AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Energy Services Agreement; Johnson Controls, Inc.;

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Energy Performance Contract for design, engineering, construction, and performance guarantee of solar PV systems and lighting retrofit to LED in select facilities

Fiscal Impact:

Submitted by: John Cattles **Submitter's Email Address:** jcattles@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
Per John, will change 1st payment date to December rather than November. No other concerns. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 11/1/2019

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 11/15/19

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 11/15/2019 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 11/15/2019

( ) Consent Agenda (●) Regular Agenda ( ) Worksession Time Allotted: 20 minutes

Agenda Date: 11/19/2019

Revised April 2015

Energy Services Agreement

ENERGY Services Agreement

MODEL CONTRACT
The Colorado Energy Office presents this document as a model contract. General Counsel to Political Subdivision should make suitable adaptations to this Model Contract pursuant to applicable Political Subdivision statutes, charter provisions and code or other procedural requirements.

POLITICAL SUBDIVISION:	Gunnison County, CO
ENERGY SERVICE COMPANY (STATE REGISTERED NAME):	Johnson Controls
PROJECT NUMBER:	
PROJECT NAME:	Gunnison County ESA

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PARTIES

This Energy Services Agreement (hereinafter called "Contract" or "ESA") is entered into by and between Energy Service Company, (Johnson Controls, Inc) (hereinafter called "Contractor"), and the (Board of County Commissioners of Gunnison County, Colorado) (hereinafter called the "Political Subdivision").

RECITALS

WHEREAS, authority for the Political Subdivision to enter into this Contract exists in the law, and other applicable state statutes and charter and code provisions, and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment of the amounts due hereunder, all within applicable constitutional, statutory, charter, code or other limitations applicable to the Political Subdivision; and

WHEREAS, required approvals, clearance and coordination have been accomplished by Political Subdivision, to enter into a contract for the design and implementation of energy analysis and recommendations pertaining to measures that would significantly increase Utility Cost Savings, Operations and Maintenance Cost Savings, and Vehicle Fleet Operational and Fuel Cost Savings; and

WHEREAS, the Contractor or other entity and the Political Subdivision entered into a certain Investment Grade Audit (IGA) Contract, whereby the Contractor or other entity provided an analysis and recommendations in the form of an IGA Report and an Energy Services AgreementESA) Project Proposal. Such report and project proposal provided: estimates of (i) the amounts by which Utility Cost Savings and Operation and Maintenance Cost Savings would increase and (ii) all costs of such Utility Cost-Savings Measures or Facility Improvement Measures (FIMs), including, but not limited to, itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs, and debt service or estimates of (i) the amounts by which Vehicle Fleet Operational and Fuel Cost Savings would increase and (ii) all costs of such Vehicle Fleet Operational and Fuel Cost-Savings Measures,; and

WHEREAS, the Contractor or other entity was selected by the Political Subdivision as the entity to analyze and recommend measures to significantly increase utility cost, operation and maintenance cost, and vehicle fleet operational and fuel cost savings, through an IGA, pursuant to competitive negotiations; and

WHEREAS, the Political Subdivision has approved Contractor's or other entity's analyses and recommendations in the IGA; and

WHEREAS, the analysis and recommendations provided by the Contractor or other entity pursuant to the IGA indicate that the expected annual payments by the Political Subdivision required under this Contract, or as required in a contract with the Political Subdivision and any Third-Party Lessor, which payments shall include any annual maintenance costs, for the implementation of one or more Utility Cost-Savings Measures or FIMs is required to be equal to or less than the sum of the Utility Cost Savings and Operation and Maintenance Cost Savings achieved by the implementation of such Utility Cost- Savings Measures and FIMs on an annual basis; and

WHEREAS, the Contractor or other entity and the Governing Body of the Political Subdivision have reviewed the Energy Services Agreement Project Proposal, which was derived from the IGA Report, in respect of which the Political Subdivision has received and reviewed the IGA Record of Review from the Colorado Energy Office (CEO), and created a finalized ESA Description of Work (**Schedule B**), and that all the necessary information has been incorporated into the appropriate ESA schedules to complete the Work; and

WHEREAS, the Contractor is either (i) the same entity that performed the IGA and is therefore exempt from any additional competitive bidding or procurement provisions,**.**, or (ii) not the same entity that performed the IGA and was selected for performance of this Contract pursuant to negotiation requirements, and applicable competitive bidding or procurement provisions; and

NOW, THEREFORE: in consideration of the premises and mutual agreements and covenants hereinafter set forth,

and intending to be legally bound, the Political Subdivision and the Contractor hereby agree to the terms and conditions in this Contract.

EFFECTIVE DATE AND NOTICE OF NON-LIABILITY

This Contract shall not be effective or enforceable until it is authorized and approved by the Governing Body (defined below in Article 1) of the Political Subdivision, by applicable resolution, ordinance or other authorizing action of the Governing Body, and executed by a duly authorized representative of the Political Subdivision, as set forth in such resolution, ordinance or other authorizing action (defined below as the "Principal Representative"), on the date set forth in Section 28 hereof in the signature block of the Political Subdivision (the "Effective Date"). The Political Subdivision shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay or reimburse the Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract, except that the Principle Representative may make any payments for work that was completed under a properly executed contract for an investment grade audit that are to be paid under this contract in accordance with the terms of the investment grade audit contract.

All references in this Contract to "Article," "Section," "Subsections," "Exhibits" or other "attachments," whether spelled out or using the **§** symbol, are references to Articles, Sections, Subsections, Exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

1. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Adjusted-Baseline Energy

"Adjusted-Baseline Energy" means the energy use of the baseline period, adjusted to a different set of operating conditions.

B. American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE)

"American Society of Heating, Refrigeration, and Air Conditioning Engineers" or "ASHRAE" means the recognized professional organization with standards and guidelines that may be referenced for additional definitions, procedures, and technical information as necessary in this Scope of Work and the IGA Project Proposal Report.

C. Baseline Energy

"Baseline Energy" means the energy use (units) occurring during the Baseline Period without adjustments.

D. Baseline Period

"Baseline Period" means the period of time chosen to represent operation of the facility or system before implementation of a Utility Cost-Savings Measure or any applicable FIM, as defined herein. This period may be as short as the time required for an instantaneous measurement of a constant quantity, or long enough to reflect one full operating cycle of a system or facility with variable operations.

E. Baseline

"Baseline" means and pertains to the baseline period.

F. Business Day

"Business Day" means any day in which the Political Subdivision is open and conducting business, but shall not include Saturday, Sunday or any holidays observed by the Political Subdivision.

G. Colorado Open Records Act (CORA)

"CORA" means the Colorado Open Records Act, **§§24-72-200.1 *et seq*., C.R.S.**

H. Commissioning

"Commissioning" means a process for achieving, verifying and documenting the performance of equipment to meet the operational needs of the facility within the capabilities of the design, and to meet the design documentation and the Political Subdivision's functional criteria, including preparation of operating personnel. Retro-commissioning is the application of the Commissioning process to existing buildings.

I. Compensation

J. "Compensation" means the funds payable to the Contractor by the Political Subdivision for the performance of the Contractor's obligations hereunder, including, but not limited to, the Project Contingency Funds

"Contingency Funds," if applicable, means the moneys of the Political Subdivision not included in the Fixed Limit of Construction Cost and budgeted, appropriated and encumbered for Project contingency purposes in order that the Political Subdivision may use such moneys to pay to the Contractor, any other contractor

through a Separate Contract constituting a portion of the Project Work as determined and authorized by the Governing Body, or any Third-Party Lessor. Contingency Funds could be used in the event of construction cost budget overage, if the Principal Representative, upon the authorization of the Governing Body, determines to add to or change the Contractor's Scope of Work, hire a contractor for special services (example-environmental remediation) or reduce the Political Subdivision's obligation to any Third-Party Lessor, all pursuant to **Article 6(C)** and **Article 6(J)**.

K. Construction Commencement Date

"Construction Commencement Date" means the date the Principal Representative issues a written Notice to Proceed to Commence Construction Phase form.

L. Construction Documents

"Construction Documents" means the documents set forth in **Article 6(A)**.

M. Construction Term

"Construction Term" means the period of time in which Contractor shall complete the Project, pursuant to **Article 6(F)**.

N. Contract Documents

"Contract Documents" means this Contract; the Exhibits; the Schedules; and the Construction Documents. **Article 25** and **Article 26**, respectively, list the Exhibits and Schedules attached hereto and incorporated by reference herein.

O. Contractor's Intellectual Property

"Contractor's Intellectual Property" means any formulas, patterns, devices, secret inventions or processes, copyrights, patents, or other intellectual property purchased, licensed or developed by Contractor prior to or outside of this Contract or purchased, licensed or developed by Contractor or its Subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon.

P. Contract Term

"Contract Term" means the definition set forth in **Article 2(B)**.

Q. Cost-Weighted Average Service Life

"Cost-Weighted Average Service Life" means the calculation is based upon the service life of the equipment (ASHRAE Handbook - HVAC Applications or other approved source), the cost of each Utility Cost-Savings Measure or FIM (excluding the audit cost and Political Subdivision's contingency), and the total cost of all the measures. The formula is the sum of each measure cost divided by the total cost multiplied by its service life. Cost-Weighted Average Service Life = ∑ each measure ÷ total cost × service life.

R. Deliverable

"Deliverable" means any document, material, data, information, specification or other deliverable that results from or is provided through the Services or that Contractor is required to deliver to the Principal Representative under this Contract, the Exhibits, Schedules or other document or report which is required to be delivered by Contractor to the Principal Representative pursuant to this Contract and is created after the Effective Date.

S. Design Documents

"Design Documents" or "DDs" means documents supplied by Contractor consisting of drawings, specifications, and other documents that fix and describe the size and character of the entire Project as to architectural, structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate, and include design plans and documentation for each Utility Cost-Savings Measure or FIM that may become part of the Project, and as further described in **Article 5(C)**.

T. Energy

"Energy" means electricity (both usage and demand), natural gas, steam, water (potable or non-potable), or any other Utility charged service.

U. Energy Conservation Measure

"Energy Conservation Measure" or "ECM" means an Energy Saving Measure or Utility Cost-Savings Measure An ECM is an activity or set of activities designed to increase the efficiency (energy, water, or other utility) of a facility, system or piece of equipment. ECMs may also conserve energy without changing efficiency. An ECM may involve one or more of: physical changes to facility equipment, revisions to operating and maintenance procedures, software changes, or new means of training or managing users of the space or operations and maintenance staff. An ECM may be applied as a retrofit to an existing system or facility, or as a modification to a design before construction of a new system or facility. Within this Contract, Utility Cost- Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

V. Energy Cost-Savings Contract

"Energy Cost-Savings Contract" means a Utility Cost-Savings Contract or a Vehicle Fleet Operational and Fuel Cost-Savings Contract

W. Energy Cost-Savings Measure

"Energy Cost-Savings Measure" means a Utility Cost-Savings Measure or a Vehicle Fleet Operational and Fuel Cost-Savings Measure. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost- savings measures.

X. Energy Services Agreement

"Energy Services Agreement" ("ESA") is a contract for evaluations, recommendations or implementation of one or more Utility Cost-Savings Measures designed to produce Utility Cost-Savings, Operation and Maintenance Cost Savings, or Vehicle Fleet Operational and Fuel Cost- Savings, which:

i. Sets forth savings attributable to calculated Utility Cost-Savings or Operation and Maintenance Cost Savings for each year during the Contract Term;

Y. Energy Service Company

"Energy Service Company" or "ESCO" means the energy service company entity entering into a contract to design and construct the Project with the Political Subdivision. The Energy Service Company may also be referred to as "Contractor" in this Contract or in related schedules, exhibits, attachments, contract modification or procedural documents. The ESCO may be the architect/engineer for the Utility Cost- Savings Measures or may contract out these professional services with approval of the Governing Body.

AA. Equipment

"Equipment" means the equipment, systems and associated services set forth on **Schedule B**, together and with any and all includes all replacements, repairs, restorations, Modifications and improvements of or to such Equipment.

BB. Escrow Agreement

"Escrow Agreement" means the escrow agreement, if applicable, executed by the Political Subdivision, the Lessor, if any, and the Escrow Fund Custodian, pursuant to which the Escrow Fund is established and administered.

CC. Escrow Fund

"Escrow Fund" means the fund, if applicable, established under the Escrow Agreement

DD. Escrow Fund Custodian

"Escrow Fund Custodian" is indicated in **Article 3D.**

EE. Evaluation

"Evaluation" means the process of examining the Contractor's Work and rating such Contractor's Work based on criteria established in this Contract.

FF. Excluded Materials and Activities

"Excluded Materials and Activities" means asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, pollutants, hazardous wastes, hazardous materials, or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof.

GG. Facility

"Facility " or "Facilities" means any building or utility owned or operated by the Political Subdivision.

HH. Facility Improvement Measure

"Facility Improvement Measure" or "FIMS" is an activity or set of activities designed to improve the structural or operational conditions of a facility, system or piece of equipment. A FIM may be an activity associated with an Energy Cost-Savings Measure and funded as part of an EPC. A FIM may be an activity requested by the Political Subdivision, but is not an Energy Cost-Savings Measure, but funds have been budgeted, appropriated and otherwise made available to be included in an EPC. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

II. Federal Energy Management Program (FEMP) Measurement & Verification Guidelines

"Federal Energy Management Program ("FEMP") Measurement and Verification (M&V) Guidelines" means the current M&V Guidelines prepared by the U.S. Department of Energy. The FEMP M&V Guidelines contains specific procedures for applying concepts originating in the IPMVP (definition below). The FEMP M&V Guidelines represents a specific application of the IPMVP to EPC projects. It outlines procedures for determining M&V approaches, evaluating M&V plans and reports, and establishing the basis of payment for energy savings during the contract. These procedures are intended to be fully compatible and consistent with the IPMVP.

JJ. Finance Agreement Term

"Finance Agreement Term" means the original term and all renewal terms of any Lease-Purchase Agreement or any other financing or funding agreement of the Political Subdivision for the costs of this Contract.

KK. Fiscal Year

"Fiscal Year" means a 12-month period beginning on January 1 of each calendar year and ending on December 31.

LL. Fixed Limit of Construction Cost

"Fixed Limit of Construction Cost" or "FLCC" means the total amount to be paid by the Political Subdivision or any Third-Party Lessor to Contractor for Contractor's satisfactory performance, construction, and installation of all elements of the Work, which shall include, but not be limited to, costs and expenses, permits, performance bonds, materials, labor, auditing, IGA, design, engineering, project construction management costs, commissioning, training, profit, travel expenses, communications, code work, including review, inspection, and compliance unless otherwise noted, acquisition and installation of Equipment. The Fixed Limit of Construction Cost is included as a part of the MCP and all costs comprising the Fixed Limit of Construction Cost shall be identified in **Schedule F**, which shall be executed after this Contract is effective. The Fixed Limit of Construction Cost does not include any Contingency Funds or the M&V Fee.

MM. Governing Body

"Governing Body" means the governing body of the Political Subdivision, a governing body (city or town council, board of trustees, etc.) of any municipality or home rule county, a board of county commissioners of any county, a board of directors of any special district, or a board of education of any school district

UU. Investment Grade Audit

"Investment Grade Audit" or "IGA" means a detailed audit of certain Facilities of the Political Subdivision, including the Premises, conducted by the Contractor or another party pursuant to the IGA Contract, and in respect of which the Political Subdivision has received and reviewed the IGA Record of Review from the CEO, which serves as the basis for this Energy Services Contract.

VV. Investment Grade Audit Contract

"Investment Grade Audit Contract" (IGA) means that certain contract between the Contractor and the

Political Subdivision and pursuant to which the Contractor conducted the IGA. The IGA Contract shall determine the feasibility of whether to enter into an Energy Services Agreement to provide for the implementation of Utility Cost Savings Measures, Facility Improvement Measures, and Operation and Maintenance Cost Savings Measures in Facilities owned or leased by the Political Subdivision and vehicle fleet operational and fuel cost saving measures at the Premises of the Political Subdivision.

WW. kW

"kW" means "Kilowatt" (abbreviation)

XX. kWh

"kWh" means "Kilowatt-hour" (abbreviation)

YY. Lease Purchase Agreement

"Lease Purchase Agreement" means any annually renewable lease purchase financing agreement entered into by the Political Subdivision, as lessee of the Equipment, and a Third-Party Lessor, as lessor of the Equipment and Services, for the financing of the Utility Cost-Savings Measures and FIMs as a result of Contractor's work pursuant to this Contract (constituting the capital project so financed).

ZZ. Material Change

"Material Change" means any change or cumulative changes in or to the Premises, whether structural, operational or otherwise in nature as determined by the Governing Body or the Principal Representative, if authorized to do so by the Governing Body, and the Contractor, to increase or decrease Guaranteed Annual Cost Savings, as defined in **PP** above, in accordance with the provisions and procedures set forth in **Schedule B** and is correlated with such change in energy or water usage, and as described in **Article 17**.

AAA. Maximum Contract Price

"Maximum Contract Price" or "MCP" means the maximum amount of total allowable costs under this Contract, as set forth in **Article 4(A),** which shall be the total amount paid by the Political Subdivision, or Third-Party Lessor on behalf of the Political Subdivision, to Contractor, and which shall include, but not be limited to, the Fixed Limit of Construction Cost, the Measurement and Verification Fee, and any Contingency Funds. It is the maximum amount payable to the Contractor pursuant to this Contract.

HHH. MMBtu

"MMBtu" means 1 Million British thermal unit (abbreviation).

III. Modification (of Equipment)

"Modification of Equipment" means a field installable upgrade, feature, addition, accessory or modification to Equipment, which is made by or for the original manufacturer of such Equipment.

JJJ. Modification (to the contract)

"Modification to the Contract" means a written (i) amendment to this Contract signed by both parties or (ii) Change Order executed in accordance with **Schedule A**.

KKK. Open Book Pricing

"Open Book Pricing" means "Open Book Pricing" as set forth in **Article 6(H)**.

LLL. Operation and Maintenance Cost Savings

"Operation and Maintenance Cost Savings" means the measurable decrease in operation and maintenance (O&M) costs that is a direct result of the implementation of one or more Utility Cost-Savings Measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

MMM. Personally Identifiable Information (PII)

"PII" means personally identifiable information including, without limitation, any information maintained by the Political Subdivision about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in **§24-72-501, C.R.S.**

NNN. Political Subdivision Confidential Information

"Political Subdivision Confidential Information" means any and all Records of the Political Subdivision not subject to disclosure under CORA. Confidential Information of the Political Subdivision shall include, but is not limited to PII, Tax Information, and Political Subdivision personnel records not subject to disclosure under CORA.

OOO. Premises

"Premises" is as set forth in **Article 5(A)**.

PPP. Project

"Project" means Contractor's design, acquisition, construction, and installation of the Utility Cost-Savings Measures and FIMs, and all Equipment and Services related thereto, as set forth in **Schedule B** and the Contract Documents, but does not include M&V Services.

QQQ. Rebate

"Rebate" means moneys used for Contractor's compensation that are not the moneys of the Political Subdivision or moneys from a Third-Party Lessor, including solar REC's and utility rebates, all as described in **Schedule B** and on **Schedule G**.

RRR. Review

"Review" means the examination by the Principal Representative of the Contractor's Work to ensure that it is adequate, accurate, correct and in accordance with this Contract.

SSS. Schedule A

"**Schedule A**" means **Schedule A** to this Contract, attached hereto as General Conditions of the Energy Services Agreement.

TTT. Schedule B

"**Schedule B**" means **Schedule B** to this Contract, attached hereto as EPC Description of Work. The **Schedule B** is developed from information in the EPC Project Proposal. **Schedule B** includes, but is not limited to: the final list of facilities that define the Premise, final list of improvements, installed equipment and upgrades, training, start-up, commissioning, and design/construction schedule. **Schedule B** details the cost for the Work from initial design to the start of the Guarantee Period. **Schedule B** includes the financial performance including any rebates, grants, Political Subdivision provided funds, and the potential third-party financial amount that totals up to the Maximum Contract Price.

UUU. Services

"Services" means all services performed by Contractor hereunder, including, but not limited to, engineering, design, project management, construction management, design, training, and M&V Services, and tangible material produced either separately or in conjunction with the Work performed.

VVV. Simple Payback

"Simple Payback" means the length of time, typically presented in years, required to recover the cost of a measure or project.

WWW. Tax Information

"Tax Information" means federal and State of Colorado tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

XXX. Third-Party Lessor

"Third-Party Lessor" means a third-party entity entering into a Lease Purchase Agreement, as lessor, with the Political Subdivision, as lessee, for the lease purchase financing of the Equipment and the Services pursuant to this Contract.

YYY. Utility or Utilities

"Utility" or "Utilities" means the water, sewer services, electricity, payments to energy service companies, purchase of energy conservation equipment, and all heating fuels. Utility may include compressed air, chilled water, or other systems or services as agreed to with the Governing Body of the Political Subdivision.

ZZZ. Utility Cost Savings

"Utility Cost Savings" is the combination of either or both of the following:

i. A cost savings caused by a reduction in metered or measured physical quantities of a bulk fuel or Utility resulting from the implementation of one or more Utility Cost-Savings Measures or FIMs when compared with an established baseline of usage; or
ii. A decrease in utility costs as a result of changes in applicable utility rates or utility service suppliers. The savings shall be calculated in comparison with an established baseline of utility costs.

AAAA. Utility Cost-Savings Contract

"Utility Cost-Savings Contract" means an Energy Services Agreement or any other agreement in which Utility Cost Savings are used to pay for services or equipment

BBBB. Utility Cost-Savings Measure

"Utility Cost-Savings Measure"**,** is the installation, modification or service that is designed to reduce energy and water consumption and related operating costs in buildings and other facilities and includes, but is not limited to, the following:

i. Insulation in walls, roof, floors and foundations, and in heating and cooling distribution systems
ii. Storm windows and doors, multi-glazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption
iii. Automatic energy control systems
iv. Heating, ventilating or air conditioning and distribution system modifications or replacements in buildings or central plants
v. Caulking or weather stripping
vi. Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a facility unless such increase in illumination is necessary to conform to the applicable building code for the proposed lighting system
vii. Energy recovery systems
viii. Renewable energy and alternate energy systems
ix. Cogeneration systems that produce steam or forms of energy, such as heat or electricity, for use primarily within a building or complex of buildings
x. Devices that reduce water consumption or sewer charges
xi. Changes in operation and maintenance practices
xii. Procurement of low-cost energy supplies of all types, including electricity, natural gas and other fuel

sources, and water

xiii. Indoor air quality improvements that conform to applicable building code requirements

xiv. Daylighting systems

xv. Building operation programs that reduce utility and operating costs including computerized energy management and consumption tracking programs, staff and occupant training, and other similar activities

xvi. Services to reduce utility costs by identifying utility errors and optimizing existing rate schedules

xvii. Any other location, orientation, or design choice related to, or installation, modification of installation or remodeling of, building infrastructure improvements that produce utility or operational cost savings for their appointed functions in compliance with applicable state and local building codes

xviii. Vehicle fleet operational and fuel cost savings

xix. When an energy saving measure involves a cogeneration system, the sale of excess cogenerated energy shall be subject to the same state and federal regulatory requirements as the sale of all other cogenerated energy,

Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

CCCC. Vehicle Fleet Operational and Fuel Cost Savings

"Vehicle Fleet Operational and Fuel Cost Savings" is a measurable decrease in the operation and maintenance costs of Political Subdivision vehicles that is associated with fuel or maintenance based on higher efficiency ratings or alternative fueling methods, including but not limited to savings from the reduction in maintenance requirements and a reduction in or the elimination of projected fuel purchase expenses as a direct result of investment in higher efficiency or alternative fuel vehicles or vehicle or charging infrastructure.

