEED ENERGY SAVINGS CONTRACT  
IN ACCORDANCE WITH THE PROVISIONS OF  
WEST VIRGINIA CODE – CHAPTER 8 - ARTICLE 12 – 5e**

**City of Huntington, WV**

**RFQ ISSUE DATE: October 19, 2010**

# REQUEST FOR QUALIFICATIONS

Issued by

City of Huntington, WV

## For Energy Performance Contracting Services

City of Huntington, (hereinafter referred to as the "City") seeks proposals from interested qualified providers to provide efficiency services to reduce energy and operating costs and implement related capital improvements for its lighting, electrical and mechanical and other related systems at the following buildings and systems: \_\_\_\_ (see Attachment D) \_\_\_\_ . This RFQ process is being conducted in accordance with the energy savings contract requirements of West Virginia Code Chapter 8, Article 12 – 5e, which requires that the annual energy and operating cost savings be guaranteed.

The proposal will be to furnish:

ENERGY EFFICIENT EQUIPMENT RETROFIT, REPAIR AND MODERNIZATION PROGRAM FOR THE CITY OF HUNTINGTON, WEST VIRGINIA.

This Energy Services proposal will be for the following buildings and systems: **SEE ATTACHMENT D**  
Proposals must be submitted in the format required by the Request for Proposals, and must comply with all applicable laws and regulations. All proposals submitted are valid for acceptance by the City and may not be withdrawn for a period of ninety (90) days after the actual date of opening thereof.

Subsequent to the City's receipt and review of the proposals, interviews may be conducted with the responsible offerors who submitted proposals. The City reserves the right to select for contract negotiations, the responsible offeror whose proposal is determined to be most advantageous to the City, taking into consideration, not only price, but all evaluation factors. The Request for Proposals may be canceled or any or all proposals may be rejected, in whole or in part, when it is in the best interests of the City.

This project is subject to the requirements of prevailing wage rates which shall apply to the construction and installation work performed under this solicitation.

Energy systems could include, but are not limited to, heating, ventilating and air conditioning (HVAC) equipment, energy management and control systems, lighting systems, domestic hot water systems, the building envelope and other energy using systems such as traffic signals, street lights, waste-water and fresh water treatment plants, stormwater infiltration into leachate system, plumbing, rainwater harvesting, etc.

The entire process consists of four phases:

RFQ Phase: Through this RFQ, the City will select a qualified provider based on written proposals and interviews.

Detailed Technical Energy Audit Phase: The City intends to award the Contract and sign a Letter of intent for the Detailed Technical Energy Audit and Final Design Phase with selected qualified provider to define the project scope, cost and terms.

Construction/Implementation Phase: Upon satisfactory results of the Technical Energy Audit, and at the option of the City, the City may enter into an Energy Savings Contract to implement the recommended energy conservation measures.

Commissioning/Monitoring Phase: The Energy Savings Contract also includes provisions for long-term follow-up monitoring of energy and operations savings, which shall not exceed fifteen years.

The City's objective in issuing this RFQ is to provide a competitive means in which to select a single contractor to perform the implementation of the efficiency program. The City will base the qualified provider selection on several criteria:

- 1.) Firm's Experience and Qualifications
- 2.) Technical Approach
- 3.) Financial Considerations
- 4.) Ability to Implement the Project

Upon review of proposals received in response to this RFQ, the City will enter into negotiations for a guaranteed energy savings contract with the highest ranked qualified provider.

### **Administrative Information**

**Submission of Written Proposals.** Proposals must be prepared as described in Attachment C: Qualified Provider Response. If any part of this RFQ is revised, an addendum notice will be sent to each qualified provider registered either when picking-up RFQ documents or at the mandatory pre-bid meeting. The City shall not be responsible for any cost incurred by the qualified provider in the preparation of this proposal. It must be specifically understood that this Request for Qualifications does not create any obligation on the part of the City to enter into any contract or undertake any financial obligation with respect to the program referred to herein.

**Proposal Review.** The City will establish a project evaluation team to review and evaluate the written responses to this RFQ in accordance with the evaluation criteria identified in Attachment B: Evaluation Criteria. References will be required from at least five (5) prior clients of each qualified provider addressing qualified provider's performance on similar energy conservation projects. The City reserves the right to reject any or all submissions and to waive informalities and minor irregularities in submissions received and to accept any submissions if deemed in the best interest of the City to do so.

**Interviews and Final Selection.** If the City deems it necessary, each of the respondents in the competitive range will participate in a formal interview with the project evaluation team to more fully discuss how the approach to this project satisfies the evaluation criteria and to answer questions. All persons with major responsibility for the project's contract negotiation, construction management and follow-up monitoring should be present at the interview. Based on results from the written responses to the RFQ and any oral interviews, an award may be made.

**Inquiries and Bulletins.** Qualified providers may make *written* inquiries concerning this RFQ to clarify requirements prior to the date indicated in Attachment A: Proposed Project Schedule. Send all written inquiries on company letterhead to: Darryl Miller, Purchasing Director at City Hall, 800 Fifth Avenue, Lower Level, Room L3, Huntington, West Virginia 25701. Any modification or addendum to this Request for Qualifications, including any changes in the times for required performance, shall be described in written bulletins issued to all qualified providers at the address provided by such party when registered to pick up RFQ documents. Such registry shall provide the name and address of the qualified provider, the name of the contact person, the telephone number, fax number and E-mail address, if any.

**Modification Or Withdrawal Of Proposals:** Proposals may be modified or withdrawn by the qualified provider before the established due date and time (Nov. 3, 2010; 11:30am).

**City Proposal Questions:** The City may request written responses to any questions it may have with regard to the proposal.

**Tentative Contract Award:** Scoring is based on the Selection Criteria outlined in Attachment B. The top respondent with the highest score will be awarded the contract tentatively. The final contract award to the selected qualified provider will be subject to negotiations between the qualified provider and the City, provided agreement is reached within 120 days of award of tentative contract. The other respondents will be informed in writing of the selection decision.

**References and Confidential/Proprietary Information:** Submission of a response grants permission to make inquiries concerning the qualified provider and its officers to any persons or firms deemed appropriate by the City solely for the purpose of evaluation and contract negotiations. Any proprietary information that the qualified provider does not want disclosed to the public shall be so identified on each page in which it is found.

Information provided in the response to this RFQ will be held in confidence and will not be revealed and discussed with competitors. All material submitted becomes the property of the City solely for the purpose of evaluating responses to this RFQ and may be returned only at the City's option. Proposals may be reviewed and evaluated by any person, except the qualified provider's competitors, at the discretion of the City, regardless of statements to the contrary contained within the qualified provider's response.

**Rejection Of Proposals:** The City reserves the right to reject any or all proposals and to waive informalities and minor irregularities in proposals received and to accept any portion of a proposal or all items proposed if deemed in the best interest of the City.

**Funding and Contract Term.** The City may terminate the guaranteed savings contract if, in any fiscal year during the term of the contract, it does not receive sufficient funds in its annual appropriations to make the payments required under the contract. No contract shall exceed fifteen (15) years in duration.

**Savings Guarantee.** The successful qualified provider shall provide a written energy usage savings guarantee. The total program costs, including financed equipment costs, long-term maintenance costs, and other costs, shall be one hundred percent (100%) covered by program operational and energy cost savings. The guarantee shall be monitored regularly and reconciled on an annual basis, commencing one year from the date of completion of installation. In the event that the actual savings are less than the guaranteed savings, the successful qualified provider shall annually provide cash reconciliation of the difference. The qualified provider's guarantee shall be a first party direct guarantee from the qualified provider to the City.

**Technical Requirements.** Facility analysis and savings calculations should be performed in accordance with generally accepted engineering practices and professional judgment. All direct engineering and design work related to the installation or modification of facilities, and all installation and construction work must be performed by engineers and contractors respectively licensed in the State of West Virginia, as applicable.

**Performance and Payment Bonds.** After execution of the contract and prior to the commencement of work, qualified provider must provide the City with performance and payment bonds for 100% of the project costs in accordance with applicable procurement code. Provide evidence that your company will be able to provide a 100% project value performance bond for faithful performance of the installation.

**Prevailing Wage.** This project is subject to West Virginia Prevailing Wage Law. All workers employed under this contract shall be paid prevailing wages. It is the qualified provider's prime responsibility to ensure compliance with the current prevailing wage reporting requirements for all aspects of the project.

**Taxes, Fees, Codes Compliance, Licensing.** The qualified provider shall be responsible for payment of any required taxes or fees associated with the execution of the guaranteed energy savings contract. The qualified provider shall be responsible for compliance with all applicable codes, statutes, and permitting requirements.

**Sample Agreement.** The Provider must provide a proposed sample contract that identifies the General Terms and Conditions as well as other agreement provisions to be used in the implementation of the program measures. The sample contract will be used to negotiate the final contract between the City and Provider. The City reserves the right to negotiate any terms of the contract that are in its best interest and according to WV code.

