Model Procurement and Contracting Documents

For Green Performance Contracting

A White Paper

by Leonardo Academy Inc.

Working Draft

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PREFACE

This is the April 27, 2007, working draft of the Leonardo Academy Guide on model procurement and contracting documents for green performance contracting.

Objectives
This Guide is being prepared and issued as a working draft with several goals in mind:

1. To provide model procurement and contracting documents for green performance contracting for:
   a. Building owners (state government, local government, and private sector) that want to include sustainability in the performance contracts for upgrading their buildings.
   b. Performance contracting service providers who want to include sustainability in their performance contracting service offerings.
2. To gather input from both building owners and performance contracting service providers on any additional information that should be added, additional issues that need to be addressed, or any other improvements that need to be made to the model procurement and contracting documents included in the Guide so that it provides the tools needed to put the engine of performance contracting to work on delivering sustainability in public and private buildings.

Flexibility Included in This Document
This document includes language that makes it easy for the user to select the metrics for sustainability definition and verification.

This flexibility is included to cover the range of approaches being used by state and local governments in specifications of sustainability and verification of achievement. Some have specified the use of LEED for both definition and verification of sustainability achievements; some have specified the use of LEED for definition of sustainability, but specified other methods for verifying sustainability achievements; and others have created their own definitions of sustainability and approaches to verification.

The degree of self-funding required for projects: This flexibility is included because, on the one hand the performance contracting enabling legislation in many states requires that these projects be self-funding, and on the other hand organizations able to invest in sustainability improvements beyond what is self-funding are able to accelerate the achievement of their sustainability objectives.

Also covered is whether to use: (a) an approach that fully integrates LEED-EB and performance contracting or, (b) an approach that uses traditional performance contracting to implement LEED-EB.

Please contact Leonardo Academy if you have any comments or suggestions for this Guide.

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April 27, 2007
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SECTION 1: HOW STATE AND LOCAL GOVERNMENTS CAN USE PERFORMANCE CONTRACTING TO ACCELERATE SUSTAINABILITY ACHIEVEMENTS

Buildings are a major cause of environmental impacts, so buildings provide major opportunities for reducing these environmental impacts and increasing sustainability. Many government and private organizations at the international, national, state, and local levels are setting sustainability goals for themselves. To reach these sustainability goals all the traditional tools for implementing energy efficiency improvements in buildings need to be upgraded and expanded to address overall sustainability. One very important tool for delivery of energy efficiency improvements in buildings, particularly in the public sector, is performance contracting.

Performance contracting is an approach to upgrading building operating performance that allows state and local governments to use expense funding to pay for capital improvements needed to improve building performance. Because state and local government buildings frequently have difficulty making capital improvement funds available for their buildings, performance contracting removes a major barrier to state and local government entities making needed upgrades of their facilities. In some states, expanding the scope of traditional approaches to energy-saving performance contracting from its traditional energy focus to covering all components of building and site sustainability can be achieved under current laws regarding performance contracting. In other states, the legislation will need to be modified to cover this expanded scope.

This Guide discusses and provides model state procurement and contracting documents for green performance contracting.
SECTION 2: MODEL PROCUREMENT AND CONTRACTING DOCUMENTS FOR GREEN PERFORMANCE CONTRACTING

Green performance contracting provides several key benefits for building owners:

- It provides comprehensive integrated solutions to building sustainability improvements.
- It allows building owners to pay for building sustainability improvements, including capital improvements, with funds in the organization’s expense budget.

Green performance contracting can address a wide variety of building and infrastructure improvements:

- Energy efficiency improvements
- Water efficiency improvements
- Waste reduction improvements
- Building improvements
- Site improvements
- Infrastructure improvements
- Comprehensive sustainability improvements

The only limit on the scope of a performance contract is finding a package for improvements that the building and site owner and the service contractor feel meets both the improvement objectives and the financial requirements of the building owner in terms of the time required to pay off the loan used to pay for the project. The project development process requires some balancing of choices between short- and long-term payback measures to produce an overall payback period that is short enough to meet the building owner’s requirements.

Green performance contracting can be used to implement sustainability in:

- New buildings being designed and constructed
- Existing buildings

For the design and construction of new buildings, performance contracting can be used to pay for incremental sustainability improvements. In these new design and construction building situations, performance contracting is highly effective because, as the building is not yet built, the energy savings only need to pay for the incremental cost of higher-efficiency measures rather than for the whole cost, as is the case for existing buildings. For new buildings being designed, the performance baseline that higher-efficiency choices are compared to is the modeled performance of the as-designed less-efficient building plans. Applying performance contracting to buildings being designed and built is the perfect cure for pressure to “value engineer” the efficiency and sustainability out of new buildings as they are designed. In new buildings, performance contracting bridges the gap between the first-cost and life-cycle-cost perspectives by using the long-term energy savings to pay for the incremental first-cost of high-efficiency measures.

For existing buildings, green performance contracting provides the mechanism for implementing and financing the building efficiency and sustainability upgrades.

Combining performance contracting and sustainability to create green performance contracting creates a powerful tool for implementing sustainability because:
• The expensive parts of implementing sustainability are primarily the major energy efficiency improvements, and performance contracting allows these improvements to be paid for with the resulting energy savings using expense budget dollars.
• The energy savings resulting from the energy efficiency improvements that have always been the core of performance contracting are typically large enough to support the implementation of low-cost and no-cost sustainability measures.
• Once the energy efficiency improvements have been made and the low-cost and no-cost sustainability measures have been implemented, most buildings will have a high sustainability rating.

All types of organizations can use performance contracting to implement sustainability, including:

• Local government
• State government
• Federal government
• Companies
• Organizations

While in the past performance contracting has been primarily used by government entities, as building owners work to drive sustainability through their building portfolios, it is expected that the use of performance contracting by the private sector will be become common.

If your organization is new to using performance contracting, it is a good idea to start by educating yourself and your organization about performance contracting.

If your organization is a private company, you can use the same procurement and contracting approaches as are used by government entities, but you are not restricted by the state laws on use of performance contracting by government entities.

If your organization is a government entity, good questions to start this exploration with are:

• What are the laws and rules that apply to performance contracting by state and local government entities in your state?
• Is there a state entity that helps state and local governments with this process?
• What other state and local governments in your state are using performance contracting, and what can you learn from them?

Good Resources on Performance Contracting:

1. The Energy Service Coalition (www.energyservicescoalition.org), which is a nonprofit organization made up of state energy office representatives, performance contractor representatives, and others interested in performance contracting, maintains a list of links to most state statutes on performance contracting.
2. Your state energy office, in many cases, will provide information and/or support for performance contracting by state and local government organizations. To find contacts for your state energy office visit: www.naseo.org/members/states.htm.
3. Leonardo Academy (www.leonardoacademy.org), a nonprofit organization, has a deep understanding of performance contracting, sustainability of buildings, and the LEED rating system.
4. The National Association of Energy Service Companies (www.naesco.org) is a national trade association that has been promoting the use of performance contracting for over 20 years.

**STEPS FOR IMPLEMENTING A GREEN PERFORMANCE CONTRACTING PROJECT**

There are two approaches to procurement and contracting for performance contracts. One approach is the Request for Qualifications (RFQ) approach and the other is the Request for Proposals (RFP) approach.

**THE RFQ APPROACH**

In the RFQ approach, the building owner issues a request for qualifications, selects a service provider, has the service provider conduct a detailed sustainability audit of the building and propose a package of measures, and then negotiates an agreement on what to include in the final package of measures and the associated cost of this package of measures.

**Step 1: Issue Request for Qualifications (RFQ) and Select Contractor**

- Issue an RFQ
- Hold a site visit for interested contractors
- Review responses to the RFQ and select top candidates
- Interview top candidates (usually no more than 3)
- Select 1 contractor to proceed

**Step 2: Have Contractor Conduct Detailed Sustainability Audit**

- Have contractor conduct a detailed sustainability audit (investment-grade audit)
- Conduct a technical review of the sustainability audit (review energy and other cost-savings estimates, sustainability achievement objectives, opportunities and commitments, cost estimates, individual projects, monitoring and verification plans, and cash flow analysis projections for financing term)

**Step 3: Develop Performance Contract and Implement Project**

- Develop performance contract with contractor to implement project
- Implement project

**Step 4: Enter Performance Delivery Period**

- Receive ongoing O&M support for performance delivery
- Track sustainability performance
- Receive the guaranteed level of sustainability performance

**THE RFP APPROACH**

In the RFP approach, the building owner issues a request for proposals; allows all potential service providers to conduct a detailed sustainability audit of the building at their own expense and propose a package of measures, including the cost and guaranteed savings for each of these measures; selects a service provider; and decides which measures to include in the final package of measures, which determines the cost of the project and the guaranteed savings.

**Step 1: Issue Request for Proposals (RFP)**

- Issue RFP
- Hold a site visit for interested contractors
- Allow contractors conduct a detailed sustainability audit (investment-grade audit) at their own expense
- Request that contractors propose a package of measures and the cost and guaranteed savings of each measure
Step 2: Select Contractor

- Review proposals
- Select a service provider
- Select which of the proposed measures to include in the final package of measures to be implemented; determine cost of the project and level of guaranteed savings
- Enter into written agreement with contractor

Step 3: Have Contractor Implement Project

Step 4: Enter Performance Delivery Period

- Receive ongoing O&M support for performance delivery
- Track sustainability performance
- Receive the guaranteed level of sustainability performance

CHOICES TO MAKE WHEN INTEGRATING SUSTAINABILITY WITH PERFORMANCE CONTRACTING

Two options for implementing green performance contracting are discussed in more detail in the next section:

OPTION A: USE FULLY INTEGRATED APPROACH TO LEED FOR EXISTING BUILDINGS AND PERFORMANCE CONTRACTING

This option uses the LEED certification process to streamline the performance contracting process, and can be implemented using either an RFQ approach or an RFP approach.

OPTION B: USE EXPANDED PERFORMANCE CONTRACTING TO IMPLEMENT LEED FOR EXISTING BUILDINGS

This option expands the traditional approach to performance contracting to encompass implementation of LEED for Existing Buildings.

Option B can be implemented using either an RFQ approach or an RFP approach.

Both options work well, and your organization should use the approach that is most comfortable for you. Leonardo Academy believes that as experience is gained, Option A will become popular because the structure and third-party certification provided by LEED will be recognized as a tool for simplifying the green performance contracting process.

IMPLEMENTING GREEN PERFORMANCE CONTRACTING

Model documents for state and local government entities implementing green performance contracting using either option are included in the Appendices.

OPTION A: USE FULLY INTEGRATED APPROACH TO LEED FOR EXISTING BUILDINGS AND PERFORMANCE CONTRACTING

This option uses the LEED certification process to streamline the performance contracting process. A description of this approach is included in Appendix A.
Users can round out this description into contracting documents by drawing from the model documents for Option B and by adding language requiring annual re-certification under LEED-EB as part of the performance verification process for the green performance contract. Users are encouraged to keep these documents as lean as possible so the objectives remain clear and the documents themselves do not become an undue burden on the process.

**OPTION B: USE EXPANDED PERFORMANCE CONTRACTING TO IMPLEMENT LEED FOR EXISTING BUILDINGS**

This option expands the traditional approach to performance contracting to encompass implementation of LEED for Existing Buildings. The model documents for implementing this approach are included in Appendix B.

The model documents for Option B are based on the Colorado Governor’s Office of Energy Management and Conservation performance contracting documents. Linda Smith of the Colorado Governor’s Office of Energy Management and Conservation has guided the continuous improvement process for these documents since the early 1990’s, and generously provided them for use in this Guide. The Colorado performance contracting documents were chosen as the basis for these model documents in this Guide because they are periodically used by the Energy Services Coalition (ESC) as the starting point for developing model ESC performance contracting documents. Linda is also a founder and a member of the Board of the ESC. The ESC is a non-profit organization made up of government and industry professionals in energy performance contracting.

It is hoped that providing model documents for green performance contracting in this Guide will facilitate the implementation of green performance contracting by state and local government in many states.

In this Guide the Colorado performance contracting documents have been generalized so they can easily be used as models for other state and local governments as well as by non-government organizations and private sector companies.

List of model documents for Option B that are included in Appendix B:

- Request for Qualifications (RFQ)
- Cover Sheet
- Instructions
- Administrative Information

**RFQ Attachments:**

- **RFQ Attachment 1:** Special Contract Terms and Conditions
- **RFQ Attachment 2:** Proposed Project Schedule
- **RFQ Attachment 3:** Contractor Response
- **RFQ Attachment 4:** Evaluation Criteria
- **RFQ Attachment 5:** List of Facilities Included in RFQ and Technical Profile of these Facilities
- **RFQ Attachment 6:** Model Sustainability Audit and Project Proposal Contract
- **RFQ Attachment 7:** Model Sustainability Performance Contract
- **RFQ Attachment 8:** Financing Bid Package
SECTION 3: CONCLUSIONS

Buildings are a major cause of environmental impacts, so buildings provide major opportunities for reducing these environmental impacts and increasing sustainability. Many government and private organizations at the international, national, state, and local levels are setting sustainability goals for themselves. To reach these sustainability goals all the traditional tools for implementing energy efficiency improvements in buildings need to be upgraded and expanded to address overall sustainability. One very important tool for delivery of energy efficiency improvements in buildings, particularly in the public sector, is performance contracting.

This Guide provides guidance on how performance contracting, which is currently primarily used for implementing energy efficiency improvements in buildings, can be upgraded and expanded to address overall sustainability of buildings and sites.

Expanding energy efficiency-focused performance contracting to address overall sustainability provides two key benefits:

1. It puts these tools to work on promoting and delivering overall sustainability.
2. It puts the issue of overall sustainability to work on increasing the delivery of energy efficiency. Because overall sustainability is a big issue closely connected to image and brand for both government entities and private sector companies, selling the leadership of government entities and private sector companies on taking action to implement sustainability is frequently easier than selling them on taking action to increase energy efficiency, which is frequently viewed as a technical issue not associated with organizational brand and image.

Leonardo Academy is available to help your organization incorporate sustainability into your performance contracting initiatives. Also please give Leonardo Academy your input on your experience with using performance contracting to implement overall sustainability and let us know what you learn along the way so that we can share it with others.
APPENDIX A: DESCRIPTION OF PROCUREMENT AND CONTRACTING PROCESS FOR FULLY INTEGRATING LEED-EB AND PERFORMANCE CONTRACTING

This Appendix describes a fully integrated approach to green performance contracting and LEED-EB that takes advantages of the strengths of both. Integrating the two both simplifies the performance contracting process by using LEED-EB metrics for performance contract verification, and also makes it easy for building owners to use performance contracting as a funding source for implementing LEED-EB.

In order to make this approach very clear it is presented here without any legal language. It is recommended that users review and adjust this approach to fit their objectives in its current language and then ask their legal counsel to add any necessary legal language. We believe that because LEED-EB provides a great framework for building evaluation, improvement, and performance verification, this approach will greatly reduce the need for long and complicated legal documents. To flesh out this approach, draw on documents in Appendix B which include the procurement documents for a traditional approach to performance contracting with the scope broadened to encompass sustainability. It is suggested that these documents be edited by individual users to provide a clear description of the green performance contracting project and process.

Please give Leonardo Academy feedback on how you have implemented this approach so we can share your experience with others.

DESCRIPTION OF THE GREEN PERFORMANCE CONTRACTING PROJECT AND PROCESS

A. OBJECTIVES

The objective of this green performance contracting project and process is to use performance contracting process to implement sustainability in the building and site identified. Performance contracting is being used as the implementation mechanism, the LEED-EB® rating system is being used to provide the metrics for performance metrics and annual LEED-EB certification and recertification is being used as the over all performance verification mechanism.

B. REQUEST FOR QUALIFICATIONS

1. A request for proposals is being issued for this project that includes:
   a. A List of the Buildings and Sites covered by the request for proposals
   b. A description of the Financial Investment Building Owner is prepared to make
      i. The Building Owner is prepared to borrow funds to implement the self funding portion of this project.
      ii. The building owner will also accelerate the sustainability achievements for this building(s) by making an initial investment of $_____ and an annual investment of $_____ beyond what would be a self funding performance contracting project.
   c. A description of the required Level of Sustainability Achievements:
      i. The sustainability performance level of the building(s) must be:
         (A.) Raised to a LEED Silver (Change to fit your objective) level overall and maintained at that level over duration of the performance contract.
         (B.) Meet the specific minimum performance standards shown in an attached LEED-EB Check list. The minimum acceptable level of points for each credits of special interest to the building owners should be specified in this LEED-EB checklist.
   d. Measurement of Sustainability Achievements: Metrics and Verification of Achievements
      i. LEED-EB is being used as the metrics for sustainability performance achievements
(A.) Annual LEED-EB certification / recertification is being used as the sustainability performance verification mechanism.

(B.) Applying for and achieving initial and annual recertification under LEED-EB is the responsibility of the service provider.

(C.) There is an annual penalty for $______ for each building for each point or prerequisite the building falls below the target overall level or the specific minimum performance standards.

(D.) There is an annual reward of $______ for each building for each point the building is above the guaranteed target overall level.

e. Metrics for guaranteed levels of financial performance:
   i. Where possible the metrics included in LEED-EB will be used to establish the baseline to measure the performance achievements for each category of guaranteed financial performance,
   ii. Where this is not possible the base line will be based on the most recent three years of historical data.

f. Building Owners Requirements for the Project to be Developed by the Service Provider
   i. Projects developed must meet the requirements in 1.a.,b,c,d,e above.
   ii. Must not exceed a maximum duration of 25 years.

g. Required information in the RFQ Response - Information Needed from Respondents
   i. Name of company and contact information
   ii. Experience:
      (A.) Performance contracting
      (B.) Sustainable buildings and sites
      (C.) LEED-EB
   iii. Guarantees the service provider is willing to make before the detailed audit on level of achievement for LEED-EB prerequisites and points that will be earned.
   (A.) Show on the LEED-EB score card provided by the building owner in B.1.c.i.(B) above.

iv. Commitments for a Detailed Sustainability Audit
   (A.) Price for the detailed sustainability audit
   (B.) Commitments:
      (1) If selected audit will be carried out for specified cost
      (2) If a project is developed by the Sustainability Contractor that meets the Owners requirements and the project proceeds: the cost of the audit will be rolled into the performance contract
      (3) If the project does not proceed the building owner will pay the Sustainability Contractor for the audit
      (4) If a project is not developed by the Sustainability Contractor that meets the Owners requirements, the building owner does not pay for the Audit.

C. SELECTION PROCESS BASED ON RFQ RESPONSES BY SUSTAINABILITY SERVICE PROVIDERS

1. Selection will be based on:
   a. Experience with sustainability
   b. Experience with LEED
   c. Experience with performance contracting
   d. Level of pre detailed audit commitment on LEED-EB Score Card
   e. Price of Detailed Sustainability Audit

D. PROJECT DEVELOPMENT PROCESS

1. Selected Sustainability Service Provider carries out detailed energy audit
2. Sustainability Service Provider
   a. Proposed Options for Action for each building and site
      i. A list of planned achievements for each buildings in the form of a filled out LEED-EB check list
   b. A financial description of the project:
      i. The Project cost:
(A.) Borrowing by Building Owner
  (1) Total amount
  (2) Annual repayments

(B.) Additional financial contributions by Building Owner
  (1) Initial
  (2) Annual

ii. Guaranteed Project Performance:
   (A.) Sustainability performance
     (1) LEED-EB Check List
   (B.) Financial performance
     (1) Annual savings streams for project
       (a) List of savings streams
       (b) Review of uncertainty for each of saving streams
     (2) Net annual cost of project for building owner

3. Negotiation between Building Owner and Sustainability Contractor:
   a. To fine tune project to meet needs of Building Owner.
      i. Sustainability Performance
      ii. Financial Performance
      iii. Performance Guarantees

E. CONTRACT FOR PROJECT

1. Actions for each building and site
2. Project Financing:
   a. The project cost:
      i. Borrowing by building owner
      ii. Additional financial contributions by Building Owner
         (A.) Initial
         (B.) Annual

3. Performance Achievements
   a. Guaranteed Project Performance:
      i. Sustainability performance
         (A.) Guaranteed Sustainability Achievements for each buildings
            (1) LEED-EB is being used as the metrics for sustainability performance achievements
                (a) LEED-EB Check list showing achievement commitments by sustainability contractor
                (b) Annual recertification under LEED-EB to verify sustainability performance
                    (i) Applying for and achieving initial and annual recertification under LEED-EB is the responsibility of the service provider
                    (ii) There is an annual penalty of $_____ for each building for each point or prerequisite the building falls below the target overall level or the specific minimum performance standards.
                    (iii) There is an annual reward of $_____ for each building for each point the building is above the guaranteed target overall level.
      ii. Guaranteed Financial Performance
         (1) Guaranteed Annual savings streams for project
             (a) List of savings streams
                (i) Type
                (ii) Amount
                (iii) Requirement that annual savings be delivered each year
             (2) Annual evaluation of achievements of Financial Performance Guarantees
      iii. Payments to Building Owner if financial and sustainability guarantees are not met
F. ONGOING SUSTAINABILITY AND FINANCIAL PERFORMANCE VERIFICATION

1. Sustainability Performance
   a. Annual Recertification under LEED-EB
      i. Comparison of certification achievements to guaranteed levels of sustainability performance
         (A.) There is an annual penalty of $_____ for each building for each point or prerequisite the building
             falls below the target overall level or the specific minimum performance standards.
         (B.) There is an annual reward of $_____ for each building for each point the building is above the
             guaranteed target overall level.
      ii. Identification of opportunities to improve sustainability performance

2. Financial Performance
   a. Annual comparison of financial performance relative to guaranteed level of financial performance
      i. Identification of opportunities to improve financial performance
      ii. Payments to Building Owner if financial and sustainability guarantees are not met
OVERVIEW OF THE RFQ AND CUSTOMIZATION FOR YOUR ORGANIZATION

RFQ REQUIREMENTS

This functions as an (Request for Qualifications) under many government procurement codes. Encumber funds temporarily to cover the cost of the audit until the later performance contract is signed; these funds will only be used if a subsequent performance contract is not signed; the funds are needed from the time the audit contract is signed until the time the performance contract is signed but should be identified prior to developing the RFQ.

USING THIS MODEL RFQ

This model RFQ is easy to customize it for your use. All the key areas to customize are highlighted. The last two attachments include the two model contracts that will be used for the Technical Sustainability Audit and for the Sustainability Performance Contract. The contracts can remain in the RFQ as-is and do not need to be customized for use in this RFQ.

- Recommendations, explanations and negotiating tips are included.
- The RFQ is a sample document only and does not attempt to identify or address all circumstances or conditions you may encounter or desire. It is recommended that you consult your legal counsel and procurement staff:
  - If your organizations is a state or local government entity – ask you legal staff to make sure these model documents meet the specific legal requirements of your state
  - To adapt these model documents to meet your needs.
- Download a current copy of this Guide from the Leonardo Academy web site, because changes and improvements are made regularly.
- **Select one option on Metrics and Verification to include throughout your RFQ and contracting documents:**
  - Metrics and Verification Option 1: Require the Use of annual LEED-EB certification as the method for verifying sustainability performance achievements.
  - Metrics and Verification Option 2: Require the building owner (user) to specify the method to be used for verifying sustainability performance achievements.

GENERAL

Prior to issuing this RFQ, it is important to have funds identified for temporary obligation during the Audit Contract stage. The Details Sustainability Audit and Project Development Contract is a standalone contract to be followed by the Sustainability Performance Contract. The latter contract guarantees saving will pay for all project costs, including the cost of the audit. However, because the Audit Contract is initially a stand-alone contract, it will require funds in the amount of the audit cost (usually 7 to 15 cents per square foot) to be set aside in order to pay for the cost of the audit unless and until the later Sustainability Performance Contract can incorporate and pay for the audit costs.

It is tempting to develop a prescribed scope of work, detailing exactly what projects the CONTRACTOR should undertake in your facilities. This is not recommended, however, because it is very valuable to use the CONTRACTOR’s technical expertise to help identify and assess the opportunities that are most cost-effective or most valuable for your facilities instead of pre-determining the scope.
RFQ PREPARATION AND CUSTOMIZATION QUESTIONS

CONTACT INFORMATION:

- Name of contracting entity (legal name, Board of ________)
- Abbreviated name to use throughout the RFQ?
- Facilities Contact person -- name, title, address (physical & mailing address), e-mail address, phone, fax

PROPOSAL SUBMISSION:

- Where to submit proposals (physical address for FedEx or drop-off, mailing address)
- Purchasing specialist or person who handles proposals – name, title, phone

SITE VISIT:

- Required or optional?
- Date?
- Duration? (usually 1 ½ to 2 hours including 30-minute orientation meeting, similar to a pre-bid meeting so interested respondents can ask questions)
- Contact person name/phone/fax/e-mail/address who will be arranging site visit (same as facilities contact person above?)
- Physical address and directions

FACILITY PROFILE:

- In addition to potential self-funded projects that were identified in the study we prepared, do you have any other specific needs to include?
- Is there anything you need to eliminate?