DDDD. Vehicle Fleet Operational and Fuel Cost-Savings Contract

"Vehicle Fleet Operational and Fuel Cost-Savings Contract" means an Energy Services Agreement or any other agreement in which Vehicle Fleet Operational and Fuel Cost Savings are used to pay for the cost of the vehicle or associated capital investments.

EEEE. Vehicle Fleet Operational and Fuel Cost-Savings Measure

"Vehicle Fleet Operational and Fuel Cost-Savings Measure" means any installation, modification, or service that is designed to reduce energy consumption and related operating costs in vehicles and includes, but is not limited to, the following:

i. Vehicle purchase or lease costs either in full or in part;

ii. Charging or fueling infrastructure to appropriately charge or fuel alternative fuel vehicles included in an energy services agreement.

FFFF. Work

"Work" means the tasks and activities the Contractor is required to perform to fulfill its obligations under this Contract and **Exhibit A**, including the performance of the Services and delivery of the Goods.

GGGG. Work Product

"Work Product" means the tangible or intangible results of the Contractor's Work, including, but not limited to, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type (but not including software), including drafts. Work Product does not include the Contractor's Intellectual Property.

Any other term used in this Contract that is defined in a Schedule shall be construed and interpreted as defined in that Schedule.

2. ORGANIZATION AND TERM

A. Contract Phases

This Contract shall be performed in accordance with its provisions and contains the following phases:

i. Funding (**Articles 3 and 4**)

ii. Pre-Construction (**Article 5**)

iii. Construction (**Article 6, 7, and 9**)

iv. Start-up, Commissioning, and Acceptance (**Article 8**)

v. Training (**Article 10**)
vi. Measurement and Verification (**Article 13**)

B. Contract Term

Contractor shall complete the Work and its other obligations as described herein on or before June

30, 2020

The Political Subdivision shall not be liable to compensate Contractor for any Work performed prior to the Effective Date or after the termination of this Contract. The term of this Contract ("Contract Term") shall be divided into three (3) separate components:

i. The "Planning Term," shall commence on the Effective Date and upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Design Phase under **Article 4(H)** and terminate upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Construction Phase for the last improvement per the Construction and Installation **Article 6(B)**

ii. The "Construction Term," shall commence upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Construction Phase under **Article 6(E)**, and terminate no more than

235 days

after the Construction Commencement Date, unless sooner terminated as provided in this Contract

3. FUNDING

A. Source of Funds

The Political Subdivision intends to obtain

$1,320,689

in funds for the MCP required under this Contract by entering into a personal property annually renewable lease purchase financing arrangement with a Third-Party Lessor or in such other manner as the Governing Body of the Political Subdivision, in its sole discretion, shall deem authorized by resolution or ordinance pursuant to and within the limitations of applicable constitutional, statutory and code provisions pertaining to the Political Subdivision. The total amount of funds that the Governing Body of the Political Subdivision will seek to acquire from a Third-Party Lessor will be

$1,320,689

If Political Subdivision is unable to obtain funds in any manner for the entire amount of the MCP, the Governing Body of the Political Subdivision and the Contractor may negotiate a reasonable reduction in the Project scope, price, and Guarantee in a manner consistent with any available funds or the Governing Body of the Political Subdivision may unilaterally terminate this Contract, in the sole discretion of the Governing Body of the Political Subdivision. If the Political Subdivision is unable to obtain financing for the entire amount of the MCP and the Parties are unable to revise the Project scope to obtain available funds within sixty (60) days of the Effective Date, either Party may terminate this Contract upon 10 days written notice to the other Party and such termination shall not be a default under this Contract. Upon termination, neither Party shall have any obligation to the other Party under this Contract, except for those provisions which by their terms survive any such termination, as provided herein.

B. Political Subdivision Funds

The Political Subdivision will provide all or a portion of the moneys for the MCP required under this Contract in the amount of

$497,500

from existing appropriations specifically budgeted, appropriated and encumbered for this purpose as full or partial compensation for the cost of the Project as described in

Schedule B and indicated on **Schedule G** to be paid to Contractor as reimbursement pursuant to **Schedule A**.

C. Escrow Account

Any funds obtained by the Political Subdivision from a Third-Party Lessor shall be deposited into an escrow account established on the Political Subdivision's behalf. The Principal Representative shall be authorized by the Governing Body of the Political Subdivision to direct the Escrow Fund Custodian, as described in **Article 3(D)**, to compensate Contractor for the Work performed by Contractor and accepted in writing by the Principal Representative in accordance with **Article 4** and **Schedule A**, and the Escrow Fund Custodian will make payment from the escrow account in accordance with procedures set forth in the Lease Purchase Agreement, this Contract, and any escrow agreement. Final payment shall be made to Contractor upon the Principal Representative's submittal of the Notice of Final Acceptance of the Project. Any proceeds from the escrow account shall accrue to the Political Subdivision.

D. Escrow Fund Custodian

The Escrow Fund Custodian is hereby identified as:

Sterling National Bank
Corporate Trust Department
400 Rella Boulevard, Montebello, NY 10901

Escrow Fund Custodian is subject to change at any time, without notice, and at the Principal Representative's discretion. The Principal Representative shall notify Contractor and the Third-Party Lessor within 15 days of any change in the Escrow Fund Custodian.

E. Energy Policy Act

The Political Subdivision agrees that, for the Work to be performed herein, Contractor may in consultation with the Principal Representative, determine which, if any, entity shall be the "designer(s)" as that term is identified in the Energy Policy Act of 2005, and which entity(s) shall have the exclusive right to report to any federal, state, or local agency, authority or other party, including without limitation under Section 179(d) of the Energy Policy Act of 2005, any tax benefit associated with the Work. Upon Notice of Final Acceptance, the Governing Body of the Political Subdivision, at its sole discretion, may authorize the Principal Representative to execute a Written Allocation including a Declaration related to Section 179D of the Internal Revenue Code. The Contractor may prepare the Declaration and all accompanying documentation.

4. COMPENSATION

Upon authorization by the Governing Body of the Political Subdivision, the Principal Representative will, or will direct any Escrow Fund Custodian to, in accordance with the provisions of this **Article 4**, pay Contractor in the amounts and using the methods set forth below:

A. Maximum Contract Price

The MCP from **Schedule G** is:	$1,818,189
The JCI Project MCP is:	$1,668,189

The MCP reflects the maximum amount of compensation payable to Contractor pursuant to this Contract. The MCP may include, without limitation,

The cost of the IGA in the amount of:	$49,360
The Fixed Limit of Construction Cost of:	$1,618,829
And all Contingency Funds in the amount of:	$0

If any Political Subdivision funds are used pursuant to **Article 3(B)** of this Contract, the maximum amount of the MCP available for payment by the Political Subdivision during any Fiscal Year of the Contract term shall be as follows:

(*Match this schedule with **Schedule G** and **Schedule B**, but do not use if amount in Political Subdivision provided capital contribution is zero)*

The first payment is 25 percent of the JCI MCP of $1,668,189 to secure further engineering and long lead items for equipment.

Pay Application #	Month	Draw Amount
1	November 2019	$417,000

Subsequent monthly draws will be based on percent of completion with total of all draws equal to the JCI Project MCP. Payment is due upon net 30 days from date of invoice.

B. Changes to MCP

Upon authorization by the Governing Body of the Political Subdivision, the Principal Representative may decrease the amount available for the MCP with the mutual consent of the Contractor and assuring that the decrease in the MCP does not adversely affect the Contractor's requirement to meet the Guaranteed Annual Cost Savings. A change in the Guaranteed Annual Cost Savings may be considered a Material Change to this Contract, pursuant to **Article 17**. The decrease in MCP may be based on the actual costs of labor and materials to Contractor. The MCP shall not be increased without an amendment to this Contract, in accordance with Political Subdivision Fiscal Rules.

C. Invoicing

Contractor shall invoice the Political Subdivision in the format and manner required by the Principal Representative. Contractor shall use the categories in **Schedule F** to demonstrate all costs categories, shall demonstrate all subcontractor costs, and shall allow the Principal Representative to review any records relating to the Project. Contractor shall provide measure-specific information and Project-level information in **Schedule F**. For each Utility Cost-Savings Measure and FIM and for the Project the profit shall be clearly explained and referenced in each invoice. The M&V Services shall be invoiced separately in a format and manner as required by the Principal Representative.

D. Payments and Retainage

The Principal Representative will, or will direct any Escrow Fund Custodian to, compensate Contractor for Work done by Contractor pursuant to **Schedule A**. The Principal Representative shall withhold and release retainage amounts pursuant to **Schedule A** and as allowed by applicable law.

E. Availability of Political Subdivision Funds

The Political Subdivision cannot make commitments in this EPC that extend beyond the term of the current Fiscal Year. Therefore, Contractor's compensation beyond the current Fiscal Year is contingent upon the specific budgeting, appropriations and encumbrances by the Governing Body of the Political Subdivision, in its sole discretion, for the purpose of providing for the commitments in this EPC in subsequent Fiscal Years. If other funds are used to fund this Contract, in whole or in part, the Political Subdivision's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall be made only from available funds specifically budgeted, appropriated and encumbered for this Contract and the Political Subdivision's liability for such payments shall be limited to the amount remaining of such encumbered funds. If Political Subdivision or other funds are not appropriated, or otherwise become unavailable to fund this Contract, the Governing Body of the Political Subdivision may terminate this Contract, in whole or in part, without further liability in accordance with the provisions hereof.

F. Erroneous Payments and Excess Funds

Payments made to Contractor in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Contractor, may be recovered from Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the Political Subdivision and Contractor or by other appropriate methods and collected as a debt due to the Political Subdivision. Such funds shall not be paid to any party other than

the Political Subdivision.

G. Notice to Proceed to Commence Design Phase

If the Political Subdivision obtains funding from any and all sources in the amount of the MCP for the purposes set forth herein, upon terms and conditions satisfactory to the Governing Body of the Political Subdivision, in its sole discretion, or obtains funds sufficient for a revised Project scope, price, and Guarantee, if authorized by the Governing Body of the Political Subdivision, the Principal Representative shall deliver to Contractor a Notice to Proceed to Commence Design Phase instructing Contractor to commence with the Pre-Construction Services, as described in **Article 5**.

5. PRE-CONSTRUCTION SERVICES

A. Premises

The Premises is the Facilities owned or controlled by the Political Subdivision, as initially detailed on the IGA Contract Exhibit C and finalized in EPC **Schedule B**.

B. Professional Design Services

i. Qualifications

Design services shall be performed by properly licensed and qualified architects, engineers and other professionals selected and paid by Contractor, subject to review by the Principal Representative. The professional obligations of such persons shall be undertaken and performed on behalf of Contractor. Nothing contained herein shall create any contractual relationship with the Political Subdivision between Subcontractors, architects, engineers or suppliers. Prior to designating a professional to perform any of these services, Contractor shall submit the name, together with a resume of training and experience in the work of like character and magnitude to the Project being contemplated to the Political Subdivision. All Drawings, Specifications, calculations, certifications and Submittals prepared by such design professionals shall bear the signature and seal of such design professionals and the Political Subdivision shall be entitled to rely upon the adequacy, accuracy and completeness of such design services.

ii. Designation of Professionals

All Work performed by Contractor that constitutes the practice of architecture/engineering shall be performed by properly qualified and licensed professionals employed by Contractor and shall be performed in accordance with applicable Colorado law.

iii. Conflict of Interest

Consultant or subcontractor, not already approved by the Governing Body of the Political Subdivision, shall not be engaged to perform Work wherein a conflict of interest exists, as described in **Article 27(N)**, provided, however, that with full disclosure to the Governing Body of the Political Subdivision of such interest, the Governing Body of the Political Subdivision may provide a waiver, in writing, in respect to the particular consultant or subcontractor.

iv. Pre-construction Meeting

Contractor and its architect and/or engineer may attend pre-construction meetings, as deemed necessary by the Contractor and the Principal Representative and such additional meetings as the Principal Representative may request. All pre-construction meetings shall be scheduled by Contractor with the approval of the Principal Representative.

v. Minutes

Contractor shall record minutes of all meetings and distribute them to all participants of the meetings within 30 days after each meeting.

C. Design Documents

i. Based on the Scope of Work in **Schedule B** the Contractor shall prepare, for the Principal Representative's acceptance, the Design Documents (DDs) defined in **Article 1(K)**. The DDs may be waived or modified per Utility Cost-Savings Measure or FIM as mutually agreed in writing between the Parties. Such DDs may include the following, where applicable:

a) Analysis of the proposed Work and the structure as such relates to any laws, codes, ordinances, and regulations

b) As necessary, provide site development Drawings for each proposed Utility Cost-Savings Measure or FIM, defining the proposed scope of the Project. Include earthwork, surface development, and utility infrastructure as applicable

c) Plans in one-line format of the proposed structural, mechanical, and electrical systems as

necessary to define size, location and quality of Equipment, materials, and constructions, for each proposed Utility Cost-Savings Measure or FIM

d) Floor plans including proposed equipment

e) Cut-sheets and/or samples of proposed materials, equipment and system components

f) Proposed architectural schedule, HVAC, plumbing and electrical fixture schedules

g) Specifications, which, identifying conditions of the Contract, materials, and standards for each proposed Utility Cost-Savings Measure or FIM

h) Design plans and documentation for each Utility Cost-Savings Measure or FIM that requires a design as agreed to with the Principal Representative

i) Submittal of final Equipment List, Construction and Installation Schedule, Systems Start-up and Commissioning, Contractor's Maintenance Responsibilities, Political Subdivision's Maintenance Responsibilities, Contractors Training Responsibilities, and the Manifest of Ownership

j) Submittal of an updated construction cost estimate as applicable, in substantially the same form as **Schedule F**

ii. A code review is required to meet the local jurisdiction authority code procedure.

iii. At the completion by Contractor and acceptance by the Principal Representative of the DDs, Contractor shall provide electronic or printed drawings and such other documents as necessary to fully illustrate the Design Development Phase to the Principal Representative. Electronic drawing files should be in a form acceptable to the Principal Representative.

iv. Contractor shall be responsible for ensuring that the DDs, prepared by Contractor are in full compliance with applicable codes, regulations, laws and ordinances, including both technical and administrative provisions thereof. If Contractor deviates from such codes, regulations, law or ordinance, without written authorization from the State Buildings Program, Contractor, shall make such corrections in the Construction Documents as may be necessary for compliance.

v. The Principal Representative shall notify Contractor of acceptance or denial of the DDs in writing within 10 days of receipt.

6. CONSTRUCTION

A. Construction Documents

The Construction Documents, if required, shall consist of the following:

i. Final Construction Documents reviewed and approved by the Principal Representative in writing for constructability and code compliance

ii. All Design Documents applicable to the Project

iii. Any appendices, addenda, clarifications and allowances

iv. All modifications issued pursuant to this Contract

v. Construction and Installation Schedule

vi. Finalized Schedule of Values

B. Construction and Installation Schedule

Contractor shall prepare a Construction and Installation Schedule, which shall provide the timetable for the execution and completion of the Project. Such Construction and Installation Schedule shall be subject to the approval of the Principal Representative, pursuant to **Schedule A**, and shall be consistent with previously issued schedules, not exceed time limits under the Contract Documents and shall provide a schedule for the entire Project, to the extent required by the Contract Documents.

C. Schedule of Values

Contractor shall prepare a schedule of the cost of construction, which shall be delivered to the Principal Representative for approval and which shall be in substantially similar format as the attached **Schedule F**, and which such Contractor-submitted **Schedule F** shall be subject to review and approval by the Principal Representative. The Schedule of Values shall include, without duplication:

i. All labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of

the Project, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Project

ii. The compensation for services and the cost of work provided by Contractor

iii. All bond premiums and costs of insurance

iv. All Design and drafting Services

v. All other allowable compensable services pursuant to this Contract as approved by the Principal Representative

vi. Contingency Funds if any

D. Approval and Completion of Construction Documents

Except as otherwise provided in this Section, the Construction Documents shall be subject to final approval by Principal Representative, on behalf of the Political Subdivision, and other reviewing authorities. The Principal Representative or written designee shall review documents submitted by Contractor and shall render decisions pertaining thereto without unreasonable delay. If authorized by the Governing Body of the Political Subdivision, the Principal Representative's approval shall be issued in the form of the Notice to Proceed to Commence Construction Phase.

E. Notice to Proceed to Commence Construction Phase

Upon receipt of Notice to Proceed to Commence Construction Phase, Contractor shall commence the Project, as described in **Article 1**, and **Schedule B**. Notice to Proceed to Commence Construction may be issued per Utility Cost-Savings Measure or FIM.

F. Construction Term

The Construction Term shall commence on the Construction Commencement Date and shall terminate upon the date according to **Article 2** or the date on which:

i. Contractor has completed the Project Work

ii. Contractor has finalized and delivered to the Principal Representative all necessary, updated, and final documents, including schedules, exhibits, and completed Punch Lists, at the Principal Representative's determination

iii. Contractor has delivered to the Principal Representative a Notice of Substantial Completion, which indicates that Contractor has constructed, installed, and commenced operating the Utility Cost-Savings Measures or FIMs specified in **Schedule B**

iv. The Principal Representative has inspected and accepted the Project, according to **Article 8** and **Schedule A**, including the design, construction, installation, and operation of the Project and accepted Contractor's submittal of a Notice of Substantial Completion as demonstrated by signing and executing such Notice of Substantial Completion

v. The Principal Representative, on behalf of the Political Subdivision, has issued a Notice of Final Acceptance

G. Fixed Limit of Construction Cost

Contractor shall complete the Project and be reimbursed an amount not to exceed the Fixed Limit of Construction Cost per **Article 4(A)**. Contractor shall design and construct the Project within the price specified in this **Article 6(G)** and shall furnish all of the labor and materials to perform the Work for the complete and prompt execution of the Project in accordance with the Contract Documents. The Fixed Limit of Construction Cost includes all of Contractor's Project Work responsibilities, including acquisition of plumbing and electrical building permits and conducting code review. The Governing Body of the Political Subdivision may unilaterally decrease the amount available for the Fixed Limit of Construction Cost based on the actual costs of labor and materials to Contractor, with the mutual consent of the Contractor, and assuring that the decrease in the FLCC does not adversely affect the Contractor's requirement to meet the Guaranteed Annual Cost Savings. A change in the Guaranteed Annual Cost Savings may be considered a Material Change to this Contract, pursuant to **Article 17**. However the Fixed Limit of Construction Cost and the Maximum Contract Price shall not be changed without an amendment or change order to this Contract, in accordance with EPC General Conditions and Fiscal Rules.

H. Cost Reporting

Contractor shall fully disclose all costs as per the Open Book Pricing requirements to the Political Subdivision through Applications for Contractors Payments and in such detail as the Principal Representative may request. Contractor shall maintain cost accounting records on authorized work performed as per **Article 24(K)**. Such accounting records shall identify all costs for materials, labor, including all costs of subcontractor's, vendors, and services received during the Contract Term **Article 2B.** Upon request by the

Principal Representative a list of hourly rates and position descriptions for labor or services provided by the Contractor and for all subcontractors and vendors and supply information on any other basis as specified by the Principal Representative. The Principal Representative may evaluate all cost through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices to ensure the Contractor's prices are reasonable and acceptable. Upon request by the Principal Representative, Contractor shall provide the Principal Representative complete access to such records at reasonable times and locations. The records shall be consistent with the Schedule of Values, **Schedule F.** Any disputes shall be subject to the terms of this Contract and **Schedule A.**

I. Progress Meetings

Contractor shall schedule and conduct regular progress meetings at which meetings the Principal Representative and Contractor shall discuss such matters as procedures, progress, schedule, costs, quality control and problems relating to the Project. Contractor shall record and distribute minutes of all such progress construction meetings within

Three (3)

days of the meeting.

J. Contingency Funds

If authorized by the Governing Body of the Political Subdivision, the Principal Representative may authorize the disbursement of Contingency Funds to Contractor through an EPC Contract Change Order, as described in **Schedule A.**

7. CONTRACTOR PERFORMANCE

A. Performance of Project

Contractor shall perform the Project in accordance with the Contract Documents. Contractor shall construct and install the Project in accordance with the Construction and Installation Schedule. Contractor shall supervise and direct the Project and be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Project under this Contract, subject to the review and approval of the Principal Representative and the Construction and Installation Schedule. Contractor shall design, construct and install the Utility Cost-Savings Measures or FIMs. Before purchasing any major Equipment not specified within the Construction Documents, Contractor shall consult with, and if necessary, receive the written or electronic approval of the Principal Representative regarding the price, specifications, warranty, and manufacturer of the Equipment.

B. Contractor's Duty of Proper Performance

Contractor shall perform the Project so as to maintain and not degrade the structural integrity of the Premises or its operating systems. Contractor shall provide the Equipment and all Services, and complete all Work contemplated under this Contract with skill and diligence to the satisfaction of the Principal Representative and in strict accordance with the provisions of the Contract Documents.

C. Standards of Comfort

Contractor's performance of the Project shall maintain and provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality as described in this Contract **Schedule N** (Standards of Comfort).

D. Security

Contractor shall meet Political Subdivision requirements for security and access to the Premises.

8. START-UP, COMMISSIONING, INSPECTION, and ACCEPTANCE

A. Contractor, in conjunction with the Political Subdivision's selected personnel, shall direct the testing of installed utilities, operations, systems and Equipment for readiness.

B. Systems Startup and Equipment Commissioning

Contractor shall conduct systematic commissioning of all Equipment installed as part of the Work, in accordance with the procedures specified in System Start-up and Commissioning **Schedule Q**, **Schedule A**, any operating parameters of Equipment from Equipment manufacturers, and this Contract**.** Contractor agrees that **Schedule Q** shall follow and use as a standard the procedures and protocol for Commissioning

located in the document *Commissioning Guidelines for Energy Saving Performance Contracts for the Colorado Energy Office*, provided by the Political Subdivision. Contractor shall test the Project and the Equipment to ensure it is functioning in accordance and compliance with any published Specifications and this Contract and to determine if modified building systems, subsystems or components are functioning properly within the Project Work. Contractor shall provide notice to the Principal Representative of the scheduled test(s) and the Principal Representative and/or its designees may be present at any or all such tests.