**Other Benefits.** Describe any other benefits your firm can bring to the energy services program.

## ATTACHMENT A: PROPOSED PROJECT SCHEDULE

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

ACTIVITY	DATE
<b><u>RFQ Phase</u></b>	
Advertise RFQ	<u>October 19</u> , 2010 <u>October 26</u> , 2010 _____, 2010
Issue RFQ	<u>October 19</u> , 2010
Deadline for written inquiries by qualified providers , 2010	<u>October 27</u>
Proposals Due	<u>November 03</u> , 2010
Proposal Review and Selection of Finalists	<u>November 03</u> , 2010
Qualified provider Interviews, Ranking and Award <u>08</u> , 2010 (includes City approval of qualified provider as required)	<u>November</u>
City <u>November 22</u> , 2010	Council                      First                      Reading
City <u>December 13</u> , 2010	Council                      Second                      Reading
<b><u>Detailed Energy Audit &amp; Final Design Phase</u></b>	
Technical Audit and Final Design, Final Report (8) Weeks	Within Eight
<b><u>Energy Performance Contract Phase</u></b>	
Development of Energy Performance Contract (8) Weeks (includes negotiation, City approval as required and signing)	Within Eight
Installation	To be negotiated
<b><u>Commissioning/Monitoring Phase</u></b>	
Commissioning	To be negotiated

Monitoring

To be negotiated

Staff Training

To be negotiated

Proposed Contract Term (Maximum 15 Year Term)

Year 2011 up to Year 2026

## ATTACHMENT B: EVALUATION CRITERIA

The criteria listed below will be used to evaluate written proposals and the subsequent interviews. The scoring weight for each evaluation criterion is listed in the tables below. The overall evaluation includes the comprehensiveness of technical, management, maintenance and monitoring services offered; the clarity, organization and level of detail in the written proposal; the quality of project history and client reference documentation; and documented experience in energy-related and performance contracting services.

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

The primary items to be considered by the City in its evaluation are the following:

### Experience

- Quality of Project History and Client Reference documentation for projects similar to the one being considered.
- Reliability of equipment performance on past projects.
- Documented energy savings of previous projects.
- Ability to plan and complete all phases of the project on schedule.
- Clarity, organization, and level of detail in written proposal.
- Ability to develop and implement state-of-the-art technologies, including renewable energy systems

### Technical Approach

- Quality of preliminary technical analysis including comprehensiveness and understanding of City building systems and conditions.
- Quality of sample baseline energy calculations.
- Quality of proposed Project Commissioning Plan.
- Quality of proposed training for facility staff.
- Quality of proposed Measurement and Verification Plan.

### Financial Approach

Reasonableness of proposed financing arrangement and financial analysis assumptions.

### Project Management

- Qualifications and experience of personnel
- Ability to effectively manage project construction.  
Staffing Plan for on-site oversight of construction activities
- Quality of communication skills of the qualified provider representatives.
- Clarity and reasonableness of sample milestones and timeline for project implementation.
- Comprehensiveness of monitoring and verification services.

**GENERAL QUALIFICATIONS EVALUATION CRITERIA**

<i>Criterion</i>	<i>Superior 6 points</i>	<i>Very Acceptable 4 points</i>	<i>Acceptable 2 points</i>	<i>Not Acceptable 0 points</i>
A. Executive Summary – Clarity of material presented				
B. Company History & Qualifications – Strength, capability and expertise; <del>renewable energy capability</del>				
C. Project Team – Management organization, team qualifications, ability to deliver				
D. Experiences & References – Demonstrated track record of successful projects and ability to <del>achieve results: local project</del>				
E. Contractual Approach – Reasonable terms and methods of handling performance risk				
<b>Total – 30 Points Maximum</b>				

**TECHNICAL AND FINANCIAL EVALUATION CRITERIA**

<i>Criterion</i>	<i>Superior 14 points</i>	<i>Very Acceptable 10 points</i>	<i>Acceptable 6 points</i>	<i>Not Acceptable 0 points</i>
F. Sample Scope of Work – ECM quality, acceptability, comprehensiveness, sound				
G. Financial Proposal – Reasonableness of sample financing methodology				
H. Implementation & Operations – Savings M&V methods, training and maintenance provisions				
I. Other Considerations – Additional beneficial features of program				
J. Oral Presentation – Clarity and ability to respond to questions				
<b>Total – 70 Points Maximum</b>				

**Total Score – Possible 100 Points**

**Company Name:** \_\_\_\_\_

**Qualifications:** \_\_\_\_\_

**Sample Technical/Financial:** \_\_\_\_\_

**Total Score:**

\_\_\_\_\_

## **ATTACHMENT C: QUALIFICATION AND PROPOSAL INFORMATION SUBMISSION REQUIREMENTS**

### **GENERAL INFORMATION**

Refer to "Administrative Information" in the body of the RFQ for an overview of the process. For further information, please contact:

Darryl Miller, Purchasing Director  
City of Huntington  
800 Fifth Avenue, Lower Level, Room L3  
Huntington, West Virginia 25701  
Phone: 304-696-5590

**Due Date:** Proposals must be *received* at the above address on or before November 03, 2010 no later than 11:30 a.m. Late proposals will not be accepted.

### **Submit Proposal**

Prepare responses to "Qualified Provider Profile & Approach to Project" (see below). Include a cover sheet, as described below, with each proposal. Clearly mark one proposal as "ORIGINAL".

Quantity: Five (5) Copies, including original.

### **Packaging**

Proposals must be sealed in a package. The outer envelope of the package must include:

- Company name
- RFQ Title
- Proposal Deadline (November 3, 2010)

### **Delivery Address:**

City Clerk  
City of Huntington  
800 Fifth Avenue  
Huntington, WV 25701

**Cover Sheet:** Include a Cover Sheet to accompany each proposal:

To: City of Huntington  
Attention: City Clerk  
Date: November 03, 2010

**Description:** Response to RFQ – Guaranteed Energy Savings Performance Contract

**From:** *Company Name, Address, Phone, Fax, e-mail Address*

**Signature:** *(signed by representative who is legally authorized to bind offeror to the proposal)*

**Printed Name & Title:** \_\_\_\_\_

## **PROPOSAL FORMAT**

### **Table of Contents**

Responses should include a table of contents properly indicating the section and page number of the information included; layout or order is up to the discretion of the bidder, but should include—at a minimum—the following information:

#### **Section A. Executive Summary**

The Executive Summary provides the opportunity for the qualified provider to present the most important aspects of its proposal including, the firm's experience and history. This is also a good opportunity to draw the reader's attention to specific unique aspects of the proposal. It should answer the question "Why should the City select your firm to provide the Guaranteed Energy Services discussed in this RFQ?" Limit this section to five pages, including exhibits.

#### **Section B. Company History & Qualifications**

Provide background information on your company, describing its primary business activities and financial backing. Provide detailed information describing your company's qualifications to perform the proposed project utilizing a comprehensive energy services approach. Discuss your firm's service capabilities (if any), bonding capacity, and sources of financing.

#### **Section C. Project Team**

Provide an organization chart that identifies all of the members of the qualified provider's staff that will participate in the project. Any affiliate companies or subcontractors should be identified in this section. Include each organization's name, address, telephone number, and key contact. Indicate the history and experience that each organization has in providing these energy services. Describe your company's organizational structure, the management approach for this project, and how the project's success will be assured.

For each individual that will be working on the project, attach a description that provides at a minimum: job title and function, length of employment with the firm, recent projects, academic degrees, professional registration. Also, indicate who will have primary responsibility for technical analysis, design work, and construction management.

Indicate the key individuals that will have primary project development point-of-contact responsibility, and the company officer with authority and responsibility to negotiate and execute the Guaranteed Energy Saving Contract with the City.

Discuss the mechanism to promote use of local subcontractors and equipment suppliers. Discuss your ability to coordinate project construction with local utilities, and customer facility personnel.

#### **Section D. Experiences & References**

Include a brief description of at least five (5) projects that your firm has completed which are similar to the anticipated project. Please include any energy savings projects that your company is currently developing or has completed in the state of West Virginia. The description should provide the customer's name (including a contact name and telephone number), location, type and size of facility, contract type and start date, scope of work, contract \$ amount and savings figures. Any difficulties meeting savings guarantees or project deadlines and the eventual resolution must be outlined in this section.

#### **Section E. Sample Scope of Work**

Provide an example of a typical scope of work organized in the following manner. For each sample Energy Conservation Measure (ECM) in a building:

1. **ECM Description** – Provide a description of typically recommended ECMs. This information should be in text or bullet format and should provide the reader with an understanding of what the ECM entails from an equipment and technical standpoint, why it will save energy, what types of energy it will save, and related operational savings, and how it will be operated (if applicable).
2. **Measurement & Verification Plan for each ECM** – Qualified provider must summarize sample M&V Plans for the ECM's in this section. The evaluator should gain a basic conceptual understanding of the M&V approach that will be used for the ECM. The City needs to establish that the qualified provider has a clear and defensible plan to verify the savings. Qualified provider needs to demonstrate the ability to develop and manage a Measurement and Verification Plan that will be comprehensive, yet, not unnecessarily burden the project with either hard costs (for M&V equipment and service) or soft costs (for professional time to manage the verification process).

