INVESTMENT GRADE AUDIT AGREEMENT

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INVESTMENT GRADE AUDIT AGREEMENT

This Investment Grade Audit Agreement (the "Contract") is made and entered into as of the date of the last signature by the Parties (the "Effective Date") by and between THE DISTRICT OF COLUMBIA GOVERNMENT, ACTING BY AND THROUGH ITS DEPARTMENT OF GENERAL SERVICES (hereinafter referred to as the "DGS" or the "DEPARTMENT"), and an ESCO ("ESCO"), having its principal offices at _____, each referred to individually as a "Party" and collectively as the "Parties."

WITNESSES

WHEREAS, this Contract was created to obtain an Investment Grade Audit of a facility from a private energy service company ("ESCO").

WHEREAS, the DEPARTMENT issued a Request for Proposal ("RFP") pertaining to the discovery, engineering, procurement, installation, savings guarantee, maintenance and monitoring of energy and water saving measures at THE DEPARTMENT's facilities, and ESCO has submitted a Response, attached and incorporated herein as **Appendices A and B** respectively; and

WHEREAS, the DEPARTMENT has selected ESCO to provide the services described herein; and

WHEREAS, the DEPARTMENT desires to enter into an Agreement to have ESCO perform an Investment Grade Audit to determine the feasibility of entering into an **Energy Services Agreement**, which will govern the installation and implementation of energy and water saving measures for the DEPARTMENT's facilities; and

WHEREAS, if energy and water saving measures are determined to be feasible, and if the amount of savings will be reasonably sufficient to cover all costs, as defined by the DEPARTMENT, associated with an Energy Savings Performance Contracting project, the Parties may, at the DEPARTMENT's sole discretion, negotiate an Energy Services Agreement ("ESA") under which the ESCO will design, procure, install, implement, maintain and monitor such energy and water saving measures; and

WHEREAS, ESCO and THE DEPARTMENT are entering into this Agreement in connection with the DGS's RFP, as well as the DEPARTMENT's Standard Contract Provisions ("SCP") for Supplies and Services Contracts, January 2016, incorporated herein as **Appendix C**, except to the extent inconsistent with or inapplicable to this Agreement;

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the DEPARTMENT and the Contractor agree as follows:

1. Investment Grade Audit Report

ESCO agrees to perform an Investment Grade Audit ("IGA") in accordance with the Scope of Work described below in Exhibit A. ESCO agrees to complete the Investment Grade Audit and

tender to THE DEPARTMENT a final report within **X** calendar days from the execution of this Contract.

The DEPARTMENT agrees to assist the ESCO in performing the IGA in accordance with the Scope of Work described below. The DEPARTMENT agrees to work diligently to provide full and accurate information. ESCO agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed. The Parties contemplate that this will be an interactive process and that the DEPARTMENT will have a reasonable amount of time to review and determine acceptance before issuing the Notice of Acceptance (See, Exhibit B: Notice of Acceptance of Investment Grade Audit Report).

ESCO agrees to offer an **Investment Grade Audit Report** (or "Report") that includes detailed energy and water saving measures, and other measures as specified in the Scope of Work referenced and incorporated herein as Exhibit A.

2. Compensation to ESCO

The ESCO shall be compensated as follows:

a. **Basis and Maximum Amount.** Except as provided for in **Subsections 2(b), or 2(c)** below, within 120 days after the DEPARTMENT's receipt and acceptance of the final Investment Grade Audit Report THE DEPARTMENT shall pay to ESCO a sum not to exceed $AMOUNT based on a maximum of X,XXX,XXX gross square feet at cost of $0.XX per square foot of audited square-footage, (*See,* Exhibit D: Project Pricing). The DEPARTMENT shall only pay for square-footage actually audited. Areas deemed by ESCO not to be audited will not be charged to the DEPARTMENT.

b. **Payment through Performance Contract.** The DEPARTMENT shall have no payment obligations under this contract provided ESCO and the DEPARTMENT execute an ESA after the DEPARTMENT issues the Notice of Acceptance of Investment Grade Audit Report, Exhibit B, and sufficient time has transpired for the Parties to negotiate the terms, but not to exceed 120 days. The cost to develop the IGA shall be incorporated into ESCO's project costs in the ESA and paid through the project's funding mechanisms.

c. **Project With Insufficient Savings.** The DEPARTMENT shall have no payment obligations under this Contract in the event ESCO's final **Investment Grade Audit Report** does not contain a package of energy and/or water saving measures which, if implemented will provide the DEPARTMENT with cash savings sufficient to fund the DEPARTMENT's payments of all costs and fees associated with the ESA, and complies with the Scope of Work (Exhibit A), including: 1) the fee associated with the Investment Grade Audit; 2) all monthly payments to finance the measures; 3) any annual fees for measurement, monitoring and maintenance incurred by the ESCO; and 4) all fees related to the DEPARTMENT's Third Party Representative. Should the ESCO determine at any time during the IGA that savings cannot be attained to meet these terms, ESCO must not delay terminating the IGA and providing written notice to the DEPARTMENT. In the event of Insufficient Savings, this Agreement shall be terminated and the DEPARTMENT shall have no obligation to pay, in whole or in part, the amount specified in this Section 2(a). Nothing in this section shall supersede the

terms of the DEPARTMENT SCP for Supplies and Services Contracts Article 8 (Default), Article 16 (Termination – Generally), and Article 17 (Termination for Convenience of the District), respectively.

3. Scope of Work

The IGA shall be performed as described in the Scope of Work. (*See*, **Exhibit A**.)

4. Termination

This Contract may be terminated pursuant to the DEPARTMENT SCP for Supplies and Services Contract Articles, including Articles 8, 16, and 17, in addition to any time or circumstance described below by:

a. <u>Termination for Default/Cause</u>

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

2) ESCO's Duties.
Notwithstanding termination of the contract, and subject to any directions from the DEPARTMENT Project Contact, the ESCO shall take timely, reasonable and necessary action to protect and preserve the DEPARTMENT's property in its possession and in which THE DEPARTMENT has an interest.