C. Acceptance by Principal Representative

Contractor's Work shall be subject to acceptance by the Principal Representative pursuant to this Contract and **Schedule A**.

D. Correction of Deficiencies

Contractor shall correct all deficiencies in the operation of the Project and the Equipment. Prior to Principal Representative acceptance, Contractor shall also provide Principal Representative with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in **Schedule B** and any subsequently necessary and accepted design or construction documents.

E. Inspection and Disputes

i. The Principal Representative may inspect the Work provided under this Contract at all reasonable times and places. If any Work does not conform to this Contract, the Principal Representative may require Contractor to perform the Work again in conformity with this Contract's requirements, with no additional compensation. When defects in the quality or quantity of Work cannot be corrected by re-performance, the Principal Representative may:

a) Require Contractor to take necessary action to ensure that the future performance conforms to Contract requirements; and/or

b) Equitably reduce the payment due Contractor to reflect the reduced value of the Work performed.

ii. Such remedies in no way limit the remedies available to the Political Subdivision in the termination provisions of this Contract, or remedies otherwise available at law. Disputes under this Contract shall be subject to the terms of this Contract and **Schedule A**.

9. ENVIRONMENTAL REQUIREMENTS

A. Excluded Material and Activities

Pursuant to its performance of the Project, Contractor may encounter, but is not responsible for, any work relating to Excluded Materials and Activities, as defined in **Article 1**. If performance of Work involves any Excluded Materials and Activities, the Principal Representative may terminate this Contract without penalty, liability, or responsibility, and no further performance may be required, per **Schedule A**. If, in the sole discretion of the Governing Body of the Political Subdivision, the Political Subdivision requires continued performance of this Contract, and the performance of any Project involves any Excluded Materials and Activities, the Political Subdivision shall perform or arrange for the performance of such work and shall bear the sole cost, risk, and responsibility therefore.

B. Discovery of Excluded Materials and Activities

i. Notice - Work Stoppage

If Contractor discovers Excluded Materials and Activities, Contractor shall immediately cease work and remove all Contractor personnel or Subcontractors from the site, and notify the Principal Representative. Contractor shall undertake no further work on the Premises except as authorized by the Principal Representative in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Political Subdivision or Contractor shall not constitute a default. In the event of such stoppage of Work by Contractor, the time for the completion of the Work shall be automatically extended by the amount of time of the work stoppage and any additional costs incurred by Contractor as a result shall be added by Change Order.

ii. Other Hazardous Materials

Contractor shall be responsible for safely handling, installing, and/or disposing of any other hazardous or other materials that it may bring to the Premises.

iii. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps

Contractor is specifically responsible for the proper handling and disposal of Polychlorinated Biphenyl (PCB) Ballasts and Mercury Lamps. Upon discovery of PCB Ballasts and Mercury Lamps, Contractor shall enter into an agreement with an approved PCB ballast disposal contractor who shall provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services such materials. All capacitors and asphalt potting compound materials removed from the PCB Ballasts shall be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction shall be provided by the approved facility to the Principal Representative. Contractor's responsibility shall be for the proper and legal management of any of the PCB Ballasts removed as a result of the Work. Contractor shall enter into an agreement with an approved Mercury Lamp disposal contractor who shall provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the Manifest of Ownership.

iv. Manifests of Ownership

The Political Subdivision will sign a Manifest of Ownership for any PCB Ballasts and Mercury Lamps encountered and removed from the Premises.

10. TRAINING AND FOLLOW-UP ACTIVITIES BY CONTRACTOR

A. Training

Contractor shall provide training to the Principal Representative and to Political Subdivision personnel regarding operation of all new and upgraded Equipment. Training shall be conducted simultaneously with Project Work and commissioning Work and shall include, but not be limited to, any HVAC equipment installed, controls, utilities, lighting, safety, manufacturer's warranties, and operation and maintenance manuals per **Schedule R** (Contractor Training Responsibilities). All training performed by Contractor shall (i) meet the standards established by the Equipment manufacturers, (ii) be included in the Fixed Limit of Construction Cost and (iii) be completed per **Schedule R**, in order for the Principal Representative to issue a Notice of Final Acceptance of the Project.

B. Emissions Reductions Documentation and Reporting

Contractor shall include information about environmental savings (not any Guaranteed Annual Cost Savings as described in **Article 14(B)**) in each annual report and advise the Principal Representative about opportunities to achieve monetary benefit from such credits.

C. Application for Certifications

Contractor shall provide information related to **Schedule B** necessary for the Principal Representative to submit any required Federal, State, Local performance or other applicable Certifications.

11. MALFUNCTIONS AND EMERGENCIES

A. The Principal Representative will use its best efforts to notify Contractor within 24 hours of the Principal Representative's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any pre-existing energy related equipment that might materially impact the Guaranteed Annual Cost Savings, (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. When the Principal Representative exercises reasonable 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 Guaranteed Annual Cost Savings.

B. If such malfunction, interruption, or alteration occurs during the Contractor's One-Year Warranty period, Contractor shall use commercially reasonable efforts to respond to any such notice within 24 hours of receipt of notice, and shall promptly thereafter proceed with corrective measures. The Principal Representative will provide Contractor with written memorialization of any telephone notice within three business days after the notice was given.

C. Contractor shall provide a written record of all service work performed for each malfunction or emergency. This record shall indicate the reason for the service, description of the problem and the corrective action performed.

D. The Political Subdivision 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. The Political Subdivision 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 Political Subdivision applies to the Premises generally.

12. OWNERSHIP

A. Ownership of Documents (Instruments of Service)

i. Drawings, specifications and other documents, including those in electronic form, prepared by the Contractor's Architect/Engineer and the Contractor's Architect/Engineer's consultants are Instruments of Service for use solely with respect to this Project. The Contractor's Architect/Engineer and the Contractor's 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.

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

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

B. As-Built Drawings/Record Drawings

The Contractor's Architect/Engineer and its consultants shall, upon completion of the Construction Term, receive redline as-built Drawings from any Subcontractors or vendors. These redline changes shall describe the built condition of the Project. This information and all of the incorporated changes directed shall be incorporated by the Contractor's Architect/Engineer and its consultants into a Record Drawings document provided to the Political Subdivision in the form of an electro-media format and a reproducible format as agreed between the parties. The Contractor's Architect/Engineer shall also provide the Principal Representative with the as-built Drawings as received from the Contractor.

C. Ownership of Existing Equipment

i. Property owned by the Political Subdivision located at the Premises on the Effective Date shall remain the property of Political Subdivision even if it is replaced or its operation made unnecessary by Work Contractor performs pursuant to this Contract. Contractor shall advise the Principal Representative in writing of any equipment and materials to be replaced at the Premises and the Principal Representative shall within 30 days designate in writing to Contractor which equipment and materials should not be disposed of off-site by Contractor.

ii. The Principal Representative shall designate the location and storage for any equipment and materials that it designates to be disposed of by Contractor. Contractor shall dispose of all equipment and materials designated by the Principal Representative as disposable off-site and in accordance with all applicable disposal laws and regulations.

iii. Except as otherwise indicated, Contractor shall not be obligated to dispose of or be responsible for any materials identified in **Article 4(O)**.

13. MODIFICATION, UPGRADE OR ALTERATIONS OF EQUIPMENT

A. Modification of Equipment

Without Contractor's prior written approval, which shall not be unreasonably withheld, during the term of this Contract, the Political Subdivision shall not affix or install any accessory equipment or device on any of

the Equipment if such addition changes or impairs the originally intended Savings, functions, value or use of the Equipment.

B. Upgrade or Alteration of Equipment

i. During the performance of this Contract, Contractor may, subject to prior authorization of the Governing Body of the Political Subdivision, change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Premises, provided that: (a) Contractor complies with the Standards of Comfort, as set forth in this Contract, and services set forth in **Schedule N**; (b) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures enable Contractor to achieve a greater amount of energy and cost savings than the Savings, at the Premises; (c) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures are solely borne by Contractor and paid for with any Contingency Funds; and (d) any such action complies with State, federal and local law and is in the public interest of the Political Subdivision, in the sole discretion of the Governing Body of the Political Subdivision. Any such upgrade or alteration shall not result in any additional cost to the Political Subdivision.

ii. All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described at that time in supplemental Schedules provided to the Governing Body of the Political Subdivision for approval; provided that any replacement of the Equipment shall, unless otherwise agreed, be new and shall reduce energy consumption at the Premises more than the Equipment being replaced. Contractor shall update any and all software it owns which is necessary for the operation of the Equipment. Upon the approval of the Governing Body of the Political Subdivision, all replacements of and alterations or additions to the Equipment shall become part this Contract and the Equipment described in **Schedule B**.

14. LOCATION AND ACCESS

Contractor Access

The Principal Representative 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 requested by Contractor that are acceptable to the Principal Representative. Contractor shall be granted immediate access to make emergency repairs or corrections as Contractor determines are needed. Contractor shall provide a written memorialization within three business days of the access specifying the emergency action taken, the reasons therefore, and the impact on the Premises.

15. MATERIAL CHANGES

A Material Change as defined could be the result of the Political Subdivision not fulfilling its responsibilities as listed in **Article 22** or from actions including to but not limited to one or more of the following:

i. manner of use of the Premises by the Political Subdivision; or
ii. occupancy of the Premises; or
iii. modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules; or
iv. facility modifications, renovations, new construction, including the replacement, addition or removal in types and quantities of energy and water consuming equipment, including plug load items, used at the Premises; or

v. changes in utility provider or utility rate classification; or
vi. any other conditions other than climate affecting energy or water usage at the Premises.

A. Reported Material Changes; Notice by Political Subdivision

The Principal Representative shall use commercially reasonable efforts to deliver to 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 Contractor of Material Changes which result because of a bona fide emergency or other situation precluding advance notice shall be deemed sufficient if given by the Principal Representative within five business days after the Principal Representative discovers the event constituting the Material Change or receives actual knowledge thereof.

B. Other Adjustments

Contractor shall work with the Principal Representative to investigate, identify and correct any Material Changes that prevent the Savings from being realized. As a result of any such investigation, Contractor and the Principal Representative shall determine what, if any, adjustments to the baseline shall be made in accordance with the provisions set forth in **Schedule B** and **Schedule C**. Any disputes between the Political Subdivision and the ESCO concerning any such adjustment shall be resolved in accordance with the provisions of **Schedule A**.

C. Force Majeure

Neither party will be responsible to the other for damages, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence of that party. Such conditions (each, a "*Force Majeure*") include, but are not limited to: acts of God; strikes; labor disputes; fires; explosions or other casualties; thefts; vandalism; riots or war; acts of terrorism; electrical power outages; interruptions or degradations in telecommunications, computer, or electronic communications systems; or unavailability of parts, materials or supplies.

16. INSURANCE

Contractor shall obtain and maintain at all times during this Contract, insurance in the kinds and amounts as specified in **Schedule A**.

17. BREACH

A. Defined

In addition to any Breaches specified in other sections of this Contract, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner may constitutes a Breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, may also constitute a Breach.

Each of the following events or conditions may constitute a Breach by Contractor:

i. Contractor does not provide the Standards of Comfort and service set forth in **Schedule N** due to failure of Contractor to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within 30 days after written notice by the Principal Representative to Contractor demanding that such failure be cured, shall be deemed cured for purposes of this Contract; or
ii. Any representation or warranty furnished by Contractor in this Contract is false or misleading in any material respect when made; or
iii. The existence of any lien or encumbrance upon the Equipment by any subcontractor, laborer or materialman which is not released or otherwise cured within 30 days after notice of said filing.
iv. Any failure by the 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 30 days after written notice by the Principal Representative to the Contractor demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract; or
v. The creation or submittal by Contractor of any data related to this Contract that is intentionally

inconsistent or incorrect, or the inability to verify Contractor's reports regarding the Guarantee as determined by any independent third-party monitor retained by the Political Subdivision if such third-party monitor determines that such inability is due to intentional acts of Contractor. Except as provided herein, any creation or submittal by Contractor of any data related to this Contract that is inconsistent, incorrect, or unable to be verified shall be considered a breach and is subject to the cure period discussed herein; or

vi. The Savings is less than the Guaranteed Annual Cost Savings and the Contractor fails to reconcile the difference as provided herein.

B. Notice and Cure Period

In the event of a Breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **Article 27**. If such Breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the Breach has not begun within 30 days and pursued with due diligence, the Political Subdivision may exercise any of the remedies set forth in **Article 20**. Notwithstanding anything to the contrary herein, the Principal Representative, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

18. REMEDIES

A. Remedies Not Involving Termination

If Contractor is in Breach under any provision of this Contract, the Political Subdivision, in the sole discretion of the Governing Body of the Political Subdivision, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the Governing Body of the Political Subdivision without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance and incurring costs in accordance with the directive of the Governing Body of the Political Subdivision and the Political Subdivision shall not be liable for costs incurred by Contractor after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed that because to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the Political Subdivision; provided, that any denial of payment shall be reasonably related to the value to the Political Subdivision of the obligations not performed.

iv. Removal

Notwithstanding any other provision herein, the Political Subdivision may demand immediate removal of any of Contractor's employees, agents, or Subcontractors whom the Principal Representative deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the Political Subdivision's best interest.

v. Intellectual Property

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Contractor shall, at the Political Subdivision's option **(a)** obtain for the Political Subdivision or Contractor the right to use such products and services; **(b)** replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, **(c)** if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the Political Subdivision.

19. REPRESENTATIONS AND WARRANTIES

A. Representations

Contractor makes the following specific representations and warranties, each of which was relied on by Political Subdivision in entering into this Contract.

i. **Standard and Manner of Performance**
Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

ii. **Legal Authority – Contractor Signatory**
Contractor warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, and by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind Contractor to its terms. If requested by the Political Subdivision, Contractor shall provide the Principal Representative, for the records of the Political Subdivision, with proof of Contractor's authority to enter into this Contract within 15 days of receiving such request.

iii. **Licenses, Permits, Etc.**
Contractor represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have and maintain, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations hereunder. Contractor warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Contract, without reimbursement by the Political Subdivision or other adjustment in MCP. Additionally, the Contractor shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract. Contractor, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform the terms of this Contract is an Event of Default by Contractor and constitutes grounds for termination of this Contract.
Contractor shall use Subcontractors who are qualified and licensed in the State of Colorado to perform the work so subcontracted pursuant to the terms hereof.

The Equipment is or shall be compatible with, or functional with, and or an upgrade to 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 shall materially adversely affect each other as a direct or indirect result of Equipment installation or operation except in cases where that Principal Representative has directed, or approved, Contractor to install such equipment.

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

B. Warranties

The warranties set forth in this section and such other warranties as may be set forth in this Contract are a part of the minimum work requirements of this Contract and all remediation or other actions required by such warranties shall be performed or delivered without additional cost to the Political Subdivision.

i. **Warranties Generally Applicable**
In addition to the Warranties provided in **Schedule A**, during the Construction phase, **§2A,** of this Contract and for a period of one year following the Principal Representative's submission of either the Notice of Substantial Completion or Notice of Partial Substantial Completion for each Utility Cost-Savings Measure or FIM, whichever is longer, Contractor warrants that:

a) The Work shall meet the Specifications set forth in the Contract Documents and be acceptable to the Political Subdivision;

b) There are not any pending suits, claims, or actions of any type with respect to the Equipment or Work;

c) All Equipment and Work provided are free and clear of any liens, encumbrances or claims arising by or through Contractor or any party related to Contractor;

d) Contractor will perform all of its obligations in accordance with **Article 7**, Contractor Performance;

e) the Equipment is new, unless otherwise agreed in writing;

f) shall be materially free from defects in materials; and,

g) shall function properly.

ii. Equipment

Specific and any material warranties that exceed the equipment One-Year Warranty period shall be provided directly by the Equipment or material manufacturers and Contractor shall assign such warranties to the Political Subdivision, after the One-Year Warranty period.

iii. Obligations

During the One-Year Warranty period, Contractor shall remedy any defects due to faulty materials and shall pay for, repair and replace any resulting damage to other work or any other resulting damage directly associated with the Work. Only new and not reconditioned parts may be used as a remedy. The Personal Representative shall give written notice to Contractor of observed defects or other Work requiring correction with reasonable promptness.

Contractor shall pursue rights and remedies against any Equipment manufacturers under the warranties in the event of Equipment malfunction or improper or defective function, defects in parts, workmanship and performance during the One-Year Warranty period. Contractor shall, during the One-Year Warranty period, notify the Principal Representative whenever defects in Equipment parts or performance arise that may provide a warranty claim. During the One-Year Warranty period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property, equipment of the Political Subdivision or the Premises, or Equipment, due to Contractor's failure to exercise its warranty rights shall be borne solely by Contractor.

Notwithstanding the above, nothing in this section shall be construed to abrogate Contractor's duty to perform its other obligations under this Contract.

20. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Except for Contractor's Intellectual Property, any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract shall be the nonexclusive property of the Political Subdivision and, all Work Product shall be delivered to the Principal Representative by Contractor upon completion or termination hereof. The nonexclusive rights of the Political Subdivision in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Contractor shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Contractor's obligations hereunder without the prior written consent of the Principal Representative on behalf of the Political Subdivision.

21. GENERAL PROVISIONS

A. Assignments

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the State shall be subject to the provisions of this Contract, except in the event that any third party acquires substantially all of the assets and obligations of Contractor, at which point the State may choose, in its sole discretion, to either provide consent to the assignment or terminate this contract without further obligation to the contractor.

B. Subcontracts

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the Governing Body of the Political Subdivision. Contractor shall submit to the Principal Representative a copy of each such subcontract upon request by the Principal Representative. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal, state and local laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

C. Binding Effect

Except as otherwise provided in **Article 24(A)**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors, and assigns.

D. Counterparts

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

E. Entire Understanding

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or affect whatsoever, unless embodied herein.

F. Modification

Except as specifically provided in this Contract, any modifications to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable law and the fiscal rules and policies of the Political Subdivision. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies of the Political Subdivision. This Contract is subject to such modifications as may be required by changes in federal, State or local law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein.

G. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Contract to a statute, regulation, Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

H. Survival of Certain Contract Terms

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and shall be enforceable by the other Party.

I. Taxes

The Political Subdivision is exempt from all federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from Colorado state and local government sales and use taxes under **§§39-26-704(1)**, ***et seq***., **C.R.S.** The Political Subdivision shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State of Colorado imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales, or use taxes that Contractor may wish to have in place in connection with this Contract.

J. Conflict of Interest

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the Political Subdivision's interests. Absent the Principal Representative's prior written approval, after authorization from the Governing Body, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the Political Subdivision hereunder. If a conflict or appearance exists, or if Contractor is uncertain whether a conflict or the appearance of a conflict of interest exists, Contractor shall submit to the Political Subdivision a disclosure statement setting forth the relevant details for the consideration of the Governing Body. Failure to promptly submit a disclosure statement or to follow the Principal Representative's direction in regard to the apparent conflict constitutes a breach of this Contract.

K. Reporting – Notification

Reports, Evaluations, and reviews required under this **Article 24(K)** shall be in accordance with the procedures of and in such form as prescribed by the Principal Representative and in accordance with **Schedule A**, if applicable.

i. Performance, Progress, Personnel, and Funds

Principal Representative shall submit a report to the Contractor upon expiration or sooner termination of this Contract, containing an Evaluation and Review of Contractor's performance and the final status of Contractor's obligations hereunder. In addition, Contractor shall comply with all reporting requirements, if any, set forth in **Schedule A.**

ii. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Contract or which may affect Contractor's ability to perform its obligations hereunder, Contractor shall notify the Principal Representative of such action and deliver copies of such pleadings to the Principal Representative.

iii. Noncompliance

Contractor's failure to provide reports and notify the Principal Representative in a timely manner in accordance with this **Article 24(K)** may result in the delay of payment of funds and/or termination as provided under this Contract.

iv. Subcontracts

Copies of any and all subcontracts entered into by Contractor to perform its obligations hereunder shall be submitted to the Principal Representative in accordance with **Schedule A**. Any and all subcontracts entered into by Contractor related to its performance hereunder shall comply with all applicable federal, state and local laws and shall provide that such subcontracts be governed by the laws of the State of Colorado.

L. Contractor Records

i. Maintenance

Contractor shall make, keep, maintain, and allow inspection and monitoring by the Principal Representative of a complete file of all records, documents, communications, notes, and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services or Goods hereunder. Contractor shall maintain such records until the last to occur of: **(i)** a period of three years after the date this Contract expires or is sooner terminated, or **(ii)** final payment is made hereunder, or **(iii)** the resolution of any pending Contract matters, or **(iv)** if an audit is occurring, or Contractor has received notice that an audit is pending, until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

ii. Inspection

Contractor shall permit the Principal Representative, any other authorized agent of the Political Subdivision, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Contract during the Record Retention Period to assure compliance with the terms hereof or to evaluate performance hereunder. The Political Subdivision reserves the right to inspect the Work at all reasonable times and places during the term of this Contract, including any extensions or renewals. If the Work fails to conform with the requirements of this Contract, the Political Subdivision may require Contractor promptly to bring the Work into conformity with Contract requirements, at Contractor's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the Political Subdivision may require Contractor to take necessary action to ensure that future performance conforms to Contract requirements and exercise the remedies available under this Contract, at law or in equity, in lieu of or in conjunction with such corrective measures.

iii. Monitoring

Contractor shall permit the Political Subdivision, the federal government, and governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Contractor pursuant to the terms of this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the Political Subdivision shall be performed in a manner that shall not unduly interfere with Contractor's performance hereunder.

iv. Final Audit Report

If an audit is performed on Contractor's records for any fiscal year covering a portion of the term of this Contract, Contractor shall submit a copy of the final audit report to the Principal Representative, for the records of the Political Subdivision, or other designee of the Political Subdivision at the address

specified herein.