3. **Other Considerations** – This section provides the qualified provider with an opportunity to provide any additional information that the City should consider in evaluating the sample ECM's. Issues such as hazardous waste disposal, asbestos issues and any other environmental considerations should be described in this section. Intangible benefits that the project might provide (avoided capital expense, improved workforce efficiency, better occupant comfort, etc.) should also be provided in this section. This section also provides the qualified provider with the opportunity to "briefly" describe its experience with the ECM in other customer facilities. Specific examples and real performance data from other projects will be viewed favorably by the City.

### **Section F. Financial Offering**

**Project Financing** – Describe the approach that qualified provider proposes to employ to finance a typical City program. Discuss your firm's past ability to finance and implement projects of this size quickly and efficiently. Describe your relationship with funding sources and whether funding these projects is a profit center for you.

### **Section G. Contractual Approach**

Describe the contracting mechanisms that your company would use to develop and implement the final project. Discuss the obligations the City would incur in the development process and the savings guarantees and project warranties that would be provided.

**Letter of Intent/Memorandum of Understanding** – provide a description of the process used during the detailed technical audit and provide a copy of the document(s) used during this phase of project development.

**Proposed Energy Services Agreement** – provide a copy of the agreement(s) that will be used as the basis for negotiations with the City. Agreement(s) should reflect a similar likely scope of work to be included in the proposal and should be fully developed, including the Performance Guarantee and the M&V Plan. References involving similar projects utilizing a similar agreement will be viewed favorably.

**Performance Guarantee** – provide description of the Savings Performance Guarantee provided in the Energy Services Agreement. Discuss the process that is used to establish and manage the Performance Guarantee for the full term of the agreement. Explain how accounts will be adjusted for shortfalls or windfalls in project cash flow.

### **Section H. Implementation Plan**

**Milestone Schedule** – Provide a typical implementation schedule for a City project from the point of

contract execution. Provide information on how your company would ensure that the project is on schedule and within the agreed budget.

**Operation & Maintenance Plan** – Describe how cost effective maintenance strategies for the installed ECMS and for the related existing facility equipment/structure will be provided to maximize savings performance. Identify and describe the roles and requirements of the City maintenance personnel and your proposed maintenance services for this project.

**Plan for Maintaining Continuity/Partnership Plan** – The City would accord utmost importance to the qualified provider's ability to foster long-term partnership, in awarding the contract. Describe the role that your company proposes to help the City ensure that the benefits of this program survive for the long term. Discuss the ongoing interaction between your staff and the City in energy-related areas outside of the specific requirements of the program. Provide specific examples of other projects where ongoing relationships have provided additional value to your customers.

#### ATTACHMENT D: PROPERTY LIST

BUILDING	ADDRESS	CONSTR.	SQ. FT.	BUILT
City Hall	800 Fifth Avenue Htgn., WV	Brick Concrete Fireproof Steel Frame		1914
Maintenance Shop & Garage	R 423 Second Avenue	Brick Concrete		1946

	Htgn., WV	Block Steel Frame		
Weed & Seed Building	1524 Tenth Avenue Htgn., WV	Brick Concrete Block Steel & Wood Frame		1978
Safety Town –Mini Service	1486 James River Road Htgn., WV	Brick & Concrete Block		1977
Safety Town—Mini Fire Dept	1490 James River Road Htgn., WV			
Safety Town Classroom	1490 James River Road Htgn., WV	Brick & Concrete Block		1977
Safety Town-Mini Police	1482 James River Road Htgn., WV	Wood Frame		1977
Municipal Parking Garage	701-729 Third Avenue Htgn., WV	Reinforced Concrete		1944
Civic Arena	700-756 Third Avenue Htgn., WV	Concrete Block Metal Clad Steel Frame		1977
Centennial Fire Station	839 Seventh Avenue Htgn., WV	Brick Concrete Block Steel Frame		1971
Gallaher Fire Station	3101 Washington Blvd Htgn., WV	Brick Concrete Block		1964
Guyandotte Fire Station	303 Fifth Avenue Htgn., WV	Brick Concrete Block		1963
Westmoreland Fire Station	509 Camden Road Htgn., WV	Brick Wood Frame		1926
Sign Shop/Traffic Engineering	738 14 <sup>th</sup> Street West Htgn., WV			
University Fire Station	534 R 20 <sup>th</sup> Street Htgn., WV	Brick Concrete Block		
A.D. Lewis Recreational Building	R. 1021-1029 Hal Greer Blvd. Htgn., WV	Brick Concrete Block		1954
AD Lewis Pool & Filter House	R 1021-1023 Hal Greer Blvd. Htgn., WV	Reinforced Concrete		1954
Dietz Hollow Landfill	Guyandotte, WV	Leachate Storage System		
Fire Department Transmitter Building	Rotary Park Htgn., WV	Concrete Block Wood Frame		1947
Police Transmitter Building	Rotary Park Htgn., WV	Concrete Block Wood Frame		1947
Safety Town Barn	1480 James River Road Htgn., WV	Wood Frame		1977
Floodwall Office	94 Virginia Avenue Htgn., WV			
Floodwall Storage	215 Second Avenue Htgn., WV			

Floodwall Equipment Storage	217 Second Avenue Htgn., WV			
Fairfield East Community Center	2711 Eighth Avenue Htgn., WV	Brick Concrete Block		1981
Huntington Police Dept Bldg	675 10 <sup>th</sup> Street Htgn., WV			
Horse Barn	1899 James River Rd. Htgn., WV			
Amphitheater/Stage	Harris Riverfront Park Htgn., WV			
Bathrooms (4 Bldgs)	Harris Riverfront Park Htgn., WV			
St Clouds Fire Station	1431 W. Fifth Avenue Htgn., WV			
Parking Lot #48	1000 Block Fourth Avenue Htgn., WV			
Parking Lot #14	200 Block 10 <sup>th</sup> Street Htgn., WV			
Traffic Lights and Equipment	\$8,800,000 Average of \$80,000 per Intersection x 110			
Street Lighting				
Floodwall Pump Stations, (including water usage at station #10 "Orchard Ave.")				

**ATTACHMENT E: ADDITIONAL TERMS AND CONDITIONS**

### **General Installation Requirements**

Provide an on-site supervisor to oversee all coordination related to installation and to collect the necessary data to submit a weekly progress report. Weekly reports need to be submitted in the same excel spreadsheet format as the construction grade audit.

Submit the construction as-built and all related warranty information at the completion of retrofit project; not limited to lamp and ballast warranty registration certificates, certified lamp and ballast waste certificates by an EPA licensed vendor.

Qualified provider shall supply and install sample products upon the request of City.

Qualified provider shall be responsible for the following: cutting, framing, and transporting all equipment comprising qualified provider's Work, installing new materials or equipment as required for the proper installation of qualified provider's Work, and any other incidental or associated work necessary to make a complete and operating installation of qualified provider's Work.

Qualified provider shall perform all clean up necessary to allow for the normal occupancy and use of the City space.

Qualified provider shall be responsible for the complete and proper new connection or reconnection of electric service to all new equipment.

Work to be performed at the City is in a proper and timely manner.

Work to be performed after normal operating hours during City in-session periods. Submission of Proposal indicates qualified provider has thoroughly examined the work site and is submitting Proposal without collusion with any other bidder.

### **Demolition**

All demolition associated with qualified provider's Work shall be the responsibility of the qualified provider.

City shall have the first option at retaining title to removed materials.

Demolition shall include removal from its current installed state.

Qualified provider shall provide on-site storage containers for all non-hazardous waste that will be removed from the Premises.

Provide documentation of lamp and ballast waste removal by an EPA licensed vendor.

### **Site Coordination**

Qualified provider shall provide coordination of material deliveries, and waste and recyclable pick-ups so as not to interfere with the City's operations and to minimize the accumulation of these items on the Premises.

Maintain all areas of material storage and disposal, which includes storage trailers, dumpsters and space provided by City, in a clean, safe and organized manner.

Secure all lifts, scaffolding, or ladders at the end of each work day by placing this equipment in areas that are not accessible by students and have been coordinated and agreed upon by the City. An acceptable alternative is to remove the equipment from the Premises except during working hours.

### **Close-Out Submittals**

The qualified provider shall provide, at a minimum, the following:

An updated "room-by-room" audit, which identifies the type and quantity of equipment actually installed.

Close-Out Submittals shall be provided within 60 days following substantial completion; not limited to lamp and ballast warranty registration certificates, certified lamp and ballast waste certificates by an EPA licensed vendor.

Attend and participate in all walk-thru's or inspections requested by all governing agencies, inspectors, or City.

### **Special Project Conditions**

Qualified provider shall take the necessary precautions to ensure a safe and professional working environment. Strictly adhere to City's safety and work procedures, which include, but are not limited to:

1. Comply with check-in/check out procedures specified by City. These procedures shall include, but not be limited to signing in at the main office promptly upon entering building. Qualified provider shall furnish and wear at all times an identification badge, displayed prominently on their person, and containing the following items: picture of employee, employee name, and employee company name.
2. Provide current criminal background checks and/or Child Abuse Clearance as required by City.

3. The use of building restrooms and parking arrangements for qualified provider's employees shall be arranged subject to the City's approval.