3) Compensation.
Payment for completed services delivered and accepted by the DEPARTMENT shall be at the contract price in accordance with Exhibit D, and in accordance with the DEPARTMENT's SCP (Supplies and Services Contract). The DEPARTMENT may withhold amounts due to the ESCO as the DEPARTMENT Project Contact deems necessary to protect THE DEPARTMENT against loss including without limitation, outstanding liens or claims of former lien holders, and reimbursement for excess costs incurred to procure similar goods and services.

4) Excuse for Nonperformance or Delayed Performance.
In addition to the DEPARTMENT SCP for Supplies and Services Contract Article 30, *Force Majeure*, neither Party shall be in default by reason of any failure in performance of this contract if such failure arises out of acts of God; acts of the public enemy; acts of the State and any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. Upon request of the ESCO, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the ESCO's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the DEPARTMENT, including the invocation of SCP for Supplies and Services Contract Articles 8, 16, and 17.

b. Termination for Convenience

This Agreement may be terminated in whole or in part by THE DEPARTMENT whenever the Superintendent of Schools, or an authorized designee, determines that such a termination is in THE DEPARTMENT's best interest. Any such termination shall be effected by delivery of a notice of termination to the ESCO, at least ten (10) business days prior to the termination date. The notice of termination shall specify the part of the contract terminated and the date upon which such termination becomes effective. The ESCO shall be entitled to receive just and equitable compensation for any work according to Section 4(b)(2) below, but no amount shall be allowed for anticipated profit on unperformed work. In the event of such termination, all finished and unfinished deliverables, documents, data, studies, surveys, drawings, maps, models, and reports prepared by the ESCO under the Agreement shall become the property of THE DEPARTMENT.

1. ESCO's Obligations.

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

2. Compensation.

a) The ESCO shall submit a Termination Claim to THE DEPARTMENT specifying the amounts due because of the termination for convenience inclusive of cost or pricing data supporting such claim. If the ESCO fails to file a Termination Claim within 90-days from the effective date of termination, THE DEPARTMENT may pay the ESCO, if at all, an amount set in accordance with subparagraph (c) of this Section.

b) THE DEPARTMENT and the ESCO may agree to a settlement provided the ESCO has filed a Termination Claim supported by cost or pricing data and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by THE DEPARTMENT, the proceeds of any sales of supplies and manufactured materials made under agreement, and the contract price of the work not terminated, reasonable attorney costs and expenses.

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

(1) Contract prices for supplies or services accepted under the contract;
(2) Costs incurred in preparing to perform the terminated portion of the work less amounts paid to or to be paid for accepted supplies or services; provided,

however, that if it appears that the ESCO would have been sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss.

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

c. Non-Appropriation - Remedies

If the term of the Agreement, or any Agreement extension, extends beyond the end of the THE DEPARTMENT fiscal year (October 1 to September 30) in which the Agreement was awarded or extended, and the approved DEPARTMENT budget for the subsequent fiscal year does not appropriate sufficient funds that may be utilized for the Agreement, the Agreement shall no longer be in force and effect upon the expiration of the current fiscal year funding. In this event, upon expiration of the current fiscal year funding, THE DEPARTMENT shall have no liability to pay any funds whatsoever to the ESCO or to furnish any other consideration under the Contract, and the ESCO shall not be obligated to perform any further work under the Agreement. If the approved DEPARTMENT budget for the subsequent fiscal year reduces funding available for the Agreement, THE DEPARTMENT shall have the option, in its sole discretion, to cancel the Agreement with no liability occurring to THE DEPARTMENT, or offer an Agreement amendment to the ESCO reflecting the reduced amount, which the ESCO may accept in lieu of termination.

5. Insurance

[Disclaimer: For the purposes of this Section, the term "Contractor" refers to ESCO.]

A. GENERAL REQUIREMENTS. The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. Should the Contractor decide to engage a subcontractor for segments of the work under this contract and wish to propose different insurance requirements than outlined below, then, prior to commencement of work by the subcontractor, the Contractor shall submit in writing the name and brief description of work to be performed by the subcontractor on the Subcontractors Insurance Requirement Template provided by the CA, to the Office of Risk Management (ORM). ORM will determine the insurance requirements applicable to the subcontractor and promptly deliver such requirements in writing to the Contractor and the CA. The Contractor must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor. If the Contractor decides to engage a subcontractor without requesting from ORM

specific insurance requirements for the subcontractor, such subcontractor shall have the same insurance requirements as the Contractor.

General liability, commercial auto, workers' compensation, and property insurance policies (if applicable to this agreement) shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor and subcontractors.

B. INSURANCE REQUIREMENTS

1. Commercial General Liability Insurance ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than $1,000,000 each occurrence, a $2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if

applicable) limit, a $1,000,000 personal and advertising injury limit, and a $2,000,000 products-completed operations aggregate limit.

The contractor should be named as an additional insured on the applicable manufacturer's/distributer's Commercial General Liability policy using Insurance Services Office, Inc. ("ISO") form CG 20 15 04 13 (or another occurrence-based form with coverage at least as broad).

DGS should collect, review for accuracy and maintain all warranties for goods and services.

2. Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor's commercial automobile liability policy or (ii) $1,000,000 per occurrence combined single limit for bodily injury and property damage.

3. Workers' Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

   Employer's Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of employer's liability insurance as follows: $500,000 per accident for injury; $500,000 per employee for disease; and $500,000 for policy disease limit.

   All insurance required by paragraphs 1,2 and 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

4. Cyber Liability Insurance - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. Limits may not be shared with other lines of coverage. A copy of the cyber liability policy must be submitted to the Office of Risk Management (ORM) for compliance review.

5. Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of $1,000,000 per claim or per occurrence for each wrongful act and $2,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services. Limits may not be shared with other lines of coverage.