M. Confidential Information – Political Subdivision Records

Contractor shall comply with the provisions on this **Article 24(M)** if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any Political Subdivision records, personnel records, and information concerning individuals.

i. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all Political Subdivision Records, unless those Political Subdivision Records are publicly available. Contractor shall not, without prior written approval of the Principal Representative, on behalf of the Political Subdivision, use, publish, copy, disclose to any third party, or permit the use by any third party of any Political Subdivision Records, except as otherwise stated in this Contract, permitted by law, or approved in writing by the Principal Representative, after authorization by Governing Body of the Political Subdivision. Contractor shall provide for the security of all Political Subdivision Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. If Contractor or any of its Subcontractors will or may receive the following types of data, Contractor or its Subcontractors shall provide for the security of such data according to the following: Contractor shall immediately forward any request or demand for Political Subdivision Records to the Principal Representative.

ii. Other Entity Access and Nondisclosure Agreements

Contractor may provide Political Subdivision Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to Political Subdivision Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any Political Subdivision Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the Principal Representative upon execution of the nondisclosure provisions if requested by the Principal Representative on behalf of the Political Subdivision.

iii. Use, Security, and Retention

Contractor shall use, hold and maintain Political Subdivision Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all Political Subdivision Confidential Information. Contractor shall provide the Principal Representative with access, subject to Contractor's reasonable security requirements, for purposes of inspecting and monitoring access and use of Political Subdivision Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Contractor shall return Political Subdivision Records provided to Contractor or destroy such Political Subdivision Records and certify to the Political Subdivision that it has done so, as directed by the Principal Representative. If Contractor is prevented by law or regulation from returning or destroying Political Subdivision Confidential Information, Contractor warrants it will guarantee the confidentiality of, and cease to use, such Political Subdivision Confidential Information.

iv. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the Principal Representative immediately and cooperate with the Principal Representative regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the Principal Representative. Unless Contractor can establish that Contractor and its Subcontractors are not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the Principal Representative, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the Principal Representative at no additional cost to the Political Subdivision. The Principal Representative may

adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the Principal Representative. If Contractor cannot produce its analysis and plan within the allotted time, the Governing Body of the Political Subdivision, in its sole discretion, may perform such analysis and produce a remediation plan, or cause such analysis to be done and such remediation plan to be produced, and Contractor shall reimburse the Political Subdivision for the actual costs thereof.

v. Data Protection and Handling

Contractor shall ensure that all Political Subdivision Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract at all times.

vi. Compliance

Contractor shall review, on a semi-annual basis, all Colorado Office of Information Security (OIS) policies and procedures which OIS has promulgated pursuant to **§§ 24-37.5-401. C.R.S.**, through 406 and 8 CCR § 1501-5, to ensure compliance with the standards and guidelines published therein. Contractor shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by OIS or its designee. Contractor shall perform an annual SSAE16 SOC2 Type II audit including the following Trust Principles: Security, Confidentiality, and Availability, and shall provide the resulting audit report as directed by the Principal Representative.

vii. Safeguarding PII

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the Principal Representative, including, without limitation, Political Subdivision non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits.

N. Order of Precedence

In the event of conflict or inconsistency between this Contract and its Schedules, Exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

i. General Conditions of the **EPC Schedule A**
ii. The provisions of the main body of this Contract
iii. The remainder of **Schedule A**
iv. Construction Documents **Article 6(A)**
v. The remaining Schedules
vi. Any other attachment

O. Indemnification

Contractor shall indemnify and hold harmless Governmental Entity the same as and under the same terms as the State as set forth In **Schedule A** and the Government Entity shall be defined and treated as an Indemnified Party under that provision of Schedule A**.**

P. Independent Contractor

Contractor is an independent contract and is not an agent, partner, joint venture or employee of Governmental Entity the same as and under the same terms as the State as set forth in Schedule A.

22. SCHEDULES-LIST OF

The following Schedules are attached hereto and incorporated by reference herein:

Schedule A	General Conditions of Energy Services Agreement
Schedule B	Energy Services Agreement Description of Work
Schedule C	Guarantee (NOT USED)
Schedule D	Measurement and Verification Services Plan (NOT USED)
Schedule E	Code Compliance Requirements

Schedule F	Schedule of Values (Initial)
Schedule G	Projected Financial Cost and Cash Flow Analysis
Schedule H	Certification that Cost-weighted Average Service Life of Equipment Exceeds Financing Term
Schedule I	Record of Reviews (as recommended by the Colorado Energy Office)
Schedule J	Certification and Affidavit Regarding Unauthorized Immigrants (UI-1) – Does not apply.
Schedule K	Certificate of Insurance (Including Professional Errors And Omissions Liability Insurance)
Schedule L	Performance Bond (SC-6.22) – Provided after project start date
Schedule M	Labor and Material Payment Bond (SC-6.221) – Provided after project start date
Schedule N	Standards of Comfort– Does not apply.
Schedule O	Client Construction Specifications– Does not apply.
Schedule P	Contractors Intellectual Property– Does not apply.
Schedule Q	System Start-up and Commissioning – Included in Schedule B
Schedule R	Contractor Training Responsibilities– Included in Schedule B
Schedule S	Political Subdivision's Maintenance Responsibilities– Included in Schedule B
Schedule T	Notice of Substantial Completion
Schedule U	Notice of Final Acceptance

23. OPTIONAL PROVISIONS AND ELECTIONS

The provisions of this Article alter the preceding Articles or enlarge upon them as indicated (The Energy Services Agreement General Conditions. The Principal Representative shall mark boxes and initial where applicable.

A. MODIFICATION OF ARTICLE 45. WARRANTY INSPECTIONS AFTER COMPLETION

If the box below is marked, the-six month warranty inspection is not required.

☐_____Principal Representative initial

B. MODIFICATION OF ARTICLE 27. LABOR AND WAGES

If the box is marked, the Federal Davis-Bacon Act shall be applicable to the Project. The minimum wage rates to be paid on the Project shall be furnished by the Principal Representative and included in the Contract Documents.

☐_____Principal Representative initial

C. MODIFICATION OF ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS

If the box is marked and initialed by the Principal Representative as noted, the requirement to participate in facilitated negotiations shall be deleted from this Contract. Article 39, Non-Binding Dispute Resolution – Facilitated Negotiations, shall be deleted in its entirety and all references to the right to the same wherever they appear in the contract shall be similarly deleted.

The box may be marked only for projects with an estimated value of [less than $500,000].

☐_____Principal Representative initial

D. MODIFICATION OF ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES

If an amount is indicated immediately below, liquidated damages shall be applicable to this Project as, and to, the extent shown below. Where an amount is indicated below, liquidated damages shall be assessed in accordance with and pursuant to the terms of Article 46, Time Of Completion And Liquidated Damages, in the amounts and as here indicated. The election of liquidated damages shall limit and control the party's right to damages only to the extent noted.

1. For the inability to use the Project, for each day after the number of calendar days specified in the Contractor's bid for the Project and the Contract for achievement of Substantial Completion, until the day that the Project has achieved Substantial Completion and the Notice of Substantial Completion is issued, the Contractor agrees that an amount equal to zero_____($0) shall be assessed against Contractor from amounts due and payable to the Contractor under the Contract, or the Contractor and the Contractor's Surety shall pay to the Political Subdivision such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due, but amounts remaining are insufficient to cover the entire assessment.

2. For damages related to or arising from additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period, for each day in excess of the number of calendar days specified in the Contractor's bid for the Project and the Agreement to finally complete the Project as defined by the issuance of the Notice of Final Acceptance) after the issuance of the final Notice of Substantial Completion, the Contractor agrees that an amount equal to zero_____($0) shall be assessed against

Contractor from amounts due and payable to the Contractor under the Contract, or the Contractor and the Contractor's Surety shall pay to the Political Subdivision such sum for any deficiency, if amounts on account thereof are deducted from remaining amounts due but amounts remaining are insufficient to cover the entire assessment.

24. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. Political Subdivision Designee:

Matthew Birnie
Gunnison County Manager
200 E Virginia
Gunnison County, CO 81230
mbirnie@gunnisoncounty.org

B. Contractor:

Rowena Adams, Account Executive
Johnson Controls Inc Performance Infrastructure
10289 W Centennial Rd
Littleton, CO 80127
Rowena.Patawaran@jci.com

25. SIGNATURE PAGE

Contract Routing Number _____

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the Political Subdivision is relying on their representations to that effect.**

CONTRACTOR **Johnson Controls, Inc** By: Maureen Blase Title: Regional Vice President _____ *Signature Date:	**POLITICAL SUBDIVISION** **Gunnison County** Board of County Commissioners _____ By: Matthew Birnie, County Manager Date: _____
	LEGAL REVIEW INSERT-Name & Title of Legal Counsel to Political Subdivision By:_____ Signature - Title Date: _____

SCHEDULE A
GENERAL CONDITIONS OF THE ENERGY SERVICES AGREEMENT

General Conditions (GCs) are important for the construction phase of a contract. Following are GCs required by the State for State projects. Political Subdivisions may substitute their own required GCs. If available, provide a version from a recent construction contract, customize the state's version, work with an independent design firm to develop them, or use an ESCO-provided boiler-plate (since the ESCO is both designer and contractor, avoid a customized ESCO version if possible).

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- C. ENERGY SERVICES AGREEMENT DEFINITIONS AND TERMS USED

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ARTICLE 52. COLORADO SPECIAL PROVISIONS
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ARTICLE 1. DEFINITIONS

A. CONTRACT DOCUMENTS

The Contract Documents consist of the following, some of which are procedural documents used in the administration and performance of the Agreement:

1. The Energy Services Agreement between the State and Contractor and all its Schedules, and Attachments;
   - 1.1 Contractor's Investment Grade Audit and Energy Services Agreement Project Proposal Contract, All Exhibits, Addenda, and Clarifications
   - 1.2 Accepted Investment Grade Audit Report and Energy Services Agreement Project Proposal
2. Performance Bond and Labor and Material Payment Bond ;
3. These General Conditions of the Energy Services Agreement (**ESAEPSA-GC**) and if applicable, Supplementary General Conditions;
4. Drawings developed by Contractor and accepted by State, prior to the Notice to Proceed to Commence Construction Phase;

5. Change Orders and any Amendments executed pursuant to State law and regulations;
6. Builder's risk insurance certificates of insurance;
7. Liability, workers' compensation and professional liability errors and omissions certificates of insurance;
8. Notice to Proceed to Commence Design Phase;
9. Notice to Proceed to Commence Construction Phase;
10. Notice of Approval of Occupancy/Use
11. Notice of Partial Substantial Completion);
12. Notice of Substantial Completion;
13. Notice of Partial Final Acceptance;
14. Notice of Final Acceptance);
15. Notice of Contractor's Settlement;
16. Application and Certificate for Contractor's Payment; and
17. Other procedural and reporting documents or forms referred to in these General Conditions of the Energy Services Agreement, the Specifications or required by the State Buildings Programs or the Principal Representative, including but not necessarily limited to the Pre-Acceptance Checklist form (SBP-05) and the Building Inspection Report (SBP-BIR). A list of the current standard Colorado Energy Office and State Buildings Programs forms applicable to this Contract may be obtained from the Principal Representative on request.

B. DEFINITIONS OF WORDS AND TERMS USED

1. AGREEMENT. The term "Agreement" shall mean the written agreement entered into by the State of Colorado acting by and through the Principal Representative and the Contractor for the performance of the Work and payment therefore, on the Energy Services Agreement (ESA-1). The term Agreement, when used without reference to ESA-1, may also refer to the entirety of the parties' agreement to perform the Work described in the Contract Documents or reasonably inferable there from. The term "Contract" shall be interchangeable with this latter meaning of the term Agreement
2. CHANGE ORDER. When the Maximum Contracted Amount was increased, per ESA §7(B), the term "Change Order" means a written order, signed by a Procurement Officer or other authorized representative of the Principal Representative, directing Contractor to make changes in the Work, in accordance with Article 35A, The Value of Changed Work.
3. COLORADO LABOR. The term "Colorado labor", as provided in C.R.S. § 8-17-101(2)(a), as amended, means any person who is a resident of the state of Colorado, at the time of the public works project, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a bona fide occupational qualification. A resident of the State of Colorado is a person who can provide a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that he or she has resided in Colorado for the last 30 days.
4. CONSULTANT. The term "Consultant" shall mean a person, firm or corporation supplying design/consulting services for the Project. Design professionals and consultants are directly contracted to the Contractor.
5. DAYS. The term "days" whether singular or plural, shall mean calendar days unless expressly stated otherwise. Where the term "business days" is used, it shall mean business days of the State of Colorado."
6. DRAWINGS. The term "Drawings" shall mean all drawings approved by appropriate State officials which have been prepared by the Contractor's Architect/Engineer showing the Work to be done, except that where a list of drawings is specifically enumerated in the Specifications, the term shall mean the drawings so enumerated, including all addenda drawings.
7. EMERGENCY FIELD CHANGE ORDER. The term "Emergency Field Change Order" shall mean a written change order for extra Work or a change in the Work necessitated by an emergency as defined in Article 35C, executed on Exhibit XIII and identified as an Emergency Field Change Order. The use of such orders is limited to emergencies and to the amounts shown in Article 35C.

8. ENERGY SERVICE COMPANY'S ARCHITECT/ENGINEER. The term "Energy Service Company Architect/Engineer" shall mean professionals licensed or registered by the State of Colorado who have contracted with the Energy Service Company with prior approval by the State, or a professional employee of the Energy Service Company, to accomplish the architectural and engineering services necessary for the Work. Nothing in this contract is intended to create a contractual relationship between such professional and the State of Colorado.
9. ENERGY SERVICES AGREEMENT CHANGE ORDER. The ESA Change Order is applicable only to Energy Services Agreements and only for the original ESA MCP. The term "ESA Change Order" means a written order, signed by a Procurement Officer or other authorized representative of the Principal Representative, directing Contractor to make changes in the Work, in accordance with Article 35E, Changes in the ESA Fixed Limit of Construction Cost.
10. FINAL ACCEPTANCE. The terms "final acceptance" or "finally complete" mean the stage in the progress of the Project, after substantial completion, when all items of Work have been completed, all requirements of the Contract Documents are satisfied and the Notice of Final Acceptance can be issued. Discrete physical portions of the Project may be separately and partially deemed finally complete at the discretion of the Principal Representative when that portion of the Project reaches such stage of completion and a Partial Notice of Substantial Completion can be issued.
11. NOTICE. The term "Notice" shall mean any communication in writing from either contracting party to the other by such means of delivery that receipt cannot properly be denied. Notice shall be provided to the person identified to receive it in Article 27 (Energy Services Agreement), Notice Identification, or to such other person as either party identifies in writing to receive Notice or in the absence of the identified party, a principal of the Contractor. Notice by facsimile transmission where proper transmission is evidenced shall be adequate where facsimile numbers are included in Article 27 (Energy Services Agreement). Notwithstanding an email delivery or return receipt, email Notice shall not be adequate. Acknowledgment of receipt of a voice message shall not be deemed to waive the requirement that Notice, where required, shall be in writing.
12. OCCUPANCY. The term "Occupancy" means occupancy taken by the State as owner after the Date of Substantial Completion at a time when a building or other discrete physical portion of the Project is used for the purpose intended. The Date of Occupancy shall be the date of such first use, but shall not be prior to the date of execution of the Notice of Approval of Occupancy/Use. Prior to the date of execution of a Notice of Approval of Occupancy/Use, the State shall have no right to occupy and the project may not be considered safe for occupancy/use for the intended use.
13. OWNER. The term "Owner" shall mean the Principal Representative.
14. PRINCIPAL REPRESENTATIVE. The term "Principal Representative " shall be defined, as provided in §24-30-1301(14), C.R.S., and as may be amended, as the governing board of a state department, institution, or agency; or if there is no governing board, then the executive head of a state department, institution, or agency, as designated by the governor or the General Assembly and as specifically identified in the Contract Documents, or shall have such other meaning as the term may otherwise be given in §24-30-1301(14), C.R.S. as amended. The Principal Representative may delegate authority. Contractor shall have the right to inquire regarding the delegated authority of any of the Principal Representative's representatives on the project and shall be provided with a response in writing when requested.
15. PRODUCT DATA. The term "Product Data" shall mean all submittals in the form of printed manufacturer's literature, manufacturer's specifications, and catalog cuts.
16. REASONABLY INFERABLE: The phrase "reasonably inferable" means that if an item or system is either shown or specified, all material and equipment normally furnished with such items or systems and needed to make a complete installation shall be provided whether mentioned or not, omitting only such parts as are specifically excepted, and shall include only components which Contractor could reasonably anticipate based on his or her skill and knowledge using an objective, industry standard, not a subjective standard. This term takes

into consideration the normal understanding that not every detail is to be given on the Drawings and Specifications.

17. SAMPLES. The term “Samples” shall mean examples of materials or Work provided to establish the standard by which the Work will be judged.
18. SBP. The term "SBP" means "State Buildings Program," which is used in connection with labeling applicable State form documents (e.g., "SBP-01" is the form number for Notice of Approval of Occupancy/Use).
19. SC. The term "SC" means "State Contract" which is used in connection with labeling applicable State form documents (e.g. "SC 6.22" is the State form number for Performance Bond).
20. SCHEDULE OF VALUES. The term “Schedule of Values” is defined as the itemized listing of description of the Work. The format shall be the same as Schedule F (similar to the OSA form SC-7.2). Included shall be all costs of the Project, which shall be executed in final form by Contractor and delivered to the State, subject to acceptance by the State, after the Effective Date, and shall include design, material, labor and other costs, and the sum of all, as described in this Contract.
21. SHOP DRAWINGS. The term “Shop Drawings” shall mean any and all detailed drawings prepared and submitted by Contractor, Subcontractor at any tier, vendors or manufacturers providing the products and equipment specified on the Drawings or called for in the Specifications.
22. SPECIFICATIONS. The term “Specifications” shall mean the written requirements for the Work to be accomplished.
23. STATE BUILDINGS PROGRAMS. Shall refer to the Office of the State Architect within the Department of Personnel & Administration of Colorado State Government responsible for project administration, review, approval and coordination of plans, construction procurement policy, contractual procedures, and code compliance and inspection of all buildings, public works and improvements erected for state purposes; except public roads and highways and projects under the supervision of the division of wildlife and the division of parks and outdoor recreation as provided in § 24-30-1301, et seq, C.R.S. The term State Buildings Programs shall also mean that individual within a State Department agency or institution, including institutions of higher education, who has signed an agreement accepting delegation to perform all or part of the responsibilities and functions of State Buildings Programs.
24. SUBCONSULTANT. The term “Subconsultant” shall mean a person, firm or corporation supplying design/consulting services for the Project. Design and other professionals directly contracted to the Contractor are considered subconsultants.
25. SUBCONTRACTOR. The term “Subcontractor” shall mean a person, firm or corporation supplying labor, materials, equipment and/or Services for Work at the site of the Project for, and under separate contract or agreement with the Contractor.
26. SUBMITTALS. The term “submittals” means drawings, lists, tables, documents and samples prepared by Contractor to facilitate the progress of the Work as required by these General Conditions or the Drawings and Specifications. They consist of Shop Drawings, Product Data, Samples, and various administrative support documents including but not limited to lists of Subcontractors, construction progress schedules, schedules of values, applications for payment, inspection and test results, requests for information, various document logs, and as-built drawings. Submittals are required by the Contract Documents, but except to the extent expressly specified otherwise are not themselves a part of the Contract Documents.
27. SUBSTANTIAL COMPLETION. The terms “substantial completion” or “substantially complete” mean the stage in the progress of the Work when the construction is sufficiently complete, in accordance with the Contract Documents, as modified by any ESA Change Orders, so that the Work, or at the discretion of the Principal Representative, any designated portion thereof, is available for its intended use by the Principal Representative and a Notice of Substantial Completion can be issued.
28. SURETY. The term “Surety” shall mean any company providing labor and material payment and performance bonds for Contractor as obligor.

ARTICLE 2. EXECUTION, CORRELATION, INTENT OF DOCUMENTS, COMMUNICATION AND COOPERATION

A. EXECUTION

Contractor, within ten (10) days from the Effective Date, as a requirement to execute the Energy Services Agreement, shall be required to furnish:

1. A fully executed Performance and Labor and Material Payment Bonds, on State Forms SC-6.22 and SC-6.221; and
2. A Certificate(s) of Insurance evidencing all required insurance on standard Acord forms designed for such purpose; and
3. A Professional Liability Errors and Omissions Insurance, if warranted by the Work.

B. CORRELATION

Upon execution of the Energy Services Agreement, the Contractor represents that Contractor has visited the Premises, has become familiar with local conditions and local requirements under which the Work is to be performed, including the building code programs of the State Buildings Program as implemented by the Principal Representative, and has correlated personal observations with the requirements of the Contract Documents.

C. INTENT OF DOCUMENTS

The Contract Documents are complementary, and what is called for by any one document shall be as binding as if called for by all. The intention of the Contract Documents is to include all labor, materials, equipment and transportation necessary for the proper execution of the Work. Words describing materials or Work which have a well-known technical or trade meaning shall be held to refer to such recognized standards.

Where a conflict occurs between or within standards, Specifications or Drawings, which is not resolved by reference to the precedence between the Contract Documents, the more stringent or higher quality requirements shall apply, so long as such more stringent or higher quality requirements are reasonably inferable. The Principal Representative shall decide with the Contractor a mutually agreeable resolution which requirements will provide the best installation. With the exception noted in the following paragraph, the precedence of the Contract Documents is as in the ESA Article 24, General Provisions:

Change Orders and Amendments, if any, to the Contract Documents take precedence over the original Contract Documents.

Unless the context otherwise requires, form numbers in this document are for convenience only. In the event of any conflict between the forms required by name or context and the form required by number, the form required by name or context shall control. The Contractor may obtain State and Colorado Energy Office forms from the Principal Representative upon request.

Nothing contained in the Energy Services Agreement Documents shall create a professional obligation or contractual relationship between the Principal Representative and any third party, including the Contractor's Architect/Engineer.

D. PARTNERING, COMMUNICATIONS AND COOPERATION

In recognition of the fact that conflicts, disagreements and disputes often arise during the performance of Energy Services Agreements, the Contractor and the Principal Representative aspire to encourage a relationship of open communication and cooperation between the employees and personnel of both, in which the objectives of the Contract may be better achieved and issues resolved in a more fully informed atmosphere.

Contractor and the Principal Representative each agree to assign an individual who shall be fully authorized to negotiate and implement a voluntary partnering plan for the purpose of facilitating open communications between them. Within thirty days (30) of the issuance of the Notice to

Proceed to Commence Design Phase, the assigned individuals shall meet to discuss development of an informal agreement to accomplish these goals.

The assigned individuals shall endeavor to reach an informal agreement, but shall have no such obligation. Any plans these parties voluntarily agree to implement shall result in no change to the Contract amount, and no costs associated with such plan or its development shall be recoverable under any Contract clause. In addition, no plan developed to facilitate open communication and cooperation shall alter, amend or waive any of the rights or duties of either party under the Contract unless and except by written Amendment to the Contract, nor shall anything in this clause or any subsequently developed partnering plan be deemed to create fiduciary duties between the parties unless expressly agreed in a written Amendment to the Contract. It is also recognized that projects with relatively low Contract values may not justify the expense or special efforts required. In the case of small projects with an initial Fixed Limit of Construction Cost under $500,000, the requirements of the preceding paragraph shall not apply.

ARTICLE 3. COPIES FURNISHED

The ESCO shall furnish to State the number of copies of Design Documents as specified in the Contract Documents (Article 5 (C) of the Energy Services Agreement), or if no number is specified, all copies reasonably necessary for the execution of the Work.

ARTICLE 4. OWNERSHIP OF DRAWINGS

Refer to Article 12 of the Energy Services Agreement.