(Note that the scope of work does not need to be clearly defined, because you will be contracting for an CONTRACTOR to do further analysis to more fully develop the scope of work.)

ALLOWABLE SAVINGS:

- Utility savings (energy & water)
- Maintenance savings (eliminated service contracts, etc.)
- Materials savings (lamp replacements, etc.)
- Labor cost savings (note that labor savings does not necessarily translate to dollar savings).
- Other savings relevant to overall sustainability

PROJECT SCHEDULE:

- Issue RFQ
- Site visit (usually 2-3 weeks after RFQ issued)
- Proposals due (usually 2 weeks after site visit)
- Proposal Review (if you schedule your committee in advance, this can be done in a day or two)
- Interviews (usually 1-2 weeks after proposal review)
- CONTRACTOR Selection & Award (usually within 1 week of interview, but allow time for Board approval if needed)
• Construction: Any special time for construction? (Note that work in the rooms is usually scheduled for evenings & weekends to avoid conflicts.)

**EVALUATION TEAM:**

Number of people on evaluation committee? (Number of proposals needed -- one for each reviewer and for any consultants)

**CONTROLS STANDARDIZATION:**

If this will involve an upgrade or modification to your controls system, do you want to pre-specify a desired controls manufacturer? Name of manufacturer? Do you have sole-source approval to specify this manufacturer?

**SPECIAL PROJECTS**

- Desired projects
- Any special projects required
- Funding assistance provided

**CONTRACT TERMS:**

- List of ALL facilities -- phased approach?
- Financing term (recommend stating a desired term of 12 to 15 years but not absolutely restricting it until the contract stage)

**ISSUES TO CONSIDER:**

Gain concept approval from administrators to potentially sign a performance contract. Be aware of the need to temporarily encumber funds from the time the audit contract is signed until the time the performance contract is signed. Allow 8-10 cents/square foot of audited space. Once the performance contract is signed, the project savings can pay for the audit costs.
# REQUEST FOR PROPOSAL COVER SHEET

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All Bids Shall be Quoted F.O.B. Destination unless Otherwise Specified

**Sustainability Performance Contracting Services**
Per the attached specifications, terms and conditions

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<th>F.E.I.N.:</th>
<th>Delivery Date:</th>
<th>Payment Terms:</th>
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<td>Company Name:</td>
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<td>City: State: Zip:</td>
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<td>Phone Number:</td>
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Contact for Clarifications:

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**IMPORTANT:** The following information must be on the outside of the Bid Return Envelope:

**Bid Number -Opening Date and Time**

Please be advised that telegraphic or electronic bids (Fax, Western Union, Telex, e-mail, etc.) cannot be accepted directly in the Purchasing Office as a sealed bid. Bidders are urged to read the solicitation document thoroughly before submitting a proposal. Offerors are required to submit Federal Employer Identification Number (F.E.I.N.) prior to payment.
REQUEST FOR QUALIFICATIONS (RFQ)

REQUEST FOR QUALIFICATIONS
for Sustainability Performance Contracting Services
for
(Insert name of your organization)

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- RFQ Attachment 2: Proposed Project Schedule
- RFQ Attachment 3: Contractor Response
- RFQ Attachment 4: Evaluation Criteria
- RFQ Attachment 5: List of Facilities Included in RFQ and Technical Profile of these Facilities
- RFQ Attachment 6: Model Sustainability Audit and Project Proposal Contract
- RFQ Attachment 7: Model Sustainability Performance Contract
- RFQ Attachment 8: Financing Bid Package
INSTRUCTIONS AND ADMINISTRATIVE INFORMATION

A. **Issuing Organization.** This Request for Qualifications (RFQ) is issued for [insert the name of your organization]. The Purchasing Office for this organization is to be the sole point of contact concerning this RFQ.

B. **Official Means of Communication.** During the solicitation process for this RFQ, all official communication between Agency and offerors will be via postings on the [insert the name of your organization] Notices web site: [insert the appropriate web page for you organization]. This Organization will post notices, which will include, but not be limited to, any modifications to administrative or performance requirements, answers to inquiries received, clarifications to requirements, and the announcement of the apparent winning offeror. **It is incumbent upon offerors to carefully and regularly monitor this web site for any such postings.**

C. **Purpose.** This RFQ provides prospective offerors with sufficient information to enable them to prepare and submit proposals for consideration by [insert the name of your organization] to satisfy the need for expert assistance in the completion of the tasks outlined.

D. **Scope.** This RFQ includes instructions governing the proposals to be submitted and the material to be included therein; mandatory requirements that must be met to be eligible for consideration; and other requirements. In responding to this RFQ, offeror verifies acceptance of document content unless otherwise specified in writing.

E. **Schedule of Activities**

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<tr>
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<th>Schedule of Activities</th>
<th>Deadline (MST)</th>
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<tr>
<td>1</td>
<td>RFQ Published on the [insert the appropriate web page for your organization]</td>
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<td>2</td>
<td>Site Visit</td>
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<td>3</td>
<td>Prospective bidder’s written inquiries</td>
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<td>4</td>
<td>Responses to Inquiries Published on [insert the appropriate web page for your organization]</td>
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<td>5</td>
<td>Submission of Qualifications</td>
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<td>6</td>
<td>Selection of 3 Qualified Bidders</td>
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<td>7</td>
<td>Proposal Submission</td>
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<td>8</td>
<td>Interviews</td>
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<tr>
<td>9</td>
<td>Announcement of Award Published on [insert the appropriate web page for your organization]</td>
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F. **Inquiries.** Prospective offerors may make written, fax or email inquiries concerning this RFQ to obtain clarification of requirements. No inquiries will be accepted after the date and time indicated in the Schedule of Activities. Direct inquires to the [insert the appropriate web page for your organization] Purchasing Office. All inquiries received and the responses will be published as a single modification to the solicitation via the [insert the appropriate web page for your organization] website. Offerors should not rely on any other statements that alter any specification or other term or condition of the RFQ. Inquires may be sent to the following addresses:

Mail inquires to:
Agency Name
Attn: Purchasing Office,
Address
(Under no circumstances may proposals be submitted by fax. Any such transmission will not be accepted for consideration. Proposals must be submitted “sealed” to the Purchasing Office.)
G. **Addendum or Supplement to Request for Proposal.** In the event it becomes necessary to revise any part of this RFQ, an addendum notice will be sent via the [insert the appropriate web page for your organization] website. Written modifications only will be legally binding. No employee or agent of [insert the name of your organization] may verbally alter the contents of the RFQ.

H. **Modification or Withdrawal of Proposals.** Proposals may be modified or withdrawn by the offeror prior to the established due date and time.

I. **Submission of Proposal Packet.** Submit one original and number [#] copies of the proposal. Any differences between the original and the copies will be resolved in favor of the original copy. Submit only one copy of the Sample Sustainability Audit (hard copy under separate cover; or an electronic file if all contents are in one file).

All material should be clearly labeled and submitted in flat bound binding to facilitate copying and filing. Omit extensive artwork, unusual printing, or other materials not essential to the utility or clarity of the proposal. The person legally authorized to bind the offeror to the proposal must sign the Submittal Coversheet. The Submittal Coversheet is to be included with the proposal copy that is marked ORIGINAL. If an offeror is owned or controlled by a parent company, provide the name, main office address and parent company’s tax identification number.

It is the responsibility of the offeror to ensure that the proposal is received on or before the proposal opening date and time. (See the delivery address on the proposal cover sheet.) Late proposals will not be accepted. Proposals must be submitted in a sealed package. The outer envelope of the package must include the following information: The name of the RFQ being responded to, Contact information for the offeror including: Name of offeror, a contact person at the offeror, a telephone number, mailing address and an email address.

J. **Acceptance of RFQ Terms:** A proposal submitted in response to this RFQ shall constitute a binding offer. Acknowledgement of this condition shall be indicted by the autographic signature of the offeror or an officer of the offeror legally authorized to execute contractual obligations. A submission in response to this RFQ acknowledges acceptance by the offeror of all terms and conditions including compensation, as set forth herein. An offeror shall identify clearly and thoroughly any variations between its proposal and the RFQ from [insert the name of your organization]. Failure to do so shall be deemed a wavier of any rights to subsequently modify the terms of performance, except as outlined or specified in the RFQ.

K. **Protested Solicitations and Awards:** Any actual or prospective offeror or Contractor who is aggrieved in connection with either the solicitation or subsequent award of a contract may protest to the Agency Purchasing Office. The protest shall be submitted in writing within seven working days after such aggrieved person knows, or should have known, of the facts giving rise thereto (emphasis added).

**Note:** With regard to the emphasized language above, it is important for offerors to note that a challenge to the solicitation’s requirements or specifications should be made within 7 days of when the protestable item is known. In other words, if you believe that the solicitation contains a requirement you want to protest, the protest should be submitted within the 7 day time period, even if that means it is filed during the time the solicitation is still open.

Announcement of the apparent winning offeror will be made via a posting on the [insert the appropriate web page for your organization] website. The requirement for timely submission of any protest (7 working days) will begin on the first working day following posting of the award notice on the [insert the appropriate web page for your organization] website.

L. **Confidential/Proprietary Information:** Any restrictions of the use or inspection of material contained within the proposal shall be clearly stated in the proposal itself. Written requests for confidentiality shall be submitted, by the offeror with the proposal. The offeror must state specifically what elements of the proposal are to be considered confidential/proprietary.
Confidentiality/proprietary information must be readily identified, marked and separated/packaged from the rest of the proposal. Co-mingling of confidential/proprietary and other information is NOT acceptable. Neither a proposal, in its entirety, nor proposal price information will be considered confidential and proprietary. Any information that will be included in any resulting contract cannot be considered confidential.

A written determination will be made as to the apparent validity of any written request for confidentiality. In the event of no concurrence with the offeror’s request for confidentiality, the written determination will be sent to the offeror.

M. Ownership of Response Material and Resulting Products/Services by [insert the name of your organization]. All material that is submitted in response to this request becomes the property of [insert the name of your organization]. Disqualification of an offeror does not eliminate this right. All products produced in response to the ensuing agreement will be the sole property of the [insert the name of your organization]. Any exceptions must be clearly outlined and may serve as cause for rejection of the proposal. Proposals may be reviewed by any person after the “Notice of Intent to Make an Award” letter has been issued.

N. Proposal Prices by ECM. Estimated proposal prices are not acceptable. Proposal prices will be considered to be your best and final offer, unless otherwise stated in the RFQ. The proposal price will be considered in determining the apparent successful offeror.

O. Proposal Evaluation. [Insert the name of your organization] reserves the right to make an award on receipt of initial proposals, so offerors are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Offerors not meeting the requirements identified in the RFQ shall be ineligible for further considerations. An evaluation committee will judge the merits of the proposals. In general, all proposals are evaluated based on: responsiveness and completeness of the proposal; the technical content of the proposal, methodology and appropriateness to the project; previous background and experience; and cost data. Specifically, the proposals will be evaluated on the criteria outlined by the committee. Discussions may be held with offerors to clarify requirements. After initial evaluation of proposals and identification of those deemed to be reasonably acceptable, the [insert the name of your organization] may request oral presentations, a site inspection of facilities, or to exhibit or otherwise demonstrate the information contained therein. The [insert the name of your organization] reserves the right to select the site and shall be at the offeror’s reasonable expense for the evaluation committee. Changes to proposals, if permitted, will be requested in writing from offerors. After the evaluation is completed, the committee will recommend the offeror whose proposal is most responsive to the needs of [insert the name of your organization] while within available resources. An Evaluation Committee will review and score offers submitted and make a recommendation for award. This selection will be for award to the responsible offeror whose proposal is determined to be most advantageous to [insert the name of your organization].

P. Notice of Intent to Award. [Insert the name of your organization], after review and approval of the evaluation committee’s written recommendation, will notify all offerors via a posting on [insert the appropriate web page for your organization]. Notices website of the results of the RFQ evaluation. The posting will be an announcement of “Notice of Intent to Make An Award” which will name the apparent successful offeror.

Q. Award of Contract. Award will be made to the responsible offeror whose proposal, conforming to the RFQ, will be most advantageous to [insert the name of your organization], price and other factors considered. Subject to the outcome of this RFQ the [insert the name of your organization] may choose to enter into a contract. In the event the parties are unable to enter into a contract, the [insert the name of your organization] may elect to cancel the “Notice of Intent to Make an Award” letter and make the award to the next most responsible offeror.

R. Acceptance of Proposal Content. The contents of the proposal (including persons specified to implement the project) of the successful offeror will become contractual obligations if acquisition action ensues. Failure of the successful offeror to accept these obligations in a contract, purchase order, or similar authorized acquisition document may result in cancellation of the award and such offeror may be removed from future solicitations.
S. **Standard Contract.** (Insert the appropriate web page for your organization) will incorporate its standard contract provisions (Special Provisions) into any contract resulting from this RFQ. Offeror will be asked to agree to the (Insert the name of your organization) Standard Contract Terms and Conditions, including the (Special Provisions) attached to this solicitation.

T. **RFQ Cancellation.** Agency reserves the right to cancel this Request for Proposal at any time, without penalty.

U. **Public Records.** All records are available for public inspection after the "Notice of Intent to Award" has been issued, subject to the limitations of Proprietary Information. Requestors will be required to pay associated costs for copies of records.

V. **Incurring Costs.** (Insert the name of your organization) is not liable for any cost incurred by offerors prior to issuance of a legally executed contract, purchase order, or other authorized acquisition document. No property interest, of any nature shall occur until a contract is awarded and signed by all concerned parties.

W. **Minority-Owned/Women-Owned Business Enterprise Participation.** It is the (Insert the name of your organization) intent to encourage minority/woman-owned businesses participation. Offerors are reminded it is illegal to discriminate.

X. **Non-Discrimination.** The offeror shall comply with all applicable state and federal laws, rules and regulations involving non-discrimination on the basis of race, color, religion national origin, age or sex.

Y. **Rejection of Proposals.** (Insert the name of your organization) reserves the right to reject any or all proposals and waive informalities and minor irregularities in proposals received and to accept any portion of a proposal or all items proposed if deemed in the best interest of the (Insert the name of your organization).

Z. **News Releases.** News releases pertaining to this RFQ shall NOT be made prior to execution of the contract without the prior written approval by the (Insert the name of your organization).

AA. **Contract Cancellation.** (Insert the name of your organization) reserves the right to cancel, for cause, any contract resulting from this RFQ by providing timely written notice to the Contractor.

BB. **Certification of Independent Price Determination.**

1. By submission of this proposal each offeror certifies, and in the case of a joint proposal each party, thereto certifies as to its own organization, that in connection with this procurement:

   a. The prices in this proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other offeror or with any competitor;

   b. Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to opening, directly or indirectly to any other offeror or to any competitor; and

   c. No attempt has been made or will be made by the offeror to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

2. Each person signing the Request for Proposal form of this proposal certifies that:

   a. He/she is the person in the offeror’s organization responsible within that organization for the decision as to the prices being offered herein and that he/she has not participated, and will not participate, in any action contrary to 1(a) through 1(c) above, or
He/she is not the person in the offeror’s organization responsible within that organization for the decision as to the prices being offered herein but that he/she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to 1(a) through 1(c) above, and as their agent does hereby so certify; and he/she has not participated, and will not participate, in any action contrary to 1(a) through 1(c) above.

A proposal will not be considered for award where 1(a), 1(c) or 2 above has been deleted or modified. Where 1(b) above has been deleted or modified, the proposal will not be considered for award unless the offeror furnishes with the proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency, or his/her designee, determines that such disclosure was not made for the purpose of restricting competition.

Conflict of Interest. By submission of a proposal, proposer agrees that, at the time of contracting, the Contractor has no interest, direct or indirect, that would conflict in any manner or degree with the performance of the Contractor’s service. The Contractor shall further covenant that, in the performance of the contract, the Contractor shall not employ any person having any such known interest.

Taxes. [Include this provision for state and local government entities] (Insert the name of your organization), as purchaser, is exempt from all federal excise taxes under Chapter 32 of the Internal Revenue Code and from all state and local government use taxes. Seller is hereby notified that when materials are purchased in certain political sub-divisions the seller may be required to pay sales tax even though the ultimate product or service is provided to a state of Local Government Entity. This sales tax will not be reimbursed by [insert the name of your organization].

Records Retention and Audits. The selected offeror shall maintain related business records as would be kept by a reasonably prudent practitioner of your profession and within generally accepted accounting practices. All records are to be sufficient to properly reflect all direct and indirect costs of labor, materials, equipment, supplies, and services, and other costs of whatever nature for which payment was requested. The State has the right to audit these records. They are to be maintained for a period of four years from the day of final payment or for such other period as necessary to resolve any pending matters.

Availability of Funds. [Include this provision for state and local government entities] Financial obligations of [insert the name of your organization] payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. In the event funds are not appropriated, any resulting contract will become null and voice, without penalty to [insert the name of your organization].

Indemnification. To the extent authorized by law, the Contractor shall indemnify, save and hold harmless the [insert the name of your organization], it employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor or its employees, agents, subContractors, or assignees pursuant to the terms of the contract resulting from this RFQ.

Scope of Award. The scope of the award cannot be altered or cancelled without the written authorization of the Agency Purchasing Office.

Order of Precedence. In the event of any conflict or inconsistency between terms of this Request for Qualifications and the offer, such conflict or inconsistency shall be resolved first by giving effect to the terms and conditions of the contract, second to the request for proposal, and third, to the proposal.

Supplemental Solicitation Instructions. The instructions throughout this RFQ, supplement [insert the name of your organization Solicitation Instructions and Terms and Conditions linked through [insert the address of the appropriate web page fro your organization].
RFQ Phase

Site Visit. A site meeting and tour of the facilities will be held after the prebid conference prior to the proposal due date. The site visit is mandatory or optional for all Contractors who will later submit a proposal. No follow-up tours, additional access to buildings, or alternative dates for tours will be allowed unless offered to all respondents. Note: The site visit does not need to be mandatory as the facility information provided in the appendix should be adequate for the Contractor to determine whether to respond to this RFQ. An optional site visit is recommended.

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Note: Hold a 30-minute meeting to describe the process, timeline, expectations, etc. Offer a tour of a few key facilities over the next one hour. There is no need for Contractors to visit all facilities.

LOCATION:
- Building name
- Meeting Room
- Physical address
- Directions

Review of Written Proposals. Proposals must be prepared as described in RFQ Attachment 3: Contractor Response. Proposers within the competitive range will be invited to participate in the interviews.

Interviews. Interviews will provide an opportunity for clarification of the written proposal. Contractor representatives at the interview should include individuals who will be key points of contact and have major responsibility for contract negotiation, engineering and design, construction management and follow-up monitoring. Each interview may be tape-recorded. Scores from the written proposal will be modified based on clarifications and the top-ranking Contractor will be considered for award.

Final Selection. Final reference checks will be conducted with the apparent awardee (top-ranked Contractor) prior to making the final selection. An award will be made to the selected Contractor.

Sustainability Audit and Project Proposal Phase

Note: Agency must have funds available to pay for the audit in the event that a sustainable performance contract is not later executed. These funds must be allocated/encumbered at the time of signing of the audit contract and will be unencumbered in full when the performance contract is executed.

Sustainability Audit and Project Proposal Contract. A Sustainability Audit and Project Proposal Contract will be negotiated as presented in RFQ Attachment 6: Model Detailed Sustainability Audit and Project Proposal Contract (also see RFQ Attachment 1: Special Contract Terms and Conditions).

Construction/Implementation/Commissioning and Financing Phase

Sustainability Performance Contract. Following successful completion and acceptance of the Detailed Sustainability Audit and Project Development Contract, an Sustainability Performance Contract will be negotiated to implement the projects, as given in RFQ Attachment 7: Model Sustainability Performance Contract (also see RFQ Attachment 1: Special Contract Terms and Conditions). Any or all performance contract agreements may be denied.

Financing Agreement. The Contractor will solicit bids from a minimum of three financing companies, prior to negotiation of the Sustainability Performance Contract, using the bid documents in RFQ Attachment 8: Financing Bid Package. Agency will make the final selection.
OVERVIEW

(Insert the name of your organization) seeks proposals from Sustainability Service Provider (Contractor) to conduct a Sustainability audit of facilities and implement a Sustainability Performance Contract. The Contractor will identify and implement building improvements to reduce energy and related costs in facilities, increase the sustainability of the building and site such that annual cost savings are applied to annual payments for improvements.

The contracting process has three phases:

- **Detailed Sustainability Audit and Project Proposal Phase:** A contract for the Detailed Sustainability Audit will be developed with the selected Contractor. This Detailed Sustainability Audit will investigate the facilities and sites covered by the RFQ, identify and evaluate cost-saving measures, identify and evaluate opportunities for increasing sustainability, assess how well the sustainability objectives of (insert the name of your organization) are being address, and define the proposed project scope, cost, savings and cash-flow over the proposed financing term. A project proposal will present aggregated measures that can be financed through guaranteed savings and any additional financing that (insert the name of your organization) has specified in the RFQ that it is willing to invest in increased sustainability.

  - The following Metrics and Verification approach will be used in the RFQ and contracts and should be addressed in the audit (User should select one option):
    - **Metrics and Verification Option 1:** Require the Use of annual LEED-EB certification as the method for verifying sustainability performance achievements.
    - **Metrics and Verification Option 2:** Require the building owner (user) to specify the method to be used for verifying sustainability performance achievements.

  - The amount of investment the Building Owner is willing to make in sustainability beyond what is self funding by the performance contract. (The User should specify whether to require Level 1 or Level 2. Once the decision is made, it should be implemented consistently through out the Request for Qualifications and contract.)

- **Construction/Implementation/Commissioning and Financing Phase:** A Sustainability Performance Contract will be negotiated following the audit. This establishes the project scope and costs, and provides for construction and follow-up services to be provided during the financing term. A separate financing agreement will be developed.

- **Post-Construction Guarantee/Monitoring Phase:** After construction, the Contractor will offer a variety of services to ensure guaranteed savings, guaranteed level of sustainability, staff training, follow-up monitoring, and contract maintenance services are delivered.
STATEMENT OF WORK

Contractor Services

Note: It is tempting to develop a prescribed scope of work, detailing exactly what projects the CONTRACTOR should undertake in your facilities. This is not recommended, however, because it is very valuable to use the CONTRACTOR’s technical expertise to help identify and assess the opportunities that are most cost-effective or most valuable for your facilities instead of pre-determining the scope.

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

- **Detailed Sustainability Audit and Project Proposal Phase**
  - detailed energy audit to evaluate costs and savings of a variety of energy and water-saving measures
  - detailed sustainability audit to identify and evaluate the costs and benefits of opportunities to increase sustainability and achieve the sustainability objectives of (insert the name of your organization) stated in the RFQ
    - Relative to the system of sustainability metrics specified by (insert the name of your organization) in the RFQ
    - Relative to the method for verification of sustainability achievements specified by (insert the name of your organization) in the RFQ
  - project proposal including financial analysis
  - benchmarking using Energy Star tools
  - monitoring and verification plan
  - utility bill data services to capture credits from utility bill errors

- **Construction/Implementation/Commissioning and Financing Phase**
  - engineering design
  - equipment procurement and purchasing
  - construction management
  - hazardous waste disposal or recycling
  - ability to arrange financing
  - commissioning
  - ability to achieve guaranteed sustainability objectives during design and implementation phase

- **Guarantee/Monitoring Phase**
  - continuing operations and maintenance for all improvements
  - staff training on routine maintenance and operation of systems
  - training of occupants
  - guarantee of performance and cost savings for the entire term of the contract
  - monitoring and verification for measurement and reporting of the performance and savings
  - provide for independent review of monitoring & verification (guaranteed savings pay for independent Contractor)
  - analysis and application for Energy Star Label and/or LEED-EB (Leadership in Energy and Environmental Design for Existing Buildings, by the US Green Building Council)
  - monitoring and reporting of emissions reductions
  - maintaining long-term, high-efficiency performance of buildings
  - ability to achieve guaranteed sustainability objectives during operation phase

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

- **Mechanical Systems.** Heating, ventilating and air conditioning (HVAC) systems, energy management and control systems, domestic hot water systems, distribution systems, etc.
- **Plants.** Distribution systems, cogeneration systems, etc.
- **Lighting systems.** Indoor and outdoor lighting systems, lighting controls, daylighting strategies.
• Building envelope systems: Windows, insulation, weatherization, etc. (It is recognized that window replacements are rarely cost-effective, but could be considered as part of a comprehensive plan.)
• Specialty Systems: laundry equipment, kitchen equipment, pool systems, renewable energy systems.
• Water and Sewage Systems: automatic controls, low-flow faucet aerators, low-flow toilets, cooling tower modifications, pool covers, and irrigation system controls or modifications.
• Sustainability in building upgrades and operations: Strategies to improve sustainability during building upgrades and operation and maintenance and reach sustainability objectives identified the RFQ
  o Relative to the system of sustainability metrics specified by [insert the name of your organization] in the RFQ
  o Relative to the method for verification of sustainability achievements specified by [insert the name of your organization] in the RFQ
• Desired projects. Note: Identify any specific needs or desires that you think must be included in a performance contracting project, or projects that are of particular interest to you. Keep in mind that the CONTRACTOR should be given the flexibility to use its own expertise to determine a broad scope of work, so avoid using this section to pre-define the scope of work.