6. Sexual/Physical Abuse & Molestation - The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the services performed that it carries $1,000,000 per occurrence limits; $2,000,000 aggregate of affirmative abuse and molestation liability coverage. Coverage should include physical abuse, such as sexual or other bodily harm and non-physical abuse, such as verbal, emotional or mental abuse; any actual, threatened or alleged act; errors, omission or misconduct. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts. So called "silent" coverage or "shared" limits under a commercial general liability or professional liability policy will not be acceptable. Limits may not be shared with other lines of coverage. The applicable policy may need to be submitted to the Office of Risk Management (ORM) for compliance review.

7. Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) $5,000,000 per occurrence and $5,000,000 in the annual aggregate, following the form and in excess of all liability policies. All liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

C. PRIMARY AND NONCONTRIBUTORY INSURANCE

The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

D. DURATION. The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

E. LIABILITY. These are the required minimum insurance requirements established by the District of Columbia. However, the required minimum insurance requirements provided above will not in any way limit the contractor's liability under this contract.

F. CONTRACTOR'S PROPERTY. Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

G. MEASURE OF PAYMENT. The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

H. NOTIFICATION. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

I. CERTIFICATES OF INSURANCE. The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia
And e-mailed to the attention of:

Domonique Banks c/o Karen Araujo
Contracting Officer, Supervisory Contract Specialist
Contracts and Procurement Division
Department of General Services
Tel: O: 202-545-3035 | M: 202-384-7744 | karen.araujo@dc.gov

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

J. DISCLOSURE OF INFORMATION. The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work

performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

K. CARRIER RATINGS. All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the District.

6. Energy Services Agreement

The Parties intend to negotiate an Energy Services Agreement ("ESA") under which the ESCO will design, install and implement energy and water saving measures which the Parties have agreed to, and provide certain maintenance, measurement, and monitoring services which the DEPARTMENT has elected to include in the Contract. However, nothing in this Contract should be construed as an obligation on any of the Parties to execute such a contract. The terms and provisions of such an Energy Services Agreement will be set forth in a separate contract duly executed by the Parties. For reference, a provisional draft of an ESA can be found in **appendix X.** This draft is for reference only, and the DEPARTMENT reserves the right to edit, revise or change this draft for any reason.

7. Extent of Agreement

This Contract represents the entire and integrated agreement between the DEPARTMENT and the ESCO and supersedes all prior negotiations, representations or agreement, either written or oral. In the event any terms of this Contract or THE DEPARTMENT's SCP for Supplies and Services Contract are inconsistent with: (1) The RFP and ESCO Proposal; (2) the Attachments or Exhibits included herein; or (3) any other ESCO documents (e.g., ESCO Responses to THE DEPARTMENT's Request for Information) sent or received in connection with this Contract or posted generally by the ESCO, the terms contained in this Contract, and THE DEPARTMENT SCP for Supplies and Services Contract shall prevail over the terms contained in (1) and (2) and (3) above, unless otherwise agreed to in an amendment to this Contract, duly executed by the Parties.

The ESCO agrees to notify the DEPARTMENT Project Contact(s) in writing of any changes to such ESCO documents at least thirty (30) days in advance. Any changes that are inconsistent with this Agreement or materially alter the obligations of the Parties under this Agreement shall not apply to THE DEPARTMENT Users, without THE DEPARTMENT's express written consent. In no case will the Provider alter how Confidential Information is collected, used, or shared under the terms of this Agreement without 30 days advance notice and express written consent from THE DEPARTMENT.

8. Other Provisions.

a) **Term.** The term of this Contract will become effective upon approval and execution by the Contracting Officer. The term shall end in accordance with Section 2.a, and after signing the **Notice of Acceptance** (**Exhibit B: Notice of Acceptance of Investment Grade Audit Report**); provided however the term of this contract shall not extend beyond (_____). The DEPARTMENT Principal Representative shall sign the Notice of Acceptance of the Final Investment Grade Audit Report.

b) The Parties' obligations under this Contract, as well as any other of the Parties' obligations and warranties herein or in the DEPARTMENT's SCP for Supplies and Services Contract, which directly or indirectly are intended by their nature or by implication to survive the Parties' performance, shall survive the expiration, cancellation, or earlier termination of this Contract.

c) This Contract may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument. Each Party may rely on facsimile or Adobe Portable Document Format ("PDF") signature pages as if such facsimile or PDF signature pages were originals.

9. THE DEPARTMENT Special Provisions

Please see Appendices X & X containing additional DEPARTMENT terms & conditions.

[**Signatures on the Following Page**]

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the last signature below.

WITNESS: XXXXXXXXXXXX

_____ By: _____

Date: _____

_____ By: _____

Date: _____

[NOTE: Revise ESCO signature block according to your procedure.]

WITNESS: ESCO

By:_____

Principal Representative
Title
Address

APPROVED:

LIST OF ATTACHMENTS and EXHIBITS

EXHIBIT A	INVESTMENT GRADE AUDIT SCOPE OF WORK
EXHIBIT B	NOTICE OF ACCEPTANCE OF INVESTMENT GRADE AUDIT REPORT
EXHIBIT C	GUIDELINES FOR PRELIMINARY MEASUREMENT & VERIFICATION PLAN
EXHIBIT D	PROJECT PRICING
APPENDIX A	RFP FOR ESCO SOLICITATION
APPENDIX B	ESCO RFP RESPONSE
APPENDIX C	THE DEPARTMENT STANDARD CONTRACT PROVISIONS FOR SUPPLIES AND SERVICES CONTRACTS, JANUARY 2016
APPENDIX D	ADDITIONAL MINIMUM STANDARD CONTRACT CLAUSES

Exhibit A
Investment Grade Audit Scope of Work

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

1. Detailed Task List

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

1.1 30% Phase - Assessment of Needs and Opportunities

Collect General Facility Information

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

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

Collect the following information for the past 36-month period (where reasonably available):

General Facility Information

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

Utility Information

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

Sub Meter Information

- Historical thermal and electrical sub meter data (if available).