ARTICLE 5. CONTRACTOR'S ARCHITECT/ENGINEER'S STATUS

In case of termination of employment or the death of the Contractor's Architect/Engineer, or the termination of the contract between the Contractor and the project's professional Architectural/Engineering firm, the Contractor will appoint a capable Architect/Engineer or contract with another professional firm, against whom the State makes no reasonable objection, whose status under the Contract shall be the same as that of the former Contractor's Architect/Engineer.

ARTICLE 6. DECISIONS AND JUDGMENTS, ACCESS TO WORK AND INSPECTION

A. DECISIONS

The Contractor shall, within a reasonable time, make decisions on all matters relating to the execution and progress of the Work.

Such decisions by the Contractor shall be promptly forwarded to the Principal Representative. The Principal Representative may consent with such decision by the Contractor or amend/revise such decision at the discretion of the Principal Representative.

B. JUDGMENTS

The State is the judge of the performance required by the Contract Documents as it relates to compliance with the Work and quality of workmanship and materials.

C. ACCESS TO WORK

The Principal Representative and representatives of State Buildings Programs shall at all times have access to the Work. Contractor shall provide proper facilities for such access and for their observations or inspection of the Work.

D. INSPECTION

The Contractor has agreed to allow the Principal Representative or consultants to the Principal Representative to make periodic visits to the Premises to generally observe the progress and quality of the Work to determine in general if the Work is proceeding in accordance with the Contract Documents. Observation may extend to all or any part of the Work and to the preparation, fabrication or manufacture of materials.

If the Contract, the laws, or ordinances of any public authority require any Work to be specifically tested or approved, Contractor shall give the Principal Representative and appropriate testing agency (if necessary) timely notice of its readiness for observation by the State or inspection by another authority, and if the inspection is by another authority, of the date fixed for such inspection, required certificates of inspection being secured by Contractor. Contractor shall give all required Notices to the Principal Representative or his or her designee for inspections required for the building inspection program. It shall be the responsibility of Contractor to determine the Notice required by the State pursuant to the Building Inspection Record, according to State Building Inspection Form (SBP-B.I.R.), or the equivalent form required by the Principal Representative as approved by the State Buildings Program. If any such Work is covered up without approval or consent of the State or prior to any building code inspection, it must, if required by the State, the Principal Representative or the State Buildings Programs be uncovered for examination, at Contractor's expense. If such Work is found to be not in accordance with the Contract Documents, Contractor shall pay such costs, unless he or she shall show that the defect in the Work was caused by another contractor engaged by the Principal Representative. In that event, the Principal Representative shall pay such cost. In addition, examination of questioned Work may be ordered, and if so ordered, the Work must be uncovered by Contractor. If such Work be found in accordance with the Contract Documents, Contractor shall be reimbursed the cost of examination and replacement.

ARTICLE 7. CONTRACTOR'S SUPERINTENDENCE AND SUPERVISION

The Contractor shall employ, and keep present on the Project during its progress, a competent superintendent and any necessary assistants, all satisfactory to the Principal Representative. The superintendent shall not be changed except with the consent of the Principal Representative, unless the superintendent proves to be unsatisfactory to the Contractor or ceases to be in his or her employ. The superintendent shall represent the Contractor in his or her absence and all directions given to the superintendent shall be as binding as if given to the Contractor. Directions received by the superintendent shall be documented by the superintendent and confirmed in writing with the Contractor.

The Contractor shall give efficient supervision to the Work, using his or her best skill and attention. He or she shall carefully study and compare all Drawings, Specifications and other written instructions and shall without delay report any error, inconsistency or omission which he or she may discover in writing to the Principal Representative.

The superintendent shall see that the Work is carried out in accordance with the Contract Documents and in a uniform, thorough and first-class manner in every respect. The Contractor's superintendent shall establish all lines, levels, and marks necessary to facilitate the operations of all concerned in the Contractor's Work. The Contractor shall lay out all work in a manner satisfactory to the Principal Representative making appropriate permanent records for all other parts of the Work.

ARTICLE 8. MATERIALS AND EMPLOYEES

Unless otherwise stipulated, Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the execution and completion of the Work.

Unless otherwise specified, all materials and Equipment shall be new and both workmanship and materials shall be of uniform quality. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

Contractor is fully responsible for all acts and omissions of Contractor's employees and shall at all times enforce strict discipline and good order among employees on the Premises. Contractor shall not employ on the Work any person reasonably deemed unfit by the Principal Representative or anyone not skilled in the Work assigned to him.

ARTICLE 9. SURVEYS, PERMITS, LAWS, TAXES AND REGULATIONS

A. SURVEYS

The Principal Representative shall furnish all surveys, property lines and benchmarks deemed necessary by the Contractor, unless otherwise specified.

B. PERMITS AND LICENSES

Permits and licenses necessary for the prosecution of the Work shall be secured and paid for by Contractor. Unless otherwise required, no local municipal or county building permit shall be required. However, State Buildings Programs requires each Principal Representative to administer a building code inspection program, the implementation of which may vary at each agency or institution of the State. The Contractor's employees shall become personally familiar with these local conditions and requirements and shall fully comply with such requirements. State electrical and plumbing permits are required, unless the requirement to obtain such permits is altered by State Building's Programs. Contractor shall obtain and pay for such permits.

Easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the Principal Representative, unless otherwise specified.

C. TAXES

1. REFUND OF SALES AND USE TAXES

Contractor shall pay all local taxes required to be paid, including but not necessarily limited to all sales and use taxes. If requested by the Principal Representative prior to issuance of the Notice to Proceed to Commence Design or directed in the Specifications, Contractor shall maintain records of such payments in respect to the Work, which shall be separate and distinct from all other records maintained by Contractor, and Contractor shall furnish such data as may be necessary to enable the State of Colorado, acting by and through the Principal Representative, to obtain any refunds of such taxes which may be available under the laws, ordinances, rules or regulations applicable to such taxes. When so requested or directed, Contractor shall require Subcontractors to pay all local sales and use taxes required to be paid and to maintain records and furnish Contractor with such data as may be necessary to obtain refunds of the taxes paid by such Subcontractors. No State sales and use taxes are to be paid on material to be used in this Project. On application by the purchaser or seller, the Colorado Department of Revenue shall issue to a Contractor or to a Subcontractor at any tier, a certificate or certificates of exemption per §39-26-114(1)(d), C.R.S., and §39-26-203, C.R.S.

2. FEDERAL TAXES

Contractor shall exclude the amount of any applicable federal excise or manufacturers' taxes from the proposal. The Principal Representative will furnish Contractor, on request, exemption certificates.

D. LAWS AND REGULATIONS

Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work as drawn or specified.

Contractor shall bear all costs arising from the performance of Work required by the Drawings or Specifications that Contractor knows to be contrary to such laws, ordinances, rules or regulations.

ARTICLE 10. PROTECTION OF WORK AND PROPERTY

A. GENERAL PROVISIONS

Contractor shall continuously maintain adequate protection of all Work, materials, and protect the property from injury or loss arising in connection with this Contract and adequately protect adjacent property as provided by law and the Contract Documents. Contractor shall be responsible for any damage, injury or loss, except to the extent:

1. Caused by agents or employees of the Principal Representative; and,

2. Due to causes beyond Contractor's control and not to fault or negligence; provided such damage, injury or loss would not be covered by the insurance required to be carried by Contractor.

B. SAFETY PRECAUTIONS

Contractor shall take all necessary precautions for the safety of employees on the Project, and shall comply with all applicable provisions of federal, State and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the Premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and he or she shall designate a responsible member of his or her organization on the Project, whose duty shall be the prevention of accidents. The name and position of any person so designated shall be reported to the Principal Representative by Contractor.

The Contractor shall provide all necessary bracing, shoring and tying of all structures, decks and framing to prevent any structural failure of any material which could result in damage to property or the injury or death of persons; take all precautions to insure that no part of any structure of any description is loaded beyond its carrying capacity with anything that will endanger its safety at any time during the execution of this Contract; and provide for the adequacy and safety of all scaffolding and hoisting equipment. Contractor shall not permit open fires within the building enclosure. Contractor shall construct and maintain all necessary temporary drainage and do all pumping necessary to keep excavations and floors, pits and trenches free of water. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, except as otherwise noted.

Contractor shall take due precautions when obstructing sidewalks, streets or other public ways in any manner, and shall provide, erect and maintain barricades, temporary walkways, roadways, trench covers, colored lights or danger signals and any other devices necessary or required to assure the safe passage of pedestrians and automobiles.

C. EMERGENCIES

In an emergency affecting the safety of life or of the Work or of adjoining property, Contractor without special instruction or authorization from the Principal Representative, is hereby permitted to act, at his or her discretion, to prevent such threatened loss or injury; and he or she shall so act, without appeal, if so authorized or instructed. Provided Contractor has no responsibilities for the emergency, if Contractor incurs additional cost not otherwise recoverable from insurance or others on account of any such emergency Work, the Fixed Limit of Construction Cost shall be equitably adjusted in accordance with Article 35, Changes in the Work.

ARTICLE 11. DRAWINGS AND SPECIFICATIONS ON THE WORK

When applicable, as determined at the sole discretion of the Principal Representative, Contractor shall keep on the Premises a printed or electronic copy of the Contract Documents in good order, including current copies of all Drawings and Specifications for the Work, and any approved Shop Drawings, Product Data or Samples, and as-built drawings. All such documents shall be available to representatives of the State. In addition, Contractor shall keep on the Premises a printed or electronic copy of all approved addenda, Change Orders, ESA Change Orders, and requests for information issued for the Work.

Contractor shall develop procedures to insure the currency and accuracy of as-built drawings and shall maintain on a current basis a log of requests for information and responses thereto, a Product Data submittal log, and a Sample submittal log to record the status of all necessary and required submittals.

ARTICLE 12. REQUESTS FOR INFORMATION AND SCHEDULES

A. DETAIL DRAWINGS AND INSTRUCTIONS

The Contractor shall furnish additional instructions with reasonable promptness, by means of drawings or otherwise, necessary for the proper execution of the Work. All such drawings and instructions shall be consistent with the Contract Documents and reasonably inferable there from.

The Work shall be executed in conformity with such instructions and Contractor shall do no Work without proper Drawings, Specifications or instructions.
The Contractor and the Principal Representative shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the Work, fixing the dates at which the various detail drawings and specification that will be required. A schedule shall be prepared, fixing the dates for the beginning of manufacture and installation of materials and for the completion of the various parts of the Work.

B. SCHEDULES

1. DESIGN SCHEDULE

Prior to receiving the Notice to Proceed to Commence Design Phase (SC-8.26), the Contractor shall submit a detailed Design Phase Schedule identifying all phases of design, including time identified for the Principal Representative to review and approve design documents and specifications at each design milestone. The Design Phase Schedule shall also identify adequate time for the document coordination between the Contractor and each of its consultants.

2. SUBMITTAL SCHEDULES

Prior to the Notice to Proceed to Commencement of Construction for the first construction phase a schedule shall be prepared by the Contractor fixing the dates for the beginning of manufacture, procure the equipment, and installation of materials for the completion of the various parts of the Work. The schedule shall be subject to change from time to time in accordance with the progress of the Work, and it shall be subject to the review and approval by the Principal Representative. The schedule shall be finalized, prepared and submitted with respect to each of the elements of the Work in time to avoid delay, considering reasonable periods for review, manufacture, procure the equipment and/or installation.

At the time the schedule is prepared, Contractor and Principal Representative shall jointly identify the Product Data and Samples, if any, which the Principal Representative shall receive simultaneously with the Contractor for the purposes of Owner coordination with existing facility standards and systems. Transmittal of Product Data copies to the Principal Representative shall be solely for the convenience of the Principal Representative and shall neither create nor imply responsibility or duty of review by the Principal Representative.

3. SCHEDULE OF VALUES

Prior to the Notice to Proceed to Commence Construction for the first construction phase, the Contractor shall submit to the Principal Representative, for approval, and to the State Buildings Programs when specifically requested, a complete itemized Schedule of Values (Schedule F) of the various parts of the Work, as estimated by Contractor, aggregating the total Project price. The Schedule of Values shall be in by ECM/FIM as indicated in the ESA Description of Work (Schedule B) or in such detail as the Principal Representative shall require, and be prepared on forms acceptable to the Principal Representative. Contractor shall revise and resubmit the Schedule of Values for approval when, in the opinion of the Principal Representative, such resubmittal is required due to changes or modifications to the Contract Documents.

The total cost of each line item so separately identified shall be consistent with the CEO Cost and Pricing Tool.

The cost of subcontracts shall be incorporated in Schedule of Values, and when requested by the Principal Representative, shall be separately shown as line items.

This Schedule of Values (Schedule F), when approved by the Principal Representative, shall be used in preparing Contractor's applications for payment.

4. CONSTRUCTION SCHEDULES

Prior to the Notice to Proceed to Commence Construction for the first construction phase, the Contractor shall submit to the Principal Representative when specifically requested, on a form acceptable to them, an overall timetable of the construction schedule for the Project. Unless the Supplementary General Conditions or the Specifications allow scheduling with bar charts or other less sophisticated scheduling tools, the Contractor's schedule shall be a critical-path method (CPM) construction schedule. The construction schedule should start with the date of Notice to Proceed to Commence Construction for the first Work phase and include the various Work activities, change order work (when applicable), demonstration of equipment operation when called for in the Specifications, commissioning of installed equipment, post-installation verification activities, testing, closeout, and acceptance and any other steps as agreed to with the Principal Representative. The completion time shall be the time specified in the Contract.

Contractor shall submit monthly updates of the construction schedule. These updates shall reflect Contractor's "Work in place" progress.

ARTICLE 13. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

A. SUBMITTAL PROCESS

Contractor shall check and field-verify all dimensions. Contractor shall check, approve and submit to the Principal Representative in accordance with the schedule described in Article 12, Requests for Information and Schedules, all Shop Drawings, Product Data and Samples required by the Specifications or required for the Work of the various trades. All Drawings and Product Data shall contain identifying nomenclature and each Submittal shall be accompanied by a letter of transmittal identifying in detail all enclosures.

The Principal Representative shall review and comment on the Specifications, Shop Drawings, and Product Data within the time provided in the agreed upon schedule for conformance with information given and the design concept expressed in, or reasonably inferred from, the Contract Documents. The nature of all corrections to be made to the Specifications, Shop Drawings, and Product Data, if any, shall be clearly noted, and the submittals shall be returned to Contractor for such corrections. On resubmitted Specifications, Shop Drawings, Product Data or Samples, Contractor shall direct specific attention in writing on the transmittal cover to revisions on any previously checked submittal. The Principal Representative shall promptly review and comment on, and return, the resubmitted items.

Contractor shall thereafter furnish such other copies in the form approved by the Principal Representative as may be needed for the prosecution of the Work.

B. FABRICATION AND ORDERING

As required by the Work, fabrication shall be started by Contractor only after receiving approved Shop Drawings by the Principal Representative. Materials shall be ordered in accordance with

approved Product Data. Work which is improperly fabricated, whether through incorrect Shop Drawings, faulty workmanship or materials, will not be acceptable.

C. DEVIATIONS FROM DRAWINGS OR SPECIFICATIONS

The review and comments of the Specifications, Shop Drawings, Product Data or Samples by the Principal Representative shall not relieve Contractor from responsibility for deviations from the Drawings or Specifications, unless the Contractor has in writing called the attention of the Principal Representative to such deviations at the time of submission, nor shall it relieve Contractor from responsibility for errors of any sort in Drawings or Specifications. Review and comments on Specifications, Shop Drawings or Product Data containing identified deviations from the Contract Documents shall not be the basis for a Change Order or a claim based on a change in the scope of the Work unless Notice is given to the Principal Representative in accordance with Articles 35 and 36.

D. CONTRACTOR REPRESENTATIONS

By preparing, approving, and/or submitting Specifications, Shop Drawings, Product Data and Samples, Contractor represents that Contractor has determined and verified all materials, field measurements, and field construction criteria related thereto, and has checked and coordinated the information contained within each submittal with the requirements of the Work, the Project and the Contract Documents and prior reviews and approvals.

ARTICLE 14. SAMPLES AND TESTING

A. SAMPLES

Contractor shall furnish for approval, with such promptness as to cause no delay in his or her Work or in that of any other Contractor, applicable Samples as defined in the Schedule B.

B. TESTING – GENERAL (Intentionally Deleted)

C. TESTING - CONCRETE AND SOILS (Intentionally Deleted)

ARTICLE 15. SUBCONTRACTS

A. CONTRACT PERFORMANCE OUTSIDE THE UNITED STATES OR COLORADO

After the contract is awarded, the Contractor is required to provide written notice to the Principal Representative no later than twenty (20) days after deciding to perform services under this contract outside the United States or Colorado or to subcontract services under this contract to a subcontractor that will perform such services outside the United States or Colorado. The written notification must include, but need not be limited to, a statement of the type of services that will be performed at a location outside the United States or Colorado and the reason why it is necessary or advantageous to go outside the United States or Colorado to perform the services. All notices received by the State pursuant to outsourced services shall be posted on the Colorado Department of Personnel & Administration's website. *If the Contractor knowingly fails to notify the Principal Representative of any outsourced services as specified herein, the Principal Representative, at its discretion, may terminate this contract as provided in C.R.S.* § *24-102-206 (4*). *(Does not apply to any project that receives federal moneys*.)

B. SUBCONTRACTOR PREQUALIFICATION

Prior to the Notice to Proceed to Commencement of Construction for the first construction phase, the Contractor shall submit to the Principal Representative a complete list of all proposed pre-qualified Subcontractors. The Contractor shall submit to the Principal Representative a complete list of Consultants including the Contractor's Architect/Engineer and the professional Subconsultants. It shall be as complete as possible at the time, showing all known Subcontractors, Consultants and Subconsultants planned for the Work. The list shall be

supplemented as other Subcontractors are determined by the Contractor and any such supplemental list shall be submitted to the Principal Representative not less than ten (10) days before the Subcontractor commences Work.

The Contractor's list of all proposed pre-qualified Subcontractors shall include those Subcontractors, if any, which the Contractor indicated in its Investment Grade Audit report, would be employed for specific portions of the Work or if such indication was requested in the Request for Proposal documents issued by the State.

C. SUBCONTRACTOR PROPOSALS

The Contractor shall request and receive proposals from the Subcontractors and subcontracts will be awarded after the proposals are tabulated in a pre-approved format which compares to each Fixed Limit of Construction Cost per Schedule B, as indicated in the finalized Schedule F, and, reviewed by, Contractor, and Principal Representative.

Should Contractor submit a proposal for subcontract Work, the proposal conditions used shall be the same as for all subcontractor proposals. These Contractor proposals for subcontract Work shall be submitted to the Principal Representative twenty-four (24) hours prior to receipt of other subcontractor proposals and be opened with the other proposals.

D. SUBCONTRACTOR FORMS

All subcontracts will be between Contractor and the Subcontractors. The form of subcontracts shall be furnished to the Principal Representative for review and consent as to form, for which consent shall not be unreasonably withheld.

E. SUBCONTRACTOR SUBSTITUTION

The substitution of any Subcontractor listed in the Contractor's proposal shall be justified in writing not less than ten (10) days after the date of the Notice to Proceed with Design, and shall be subject to the approval of the Principal Representative. For reasons such as the Subcontractor's refusal to perform as agreed, subsequent unavailability or later discovered proposal errors, or other similar reasons, such substitution may be approved. Contractor shall bear any additional cost incurred by such substitutions.

F. CONTRACTOR RESPONSIBLE FOR SUBCONTRACTORS

The Contractor shall not employ any Subcontractor that the Principal Representative, within ten (10) days after the date of receipt of the Contractor's list of Subcontractors or any supplemental list, objects to in writing as being unacceptable to either the Principal Representative or State Buildings Program. If a Subcontractor is deemed unacceptable, the Contractor shall propose a substitute Subcontractor and the Contract sum shall be adjusted by any demonstrated difference between the Subcontractor's bids, except where the Subcontractor has been debarred by the State or fails to meet qualifications of the Contract Documents to perform the work proposed.

The Contractor shall be fully responsible to the Principal Representative for the acts and omissions of Subcontractors and of persons either directly or indirectly employed by them. All instructions or orders in respect to work to be done by Subcontractors shall be given to the Contractor.

ARTICLE 16. RELATIONS OF CONTRACTOR AND SUBCONTRACTORS

Contractor agrees to bind each Subcontractor to the terms of these General Conditions and to the requirements of the Drawings and Specifications, and any Addenda thereto, and also all the other Contract Documents and Procedural Documents, as applicable to the Work of such Subcontractor. Contractor further agrees to bind each Subcontractor to those terms of the General Conditions which expressly require that Subcontractors also be bound, including without limitation, requirements that Subcontractors waive all rights of subrogation, provide adequate general commercial liability and property insurance, automobile insurance and workers' compensation insurance as provided in Article 25, Insurance.

Nothing contained in the Contract Documents shall be deemed to create any contractual relationship whatsoever between any Subcontractor and the State of Colorado acting by and through its Principal Representative.

ARTICLE 17. MUTUAL RESPONSIBILITY OF CONTRACTORS

Should the Contractor cause damage to any separate contractor engaged by the Principal Representative on the Work, the Contractor agrees, upon due Notice, to settle with such separate contractor by agreement, if he or she will so settle. If such separate contractor sues the Principal Representative on account of any damage alleged to have been so sustained, the Principal Representative shall notify the Contractor, who shall defend such proceedings if requested to do so by Principal Representative. If any judgment against the Principal Representative arises there from, the Contractor shall pay or satisfy it and pay all costs and reasonable attorney fees incurred by the Principal Representative, in accordance with Article 53(I), Indemnification, provided the Contractor was given due Notice of an opportunity to settle.

ARTICLE 18. SEPARATE CONTRACTS

The Principal Representative reserves the right to enter into other contracts in connection with the Project or the Contract. The Contractor shall afford other separate contractors reasonable opportunity for the introduction and storage of their materials and the execution of their Work, and shall properly connect and coordinate his or her Work with theirs. If any part of the Contractor's Work depends, for proper execution or results, upon the Work of any other separate contractor, the Contractor shall inspect and promptly report to the Principal Representative any defects in such Work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other separate contractor's Work as fit and proper for the reception of work, except as to defects which may develop in the other separate contractor's Work after the execution of the Contractor's Work.

To insure the proper execution of subsequent Work, the Contractor shall measure Work already in place and shall at once report to the Principal Representative any discrepancy between the executed Work and the Drawings.

ARTICLE 19. USE OF PREMISES

Contractor shall confine apparatus, the storage of materials and the operations of workmen to limits indicated by law, ordinances, permits and any limits lines shown on the Drawings or defined in the Work. Contractor shall not unreasonably encumber the premises with materials. Contractor shall enforce all of the Principal Representative's instructions and prohibitions regarding, without limitation, such matters as signs, advertisements, fires and smoking.