Note: Delete items above that do not exist on the sites and buildings included Covered by the RFQ.

STANDARDIZED PROCESS

(Include for state and local government RFQs in states the provide process support for performance contracting)

• State Support for Sustainable Performance Contracting Process in state and local government Buildings: [insert the name of your organization] has requested the support of relevant state agency for this project. The relevant state agency for this project will work with: [insert the name of your organization in all phases of the performance contracting process, providing the following assistance in: developing a performance contracting project, developing and negotiating the audit contract, reviewing the technical audit report regarding cost and energy savings estimates, reviewing and advising on the monitoring and verification plan, developing the performance contract and providing negotiating assistance, and providing on-going support.
• Standardized documents: To the extent they are available and applicable to the [insert the name of your organization] uses standardized documents for sustainability performance contracting.

BUILDINGS, FACILITIES AND APPROACH

The sites and facilities listed in RFQ Attachment 5: List of Facilities Included in RFQ and Technical Profile of these Facilities are being addressed by this RFQ and shall be addressed by the proposal developed. Work may be conducted in phases to work through the listed facilities, where the detailed scope of work can be developed at any time during the term of the performance contract. The performance contract can be amended at any time during the initial performance contract term to address other buildings or new projects. [insert the name of your organization] reserves the right to reduce the scope of work, to conduct the work in phases or to segment work in facilities. Additional facilities not listed in RFQ Attachment 5 can be added by [insert the name of your organization] at any time during the term of the performance contract by including a scope of work in a contract amendment.

Note: The entity issuing the RFQ should consider the number of facilities it wants to include in the RFQ by including them in RFQ, Attachment 5: List of Facilities Included in the RFQ and Technical Profile of these Facilities, based on the size of the organizations and degree of experience with performance contracting. Entities many facilities and new to the process may wish to include a smaller number of facilities in its first several RFQs to gain experience with the process and then increase the numbers included in later RFQs. Entities with a small number of facilities may want to include all their facilities to attract the interest of more potential sustainability performance contracting service providers.
RFQ ATTACHMENT 1: SPECIAL CONTRACT TERMS AND CONDITIONS

**Contract Documents**

The Model Sustainability Audit & Project Proposal Contract (RFQ Attachment 6) and the Model Sustainability Performance Contract (RFQ Attachment 7)

**Payment for Audit**

As given in the Model Detailed Sustainability Audit & Sustainability Project Proposal Contract (RFQ Attachment 6):

Agency shall have no payment obligations under this contract provided that CONTRACTOR and Agency execute a Sustainability Performance Contract within (Insert Number of Days – maximum 90) days, or such longer period as the parties may mutually agree, after submission and acceptance by Principal Representative of the final Detailed Sustainability Audit report and Project Development Proposal by CONTRACTOR to Agency.

Should the CONTRACTOR determine any time during the Detailed Sustainability Audit that savings cannot be attained to meet Agency’s terms as set forth in the RFQ, the Detailed Sustainability Audit will be terminated by written notice of the CONTRACTOR to the (insert the name of your organization). In this event this Contract shall be cancelled and (insert the name of your organization) shall have no obligation to pay, in whole or in part, the amount specified in this paragraph.

(insert the name of your organization) shall have no payment obligations under this Contract in the event that CONTRACTOR's final Detailed Sustainability Audit report does not contain a package of energy and water saving measures which, if implemented, will provide the Agency with cash savings to meet the following terms:

1. Meets or exceeds the minimum sustainability achievement requirement specified by (insert the name of your organization). Choose one of the following options based the degree to which LEED is being used in the Sustainability Performance Contracting process:
   a. Option 1: Using LEED-EB as the sustainability metric and annual LEED-EB certification as the sustainability performance verification method implemented and paid for by the Sustainability Performance Contractor:
      i. Provides a Performance Guarantee that the proposed work
         (1) meets all the LEED-EB Prerequisites for at least (insert minimum number) percent of the total floor area of all the buildings covered by the RFQ.
         (2) Earn at least (insert minimum number) LEED-EB points each building.
         (3) Earn at least (insert minimum number) floor area weighted average LEED-EB points for all buildings included in the RFQ.
         (4) Earn at least (insert minimum number) LEED-EB Energy credit 1 points each building.
         (5) Earn at least (insert minimum number) floor area weighted average LEED-EB Energy credit 1 for all buildings included in the RFQ.
   2. Option 2: Using LEED-EB as the sustainability metric but using LEED-EB certification as the sustainability performance verification method.
      a. Option 1: Using LEED-EB as the sustainability metric and annual documentation of LEED-EB performance by the Sustainability Performance Contractor subject to verification by (insert the name of your organization) or by a contractor of (insert the name of your organization) with this documentation and verification paid for by the Sustainability Performance Contractor:
         i. Provides a Performance Guarantee that the proposed work
            (1) meets all the LEED-EB Prerequisites for at least (insert minimum number) percent of the total floor area of all the buildings covered by the RFQ.
            (2) Earn at least (insert minimum number) LEED-EB points each building.
            (3) Earn at least (insert minimum number) floor area weighted average LEED-EB points for all buildings included in the RFQ.
            (4) Earn at least (insert minimum number) LEED-EB Energy credit 1 points each building.
(5) Earn at least (insert minimum number) floor area weighted average LEED-EB Energy credit 1 for all buildings included in the RFQ

3. Meets the financial requirements of (insert the name of your organization):
   a. Specify the amount of investment the Building Owner is willing to make in sustainability beyond what is self funding by the performance contract. (The User should specify whether to require Level 1 or Level 2. Once the decision is made, it should be implemented consistently though out the Request for Qualifications and contact.
      i. This performance contract allows for accelerate the achievement of sustainability at the following level (User should select 1):
         1. Level 1 Sustainability Acceleration Funding: Performance contracting enabling legislation that requires that these project be self funding.
         2. Level 2 Sustainability Acceleration Funding: Performance contracting enabling legislation that allows users to specify in RFQs and Performance Contracting Agreements how much they are willing to invest in sustainability improvements beyond what is self funding. If Level 2 is allowed the user is required to state in the RFQ and in the contacting documents for the detailed audit and the performance contract: the additional Capital investment amount ($) and or the Annual payments ($) they are willing to make to accelerate the Sustainability Achievements.
   b. The cost of the payments of all costs and fees associated with the Sustainability Performance Contract, including: 1) the fee associated with the Sustainability Audit, 2) any annual fees for monitoring and maintenance to the CONTRACTOR, 3) all monthly payments on a lease purchase agreement to finance the measures.
   c. Minus the investments (insert the name of your organization) is willing to make in sustainability improvements beyond those that are self funding through the performance contract (see the level of sustainability acceleration funding in section a. above).
   d. Is less that the guaranteed savings provided under Sustainability Performance Contracting Agreement.
   e. With the analysis based on proposed financing terms over the a financing period of (insert maximum financing period) specified under “Contract Term” below, and with a fixed rate of interest actually available to Agency.

FUNDING SOURCES TO SUPPORT ANNUAL PAYMENT

The following payment sources will be considered in the audit:

- Annual energy cost savings
- Annual water and other utility cost savings
- Material/commodity savings, only in years when savings are achieved, including avoided costs such as lamp and ballast replacements, scheduled replacement of parts, etc. Note: This category is often recommended to help increase the scope of work through added source of funds; thorough documentation and review is critical to ensure these anticipated savings are verifiable.

During negotiations, Agency may consider savings to include the following:

- Maintenance cost savings such as terminated service contracts on equipment.
- Labor cost savings, in-house. Note: This category is generally not advised unless staff are cut to achieve budget savings.

Equity cash outlay:

- At option of (insert the name of your organization), and pending funding approval, an equity cash outlay may be used to supplement savings (see the level of sustainability acceleration funding in section a. above.)
Note: Move items above into desired categories. Maintenance and operation cost savings: 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 actually occur.

**Contract Term.** The contract term is up to 25 years provided the cost-weighted average lifetime of the equipment exceeds the contract term, however a lesser term of 12-15 years is typically desired. The ASHRAE Book of Standards will be used in determining the cost-weighted average useful life of the equipment.

**Annual Guaranteed Sustainability Performance.** Annual Sustainability Performance achievements shall meet or exceed the guaranteed levels in each and every year of the performance period.

1. If the prerequisite targets are met for all buildings in the performance contract, for each point the floor area weighted average Sustainability (LEED-EB or user specified metric) point score for all the buildings in the performance contract is above the guaranteed level, (insert the name of your organizations) will pay the performance contractor (insert an amount) per point above the guarantee.
2. If the prerequisite targets are not met for all buildings in the performance contract, not incentive payments will be made for floor area weighted average Sustainability (LEED-EB or user specified metric) point score for all the buildings in the performance contract.
3. For each point the floor area weighted average Sustainability (LEED-EB or user specified metric) point score for all the buildings in the performance contract is below the guaranteed level, the performance contractor will pay (insert the name of your organizations) (insert an amount) per point below the guarantee.

These sustainability performance guarantees are measures using the metrics for measuring sustainability performance specified in RFQ Attachment 1: Special Contract Terms and Conditions

**Annual Savings Exceed Annual Costs.** Annual savings shall exceed annual costs in 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 will not be allocated to meet shortfalls in any year. Annual payments include debt service, Contractor fees, maintenance services, monitoring services, and other services.

**Annual Guaranteed Cost Savings.** An annual contractual guarantee will be provided for the first three years of the contract, however, the guarantee shall be made available as a continued option for each subsequent year of the contract term. The Agency can cancel the guarantee at any time after the required period. The guarantee must provide for the sum of identified cost savings plus any annual amount of Building Owner contribution specified by the Building Owner to equal or exceed the amount of the annual payment, where annual payment equals lease plus monitoring & verification fee plus required service, each and every year while the guarantee is in effect.

**Interim Savings during Construction Period.** Savings accrued during the construction period will not be allocated to the annual savings of any year. See “Annual Savings Exceed Annual Costs” above.

**Excess Savings (beyond the guaranteed amount).** Excess savings will be retained by Agency and will not be allocated to shortfalls in savings in other years. See “Annual Savings Exceed Annual Costs” above.

**Energy Conservation Measure (ECM).** Measure implemented to reduce energy operating costs.

**Sustainability Improvement Measure (SIM).** Measure implemented to reduce energy operating costs.

**Pricing.** Shall be provided by ECM.

**Contingency.** Any unused contingency cost will not be retained by the CONTRACTOR and will be applied to the project.

**Equipment Compatibility or Standardization.** All equipment installed that is comparable to similar equipment at the facilities, shall offer compatibility with existing systems, and/or be of the same manufacturer for standardization of equipment agency-
wide, unless excepted by Agency. Note: Could include name of existing controls system, or a requirement for open systems or devices, if new controls systems will have to be compatible with an existing brand of controls.

**Annual Appropriations.** Annual payment is subject to annual appropriations.

**Inflation and Escalation Rates.** Any inflation rates will be pre-approved by (insert the name of your organization)

**Energy Escalation Rates.** Where the annual lease-purchase 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 US Department of Energy for energy saving performance contracts in its Federal Energy Management Program. The tool is on-line at: [http://www.eere.energy.gov/femp/techassist/softwaretools/softwaretools.html](http://www.eere.energy.gov/femp/techassist/softwaretools/softwaretools.html) (EERC).

**Monitoring and Verification Plan.** A monitoring and verification plan will be developed per guidelines in the Sustainability Performance Contract.

**Independent Review of Monitoring & Verification.** The Sustainability Performance Contract must provide for a portion of the guaranteed savings for Agency to contract with an independent monitoring & verification specialist to provide an independent review of the CONTRACTOR’s monitoring & verification plans and reporting. This is estimated to be 2% of energy/operational savings suggested.

**Electronic Submittal of RFQ Response.** The selected CONTRACTOR must provide an electronic copy of the RFQ response, in Word format, in a single file.
RFQ ATTACHMENT 2: PROPOSED PROJECT SCHEDULE

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

*Note: Change week numbers as needed. Consider holiday or seasonal schedules if they are the best times for construction.*

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>RFQ PHASE</strong></td>
<td></td>
</tr>
<tr>
<td>Issue RFQ</td>
<td>Week 1</td>
</tr>
<tr>
<td>Note: Plan sufficient time before this date to get buy-in from necessary decision-makers, get review from your Purchasing department, etc.</td>
<td></td>
</tr>
<tr>
<td>Site Visit (to be arranged)</td>
<td>Weeks 2-4</td>
</tr>
<tr>
<td>Note: Allow at least 10 to 14 days from time RFQ is issued to allow CONTRACTORs to meet the schedule; allow more time for large university-type projects.</td>
<td></td>
</tr>
<tr>
<td>Written inquiries accepted by prospective CONTRACTORs</td>
<td>Week 4-5</td>
</tr>
<tr>
<td>Note: This is a necessary step to clarify any questions for responding CONTRACTORs. Check with your Purchasing department for any required time period.</td>
<td></td>
</tr>
<tr>
<td>Proposals Due</td>
<td>Week 6</td>
</tr>
<tr>
<td>Note: Refer to your purchasing policy for the minimum time RFQs must be advertised.</td>
<td></td>
</tr>
<tr>
<td>Proposal Review and Selection of Finalists</td>
<td>Week 6-7</td>
</tr>
<tr>
<td>Note: Set a date in advance for your proposal review committee to spend a day reviewing proposals, so proposals can be reviewed within a few days of receipt.</td>
<td></td>
</tr>
<tr>
<td>CONTRACTOR Interviews</td>
<td>Week 7-8</td>
</tr>
<tr>
<td>Note: You can justify a very short notice for interviews if you state the interview date in the RFQ.</td>
<td></td>
</tr>
<tr>
<td>CONTRACTOR Selection and Award</td>
<td>Week 8</td>
</tr>
<tr>
<td>Note: Consider time needed for Board approval, if necessary, or official announcement.</td>
<td></td>
</tr>
</tbody>
</table>

**SUSTAINABILITY AUDIT PHASE**

Contract Negotiation                           | Weeks 9-11    |
| Note: Allow two weeks for negotiations. Reserve time to negotiate the scope and level of the audit. Otherwise, this contract is simple and straightforward. |         |
Board approval and signatures to execute contract

Note: Allow sufficient time based on past experience with contracts in your department.

Audit, Final Report and Presentation

Note: Allow time for several meetings during this process, so that there is sufficient discussion for agreement.

**Sustainability Performance Contract Phase**

Negotiation and Documentation

Note: It is very important to allow sufficient time to review the contract and meet several times with the CONTRACTOR to ensure thorough understanding of contract elements, to discuss and negotiate project scope and costs, and to fully document the contract to incorporate project schedules, maintenance agreements, and other project-specific documents. Its time well-spent, as a thorough understanding and documentation of expectations could avoid future conflicts.

Board approval and signatures to execute contract

Note: Allow sufficient time based on past experience with contracts in your department. To save time, request legal review and approval during the RFQ stage.

Installation

To be negotiated

**Commissioning/Monitoring Phase**

Commissioning

To be negotiated

Monitoring

To be negotiated

Staff Training

To be negotiated

Other

To be negotiated

Proposed Contract Term

To be negotiated

Note: This schedule is subject to change.
RFQ ATTACHMENT 3: CONTRACTOR RESPONSE

- An electronic copy of this RFQ section is available for easier preparation.
- Please number and re-state each subheading or question, followed by your response.
- Number all pages.

TO CONTRACTORS responding to this RFQ:
For small projects, please limit your responses to a level appropriate for the scope of the project.
Note: Delete this statement if not applicable.

1. FIRM’S GENERAL APPROACH TO PERFORMANCE CONTRACTING

Describe performance contracting from your firm’s perspective, describing your phases and your firm’s ability to support each of the phases. Generally, this description will include references to sustainability auditing, financing, construction, commissioning, monitoring & verification, maintenance support, staff/occupant training, guarantee, etc. (1-5 pages; brevity is desired)

2. QUALIFICATIONS OF THE FIRM OR TEAM

BACKGROUND INFORMATION ON THE FIRM

- Structure and Evolution of Firm. Type of firm (corporation, partnership, sole proprietorship, joint venture); Name of parent company if applicable (include the name, main office address and parent company’s tax identification number). Name of division or branch office if applicable; Name of current firm and number of years operating under this firm name; Former firm names if applicable and corresponding years in operation. Structure of team if this is a joint venture.
- Years in Energy Business. State the number of years your firm has been involved in the energy-efficiency related business.
- Years in Performance Contracting. State the number of years your firm has offered performance contracting services.
- Number of Performance Contracting Projects. State the number of performance contracting projects completed by your firm. Number under $1 million. Number over $1 million.
- Experience with Sustainability: Number of projects and descriptions of projects

FINANCIAL QUALIFICATIONS & STABILITY OF FIRM

- Financial Soundness. Describe the financial soundness and stability of the firm.
- Profitability. Has your firm or parent company been profitable each year for the past three years?
- Financial Report. Submit the most recent annual summary (1-3 pages) of the annual Statements of Financial Conditions, including balance sheet, income statement and statement of cash flows, dated within the past twelve (12) months, along with name, address, and the telephone number of firm(s) that prepared the Financial Statements.
- Bonds. What is your current bonding capacity? What is your current bonding rate? What is your firm’s bond rating? Is your firm currently bondable for: 100% of a payment bond for construction of this project, 100% of a performance bond for construction of this project? Include a letter from a licensed surety as evidence of ability to bond for each of these categories.

NAESCO ACCREDITATIONS, NUMBER OF LEED ACCREDITED PROFESSIONALS ON STAFF AND OTHER PRE-QUALIFIERS
State if your firm is accredited by industry organizations, such as the National Association of Energy Service Companies (NAESCO), or pre-qualified for work through the U.S. Department of Energy for federal facilities or the U.S. Department of Defense. Describe the relevance or importance of any accreditations or pre-qualifications with regard to this project.
COMPLIANCE WITH REQUIREMENTS

Affirm your ability to meet requirements: “Yes, this firm or team responding to this proposal understands the requirements specified in RFQ Attachment 1: Special Contract Terms and Conditions, RFQ Attachment 6: Model Sustainability Audit and Project Proposal Contract, and RFQ Attachment 7: Model Sustainability Performance Contract and can abide by them.”

3. PROJECT HISTORY

PROJECT LIST

List all Sustainability Performance Contracts that your firm or personnel have managed within the last five years. Include list as shown below. Truncate the list at one page.

1) PERFORMANCE CONTRACTING PROJECTS

<table>
<thead>
<tr>
<th>Project Name</th>
<th>City, State</th>
<th>Total Project $</th>
<th>Year completed</th>
</tr>
</thead>
</table>

All projects listed should be those conducted only by your firm. If you deem it relevant to list projects under contract to a different firm, clearly identify the name of firm responsible for the project and indicate why you’re including it as a reference for your company and for this project.

2) SUSTAINABILITY PROJECTS

All projects listed should be those conducted only by your firm. If you deem it relevant to list projects under contract to a different firm, clearly identify the name of firm responsible for the project and indicate why you’re including it as a reference for your company and for this project.

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Project Type</th>
<th>City, State</th>
<th>Total Project $</th>
<th>Year constructed</th>
</tr>
</thead>
</table>

3) OTHER PROJECTS (only if deemed relevant to this project)

If desired, also list related projects deemed relevant to this work, particularly those managed in the state.

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Project Type</th>
<th>City, State</th>
<th>Total Project $</th>
<th>Year constructed</th>
</tr>
</thead>
</table>

CASE STUDIES – PROJECT PERFORMANCE

Provide detailed information on performance contract-based projects and sustainability projects you want to showcase that have similarities to work related to this proposal. Similarities could include type/use of building, size of individual buildings, size of total expected project, technical scope of projects, and geographic region (work in this state or similar type of metro/rural region). Include the following information on each project, as a minimum (no preferred format):

Project Owner:
Name. Name of state department, university, school district, office building, etc.
Location. city/state
Contact Information. Names and contact information of owner(s)’ representatives who can serve as references.
Project Information:
Type of Project: performance contract; other
**Project Size.** Number of buildings, total square footage, total contract amount and the total project capital cost.

**Financing:** Type of financing used and grants/rebates, etc. Describe your involvement in securing funds.

**Project Implementation Dates:** Date of audit beginning and acceptance, and construction start and acceptance.

**List of Improvements.** Type of retrofits and operational improvements related to energy, water and other cost savings.

**Project Performance:** State amounts of projected annual savings, guaranteed annual savings, and actual annual savings.

**Project Personnel.** State the name(s) of individuals involved in the project and their role. Note if these personnel are assigned to Agency’s project.

Comments. **Comment on any special features, services, conditions, creative approaches, special needs of Agency, etc. that may be of interest.**

All projects listed should be those conducted only by your firm. If you deem it relevant to list projects under contract to a different firm, clearly identify the name of firm responsible for the project and indicate why you’re including it as a reference for your company and for this project.

**Relevant Experience - Overview of Strengths**

Briefly summarize your project histories to define your firm’s strengths and the relevance of past work to this project (experience similar to this project in terms of size, scope, facility type; experience with types of retrofits applicable to this project; etc.).

4. **PERFORMANCE CONTRACTING CAPABILITY & TECHNICAL APPROACH**

**General Scope of Services**

Following is a minimum scope of services acceptable to compete for a Sustainability Performance Contract. Add a brief comment for each item (25 words or less preferred) to demonstrate your capability for each.

Expertise in energy systems in buildings (include local project name and date for each):

- Lighting (indoor & outdoor)
- Heating
- Ventilation and indoor air quality
- Cooling
- Controls systems
- Water-using systems (indoor plumbing; outdoor irrigation)
- Other (central plants, distributed generation, kitchens, laboratories, laundry, pools, renewables, fuel switching, daylighting, as deemed potentially applicable for this project).

Experience and capability in:

- Energy auditing (identify potential energy-saving measures, determine savings projection based on standard energy engineering principles; estimate project costs; present package of measures with cash flow)
- Utility bill analysis (correct errors and retrieve credits from utilities)
- System design engineering (mechanical, electrical)
- Procurement, bidding
- Construction
- Commissioning of projects and retro-commissioning of existing buildings
- Project management
- Measurement and verification of savings
- Asbestos identification and abatement as applicable
All the sustainability measures included in the following Metrics and Verification approach being used for this project (User should select one option):

- **Metrics and Verification Option 1:** Require the Use of annual LEED-EB certification as the method for verifying sustainability performance achievements.
- **Metrics and Verification Option 2:** Require the building owner (user) to specify the method to be used for verifying sustainability performance achievements.

Ability to provide:
- Performance guarantee for every year of the financing term
- Insurance per contract requirements
- Equipment warranties
- Financing partner with ability to provide a municipal, tax-exempt lease purchase
- Hazardous material handling
- Performance monitoring
- Training (maintenance staff, occupants)
- Long-term maintenance services on energy systems
- Application for an Energy Star Label and LEED certification.
- Sustainability
- LEED-NC support for any new building/addition project
- LEED-EB support to help the agency become LEED-EB certified
- Calculation and reporting of emissions reductions

**Performance Contracting Technical Approach**

1) **Performance Guarantee.** How is a performance guarantee provided (self-guarantee or third party) and describe the value of this approach?
2) **Insurance.** How is insurance provided (self-guarantee or third party) and describe the value of this approach?
3) **Warranties.** Who provides warrantee service (CONTRACTOR or manufacturer)? How is this provided? Describe the value of this approach.
4) **Standards of Comfort.** Describe standards of comfort that are generally used for light levels, space temperatures, ventilation rates, etc. in the intended facilities. Describe any flexibility.
5) **Baseline Calculation Methodology.** Describe in detail the methodology your firm normally uses to compute baseline of energy and water use as well as performance.
6) **Sustainability Base line and Performance Measurement.** Comment on your ability to use the following Metrics and Verification approach that is being used in the RFQ and contracts and should be addressed in the audit (User should select one option):

   - **Metrics and Verification Option 1:** Require the Use of annual LEED-EB certification as the method for verifying sustainability performance achievements.
   - **Metrics and Verification Option 2:** Require the building owner (user) to specify the method to be used for verifying sustainability performance achievements.