### **Jobsite Safety/Environmental Requirements**

Qualified provider shall be responsible for maintaining and supervising prudent safety procedures. Qualified provider shall be responsible for providing a project-specific site safety plan. Comply with all safety laws, regulations, ordinances and other directives of jurisdictional authorities in order to prevent injury, damage or loss to:

1. all employees involved in performance of qualified provider's Work;
2. all students, teachers, administrative personnel, and employees, and other persons in proximity to, or otherwise affected by qualified provider's Work;
3. materials and equipment to be incorporated therein, whether in storage on or off the Premises;
4. Property at the Premises or in proximity to qualified provider's Work and which is designated to maintain;
5. Property that is located on-site or in proximity to the qualified provider's Work and is designated to be altered, renovated or relocated.

Qualified provider should select one or more on-site personnel whose duty shall be accident prevention. One such person shall be qualified provider's on-site supervisor, unless otherwise designated by qualified provider in writing to the City.

Qualified provider must not structurally overload or permit any part of qualified provider's Work to be overloaded so as to endanger its safety.

Qualified provider and its subcontractors must comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, including any subsequent additions, deletions, and/or changes, as applicable. Qualified provider should review any Environmental Assessment reports supplied by the City and make note of affected areas within the buildings. Qualified provider must notify the City of any specific situation where an environmental condition poses a risk of disturbance or affects their ability to perform qualified provider's Work safely. This must include asbestos and lead paint related documents.

Qualified provider is responsible for removing all applicable PCB and Non-PCB ballast. Qualified provider shall be responsible for properly labeling, sorting, and disposing all PCB and Non-PCB ballast.

Qualified provider is responsible for removing all applicable lamps. Qualified provider shall be responsible for properly labeling and sorting all removed lamps, not limited to, High Intensity Discharge, Linear Fluorescent, Incandescent, and Compact Fluorescent from the Premises. All lamps to be properly returned to an EPA Licensed waste vendor.

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**Evansville Vanderburgh School Corporation**

**REQUEST FOR PROPOSAL**

**2010**

**Performance Based Energy/Operating Cost Reduction Program**

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**NOTE:**

Proposals time-stamped on due date at 1:01 p.m. or after will be returned unopened to the Bidder.

Contact for Request for Proposal: Mr. Pat Tuley, Chief Facilities Officer, (812) 435-8426

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**Request for Proposals  
Guaranteed Savings Contract  
Notice to Contractors**

Notice is hereby given that the Evansville Vanderburgh School Corporation by and through its Board of School Trustees will receive sealed proposals until 1:00 p.m., local time, on **Tuesday January 12<sup>th</sup>, 2010**, and not thereafter, in the EVSC Office of School Facilities, 310 S.E. 8th Street, Evansville, Indiana 47713.

Opening will be open to the public. Said sealed proposals shall be for **Performance Based Energy/Operating Cost Reduction Program** in accordance with proposal requirements for Reitz, Central, Harrison, North High Schools, Delaware and Lodge Elementary School and the Administration Building. The deposit will be a total of twenty-five dollars (\$25.00) which will be refunded in full if the contractor submits a bid and returns the Proposal Requirements within four (4) days of bid date.

A **mandatory** pre-bid meeting and site tour is schedule for Tuesday, November 24<sup>th</sup> 2009 at 8:00 a.m. at the EVSC Office of School Facilities, 310 S.E. 8<sup>th</sup> Street, Evansville, Indiana. Site tour will be conducted at all buildings following the pre-bid meeting. However, site tours can be arranged prior to pre-bid by contacting Pat Tuley at 435-8426. All tours will be conducted by EVSC personnel.

Copies of the Proposal Requirements and proposal form will be furnished to reliable contractors applying at the Office of School Facilities, 310 S.E. 8<sup>th</sup> Street, Evansville, Indiana 47713. A check or money order payable to Evansville Vanderburgh School Corporation is required for each set of bidding documents. It is mandatory that each prime contract bidder obtain one (1) complete set of bidding documents.

All proposals shall be made out and submitted on a bid proposal form attached to **General Form No 96 (Revised 2005)**, a bid form prescribed by the State Board of Accounts. Any bid that exceeds a sum of \$5,000.00 must be accompanied by a Contractor's Financial Statement attached to the General Form 96 (revised 2005) as prescribed by the State Board of Accounts. One General Form No. 96 (revised 2005) will be required from any one contractor for one or more bids. All proposals shall be firm without escalator clauses.

The proposal must be accompanied by a certified check made payable to Evansville Vanderburgh School Corporation in an amount equal to not less than five percent (5%) of the base bid or an acceptable bidder's surety bond made payable to Evansville-Vanderburgh School Corporation, in a SPECIFIC AMOUNT of not less than five percent (5%) of the base bid, executed by a surety company authorized to do business in the State of Indiana. The certified check or bidder's bond shall be a guarantee that said bidder will, if the contract is awarded to him, execute within ten (10) days from the acceptance of his proposal a contract for the work bid upon, and furnish acceptable surety bonds as set forth in the specifications. However, if the contractor has not executed the contract within the ten (10) day period, or has failed to furnish acceptable surety bonds as indicated, the Board of School Trustees reserves the right to award the contract to the next higher or best bidder.

**All contractors/subcontractors performing work under this agreement will be required to be licensed per City County Building Commission ordinances. Additional information can be obtained by calling (Building Commissioner #812-436-7867).**

**Any prime contractors or sub-contractor performing work on site must adhere to the EVSC approved drug and alcohol policy. Proof of said policy must be provided prior to performing work.**

**All persons intending to submit a proposal with EVSC must comply with MBE/WBE utilization policies and procedures as outlined in the specifications.**

The Qualified Provider will be required to submit performance bonds to ensure the Qualified Provider's faithful performance of the Qualified Provider's obligations during the construction phase and over the term of the contract.

The Qualified Provider to whom the work is awarded shall conform to the provisions of Indiana Code Section 5-16-7-1 et. seq., regarding common construction wage rates. The wage rates paid shall not be less than the common construction wage for the county in which the work is to be done as ascertained by the statutorily prescribed process.

No bidder may withdraw his bid for a period of ninety (90) days after the date set for the opening of bids.

The Board of School Trustees of the Evansville Vanderburgh School Corporation reserves the right to reject any and all bid proposals and to waive any defects or informalities if deemed by it to be for the best interest of said Board.

**BOARD OF SCHOOL TRUSTEES  
EVANSVILLE-VANDERBURGH SCHOOL CORPORATION  
BY: PATRICK TULEY – CHIEF FACILITIES OFFICER**

Advertisement Dates: November 12<sup>th</sup> and November 19<sup>th</sup>, 2009

**Evansville Vanderburgh School Corporation  
REQUEST FOR PROPOSALS**

**Performance Based Energy/Operating Cost Reduction Program**

Request for Proposals for the purpose of providing a performance based energy/operating cost reduction program will be received at the Evansville Vanderburgh School Corporation, Office of School Facilities, 310 S.E. 8<sup>th</sup> Street, Evansville, Indiana 47713 on Tuesday January 12<sup>th</sup>, 2010. Proposals must be time-stamped at 1:00 p.m. or before local time. Proposals time-stamped at 1:01 p.m. or after will be returned unopened to the Bidder. All submittal will be the property of EVSC and will not be returned.

Request for Proposals packages can be obtained by contacting Mr. Pat Tuley, Chief Facilities Officer, at (812) 435-8426 [pat.tuley@evsc.k12.in.us](mailto:pat.tuley@evsc.k12.in.us) Office of School Facilities 310 S.E. 8<sup>th</sup> Street, Evansville, Indiana 47713.

**Evansville Vanderburgh School Corporation**

Evansville Vanderburgh School Corporation (EVSC) is soliciting specific proposals from qualified energy services providers offering their abilities and qualifications in the field of providing energy conservation, facility modernization, improving occupant comfort, enhancing facility staff effectiveness, and financial services. These measures will be implemented through a guaranteed energy savings contract pursuant to IC 36-12.5. It is the intent of the School Corporation to accept proposals from qualified contractors that include 100% program financing which guarantee positive savings to the Corporation with annual reconciliation of guarantee sums. The finalist selection process for the above will be by review and evaluation of written proposals. The fees for the professional services will be negotiated with the Contractor selected by Evansville Vanderburgh School Corporation.

**SCOPE OF PROJECT**

Evansville Vanderburgh School Corporation is soliciting energy service companies (ESCO's) who can meet the goals listed below. Responding ESCO's should prepare a response to the RFP detailing their proposed methods of meeting each of these seven (7) goals.

**PROJECT GOALS (Detail Methods):**

1. Improve comfort conditions
2. Reduce energy and operating costs
3. Upgrade old and inefficient systems
4. Ongoing system monitoring and analysis for performance sustainability
5. Enhance personnel development and training
6. Improve utilization of technology
7. Removal of financial and technical risk

**OBJECTIVE AND GENERAL CONTRACT DESCRIPTION**

The objective of the EVSC in issuing this Request for Proposals is to provide a competitive means in which to select a single qualified provider to perform the implementation of a guaranteed energy savings contract. The cost of preparing a response to this request will not be reimbursed by EVSC. For this contract, the performance contractor selected for final negotiations will be required to demonstrate how they will implement and achieve the project goals. The energy conservation, facility modernization, and/or occupant comfort improvement measures will be implemented through a guaranteed energy savings contract pursuant to IC 36-12.5 and will be subject to all other applicable laws (state, local and school board policies).