Equipment and Facility Information

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

Operations Information

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

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

Inventory Existing Systems and Equipment

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

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

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

Address the following considerations:

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

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

Establish Baseline

Estimate Loads

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

Estimate Baseline Usage

- Examine utility supply contracts and utility rate structure applicable to each building.
- If building-specific utility data is not available or not useful, then provide other means (for example sub meters and/or data loggers) to establish baseline consumption. Establish base year and/or baseline consumption.
- Present base year and/or baseline consumption in terms of energy or water units (kWh, kW, ccf, Therms, gallons, or other units used in bills), in terms of dollars, and in terms of dollars per square foot.
- Describe the process used to determine the base year and/or baseline consumption and demand (averaging, selecting most representative contiguous 12 months, or sampling; sampling may include temporary sub meters or data loggers where needed).

- Consult with facility personnel to account for any anomalous schedule or operating conditions on billings or equipment conditions that could skew the base year and/or baseline representation.
- ESCO will (as best as possible) account for periods of time when equipment was broken or malfunctioning in calculating the base year or baseline definition period.

Reconcile Estimates

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

Baseline Adjustments:

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

1.2 60% Phase - Initial Analysis of Measures

Identify Potential Measures

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

- Facility operation, including energy management and operating procedures;
- Equipment maintenance problems;
- Comfort problems and requirements;
- Equipment reliability;
- Projected equipment needs;
- Occupancy and use schedules for the facility and specific equipment;
- Facility improvements – past, planned and desired; and
- Other project sustainability goals, metrics or standards (i.e. LEED, ENERGY STAR, Net Zero Energy, etc.).
    - THE DEPARTMENT has a target Energy Utilization Index percent reduction of X for each building in the portfolio.

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

- lighting (indoor and outdoor);
- heating and heat distribution systems;
- cooling systems and related equipment;
- automatic temperature control systems and equipment;
- air distribution systems and equipment;
- outdoor ventilation systems and equipment;
- exhaust systems and equipment;
- domestic hot water systems;
- electric motors;

- transmission and drive systems;
- electrical transformers;
- special systems (kitchen/dining equipment, etc.);
- renewable energy systems;
- Other energy using systems;
- water consuming systems (restroom fixtures, water fountains, irrigation systems, etc.); and
- plug loads.

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

Assess potential measures:

Consider the following for each system:

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

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

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

Evaluate Measures:

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

Present Findings

- Submit the preliminary findings and list of measures to THE DEPARTMENT based on the agreed upon schedule.
- Meet with THE DEPARTMENT to present preliminary findings prior to thorough analysis.
- Describe how the project economics, savings, and financials will meet THE DEPARTMENT's terms for completing the IGA phase. Discuss assessment of energy

use, savings potential, and project opportunities. THE DEPARTMENT shall have the option to reject calculations of savings, potential savings allowed, or project recommendations or request recalculations of savings, potential savings allowed, or related to project recommendations, at no additional cost.

- Develop a list of recommended measures with THE DEPARTMENT for further analysis.

1.3 90% Phase - Further Analysis for Investment Grade Audit

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

Savings Analysis

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

Inflation & Escalation Rates

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

Project Costs

Provide detailed cost build-ups associated with each of the ECMs proposed in the Audit including breakouts for labor, materials, and equipment. Markups and fees must be consistent with those presented in ESCO's RFP Response, incorporated in Appendix B, and those documented in Exhibit D -*Project Pricing.* In the event of conflict, the markups and fees presented in Exhibit D shall prevail.

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

Measurement and Verification Plan

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

Commissioning Plan

- Provide a preliminary commissioning plan for the proposed ECMs.

Operations and Maintenance Plan

- Develop a preliminary Operations and Maintenance Plan.

Training Plan

- Develop a preliminary Training Plan for proposed ECMs.

1.4 100% Phase - Final Investment Grade Audit Report

The final Investment Grade Audit Scope of work shall be completed within X days of the date of execution of this Contract.

Investment Grade Audit Report

The Investment Grade Audit report includes:

Overview

- Contact information.
- Executive Summary.
- Description of the facility, measures evaluated, analysis methodology, results.
- Summary table presenting the cost and savings estimates for each measure and for the project as a whole.
- Summary table of recommended energy and water saving measures, including total and itemization for each measure of total design and construction cost, annual maintenance costs, the first-year cost avoidance (in dollars and energy units), simple payback and equipment service life.

- Any cost savings due to changes to utility rates or commodity costs due to changes in metering, commodity procurement, etc.
- Summary of annual energy and water use and costs by fuel type and costs of existing or base year condition.
- Calculation of energy and cost savings expected if all recommended measures are implemented, and total percentage savings of total facility energy cost.
- Description of the existing facility, mechanical and electrical systems.
- Summary description of measures, including estimated costs and savings for each as detailed above.
- Summary of recommended DEPARTMENT-related actions.
- Discussion of measures considered but not investigated in detail.
- Summary of the value beyond energy cost savings (i.e. improvement to learning environment, student engagement, campus sustainability goals, greenhouse gas reduction, employee retention and recruiting benefits, employee productivity benefits, etc.). Qualitative at a minimum, quantitative would be best.
- Conclusions and recommendations.

Baseline and/or base year energy use

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

Description of each operational, energy and water saving measure

Written description

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

Savings calculations

- Base year energy use and cost.
- Post-retrofit energy use and cost.
- Savings calculations including analysis methodology, supporting calculations and assumptions used.
- Annual savings calculations. The cost savings for all energy saving measures must be estimated for each year during the contract period. Savings must be able to be achieved each year (cannot report average annual savings over the term of the contract).

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

Firm-Fixed Pricing

- A detailed narrative of the construction scope of work and open book pricing model that builds up the cost to a total fixed-firm price. Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts.
- Engineering/design costs.
- ESCO/vendor estimates for labor, materials, and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities.
- Permit costs.
- Construction management fees.
- Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.).
- Note that all markups and fees stated in **Exhibit D** shall be used in the cost estimates, unless otherwise documented and justified due to change in scope or size of project or other unforeseen circumstances agreed to by the DEPARTMENT in writing.
- Conclusions, observations, caveats.
- Other cost categories as defined above under “markups” in Section 3b above.