ARTICLE 20. CUTTING, FITTING OR PATCHING

The Contractor shall do all cutting, fitting or patching of Work that may be required to make its several parts come together properly and fit it to receive or be received by Work of other separate contractors shown upon, or reasonably inferred from, the Drawings and Specifications for the complete structure, and shall provide for such finishes to patched or fitted Work as the Principal Representative may direct. The Contractor shall not endanger any Work by cutting, excavating or otherwise altering the Work and shall not cut or alter the Work of any other separate contractor save with the consent of the Principal Representative.

ARTICLE 21. UTILITIES

A. TEMPORARY UTILITIES

Unless otherwise specifically stated in the Specifications or on the Drawings, the Principal Representative shall be responsible for the placement of all utilities as shown on the Drawings or indicated elsewhere in the Specifications, subject to Contractor's compliance with all statutory or regulatory requirements. When actual conditions deviate from those shown in the Drawings and Specifications, Contractor shall comply with the requirements of Article 37, Differing Premises Conditions. As applicable to the Project, Contractor shall provide and pay for the installation of all temporary utilities required to supply all the power, light and water needed by him or her and other Contractors for their Work associated with the Project and shall install and maintain all such

utilities in such manner as to protect the public and workmen and conform with any applicable laws and regulations. Upon completion of the work, he or she shall remove all such temporary utilities from the site, if applicable. Contractor shall pay for all consumption of power, light and water used by him or her and the other Contractors used during the Project as it applies to these temporary utilities, without regard to whether such items are metered by temporary or permanent meters. The Superintendent shall have full authority over all trades and Subcontractors at any tier to prevent waste. The cut-off date on permanent meters shall be either the agreed date of the Notice of Substantial Completion of the Project, whichever shall be the earlier date.

B. PROTECTION OF EXISTING UTILITIES

Where existing utilities, such as water mains, sanitary sewers, storm sewers, computer networks, and electrical conduits, are shown on the Drawings, Contractor shall be responsible for the protection thereof, without regard to whether any such utilities are to be relocated or removed as a part of the Work. If any utilities are to be moved, the moving must be conducted in such manner as not to cause undue interruption or delay in the operation of the same.

C. CROSSING OF UTILITIES

When new construction crosses highways, railroads, streets, or utilities under the jurisdiction of State, city or other public agency, public utility or private entity, Contractor shall secure proper written permission before executing such new construction. Contractor will be required to furnish a proper release before final acceptance of the Work.

ARTICLE 22. UNSUITABLE CONDITIONS

Contractor shall not work at any time, or permit any work to be done, under any conditions contrary to those recommended by manufacturers or industry standards which are otherwise proper, unsuited for proper execution, safety and performance. Any loss, damage, or increased cost caused by ill-timed Work shall be borne by Contractor unless the timing of such Work shall have been directed by the Principal Representative, and Contractor provided Notice of any additional cost.

ARTICLE 23. TEMPORARY FACILITIES

A. OFFICE FACILITIES

Contractor shall provide and maintain without additional expense for the duration of the Project temporary office facilities, as required and as specified, for his or her own use and the use of the representatives of the Principal Representative.

B. TEMPORARY HEAT

Contractor shall furnish and pay for all the labor, facilities, equipment, fuel and power necessary to supply temporary heating, ventilating and air conditioning, except to the extent otherwise specified, and shall be responsible for the installation, operation, maintenance and removal of such facilities and equipment. Unless otherwise specified, the permanent HVAC system shall not be used for temporary heat in whole or in part. If Contractor desires to put the permanent system into use, in whole or in part, Contractor shall set it into operation and furnish the necessary fuel and manpower to safely operate, protect and maintain that HVAC system. Any operation of all or any part of the permanent HVAC system including operation for testing purposes shall not constitute acceptance of the system, nor shall it relieve Contractor of his or her Warranty of the Work from the date of the Notice of Substantial Completion of the entire Project, and if necessary due to prior operation, Contractor shall provide manufacturers' extended warranties from the date of Contractor's use prior to the date of the Notice of Substantial Completion.

C. WEATHER PROTECTION

The Contractor shall, at all times, provide protection against weather, so as to maintain all Work, materials, apparatus and fixtures free from injury or damages. The Contractor shall provide weathertight storage on substantial floors at least six (6) inches off the ground for all materials requiring protection from the weather.

D. DUST PARTITIONS

If the Work involves Work in an occupied existing building, Contractor shall erect and maintain during the progress of the Work, suitable dust-proof temporary partitions, or more permanent partitions as specified, to protect such building and the occupants thereof.

E. BENCHMARKS

Contractor shall maintain any Premises benchmarks provided by the Principal Representative and shall establish any additional benchmarks specified by the Principal Representative as necessary for Contractor to layout the Work and ascertain all grades and levels as needed.

F. SIGN

Contractor shall erect and permit one 4' x 8' sign only at the Premises to identify the Project as specified or directed by the State which shall be maintained in good condition during the life of the Project.

G. SANITARY PROVISION

Contractor shall provide and maintain suitable, clean, temporary sanitary toilet facilities for any and all workmen engaged on the Work, for the entire construction period, in strict compliance with the requirement of all applicable codes, regulations, laws and ordinances, and no other facilities, new or existing, may be used by any person on the Project. When the Project is complete Contractor shall promptly remove them from the Premises, disinfect, and clean or treat the areas as required. If any new construction surfaces in the Project other than the toilet facilities provided for herein are permanently soiled at any time, the entire areas so soiled shall be completely removed from the Project and rebuilt.

ARTICLE 24. CLEANING UP

Contractor shall keep the building and premises free from all surplus material, waste material, dirt and rubbish caused by employees or Work, and at the completion of the Work shall remove all such surplus material, waste material, dirt, and rubbish, as well as all tools, equipment and scaffolding, and shall wash and clean all window glass and plumbing fixtures, perform cleanup and cleaning required by the Specifications and leave all of the Work clean unless more exact requirements are specified.

ARTICLE 25. INSURANCE

A. GENERAL

The Contractor shall procure and maintain all insurance requirements and limits as set forth below, at his or her own expense, for the length of time set forth in Contract requirements. The Contractor shall continue to provide evidence of such coverage to State of Colorado on an annual basis during the aforementioned period including all of the terms of the insurance and indemnification requirements of this agreement. All below insurance policies shall include a provision preventing cancellation without thirty (30) days' prior Notice per Article 27 (Energy Services Agreement) by certified mail. A completed Certificate of Insurance shall be filed with the Principal Representative within ten (10) days after the date of the Notice of Award, said Certificate to specifically state the inclusion of the coverages and provisions set forth herein and shall state whether the coverage is "claims made" or "per occurrence."

B. COMMERCIAL GENERAL LIABILITY INSURANCE (CGL)

This insurance must protect the Contractor from all claims for bodily injury, including death and all claims for destruction of or damage to property (other than the Work itself), arising out of or in connection with any operations under this Contract, whether such operations be by the Contractor or by any Subcontractor under him or anyone directly or indirectly employed by the Contractor or by a Subcontractor. All such insurance shall be written with limits and coverages as specified below and shall be written on an occurrence form.

General Aggregate	$2,000,000
Products – Completed Operations Aggregate	$2,000,000
Each Occurrence	$1,000,000

Personal Injury $1,000,000

The following coverages shall be included in the CGL:

1. Per project general aggregate (CG 25 03 or similar)
2. Additional Insured status in favor of the State of Colorado and any other parties as outlined in The Contract and must include both ONGOING Operations AND COMPLETED Operations per CG2010 10/01 and CG 2037 10/01 or equivalent as permitted by law
3. The policy shall be endorsed to be primary and non-contributory with any insurance maintained by Additional Insureds
4. A waiver of Subrogation in favor of all Additional Insured parties
5. Personal Injury Liability
6. Contractual Liability coverage to support indemnification obligation per Article 53.I
7. Explosion, collapse and underground (xcu)

The following exclusionary endorsements are prohibited in the CGL policy:

1. Damage to Work performed by Subcontract/Vendor (CG 22-94 or similar)
2. Contractual Liability Coverage Exclusion modifying or deleting the definition of an "insured contract" from the unaltered SO CG 0001 1001 policy from (CG 24 26 or similar)
3. If applicable to the Work to be performed: Residential or multi-family
4. If applicable to the Work to be performed: Exterior insulation finish systems
5. If applicable to the Work to be performed: Subsidence or Earth Movement

The Contractor shall maintain general liability coverage including Products and Completed Operations insurance, and the Additional Insured with primary and non-contributory coverage as specified in this Contract for three (3) years after completion of the project.

C. AUTOMOBILE LIABILITY INSURANCE and business auto liability covering liability arising out of any auto (including owned, hired and non-owned autos).

Combined Bodily Injury and Property Damage Liability
(Combined Single Limit): $1,000,000 each accident

Coverages:
Specific waiver of subrogation

D. WORKERS' COMPENSATION INSURANCE

The Contractor shall procure and maintain Workers' Compensation Insurance at his or her own expense during the life of this Contract, including occupational disease provisions for all employees per statutory requirements. Policy shall contain a waiver of subrogation in favor of the State of Colorado.

The Contractor shall also require each Subcontractor to furnish Workers' Compensation Insurance, including occupational disease provisions for all of the latter's employees, and to the extent not furnished, the Contractor accepts full liability and responsibility for Subcontractor's employees.

In cases where any class of employees engaged in hazardous work under this Contract at the site of the Project is not protected under the Workers' Compensation statute, the Contractor shall provide, and shall cause each Subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise protected.

E. UMBRELLA LIABILITY INSURANCE (for construction projects exceeding $10,000,000, provide the following coverage):

The Contractor shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in Section B-D above. Coverage shall follow the terms of the underlying insurance, including the additional insured and waiver of subrogation provisions. The amounts of insurance required in Sections above may be satisfied by the Contractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned.

Each occurrence	$5,000,000
Aggregate	$5,000,000

F. BUILDER'S RISK INSURANCE

Unless otherwise expressly stated in the Supplementary General Conditions (e.g. where the State elects to provide for projects with a completed value of less than $1,000,000), the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property, or the Date of Notice specified on the Notice of Acceptance, State Form SBP-6.27 or whichever is later.

This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project as named insureds.

All associated deductibles shall be the responsibility of the Contractor. Such policy may have a deductible clause but not to exceed ten thousand dollars ($10,000.00).

Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Contractor's services and expenses required as a result of such insured loss.

Contractor shall maintain Builders Risk coverage including partial use by Owner.

The Contractor shall waive all rights of subrogation as regards the State of Colorado and the Principal Representative, its officials, its officers, its agents and its employees, all while acting within the scope and course of their employment. For damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work. The Contractor shall require all Subcontractors at any tier to similarly waive all such rights of subrogation and shall expressly include such a waiver in all subcontracts.

Upon request, the amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, the Contractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the

insurance represented by such independent contracts let or to be let to the total insurance carried.

The Principal Representative, with approval of the State Controller, shall have the power to adjust and settle any loss. Unless it is agreed otherwise, all monies received shall be applied first on rebuilding or repairing the destroyed or injured work.

G. PROFESSIONAL ERRORS AND OMISSIONS LIABILITY INSURANCE

The Contractor's Architect/Engineer or other such consultant providing professional services to the Contractor shall require 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 or such other minimum coverage as determined by the Principal Representative and approved by the State Buildings Programs. The policy, including claims- made forms, shall remain in effect for the duration of this Agreement and for at least three (3) years beyond the completion and acceptance of the Work. The Contractor's Architect/Engineer shall be responsible for all claims, damages, losses or expenses including attorney's fees, arising out of or resulting from the performance of Professional Services contemplated in this Agreement, provided that any such claim, damage, loss or expense is caused by any negligent act, error or omission of the Contractor's Architect/Engineer, 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 Agreement and also any notices of Renewals of the said policy as they occur.

For a Fixed Limit of Construction Cost	**Minimum Coverage per Claim**	**Minimum Coverage in the Aggregate**
$999,999 and under	$250,000	$500,000
$1,000,000 to $4,999,999	$500,000	$1,000,000
$5,000,000 to $19,999,999	$1,000,000	$2,000,000
$20,000,000 and above	$2,000,000	$2,000,000

H. POLLUTION LIABILITY INSURANCE

If Contractor is providing directly or indirectly work with pollution/environmental hazards, the Contractor must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage. State of Colorado must be included as additional insureds on the policy. The policy limits shall be in the amount of $1,000,000 with maximum deductible of $25,000 to be paid by the Subcontractor/Vendor.

I. ADDITIONAL MISCELLANEOUS INSURANCE PROVISIONS

Certificates of Insurance and/or insurance policies required under this Contract shall be subject to the following stipulations and additional requirements:

1. Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Contractor;
2. If any of the said policies shall fail at any time to meet the requirements of the Contract Documents as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Contract Documents, the Contractor shall promptly obtain a new policy, submit the same to the Principal Representative and State Building Programs for approval if requested, and submit a Certificate of Insurance as hereinbefore provided. Upon failure of the Contractor to furnish, deliver and maintain such insurance as provided herein, this Contract, in the sole discretion of the State of Colorado, may be immediately declared suspended, discontinued, or terminated. Failure of the Contractor in obtaining and/or maintaining any required insurance shall not relieve the Contractor from any liability under the Contract, nor shall the insurance

requirements be construed to conflict with the obligations of the Contractor concerning indemnification;

3. All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to the Principal Representative;
4. Receipt, review or acceptance by the Principal Representative of any insurance policies or certificates of insurance required by this Contract shall not be construed as a waiver or relieve the Contractor from its obligation to meet the insurance requirements contained in these General Conditions.

ARTICLE 26. CONTRACTOR'S PERFORMANCE AND PAYMENT BONDS

Contractor shall furnish a Performance Bond and a Labor and Material Payment Bond on State Forms SC-6.22, Performance Bond, and SC-6.221, Labor and Material Payment Bond, or such other forms as State Buildings Programs may approve for the Project, executed by a corporate Surety authorized to do business in the State of Colorado and in the full amount of the Fixed Limit of Construction Cost. The expense of these bonds shall be borne by the Contract and the bonds shall be filed with Principal Representative and State Buildings Programs.

If, at any time, a Surety on such a bond is found to be, or ceases to be in strict compliance with any qualification requirements of the Contract Documents or the bid documents, or loses its right to do business in the State of Colorado, another Surety will be required, which Contractor shall furnish to the Principal Representative and State Buildings Programs within ten (10) days after receipt of Notice from the Principal Representative or after Contractor otherwise becomes aware of such conditions.

The bonds shall be maintained in full force and effect until Final Completion of the construction work but are not being furnished to cover any utility guarantee or guaranteed savings under this Contract. Upon Final Acceptance the bonds shall be released.

ARTICLE 27. LABOR AND WAGES

In accordance with laws of Colorado, **C.R.S. § 8-17-101(1)**, as amended, Colorado labor shall be employed to perform at least eighty percent (80%) of the work. If the Federal Davis-Bacon Act shall be applicable to the Project, as indicated in Article 26 (Energy Services Agreement), Modification of Article 27, the minimum wage rates to be paid on the Project will be specified in the Contract Documents.

ARTICLE 28. ROYALTIES AND PATENTS

Contractor shall be responsible for assuring that all rights to use of products and systems have been properly arranged and shall take such action as may be necessary to avoid delay, at no additional charge to the Principal Representative, where such right is challenged during the course of the Work. Contractor shall pay all royalties and license fees required to be paid and shall defend all suits or claims for infringement of any patent rights and shall save the State of Colorado and the Principal Representative harmless from loss on account thereof, in accordance with Article 53(I) Indemnification.

ARTICLE 29. ASSIGNMENT

Except as otherwise provided, hereafter the Contractor shall not assign the whole or any part of this Contract without the written consent of the Principal Representative. This provision shall not be construed to prohibit assignments of the right to payment to the extent permitted by **C.R.S. § 4-9-406**, et. seq., as amended, provided that written Notice of assignment adequate to identify the rights assigned is received by the Principal Representative and the controller for the agency, department, or institution executing this Contract (as distinguished from the State Controller). Such assignment of the right to payment shall not be deemed valid until receipt by the Principal Representative and such controller and the Contractor assumes the risk that such written Notice of assignment is received by the Principal Representative and the controller for the agency, department, or institution involved. In case the Contractor assigns all or part of any moneys due or to become due under this Contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to all claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called

for in this Contract, whether said service or materials were supplied prior to or after the assignment. Nothing in this Article shall be deemed a waiver of any other defenses available to the Principal Representative against the Contractor or the assignee.

ARTICLE 30. CORRECTION OF WORK BEFORE ACCEPTANCE

Contractor shall promptly remove from the premises all Work or materials condemned or declared irreparably defective as failing to conform to the Contract Documents on receipt of written Notice from the Principal Representative. If such materials shall have been incorporated in the Work, or if any unsatisfactory Work is discovered, the Contractor shall promptly replace and re-execute his or her Work in accordance with the requirements of the Contract Documents without expense to the Principal Representative, and shall also bear the expense of making good all work of other contractors destroyed or damaged by the removal or replacement of such defective material or Work.

Should any defective work or material be discovered during the process of construction, or should reasonable doubt arise as to whether certain material or Work is in accordance with the Contract Documents, the value of such defective or questionable material or Work shall not be included in any application for payment, or if previously included, shall be deducted by the Principal Representative from the next application submitted by the Contractor.

If Contractor does not perform repair, correction and replacement of defective Work, in lieu of proceeding by issuance of a Notice of Intent to remove condemned Work as outlined above, the Principal Representative may, not less than seven (7) days after giving the original written Notice of the need to repair, correct, or replace defective Work, deduct all costs and expenses of replacement or correction as instructed by the State from Contractor's next application for payment in addition to the value of the defective Work or material. The Principal Representative may also make an equitable deduction from the Fixed Limit of Construction Cost by unilateral Change Order, in accordance with Article 33, Payments Withheld and Article 35, Changes in The Work.

If the Contractor does not remove such condemned or irreparably defective Work or material within a reasonable time, the Principal Representative may, after giving a second seven- (7) day advance Notice to the Contractor and the Surety, remove them and may store the material at the Contractor's expense. The Principal Representative may accomplish the removal and replacement with its own forces or with another separate contractor. If the Contractor does not pay the expense of such removal and pay all storage charges within ten (10) days thereafter, the Principal Representative may, upon ten (10) days' written Notice, sell such material at auction or at private sale and account for the net proceeds thereof, after deducting all costs and expenses which should have been borne by the Contractor. If the Contractor shall commence and diligently pursue such removal and replacement before the expiration of the seven- day period, or if the Contractor shall show good cause in conjunction with Schedule showing when the Work will be performed and why such removal of condemned Work should be scheduled for a later date, the Principal Representative shall not proceed to remove or replace the condemned Work.

If the Contractor disagrees with the Notice to remove Work or materials condemned or declared irreparably defective, the Contractor may request facilitated negotiation of the issue and the Principal Representative's right to proceed with removal and to deduct costs and expenses of repair shall be suspended and tolled until such time as the parties meet and negotiate the issue

ARTICLE 31. APPLICATIONS FOR PAYMENTS

A. CONTRACTOR'S SUBMITTALS

On or before the first day of each month and no more than five days prior thereto, Contractor may submit applications for payment for the Work performed during such month covering the portion of the Work completed as of the date indicated, and payments on account of this Contract shall be due within thirty (30) days after the last day of the period for which payment is requested. Contractor shall submit the application for payment to the Principal Representative on a format the State Buildings Programs shall approve (Schedule F) or the State forms SBP-7.2, Certificate for Contractor's Payment, in an itemized format in accordance with the Schedule of Values

(Schedule F), supported to the extent reasonably required by the Principal Representative by receipts or other vouchers, showing payments for materials and labor, prior payments and payments to be made to Subcontractors and such other evidence of Contractor's right to payments as the Principal Representative may direct.

If payments are made on account of materials not incorporated in the Work but delivered and suitably stored at the Premises, or at some other location agreed upon in writing, such payments shall be conditioned upon submission by Contractor of bills of sale or such other procedure as will establish the Principal Representative's title to such material or otherwise adequately protect the Principal Representative's interests, and shall provide proof of insurance whenever requested by the Principal Representative and shall be subject to the right to inspect the materials at the request of the Principal Representative.

All applications for payment, except the final application, and the payments there under, shall be subject to correction in the next application rendered following the discovery of any error.

B. Intentionally deleted.

C. RETAINAGE WITHHELD

Unless otherwise provided in the Supplementary General Conditions, an amount equivalent to five percent (5%) of the amount shown to be due the Contractor on each application for payment shall be withheld until the work required by the Contract has been performed. The withheld percentage of the contract price of any such work, improvement, or construction shall be administered according to § 24-91-101, et seq., C.R.S., as amended, and except as provided in § 24-91-103, C.R.S., as amended, and Article 31D, shall be retained until the Work or discrete portions of the Work, have been completed satisfactorily, finally or partially accepted, and advertised for final settlement as further provided in Article 41.

D. RELEASE OF RETAINAGE

Contractor may, for satisfactory and substantial reasons shown to the Principal Representative's satisfaction, make a written request to the Principal Representative for release of part or all of the withheld percentage applicable to the Work of a Subcontractor which has completed the subcontracted Work in a manner finally acceptable to Contractor and the Principal Representative. Any such request shall be supported by a written approval from the Surety furnishing Contractor's bonds and any surety that has provided a bond for the Subcontractor. The release of any such withheld percentage shall be further supported by such other evidence as the Principal Representative may require, including but not limited to, evidence of prior payments made to the Subcontractor, copies of the Subcontractor's Contract with Contractor, any applicable warranties, as-built information, maintenance manuals and other customary close-out documentation. The Principal Representative shall not be obligated to review such documentation nor shall they be deemed to assume any obligations to third parties by anyreview undertaken.

Contractor's obligation under these General Conditions to warranty Work for one year from the date of the Notice of Substantial Completion or the date of any Notice of Partial Substantial Completion of the applicable portion or phase of the Project, shall be unaffected by such partial release.

Any rights of the Principal Representative which might be terminated by or from the date of any final acceptance of the Work, whether at common law or by the terms of this Contract, shall not be affected by such partial release of retainage prior to any final acceptance of the entire Project.

Contractor remains fully responsible for the Subcontractor's Work and assumes any risk that might arise by virtue of the partial release to the Subcontractor of the withheld percentage, including the risk that the Subcontractor may not have fully paid for all materials, labor and equipment furnished to the Project.

If the Principal Representative considers Contractor's request for such release satisfactory and supported by substantial reasons, the State may make a "final inspection" of the applicable portion of the Project to determine whether the Subcontractor's Work has been completed in accordance with the Contract Documents. A final punch list shall be made for the Subcontractor's Work, and the procedures of Article 41 shall be followed for that portion of the Work, except that advertisement of the intent to make final payment to the Subcontractor shall be required only if the Principal Representative has reason to believe that a supplier or Subcontractor to the Subcontractor for which the request is made, may not have been fully paid for all labor and materials furnished to the Project.