## **DESIGNATED CONTACTS**

Questions and request for clarifications on this request for proposals must be submitted *in writing* to Pat Tuley [pat.tuley@evsc.k12.in.us](mailto:pat.tuley@evsc.k12.in.us) or faxed to 812-435-8462, following the instructions posted in the notice. No verbal inquiries will be addressed.

## **QUALIFICATIONS AND MINIMUM EVALUATION FACTORS**

In preparing your written proposals, it is requested that you give particular attention in providing the following information labeled by section to correspond with the format indicated below:

### **1. EXPERIENCE**

Provide a minimum of five (5) references for educational facilities in Indiana and its contiguous states where your firm has provided an energy services contract over \$2,000,000 that include a minimum of ~~financial guarantee~~, bundled energy retrofits, ongoing support services, and ~~financing of program costs~~. Provide an executive summary of each project along with contact name, address and telephone number.

### **2. CREDENTIALS**

Provide a complete overview of your firm including, but not limited to, name and address of firm; signature of individual authorized to bind; bonding limits; summation of past years' audited financial statements; proof of liability; property damage and worker's compensation insurance; and number of years' experience in performance based contracting including the size of contracts completed. ~~A minimum of ten (10) years of actual energy services experience under the current business structure is required.~~ Provider must be registered to do business in the state of Indiana. Provider's scope must be designed and approved by a licensed P.E. employed by the respondent's company. ~~Provider must be NAESCO (National Association of Energy Service Companies) accredited.~~

### **3. MANAGEMENT AND STAFFING FOR THIS PROJECT**

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

#### **a. Management**

- 1) **Coordination.** Describe your firm's approach to managing this project. Include an organizational chart showing clear lines of communication and responsibility. Describe the transition and responsible parties from the sales to auditing phase, auditing to construction phase, construction to follow-up monitoring phase, etc.
- 2) **Construction Management.** Describe how your firm would work with current building management and maintenance personnel in order to coordinate construction and avoid conflicts with the building's operation and use. Describe your flexibility and/or any limitations regarding possible Institution activities such as: management of additional energy and water projects, monitoring of installation and performance of Contractor projects, integration of other identified capital needs with Contractor projects which may or may not contain energy and water saving opportunities.
- 3) **In-house Capability vs. Subcontractors.** Generally describe the types of services (both professional and construction services) that you offer in-house and the services you offer through sub-contractors, and describe the strategy behind in-house vs. subcontractor use.
- 4) **Institution Involvement.** Describe how you engage the Institution in decision-making regarding project scope, equipment specifications, ongoing operational and maintenance strategies, etc., and how you incorporate Institution's needs.
- 5) **Local Staffing and Support.** Describe extent of local staffing and support for the geographic region. Include basic job descriptions and capabilities of the local staff. Describe the relevance or importance of local presence with regard to this project.

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

**b. Personnel Information**

- 1) **Qualifications and Experience of Staff Assigned to this Project.** Identify the individual who will have primary responsibility for each task and phase of the project. List name, title, intended role and responsibilities for the duration of the contract, educational background, specific qualifications related to role and responsibilities, past relevant experience, number of years of relevant experience, supervisory responsibilities if relevant, list of projects individual was associated with during the last five years including type of project and project cost and resume. Tasks and phases to address include technical analysis, engineering design, construction management, construction, training and post-contract monitoring. Indicate the percent of time each person is available to work on this project. Indicate their office location (city/state).
- 2) **Added Qualifications and Experience.** Describe any added expertise and capability of staff available through the parent company, other subcontracts, etc. to provide back-up strengths in technical analysis, engineering design, architectural design (if applicable), construction management, construction, training and post-contract monitoring, etc.

**c. Self-Performed Work or Subcontractors.**

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

**4. TECHNOLOGY OFFERINGS OF YOUR FIRM**

Include an overview of applicable technology that your firm provides in the area of environmental and safety control along with applicable energy retrofit offerings, preventative maintenance programs, and design capabilities.

**5. TECHNICAL APPROACH AND ENERGY CONSERVATION MEASURES (ECMs)**

Describe the firm's technical approach to meet the Evansville Vanderburgh School Corporation's comfort, energy efficiency and operating cost reduction objectives.

- a) **Needs & Solutions:** Include a "Needs & Solutions" section explaining comprehensive facility needs and solutions the Qualified Provider recommends.
- b) **Scope of Work:** Proposals shall include the improvements recommended in the following buildings.

Reitz High School  
Delaware Elementary School

Alternates: Central High School, Harrison High School, North High School, Lodge Elementary School, and the School Administration Building-the EVSC reserves the right to accept or reject any and all proposals identified as alternates as they are subject to available funding.

- c) **Implementation Plan:** Include in your proposal an implementation plan, including completion dates, describing how the Provider intends to execute the project based on a January 25<sup>th</sup> or February 8<sup>th</sup>, 2010, contract award.
- d) **Additional Information:** Additional information about the respondent's technical approach to the project may be included in the proposal.

**6. PERFORMANCE MONITORING SERVICES**

Describe your firm's sustainability program to ensure that the energy savings guarantee is being met.

- a) Describe your firm's approach to measurement and verification.
- b) Provide the estimated costs of annual reconciliation statement, measurement and verification, and any required ongoing services.
- c) Indicate any equipment maintenance service contracts and their costs, which will be required by your firm as a condition of the energy services guarantee.
- d) Describe your firm's ability to provide ongoing energy monitoring of the energy conservation measures implemented.
- e) Describe your firm's ability to provide performance monitoring of the energy conservation measures implemented (indoor air quality, equipment efficiency, water treatment, air filtration, etc.).
- f) Describe your firm's ability to provide an asset management program.
- g) Describe your firm's ability to provide a program for continuous commissioning.
- h) Describe your firm's ability to provide ongoing technical support for the energy conservation measures implemented.
- i) Reconciliation of guaranteed sums shall be on an annual basis, commencing one year from the date of completion of total and complete program installation. Contractor's guarantee shall be a first party direct guarantee from the contractor to the EVSC. Proposals will be rejected if they do not contain a savings guarantee.
- j) Contractor shall provide the EVSC with quarterly energy audits and savings analysis over the life of the guarantee.

**7. INSURANCE REQUIREMENTS**

Include the firm's ability to provide and maintain the following liability and insurance amounts:

Errors & Omissions	\$ 5,000,000
Comprehensive General Liability	\$ 2,000,000
Umbrella Coverage	\$50,000,000

**8. ABILITY AND TRACK RECORD**

To support the requirements of removing all financial and technical risks for Evansville Vanderburgh School Corporation, the following areas must be addressed, but not limited to:

- a) Your contractual documents for energy savings guarantee;
- b) How you assure against technical obsolescence and assure investment protection; and
- c) Show proof of single project bond ability of \$25,000,000.

**9. FINANCIAL CONSIDERATIONS & NET ECONOMIC IMPACT**

a) **Improvement List:** Include an Improvement List with the specific conservation measures the respondent proposes to implement. On this Improvement List provide the following for each energy conservation measure (ECM) on a per building basis. Proposals not providing this individual breakdown may be rejected.

- (1) Energy Conservation Measure (ECM)

- 2) Installation Cost
- 3) Operational Savings
- 4) Energy Cost Reduction
- 5) Capital Cost Avoidance (by building)
- 6) Applicable Utility Rebate
- 7) Simple Payback

Energy Conservation Measure (ECM)	Installation Cost	Operational Savings	Energy Cost Reduction	Capital Cost Avoidance (by bldg.)	Applicable Utility Rebate	Simple Payback

**b) Payment Explanation:** List the principal amount, finance cost, annual lease payment, monitoring cost, total annual payment, payment term, payment frequency and payment start date.

- 1) **Principal amount:** Principal amount is the total installation cost less any down payment.
- 2) **Finance cost:** Finance cost is the interest rate of the payment plus any legal fees required to execute the contract.
- 3) **Annual lease payment:** Annual lease payment is the annual cost for principal, interest and legal fees.
- 4) **Performance monitoring cost:** Monitoring cost includes the annual cost to track annual savings and other guarantees written into the Qualified Provider's "Performance Guarantee Agreement."
- 5) **Payment term:** The payments shall be spread over a 10, 15, and 20 year terms or the average life of the energy conservation measure. Actual terms to be determined as part of the negotiated contract.
- 6) **Payment frequency:** Payments shall be semi-annual with payment dates of January 15<sup>th</sup> and July 15<sup>th</sup>.
- 7) **Payment start date:** The first payment shall be due on January 15, 2011.

**c) Cash Flow Analysis:** Include a cash flow analysis extending 10, 15, and 20 years which identifies the annual guaranteed energy savings, guaranteed operational savings, total annual payment, simple payback, net cash flow and cumulative cash flow.