7) **Project Schedule.** Comment on your ability to meet the schedule and the reasonableness of the schedule.

**Sample Technical Audit**

Submit a sample technical sustainability audit conducted by your firm for a similar project (as directed in the Proposal Submittal Information).

- Briefly describe this sample audit. It should be representative of the type of facility and the type of audit that will be conducted.
- Verify that this audit includes detailed energy and economic calculations.
- Verify that it was conducted by a current member of the team proposed for this project.
FINANCING COMPANY

CONTRACTOR will be required to solicit bids for financing on behalf of [insert the name of your organization]. (Since [insert the name of your organization] will sign a separate agreement with the financing company, [insert the name of your organization], will review bids, select desired firm, and develop the financing agreement.) To solicit bids, CONTRACTOR will use the RFQ and supplemental information provided in Appendix 8 (Financing Bid Package).

1) Identify three financing companies that you recommend as qualified to provide municipal tax-exempt financing for this project.
2) Provide letters of qualifications and references from each firm.

SITE-SPECIFIC APPROACH

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

5. MANAGEMENT AND STAFFING FOR THIS PROJECT

This section applies to this project, with an emphasis on local capability/service.

MANAGEMENT

1) Coordination. Describe your firm's approach to managing this project. Include an organizational chart showing clear lines of communication and responsibility. Describe the transition and responsible parties from the sales to auditing phase, auditing to construction phase, construction to follow-up monitoring phase, etc.
2) Construction Management. Describe how your firm would work with current building management and maintenance personnel in order to coordinate construction and avoid conflicts with the building's operation and use. Describe your flexibility and/or any limitations regarding possible Agency activities such as: management of additional energy and water projects, monitoring of installation and performance of CONTRACTOR projects, integration of other identified capital needs with CONTRACTOR projects which may or may not contain energy and water saving opportunities.
3) In-house Capability vs. SubContractors. Generally describe the types of services (both professional and construction services) that you offer in-house and the services you offer through subContractors, and describe the strategy behind in-house vs. subContractor use. (Detailed information on pricing of subContractors is requested in the Cost Section below.)
4) Agency Involvement. Describe how you engage the Agency in decision-making regarding project scope, equipment specifications, ongoing operational and maintenance strategies, etc., and how you incorporate Agency's needs.
5) Local Staffing and Support. Describe extent of local staffing and support for the geographic region. Include basic job descriptions and capabilities of the local staff. Describe the relevance or importance of local presence with regard to this project.
6) Long-term Servicing. Describe long-term servicing of equipment and systems. State the location of your nearest servicing office.

PERSONNEL INFORMATION

1) Qualifications and Experience of Staff Assigned to this Project. Identify the individual who will have primary responsibility for each task and phase of the project. List name, title, intended role and responsibilities for the duration of the contract, educational background, specific qualifications related to role and responsibilities, past
relevant experience, number of years of relevant experience, supervisory responsibilities if relevant, list of projects individual was associated with during the last five years including type of project and project cost and resume. Tasks and phases to address include technical analysis, engineering design, construction management, construction, training and post-contract monitoring. Indicate the percent of time each person is available to work on this project. Indicate their office location (city/state).

2) **Added Qualifications and Experience.** Describe any added expertise and capability of staff available through the parent company, other subcontracts, etc. to provide back-up strengths in technical analysis, engineering design, architectural design (if applicable), construction management, construction, training and post-contract monitoring, etc.

**SELF-PERFORMED WORK OR SUBCONTRACTORS.**

1) State whether work is completed by the CONTRACTOR or by a subContractor for each category of measure (auditing, design, procurement/supply of equipment from vendors and manufacturers, engineering, construction management services, lighting, HVAC, controls, monitoring & verification, etc.).

2) Describe how subContractors are selected. Also comment on your ability to competitively select subContractors.

3) Identify any subContractors already selected.

6. **COST AND PRICING**

Clearly indicate (mark by page) if elements of this section are requested to be treated as proprietary (the responsible Purchasing official will make the final decision if this is to be treated as proprietary).

1) **Pricing shall be provided for each ECM and SIM**

2) **Service Fees:** Identify fees that you typically use in your pricing structure:

   - Categories may include but are not limited to: bonds, permits, maintenance agreements, annual monitoring & verification fees, etc.
   - Describe how fees are determine
   - Describe how fees are charged to the project and when they are applied.

3) **Audit Cost**

   Total Cost. State the total cost of the Sustainability audit. Ensure that your cost is based on the approach and requirements included in RFQ Attachment 6: Model Sustainability Audit and Project Proposal Contract. For the purpose of this evaluation, assume all facilities listed in RFQ Attachment 5:

   a) List of Facilities Included in RFQ and Technical Profile of these Facilities will be audited.

   b) Unit Cost. State the cost per square foot of the audit. This cost will be evaluated on the basis of reasonableness, so an unrealistically high or low cost will be devalued in the evaluation process.

   c) Meet Full Scope of Work of Audit Contract. State your capability to complete the full scope of work as presented in RFQ Attachment 6: Model Sustainability Audit and Project Proposal Contract, within your proposed cost.

   **Note:** In RFQ Attachment 5: List of Facilities Included in RFQ and Technical Profile of these Facilities, list all buildings that could potentially be audited and verify that square footage, use of building and other information is include, and provide a total square footage of buildings to be audited. Later negotiation may streamline this list.

4) **Contingency:**

   a) How will contingency be applied to cover changes in work scope and subContractor change orders?

   b) What is your typical level of contingency budget for lighting, electrical, mechanical, controls projects, and other projects? (Note that all unused contingency funds will revert to Agency or be applied to additional work scope through a State approved change order.)

5) **Cost competition:** Describe your process to solicit bids on equipment/labor or to secure the best cost.
APPLICATION OF ECM n SIM COSTS AND FEES (HYPOTHETICAL EXAMPLE)

Provide a sample of your pricing model using a two-measure performance contracting project. Show the complete detail of what will be provided to the Agency in the actual project for all categories, fees and services that will be seen in the actual project (including the audit cost).

Include a sample project performance and clearly indicate all fees required for monitoring & verification, project management and all services that may be included in the actual project. All fees (including the audit cost) used in this example must be representative of what will be used in the actual project.

Incomplete service fees, or service category costs not shown in this example will NOT be allowed in the final contract.

Incomplete information will be considered an incomplete response and cause the response to be rejected.

1) Provide an example lighting measure that relates to this project in size and scope.

2) Provide same information for an example boiler measure (or other heating/cooling equipment if a boiler replacement is not relevant for this project)

3) Show the two measures above in a complete two-measure performance contracting project. Provide a proforma to clearly indicate all costs and fees represented as they will be applied in the final contract. Use the format and structure you will use in the final contract.

BEST VALUE

Briefly describe how your approach to performance contracting delivers best value for the investment. This is an opportunity to point out how your company may be able to deliver a more cost-effective overall project due to corporate structure, relationships with vendors, depth of experience and expertise, local relationships and experience, experience in similar types of facilities, knowledge of particular retrofits, etc. Also describe any utility rebates or other financial incentives or grants can potentially provide and/or facilitate.
RFQ ATTACHMENT 4: EVALUATION CRITERIA

WRITTEN PROPOSALS

The Evaluation Team will identify scoring weights for each section, with the “Cost and Pricing” section equaling a minimum of 30% of the total score of the written response to this RFQ. The weights of criteria will be determined by the Evaluation Team.

The Evaluation Team recognizes it is premature to place a major emphasis on projected financial benefits prior to the completion of the Sustainability Audit, because the Audit will define the potential scope and cost benefit. Therefore, the most emphasis will be on qualifications and less emphasis will be placed on the cost information. However binding commitments by CONTACTORS to minimum or average sustainability scores for the buildings addressed under the sustainability metrics specified by the building owner (LEED or user specified metrics) will be considered in the decision making.

INTERVIEWS

CONTACTORS in the competitive range will be invited for an oral interview. The proposal scores will be modified based on clarifications to responses provided in the interview.

SELECTION

The Evaluation Team will identify the apparent awardee and then contact references to complete the evaluation. With quality references, the apparent awardee will be notified of selection; otherwise, the same process will be used with the second-ranked CONTRACTOR.
RFQ ATTACHMENT 5:  LIST OF FACILITIES INCLUDED RFQ AND IN TECHNICAL PROFILES

**Note:** The energy service companies (CONTRACTORS will need a description of the facilities in order to decide whether to respond to the RFQ. Use any format you wish. Only include information that is readily available in order to expedite the RFQ process. At the minimum, include “Building List” and the minimum recommended portions of the “Energy and Water Consumption and Cost Information” section.

The information in this technical facility profile is provided to inform the CONTRACTOR about the condition of the facilities. The information was prepared with diligence. The CONTRACTOR is responsible for verifying the accuracy, as necessary.

**Note:** Provide as a separate file to avoid word-processing errors. Include this page as a cover sheet.

**BUILDING LIST**

- **List of Buildings** (include all buildings that could be potential candidates either now or in the future; you can always scale back the project scope during contract negotiations if desired). List only those buildings where you pay the utility bills and have responsibility for upgrades. Include:
  - Name of building
  - Total square footage of conditioned space.
  - Primary use of building (school, office, etc.)
  - Year constructed
  - Year of any major modifications, additions or renovations (briefly describe)
  - General location of buildings if not all are in one city or one “campus”

**ENERGY AND WATER COST & CONSUMPTION INFORMATION**

Only provide information that is readily available.

- List the present utility companies that provide electricity, gas, water, etc.
- Is natural gas or propane used? If propane, is natural gas available in the area?
- Provide energy use information as available: At a minimum, include **annual costs** for each of the main buildings (preferably itemized by electricity, natural gas, water, etc.). **If available**, include **monthly** consumption and cost information for electricity (kW, kWh, $), gas (ccf/therms/gal, $), water (gal, $), etc. for the past one-year period for each of the major buildings. If monthly information is not readily available, attach copies of utility rate schedules that apply to the facilities or include a sample utility bill for electricity, gas, etc. for each facility or meter from a winter month and a summer month. If under contract for natural gas, provide the fuel purchase agreement and a monthly price history, if available.

**PAST ENERGY IMPROVEMENT EFFORTS**

Only provide information that is readily available.

- Describe any major energy-related changes made during the past ten years (boiler/chiller replacements, other heating/cooling modifications, cooling additions, energy management control installation/upgrade, T8/electronic ballast lighting upgrades, ventilation improvements, etc.).
- State if any energy audits were conducted in the past 5 years and if the information is available.
未来的计划

只提供 readily available 的信息。
- 描述任何重大改变计划，包括但不限于：扩建、翻新、照明升级、主要设备更换、退役、拆除或出售；功能在接下来的10年中发生显著变化；功能随建筑物调整，如教室到办公区域变化；工作时间变化，如年终到季节性工作。
- 描述可用的、计划的或预计的改进。
- 描述任何你想在项目期间进行的研究的建筑改进。

能源使用的系统描述

只提供 readily available 的信息。
- 加热系统：简要描述服务建筑的加热系统（锅炉、炉子、屋顶单元等）。描述加热或冷却的分配系统，以及它们的类型（热风、水等）。描述其年龄和状况。
- 冷却系统：简要描述服务建筑的冷却系统（冷水机、屋顶等）。描述其年龄和状况。
- 控制系统：如果有控制系统用于控制空间温度和加热和冷却设备，请描述其功能（控制的对象）、类型（气动压缩空气系统、直接数字控制系统等）。描述其年龄和状况。
- 照明系统，室内：描述更换荧光系统为T8灯和电子镇流器的范围。
- 水加热系统：描述您的国内水加热系统。它是空间加热系统的一部分吗？
- 其他能源使用的系统（洗衣房、厨房、实验室、太阳能系统、游泳池、SPA、冰球等）
- 列出任何增加的水使用，如淋浴、洗衣、灌溉等。

运行信息

只提供 readily available 的信息。
- 描述每个设施的典型运行时间（工作日、周末、季节性）。换句话说，什么时间灯亮，什么时间加热/冷却系统运行?
- 描述清洁工时间（工作时间或下班时间）
- 描述冷却系统使用情况和在哪些建筑中使用。

维护实践

只提供 readily available 的信息。
- 描述一般的维护实践（预防性维护计划、熟练或半熟练的维护人员、良好的或不足的维护资金、可能的维护延误等）
- 描述任何已知的维护问题和/或与维护延误有关的需求。包括舒适度问题。
RFQ ATTACHMENT 6: MODEL SUSTAINABILITY AUDIT & PROJECT PROPOSAL CONTRACT

OVERVIEW

This Contract for Detailed Sustainability Audit & Project Development is the first of two contracts with the selected CONTRACTOR. The CONTRACTOR will complete an investment grade Sustainability audit that will include an analysis of each proposed project with projected energy and cost savings and itemized project cost. The CONTRACTOR will also propose terms for the performance contract and present a proposal that includes recommended projects, financing term and projected annual cash-flow analysis. The results of the audit will form the basis for a subsequent Sustainability Performance Contract.

Model Sustainability Audit & Sustainability Project Proposal Contract

For Sustainability Performance Contracting Services

OVERVIEW:
This Contract for Sustainability Audit & Project Proposal is the first of two contracts with the selected Contractor. The Contractor will complete an investment grade Sustainability audit that will include an analysis of each proposed project with projected energy and cost savings and itemized project cost. The Contractor will also propose terms for the performance contract and present a proposal that includes recommended projects, financing term and projected annual cash-flow analysis. The results of the audit will form the basis for a subsequent Sustainability Performance Contract.

Notes to User:
- This is a model document only and does not attempt to identify or address all circumstances or conditions you may encounter or desire. Consult with your legal counsel and procurement staff to adapt it to meet your needs.
- This results in a detailed, full-scope audit. It is important to scale-back the audit to fit the potential scope and needs of the project.
- If a solicitation document (RFQ or other) was used to solicit a Sustainability Service Company to enter into this Contract, ensure that this Contract is consistent with terms and conditions established in the RFQ. Both the RFQ and Detailed Sustainability Audit are recommended attachments for the subsequent Sustainability Performance Contract to ensure consistency and follow-through on objectives.
SUSTAINABILITY AUDIT AND PROJECT PROPOSAL CONTRACT

Note: Find and replace “Agency” with acronym or name of facility in entire document.

This Sustainability Audit & Project Proposal Contract (the "Contract") is made and entered into as of Date, between ESCO Name ("Contractor"), having its principal offices at Contractor Address, and (insert name of your organizations) hereinafter referred to as (“Agencies”), Agency Address.

WITNESSETH

WHEREAS, Contractor is a company with experience and technical and management capabilities to provide for the discovery, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy and water saving measures at facilities similar in size, function and system type to Agency’s facilities; and

WHEREAS, Contractor has submitted a Contractor Response, in response to Agency’s Request for Qualifications (RFQ), pertaining to the discovery, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy and water saving measures at Agency’s facilities; and

WHEREAS, Agency has selected Contractor to provide the services described herein; and

WHEREAS, Agency desires to enter into a Contract to have Contractor perform a Detailed Sustainability Audit and Project Proposal Contract to determine the feasibility of entering into an Sustainability Performance Contract to provide for installation and implementation of energy and water saving measures at Agency’s facilities.

WHEREAS, if energy and water saving measures are determined to be feasible, and if the amount of savings can be reasonably sufficient to cover all costs, as defined by Agency, associated with an Sustainability Performance Contracting project, the parties intend to negotiate an Sustainability Performance Contract under which the Contractor will design, procure, install, implement, maintain and monitor such energy and water saving measures. However, this intent does not commit Agency to entering into such Sustainability Performance Contract.
THEREFORE, the parties agree as follows:

1. **Sustainability Audit and Project Proposal Contract**

Contractor agrees to perform a Sustainability Audit in accordance with the Scope of Work described below. Contractor agrees to complete the Sustainability Audit and tender to Agency a final report within Number of Days – 120 days recommended depending on size and complexity of facilities and time needed to review the audit calendar days from the execution of this Contract.

Agency agrees to assist the Contractor in performing the Sustainability Audit in accordance with the Scope of Work described below. Agency agrees to work diligently to provide full and accurate information. Contractor 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 iterative process and that Agency will have a reasonable amount of time to review and determine acceptance before issuing the Notice of Acceptance (Exhibit B).

Contractor agrees to offer a Performance Contract Proposal with a package of energy and water saving measures and with details as specified in the Scope of Work below.

2. **Compensation to Contractor**

Except as provided for in Subsections 2(a), 2(b), or 2(c) below, within Number of Days: 120 days recommended days after Agency’s acceptance of the final Sustainability Audit and Project Proposal Contract, Agency shall pay to Contractor a sum not to exceed Dollar Amount in Words ($ dollar amount) based on a maximum of square footage to be audited gross square feet at cost per square foot per square foot of audited square-footage Note: Expect about $0.07 to $0.15 per square foot depending on project complexity, size and scope of project, and geographic location. Agency shall only pay for square-footage actually audited. Areas deemed by Contractor not to be audited will not be charged to Agency.

   a. **Agency** shall have no payment obligations under this contract provided that Contractor and Agency execute an Sustainability Performance Contract within Number of Days – allow sufficient time for contract negotiation and signing; 120 days recommended days, after issuance of the Notice of Acceptance (Exhibit B) of the final Sustainability Audit and Project Proposal Contract, but the fee indicated above shall be incorporated into Contractor’s project costs in the Sustainability Performance Contract.

   b. Should the Contractor determine at any time during the Sustainability Audit that savings cannot be attained to meet Agency’s terms as set forth in the Scope Guidelines and Requirements (Section 3.b), the Sustainability Audit will be terminated by written notice by the Contractor to Agency. In this event this Contract shall be cancelled and Agency shall have no obligation to pay, in whole or in part, the amount specified in this Section 2. Note: the maximum financing term used in the audit must match the financing term given in the RFO.

   c. **Agency** shall have no payment obligations under this Contract in the event that Contractor’s final Sustainability Audit and Project Proposal Contract does not contain a package of energy and water saving measures which, if implemented, will provide the Agency with cash savings sufficient (with any capital or ongoing contribution the building owner is willing to make) to fund Agency’s payments of all costs and fees associated with the Sustainability Performance Contract, including 1) the fee associated with the Sustainability Audit, 2) all monthly payments on a lease purchase agreement to finance the measures, 3) any annual fees for monitoring and maintenance incurred by the Contractor. Analysis will be based on proposed financing terms including a conventional, fully amortizing lease-purchase agreement not to exceed the term set out in Section 3.b1 over a fixed rate or interest actually available to Agency. Note: The maximum financing term must match the financing term given in the RFO.
3. **Scope of Work**

*Note: It is tempting to develop a prescribed scope of work, detailing exactly what projects the Contractor should undertake in your facilities. This is not recommended, however, because it is very valuable to use the Contractor’s technical expertise to help identify and assess the opportunities that are most cost-effective or most valuable for your facilities instead of pre-determining the scope.*

The Sustainability Audit and Performance Proposal Contract shall be performed as described below:

a. **Process**

This will be an interactive approach in working with **Agency**, following these steps:

1) **Preliminary Assessment of Needs and Opportunities**
   a) Meet with **Agency** to establish interests, plans, problems, etc. related to facilities and operation of facilities.
   b) Collect data and background information on buildings, equipment and facilities operation
   c) Perform a preliminary walk-through of facilities and interview staff and occupants to identify potential measures
   d) Meet with **Agency** to present preliminary findings and establish agreement on measures to analyze

2) **Preliminary Analysis of Measures**
   a) Establish base year consumption and reconcile with end-use consumption estimates
   b) Conduct a preliminary analysis of potential measures
   c) Meet with **Agency** to present preliminary findings and establish agreement on measures to further analyze

3) **Further Analysis and Audit Report**
   a) Further analyze measures
   b) Develop a draft Sustainability Audit Report
   c) Meet with **Agency** to present results
   d) Prepare final Sustainability Audit Report

4) **Performance Contract Proposal**
   a) Develop performance contract proposal
   b) Meet with **Agency** to present results and negotiate final terms

b. **Scope Guidelines and Requirements**

1) **Sustainability Performance Contract Term.** The Sustainability Performance Contract Term shall have a term no greater than 25 years and no greater than the cost-weighted average lifetime of the equipment, as legislated by **Agency**’s goal is for a term no greater than Desired Financing Term (12-15 years is typical unless major infrastructure improvements are involved) years.

2) **Annual Guaranteed Energy and Cost Savings.** The annual guarantee is required for the entire financing term, however **Agency** has the option to terminate the guarantee at any time after the first three years of the contract term provided the annual guaranteed energy and cost savings were achieved each prior year. The guarantee is based on cost savings attributable to all energy saving measures (plus any capital and annual contributions the Building Owners is willing to make) must equal or exceed all project costs each year during the contract period. Annual project costs include debt service, Contractor fees, maintenance services, monitoring services, and other services.

3) **Contractor shall reserve up to 2% of annually guaranteed savings for monitoring and verification savings.** 
   Note: Assume that this oversight would be 2% of ES and OS, typically less than 1% of the overall project cost

4) **Excess Savings.** Annual cost savings beyond the guaranteed minimum savings will be retained by **Agency**, and will not be allocated to shortfalls in other years.
5) Annual Savings Estimates: The utility and operational and maintenance cost savings for all measures must be estimated for each year during the contract period.

6) Note: Insert section from Request for Qualifications (RFQ Attachment 1): Performance Contract Terms & Conditions

7) Allowable cost and savings factors approved for consideration. Agency will provide Contractor with sufficient guidance to develop savings estimates.
   a) Payment sources that can be negotiated:
      1. Energy and water cost savings
      2. Agency material/commodity savings, including scheduled replacement of parts (only for years that these cost savings are applicable)
      3. Outside labor cost savings, including maintenance contracts
      4. Agency in-house labor costs
      5. Agency deferred maintenance cost
      6. Offset of future Agency capital cost
      7. Outside incentive funds (utility incentives, grants, etc.)
      8. Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented.
   b) The following items may be negotiated:
      1. Escalation rates that apply to each payment source. These are rates to be used in cash flow projections for project development purposes. Note: Check with your local utilities to ensure reasonableness. Also note that rates could vary in different years during the contract term.
      2. Interest rates (municipal tax-exempt rates for public institutions)
      3. Agency cash outlay (Agency’s sole discretion)

   c) Fees: Identify fees that you typically use in your pricing structure:

<table>
<thead>
<tr>
<th>FEES</th>
<th>HOW DETERMINED &amp; USED</th>
<th>YEARS APPLIED (one-time, annual, etc)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit Contract</td>
<td>_____ cents per square foot</td>
<td>One-time fee (may be applied in phases)</td>
</tr>
<tr>
<td>M&amp;V Contract</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

c. Collect data and background information from Agency concerning facility operation and energy use for the most recent three years from the effective date of this Contract as follows.
1) Building square footage.
2) Construction data of buildings and major additions including building envelope
3) Utility company invoices
4) Occupancy and usage information
5) Description of all energy-consuming or energy-saving equipment used on the premises, as available.
6) Description of energy management procedures utilized on the premises
7) Description of any energy-related improvements made or currently being implemented
8) Description of any changes in the structure of the facility or energy-using or water-using equipment
9) Description of future plans regarding building modifications or equipment modifications and replacements
10) Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels)
11) Original construction submittals and factory data (specifications, pump curves, etc.), as available
12) Operating engineer logs, maintenance work orders, etc., as available
13) Records of maintenance expenditures on energy-using equipment, including service contracts
14) Prior energy audits or studies, if any
Agency agrees to work diligently to furnish Contractor, upon request, accurate and complete data and information as available. Where information is not available from Agency, Contractor will make a diligent effort to collect such information through the facility inspection, staff interviews, and utility companies.

Contractor agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

d. **Identify potential measures**

1) Interview the facility manager, maintenance staff, subcontractors and occupants of each building regarding:
   a) Facility operation, including energy management procedures
   b) Equipment maintenance problems
   c) Comfort problems and requirements
   d) Equipment reliability
   e) Projected equipment needs
   f) Occupancy and use schedules for the facility and specific equipment.
   g) Facility improvements – past, planned and desired

2) Inspect major energy-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; hot water systems, electric motors, transmission and drive systems, special systems (kitchen/dining equipment, etc.), renewable energy systems, other energy using systems, water consuming systems (restroom fixtures, water fountains, irrigation systems, etc.)