ARTICLE 32. CERTIFICATES FOR PAYMENTS

State Form SBP-7.2, Certificate For Contractor's Payment, as modified to include design and construction administration services and as approved by the Principal Representative and its continuation detail sheets, when submitted, shall constitute the Certificate of Contractor's Application for Payment, and shall be a representation by the Contractor to the Principal Representative that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and materials for which payment is requested have been incorporated into the Project except as noted in the application. If requested by the Principal Representative, the Certificate of Contractor's Application for Payment shall be sworn under oath and notarized.

ARTICLE 33. PAYMENTS WITHHELD

The Principal Representative may withhold, or on account of subsequently discovered evidence, nullify the whole or any part of any payment application on account of, but not limited to, any of the following:

1. Defective Work not remedied;
2. Claims filed or reasonable evidence indicating probable filing of claims;
3. Failure of Contractor to make payments to Subcontractors for material or labor;
4. A reasonable doubt that the Contract can be completed for the balance of the Fixed Limit of Construction Cost then unpaid;
5. Damage or injury to another contractor or any other person, persons or property except to the extent of coverage by a policy of insurance;
6. Failure to obtain necessary permits or licenses or to comply with applicable laws, ordinances, codes, rules or regulations or the directions of the State;
7. Failure to submit a monthly construction schedule;
8. Failure of Contractor to keep Work progressing in accordance with the construction schedule;
9. Failure to keep a superintendent on the Work;
10. Failure to maintain as built drawings of the Work in progress;
11. Unauthorized deviations by Contractor from the Contract Documents; or
12. On account of liquidated damages.

In addition, the Principal Representative or State Buildings Programs may withhold or nullify the whole or any part of any application for any reason noted elsewhere in these General Conditions of the Energy Services Agreement. Nullification shall mean reduction of amounts shown as previously paid on the application. The amount withheld or nullified may be in such amount as the Principal Representative estimates to be required to allow the Principal Representative to accomplish the Work, cure the failure and cover any damages or injuries, including an allowance for attorneys' fees and costs where appropriate. When the grounds for such withholding or nullifying are removed, payment shall be made for the amounts thus withheld or nullified on such grounds.

ARTICLE 34. DEDUCTIONS FOR UNCORRECTED WORK

If the Principal Representative deems it inexpedient to correct Work injured or not performed in accordance with the Contract Documents, the Principal Representative may, after ten (10) days' Notice to Contractor of intent to do so, make reasonable reductions from the amounts otherwise due Contractor on the next application for payment. Notice shall specify the amount or terms of any contemplated reduction. Contractor may during this period elect to correct or perform the Work. If Contractor does not elect to

correct or perform the Work, an equitable deduction from the Fixed Limit of Construction Cost shall be made by Change Order, in accordance with Article 35, Changes In The Work. If either party elects facilitation of this issue after Notice is given, the 10-day notice period shall be extended and tolled until facilitation has occurred.

ARTICLE 35. CHANGES IN THE WORK

CHANGES TO THE ESA FIXED LIMIT OF CONSTRUCTION COST

Changes to the Fixed Limit of Construction Cost within the Maximum Contract Price of an Energy Services Agreement, that the costs are negotiation determined based upon the IGA Exhibit C, Cost and Pricing Elements instead of Article 35B limits. Articles 35 A, B, C, and D apply, but The Contractor will indicate and detail in any ESA Change Order if and how the Annual Guaranteed Cost Savings is modified. Changes to the Maximum Contract Price that are not based upon an additional ESA phase or a decrease in the ESA Description of Work (ESA Schedule B) are based upon the limits in Article 35B.

The Principal Representative may designate, without invalidating the Agreement, and with the approval of State Buildings Program and the State Controller, may order extra Work or make changes with or without the consent of the Contractor as hereafter provided, by altering, adding to or deducting from the Work, the Contract sum being adjusted accordingly. All such changes in the Work shall be within the general scope of and be executed under the conditions of the Contract, except that any claim for extension of time made necessary due to the change or any claim of other delay or other impacts caused by or resulting from the change in the Work shall be presented by the Contractor and adjusted by Change Order to the extent known at the time such change is ordered and before proceeding with the extra or changed Work. Any claims for extension of time or of delay or other impacts, and any costs associated with extension of time, delay or other impacts, which are not presented before proceeding with the change in the Work, and which are not adjusted by Change Order to the extent known, shall be waived.

The Principal Representative or the Contractor's Architect/Engineer with the consent of the Principal Representative, shall have authority to make minor changes in the Work, not involving extra cost, and not inconsistent with the *intent of the Contract Documents, but otherwise, except in an emergency endangering life or property, no extra work or change in the Contract Documents shall be made unless by 1) a written Change Order, approved by the Principal Representative, State Buildings Program, and the State Controller prior to proceeding with the changed Work; or 2) by an Emergency Field Change Order approved by the Principal Representative and State Buildings Program as hereafter provided in Article 35C, Emergency Field Ordered Changed Work; or 3) by an allocation in writing of any allowance already provided in the encumbered contract amount, the Contract sum being later adjusted to decrease the Contract Sum by any unallocated or unexpended amounts remaining in such allowance. No change to the Contract Sum shall be valid unless so ordered.*

A. THE VALUE OF CHANGED WORK

1. *The value of any extra Work or changes in the Work shall be determined by agreement in one or more of the following ways:*
   a. *By estimate and acceptance of a lump-sum amount;*
   b. *By unit prices specified in the Agreement, or subsequently agreed upon, that are extended by specific quantities;*
   c. *By actual cost plus a fixed fee, in a lump sum amount for profit, overhead and all indirect and off-site home office costs, the latter amount agreed upon in writing prior to starting the extra or changed Work.*
2. *Where the Contractor and the Principal Representative cannot agree on the value of extra work, the Principal Representative may order the Contractor to perform the changes in the Work and a Change Order may be unilaterally issued based on an estimate of the change in the Work prepared by the Contractor's Architect/Engineer or Principal Representative. The value of the change in the Work shall be the Principal Representative's determination of the*

amount of equitable adjustment attributable to the extra Work or change. The Principal Representative's determination shall be subject to appeal by the Contractor pursuant to the claims process in Article 36, Claims.

3. *Except as otherwise provided in Article 35B, Detailed Breakdown, below, the Cost Principles of the Colorado Procurement Rules in effect on the date of this Contract, pursuant to § 24-107-101, C.R.S., as amended, shall govern all Contract changes.*

B. DETAILED BREAKDOWN

In all cases where the value of the extra or changed Work is not known, based on unit prices in the Contractor's proposal or the Agreement, a detailed change proposal shall be submitted by the Contractor on a Change Order Proposal (SC-6.312), or in such other format as the Principal Representative *and State Buildings Program approve, with which the Principal Representative may require an itemized list of materials, equipment and labor, indicating quantities, time and cost for completion of the changed Work.*

Such detailed change proposals shall be stated in lump sum amounts and shall be supported by a separate breakdown, which shall include estimates of all or part of the following when requested by the Principal Representative:

1. *Materials, indicating quantities and unit prices including taxes and delivery costs if any (separated where appropriate into general, mechanical and electrical and/or other Subcontractors' Work; and the Principal Representative may require in its discretion any significant subcontract costs to be similarly and separately broken down).*
2. *Labor costs, indicating hourly rates and time and labor burden to include Social Security and other payroll taxes such as unemployment, benefits and other customary burdens.*
3. *Costs of project management time and superintendence time of personnel stationed at the site, and other field supervision time, but only where a time extension, other than a weather delay, is approved as part of the Change Order, and only where such project management time and superintendence time is directly attributable to and required by the change.*
4. *Construction equipment (including small tools). Expenses for equipment and fuel shall be based on customary commercially reasonable rental rates and schedules. Equipment and hand tool costs shall not include the cost of items customarily owned by workers.*
5. *Workers' compensation costs, if not included in labor burden.*
6. *The cost of commercial general liability and property damage insurance premiums but only to the extent charged the Contractor as a result of the changed Work.*
7. *Overhead and profit, as hereafter specified.*
8. *Builder's risk insurance premium costs.*
9. *Bond premium costs.*
10. *Testing costs not otherwise excluded by these General Conditions.*
11. *Subcontract costs.*
12. *Contractor's Architect/Engineer Design Services Costs.*

Unless modified *in the Supplementary General Conditions, overhead and profit shall not exceed the percentages set forth in the table below.*

	OVERHEAD	*PROFIT*	*COMMISSION*
To the Contractor or to Subcontractors for the portion of work performed with their own forces:	*10%*	*5%*	*0%*
To the Contractor or to Subcontractors for work performed by others at a tier immediately below either of them:	*5%*	*0%*	*5%*

Overhead shall include: a) insurance premium for policies not previously purchased (if required) for the Project and itemized above, b) home office costs for office management, administrative

and supervisory personnel and assistants, c) estimating and change order preparation costs, d) incidental job burdens, e) legal costs, f) data processing costs, g) interest costs on capital, h) general office expenses except those attributable to increased rental expenses for temporary facilities, and all other indirect costs, but shall not include the Social Security tax and other direct labor burdens. The term "Work" as used in the preceding table shall include labor, materials and equipment and the "Commission" shall include all costs and profit for carrying the subcontracted Work at the tiers below except direct costs as listed in items 1 through 11 above if any.

On proposals for Work involving both additions and credits to the amount of the Contract Sum, the overhead and profit will be allowed on the net increase only. On proposals resulting in a net deduct to the amount of the Contract sum, profit on the deducted amount shall be returned to the Principal Representative at fifty percent (50%) of the rate specified. The inadequacy of the profit specified shall not be a basis for refusal to submit a proposal.

Except in the case of Change Orders or Emergency Field Change Orders agreed to on the basis of a lump sum amount or unit prices as described in paragraphs 35A1 and 35A2 above, The Value of Changed Work*, the Contractor shall keep and present a correct and fully auditable account of the several items of cost, together with vouchers, receipts, time cards and other proof of costs incurred, summarized on a Change Order form (SC-6.31) using such format for supporting documentation as the Principal Representative and State Buildings Program approve. This requirement applies equally to Work done by Subcontractors. Only auditable costs shall be reimbursable on Change Orders where the value is determined on the basis of actual cost plus a fixed fee pursuant to paragraph 35A3 above, or where unilaterally determined by the Principal Representative on the basis of an equitable adjustment in accordance with the Procurement Rules, as described above in Article 35A, The Value Of Changed Work.*

Except for proposals for Work involving both additions and credits, changed Work shall be adjusted and considered *separately for Work either added or omitted. The amount of adjustment for Work omitted shall be estimated at the time it is directed to be omitted, and when reasonable to do so, the agreed adjustment shall be reflected on the schedule of values used for the next Contractor's application for payment.*

The Principal Representative reserves the right to contract with any person or firm other than the Contractor for any or all extra Work; however, unless specifically required in the Contract Documents, the Contractor *shall have no responsibility without additional compensation to supervise the Work of persons or firms separately contracted by the Principal Representative.*

C. HAZARDOUS MATERIALS

The Principal Representative represents that it has undertaken an examination of the site of the Work and has determined that there are no hazardous substances, as defined below, which the Contractor could reasonably encounter in its performance of the Work. In the event the Principal Representative so discovers hazardous substances, the Principal Representative shall render harmless such hazards before the Contractor commences the Work.

In the event the Contractor encounters any materials reasonably believed to be hazardous substances which have not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Principal Representative, in writing. For purposes of this Agreement, "hazardous substances" shall include asbestos, lead, polychlorinated biphenyl (PCB) and any or all of those substances defined as "hazardous substance," "hazardous waste," or "dangerous or extremely hazardous wastes" as those terms are used in the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA), and shall also include materials regulated by the Toxic Substances Control Act (TSCA), the Clean Air Act, the Air Quality Act, the Clean Water Act, and the Occupational Safety and Health Act. The Work in the affected area shall not, therefore, be resumed except by written agreement of the Principal Representative and the Contractor, if in fact materials that are hazardous substances have not

been rendered harmless. The Work in the affected area shall be resumed only in the absence of the hazardous substances or when it has been rendered harmless or by written agreement of the Principal Representative and the Contractor.

The Contractor shall not be required to perform Work without consent in any areas where it reasonably believes hazardous substances that have not been rendered harmless are present.

D. EMERGENCY FIELD CHANGE ORDERED WORK

The Principal Representative, without invalidating the Agreement, and with the approval of State Buildings Program and without the approval of the State Controller, may order extra Work or make changes in the case of an emergency that is a threat to life or property or where the likelihood of delays in processing a normal Change Order will result in substantial delays and or significant cost increases for the Project. Emergency Field Orders are not to be used solely to expedite normal Change Order processing absent a clear showing of a high potential for significant and substantial cost or delay. Such changes in the Work may be directed through issuance of an Emergency Field Change Order signed by the Contractor, the Principal Representative (or by a designee specifically appointed to do so in writing), and approved by the Director of State Buildings Program or his or her delegate. The change shall be directed using an Emergency Field Change Order form (SC-6.31E).

If the amount of the adjustment of the Contract price and time for completion can be determined at the time of issuance of the Emergency Field Change Order, those adjustments shall be reflected on the face of the Emergency Field Change Order. Otherwise, the Emergency Field Change Order shall reflect a Not To Exceed (NTE) amount for any schedule adjustment (increasing or decreasing the time for completion) and an NTE amount for any adjustment to Contract sum, which NTE amount shall represent the maximum amount of adjustment to which the Contractor will be entitled, including direct and indirect costs of changed Work, as well as any direct or indirect costs attributable to delays, inefficiencies or other impacts arising out of the change. Emergency Field Change Orders directed in accordance with this provision need not bear the approval signatures of the State Controller.

On Emergency Field Change Orders where the price and schedule have not been finally determined, the Contractor shall submit final costs for adjustment as soon as practicable. No later than seven (7) days after issuance, except as otherwise permitted, and every seven days thereafter, the Contractor shall report all costs to the Principal Representative. The final adjustment of the Emergency Field Change Order amount and the adjustment to the Project time for completion shall be prepared on a normal Change Order from (SC-6.31) in accordance with the procedures described in Article 35A, The Value of Changed Work, and B, Detailed Breakdown, above. Unless otherwise provided in writing signed by the Director of State Buildings Program to the Principal Representative and the Contractor, describing the extent and limits of any greater authority, individual Emergency Field Change Orders shall not be issued for more than $25,000, nor shall the cumulative value of Emergency Field Change Orders exceed an amount of $100,000.

E. APPROPRIATION LIMITATIONS - § 24-91-103.6, C.R.S., as amended

The amount of money appropriated, as shown on the Design/Build Maximum Price Agreement (SC 9.0), is equal to or in excess of the Contract amount. No Change Order, Emergency Field Change Order, or other type of order or directive shall be issued by the Principal Representative, or any agent acting on his or her behalf, which directs additional compensable work to be performed, which work causes the aggregate amount payable under the Contract to exceed the amount appropriated for the original Contract, as shown on the Design Build Guaranteed Maximum Price Agreement (SC-9.0), unless one of the following occurs: (1) the Contractor is provided written assurance from the Principal Representative that sufficient additional lawful appropriations exist to cover the cost of the additional work; or (2) the work is covered by a Contractor remedy provision under the Contract, such as a claim for extra cost. By way of example only, no assurance is required for any order, directive or instruction by the Contractor's

Architect/Engineer or the Principal Representative to perform Work which is determined to be within the performance required by the Contract Documents; the Contractor's remedy shall be as described elsewhere in these General Conditions.

ARTICLE 36. CLAIMS

It is the intent of these General Conditions to provide procedures for speedy and timely resolution of disagreements and disputes at the lowest level possible. In the spirit of on the job resolution of issues relating to the Premises, the parties are encouraged to use the partnering processes of Article 2D, Partnering, Communications and Cooperation, before turning to the more formal claims processes described in this Article 36, Claims. The use of non-binding dispute resolution, whether through the formal processes described in Article 39, Non-Binding Dispute Resolution – Facilitated Negotiations, or through less formal alternative processes developed as part of a partnering plan, are also encouraged. Where such process cannot resolve the issues in dispute, the claims process that follows is intended to cause the issues to be presented, decided and where necessary, documented in close proximity to the events from which the issues arise. To that end, and in summary of the remedy granting process that follows commencing with the next paragraph of this Article 36, Claims, Contractor shall 1) first, informally present the claim to Principal Representative as described hereafter, and 2) failing resolution in the field, give Notice of intent to exercise statutory rights of review of a formal Contract controversy, and 3) seek resolution outside the Contract as provided by the Procurement Code.

If the Contractor claims that any instructions, by detailed drawings, or otherwise, or any other act or omission of the Principal Representative affecting the scope of the Contractor's Work, involve extra cost, extra time or changes in the scope of the Work under this Contract, the Contractor shall have the right to assert a claim for such costs or time.

Unless it is the Principal Representative's judgment and determination that the Work is not included in the performance required by the Contract Documents, the Contractor shall proceed with the work as originally directed. Where the Contractor's claim involves a dispute concerning the value of Work unilaterally directed pursuant to Article 35A2 the Contractor shall also proceed with the Work as originally directed while his or her claim is being considered.

The Contractor shall give the Principal Representative Notice of any claim promptly but in no case later than ten (10) days from the date of the occurrence affecting the claim. The Notice of claim shall state the grounds for the claim and the amount of the claim to the extent known in accordance with the procedures of Article 35, Changes in The Work. The period in which Notice must be given may be extended by the Principal Representative if requested in writing by the Contractor with good cause shown, but any such extension to be effective shall be in writing.

The Principal Representative shall respond in writing within a reasonable time, and except where a request for facilitation of negotiation has been made as hereafter provided, in no case later than seven (7) business days (or at such other time as the Contractor and Principal Representative agree) after receipt of the Contractor's Notice of claim regarding such instructions or alleged act or omission. If no response to the Contractor's claim is received within seven (7) business days of Contractor's Notice (or at such other time as the Contractor and Principal Representative agree) and the instructions have not been retracted, it shall be deemed that the Principal Representative has denied the claim.

The Principal Representative may grant or deny the claim in whole or in part, and a Change Order shall be issued if the claim is granted. To the extent any portion of claim is granted where costs are not clearly shown, the Principal Representative may direct that the value of that portion of the Work be determined by any method allowed in Article 35A, The Value of Changed Work. Except in the case of a deemed denial, the Principal Representative shall provide a written explanation regarding any portion of the Contractor's claim that is denied.

If the Contractor disagrees with the Principal Representative's judgment and determination on the claim and seeks an equitable adjustment of the Contract sum or time for performance, he or she shall give Notice of intent to exercise his or her statutory right to seek a decision on the contract controversy within

ten (10) days of receipt of the Principal Representative's decision denying the claim. A "contract controversy," as such term is used in the Colorado Procurement Code, § 24-109-106, C.R.S., shall not arise until the initial claim process described above in this Article 36 has been properly exhausted by the Contractor. The Contractor's failure to proceed with Work directed by the Principal Representative or to exhaust the claim process provided above in this Article 36, shall constitute an abandonment of the claim by the Contractor and a waiver of the right to contest the decision in any forum.

At the time of filing the Notice of intent to exercise his or her statutory right to seek a decision on the contract controversy, the Contractor may request that the Principal Representative defer a decision on the contract controversy until a later date or until the end of the Project. If the Principal Representative agrees, he or she shall so advise the Contractor in writing. If no such request is made, or if the Principal Representative does not agree to such a request, the Principal Representative shall render a written decision within twenty (20) business days and advise the Contractor of the reasons for any denial Unless the claim has been decided by the Principal Representative (as opposed to delegates of the Principal Representative), the person who renders the decision on this statutory contract controversy shall not be the same person who decided the claim. To the extent any portion of the contract controversy is granted where costs are not clearly shown, the Principal Representative may direct that the value of that portion of the Work be determined by any method allowed in Article 35A, The Value of Changed Work. In the event of a denial, the Principal Representative shall give Notice to the Contractor of his or her right to administrative and judicial reviews as provided in the Colorado Procurement Code, § 24-109-201 *et seq*, C.R.S., as amended. If no decision regarding the contract controversy is issued within twenty (20) business days of the Contractor's giving Notice (or such other date as the Contractor and Principal Representative have agreed), and the instructions have not been retracted or the alleged act or omission has not been corrected, it shall be deemed that the Principal Representative has ruled by denial on the contract controversy. Except in the case of a deemed denial, the Principal Representative shall provide an explanation regarding any portion of the contract controversy that involves denial of the Contractor's claim.

Either the Contractor or the Principal Representative may request facilitation of negotiations concerning the claim or the contract controversy, and if requested, the parties shall consult and negotiate before the Principal Representative decides the issue. Any request for facilitation by the Contractor shall be made at the time of the giving of Notice of the claim or Notice of the contract controversy. Facilitation shall extend the time for the Principal Representative to respond by commencing the applicable period at the completion of the facilitated negotiation, which shall be the last day of the parties' meeting, unless otherwise agreed in writing.

Disagreement with the decision of the Principal Representative to deny any claim or denying the contract controversy shall not be grounds for the Contractor to refuse to perform the Work directed or to suspend or terminate performance. During the period that any claim or contract controversy decision is pending under this Article 36, Claims, the Contractor shall proceed diligently with the Work directed.

In all cases where the Contractor proceeds with the Work and seeks equitable adjustment by filing a claim and or statutory appeal, the Contractor shall keep a correct account of the extra cost, in accordance with Article 35B, Detailed Breakdown supported by receipts. The Principal Representative shall be entitled to reject any claim or contract controversy whenever the foregoing procedures are not followed and such accounts and receipts are not presented.

The payments to the Contractor in respect of such extra costs shall be limited to reimbursement for the current additional expenditure by the Contractor made necessary by the change in the Work, plus a reasonable amount for overhead and profit, determined in accordance with Article 35B, Detailed Breakdown, determined solely with reference to the additional work, if any, required by the change.

ARTICLE 37. DIFFERING SITE CONDITIONS

A. NOTICE IN WRITING

Contractor shall promptly, and where possible before conditions are disturbed, give the Principal Representative Notice in writing of:

1. subsurface or latent physical conditions at the Premises differing materially from those indicated in or reasonably assumed from the information provided in the Contract Documents; and,
2. unknown physical conditions at the Premises, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents.

The Principal Representative shall promptly investigate the conditions, and if it is found that such conditions do materially so differ and cause an increase or decrease in Contractor's costs of performance of any part of the Work required by the Contract Documents, whether or not such Work is changed as a result of such conditions, an equitable adjustment shall be made and the Fixed Limit of Construction Cost shall be modified in accordance with Article 35, Changes In The Work.

If the time required for completion of the Work affected by such materially differing conditions will extend the Work the time for completion shall also be equitably adjusted.

B. LIMITATIONS

No claim of the Contractor under this clause shall be allowed unless the Contractor has given the Notice required in Article 37A, Notice In Writing, above The time prescribed for presentation and adjustment in Articles 36, Claims and 38, Delays And Extensions Of Time, shall be reasonably extended by the Principal Representative to the extent required by the nature of the differing conditions; provided, however, that even when so extended no claim by the Contractor for an equitable adjustment hereunder shall be allowed if not quantified and presented prior to the date the Contractor requests a final inspection pursuant to Article 41A, Notice Of Completion.