Other

- Estimate of average useful service life of equipment.
- Preliminary commissioning plan.
- Preliminary measurement and verification plan, following the current version of the International Performance Measurement and Verification Protocol

("IPMVP"), explaining how savings from each measure is to be measured and verified (description of Option A, B, C, or D will be implemented for the measure).

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

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

- 30% IGA Report (shall be completed within X calendar days after execution of this Contract). Facility descriptions (general, envelope, lighting, HVAC, controls, water); baseline lighting and water audit; equipment inventories; baseline EMS trending and data logger measurements (if completed, acceptable to submit at 60% report). This is to be submitted after the Scope of Work in Section 1.1 of this document is completed.
- 60% IGA Report (shall be completed within X calendar days after execution of this Contract) – Used as a scoping document to outline potential ECMs that will be feasible to include in performance contract and those that will not; high-level cost and savings analysis; draft pro forma/financial models; draft M&V plan; submission of supporting data including EMS trending analyses and data logger results; baseline energy simulation model (if applicable) input files and output reports.
  This is to be submitted after the Scope of Work in Section 1.2 of this document is completed.
- 90% IGA Report (shall be completed within X calendar days of the date of execution of this Contract) – Baseline energy and water consumption/cost analysis per site and per building; utility consumption allocation by end-use; building EUI and other performance metrics; Executive summary with ECM list economics and pro forma; facility descriptions; energy and water analysis; ECM section with detail descriptions existing conditions and proposed upgrades; final M&V plan; final ECM costs following open-book pricing model; final ECM savings analyses – spreadsheet models or energy models (input and outputs if applicable); appendices for supporting data including EMCS trending data. This is to be submitted after the Scope of Work in Section 1.3 of this document is completed.
- 100% IGA Report, which shall incorporate all necessary engineering, economic, financial, and overall scope of work changes, as well as all DEPARTMENT and 3rd Party comment resolutions, shall be completed within X calendar days of the execution of this Contract. This is to be submitted after the Scope of Work in Section 1.4 of this document is completed.

After each report submission, the DEPARTMENT's Representative shall have up to thirty (30) days to review ESCO reports and generate comments and questions for the ESCO. The Parties will then meet at a mutually convenient time to review and discuss the reports.

EXHIBIT B
Notice of Acceptance of Investment Grade Audit Report

(Sample)

Notice of Acceptance

Date of Notice _____

Notice is hereby given that ***THE DEPARTMENT*** accepts the Investment Grade Audit and Project Development Proposal by ESCO, as contemplated in **Section 2 of the Investment Grade Audit Agreement** dated _____.

THE DEPARTMENT Title: [**Note:** Insert THE DEPARTMENT signature block info. here]

By: _____

Date: _____

When completely executed, this form shall be sent via email to the ESCO located at:

[**Note:** Insert ESCO signature block info. here]

ESCO
TITLE
ADDRESS
ETC.

EXHIBIT C
GUIDELINES FOR PRELIMINARY MEASUREMENT AND VERIFICATION PLAN

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

In the event the Energy and Cost Savings achieved during such guaranteed year are less than the Guaranteed Energy and Cost Savings as defined in the agreed to Savings Guarantee, the ESCO shall pay THE DEPARTMENT an amount equal to the shortfall. The ESCO shall remit such payments to THE DEPARTMENT within forty-five (45) days of THE DEPARTMENT's written notice to the ESCO requesting payment. The ESCO shall also be obligated to remedy the ECM deficiencies causing the shortfall at no cost to THE DEPARTMENT.

Prepare the M&V Plan as outlined below:

List of Processes and Tables:
Risk, Responsibility and Performance Matrix.
M&V Plan and Savings Calculation Methods

- Proposed Annual Savings Overview;
- Site Use and Savings Overview (Optional);
- M&V Plan Summary;
- Schedule of Verification Reporting Activities;
- Proposed Annual Savings For ECM; and
- Expected Year 1 Savings for ECM.

Risk, Responsibility and Performance Matrix.
The ESCO shall complete and include the matrix below to summarize the allocation of responsibility for key items related to M&V.

RISK, RESPONSIBILITY AND PERFORMANCE MATRIX

RESPONSIBILITY/DESCRIPTION	CONTRACTOR PROPOSED APPROACH
1. Financial	
a. Interest rates: Neither the contractor nor THE DEPARTMENT has significant control over prevailing interest rates. Higher interest rates will increase project cost, financing/project term, or both. The timing of the TO signing may impact the available interest rate and project cost.	