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

4) Develop a preliminary list of potential energy and water saving measures. Consider the following for each system:
   a) Comfort and maintenance problems
   b) Energy use, loads, proper sizing, efficiencies and hours of operation
   c) Current operating condition
   d) Remaining useful life
   e) Feasibility of system replacement
   f) Hazardous materials and other environmental concerns
   g) Agency’s future plans for equipment replacement or building renovations
   h) Facility operation and maintenance procedures that could be affected
   i) Capability to monitor energy performance and verify savings

Agency will allow Contractor reasonable access to facility staff to ensure understanding of existing systems and opportunities.

Contractor agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

e. **Establish base year consumption and reconcile with end use consumption estimates.**

1) Establish base year consumption by examining utility bills for the past three years for electricity, gas, steam, water, etc. Present base year consumption in terms of energy 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 (averaging, selecting most representative contiguous 12 months, etc.). Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the base year representation. Contractor will account for periods of time when equipment was broken or malfunctioning in calculating the base year.

2) Estimate loading, usage and/or hours of operation for all major end uses of total facility consumption including, but not limited to: lighting, heating, cooling, HVAC motors (fans and pumps), plug loads, and other major energy and water using equipment. Where loading or usage are highly uncertain (including
variable loads such as cooling), Contractor will use its best judgment, spot measurements or short-term monitoring. Contractor should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

3) Reconcile annual end-use estimated consumption with the annual base year consumption. This reconciliation will place reasonable “real-world” limits on potential savings.

4) Propose adjustments to the baseline for energy and water saving measures that will be implemented in the future.

5) Explain how measurement and verification approach meets the requirements of the Metrics and Verification approach being used for this project (User should select one option):

<table>
<thead>
<tr>
<th>Metrics and Verification Option 1:</th>
<th>Require the Use of annual LEED-EB certification as the method for verifying sustainability performance achievements.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Metrics and Verification Option 2:</td>
<td>Require the building owner (user) to specify the method to be used for verifying sustainability performance achievements.</td>
</tr>
</tbody>
</table>

f. **Develop a preliminary analysis of potential energy and water saving measures.**

This list shall be compiled and submitted to Agency within 90 calendar days of the execution of this Contract.

1) List all potential opportunities, whether cost-effective or not. 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.

2) Identify measures which appear likely to be cost effective and therefore warrant detailed analysis

3) For each measure, prepare a preliminary estimate of energy or water cost savings including description of analysis methodology, supporting calculations and assumptions used to estimate savings.

g. **Meet with Agency to present preliminary findings** prior to thorough analysis. Describe how the projected project economics meet the Agency’s terms for completing the Sustainability Audit and Proposal Contract. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an Sustainability Performance Contract. Develop a list of recommended measures for further analysis. The Agency’s rejection of calculations of savings, potential savings allowed, or project recommendations shall be at the risk of the Contractor.

h. **Analyze savings and costs for each energy and water saving measure.**

1) Follow the methodology of ASHRAE or other nationally-recognized authority following the engineering principle(s) identified for each retrofit option

2) 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.

3) Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use

4) Develop a preliminary measurement and verification plan for each measure

5) Follow additional guidelines for analysis and report preparation given below

6) Include cost to provide services and complete application for Energy Star Label, LEED-EB certification for Existing Buildings, or other certification. Also include cost for EPA’s Tools for Schools or other such program related to improved air quality.

i. **Prepare a draft Sustainability Audit Report.** The report provides an engineering and economic basis for negotiating a potential Sustainability Performance Contract between the Agency and the Contractor. The report shall be completed within 90 calendar days of the date of execution of this Contract. The report shall include:

1) **Overview**
   a) Contact information
b) Summary table of recommended energy and water saving measures, with itemization for each measure of total design and construction cost, annual maintenance costs, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life

c) Summary of annual energy and water use by fuel type and costs of existing or base year condition

d) Calculation of cost savings expected if all recommended measures are implemented, and total percentage savings of total facility energy cost.

e) Description of the existing facility, mechanical and electrical systems

f) Summary description of measures, including estimated costs and savings for each as detailed above

g) Discussion of measures considered but not investigated in detail

h) Conclusions and recommendations

2) Base year energy use

a) Description and itemization of current billing rates, including schedules and riders.

b) Summary of all utility bills for all fuel types and water

c) Identification and definition of base year consumption and description of how established

d) Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc) with base year (include discussion of any unusual findings)

3) Full description of each energy and water saving measure including:

   a) Written description

      (1) Existing conditions
      (2) Description of equipment to be installed and how it will function
      (3) Include discussion of facility operations and maintenance procedures that will be affected by installation/implementation.
      (4) Present the plan for installing or implementing the recommendation.

   b) Savings calculations

      (1) Base year energy use and cost
      (2) Post-retrofit energy use and cost
      (3) Savings estimates including analysis methodology, supporting calculations and assumptions used.
      (4) Annual savings estimates. 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).
      (5) Savings estimates must be limited to savings allowed by the Agency as described above.
      (6) Percent cost-avoidance projected
      (7) Description and calculations for any proposed rate changes
      (8) Explanation of how savings interactions between retrofit options are accounted for in calculations.
      (9) 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.
      (10) If computer simulation is used, include a short description and state key input data. If requested by Agency, 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 Sustainability Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts
      (11) If manual calculations are employed, formulas, assumptions and key data shall be stated.
      (12) Conclusions, observations, caveats

c) Cost estimate -- detailed scope of the construction work needed, suitable for cost estimating. Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts. Engineering/design costs

      (1) Contractor/vendor estimates for labor, materials, and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities.
      (2) Permit costs
(3) Construction management fees
(4) Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.)
(5) Note that all costs and fees stated in this Contract 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.
(6) Conclusions, observations, caveats

d) Other
(1) Estimate of average useful service life of equipment
(2) Preliminary commissioning plan
(3) Preliminary measurement and verification plan, following the International Performance Measurement and Verification Protocol (IPMVP), explaining how savings from each measure is to be measured and verified (stipulated by Contract, utility bill analysis, end-use measurement and calculation, etc.). The Preliminary M&V plan shall follow the format provided in Exhibit C: Guidelines for Draft Monitoring and Verification Plan.
(4) 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.
(5) Compatibility with existing systems. Note: Could include name of existing controls system, if new controls systems will have to be compatible with an existing brand of controls.
(6) Complete appendices that document the data used to prepare the analyses. Describe how data were collected.

j. Meet with Agency to:
Review the recommendations, savings calculations and impact of the measures on the operations of the facility. Describe how the projected project economics meet the Agency’s terms for completing the Sustainability Audit and Performance Contract Proposal. Discuss the willingness and capability of Agency to make capital contributions to the project to improve the economics of the overall project.

k. Revise Audit as directed by Agency.

l. Prepare a Performance Contract Proposal (Term Sheet). In anticipation of Contractor and Agency entering into an Sustainability Performance Contract to design, install, and monitor the energy and water saving measures proposed in the Sustainability Audit Report, Contractor shall prepare a proposal for terms to be incorporated in a Sustainability Performance Contract to include:

1) Project Cost is the total amount Agency will pay for the project and Contractor’s services. Costs must be broken out by ECM and SIP. Costs may include but are not limited to: engineering, designing, packaging, procuring, installing (from Sustainability Audit Report results); performance/payment bond costs; construction management fees; commissioning costs; maintenance fees; monitoring fees; and training fees.
2) Include a List of Services that will be provided as related to each cost.
3) Expected term of the Sustainability Performance Contract.
4) Description of how the project will be financed including available interest rates and financing terms, based on interest rates likely available to Agency at this time, and based on a 60-day and 90-day lock option.
5) Explanation of how the savings will be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors. Monitoring and verification methods must be consistent with the International Performance Monitoring and Verification Protocol 2000.
6) Analysis of annual cash flow for Agency during the contract term.
4. Termination

CONTRACTOR may terminate this Contract at any time as described below by:

a. Termination for Default/Cause
   1) Default
      If the Contractor 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 procurement officer may notify the Contractor in writing of the non-performance, and if not promptly corrected within the time specified, such officer may terminate the Contractor'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 Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

2) Contractor's Duties
   Notwithstanding termination of the contract and subject to any directions from the procurement officer, the Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Contractor in which the purchasing agency has an interest.

3) Compensation
   Payment for completed supplies delivered and accepted by the purchasing agency shall be at the contract price. The purchasing agency may withhold amounts due to the Contractor as the procurement officer deems to be necessary to protect the purchasing agency against loss because of outstanding liens or claims of former lien holders and to reimburse the purchasing agency for the excess costs incurred in procuring similar goods and services.

4) Excuse for Nonperformance or Delayed Performance
   The Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms 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 Contractor, 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 Contractor'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 purchasing agency.

5) Erroneous Termination for Default
   If after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause.

b. Termination for Convenience
   1) Termination
      The Agency may, when the interests of the purchasing agency so require, terminate this contract in whole or in part, for the convenience of the agency. The Agency shall give written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective. This in no way implies that the purchasing agency has breached the contract by exercise of the Termination for Convenience Clause.

2) Contractor's Obligations
   The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the purchasing agency. The Contractor must still complete and deliver to the purchasing agency the work not terminated by the Notice of Termination and may incur obligations as are necessary to do so.
3) Compensation  
   a) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the Contractor fails to file a termination claim within 90 days from the effective date of termination, the Agency may pay the Contractor, if at all, an amount set in accordance with subparagraph C of this Section.  
   b) The Agency and the Contractor may agree to a settlement provided the Contractor 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 purchasing agency, the proceeds of any sales of supplies and manufactured materials made under agreement, and the contract price of the work not terminated.  
   c) Absent complete agreement, under subparagraph B of this Section, the Agency shall pay the Contractor 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 plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid to or to be paid for accepted supplies or services; provided, however, that if it appears that the Contractor 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) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the Contractor’s obligations paragraph of this clause. These costs must not include costs paid in accordance with subparagraph B of this Section.  
      (4) The reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts there under, together with reasonable storage, transportation, and other costs incurred in connection with the terminated portion of this contract.  
      (5) The total sum to be paid the Contractor under this subparagraph C shall not exceed the total contract price plus settlement costs, reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph B, and the contract price of work not terminated.  
   d) Cost claimed or agreed to under this section shall be in accordance with applicable sections of the (insert the name of your state) State Procurement Code.

c. Lack of Funding

d. At any time as described in Section 2.b above.

5. Insurance

Note to Agency: Coordinate insurance requirements and amounts of coverage with existing policy amounts and coverages and modify below as needed.

Before commencing any Work under this Contract, Contractor shall file with Agency certificates of insurance evidencing the coverage’s as specified below:

   a. It is agreed and understood Contractor shall maintain in full force and effect adequate commercial general liability insurance and property damage insurance, as well as workmen’s compensation and employer’s liability insurance pursuant to the State insurance requirements as defined below.
   b. The Contractor shall obtain, and maintain at all times during the term of this Agreement, insurance in the following kinds and amounts.
      1) Standard Workers’ Compensation and Employer’s Liability as required by State statute, including occupational disease, covering all employees at the work site.
      2) General Liability (minimum coverage)
6. **Sustainability Performance Contract**
   The Parties intend to negotiate an Sustainability Performance Contract under which the Contractor will design, install and implement energy and water saving measures which the Parties have agreed to, and provide certain maintenance and monitoring services. 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 Sustainability Performance Contract will be set forth in a separate contract.

7. **Extent of Agreement**
   a. This Contract represents the entire and integrated agreement between Agency and Contractor and supersedes all prior negotiations, representations or agreement, either written or oral. This Contract may be amended only by written instrument signed by the Agency and any other required government officials.
   b. The Agency and Contractor understand and agree the attachment and exhibits hereto are and shall be an integral part of this Contract and the terms and provisions thereof are hereby incorporated, made a part of and shall supplement those recited herein. In the event of any conflict, or variance, the terms and provisions of this printed Agreement shall supersede, govern and control.

8. **Term**
   The term of this Contract will become effective upon approval by the Controller and acceptance by the Principal Representative. The term shall end number of days plus 15 days to allow for processing of check [suggest 135 days] after signing of the Notice of Acceptance (Exhibit B) of the Final Sustainability Audit Report by the Principal Representative.

9. **Order of Precedence**
   In the event of conflict or inconsistency between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

10. **Special Provisions for your State**
    (State and local government organizations should insert here any special provisions required by your state’s laws and regulations.)

   1. **APPROVAL**
      This contract shall not be deemed valid until it has been approved by [insert name of official responsible in your organization] or such assistant as they may designate.

   2. **FUND AVAILABILITY. CRS 24-30-202 (5.5)**
      Financial obligations of the State of [insert name of your state] payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
3. **INDEMNIFICATION.**
   The Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subContractors, or assignees pursuant to the terms of this contract.

4. **INDEPENDENT Contractor.**
   The Contractor shall perform its duties hereunder as an independent Contractor and not as an employee. Neither the Contractor nor any agent or employee of the Contractor shall be or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income tax and local head tax on any monies paid by the State pursuant to this contract. Contractor acknowledges that the Contractor and its employees are not entitled to unemployment insurance benefits unless the Contractor or third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall provide and keep in force Workers’ Compensation (and provide proof of such insurance when requested by the State) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for the acts of the Contractor, its employees and agents.

5. **NON-DISCRIMINATION.**
   The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

6. **CHOICE OF LAW.**
   The laws of the State of (insert the name of your state) and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

   At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

7. **VENDOR OFFSET.**
   (For State Agency Projects, check to see if your state has a requirement like this) The State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

8. **EMPLOYEE FINANCIAL INTEREST.**
   (For State Agency Projects, check to see if your state has a requirement like this) The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described herein.
THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Contract on the date first written above.

(Insert the name of your organization),
acting by and through:
Department of Personnel and Administration

By _______________________________
Principal Representative

CONTRACTOR
By:
______________________________
(Insert Name and Title)

______________________________
Address

______________________________
City, State, Zip

______________________________
Social Security Number or Federal ID Number

(Modify this section to fit the approval requirement of your organization)

APPROVED:
STATE OF __________________________
DEPARTMENT OF LAW
(Insert Name and Title)
______________________________
Address
______________________________
City, State, Zip
______________________________
Social Security Number or Federal ID Number

APPROVED:
STATE OF __________________________
DEPARTMENT OF PERSONNEL & ADMINISTRATION
______________________________
Manager (or authorized Delegate)

By: ______________________________

By: ______________________________

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The Contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of ____________ may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:

By ______________________________

Date ______________________________
RFQ EXHIBIT A: Minority/Women Business Enterprise Participation Report
RFQ EXHIBIT B: Notice of Acceptance of Sustainability Audit Report

(Change to see how this type of requirement applies to your organization) For state agencies and higher education institutions, use first page and delete second page. For others, delete first page and use second page.

Notice of Acceptance

Date of Notice __________

Notice is hereby given that Customer accepts the Sustainability Audit and Project Development Proposal by Contractor, as contemplated in Section 2 of the Contract for Sustainability Audit and Project Development dated _______.

Department of Personnel & Administration
State Buildings & Real Estate Programs
(Change to fit your organization)

By ________________

Date

By ________________

Date

When completely executed, this form is to be sent by certified mail to the Contractor by Customer.
Notice of Acceptance

Date of Notice __________

Notice is hereby given that Agency accepts the Sustainability Audit and Project Development Proposal by Contractor, as contemplated in Section 2 of the Sustainability Audit and Project Proposal Contract dated ________.

Agency Name

By __________________________

Date __________________________

When completely executed, this form is to be sent by certified mail to the Contractor by Agency Name.
RFQ Exhibit C:  Guidelines for Draft Monitoring and Verification Plan

Measurement & Verification for Green Performance Contracts Performance Contracts

Sustainability Performance Contracts are based on guaranteed delivery of the level of sustainable performance.

The sustainability metric and verification method guide the M&V in a green performance contract. (The users should select the option be used.)

Option 1: Using LEED-EB as the sustainability metric and annual LEED-EB certification as the sustainability performance verification method implemented and paid for by the Sustainability performance contractor:

- Provides a Performance Guarantee that the proposed work
  - a. meets all the LEED-EB Prerequisites for at least (insert minimum number) percent of the total floor area of all the buildings covered by the RFQ
  - b. Earn at least (insert minimum number) of LEED-EB points each building
  - c. Earn at least (insert minimum number) floor area weighted average LEED-EB points for all buildings included in the RFQ
  - d. Earn at least (insert minimum number) of LEED-EB Energy credit 1 points each building
  - e. Earn at least (insert minimum number) floor area weighted average LEED-EB Energy credit 1 for all buildings included in the RFQ

Option 2: Using LEED-EB as the sustainability metric but using LEED-EB certification as the sustainability performance verification method.

Option 2: Using LEED-EB as the sustainability metric and annual documentation of LEED-EB performance by the Sustainability Performance Contractor subject to verification by (insert the name of your organization or by a contractor of (insert the name of your organization) with this documentation and verification paid for by the Sustainability Performance Contractor:

- Provides a Performance Guarantee that the proposed work
  - i. meets all the LEED-EB Prerequisites for at least (insert minimum number) percent of the total floor area of all the buildings covered by the RFQ
  - 1. Earn at least (insert minimum number) of LEED-EB points each building
  - 2. Earn at least (insert minimum number) floor area weighted average LEED-EB points for all buildings included in the RFQ
  - 3. Earn at least (insert minimum number) of LEED-EB Energy credit 1 points each building
  - 4. Earn at least (insert minimum number) floor area weighted average LEED-EB Energy credit 1 for all buildings included in the RFQ.
OVERVIEW:

This Sustainability Performance Contract is for design, construction, guarantee, and follow-up monitoring of energy-saving projects. An energy audit was previously completed that identified the costs and savings of each project. The audit provides the basis to develop and negotiate this Sustainability Performance Contract.

NOTES TO AGENCY:

- This contract is provided as a sample and reference only. It may not identify or address all the circumstances or conditions you may encounter. Consequently, we recommend that your legal counsel and procurement staff carefully review this document and adapt it to meet your needs.
Sustainability Performance Contract

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SUSTAINABILITY PERFORMANCE CONTRACT

This Sustainability Performance Contract (the “Contract”) is made and entered into as of this [Day of Month day of Month, Year], by and between [Formal Name of Agency such as “Board of...”, “” etc.], (“Agency”) and [Contractor name] (“Contractor”), [Contractor Address], a [State of Contractor Headquarters] corporation doing business in [insert the name of your state].

Editing Note: Search and replace on “Agency” to change to abbreviated Agency name.

WITNESSETH:

WHEREAS, Agency is (insert description of your organization “municipal government”, “State Agency” etc.), and is authorized and empowered under the laws of the State, to enter into this Contract for the purpose of the sale and installation of certain sustainability equipment including energy saving equipment, and provision of other services designed to increase sustainability including save energy and reduce related costs as per the guarantee described herein for certain property and buildings owned by the Agency; and

WHEREAS, authority exists in the STATE law and sufficient funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this Contract; and

WHEREAS, Agency has been authorized to enter into a lease-purchase agreement for all professional services, construction/improvements, project contingencies, reimbursable expenses and miscellaneous expenses for the purchase and installation of energy and water conservation measures, collectively referred to as the Work (as herein after defined); and

WHEREAS, required approval, clearance, and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, Contractor has developed or become knowledgeable about certain procedures for controlling energy and water consumption through services provided and equipment installed and maintained at facilities similar in scope and scale of Agency; and

WHEREAS, Contractor was selected after a determination that its proposal was the most advantageous to Agency pursuant to a Request for Proposal and contract for the Sustainability Audit Contract (as hereinafter defined); and

WHEREAS, Contractor has made an assessment of the utility consumption characteristics of facilities, which was delivered to Agency as a Sustainability Audit which Agency has approved; and

WHEREAS, Agency owns and operates the Premises (as hereinafter defined); and

WHEREAS, Agency desires to retain Contractor to sell to it, install and service certain energy efficiency equipment of the type or class described herein and to provide other services for the purpose of achieving utility cost reductions within Premises; and

WHEREAS, Contractor has selected the Equipment (as hereinafter defined) on the basis of competitive quality, compliance with Contractor’s specifications, and price;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Agency and Contractor hereto covenant and agree that the following Schedules, Exhibits and Appendices are attached hereto (or will be, as provided in this Contract) and are made a part of this Contract by reference.
ARTICLE I: DEFINITIONS, SCHEDULES, EXHIBITS AND APPENDICES

Section 1.1. Definitions.

Certificate of Acceptance: The certificate substantially in the form provided in Appendix A.

Change Order: (NEED DEFINITION HERE)

Contract: This Sustainability Performance Contract and all Schedules and Exhibits attached hereto.

Contractor Monitoring Agreement: (Need Definition)

Contract Sum: The sum of all materials, labor, auditing, design, engineering, project construction management fees, overhead, profit, contingency, outside services, and bidding and construction contingencies related to the project.

Contract Year:

Energy and Water Cost Savings: The savings as provided in Schedule C

Energy and Cost Savings Guarantee: The guarantee that is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract as specified in Schedule D and in accordance with the Savings Calculation Formula as set forth in Schedule F.

Equipment: The goods enumerated on Schedule A that is now or hereafter from time to time become attached hereto and incorporated herein by reference, together and with any and all additions, modifications, attachments, replacements and parts thereof.

Event of Contract Termination: (NEED DEFINITION HERE)

Event of Default: Those events described in Section 17.1 and Section 17.2 hereof.

Interim Period: The period from contract execution until the Performance Commencement Date.

Monitoring Fee: An annual fee according to Schedule D for monitoring the Energy and Cost Savings

Notice of Contractor’s Settlement:

Performance Commencement Date: The date described in Section 4.2.

Premises: The facilities of the Agency, and is in need of energy and water saving equipment and services designed to reduce consumption and associated costs at said Premises

Professional Services: Architecture, engineering, project/construction management related to the Contract.

Sustainability Audit: A sustainability audit evaluates the current level of sustainable performance of the building and site and is the foundation for developing a range of options for increasing the sustainability of the building and site that are used to develop a package of improvements that meet the financial and performance requirements specified by the building owner.

Work: Collectively, the Equipment, Professional Services and project construction related to the project.
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Article II: PAYMENTS

Section 2.01: Purchase and Sale

Agency agrees to lease Equipment through a third party lessor, name of lessor, as provided for in a separate lease document, Appendix A (Lease Agreements and Related Documents). Contractor agrees to provide the Equipment, together with installation, maintenance and other services as provided herein, as in Schedule A, based upon the terms and conditions set forth in Appendix A.

The agreed to Contract Sum for the Work is a Guaranteed Maximum Price of $[Dollar Amount] as set forth in Schedule R.

Payment terms are described in Schedule O.

Contractor will provide the Work and all related services identified on Schedule A and the services detailed on Schedule D. Contractor shall supervise and direct the Work and shall be solely responsible for all construction means, methods,
techniques, sequences, and procedures and for coordinating all portions of the Work under this Contract. Contractor shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work.

Section 2.2. Contractor Compensation – Interim Period.

Agency shall pay Contractor the Contract Sum in accordance with Schedule O and Appendix A. Payments will be made on a progress basis, for Work completed and authorized by Agency during the Interim Period. The Progress Payments outlined in Appendix A will not be applicable to this Contract. Retainage will be withheld from each payment until the construction installation is completed as set forth in Section 4.2. Professional Services shall not be subject to retainage.

When using a third-party lease-purchase structure the Contractor will receive 100% of the Contract Sum from the Agency once the Certificate of Acceptance is signed. The payments to the Contractor during the Interim Period can be drawn down by the Contractor from the proceeds of the lease through an escrow account set up by the leasing company. The Agency should require a retainage be withheld from the Contractor until the Certificate of Acceptance is executed at which time final payment can be made.

Section 2.3. Energy and Cost Savings Guarantee.

Subsequent to the Performance Commencement Date and throughout the term of this Contract, Contractor hereby guarantees the levels of Sustainable Performance as detailed in Schedule C. Contractor shall provide the guarantee and monitoring as defined in Schedule D, for every year of the contract term, or until such time that Agency issues a notice to terminate the guarantee and monitoring service. Agency may terminate the Sustainable Performance Guarantee and related Monitoring Fee, as set forth in Section 2.9 and defined in Schedule R, after the first three years of the performance period and this Contract shall terminate and Contractor shall have no further obligations hereunder.