**d) Energy Savings:** All energy calculations and assumptions shall be included in the proposal including any methods to be used to adjust for factors such as weather. To receive the accurate savings information at a reasonable annual monitoring cost and minimize the reporting effort required of the Evansville Vanderburgh School Corporation staff, methods used in determining actual utility savings shall be based on energy measurements of the specific ECM installed under this project or stipulated values based on industry standard formulas, calculations or manufacturers' data.

**e) Operational Savings:** The operational savings guarantee shall be based on historical operating costs where those costs accurately reflect the anticipated future operating costs. Life cycle costing may be used in lieu of historical operating costs where life cycle costing more accurately reflects the true costs that the Evansville Vanderburgh School Corporation will likely incur in operating facilities had this project not been implemented. The methods to be used in determining actual operational savings shall be clearly identified in the Guarantee. If stipulated or "agreed to" values are included in the calculations that determine actual savings, then those stipulated or "agreed upon" values

shall be clearly identified in the Guarantee. Architectural, engineering or accounting studies as required under statute shall be included with the Qualified Provider's proposal.

- f) **Performance Bond:** The Qualified Provider must submit to Evansville Vanderburgh School Corporation a performance bond immediately following contract execution to insure the performance of the construction portion of the project. A subsequent performance bond shall be executed to insure the performance of the guaranteed savings.
- g) **Performance Guarantee Agreement:** Each Qualified Provider must complete the energy savings, operational savings and total savings amount along with providing guarantee language that reflects the performance guarantees provided with the Qualified Provider's proposal and the savings methodology described above in 'Energy Savings' and 'Operational Savings' paragraphs above. Energy savings and operational savings shall be tracked separately and a shortfall in energy savings cannot be offset with excess operational savings. One hundred percent (100%) of all energy and operational savings over the term of the contract shall be retained by the EVSC, and if less, the contractor will reimburse the School Corporation for the difference between the guaranteed savings and actual savings.

**10. FINANCIAL SERVICES**

Provide sufficient documentation to assure that your firm can provide the required financing. A description of the respondent's source of financing for this project should be included in this section.

- a) Any contingencies that must be met in order to obtain such financing should be noted.
- b) If debt financing is involved, provide the percentage of total project cost to be financed with debt, and the anticipated interest rate based on the term of the loan (see 9 Financial Considerations..., Payment Explanation "5").

**11. QUALIFICATION REQUIREMENTS AND EVALUATION CRITERIA**

- a) The Proposal submitted should be on 8-½" x 11" paper, labeled by section to correspond with the format indicated above. While other attachments may be included, there is no guarantee of review. Scoring will be based on the Proposal.
- b) One (1) original and seven (7) copies of the firm's Proposal must be submitted no later than 1:00 p.m. Tuesday, January 12th, 2010.
- c) All proposals must be submitted in a sealed envelope, package, or box plainly marked "Evansville Vanderburgh School Corporation, BID PROPOSAL: Performance-based energy/operating cost reduction Program," to the attention of Pat Tuley, with the name and address of the respondent in the upper left-hand corner. No responsibility will attach to the Evansville Vanderburgh School Corporation or any official or employee thereof, for the pre-opening of, post-opening of, or the failure to open a Proposal not properly addressed and identified.
- d) The POINT VALUE SYSTEM Evaluation of the proposals will apply in the following manner:
  - 1) Firm's qualifications, personnel experience, and local presence 15%
  - 2) Customer references and previous project track record 15%
  - 3) Firm's ability to provide support & ongoing performance monitoring services 25%
  - 4) Technical Approach and Energy Conservation Measures 25%

5) Financial Consideration & Net Economic Impact

20%

If it becomes necessary to revise or amend any part of the Request for Proposals, a written addendum will be provided to Respondents. Evansville Vanderburgh School Corporation is not bound by any oral representations, clarifications, or changes made in the written Request for Proposals by Evansville Vanderburgh School Corporation's employees unless such clarification or change is provided to Respondents in written addendum form.

**12. HAZARD AWARENESS AND ACKNOWLEDGEMENT**

Each bidder shall visit the site of the proposed work and fully acquaint himself with conditions affecting the work under the contract and any ramifications due to the presence of asbestos-containing materials (ACM) or lead-based paint.

- a) **ASBESTOS:** The General Contractor shall be aware of the potential for encountering ACM in the work site. ACM on surfaces or systems affected by this work will be abated by prime contractor. While ACM will be removed from the affected surfaces, other ACM may remain in place. It is the responsibility of the General Contractor to assure that these materials are not damaged during the construction work.
  - 1) Potential bidders may examine a copy of the school's Asbestos Management Plan as the written Communication of Hazard, which is required by OSHA 29 CFR 1926.1101, The Construction Industry Asbestos Standard at the EVSC Supportive Services Center, 951 Walnut Street. The Management Plan lists the areas of known ACM. The prime contractor shall be responsible for informing all sub-contractors of the information contained in the Management Plan.
  - 2) If any material is encountered during construction which is suspected of containing asbestos, work in that area must be stopped, and the Owner, as well as prime contractor, must be notified so that the suspected material can be inspected and sampled by a properly accredited asbestos building inspector. If the material is found to be asbestos-containing, prime contractor will arrange for the abatement of the ACM before any work proceeds that may disturb that ACM. Absolutely no extras or additions to the contract will be allowed to the Contractor because of a delay in the work due to asbestos testing or removal. If the Contractor is concerned about increased cost resulting from such delays, he shall include that cost in his bid.
  - 3) Examination of site, drawings, etc., each bidder shall visit the site of the proposed work and fully acquaint himself with conditions affecting the work of the contract and any possible ramifications due to asbestos removal.
  - 4) At the beginning of the project, the Owner will point out to the contractor those areas known to contain asbestos. Absolutely no work or penetration shall take place which will disturb asbestos on the surfaces so indicated by the Owner. If the Contractor or any of his subcontractors penetrates any asbestos-containing surfaces, thereby creating a contaminated area, that contractor will be responsible for complete cleanup, testing to insure that the area has met the Clean Air Standard, and paying any fines levied by any local, state or federal agency associated with the contamination.
  - 5) If the contractor disturbs areas containing asbestos, then that contractor will be responsible for all clean up, including testing and monitoring by a certified independent firm representing the owner, to assure clearance as required by CFR 40 763 (AHERA).
  - 6) If the employees of the contractor request a physical examination due to health concerns regarding potential exposure to airborne asbestos fibers, then all costs created by the employees request will be the responsibility of the contractor.

- 7) Prime contractor shall be responsible for paying all fees and/or fines relating to asbestos removal and testing.

**13. OTHER**

- a. Include other factors the firm or team determines appropriate which would indicate to the Evaluation Committee the firm or team has the necessary capability, competence, and performance record to accomplish the project in a timely and cost-effective manner.
- b. If a proposal includes any proprietary data or information that the respondent does not want disclosed to the public, such data or information must be specifically identified as such on every page on which it is found. Data or information so identified will be used by the EVSC solely for evaluating the proposals and conducting contract negotiations.
- c. The EVSC reserves the right to waive any and all technicalities and award this contract to the company with the best overall proposal and solution for the Evansville Vanderburgh School Corporation.
- d. Provide training of facility staff with respect to any special energy saving, as well as routine, maintenance and operation procedures for all new and existing equipment.
- e. Provide asbestos abatement as required to replace existing mechanical equipment or piping.
- f. All drawings, reports and materials prepared by the provider specifically in performance of the contract shall become the property of EVSC, and shall be delivered to them as needed or upon completion of construction.
- g. The provider must ensure that all energy conservation measures conducted under this project will be integrated with existing building systems to the satisfaction of the EVSC.
- h. The provider will be required to work with current building management and maintenance personnel to coordinate construction and to provide appropriate training in operation of retrofit.

## DRUG AND ALCOHOL POLICY AND COMPLIANCE

**WHEREAS**, the Evansville Vanderburgh School Corporation finds that illegal drug use is detrimental to the public health, safety and welfare of the community and is destroying families and individuals affected by such activity; and

**WHEREAS**, individuals who may be under the influence of illegal drugs are a threat to themselves, co-workers and members of the public particularly in the area of construction; and

**WHEREAS**, the Evansville Vanderburgh School Corporation desires to reward, encourage and promote contractors who have a random drug testing program as part of their company policy by making it a requirement for all construction contractors doing business with the School Corporation to have a drug testing program meeting the minimal standards outlined in this ordinance.

**BE IT RESOLVED** that the following language be inserted into all bid specifications for public work projects initiated by the Evansville Vanderburgh School Corporation:

- A. For purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning: "Contractor" shall mean the person, company or firm submitting a price, quote or bid for the award of a public works project. The term includes a subcontractor of a contractor.

"Public works project" shall mean the construction, reconstruction, alteration, or renovation of a public building, or other structure that is paid for out of an appropriation, and includes, the construction, alteration, or repair of a highway, street, alley, bridge, sewer drain or other improvement when the estimated cost of the public works project is more than Ten Thousand Dollars (\$10,000.00).