b. Construction costs: The contractor is responsible for determining construction costs and defining a budget. If construction estimates are significantly greater than originally assumed, the contractor may find that the project or measure is no longer viable and drop it before TO award. In any design/build contract, THE DEPARTMENT loses some design control. **Clarify design standards and the design approval process (including changes) and how costs will be reviewed.**	
c. M&V confidence: THE DEPARTMENT shall determine the confidence it requires for the M&V program and energy savings determinations. The desired confidence will be reflected in the resources required for the M&V program, and the ESCO must consider the requirement prior to submission of the final proposal. **Clarify how project savings are being verified (e.g., equipment performance, operational factors, energy use) and the impact on M&V costs.**	
d. Energy Related Cost Savings: THE DEPARTMENT and the contractor may agree that the project will include savings from *recurring* and/or *one-time* costs. This may include one-time savings from avoided expenditures for projects that were appropriated but will no longer be necessary. Recurring savings generally result from reduced Operations & Maintenance (O&M) expenses or reduced water consumption. These O&M and water savings must be based on actual spending reductions. **Clarify sources of non-energy cost savings and how they will be verified.**	
e. Delays: Failure to implement a viable project in a timely manner costs THE DEPARTMENT in the form of lost savings, and can add cost to the project (e.g., construction interest, re-mobilization). **Clarify schedule and how delays will be handled.**	
f. Major changes in facility: THE DEPARTMENT controls major changes in facility use, including closure. **Clarify responsibilities in the event of a premature facility closure, loss of funding, or other major change.**	
2. Operational	
a. Operating hours: THE DEPARTMENT generally has control over operating hours. Increases and decreases in operating hours can present as increases or decreases in "savings" depending on the M&V method (e.g., operating hours multiplied by improved efficiency of equipment vs. whole building/utility bill analysis). **Clarify whether operating hours are to be measured or stipulated and what the impact will be if they change.** If the operating hours are stipulated, the baseline should be carefully documented and agreed to by both parties.	
b. Load: Equipment loads can change over time. THE DEPARTMENT generally has control over hours of operation, conditioned floor area, intensity of use (e.g., changes in occupancy or level of automation). Changes in load can present as increases or decreases in "savings" depending on the M&V method. **Clarify whether equipment loads are to be measured or stipulated and what the impact will be if they change**. If the equipment loads are stipulated, the baseline should be carefully documented and agreed to by both parties.	
c. Weather: A number of energy efficiency measures are affected by weather. Neither the contractor nor THE DEPARTMENT has control over the weather. Should THE DEPARTMENT agree to accept risk for weather fluctuations, it shall be contingent upon aggregate payments not exceeding aggregate savings. **Clearly specify how weather corrections will be performed.**	
d. User participation: Many energy conservation measures require user participation to generate savings (e.g., control settings). The savings can vary and the contractor may be unwilling to invest in these measures. **Clarify what degree of user participation is needed and utilize monitoring and training to mitigate risk.** If performance is stipulated, document and review assumptions carefully and consider M&V to confirm the capacity to save (e.g., confirm that the controls are functioning properly).	
3. Performance	

a. Equipment performance: The contractor has control over the selection of equipment and is responsible for its proper installation, commissioning, and ultimate performance. The contractor has the responsibility to demonstrate that new improvements meet expected performance levels including specified equipment capacity, standards of service, and efficiency. **Clarify who is responsible for initial and long-term performance, how it will be verified, and what will be done if performance does not meet expectations.**	
b. Operations: Performance of the day-to-day operations activities (e.g. turning lights on, occupying the facilities, etc.) is negotiable and can impact performance. However, the contractor bears the ultimate risk regardless of which party performs these activities. **Clarify which party will perform equipment operations, the implications of equipment control, how changes in operating procedures will be handled, and how proper operations will be assured.**	
c. Preventive Maintenance: Performance of required maintenance activities including day-day, monthly, and annual activities is negotiable and can impact performance. **Clarify how maintenance will be assured, especially if the party responsible for long-term performance is not responsible for maintenance (e.g., contractor provides maintenance checklist and reporting frequency). Clarify who is responsible for performing preventive maintenance to maintain operational performance throughout the contract term. Clarify what will be done if inadequate preventive maintenance impacts performance.**	
d. Equipment Diagnosis, Repair, and Replacement: Performance of diagnosis, repairs, and replacement of the contractor-installed equipment is negotiable between the parties. **Clarify who is responsible for performing replacement of failed components or equipment replacement throughout the term of the contract.** Specifically address potential impacts on performance due to equipment failure. Specify expected equipment life and warranties for all installed equipment. Discuss replacement responsibility when equipment life is shorter than the term of the contract.	

M&V PLAN AND SAVINGS CALCULATION METHODS OUTLINE

Fill in the following tables or provide equivalent information.

PROPOSED ANNUAL SAVINGS OVERVIEW

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)**	Total energy and water cost savings, Year 1 ($/yr)	Other energy-related O&M cost savings, Year 1 ($/yr)	Total cost savings, Year 1 ($/yr)
Total savings									

First Year Guaranteed Cost Savings: $

Notes
*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
MBtu=10^6 Btu.
**If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

SITE USE AND SAVINGS OVERVIEW

	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)**
Total proposed project savings						
Usage for entire site**						
% Total site usage saved						
Project square footage (KSF)						
Total site square footage (KSF)						
% Total site area affected						

Notes
MBtu=10^6 Btu
*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
**If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).
***Define usage period.
KSF = 10^3 square feet.

M&V PLAN SUMMARY

ECM No.	ECM Description	M&V Option Used*	Summary of M&V Plan

*M&V options include A, B, C, and D of the International Performance Measurement and Verification Protocol (IPMVP).

SCHEDULE OF VERIFICATION REPORTING ACTIVITIES

Item	[a]Recommended time of submission	[a]THE DEPARTMENT's review and acceptance period
Post-Installation Report	30 to 60 days after acceptance	30 days
Annual Report	30 to 60 days after annual performance period	30 days

[a]Times are recommended based on industry practice; modify as needed.

PROPOSED ANNUAL SAVINGS FOR EACH ECM

[Include all applicable fuels/commodities for project, such as: electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

	Total energy use (MBtu/yr)	Electric energy use (kWh/yr)	Electric energy cost, Year 1 ($/yr)	Electric demand* (kW/yr)	Electric demand cost, Year 1 ($/yr)	Natural gas use (MBtu/yr)**	Natural gas cost, Year 1 ($/yr)	Water use (gallons/yr)	Water cost, Year 1 ($/yr)	Other energy use (MBtu/yr)**	Other energy cost, Year 1 ($/yr)	Other energy-related O&M costs, Year 1 ($/yr)	Total costs, Year 1 ($/yr)
Baseline use													
Post-installation use													
Savings													

Notes
*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
MBtu = 10^6 Btu.
**If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

ECM-SPECIFIC M&V PLAN AND SAVINGS CALCULATION METHODS

Develop section for each ECM.

- Summarize the scope of work, location, and how cost savings are generated. Describe source of all savings including energy, water, O&M, and other (if applicable).
- Specify the M&V guideline and option used from the International Performance Measurement and Verification Protocol ("IPMVP").
- Provide an overview of M&V Activities for ECM. Explain intent of M&V plan, including what is being verified.
- Provide an overview of savings calculations methods for ECM. Provide a general description of analysis methods used for savings calculations.