This Sustainable Performance Guarantee is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract as specified in Schedule D and in accordance with the Savings Calculation Formula as set forth in Schedule F. The Annual Sustainability Performance Guarantee per Schedule C shall not be reduced even in the event of a Material Change per Section 14.1, except as the parties may mutually agree to such a reduction and act in good faith in determining such an agreement. In the event this Contract is terminated due to an uncured Event of Default, as defined in Section 17.1, by Agency, the Sustainable Performance Guarantee shall be cancelled and Contractor shall have no further obligations hereunder, except to guarantee Agency the prorated portion of the annual Sustainable Performance Guarantee. The prorated portion shall include all Guaranteed Savings incurred prior to the termination date except that such portion should only go up until the Event of Default if the Event is related to the non-payment or other violations impacting the Sustainable Performance Guarantee including but not limited to providing utility bills and access to the Equipment.

Contractor has structured the Sustainable Performance Guarantee to be sufficient, with the addition of any capital or expense contribution the building owner commits to making to accelerate the sustainability achievements, to exceed any and all annual payments required by the Agency in connection with the acquisition of Equipment to be installed by Contractor under this Contract and the Agency’s lease financing obligations. Actual energy and operations savings achieved by Contractor through the operation of Equipment and performance of services by Contractor, including the annual Energy and Cost Savings Guarantee, shall be sufficient to cover any and all annual fees to be paid by Agency to Contractor for the provision of services as set forth and in accordance with the provisions of Schedule D all payments to the third party lessor under the terms of the lease documents contained in Appendix A.

This section establishes the term of the energy and cost savings guarantee to be on an annual basis and to cover any and all annual payments (debt service and Contractor monitoring, maintenance and other fees) to be made by the Agency. It ensures that the Contractors’ savings guarantee will at least cover annual project lease-purchase costs (principal and interest) and all annual Contractor service fees for maintenance.

Section 2.4. Allowable Payment Sources. Agency has pre-determined allowable payment sources to be applied to annual payments, may include: Energy and water cost savings; material/commodity savings (including avoided cost from replacement lamps, ballasts, etc.), including scheduled replacement of parts; and other cost savings including maintenance contracts.
Section 2.5. Capital Contribution from Agency.
In addition to the funds provided by the equipment lease described in Appendix A, Agency elects to make an initial capital contribution of $\text{Dollar Amount}$ to pay for part of the initial cost as described in Schedule O.

Section 2.6. Independent Monitoring
Agency will hire, with consultation of Contractor and paid for with guaranteed savings, an independent third party monitor to review the Contractor’s monitoring and verification reports and advise Agency of compliance in monitoring and verifying savings. The independent monitor’s responsibilities could also include verifying the prorated share of Guaranteed Savings in the Event of Contract Termination. Compliance checks will relate to the established baseline (Schedule E), baseline adjustments monitoring and verification plan and savings calculations of (Schedule F).

For preliminary estimating purposes, assume the cost of the independent monitor will be 10% of Contractor’s cost to perform monitoring and verification services that meet the needs of this contract. This amount must be part of the guaranteed savings so Agency has no added cost for the independent monitoring service.

Section 2.7. Annual Review and Reimbursement/Reconciliation.
Energy-related cost savings shall be measured and/or calculated as specified in Schedule E and Schedule F and a report provided within ninety (90) days of receipt of all Needed Data (as defined in Schedule D hereof) for the previous year for each anniversary of the Performance Commencement Date. Contractor has developed the measurement and verification procedures specified in Schedule F which is based on the International Performance Measurement and Verification Protocol 2002.

In the event the Energy and Cost Savings achieved during such Contract Year is less than the Guaranteed Energy and Cost Savings (as defined in Schedule C hereof), set forth for such year during the years the guarantee is in effect, Contractor shall pay the Agency an amount equal to the deficiency.

If during the Contract Year the Energy and Cost Savings achieved are greater than the Guaranteed Energy and Cost Savings, such excess Energy and Cost Savings shall be retained by the Agency.

At the end of each contract year, usually within a specified 45-60 days, there will be a review and reconciliation of the actual achieved savings (subject to any adjustments made for weather, occupancy, operations etc.) vs. the Contractor’s guaranteed savings projections. If there is a savings shortfall, the Contractor is contractually liable to reimburse the Agency for the difference between what was actually achieved and the guaranteed amount. If in any year, the achieved savings exceed the guarantee, the Agency shall retain excess savings. As an incentive for the Contractor to look even deeper for additional savings, a shared savings arrangement for any excess savings could be part of this Contract.

Section 2.8. Monitoring Information Procedure.
Energy and Cost Savings shall be calculated [monthly, quarterly, or annually] in the following manner:

(i) Each month, by the [Number of Days – suggest 10] day after receipt, Agency shall provide Contractor with copies of all relevant energy bills received for the preceding month;

(ii) Reporting to Agency is outlined in Schedule D.

Agency will provide monthly utility bills to the Contractor in a timely manner.

Section 2.9. Monitoring Fee
Throughout the Term of this Contract, or until the Contractor Monitoring Agreement is cancelled by Agency, Agency shall pay Contractor an annual fee according to Schedule D for monitoring the Energy and Cost Savings. Annual guaranteed energy and cost savings achieved shall be sufficient to cover any and all fees to be paid to Contractor pursuant to the provisions of Schedule D. Notwithstanding the above provisions in Section(s) 4.1, 4.2 and 4.3 hereof, Agency shall not be required to begin any Monitoring Fee payments to Contractor under this Contract unless and until all equipment installation is completed by Contractor in accordance with the provisions of Article VI and Article IX, Schedule H and Schedule L, and accepted by Agency as evidenced by the signed Notice of Substantial Completion as set forth in Exhibit III.
(ii), and unless and until said equipment is fully and properly functioning in accordance with Schedule A and related details and specifications.

Section 2.10. Late Payment.
Payment during construction will be in accordance with Schedule N. Payment due during the Performance Period shall be due and payable within forty-five (45) days of the invoice date. Interest shall accrue on Guaranteed Savings not in dispute and rightfully owned for past due balance, owed to Agency hereunder at the rate of one percent (1%) per month (or the highest rate not prohibited by law, whichever is lower).

This section states that the final Contractor payments shall not be paid until all equipment is installed and operating in accordance with the agreed upon Construction Schedule and until Agency has accepted the completed installation and signed the required Certificate of Acceptance—Installed Equipment.

Section 3. UTILITY AWARD PAYMENTS

Section 3.1. Utility Award Payments

[ Utility Award Payments are not a part of this contract. ]

[ Contractor has entered into a Demand Side Management Agreement with (insert the name of a utility) (the “Utility”) wherein a portion of the Contract Sum will be subsidized by the Utility (the “Award Payment”) upon the Utility’s inspection and approval of the work performed. Based upon the reduced energy consumption to be achieved at the Premises and the energy efficiency Equipment to be installed, the total Award Payment is as indicated in Schedule O. This amount has been applied by Contractor in determining the Contract Sum. There shall be no adjustment to the Contract Sum, Guarantee, or Schedule of Values if the Award Payment allowed by the Utility is other than the amount specified herein, unless the disallowance or reduction is attributable to delay caused by neglect or an act of Agency constituting a breach of its obligations under this Contract. Agency understands that Contractor is not a representative or an agent of the utility servicing the facilities being address in this green performance contract.

ARTICLE IV: TIME FOR COMPLETION; COMMENCEMENT DATE; TERM OF CONTRACT

Section 4.1. Construction Commencement Date and Time for Completion of Work.
Work must commence within thirty (30) days of execution of this Contract and shall be completed as set forth in Schedule G. The Time for Completion of Work is of the essence of this Contract. By executing this Contract, the parties hereto confirm the Time of Completion of Work is a reasonable period for performing the Work. Except for obligation to make payments of money, Contractor shall not be responsible for any failure to fulfill, or any delay in fulfilling, its obligations hereunder, if such failure or delay is beyond the reasonable ability of such party to control, avoid or mitigate and is due to storm, flood, or other Act of God, or to fire, war, rebellion, scarcity of water, insurrection, riots, strikes (other than strikes directed at subcontractor), or is the result of some order, rule or regulation of any federal, state, municipal, or other governmental agency that could not have been reasonably anticipated or that was not scheduled to take effect. Time for Completion of the Work and the costs related thereto shall be extended and modified by Change Order, for such reasonable time and amount as the parties hereto may determine. Change Orders in excess of contingency funds and/or completion date shall not be allowed unless mutually re-negotiated by both parties.

Section 4.2. Performance Commencement Date.
The Performance Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by Agency and when Contractor shall have delivered a Notice to Agency that it has installed and commenced operating all of the Equipment specified in Schedule A and in accordance with the provisions of Article VI and Schedule H, Agency has inspected and accepted said installation and operation as evidenced by the Notice of Substantial Completion as set forth in Exhibit III (ii). Notwithstanding anything to the contrary in Article II and Article IV the Performance Commencement Date shall not occur and the Agency shall not be required to accept the work under this Contract unless and until: all Equipment installation for the subject Premises is completed by Contractor in accordance with the terms and conditions of this Contract. Agency shall have fifteen (15) days after notification by the Contractor to inspect and accept the Equipment. Agency reserves the right to reject the Equipment if installation fails to meet
reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. Contractor shall not be paid in full, including retainage, until the Notice of Acceptance and Notice of Contractor’s Settlement have been issued after the punch list is worked down to less than ten items. The retainage will be released after punch list is completed and Contractor has satisfied any and all claims for labor and materials.

This section determines the Performance Commencement Date when the savings guarantee period begins. This date is usually the first month AFTER the Contractor has completed construction and delivered a notice that all equipment is installed and operating, and the Agency has signed the Certificate of Acceptance. The Certificate of Acceptance should be attached to the contract. No payment for Contractor service and maintenance should be made prior to the Performance Commencement Date. The repayment obligation for lease-purchase costs should be arranged to coincide with the Performance Commencement Date. The Performance Commencement Date may also need to accommodate the Agency’s fiscal year for the purpose of appropriations and budgeting.

Section 4.3. Performance Term of Contract.
Unless otherwise terminated pursuant to the terms of this Contract, the Performance Term of this Contract shall begin with the Performance Commencement Date and continue up to a maximum of [number of years] years, or for a maximum of 25 years if the cost-weighted average lifetime of the equipment exceeds the lease financing term. This Contract shall be effective and binding upon the parties immediately upon its execution. All energy savings achieved during the Interim Period shall not be applicable to the Guaranteed Savings after the Performance Commencement Date.

Overview & Comments: Prior to the Performance Commencement Date the final contract and schedules are negotiated and executed by signature. At that time the Contractor typically begins final project design and construction. The ”Interim Period” is the design and construction period. Some savings will be realized during this period. The savings should be credited to the Agency unless specific procedures for verifying these savings are provided and agreed to with the Contractor. A lease-purchase term of 10-15 years is typical; however it can be as high as 25 years.

ARTICLE V: ENERGY USAGE RECORDS AND DATA

Section 5.1 Energy Usage Records and Data
Agency has furnished and shall continue to furnish (or authorize its energy suppliers to furnish) during the Term of this Contract to Contractor or its designee, upon its request, all of its records and complete data concerning energy and water usage and related maintenance for the Premises.

This section ensures that the Contractor has access to data on historical energy use, facility operations and occupancy in order to develop baseline utility consumption. At a minimum, there should be 24 months of data, however, 36 months is recommended. Existing facility conditions, operations and equipment need to be carefully documented to establish an accurate baseline. This will serve as a record of the state of your buildings before project installation and will be critical in establishing and adjusting the baseline and measurement of savings. Any prior technical studies and energy audits should also be provided for the Contractor’s review.

ARTICLE VI: CONSTRUCTION AND INSTALLATION BY CONTRACTOR

Section 6.1. Permits and Approvals.
Agency shall use its best efforts to assist Contractor in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Agency, however, be responsible for direct payment of any permit or license fee or the delay of any such permit or license fee.

As directed by Agency, design documentation will be submitted to Agency for review. As deemed necessary by Agency, design documentation will be forwarded by Agency to the appropriate code review Contractor for review. Agency agrees that the Agency’s review process at each phase will not be longer than 14 calendar days, not including code review. All costs of code review will be borne by Agency.
This standard construction provision requires the Contractor to comply with all code requirements, pay all associated permit fees and provide the Agency with copies of each permit and license required to do the work. The Agency agrees to assist the Contractor to the best of its ability to obtain required permits and approvals.

Section 6.2. Contractor’s Duty of Proper Installation.
All services called for by this Contract which constitute the “practice of architecture” or the “practice of engineering”, shall be performed by properly qualified and licensed professionals employed by Contractor and shall be performed in accordance with applicable law. Contractor shall perform all tasks/phases under this Contract, including construction, and shall install 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 set forth in Schedule I and Schedule G.

Section 6.3. Administration. The Contractor’s contact person (Project Manager) shall forward all communications in writing and all documents to the Principal Representative’s contact person and the Program Manager’s contact person simultaneously as listed below:

For the Principal Representative: For the Program Manager:

For the Contractor Project Manager: For the Contractor Superintendent:

ARTICLE VII: ENVIRONMENTAL REQUIREMENTS

Section 7.1. Excluded Material and Activities.
Agency recognizes that in connection with the installation and/or service or maintenance of Equipment at Agency’s Premises, Contractor may encounter, but is not responsible for, any work relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, or (ii) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in this Section below (collectively “Hazardous Materials”), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof. The materials and activities listed in the foregoing sentence are referred to as “Excluded Materials and Activities”. Agency agrees that if performance of work involves any Excluded Materials and Activities, Agency will perform or arrange for the performance of such work and shall bear the sole risk and responsibility therefore. In the event Contractor discovers Hazardous or Excluded Materials, Contractor shall immediately cease work, remove all Contractor personnel or subcontractors from the site, and notify the Agency. The Agency shall be responsible to handle such Materials at its expense. Contractor shall undertake no further work on the Premises except as authorized by the Agency in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Agency shall not constitute a default by the Agency. In the event of such stoppage of work by Contractor, 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 Contractor as a result will be added by Change Order.

Contractor shall be responsible for any hazardous or other materials, including, without limitation, those listed in this Section 7.1 that it may bring to the Premises.

Section 7.2. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps.
Contractor will enter into an agreement with an approved PCB ballast disposal Contractor who 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 Agency’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 to Agency. Contractor’s responsibility shall be for the proper and legal management of any of Agency’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 PCB ballast disposal Contractor’s vehicle for transportation.
Contractor will enter into an agreement with an approved lamp disposal contractor who will provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the manifest.

Agency agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Premises.

**ARTICLE VIII: ACCEPTANCE TESTING**

**Section 8.1. Modification of Schedules.**
To ensure this Contract properly accounts for as-installed conditions, which conditions may vary from the pre-installation analyses, the Contractor shall re-validate or modify Schedule A and Schedule H prior to System Start-Up.

**Section 8.2. Systems Startup and Equipment Commissioning.**
The Contractor 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 Schedule H and prior to acceptance of the project by Agency as specified in Exhibit III (iii). Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The Contractor shall provide notice to the Agency of the scheduled test(s) and the Agency and/or its designees shall have the right to be present at any or all such tests conducted by Contractor and/or manufacturers of the Equipment. The Contractor shall be responsible for correcting and/or adjusting all deficiencies in the Equipment operation that may be observed during system commissioning procedures of Schedule H. The Contractor shall be responsible for correcting and/or adjusting all deficiencies in Equipment operation that may be observed during system testing procedures. Prior to Agency acceptance Contractor shall also provide Agency with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in Schedule A.

This section requires the Contractor to do commissioning to ensure the system is functioning properly, testing equipment performance and verifying the specified operating parameters. Commissioning typically occurs before the Agency’s final project acceptance; however, language can be included here to provide for testing after project acceptance. It also requires the Contractor notify the Agency when testing will take place and gives the Agency (or its designee) the right to be present during all tests. Have the commissioning report include manufacturer’s startup and performance sheets.

**ARTICLE IX: MAINTENANCE/MONITORING**

**Section 9.1. Ownership of Certain Proprietary Property Rights.**
Agency shall not, by virtue of this Contract, acquire any ownership interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. Agency shall, however, have a nonexclusive license to utilize all such intellectual or proprietary rights obtained by Contractor related to Equipment in connection with its use of the Equipment under this Contract. The Contractor hereby grants to the Agency a perpetual, irrevocable, royalty-free license to any and all software or other intellectual property or proprietary rights it obtains from Equipment manufacturers necessary for the Agency to continue to operate, maintain, and repair the Equipment in a manner that will yield maximal energy consumption reductions. This license shall continue subsequent to any termination or expiration of this Contract other than termination due to breach by Agency.

In most cases, this provision addresses the Contractor’s proprietary rights over customized (or exclusive) software used in an energy management system which may control, manage and perform other functions in conjunction with the project (there may other technical designs, processes, formulas etc., which this provision would cover). Of particular importance is the stipulation that grants the Agency a continuing license (at no charge) to use and operate the project without violating the Contractor’s proprietary rights.
Section 9.2. Ownership of Documents.

(a) Instruments of Service Drawings, specifications and other documents, including those in electronic form, prepared by the Architect/Engineer and the Architect/Engineer’s consultants are Instruments of Service for use solely with respect to this Project. The Architect/Engineer and the Architect/Engineer’s consultants shall be deemed the authors and owners of their respective instruments of service and shall retain all common law, statutory and other reserved rights, including copyrights.

Upon execution of this Contract, the Architect/Engineer hereby grants to the State a perpetual nonexclusive license to reproduce and use, and permit others to reproduce and use for the State, the Architect/Engineer’s Instruments of Service solely for purposes of constructing, using and maintaining the Project or for future alterations, or additions to the Project. The Architect/Engineer shall obtain similar nonexclusive licenses from the Architect/Engineer’s consultants consistent with this Contract. If, and upon the date the Architect/Engineer is adjudged in default of this Contract, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the State to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project, or for future alterations, or additions to the Project.

Any unilateral use by the State of the Instruments of Service for completing, using, maintaining, adding to or altering the Project or facilities shall be at the State’s sole risk and without liability to the Architect/Engineer and the Architect/Engineer’s consultants; provided, however, that if the State’s unilateral use occurs for completing, using or maintaining the Project as a result of the Architect/Engineer’s breach of this Contract, nothing in this Article shall be deemed to relieve the Architect/Engineer of liability for its own acts or omissions or breach of this Contract.

(b) As-Built Drawings/Record Drawings The Architect/Engineer and its consultants shall, upon completion of the Construction Phase receive redline As-Built Drawings from the Contractor. These redline changes shall describe the built condition of the Project. This information and all of the incorporated changes directed by Bidding Addenda, Change Order/Amendment or Architect/Engineer’s Supplementary Instructions shall be incorporated by the Architect/Engineer and its consultants into a Record Drawings document provided to the Principal Representative in the form of an electro-media format and a reproducible format as agreed between the parties. The Architect/Engineer shall also provide the Principal Representative with the As-built Drawings received from the Contractor.

Section 9.3. Ownership of Existing Equipment.
Ownership of the equipment and materials existing at the Premises at the time of execution of this Contract shall remain the property of Agency even if it is replaced or its operation made unnecessary by work performed by Contractor pursuant to this Contract. If applicable, Contractor shall advise the Agency in writing of all equipment and materials to be replaced at the Premises and the Agency shall within fifteen (15) days designate in writing to the Contractor which equipment and materials should not be disposed of off-site by the Contractor. It is understood and agreed to by both Parties that the Agency shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. Except as may be otherwise provided in this Contract, the Contractor shall be responsible for the disposal of all equipment and materials designated by the Agency as disposable off-site in accordance with all applicable laws and regulations regarding such disposal. Except as indicated in Section 7.1 and Section 7.2, under no circumstance shall Contractor be obligated to dispose of or take responsibility for any materials identified in Section 7.1 or Section 7.2 of this Contract.

This provision states that the Agency has ownership of all existing equipment and the Contractor shall notify the Agency in writing of what equipment and materials are to be replaced. If the Agency chooses to keep the equipment to be replaced, the Contractor will be notified and the Agency will be responsible for identifying the location of where the property is to be stored or relocated. The Contractor is responsible for all equipment and materials to be disposed. The exception to this is the treatment of any hazardous or environmentally sensitive materials.
Section 9.4. Ownership of Measurement and Verification Equipment.
Agency agrees to own the equipment required to provide the ongoing measurement of energy and water savings (the “Metering Equipment”). If required, Agency shall provide and maintain a non-dedicated telephone line to facilitate remote monitoring of the Equipment.

ARTICLE X: STANDARDS OF COMFORT

Section 10.1 Standards of Comfort. Contractor will design and install the Equipment so that it is able to provide the standards of heating, cooling, ventilation, hot water supply, lighting quality and levels described in Schedule I. During the term of this Contract, Contractor and Agency will maintain, according to Schedule D, Schedule J and Schedule K, and operate the Equipment in a manner that will provide the standards of comfort and levels of operation as described in Schedule I.

This section references the standards of comfort contained in Schedule I that the Contractor is contractually liable to maintain throughout the contract term. These standards are negotiated between the Contractor and Agency to reflect realistic ranges of heating, cooling and hot water temperatures, lighting levels, chilled water requirements, and other specified comfort and operating parameters to be maintained.

ARTICLE XI: EQUIPMENT WARRANTIES

Section 11.1 Equipment Warranties.
Contractor warrants that all equipment sold and installed as part of this Contract is new, unless otherwise agreed, will be materially free from defects in materials or workmanship, will be installed properly in a good and workmanlike manner, and will function properly for a period of one (1) year from the date of the Substantial Completion for the particular energy conservation measure if operated and maintained in accordance with the procedures established per building. Substantial Completion shall be defined as the stage in the progress of the Work where the Work is sufficiently complete in accordance with the Contract Documents so that the Agency can utilize and take beneficial use of the Work for its intended use or purpose. Substantial Completion does not occur until the Equipment or system has been commissioned, accepted, and the “Substantial Completion” form fully executed.

After the warranty period, Contractor shall have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims relating to the Equipment, except as provided in Schedule D and Schedule J.
Contractor further agrees to assign to Agency all available manufacturer’s warranties relating to the Equipment and to deliver such written warranties and which shall be attached and set forth as Exhibit IV; pursue rights and remedies against the manufacturers under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance. Contractor shall, during the warranty period, notify the Agency whenever defects in Equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by Contractor. During this period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property and equipment of the Agency or the Premises, due to Contractor’s failure to exercise its warranty rights shall be borne solely by Contractor.

All warranties, to the extent transferable, shall be transferable and extend to the Agency. The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction.

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

This warranty provision ensures all installed equipment is new and protected by appropriate written manufacturers' warranties for parts and performance for a minimum of one year. It requires that warranties provide for replacement with new parts (not used or reconditioned) during the warranty period. While equipment warranties will be transferred to Agency after completed project installation, the Contractor is responsible for pursuing any necessary remedies during the warranty period. If the Contractor fails to exercise the warranty and damages occur, the Contractor is responsible for all costs of repair and any lost savings. Manufacturer warranties cannot supersede Performance Commencement Date.
This section refers to the maintenance and service responsibilities of each party as specified in Schedules J (Contractor’s Maintenance Responsibilities) and D (Contractor Monitoring, Maintenance and Service Agreement). It also states that if the Agency is at fault for causing additional maintenance or repair to the equipment, the Agency will be charged by the Contractor for maintenance or repair costs.

Section 11.2 Actions by Contractor.
Incorporated herein by reference Schedule D, Schedule J, and Schedule N.

Section 11.3 Malfunctions and Emergencies.
Agency shall use its best efforts to notify the Contractor or its designated subcontractor within twenty-four (24) hours after the Agency’s actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the Energy Savings or Energy Savings Guarantee, (ii) any interruption or alteration to the energy supply to the Premises, or (iii) any alteration or modification in any energy-related equipment or its operation.

Where Agency exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify any such conditions as having a material impact upon the savings. Agency shall notify Contractor within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. If such malfunction, interruption, or alteration occurs during the Warranty Period, Contractor shall respond to any such notice within twenty-four (24) hours for non-critical equipment, and eight (8) hours for critical equipment, and shall promptly thereafter proceed with corrective measures. Any telephonic notice of such conditions by Agency shall be followed within three business days by written notice to Contractor from Agency. If Agency unreasonably delays in so notifying Contractor of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, Contractor may charge Agency for its loss, due to the delay, associated with the guaranteed savings under this Contract for the particular time period, provided that Contractor is able to show the direct causal connection between the delay and the loss.

The Contractor will provide a written record of all service work performed. This record will indicate the reason for the service, description of the problem and the corrective action performed.

This section requires the Agency to notify the Contractor within a specified number of hours of actually knowing about any situation that impacts the performance of the equipment. The impacts cover both pre-existing energy related equipment and the newly installed equipment including equipment malfunction or modification, interruption of power supply or any emergency situation which may affect the energy savings guarantee. If such an impact is known by the Agency to have occurred and the Agency delays notifying the Contractor and doesn’t correct the situation, it will be treated as a Material Change and the baseline will be adjusted accordingly. If the Agency makes an effort to assess the situation and incorrectly determines it doesn’t have an impact, then the Contractor will not fault the Agency, although an adjustment to the baseline may still be warranted.