- B. Except as otherwise approved by the Board of Trustees of the Evansville Vanderburgh School Corporation, the Evansville Vanderburgh School Corporation shall not award a contract for a public works project to a contractor unless the contractor and every subcontractor doing construction work on the public works project has in place, at the time of submission of his quote or bid, a random drug testing program which shall, at a minimum, meet the following qualifications and criteria:

1. The contractor shall maintain a random drug testing program, and the program shall be reduced to writing;
2. The drug testing program shall contain at least a five (5) drug panel that tests for the following drugs: amphetamines, cocaine, opiates (2000 ng/ml), PCP and THC;
3. All employees of the contractor are subject to at least annual testing, and at least one-twelfth (1/12<sup>th</sup>) of 25% of the employer's total workforce shall be selected randomly each month for testing; and
4. The random drug testing program operated by the contractor shall contain a progressive discipline component for employees who fail the drug test that meets at least the following minimum steps:
  - a) After the first positive test, an employee must be: (i) suspended from work for thirty (30) days and; (ii) directed to a program of treatment or rehabilitation; and (iii) subject to unannounced drug testing for one (1) year, beginning the day the employee returns to work.

- b) After a second positive test, an employee must be: (i) suspended from work for ninety (90) days and; (ii) directed to a program of treatment or rehabilitation; and (iii) subject to unannounced drug testing for one (1) year, beginning the day the employee returns to work.
- c) After a third positive test, an employee must be: (i) suspended from work for one (1) year and; (ii) directed to a program of treatment or rehabilitation; and (iii) subject to unannounced drug testing for one (1) year, beginning the day the employee returns to work.
- d) Any subsequent positive test shall be treated the same as a third positive test.

An employer complies with the requirement to direct an employee to a program of treatment or rehabilitation if the employer advises the employee of any program of treatment or rehabilitation covered by insurance provided by the employer or if the employer does not provide insurance that covers drug treatment or rehabilitation programs, the employer advises the employee of agencies known to the employer that provide drug treatment or rehabilitation programs.

At the discretion of the employer, the discipline issued above may include more severe discipline including, but not limited to, dismissal of the employee.

C. A contractor that is subject to a collective bargaining agreement shall be treated as having an employee drug testing program that complies with section B of this Policy if the collective bargaining agreement establishes an employee drug testing program that includes the following:

1. The program provides for the random testing of the contractor's employees.
2. The program contains a five (5) drug panel that tests for the substances identified in section B(2) of this ordinance.
3. The program imposes disciplinary measures on an employee who fails a drug test. The disciplinary measures must include at a minimum, all of the following:
  - a) The employee is subject to suspension or immediate termination.
  - b) The employee is not eligible for reinstatement until the employee tests negative on a five (5) drug panel test certified by a medical review officer.
  - c) The employee is subject to unscheduled sporadic testing for at least one (1) year after reinstatement.
  - d) The employee successfully completes a rehabilitation program recommended by a substance abuse professional if the employee fails more than one (1) drug test.

For purposes of this Policy, a copy of the relevant part of the collective bargaining agreement constitutes a written plan.

D. A copy of the Contractor's random drug policy shall be submitted with its bid. Failure to provide evidence of the contractor's random drug testing policy or program shall result in a rejection of the bid. Failure to implement an employee drug testing program during the term of the contract or failure to provide information regarding implementation of the employee drug testing program at the request of the contractor may result in a cancellation of the contract. Submitting false information concerning compliance with the requirements of this chapter shall result in the rejection of the bid or cancellation of the contract if an award had been made prior to determining the information is false by the Board of Trustees of the Evansville-Vanderburgh School Corporation.

In such event, the contractor shall be paid only for the work done prior to cancellation of the contract.

E. The Contractor shall be solely responsible for the enforcement of, and compliance with, its random drug testing policy.

### **A31 MBE/WBE REQUIREMENTS**

In an effort to increase business opportunities for minorities and women in our community, to ensure compliance with our nondiscrimination policies, alignment with the inter-local governmental agreement for cooperative purchasing organization with the city of Evansville and Vanderburgh county, as well as to create equity in our processes, it is therefore the policy of the Board of School Trustees to provide equal opportunity for existing and operating Minority-owned Business Enterprises (MBE) and Woman-owned Business Enterprises (WBE) to participate in procurement and contracting processes with the Evansville Vanderburgh School Corporation.

All contractors and suppliers must comply with the Federal and Indiana Civil Rights Laws & Regulations prohibiting discrimination based on protected classes of race, religion, color, sex, age, disability, or national origin. Accordingly, all contractors, subcontractors, and suppliers must have an adopted equal employment opportunity/nondiscrimination clause in all contracts in order to gain Board approval. Failure of any company to comply with this policy will cause that company's bid to be considered unresponsive, resulting in rejection of the bid. Compliance with this policy shall be coordinated through the collaborative efforts of the Purchasing Department and the Office of Diversity & Equity and will follow the guidelines outlined in the City/County/EVSC Utilization Plan.

Additionally, we shall actively promote, monitor, and enforce this policy in order to ensure compliance, or in the case where a certified MBE/WBE cannot be utilized, to ensure that a legitimate effort was made to do so. All MBE/WBE companies must be certified, and that certification verified in order to be considered within this policy.

Pursuant to this policy, the following definitions are provided for Minority- and Woman-owned Business Enterprises:

- A. A "Minority-owned Business Enterprise" (MBE) is defined as a business that is owned, capitalized, operated and controlled by a member of an identified minority group who is a citizen of the United States.
- B. A "Minority" is defined as a person of African American, Hispanic American, Asian American, Native American, East Asian Indian or other descent considered minority as defined by Federal or Indiana law.
- C. Ownership by minority individuals means the business is at minimum 51% owned by such individuals, or in the case of a publicly-owned business, 51% of the stock (minimum) is owned by one or more such individuals. Further, the management and daily operations are controlled by those minority group members.
- D. Control of the business is evidenced by signature role on debt or financial instruments, or on legally binding documents such as leases and contracts. Other evidence proving majority control and management of the business consists of hiring/dismissal and other decision-making authority.
- E. A "Woman-owned Business Enterprise" (WBE) is defined as a business that is owned, capitalized, operated and controlled by a woman or group of women who are citizens of the United States.
- F. The business must have a minimum of 51% established ownership by a woman/group of women. In the case of a publicly-owned business, 51% of the stock (minimum) is owned by one or more women. Further, the management and daily operations must be controlled by those women.
- G. Control of the business is evidenced by signature role on debt or financial instruments, or on legally binding documents such as leases and contracts. Other evidence proving majority control and management of the business consists of hiring/dismissal and other decision-making authority.

The Board recognizes that the EVSC is not an entity that can determine if companies meet the definitions of MBE/WBE contained herein. Because this determination is already made by state and local government authorities, or other agencies authorized to do so, the school corporation will rely on certification by those recognized bodies to prove the legitimacy of MBE/WBE firms.

Certification refers to the verification thereof by the State of Indiana, City of Evansville or by another entity in the State of Indiana with respect to the authenticity of a Minority- or Woman-owned Business Enterprise to determine eligibility for inclusion under this policy.

Because diversity is a corporation-wide commitment, all functions and departments within the corporation are expected to contribute to the execution of this policy. Any office using vendors to obtain goods and services shall require compliance with this policy.

The Chief Operating Officer and the Chief Diversity Officer will oversee implementation of this policy; however, the Superintendent, along with the School Board of Trustees shall be the final authority on all matters pertaining to the execution and persistence of the MBE/WBE utilization policy and compliance thereto.

For further information contact:

EVSC Chief Diversity Officer: Dr. Dionné Blue; [dionne.blue@evsc.k12.in.us](mailto:dionne.blue@evsc.k12.in.us); 812-435-8451

City of Evansville Purchasing Department: Deb Spalding; [dspalding@evansvillegis.com](mailto:dspalding@evansvillegis.com); 812-436-4961

**To find a list of certified MBE/WBE Contractors visit the following websites:**

[www.evansvillegov.org](http://www.evansvillegov.org), [www.vanderburghgov.org](http://www.vanderburghgov.org), click on Government button, choose City or County Offices, select Purchasing from list and click on MBE/WBE on the left hand side of Purchasing Page, or [www.imsdc.org](http://www.imsdc.org), your link to: Indiana Minority Supplier Development Council (IMSDC): (This is a fee-based service. Contact Stacy Little: [slittle@imsdc.org](mailto:slittle@imsdc.org); 812-401-9525) click on **Direct Connect**

To: All Potential Contractors and Suppliers

From: Vincent M. Bertram, Ed.D; Superintendent  
Patrick Tuley; Chief Facilities Officer  
Dionne A. Blue, Ph.D.; Chief Diversity Officer

Date: November 2009

Re: EVSC Minority-owned & Woman-owned Business Enterprise (MBE/WBE) Utilization

The commitment of the Evansville Vanderburgh School Corporation and the Board of School Trustees to minority-owned and woman-owned businesses is a proactive response to the needs of our community. We demonstrate this commitment by recognizing and supporting the contribution of these business enterprises, and by promoting economic development within all of the communities served by the School Corporation as a result of requesting your compliance to the following policies and procedures. As a potential contractor for EVSC construction projects, it is important that you understand that a critical component of our Strategic Building Plan is a commitment to minority business utilization within all aspects of both renovation and new construction.