Proposed Energy and Water Savings Calculations and Methodology

- Provide detailed description of analysis methodology used. Describe any data manipulation or analysis that was conducted prior to applying savings calculations.
- Detail all assumptions and sources of data, including all stipulated values used in calculations.
- Include equations and technical details of all calculations made. (Use appendix and electronic format as necessary.) Include description of data format (headings, units, etc.).
- Details of any savings or baseline adjustments that may be required.
- Detail energy and water rates used to calculate cost savings. Provide post-acceptance performance period energy and water rate adjustment factors.
- Detail proposed savings for this energy conservation measure for post-acceptance performance period. Include table outlining the Proposed Annual Savings for Each ECM.

Operations and Maintenance Cost Savings

- Provide justification for O&M cost savings, inclusive of calculations, analysis, and sources of data. Describe how savings are generated. Detail cost savings calculations.
- Provide post-acceptance performance period other cost savings adjustment factors.

Details of other savings (if applicable)

- Provide justification for cost savings, inclusive of calculations, analysis, and sources of data. Describe how savings are generated. Detail cost savings calculations.
- Provide post-acceptance performance period other cost savings adjustment factors.

Post-Installation M&V Activities - Describe the intent of post-installation verification activities, including what will be verified.

- Describe variables affecting post-installation energy or water use. Include variables such as weather, operating hours, set point changes, etc. Describe how each variable will be quantified, (i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.)
- Define key system performance factors characterizing the post-installation conditions such as lighting intensities, temperature set points, etc.
- Define requirements for THE DEPARTMENT witnessing of measurements if different than whole project data requirements.
- Detail data analysis to be performed.
- Provide details of post-installation data to be collected, including:
    - Parameters to be monitored:
    - details of equipment to be monitored (location, type, model, quantity, etc.);
    - A sampling plan, including details of usage groups and sample sizes;
    - Duration, frequency, interval, and seasonal or other requirements of measurements;
    - Monitoring equipment to be used, including installation requirements for monitoring equipment;
    - Calibration requirements/procedures;
    - Expected accuracy of measurements/monitoring equipment;
    - Quality control procedures to be used;
    - Form of data to be collected (.xls, .cvs, etc.); and,
    - Sample data collection forms (optional).

Post-Acceptance Performance Period Verification Activities

- Describe variables affecting post-acceptance performance period energy or water use. Include variables such as weather, operating hours, set point changes, etc. Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.
- Define key system performance factors characterizing the post-acceptance performance period conditions. Include factors such as comfort conditions, lighting intensities, temperature set points, etc.
- Describe the intent of post-acceptance performance period verification activities – what will be verified.
- Provide detailed schedule of post-acceptance performance period verification activities and inspections.
- Define requirements for THE DEPARTMENT witnessing of measurements if different than whole project data requirements.
- Detail data analysis to be performed.
- Provide details of post-acceptance performance period data to be collected, including:
    - Parameters to be monitored;
    - Details of equipment to be monitored (location, type, model, quantity, etc.);
    - A sampling plan, including details of usage groups and sample sizes;
    - Duration, frequency, interval, and seasonal or other requirements of measurements;
    - Monitoring equipment to be used, including installation requirements for monitoring equipment;
    - Calibration requirements/procedures;
    - Expected accuracy of measurements/monitoring equipment;
    - Quality control procedures to be used;
    - Form of data to be collected (.xls, .cvs, etc.); and,
    - Sample data collection forms (optional).
- Define O&M and repair reporting requirements. Detail verification activities and reporting responsibilities of THE DEPARTMENT and contractor for operations and maintenance items.
- Define reporting schedule.

EXHIBIT D – Project Pricing

The below schedule is a deliverable that summarizes the pricing structure and the proposed project costs and price. ESCO shall complete this chart as a project deliverable as described in Exhibit A – IGA Scope of Work

Cost Markups

		RFP MARKUPS	***FINAL PROJECT MARKUPS & TOTAL COSTS***	
	Project Budget	***Percent of Total Project Price***	***Percent of Total Project Price***	***Price/Cost***
a	Subcontractor Costs (Contractor Costs to ESCO)	*N/A*		
b	Other Direct Purchases of Equipment, Material, Supplies (Supplier Costs to ESCO)			
c	Total of Hard Costs		*c = a + b*	
d	Project Development	*X %*		
e	Design/Engineering	*X %*		
f	Project Management	*X %*		
g	Permits	*X %*		
h	Performance Bond	*X %*		
i	Payment Bond	*X %*		
j	Commissioning	*X %*		
k	Measurement & Verification	*X %*		
l	Training	*X %*		
m	Contingency	*X %*		
n	Warranty Service	*X %*		
o	Maintenance on Installed Measures	*n/a* Note 1		
p	**Total of ESCO Fees**		p = sum(d:o)	
q	Overhead	*X %*		
r	Profit	*X %*		
s	**PROJECT PRICE SUB TOTAL w/OH &P**		s = p + q + r	

Note 1: Ongoing operations and maintenance (O&M) services, if desired by THE DEPARTMENT, will be paid on an annual basis.

Audit Fee

Below is the fee to conduct the Investment Grade Audit and Project Development Proposal, on a cost per square foot basis and total price. The total square feet is based on the Building Scope List, below.

AUDIT FEES			
a	Investment Grade Audit	$X.XX/SQFT	
b	Total Square Feet (SQFT)	X,XXX,XXX	
c	Total Price for IGA	$XXX,XXX	c = a x b

Building Scope List

APPENDIX A – RFP FOR ESCO SOLICITATION

APPENDIX B – ESCO RFP RESPONSE

APPENDIX C – GOVERRNMENT OF THE DISTRICT OF COLUMBIA'S DEPARTMENT OF GENERAL SERVICES STANDARD CONTRACT PROVISIONS FOR SUPPLIES AND SERVICES CONTRACTS, JANUARY 2016

APPENDIX D – ADDITIONAL MINIMUM STANDARD CONTRACT CLAUSES

1. Contract Documents. The Investment Grade Audit Agreement is to be agreed to before the IGA phase begins. The Model Energy Savings Performance Contract ("ESPC") is to be agreed to before the Implementation (construction) phase begins.