Section 11.4 Actions by Agency.
During the term of this Contract, Agency shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of Contractor except as set forth in Schedule K. Notwithstanding the foregoing, Agency may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify Contractor before taking any such actions. In the event of such an emergency, Agency shall take reasonable steps to protect the Equipment from damage or injury. Agency agrees to maintain the Premises in good repair and to protect and preserve all portions thereof, which may in any way affect the operation or maintenance of the Equipment, all in accordance with the same standard of care the Agency applies to the Premises generally, that of a reasonably prudent government owner.

This section states the Agency may not make any changes to the operation and maintenance of the equipment without prior written approval of the Contractor unless otherwise indicated in Schedule K (Agency’s Maintenance Responsibilities) or if there is an emergency and the Contractor can’t be reasonably notified. In the case of such emergency, the Agency should follow instructions provided by the Contractor for emergency action.
ARTICLE XII: MODIFICATION, UPGRADE OR ALTERATION OF EQUIPMENT

Section 12.1. Modification of Equipment. During the Term of this Contract, Agency will not, without the prior written consent of Contractor, affix or install any accessory Equipment or device on any of the Equipment if such addition will change or impair the originally intended functions, value or use of the Equipment without Contractor’s prior written approval, which shall not be unreasonably withheld.

Section 12.2. Upgrade or Alteration of Equipment. Contractor shall at all times have the right, subject to Agency’s prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Premises, provided that: (i) the Contractor complies with the standards of comfort and services set forth in Schedule I herein; (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the Contractor to achieve greater energy and cost savings at the Premises and; (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the Contractor.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the Agency for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall, unless otherwise agreed, be new and have equal or better potential to reduce energy consumption at the Premises than the Equipment being replaced. The Contractor shall update any and all software necessary for the operation of the Equipment in accordance with the provisions of Section 9.1 of Schedule J. All replacements of and alterations or additions to the Equipment shall become part of the Equipment described in Schedule A and shall be covered by the provisions and terms of Article VI and Article VIII.

This section describes the terms and conditions under which the Contractor can make changes to the equipment, operating procedures or take other energy savings actions. If such changes are implemented during any time during the contract they must be described in a supplemental schedule and be approved by the Agency. Any equipment replaced is required to be new and have the potential to produce equal or greater savings. If computer software is updated, the licensing provisions stated herein still apply.

ARTICLE XIII: LOCATION AND ACCESS

Section 13.1. Contractor Access. Contractor acknowledges that there exists sufficient space on the Premises for the installation and operation of the Equipment. Agency shall take reasonable steps to protect such Equipment from harm, theft and misuse during the term of this Contract. Agency shall provide access to the Premises for Contractor to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by Contractor and acceptable to the Agency. Contractor shall be granted immediate access to make emergency repairs or corrections as it may, in its discretion, determine are needed. Contractor’s access to the Premises to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by Agency. Contractor shall immediately notify the Agency when emergency action is taken and follow up with written notice within three (3) business days specifying the action taken, the reasons therefore, and the impact upon the Premises, if any.

This provision states the Agency’s responsibility for providing adequate space and protection for the installed equipment and authorizes the Contractor’s access to the facility to perform routine and emergency operations.

Section 13.2. Utility Access. If a Utility Award Payment is made as described in Section 3 (Utility Award Payments), the following applies. Upon request by the Utility (or its agent) and with prior consent of the Agency which consent shall not be unreasonably withheld, the Agency shall agree to allow Utility to interview the Agency and to enter the Premises at reasonable times throughout the life of the installed equipment to install metering equipment, perform energy audits or inspect the facilities and any equipment installed. The Agency also agrees to cooperate with the Utility or its agent upon request and
with prior consent of the Agency, in conducting such activities and/or in analyzing energy savings. At all times a representative of the Agency (or its agent) shall be present during such inspections.

Delete this section if a Utility Award Payment is not applicable.

ARTICLE XIV: MATERIAL CHANGES

A Material Change shall include any change or cumulative changes in or to the Premises, whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Agency, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in Schedule E (and Schedule F) after adjustments for climatic variations and provided a correlation exists between usage and Material Change.

Actions by the Agency that may result in a Material Change include but are not limited to the following: (i) manner of use of the Premises by the Agency; or (ii) hours of operation for the Premises or for any equipment or energy using systems operating at the Premises; or (iii) permanent changes in the comfort and service parameters set forth in Schedule I; or (iv) occupancy of the Premises; or (v) structure of the Premises; or (vi) types and quantities of equipment used at the Premises or (vii) modification, renovation or construction at the Premises; or (viii) the Agency’s failure to provide maintenance of and repairs to the Equipment in accordance with Schedule K; or (ix) casualty or condemnation of the Premises or Equipment, or (x) changes in utility provider or utility rate classification, or (xi) any other conditions other than climate affecting energy or water use at the Premises.

This section defines the term "Material Change" which covers any condition other than weather that affects building energy use by more than the negotiated percentage (see above discussion). It is typical for the percent of deviation to be negotiated as a value ranging between 2% and 5% based on aggregate consumption costs. The lower value (2%) may be appropriate for large facilities (over $20,000/month utility bills) and the higher value (5%) may be appropriate for small facilities (less than $5,000/month utility bills).

Section 14.2. Reported Material Changes; Notice by Agency
The Agency shall use its best efforts to deliver to the Contractor a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises at least 14 days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the Contractor of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the Agency within five (5) business days after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Agency to have occurred.

Section 14.3. Other Adjustments.
As agreed in Section 16.1 Agency will alert Contractor of materials changes as known. Both parties have a vested interest in meeting the guaranteed savings of the Contract. As such, the Contractor will work with Agency to investigate, identify and correct any changes that prevent the guaranteed savings from being realized. As a result of such investigation, Contractor and Agency shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in Schedule F and Schedule E.

This section requires the Agency to notify the Contractor in writing if there are any actual or planned changes to the facility which would effect energy consumption by more than the negotiated percentage (see above discussion). In the event of an emergency or situation that would prevent advance notification, the Agency has a specified number of hours to inform the Contractor that a Material Change has occurred.

This section states that if all building conditions and operations stay the same, then energy consumption will not vary more than the negotiated percentage (see above discussion) during any month when compared to the baseline use for that month and after adjustments for weather are made. In the event such a variation occurs, the Contractor will try to determine the cause of the deviation and report its findings to the Agency. The Contractor and Agency will then determine what adjustments will be made to the baseline as described in Schedule F (Savings Measurement and Calculation Formulae; Methodology to Adjust Baseline; Monitoring and Verification Plan). Disputes may need to be addressed here.
ARTICLE XV: TRAINING AND FOLLOW-UP ACTIVITIES BY CONTRACTOR

Section 15.1 Training. The Contractor shall conduct the training program described in Schedule M. Appropriate training must be completed prior to acceptance of the Equipment installation. The Contractor 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 the Agency.

*Training of facility personnel is often conducted before acceptance of the completed installation. If it is necessary to conduct training after project acceptance, note this in the appropriate schedule. If there are charges for unscheduled training, it should be noted in this section.*

Section 15.2 Application for Energy Star or LEED. The Contractor shall conduct an Energy Star benchmarking study for each facility and apply for an Energy Star Label on behalf of Agency for all buildings that meet or exceed the necessary requirements for the Energy Star Label. Contractor shall use the US Green Building Council’s Leadership in Energy and Environmental Design (LEED) approach and apply for LEED certification where deemed applicable.

Section 15.3 Emissions Reductions Documentation and Reporting. The Contractor shall include emissions reductions quantities in each annual report and advise the Agency on opportunities to achieve monetary benefit from such credits.

ARTICLE XVI: GENERAL CONTRACTUAL PROVISIONS

Section 16.1 Additional Insurance Requirements- Professional Liability Insurance. This section needs to reflect Agency’s requirements with regard to insurance. Contractor promises and agrees to maintain in full force and effect an Errors and Omissions Professional Liability Insurance Policy in the amounts indicated in the following table as minimum coverage. The policy, including claims made forms, shall remain in effect for the duration of the Interim Period and for at least three years beyond the completion and acceptance of the Equipment. The Contractor shall be responsible for all claims, damages, losses or expenses, including attorney fees, arising out of or resulting from the performance of professional services contemplated in this Contract, provided that any such claim, damage, loss or expense is caused by any negligent act, error or omission of the Contractor, any consultant or associate thereof, or anyone directly or indirectly employed by the Contractor. The Contractor shall submit a Certificate of Insurance verifying said coverage at the signing of this Contract and also any notices of renewals of Renewals of the said policy as they occur.

<table>
<thead>
<tr>
<th>For a Fixed Limit of Construction Cost</th>
<th>Minimum Coverage per Claim</th>
<th>Minimum Coverage in the Aggregate</th>
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ARTICLE XVII: EVENTS OF DEFAULT

Section 17.1 Events of Default by Agency. Each of the following events or conditions shall constitute an "Event of Default" by Agency:

(i) any failure by Agency to pay Contractor any sum due that is not in dispute, hereunder for a service and maintenance period of more than thirty (30) days after written notification by Contractor that Agency is delinquent in making payment;
(ii) any other mutually determined material failure by Agency to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after notice to Agency demanding that such mutually determined failures to perform be cured or if such cure cannot be effected in such forty-five (45) days, Agency shall be deemed to have cured default upon the commencement of a cure within such forty-five (45) days and diligent subsequent completion thereof;

(iii) any representation or warranty furnished by Agency in this Contract that was false or misleading in any material respect when made.

Section 17.2. Events of Default by Contractor.

Each of the following events or conditions shall constitute an "Event of Default" by Contractor:

(i) the standards of comfort and service set forth in Schedule I are not provided due to failure of Contractor to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within twenty-one (21) days after written notice by Agency to Contractor demanding that such failure be cured, shall be deemed cured for purposes of this Contract.

(ii) any representation or warranty furnished by Contractor in this Contract is false or misleading in any material respect when made;

(iii) provided that the operation of the facility is not adversely affected and provided that the Standards of Comfort in Schedule I are maintained, any failure by Contractor to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within thirty (30) days after written notice to Contractor demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract;

(iv) any lien or encumbrance upon the equipment by any subcontractor, laborer or materialman of Contractor which is not released in thirty days after notice of said filing;

(v) the filing of a bankruptcy petition whether by Contractor or its creditors against Contractor which proceeding shall not have been dismissed within 90 days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of Contractor.

(vi) failure by the Contractor to pay any amount due that is not in dispute, or perform any material obligation under the terms of this Contract, unless such amount due or failure to perform is excused pursuant to the provisions of this Contract.

ARTICLE XVIII: ASSIGNMENT

Section 18.1. Assignment by Contractor. The Contractor acknowledges that the Agency is induced to enter into this Contract by, among other things, the professional qualifications of the Contractor. The Contractor agrees that except as set forth below, neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the Agency.

(i) The Contractor agrees that except as provided below, neither this Contract nor any right of obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the Agency.

(ii) The assignment of this Contract, in whole or in part, within the Enterprise of which Contractor is a part does not require the consent of the other party.

This assignment provision acknowledges that the Agency selected the Contractor for its unique expertise and qualifications to perform the services specified in the contract. The Contractor may not assign this Contract to another Contractor without the written approval of the Agency and any Contractor assigned this contract must fully comply with all terms and conditions of the original contract.
conditions. The Contractor and any assignee remain contractually liable to the Agency for fulfilling all of the Contractor’s obligations as specified in the contract.

Section 18.2. Assignment by Agency.
Agency may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Premises or an interest therein with the consent of Contractor, which shall not be unreasonably withheld. The lack of financial qualification of the new owner shall be grounds for withholding such consent.

This provision allows the Agency to transfer or assign this contract to a new building owner or occupant. The assignee, however, still remains responsible to the Contractor for the obligations as specified in the contract.

ARTICLE XIX: REPRESENTATIONS AND WARRANTIES

This boilerplate provision states that each party has the requisite authority and ability to enter into this contract.

Section 19.1. Representations and Warranties. Each party warrants and represents to the other that:
(i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
(ii) its execution, delivery, and performance of this Contract will not result in a breach or violation of, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or

ARTICLE XX. ADDITIONAL REPRESENTATIONS OF THE PARTIES.

Section 20.1. By Agency.
Agency hereby warrants, represents and promises that:
(i) (Insert the name of your organization) is authorized under the laws of this State to enter into this Contract, each transaction contemplated hereby, and to perform all of its obligations under this Contract.
(ii) Subject to the provisions contained herein, Agency has provided or shall provide timely to Contractor, all records relating to energy and water usage and energy-related maintenance of Premises requested by Contractor and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects and Contractor shall be entitled to rely thereon; and
(iii) Agency has not entered into any prior leases, contracts or agreements with other persons or entities regarding the leasing or acquisition of water or energy efficiency equipment or the provision of energy management services for the Premises or with regard to servicing any of the Equipment located in the Premises that would encroach upon the scope of this Contract. Agency shall provide Contractor with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Premises that may be executed from time to time hereafter within seven days after execution thereof.

These additional representations address several areas specific to the performance contract. The Agency certifies it has or will provide the Contractor will all energy and energy-related records and all future records to be provided will be truthful and accurate. The Agency also declares it has not entered into any leases or service contracts relating to energy equipment or servicing of pre-existing equipment and will notify the Contractor within a specified period of time if it does so.

As well, the Contractor certifies that before beginning work under this contract it will: have become licensed to business in this state; provide proof of required insurance; give Agency access to all document relating to the project (including all contracts and subcontracts) upon request; use state licensed and qualified subContractors; and is financially able to complete the project and perform under the terms of this contract.

Section 20.2. By Contractor.
Contractor hereby warrants, represents and promises that:

1. Before commencing performance of this Contract:
   a. Contractor shall have become licensed or otherwise permitted to do business in the State of (insert the name of your state)
   b. Contractor shall have provided proof and documentation of all required insurance and bonds pursuant to this Contract.
   c. Contractor shall make available, upon reasonable request, documents relating to its performance under this Contract, including contracts and subcontracts it shall enter into;
   d. Contractor shall use subcontractors who are qualified, licensed and bonded in this State to perform the work so subcontracted pursuant to the terms hereof;
   e. Contractor has all requisite authority to license the use of proprietary property, both tangible and intangible, contemplated by this Contract;

2. The Equipment will meet or exceed the Acceptance Testing Standards set forth in this Contract.

3. The Equipment is or will be compatible with all other Premises mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation or operation;

4. That Contractor is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Installation and perform its obligations under this Contract.

ARTICLE XXI: MISCELLANEOUS DOCUMENTATION PROVISIONS.

Section 21.1. Waiver of Liens, Performance Bonds, Labor and Material Payment Bonds. Such executed bonds are incorporated herein by reference as Exhibit I (Performance Bond) and Exhibit II (Labor and Material Payment Bond) per Schedule N (General Conditions; Article 26).

This is a standard construction contracting provision.

Section 21.2. Further Documents
The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

Section 21.3 Agency’s Responsibilities.

This provision protects both the Contractor and the Agency by establishing a method for the Contractor to supervise the Agency’s compliance with the scheduled routine and preventative maintenance activities to be performed by the Agency (either by in-house personnel or existing maintenance contract). This checklist should be developed for both the newly installed and pre-existing energy-related equipment.

(a) Methods of Operation by Agency
The parties acknowledge and agree that said Energy and Cost Savings would not likely be obtained unless certain procedures and methods of operation designed for energy and water conservation shall be implemented, and followed by Agency on a regular and continuous basis.

(b) Agency Maintenance Responsibilities
Agency agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on Schedule K, to be attached hereto and made a part hereof after Agency’s approval, such approval not to be unreasonably withheld, conditioned or delayed.
(c) Inspection of Premises
Agency agrees that Contractor shall have the right once a month, with prior notice, to inspect Premises to determine if Agency is complying, and shall have complied with its obligations as set forth in Section 21.3(b). For the purpose of determining Agency’s said compliance, the checklist to be set forth at Schedule L as completed and recorded by Contractor during its monthly inspections, shall be used to measure and record Agency’s said compliance. Agency shall make the Premises available to Contractor for and during each monthly inspection, and shall have the right to witness each inspection and Contractor’s recordation on the checklist. Agency may complete its own checklist at the same time. Contractor agrees to not interfere with the Agency operations during any monthly inspection.

ARTICLE XXII: CONFLICTS OF INTEREST

Section 22.1 Conflicts of Interest. Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, neither party hereto nor any director, employee or agent of any party hereto shall give to or receive from any director, employee or agent of any other party hereto any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, neither party hereto nor any director, employee or agent of either party hereto, shall without prior notification thereof to the other party enter into any business relationship with any director, employee or agent of the other party or of any affiliate of the other party, unless such person is acting for and on behalf of the other party or any such affiliate. A party shall promptly notify the other party of any violation of this section and any consideration received as a result of such violation shall be paid over or credited to the party against whom it was charged. Any representative of any party, authorized by that party, may audit the records of the other party related to this Contract, upon reasonable notice and during regular business hours including the expense records of the party’s employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this section.

ARTICLE XXIII: CONTRACT DOCUMENTS

Section 23.1. Plan Details. Contractor prepared a complete Sustainability Audit which has been approved and accepted by Agency as set forth in Exhibit III (i) (Notice of Acceptance – Sustainability Audit and Monitoring and Verification Plan).

Section 23.2. General Conditions. General Conditions Articles summarized below and attached hereto as Schedule N shall be incorporated and made a part hereof as follows:

(A) CONTRACT OR SC6.21: SHALL BE DEFINED TO BE THIS SUSTAINABILITY PERFORMANCE CONTRACT AND ALL RELATED SCHEDULES, EXHIBITS AND APPENDICES.

(B) ARCHITECT/ENGINEER: SHALL BE DEFINED TO BE THE CONTRACTOR WHERE SERVICES ARE REQUIRED TO BE PERFORMED BY THIS CONTRACT.

(C) OVERHEAD/PROFIT/COMMISSION: AMOUNTS SHALL BE AS SPECIFIED IN CONTRACTOR’S PROPOSAL AND SCHEDULE R.

The contract schedules detail the substantive technical parameters of the projects. These schedules are referenced throughout the Contract. If any schedules need to be completed after contract execution, include language to that effect. Descriptions for each schedule, exhibit and appendix are provided under each heading.

The Schedule N (General Conditions) These conditions are recommended for use by both government and not government entities since they are based on sound industry practices.
Section 23.3. Order of Precedence.

Notwithstanding, the provisions of this Contract and the attached Schedules, Exhibits and Appendices shall govern in the event of any inconsistencies between the Sustainability Audit and the provisions of this Contract.

In the event of conflicts or inconsistencies between this Contract and its Schedules, Exhibits or Appendices, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: a) Special Provisions, b) Contract body, c) Schedule, d) Schedules/Exhibits/Appendices, e) Agency RFQ Number, f) Contractor Proposal.

In the event of any conflicts between Schedule C and other parts of this Contract regarding Energy and Water Cost Savings calculations or measurement of the guarantee, Schedule C shall govern.

Section 23.4. Facsimile Signatures. Parties agree that facsimile signatures shall be accepted as originals.

ARTICLE XXIV: SPECIAL PROVISIONS
(Not for Use with Inter-Governmental Contracts)

9. CONTROLLER’S APPROVAL.
This contract shall not be deemed valid until it has been approved by the Controller of for the Agency or such assistant as he may designate.

10. FUND AVAILABILITY.
Financial obligations of the Agency payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

11. INDEMNIFICATION.
The Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subContractors, or assignees pursuant to the terms of this contract.

12. INDEPENDENT CONTRACTOR. 4 CCR 801-2
The Contractor shall perform its duties hereunder as an independent Contractor and not as an employee. Neither the Contractor nor any agent or employee of the Contractor shall be or shall be deemed to be an agent or employee of the state. Contractor shall pay when due all required employment taxes and income tax and local head tax on any monies paid by the State pursuant to this contract. Contractor acknowledges that the Contractor and its employees are not entitled to unemployment insurance benefits unless the Contractor or third party provides such coverage and that the state does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the state to any agreements, liability, or understanding except as expressly set forth herein. Contractor shall provide and keep in force Workers’ Compensation (and provide proof of such insurance when Requested by the State) and unemployment compensation insurance in the amounts required by law, and shall be solely responsible for the acts of the Contractor, its employees and agents.

13. NON-DISCRIMINATION.
The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

14. CHOICE OF LAW.
The laws of the State of insert the name of your state) and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in
part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

15. VENDOR OFFSET.

(State Projects should check to see if you state has a provision like this) The State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified owed to the state; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

16. EMPLOYEE FINANCIAL INTEREST.

The signatories aver that to their knowledge, no employee of the Agency has any personal or beneficial interest whatsoever in the service or property described herein.
THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

(Modify this section to fit your organization and Contractor)

CONTRACTOR:

___________________________________________

By

Legal Name of Contracting Entity

Name of Authorized Representative

Social Security Number or FEIN

AGENCY

Signature of Authorized Officer

LEGAL REVIEW

Name of Reviewing Agency

By

Print Name & Title of Authorized Officer

CORPORATIONS:
(A corporate attestation is required and seal, if available.)

Attest (Seal) By

(Corporate Secretary or Equivalent, or Town/City/County Clerk)
**SCHEDULE A.**

**EQUIPMENT TO BE INSTALLED BY CONTRACTOR**

This schedule will be furnished by the Contractor based on the final Sustainability Audit. The Sustainability Audit is not an Attachment to this Contract, so all detail from the Sustainability Audit as modified or amended in negotiations for this Contract should be included in this Schedule. It should specify all of the newly installed equipment including manufacturer, quantity, location and warranties (you can also have a separate schedule for warranties). The information should be provided in sufficient detail by building or area of building so that the Agency can verify the number of units installed under the contract. This is particularly important for a lighting retrofit and is used as the basis for making adjustments to the Contract Sum if the number of fixtures actually retrofit is different than the number estimated. Detailed specifications of major pieces of equipment such as boilers, chillers, motors should be provided. A detailed points list of any energy management control system should be provided along with the major control strategies being implemented. This schedule should also describe any modifications that may have to be made to existing equipment, if applicable.

**SCHEDULE B.**

**DESCRIPTION OF PREMISES; PRE-EXISTING EQUIPMENT INVENTORY**

This schedule is based on the final Sustainability Audit. It contains basic information about the condition of the premises at the time of contract execution. The Sustainability Audit is not an Attachment to this Contract, so all detail from the Sustainability Audit as modified or amended in negotiations for this Contract should be included in this Schedule. Such information would include facility square footage, building construction, use, occupancy, hours of operation etc., and any special conditions that may exist.

The inventory is important to include for the purpose of identifying what equipment was in place and how it was configured at the time of contract execution. This schedule is important to the accurate establishment of baseline savings measurement and may need to be referred to in the later years of the contract. It is critical that if M&V option C of the International Performance Monitoring and Verification protocol is used for establishing the savings, then a detailed list of the existing energy consuming equipment of the facility be documented in great detail. If Option A or B is used, then the pre-existing equipment inventory can be eliminated.

**SCHEDULE C:**

**ENERGY AND COST SAVINGS GUARANTEE**

This schedule should fully describe all provisions and conditions of the energy saving guarantee provided by the Contractor. The guarantee should be defined in units of energy to be saved for the duration of the contract term and dollar savings. Reference to the annual reconciliation of achieved vs. guaranteed savings should be included (there is also language in the body of the contract regarding annual reconciliation See Section 2.6 (Annual Review and Reimbursement/Reconciliation)). Guidelines for the guarantee were established in the RFQ, so ensure compliance with RFQ intent.

This schedule should contain the projected energy savings in units for each year of the contract. Often these projections are broken down on a measure-by-measure basis, although some measures may be aggregated into general categories such as lighting or HVAC. If there are several buildings involved in the project, this schedule should contain projections for each facility, even though they may all be covered under a single guarantee.

**SCHEDULE D:**

**MONITORING, MAINTENANCE AND SERVICE AGREEMENT**

This should contain the amount and frequency of any payments that may be made to the Contractor for maintenance, monitoring or other services negotiated as part of the contract. It should contain information about how the compensation is calculated (e.g. a percentage of savings above and beyond the guarantee, flat fee etc.), and if an annual inflation index is to be used to escalate fees over the duration of the contract term. An hourly fee structure can also be included to cover Contractor costs for any services provided beyond the scope agreed to at the time of contract execution.
SCHEDULE E:
BASELINE ENERGY CONSUMPTION

The baseline energy consumption is the “yardstick” by which all savings achieved by the installed project will be measured. The methodology and all supporting documentation used to calculate the baseline should be in this schedule including unit consumption and current utility rates for each fuel type. This schedule may also include baseline documentation regarding other cost savings such as material savings (e.g., bulbs, ballast, filters, chemicals etc.), and cost savings associated with the elimination of outside maintenance contracts.