**In an effort to facilitate this commitment, all persons intending to submit a bid with the EVSC must comply with MBE Utilization policies and procedures as outlined in the enclosed bid specifications.**



Office of Administration  
1 Southeast Ninth Street, Evansville, Indiana 47708  
Phone (812) 435-8453  
www.evscschools.com

The following document included in this specification packet is part of this procedure:

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- The Mandatory *Minority and Woman-owned Business Enterprise (MBE/WBE) Information Form*;

This form must be signed and returned with your bid in order to be considered responsive. You are responsible for making sure all relevant documents and information are included with your bid. All information on this form will be verified by the EVSC before awarding any contract. If you are a Minority-owned or Woman-owned Business Enterprise, please be sure a copy of your current certification is enclosed with your bid. All MBE/WBE certifications must be verified prior to awarding any contract.

It is the policy of the Board of School Trustees to require all contractors and suppliers to comply with the Federal Equal Employment Opportunity (EEO) Laws and Indiana Civil Rights Laws (IC 1971, 22-9-1) prohibiting discrimination based on protected classes of race, religion, color, sex, age, disability, or national origin. In accordance to that policy, all contractors, subcontractors and suppliers shall adopt an equal employment opportunity/anti-discrimination clause in all contracts in order to gain Board approval. Please be sure that your anti-discrimination statement is included with your bid. We look forward to your cooperation with this important policy.



Office of Administration  
1 Southeast Ninth Street, Evansville, Indiana 47708  
Phone (812) 435-8453  
www.evscschools.com

**Mandatory MBE/WBE Information Form**

All potential contractors for the Evansville Vanderburgh School Corporation intending to either subcontract part of the work or purchase any supplies, shall contact certified Minority-or Woman-owned Business Enterprises (MBE/WBE) to participate, and submit this completed form with bid packet. ***This form must be submitted with bid packet even if MBE/WBE's will not be used in your bid.*** Please indicate below the level of MBE/WBE participation.

All work will be self-performed, but suppliers have been contacted.(Indicate Suppliers on page 2)

A certified MBE or WBE was identified, but not utilized. Reason (Please Be Specific):  
\_\_\_\_\_

Was MBE/WBE a responsive bidder? Y \_\_\_ N \_\_\_ Based on what criteria (bid amount, etc.)?

(Please Be Specific): \_\_\_\_\_

We were unable to identify a certified MBE or WBE for participation in this bid process.

Certified MBE/WBE subcontractors will be utilized on this project (Complete MBE/WBE Utilization Form and submit within 5 working days of Bid opening)

**Our company took the following steps to identify and utilize MBE or WBE subcontractors /Suppliers for this project. (Mark all that apply):**

Negotiated in good faith with an interested and certified MBE/WBE company and other low bidders to maximize MBE/WBE participation.

Provided *written* notice to \_\_\_ certified MBE/WBE companies whose specific expertise or supplies are relevant to this contract (indicate number).

Provided sufficient notice (*minimum 10 days*) to certified MBE/WBE companies whose specific expertise or supplies are relevant to this contract.

Efforts were made to divide total requirements into smaller tasks or quantities so that MBE/WBE participation could be maximized.

Assisted responsive MBE/WBE companies in reviewing blueprints and/or contract and project specifications.

**Contacted the Following Offices for Assistance:**

\_\_\_ EVSC Chief Diversity Officer: Dr. Dionne Blue; [dionne.blue@evsc.k12.in.us](mailto:dionne.blue@evsc.k12.in.us); 812-435-8451.

\_\_\_ City of Evansville Purchasing Department: Deb Spalding; [dspalding@evansvillelegis.com](mailto:dspalding@evansvillelegis.com); 812-436-4961.

\_\_\_ Indiana Minority Supplier Development Council (IMSDC): (This is a fee-based service. Contact Stacy Little: [slittle@imsdc.org](mailto:slittle@imsdc.org); 812-401-9525).

Based on the aforementioned efforts made to identify and utilize MBE/WBE companies as subcontractors and/or suppliers, the bidder hereby requests recognition of compliance and good faith effort from the EVSC for the EVSC MBE/WBE utilization policy.

**The School Corporation reserves the right to request follow-up information based on the information provided herein.**

Please provide contact information for all Minority/Woman-owned businesses your company contacted in reference to this bid. **You must complete this section for suppliers even if the work is self-performed.** Attach additional forms if necessary.

Company Name: \_\_\_\_\_ MBE: \_\_\_\_\_ WBE: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Service/Supplies Requested: \_\_\_\_\_ Date Contacted: \_\_\_\_\_

Company Name: \_\_\_\_\_ MBE: \_\_\_\_\_ WBE: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Service/Supplies Requested: \_\_\_\_\_ Date Contacted: \_\_\_\_\_

Company Name: \_\_\_\_\_ MBE: \_\_\_\_\_ WBE: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Service/Supplies Requested: \_\_\_\_\_ Date Contacted: \_\_\_\_\_

Company Name: \_\_\_\_\_ MBE: \_\_\_\_\_ WBE: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Service/Supplies Requested: \_\_\_\_\_ Date Contacted: \_\_\_\_\_

The undersigned contractor or representative verifies that the information provided in this document is accurate. ***The undersigned also understands that providing false or incorrect information will result in rejection of the accompanying bid.***

\_\_\_\_\_  
Contractor/Supplier or Representative (print)

\_\_\_\_\_  
Title

Signature

Date

**Subcontractor Letter of Intent to Execute**

This form is to be completed by each Minority or Woman-owned Business Enterprise (MBE/WBE) intending to subcontract, and must be submitted to the EVSC by the Contractor/Consultant/Vendor within 5 business days of bid opening. MBE/WBE Certification must be verified before contract is awarded.

The undersigned intends to execute the following work in connection with the submitted bid:

Contract/Project/Bid Name: \_\_\_\_\_, in the role of:

\_\_\_ Prime Contractor \_\_\_ Joint Venture \_\_\_ Subcontractor \_\_\_ Supplier

The undersigned has agreed to provide the following work, trades, services or supplies:

at the following total cost/breakdown: \$ \_\_\_\_\_.

Projected Commencement Date: \_\_\_\_\_ Projected Completion Date: \_\_\_\_\_

The undersigned will enter into formal contract or purchase order agreement with

\_\_\_\_\_ (company) for the aforementioned work,

trades, services, or supplies contingent upon prior execution of a contract with said company.

Name of MBE/WBE (please print): \_\_\_\_\_ Title: \_\_\_\_\_

Name of Company: \_\_\_\_\_

Business Address: \_\_\_\_\_

Business Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Under what organization are you certified as an M/WBE? \_\_\_\_\_

The undersigned Minority or Woman-owned Business Enterprise (M/WBE) verifies that the information provided in this document is accurate. ***The undersigned also understands that providing false or incorrect information will result in rejection of the accompanying bid, and may result in exclusion from future bids.***

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



Office of Administration  
 1 Southeast Ninth Street, Evansville, Indiana 47708  
 Phone (812) 435-8453  
 www.evscschools.com



**Minority and Woman-owned Business Enterprise Utilization Form**

Date Submitted: \_\_\_\_\_ Bid/Proposal Name: \_\_\_\_\_

Name of Firm Submitting Bid or Proposal: \_\_\_\_\_

Preparer's Name/Title (please print): \_\_\_\_\_

*This form must be complete and submitted within 5 business days of the bid opening in order to be considered responsive. Failure to properly complete this or any other requirements may result in bid/proposal rejection.*

**Please check one of the following:**

\_\_\_\_\_ Bidder is a certified MBE company \_\_\_\_\_ Bidder is a certified WBE company  
 (please submit MBE/WBE Certification with your Bid)

\_\_\_\_\_ Bidder intends to utilize MBE/WBE subcontractors/suppliers in this contract as indicated:

MBE \_\_\_\_/Total Amount: \_\_\_\_\_ WBE \_\_\_\_/Total Amount: \_\_\_\_\_

\_\_\_\_\_ Bidder does not intend to utilize MBE/WBE subcontractors/suppliers to participate in this contract (complete Mandatory MBE/WBE Information Form).

The MBE/WBE identified below will participate on the enclosed project/contract. Failure to meet or exceed the allotted award (as stated in the *Subcontractor Letter of Intent to Execute*) throughout the life of the contract/project may result in exclusion from future bids. Complete the remainder of this form if you intend to utilize an MBE/WBE contractor or supplier.

**Name(s) of MBE/WBE your company intends to utilize (attach additional sheets if needed):**

Company Name: \_\_\_\_\_ MBE: \_\_\_\_\_ WBE: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Service/Supplies to be provided: \_\_\_\_\_ Dollar Amount: \_\_\_\_\_

Company Name: \_\_\_\_\_ MBE: \_\_\_\_\_ WBE: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Service/Supplies to be provided: \_\_\_\_\_ Dollar Amount: \_\_\_\_\_

Company Name: \_\_\_\_\_ MBE: \_\_\_\_\_ WBE: \_\_\_\_\_

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

Phone:

Service/Supplies to be provided: \_\_\_\_\_ Dollar Amount: \_\_\_\_\_