2. Payment through Performance Contract**.** DC government shall have no payment obligations under this contract provided that ESCO and DGS execute an ESPC within 90 days after issuance of the Notice of Acceptance of the final Investment Grade Audit. The IGA fee shall be incorporated into ESCO's project costs in the ESPC and paid for through the ESPC funding mechanisms.

An IGA fee, or walk away fee, is agreed to (on a $/SF basis) with the ESCO and is included as part of the IGAA. The fee is only payable to the ESCO if they provide an IGA report that meets the IGAA requirements and DGS still decides not to move forward with executing an ESA.

3. Project with Insufficient Savings. DC government shall have no payment obligations under this Contract in the event that the ESCO's final IGA Report does not contain a package of energy and water saving measures, per the ESPC Specifications and Scope of Work, that will provide the DGS with annual cost savings sufficient to fund the DGS's annual payments of all costs and fees associated with the ESPC. This includes 1) the fee associated with the IGA, 2) all monthly payments on the applicable debt service to finance Energy Conservation Measure (ECM) construction, 3) any annual service fees including but not limited to Measurement & Verification (M&V), Operations & Maintenance (O&M), Repair & Replacement (R&R), or other service fees that are incurred by the ESCO, and all fees related to DGS's third-party owner's representative. Should the ESCO determine at any time during the IGA that savings cannot be attained to meet these terms, the IGA shall be terminated by written notice by the ESCO to DGS. In this event, the Contract shall be cancelled, and DGS shall have no obligation to pay, in whole or in part.

4. Project is Declined by DGS. Within 90 days of DGS's decision not to execute the IGAA, DC government shall pay to the ESCO a sum not to exceed the maximum cost per square-footage as agreed to by the ESCO and DGS in the executed IGAA. DC government shall only pay for square-footage actually audited. Areas deemed by the ESCO not to be audited will not be charged to DGS.

5. Funding Sources to Support Annual Payment. The following payment sources identified in the Investment Grade Audit Report will be considered acceptable:

1) Annual utility cost savings
2) Material/commodity savings, only in years when savings are achieved, including avoided costs such as lamp and ballast replacements, scheduled replacement of parts, etc. (savings for this line item will be limited to those that can be thoroughly documented and approved. Such savings must only be attributed to the cash flow in years when savings will occur).

3) Maintenance cost savings such as terminated service contracts on equipment (savings will be limited to those that can be thoroughly documented and approved. Such savings must only be attributed to the cash flow in years when savings will occur).

6. Equity cash outlay - At option of DC government, an equity cash outlay, pending funding approval, may be used to supplement savings. This is only by direction of DC government. The ESCO shall proceed with development of a fully self-funding project paid only through cost savings stated above.

7. ESA Contract Term. The maximum contract term is 25 years provided the cost-weighted average lifetime of the equipment exceeds the contract term. The *ASHRAE Book of Standards* will be used in determining the cost-weighted average useful life of the equipment.

8. Annual Savings Exceed Annual Costs. Annual savings shall exceed annual payments each and every year while the performance guarantee is in effect. This means that excess savings in other years and interim savings during the construction period shall not be allocated to meet shortfalls in any other year. Annual payments shall include debt service, ESCO fees, maintenance services, M&V services, third party consultant services, and other services.

9. Annual Guaranteed Cost Savings. An annual contractual guarantee with and the associated annual M&V report will be provided by the ESCO for every year of the contract term. However, DGS reserves the right to terminate the Guarantee after the first performance year from the date of project acceptance. If DGS exercises that option, the ESCO will have no more savings guarantee requirements. Any savings guarantee shall be made available as a continued option for each subsequent year of the contract term. DGS may cancel the guarantee at any time after the minimum requirement period.

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

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

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

13. Open Book Pricing. Open book pricing will be required, such that the ESCO will fully disclose all costs, including all costs of subcontractors and vendors. ESCO will maintain cost accounting records on authorized work performed under actual costs for labor and

material, or other basis requiring accounting records. Costs will be evaluated by DGS and its consultants through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical price benchmarks. Stated cost markups will be clearly applied. ESCO will provide access to records and preserve them during the construction phase of the project.

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

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

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

17. Inflation and Escalation Rates. Any general inflation rates and/or escalation rates will be -approved by DGS and mutually agreed upon prior to ESA execution.

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

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

In the event the Energy and Cost Savings achieved during such guaranteed year are less than the Guaranteed Energy and Cost Savings as defined in the agreed to Savings Guarantee**,** the ESCO shall pay DC government an amount equal to the shortfall. The

ESCO shall remit such payments to DC government within an agreed upon time frame (in days) of written notice by DC government of such monies due. The ESCO shall also be obligated to remedy the ECM deficiencies causing the shortfall at no cost to DC government.

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

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

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

23. Standards of Comfort. ESCO will maintain and operate the equipment in a manner which will provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality and levels as defined by DGS during the IGA phase. During the term of this Contract, ESCO and DGS will maintain and operate the equipment in a manner that will provide the standards of comfort and levels of operation as described in the IGA report.

24. Hazardous Materials. In the event ESCO discovers Hazardous or Excluded Materials (as agreed to in the Contract), ESCO shall immediately cease work, remove all ESCO personnel or subcontractors from the site, and notify DGS. DGS shall be responsible to handle such Materials at its expense. ESCO shall undertake no further work on the Project Site(s) except as authorized by DGS in writing. Notwithstanding anything in the project Contract to the contrary, any such event of discovery or remediation by DGS shall not constitute a default by DGS. In the event of such stoppage of work by ESCO, the Time for Completion of Work will be automatically extended by the amount of time of the work

stoppage and any additional costs incurred by ESCO as a result will be added by Change Order.

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

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

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

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

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

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