For each site or project, the baseline and post-installation energy use will usually be defined using metering, billing analysis and/or engineering calculations (including computer simulations) either individually or in combination. In addition, values for certain factors that affect energy use and savings that are beyond the Contractor’s control may be stipulated using historical data, analyses and/or results of spot or short-term metering. The owner or the Contractor can define baseline conditions. If the owner defines the baseline, the Contractor will have the opportunity to verify it. If the baseline is defined by the Contractor, the owner will have the opportunity to verify.

Baseline physical conditions (equipment inventory and conditions, occupancy, nameplate data, energy consumption rate, control strategies, etc.) are typically determined through well-documented audits, surveys, inspections and/or spot or short-term metering. This documentation will define the baseline for calculating savings and document baseline conditions in case future changes require baseline energy use adjustments.

SCHEDULE F:
SAVINGS MEASUREMENT AND CALCULATION FORMULAE; METHODOLOGY TO ADJUST BASELINE; MONITORING AND VERIFICATION PLAN

This schedule contains a description of the energy savings measurement; monitoring and calculation procedures used to verify and compute the savings performance of the installed equipment will be contained in this schedule. The Agency should consider requiring the Contractor to use the International Performance Monitoring and Verification Protocol 2002 as the basis of the savings calculation methodology. This protocol provides four options for M&V and covers all possible energy and water efficiency measures and is the accepted international standard for M&V of performance contracts.

This calculation will include a method to compare the level of energy that would have been consumed without the project (referred to as the "Baseline") with what amount of energy was actually consumed during a specific time period (monthly, quarterly, etc.). All methods of measuring savings including engineered calculations, metering, equipment run times, pre- and post-installation measurements, etc. should be explicitly described for all equipment is installed.

A clear methodology for converting energy savings into energy cost savings should be provided. The utility rates to be used for the baseline and actual energy costs should be defined. How the calculations are affected by rising or lowering utility rates should be clearly described.

Periodically (typically on an annual basis), the baseline will be adjusted to account for the prevailing conditions (e.g., weather, billing days, occupancy, etc.) during the measurement period. All methodologies used to account for any adjustments to the baseline needs to be clearly defined in this schedule.

Examples of baseline adjustments include: change in the amount of space being air conditioned, changes in auxiliary systems (towers, pumps, etc.), and changes in occupancy or schedule. For example, if a chiller retrofit was completed in a building with 100,000 square feet of conditioned space and during the contract term the conditioned space is reduced to 75,000 square feet, post-installation energy use would be lower making savings higher. If there are no records of the amount of originally conditioned space, the baseline could not be adjusted.

Baseline adjustments for issues such as changes in production shifts, facility closures, adding new wings or loads (such as computer labs) require a conceptual approach versus a method to cover each eventuality. Clearly predictable annual variations are usually handled through established procedures for each identified factor in the savings formulas. Permanent changes, such as changes in square footage, are handled through agreement clauses that allow predictable or expected changes and/or through a “re-open” clause that allows either party to renegotiate the baseline.
A Facility Changes Checklist or other method may be provided by the Contractor for the Agency to notify the Contractor of any changes in the facility that could have an impact on energy use (occupancy, new equipment, hours of use, etc.). This checklist is generally submitted on a monthly or quarterly basis.

**SCHEDULE G: CONSTRUCTION AND INSTALLATION SCHEDULE**

The timetables and milestones for project construction and installation should be contained in this schedule. Any penalties for late installation should also be documented here. Documentation of required insurance, subContractor lists, and any MBE/WBE required subcontracts can be included in this schedule or broken out into a separate schedule. NOTE: It is important that the construction/installation phase of the project (for example bonds and insurance) be treated in compliance with individual institutional requirements and the appropriate governing statutes. Since construction is just one component of the overall project, a separate construction contract may be desirable and in some cases necessary. The construction contract would then be referred to in the body of the contract and attached as an exhibit, appendix or other type of attachment. Another approach would be to consolidate the appropriate construction language for inclusion in the body of the final contract. This will need to be decided as appropriate on a case-by-case basis.

**SCHEDULE H: SYSTEMS START-UP AND COMMISSIONING; OPERATING PARAMETERS OF INSTALLED EQUIPMENT**

This section should specify the performance testing procedures that will be used to start-up and commission the installed equipment and total system. The schedule also provides for the Agency to be notified of and have the right to be present during all commissioning procedures. This schedule should contain a provision for the documentation of the client’s attendance at the various tests and acceptance of the Contractor’s certification that the tests followed the specified procedures and met or exceed the expected results. Use of manufacturer’s start up and performance sheets are required.

The operating parameters should contain any specified parameters for the operation of the installed equipment such as temperature setbacks, equipment run times, load controlling specifications and other conditions for the operation of the equipment.

**SCHEDULE I: STANDARDS OF COMFORT**

The standards of comfort to be maintained for heating, cooling, lighting levels, hot water temperatures, humidity levels and/or any special conditions for occupied and unoccupied areas of the facility should be explicitly described in this schedule.

**SCHEDULE J: CONTRACTOR’S MAINTENANCE RESPONSIBILITIES**

A complete description of the Contractor's specific operations and maintenance responsibilities should be included in this schedule along with the time intervals for their performance of the stated O&M activities (through Acceptance, through monitoring period, etc.).

**SCHEDULE K: AGENCY’S MAINTENANCE RESPONSIBILITIES**

This schedule describes the operations and maintenance responsibilities that may be assigned to facility staff as agreed to by both parties. In same instances it will contain no more than a description of routine O&M currently being performed on existing energy consuming equipment in the facility. In other cases, facility staff may be used to provide some maintenance on the new equipment installed under the performance contract, with the Contractor providing any specialized services as needed.

**SCHEDULE L: FACILITY MAINTENANCE CHECKLIST**

This checklist is a method by which the Contractor may record and track compliance with operations and maintenance procedures performed by facility personnel. The checklist typically specifies simple list of tasks and the corresponding
schedule for the performance of the prescribed procedures. Facility staff will complete the checklist and forward it to the Contractor, usually on a monthly basis. (This checklist is a very useful tool for both the Contractor and Agency to verify that the required maintenance activities are being performed at the scheduled intervals). It could be stated here that the checklist will be provided as a part of the Operation and Maintenance Manuals.

**SCHEDULE M:**
**CONTRACTOR’S TRAINING RESPONSIBILITIES**
The description of the Contractor’s training program or sessions for facility personnel should be contained in this schedule. The duration and frequency of the specified training should also be included. Any provisions for on-going training, commitments to train newly hired facility personnel, and training with respect to possible future equipment or software upgrades should also be described. Any fees associated with requests for training beyond what the Contractor is contractually bound to provide should also be specified.

**SCHEDULE N:**
**GENERAL CONDITIONS**
Insert General Conditions of the Contract (provided in separate file).

Section 28.2 (Schedules, Exhibits and Appendices) describes which of the paragraphs of the general conditions apply to this contract.

**SCHEDULE O:**
**PAYMENT SCHEDULE AND SCHEDULE OF VALUES**
This schedule contains the schedule of payments from the Agency to the Contractor based on the level of work completed. This can be structured on an overall % project completion basis or on a ECM or Building by Building basis. A detailed Schedule of Values should be provided by ECM, SIM and by building so that the % completion can be established. The Schedule of Values should show a breakdown of the total cost by of ECM, SIM and related services (i.e. energy audit). The amount of Agency contribution should also be clearly indicated.

**SCHEDULE P:**
**PRE-EXISTING SERVICE AGREEMENTS**
Information regarding the scope and cost of pre-existing equipment service contracts should be located in this schedule. This gives both the Agency and Contractor information about how and when the existing equipment is being serviced. As well, if the Contractor is credited with any maintenance savings or is taking over any existing service contracts, the scopes and costs of such Contracts will useful in tracking the performance of the Contractor in providing the required services and documenting any attributable cost savings.

**SCHEDULE Q:**
**CURRENT AND KNOWN CAPITAL PROJECTS AT FACILITY**
If there are any current or planned capital projects to be implemented in the facility, that information should be contained in this schedule. This information could prove to be very useful in the out-years of the contract to avoid potential disputes over long-term energy savings performance, overall facility energy consumption and costs.

**SCHEDULE R:**
**PROJECTED FINANCIAL PERFORMANCE**
This schedule should contain the projected energy savings in units for each year of the contract. Oftentimes these projections are broken down on a measure-by-measure basis although some measures may be aggregated into general categories such as lighting or HVAC. If there are several buildings involved in the project, this schedule should contain projections for each facility, even though they may all be covered under a single guarantee.

It should also include a spreadsheet depiction of expected financial performance of the project for the entire contract term. It should clearly identify all financial components of the project including interest rates and lease-purchase costs to the leasing company, current fuel prices, any escalation rates to be applied (if an escalation rate is going to be agreed
upon with the Contractor then it should be clearly documented in **Schedule F**, guaranteed savings, Contractor compensation figures (up front payment and monitoring fees), cash-flow projections and projected Net Present Value of any cumulative positive cash flow benefits to the building owner.

**SCHEDULE S**  
Certificate of Insurance
EXHIBITS

EXHIBIT I
PERFORMANCE BOND

To be provided after execution of this Contract.

EXHIBIT II
LABOR AND MATERIAL PAYMENT BOND

To be provided after execution of this Contract.

EXHIBIT III (i)
NOTICE OF ACCEPTANCE—SUSTAINABILITY AUDIT AND MONITORING AND VERIFICATION PLAN

To be provided by the Agency.

EXHIBIT III (ii)
Notice of Substantial Completion

Notice of Substantial Completion

For state agencies and higher education institutions, use first page and delete second page.
For others, delete first page and use second page.

Notice is hereby given that Customer accepts the installed equipment and establishes a performance period start date of ____________.

(Modify to fit your organization)
Agency Customer Name

By ____________________________ By ____________________________
Date ____________________________ Date ____________________________

When completely executed, this form is to be sent by certified mail to the Contractor by Customer.
Notice of Substantial Completion

Date of Notice __________

Notice is hereby given that Customer accepts the installed equipment and establishes a performance period start date of _____________.

Agency Name

By ____________________________

Date

When completely executed, this form is to be sent by certified mail to the Contractor by Agency Name.

Exhibit IV
Equipment Warranties

Exhibit V
Minority and Women-Owned Business Enterprises

Exhibit VI
Certification that Lifetime of Equipment Exceeds Financing Term

Exhibit IV
Equipment Warranties

Exhibit V
Minority and Women-Owned Business Enterprises

Exhibit VI
Certification that Lifetime of Equipment Exceeds Financing Term
APPENDICES

APPENDIX A:
LEASE AGREEMENTS AND DOCUMENTS

APPENDIX B:
RFQ FOR CONTRACTOR SOLICITATION

APPENDIX C:
CONTRACTOR PROPOSAL
RFQ ATTACHMENT 8: FINANCING BID PACKAGE

OVERVIEW

The CONTRACTOR is expected to conduct a competitive bid process to select a financing firm to satisfaction of Agency.

TABLE OF CONTENTS

Model Request for Proposal for Financing
Model Lease Contract
Note to political subdivisions: Eliminate the Lease Contract from the file and replace with this statement: The selected CONTRACTOR will submit a lease-purchase agreement that meets State Statutory requirements and is approved by the Agency’s Bond Counsel.
Financing Proposal Letter
Signature Sheet
Overview of Facility Improvement Projects
Request for Proposal

RFQ Reference: Customer Name
RFQ Date: Date
RFQ Closing Date: Date
ESCO - Contact: Name, Address, Phone, Fax, E-mail

Notice to Firms

Invitations are extended for proposals using the attached proposal format

Scope of Request: Provide pursuant to a tax-exempt lease purchase agreement with Customer financing for energy and water savings measures for those certain facilities located at the Customer’s campus.

Properly Completed Responses will include:

- a signed and dated proposal letter in the format included
- a signed and completed signature sheet
- a schedule of payments and amortization schedule including any purchase options
- escrow information (contact, Escrow Agreement and List of All Fees)
Specific Terms

Lessee: Board of Customer

Lessor: The Provider of the Financing or a Mutually Agreeable Nominal Lessor

Contract: A Model Lease Contract between Lessor and the Customer. Each firm is required to provide a lease contract. The selected ESCO will submit a lease-purchase agreement that meets the requirements of the State Statutes and is approved by Agency Bond Counsel.

Security: The Lessor will be secured by the Customer’s obligation to pay the lease payments, which are subject to annual appropriations and by a security interest in the equipment purchased for the energy and water savings measures to be installed by ESCO, which can be salvaged without damage to the facility to which such equipment is attached. See Fiscal Funding clause for lease agreement.

Fiscal Funding: The Lessor understands and agrees that this Agreement is contingent upon the continuing availability of funds as provided in the second paragraph of the Special Provisions hereinafter set forth, and that the Government is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. The Government contracts to acquire by purchase the Equipment and services described in this Agreement and has reason to believe that sufficient funds will be available for the full term of this Agreement. Where, for reasons beyond the Government’s control, its funding entity does not allocate funds for any fiscal period beyond the one in which this Agreement is entered into, the Government has exhausted all efforts to obtain funds legally available for future fiscal periods, and the Government’s failure to obtain funds does not result from any act or failure to act on the part of the Government, this Agreement shall be terminated without penalty and the Government will not be obligated to make the payments remaining beyond the government’s then current fiscal period. The Government shall notify the Lessor in writing of such non-allocation of funds (an "Event of Nonappropriation") as soon as the Government shall reasonably know of such non-allocation, and if possible, prior to the effective date of termination.

The Lessor understands and agrees that the obligation of the Government to pay the charges due under this Agreement constitutes a current expense of the Government payable exclusively from the Government’s funds and shall not in any way be construed to be a general obligation of indebtedness of the Government or any agency or department. Neither the Government, nor the Lessor acting on the Government’s behalf, has pledged the full faith and credit of the Government or any agency or department thereof to the payment of the charges due under this Agreement, and this Agreement shall not directly or contingently obligate the Government or any agency or department thereof to apply money from, or levy or pledge any form of taxation to, the payment of any charge due under this Agreement.

Interest Rate: A fixed rate of interest for the term of the financing. The proposal should include the relevant index and spread along with the period of time the proposed fixed interest is committed

Prepayment: The final tax-exempt lease purchase agreement shall include certain prepayment provisions pursuant to a schedule to be agreed to by the parties

Assignment: The Lessor may assign its rights to receive lease payments and its security interest in the equipment installed pursuant to the Sustainability Performance Contract but only with the advance written consent of the Customer. Each assignment must specifically mention the Customer’s rights regarding prepayment.

Amendment: The Customer reserves the right to amend the Model Lease Contract that is entered into pursuant to this Request for Proposal. Any such amendment will be in writing and subject to the mutual consent of both parties.
**Cost:** The proposal should identify specifically all costs associated with the transaction, if any, that would be an obligation of the Customer as either a direct payment or as additional project costs for purpose of determining the funded lease amount an/or ongoing lease payment obligation. These costs must be all-inclusive and may include commitment fees, legal counsel, trustee fees and any other costs. The Lease Agreement does not require the Customer to pay any supplemental financing costs, either direct (upfront) or as an addition to the project cost.

**Requirement of ESCO:** The proposal shall identify specifically any requirements to be imposed upon ESCO as a result of this financing.

**Requirement of Lender:** The Lessee will agree that Lessor will bear the risk of loss if the equipment is damaged or destroyed, and to pay lease payments from funds available for that purpose, when and if appropriated by the State Legislature.

### Conditions to Proposal

**Cost of Preparing**

**Proposal:** The cost of developing and submitting the proposal is entirely the responsibility of the firms submitting a response to this Request for Proposal. This includes, but is not limited to, costs to determine the nature of the engagement, preparation of the proposal, submitting the proposal, negotiating for the contract and other costs associated with this Request for Proposal.

**No Oral or Implied Contracts:** There shall be no oral or implied contracts relating this Request for Proposal.

**Acceptance or Rejection:** The Customer reserves the right to select, accept or reject any or all proposals or part of a proposal; to waive any informalities or technicalities; clarify any ambiguities in proposals; modify any criteria in this Request for Proposal; and establish financing at any time.

**Contract:** The successful firm will be required to enter into a tax-exempt lease purchase agreement with the Customer.

The tax-exempt lease purchase agreement shall be substantially in the form set forth on Attachment 1: Model Lease Contract. Each firm is required to provide comments and specific alternate language for those items in the Model Lease Contract from which the firm wishes to deviate.

**Contract Documents:** This Request for Proposal and any amendments and the response and any amendments of the successful firm shall become a part of the written contract, which shall compose of the complete understanding of the parties.

In the event a conflict in terms of language among the documents, the following order of precedence shall govern:

1. written modifications to the executed contract;
2. tax-exempt lease purchase agreement signed by the parties;
3. this Request for Proposal, including any and all addenda

**Contract Formation:** No contract shall be considered to have been entered into by the Customer until all statutorily required signatures and certifications have been rendered and a written contract has been signed by the successful firm.

**Open records Act:** All proposals become the property of the Customer. State statute requires all information contained the proposals become open for public review once a contract is signed or all proposals are rejected.
Submission of Proposals: A copy of the firm’s proposal shall be received on or before Time, Date, addressed as follows:

Name, Address

Responses via email or facsimile will be accepted provided that such response includes all of the requisite information.

Proposals received prior to the closing date shall be kept secured until closing. The Customer shall not be responsible for the premature opening of a proposal or for the rejection of a proposal that was not received prior to the closing date.

Signature of Proposals: Each proposal shall give the complete mailing address of the firm and be signed by an authorized representative with his or her name and legal title typed below the signature line.

Acknowledgement of Addenda: All firms shall acknowledge receipt of any addenda to this Request for Proposal by original signature with his or her name and legal title typed below the signature line. Each proposal shall include the firm’s social security number or Federal Employer Identification Number.

Modification of Proposal: A firm may modify a proposal by written notification at any time prior to the closing date. Any modifications received after the closing date shall not be accepted.

Withdrawal of Proposal: A proposal may be withdrawn on written request from the firm to the representative designed above.

Proposal Disclosures: At the time of closing, only the names of the firms who submitted proposals shall be made available to the public. No interest rate information will be released until there is an award and contract.

Notice of Award: An award is made on the execution of the written contract by the all parties. Only the Customer is authorized to issue news releases relating to this Request for Proposal, its evaluation, award and/or performance of the tax-exempt lease financing.

Prohibition of Gratuities: Neither the successful firm nor any person, firm or corporation employed by the successful firm in the performance of this contract shall offer or give any gift, money or anything of value or any promise of future award or compensation to any Customer employee at any time.

Third Party Beneficiaries: This Request for Proposal and resulting tax-exempt lease purchase agreement shall not be construed as providing an enforceable obligation to any third party.

No Liability: The Customer shall have no liability, obligation nor shall it be compelled to enter into any tax-exempt lease purchase agreement or any other financing arrangement as a result of issuing this Request for Proposal.
Financing Proposal Letter

PROPOSING FINANCING FIRMS: SUBMIT ON FIRM LETTERHEAD

Date

RE: <Customer>

<Lender> is pleased to submit the following financing proposal for the <Customer> energy and water savings conservation project. This proposal is being submitted in response to your Request for Qualifications dated February _____, 2004.

I. Lender Information
Lender Name:
Address:
Contact:
Telephone:
Fax:
Email:
Background: Lender Background -- Discuss experience in financing state projects and / or performance contracts, with attention given to experience in this state, and what advantages your firm offers.

II. Financing Structure
Purpose: Finance the energy and water savings conservation projects to be engineered, designed, constructed and commissioned by ESCO for

Structure: Tax-exempt Lease Purchase arrangement using the Model Lease Contract distributed with this Request for Qualifications.

Security: First lien on the equipment
Lessee appropriations

Proceeds: Approximately $________ plus capitalized interest for the _____ month construction period.

Term: _______ months (___ months of construction plus 144 months of amortization period)

Payments: Quarterly in arrears.

Prepayment: List prepayment terms / conditions / penalty

Interest Rate: _______% (This is a non-bank qualified financing)

Rate will be held until ____________________. After that date, the rate will be adjusted as follows:
________________________ (name and source of index).

Example: This rate will be held until_____. After that date, the rate will float at 75 basis points over the 10 year treasury, constant maturity, as published daily in the Federal Reserve Bulletin Statistical Release H-15.

Closing Costs: $____________________ (if any)
**Escrow Account**
Terms: Agent name and all costs associated with opening and maintaining the escrow, including any investment management fees, if any. (Note: Please include a copy of the escrow agreement as part of the response documents)

Documents: A redlined copy of the Model Lease Contract is included with this response and contains the edits that we require in order to execute the agreement.

Payment and Performance Bonds: We **do / do not** require to be named as dual obligee on the payment and performance bonds.

Other Conditions Of ESCO:
___________________________________________________________

Credit Approval: The transaction **is / is not** subject to credit approval of the lender. (Note: If the financing is not approved, please list requirements and time frame required for approval)

**Estimated Closing**
Date: Within 60 days of the award of the financing.

Other Requirements or conditions:

III. Other Information
Please provide any other information that you would like to share regarding your firm’s qualifications, references, contacts, etc.
Thank you for the opportunity to provide this proposal. If you have any questions or would like to discuss this proposal in further detail, please let us know.

Sincerely,

By: ____________________
Title: ____________________
Date: ____________________
Signature Sheet

Item: Tax-exempt lease financing for <Customer’s> energy and water conservation projects.

Entity: Board of <Customer>

We submit a proposal to furnish the financing for the term of the contract in accordance with the specifications and schedule of supplies. I hereby certify that I (we) do not have any substantial conflict of interest sufficient to influence the bidding process on this bid. A conflict of substantial interest is one, which a reasonable person would think would compromise the open competitive bid process.

Addenda: The undersign acknowledges receipt of the following addenda:
Proposal letter dated ___;
Model Lease Contract – Attachment A;
List of energy and water savings measures and the associated capital cost – Attachment B;

Legal Name of Person, Firm or Corporation: __________________________________________________________
Telephone: ___________________________ Fax: ___________________________
Email: ___________________________

Mailing Address: __________________________________________________________
City & State: ___________________________ Zip: ___________________________
FEIN Number: ___________________________

Please indicate taxes currently registered for in [insert name of your state]:
Corporate Income Tax [ ]; Sales Tax [ ]; Withholding Tax [ ]
Compensating Use Tax [ ]; None [ ]

The undersigned attests this bidder is not in arrears in taxes due the [insert name of your state].

Signature: ___________________________ Date: ___________________________
Typed Name of Signature: Title: ___________________________

If awarded a contract and purchase orders are to be directed to an address other than above, indicate mailing address and telephone number below.

Address: __________________________________________________________
City & State: ___________________________ Zip Code: ___________________________
Telephone: ___________________________ Fax: ___________________________
Email: ___________________________
Overview of Facility Improvement Projects

Sustainability Services Company:

Contractual Arrangement: Sustainability Performance Contract by and between Sustainability Services Company and Board of <Customer>

Total Installed Costs: $______________, subject to adjustment based upon final analysis by Sustainability Services Company

Financed Capital: Approximately $__________________, which is the Total Installed Costs plus capitalized interest for the _____ month construction period

Term: _______ months (___ months of construction plus ____ months of amortization period)

Payments: no more frequent than quarterly and such payment shall be in arrears

Projects: Energy and Water Savings Measures including but not limited to:
Item 1
Item 2

A more detailed description of these measures is included with this Request for Proposal along with an estimate of the capital cost associated with each.

Anticipated Draw Schedule:
APPENDIX C: REFERENCES

REFERENCES FOR APPENDIX B:

Appendix B is based on the Colorado Governor’s Office of Energy Management and Conservation Model Performance Contracting Documents. The Colorado model documents are Colorado-specific and have started to include LEED. Linda Smith of the Colorado Governor’s Office of Energy Management and Conservation has guided the continuous improvement process for these documents since the early 1990’s. The Colorado performance contracting documents were chosen as the basis for these model documents in this Guide because they are periodically used by the Energy Services Coalition (ESC) as the starting point for developing model ESC performance contracting documents. Linda is also a founder and a member of the Board of the ESC. The ESC is a non-profit organization made up of government and industry professionals in energy performance contracting.

State-specific portions of these model documents have been adapted so that they can be easily used by state and local government agencies in any state.
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