ARTICLE 38. DELAYS AND EXTENSIONS OF TIME

If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the State of Colorado, Principal Representative, or of any employee or agent of either, or by any separately employed Contractor or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any other causes beyond the Contractor's control, including weather delays as defined below, the time of Completion of the Work shall be extended for a period equal to such portion of the period of delays directly affecting the completion of the Work as the Contractor shall be able to show he or she could not have avoided by the exercise of due diligence.

The Contractor shall provide Notice in writing to the Principal Representative within three (3) business days from the beginning of such delay and shall file a written claim for an extension of time within seven (7) business days after the period of such delay has ceased, otherwise, any claim for an extension of time is waived.

All claims for extension of time due to a delay claimed to arise or result from ordered changes in the scope of the Work, or due to instructions claimed to increase the scope of the Work, shall be presented to the Principal Representative as part of a claim for extra cost, if any, in accordance with Article 36, Claims, and in accordance with the Change Order procedures required by Article 35, Changes In The Work.

Except as otherwise provided in this paragraph, no extension of time shall be granted when the Contractor has failed to utilize a CPM schedule or otherwise identify the Project's critical path as specified in Article 12, Requests for Information and Schedules, or has elected not to do so when allowed by the Supplementary General Conditions or the Specifications to use less sophisticated scheduling tools, or has failed to maintain such a schedule. Delay directly affecting the completion of the Work shall result in an extension of time only to the extent that completion of the Work was affected by impacts to the critical path shown on Contractor's CPM schedule.

Extensions of the time for completion of the Work due to weather will be granted on the basis of one and three tenths (1.3) calendar days for every day that the Contractor would have Worked but was unable to Work, with each separate extension figured to the nearest whole calendar day.

For weather delays and delays caused by events, acts or omissions not within the control of the Principal Representative or any person acting on the Principal Representative's behalf, the Contractor shall be entitled to an extension of time only and shall not be entitled to recovery of additional cost due to or resulting from such delays. This Article does not, however, preclude the recovery of damages for delay by either party under other provisions in the Contract Documents.

ARTICLE 39. NON-BINDING DISPUTE RESOLUTION – FACILITATED NEGOTIATIONS

Contractor and Principal Representative agree to designate one or more mutually acceptable persons willing and able to facilitate negotiations and communications for the resolution of conflicts, disagreements or disputes between them at the specific request of either party with regard to any Project decision of either of them or any decision of the State. The designation of such person(s) shall not carry any obligation to use their services except that each party agrees that if the other party requests the intervention of such person(s) with respect to any such conflict, dispute or disagreement, the non- requesting party shall participate in good faith attempts to negotiate a resolution of the issue in dispute. If the parties cannot agree on a mutually acceptable person to serve in this capacity one shall be so appointed; provided, however, that either party may request the director of State Buildings Programs to appoint such a person, who, if appointed, shall be accepted for this purpose by both Contractor and the Principal Representative.

The cost, if any, of the facilitative services of the person(s) so designated shall be shared if the parties so agree in any partnering plan; or in the absence of agreement the cost shall be borne by the party requesting the facilitation of negotiation.

Any dispute, claim, question or disagreement arising from or relating to the Contract or an alleged breach of the Contract may be subject to a request by either party for facilitated negotiation subject to the limitations hereafter listed, and the parties shall participate by consultation and negotiation with each other, as guided by the facilitator and with recognition of their mutual interests, in an attempt to reach an equitable solution satisfactory to both parties.

The obligation to participate in facilitated negotiations shall be as described above and elsewhere in these General Conditions, as by way of example in Article 36, Claims, or Article 34, Deductions for Uncorrected Work, and to the extent not more particularly described or limited elsewhere, each party's obligations shall be as follows:

1. a party shall not initiate communication with the facilitator regarding the issues in dispute; except that any request for facilitation shall be made in writing with copies sent, faxed or delivered to the other party;
2. a party shall prepare a brief written description of its position if so requested by the facilitator (who may elect to first discuss the parties' positions with each party separately in the interest of time and expense);
3. a party shall respond to any reasonable request for copies of documents requested by the facilitator, but such requests, if voluminous, may consist of an offer to allow the facilitator access to the parties' documents;
4. a party shall review any meeting agenda proposed by a facilitator and endeavor to be informed on the subjects to be discussed;
5. a party shall meet with the other party and the facilitator at a mutually acceptable place and time, or, if none can be agreed to, at the time and place designated by the facilitator for a period not to exceed four hours unless the parties agree to a longer period;
6. a party shall endeavor to assure that any facilitation meeting shall be attended by any other persons in their employ that the facilitator requests be present, if reasonably available, including the State;

7. each party shall participate in such facilitated face-to-face negotiations of the issues in dispute through persons fully authorized to resolve the issue in dispute;
8. each party shall be obligated to participate in negotiations requested by the other party and to perform the specific obligations described in paragraphs (1) through (10) this Article 39 no more than three times during the course of the Project;
9. neither party shall be under any obligation to resolve any issue by facilitated negotiation, but each agrees to participate in good faith and the Principal Representative shall appropriately document any resolution or agreement reached and to execute any Amendment or Change Order to the Contract necessary to implement their agreement; and,
10. to be matters pertaining to settlement negotiations and shall not be subsequently available in further proceedings except to the extent of any documented agreement.

In accordance with State Fiscal Rules and the Colorado Special Provisions, nothing in this Article 39 shall be deemed to call for arbitration or otherwise obligate the State to participate in any form of binding alternative dispute resolution.
A partnering plan developed as described in Article 2D, Partnering, Communications and Cooperation, may modify or expand the requirements of this Article but may not reduce the obligation to participate in facilitated negotiations when applicable. In the case of small projects estimated to be valued under $500,000, the requirements of this Article may be deleted from this Contract, by modification in Article 26, Optional Provisions and Elections (Energy Services Agreement). When so modified, the references to the parties' right to elect facilitated negotiation elsewhere in these General Conditions shall be deleted.

ARTICLE 40. RIGHT OF OCCUPANCY

The Principal Representative shall have the right to take possession of and to use any completed or partially completed portions of the Work, even if the time for completing the entire Work or portions of the Work has not expired and even if the Work has not been finally accepted, and Contractor shall fully cooperate with the Principal Representative to allow such possession and use. Such possession and use shall not constitute an acceptance of such portions of the Work, but may impact equipment warranty start date.

Prior to any occupancy of the Project, an inspection shall be made by the Principal Representative, the Contractor's Architect/Engineer, and the Contractor. Such inspection shall be made for the purpose of ensuring that the building is secure, protected by operation safety systems as designed, operable exits, power, lighting and HVAC systems, and otherwise ready for the occupancy intended and the Notice of Substantial Completion has been issued for the occupancy intended. The inspection shall also document existing finish conditions to allow assessment of any damage by occupants. The Contractor shall assist the Principal Representative in completing and executing State Form SBP-01, Approval of Occupancy/Use, prior to the Principal Representative's possession and use. Any and all areas so occupied will be subject to a final inspection when the Contractor complies with Article 41, Completion, Final Inspection, Acceptance and Settlement.

ARTICLE 41. COMPLETION, FINAL INSPECTION, ACCEPTANCE AND SETTLEMENT

A. NOTICE OF COMPLETION

When the Work, or a discrete physical portion of the Work (as hereafter described) which the Principal Representative has agreed to accept separately, is substantially complete and ready for final inspection, the Contractor shall file a written Notice with the Principal Representative that the Work, or such discrete physical portion, in the opinion of the Contractor, is substantially complete under the terms of the Contract. The Contractor shall prepare and submit with such Notice a comprehensive list of items to be completed or corrected prior to final payment, which shall be subject to review and additions as the Principal Representative shall determine after inspection. If the Contractor's Architect/Engineer or the Principal Representative believe that any of the items on the list of items submitted, or any other item of work to be corrected or completed, or the cumulative number of items of work to be corrected or completed, will prevent a determination that the Work is substantially complete, those items shall be completed by the Contractor and the Notice shall then be resubmitted.

B. FINAL INSPECTION

Within ten (10) days after Contractor files written Notice that the Work is substantially complete, the Principal Representative, and Contractor shall make a "final inspection" of the Project to determine whether the Work is substantially complete and has been completed in accordance with the Contract Documents. State Buildings Programs shall be notified of the inspection not less than three (3) business days in advance of the inspection. Contractor shall provide the Principal Representative an updated punch list in sufficient detail to fully outline the following:

1. Work to be completed, if any; and
2. Work not in compliance with the Drawings or Specifications, if any.

A final punch list shall be made by the State in sufficient detail to fully outline to Contractor:

1. Work to be completed, if any;
2. Work not in compliance with the Drawings or Specifications, if any; and
3. unsatisfactory Work for any reason, if any.

The required number of copies of the final punch list will be countersigned by the authorized representative of the Principal Representative and will then be transmitted by the Contractor to the Principal Representative and State Buildings Programs.

C. NOTICE OF SUBSTANTIAL COMPLETION

Notice of Substantial Completion shall establish the date of substantial completion of the Project, as indicated on the form of Notice of Substantial Completion. Contractor acknowledges and agrees that because the departments, agencies and institutions of the State of Colorado are generally involved with the business of the public at large, greater care must be taken in establishing the date of substantial completion than might otherwise be the case to ensure that a project or building or discrete physical portion of the Work is fully usable and safe for public use, and that such care necessarily raises the standard by which the concept of substantial completion is applied for a public building.

The Notice of Substantial Completion shall not be issued until the following have been fully established:

1. All required building code inspections have been called for and the appropriate code officials have affixed their signatures to the Building Inspection Record indicating successful completion of all required code inspections;
2. All required corrections noted on the Building Inspection Record shall have been completed unless the Principal Representative and State Buildings Programs, in their complete and absolute discretion, all concur that the condition requiring the remaining correction is not in any way life threatening, does not otherwise endanger persons or property, and does not result in any undue inconvenience or hardship to the Principal Representative or the public;
3. The building, structure or Project can be fully and comfortably used by the Principal Representative and the public without undue interference by Contractor's employees and workers during the completion of the final punch list taking into consideration the nature of the public uses intended and taking into consideration any stage or level of completion of HVAC system commissioning or other system testing required by the Specifications to be completed prior to issuance of the Notice of Substantial Completion;
4. The Project has been fully cleaned as required by these General Conditions, and as required by any stricter requirements of the Specifications, and the overall state of completion is appropriate for presentation to the public; and
5. Contractor has provided a schedule for the completion of each and every item identified on the punch list which specifies the Subcontractor or trade responsible for the Work, and the dates the completion or correction of the item will be commenced and finished; such schedule will show completion of all remaining final punch list items within the period indicated in the Contract for final punch list completion prior to Final Acceptance, with the

exception of only those items which are beyond the control of the Contractor despite due diligence. The schedule shall provide for a reasonable punch list inspection process. Unless liquidated damages have been specified in Article 26, D, of the Energy Services Agreement, the cost to the Principal Representative, if any, for re-inspections due to failure to adhere to the Contractor's proposed punch-list completion schedule shall be the responsibility of the Contractor and may be deducted by the Principal Representative from final amounts due to the Contractor.

Substantial completion of the entire Project shall not be conclusively established by a decision by the Principal Representative to take possession and use of a portion or all of the Project, where portions of the Project cannot meet all the criteria noted above. Notice of Substantial Completion for the entire Project shall, however, only be withheld for substantial reasons when the Principal Representative has taken possession and uses all of the Project in accordance with the terms of Article 40, Right Of Occupancy. Failure to furnish the required completion schedule shall constitute a substantial reason for withholding the issuance of any Notice of Substantial Completion.

Contractor shall have the right to request a final inspection of any discrete physical portion of the Project when in the opinion of the Principal Representative a final punch list can be reasonably prepared, without confusion as to which portions of the Project are referred to in any subsequent Notice of Partial Final Settlement which might be issued after such portion is finally accepted. Discrete physical portions of the Project may be, but shall not necessarily be limited to, such portions of the Project as separate buildings where a Project consists of multiple buildings. Similarly, an addition to an existing building where the Project also calls for renovation or remodeling of the existing building may constitute a discrete physical portion of the Project. In such circumstances, when in the opinion of the Principal Representative and State Buildings Programs, the requirements for issuance of a Notice of Substantial Completion can be satisfied with respect to the discrete portion of the Project, a partial Notice of Substantial Completion may be issued for such discrete physical portion of the Project.

D. NOTICE OF FINAL ACCEPTANCE

The Notice of Final Acceptance shall establish the completion date of the Project. It shall not be authorized until Contractor shall have performed all of the Work to allow completion and approval of the Pre-Acceptance Checklist (SBP-05).

Where partial Notices of Substantial Completion have been issued, partial Notices of Final Acceptance may be similarly issued when appropriate for that portion of the Work. Partial Notice of Final Acceptance may also be issued to exclude the Work described in Change Orders executed during late stages of the Project where a later completion date for the Change Ordered Work is expressly provided for in the Contract as amended by the Change Order, provided the Work can be adequately described to allow partial advertisement of any Notice of Partial Final Settlement to be issued without confusion as to the Work included for which final payment will be made.

E. SETTLEMENT

Final payment and settlement shall be made on the date fixed and published for such payment except as hereafter provided. The Principal Representative shall not authorize final payment until all items on the Pre-Acceptance Checklist (SBP-05) have been completed, the Notice of Acceptance (SBP-6.27) issued, and the Notice of Contractors Settlement (SBP-7.3) published. If the Work shall be substantially completed, but final acceptance and completion thereof shall be prevented through delay in correction of minor defects, or unavailability of materials or other causes beyond the control of Contractor, the Principal Representative in his or her discretion may release to Contractor such amounts as may be in excess of three times the cost of completing the unfinished Work or the cost of correcting the defective Work, as estimated and approved by State Buildings Programs. Before the Principal Representative may issue the Notice of Contractor's Settlement and advertise the Project for final payment, Contractor shall have corrected all items

on the punch list except those items for which delayed performance is expressly permitted, subject to withholding for the cost thereof, and shall have:

1. Delivered to the State:

    a. All warranties;
    b. All statements to support local sales tax refunds, if any;
    c. Three (3) complete bound sets of required operating maintenance instructions;
    d. One (1) set of as-built Contract Documents showing all job changes, as necessary, and,
    e. Electronic files of all above items in a format acceptable to Principal Representative.

2. Demonstrated to the operating personnel of the Principal Representative the proper operation and maintenance of all equipment.

3. Delivered to the State of Colorado Department of Personnel & Administration in accordance with C.R.S. § 24-103-210, a written disclosure of the five most costly goods incorporated into the project, including iron, steel, or related manufactured goods and the total cost and country of origin of those five goods and whether the project was subject to any existing domestic content preferences.

Upon completion of the foregoing, the Project shall be advertised in accordance with the Notice of Contractor's Settlement by two publications of Notice, the last publication appearing at least ten (10) days prior to the time of final settlement. Publication and final settlement should not be postponed or delayed solely by virtue of unresolved claims against the Project or Contractor from Subcontractors, suppliers or materialmen based on good faith disputes; the resolution of the question of payment in such cases being directed by statute.

Except as hereafter provided, on the date of final settlement thus advertised, provided Contractor has submitted a written Notice to the State that no claims have been filed, and further provided the Principal Representative shall have received no claims, final payments and settlement shall be made in full. If any unpaid claim for labor, materials, rental machinery, tools, supplies or equipment is filed before payment in full of all sums due Contractor, the Principal Representative and the State Controller shall withhold from Contractor on the date established for final settlement, sufficient funds to insure the payment of such claim, until the same shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing a receipt in full or an order for withdrawal signed by the claimant or his or her duly authorized agent or assignee. The amount so withheld may be in the amount of 125% of the claims or such other amount as the Principal Representative reasonably deems necessary to cover expected legal expenses. Such withheld amounts shall be in addition to any amount withheld based on the cost to complete unfinished Work or the cost to repair defective Work. However, as provided by statute, such funds shall not be withheld longer than ninety (90) days following the date fixed for final settlement with Contractor, as set forth in the published Notice of Contractor's Settlement, unless an action at law shall be commenced within that time to enforce such unpaid claim and a Notice of such action at law shall have been filed with the Principal Representative and the State Controller. At the expiration of the ninety (90) day period, the Principal Representative shall authorize the State Controller to release to Contractor all other money not the subject of such action at law or withheld based on the cost to complete unfinished Work or the cost to repair defective Work.

Notices of Partial Final Settlement may be similarly advertised, provided all conditions precedent have been satisfied as though that portion of the Work affected stood alone, a Notice of Partial Acceptance has been issued, and the consent of surety to the partial final settlement has been obtained in writing. Thereafter, partial final payments may be made to Contractor subject to the same conditions regarding unpaid claims.

ARTICLE 42. GENERAL WARRANTY AND CORRECTION OF WORK AFTER ACCEPTANCE

Contractor warrants that the materials used and the equipment furnished shall be new and of good quality unless specified to the contrary. Contractor further warrants that the Work shall in all respects be free from material defects not permitted by the Specifications and shall be in accordance with the requirements of the Contract Documents. Neither the final certificate for payment nor any provision in the Contract Documents shall relieve the Contractor of responsibility for defects or faulty materials or workmanship. The Contractor shall be responsible to the Principal Representative for such warranties for the longest period permitted by any applicable statute of limitations.

In addition to these general warranties, and without limitation of these general warranties, for a period of one year after the date of any Notice of Substantial Completion, or any Notice of Partial Substantial Completion if applicable, the Contractor shall remedy defects, and faulty workmanship or materials, and work not in accordance with the Contract Documents which were not accepted at the time of the Notice of Final Acceptance, all in accordance with the provisions of Article 44, One-Year Warranties.

ARTICLE 43. LIENS

Colorado statutes do not provide for any right of lien against public buildings. In lieu thereof, §38-26-107, C.R.S., provides adequate relief for any claimant having furnished labor, materials, rental machinery, tools, equipment, or services toward construction of the particular public Work in that final payment may not be made to a Contractor until all such creditors have been put on Notice by publication in the public press of such pending payment and given opportunity for a period of up to ninety (90) days to stop payment to Contractor in the amount of such claims.

ARTICLE 44. ONE-YEAR WARRANTIES

A. ONE YEAR WARRANTY OF THE WORK

The Contractor shall warrant to remedy defects and repair or replace the Work for a period of one year from the date of the Notice of Substantial Completion or from the dates of any Partial Notices of Substantial Completion issued for discrete physical portions of the Work. Contractor shall remedy any defects due to faulty materials or workmanship and shall pay for, repair and replace any damage to other Work resulting therefrom, which shall appear within a period of one year from the date of such Notice(s) of Substantial Completion. Contractor shall also remedy any deviation from the requirements of the Contract Documents which shall later be discovered within a period of one year from the date of the Notice of Substantial Completion; provided, however, that Contractor shall not be required to remedy deviations from the requirements of the Contract Documents where such deviations were obvious, apparent and accepted by the Principal Representative at the time of the Notice of Final Acceptance. The Principal Representative shall give Notice of observed defects or other Work requiring correction with reasonable promptness. Such Notice shall be in writing to Contractor.

The one year warranty of Contractor's Work may run separately for discrete physical portions of the Work for which partial Notices of Substantial Completion have been issued.

B. SPECIAL WARRANTIES

In case of Work performed for which product, manufacturers or other special warranties are required by the Specifications, Contractor shall secure the required warranties and deliver copies thereof to the Principal Representative upon completion of the Work.

These products, manufacturers or other special warranties, as such, do not in any way lessen Contractor's responsibilities under the Contract. Whenever warranties are required by the Specifications for a longer period than one year, such longer period shall govern. Administration of such extended warranties may be the responsibility of the specific manufacturer of the product being warranted and not necessarily the Contractor, unless explicitly stated in the Contract Documents.

ARTICLE 45. WARRANTY INSPECTIONS AFTER COMPLETION

The Principal Representative and Contractor together shall make at least one (1) complete inspection of the Work after the Work has been determined to be substantially complete and accepted. One such inspection, the "Eleven-Month Warranty Inspection" shall be made approximately eleven (11) months after the date of the Notice of Substantial Completion. The Principal Representative shall schedule and so notify all parties concerned, including State Buildings Programs, of these inspections. If more than one Notice of Substantial Completion has been issued at the reasonable discretion of the Principal Representative separate eleven month inspections may be required where the one year warranties do not run reasonably concurrent.

Written punch lists and reports of these inspections shall be made by Contractor and forwarded to the Principal Representative and State Buildings Programs within ten (10) days after the completion of the inspections. The punch list shall itemize all warranty items, prior punch list items still to be corrected or completed and any other requirements of the Contract Documents to be completed which were not waived by final acceptance because they were not obvious or could not reasonably have been previously observed. Contractor shall immediately initiate such remedial Work as may be necessary to correct any deficiencies or defective Work shown by this report, and shall promptly complete all such remedial Work in a manner satisfactory to the Principal Representative and State Buildings Programs.

If Contractor fails to promptly correct all deficiencies and defects shown by this report, the Principal Representative may do so, after giving Contractor ten (10) days written Notice of intention to do so.

The State of Colorado, acting by and through the Principal Representative, shall be entitled to collect from Contractor all costs and expenses incurred by it in correcting such deficiencies and defects, as well as all damages resulting from such deficiencies and defects.

ARTICLE 46. TIME OF COMPLETION AND LIQUIDATED DAMAGES

It is hereby understood and mutually agreed, by and between the parties hereto, that the date of beginning, rate of progress, and the time for completion of the Work to be done hereunder are ESSENTIAL CONDITIONS of this Agreement, and it is understood and agreed that the Work embraced in this Contract shall be commenced at the time specified in the Notice to Proceed (SC-6.26).

It is further agreed that time is of the essence of each and every portion of this Contract, and of any portion of the Work described on the Drawings or Specifications, wherein a definite and certain length of time is fixed for the performance of any act whatsoever. The parties further agree that where under the Contract additional time is allowed for the completion of the Work or any identified portion of the Work, the new time limit or limits fixed by such extension of the time for completion shall be of the essence of this Agreement.

Contractor acknowledges that subject to any limitations in the Lease Purchase Agreement, the Fixed Limit of Construction Cost is consistent with and considers the number of days to substantially complete the Project and the number of days to finally complete the Project to which the parties may have stipulated in the Agreement, which stipulation was based on the Fixed Limit of Construction Cost. Contractor agrees that Work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will ensure the Project will be substantially complete, and fully and finally complete, as recognized by the issuance of all required Notices of Substantial Completion and Notices of Final Acceptance, within any times stipulated and specified in the Agreement, as the same may be amended by Change Order or other written modification, and that the Principal Representative will be damaged if the times of completion are delayed.

It is expressly understood and agreed, by and between the parties hereto, that the times for the Substantial Completion of the Work or for the final acceptance of the Work as may be stipulated in the Agreement, and as applied here and in Article 26 of the Energy Services Agreement, Modification of Article 46, are reasonable times for these stages of completion of the Work, taking into such

consideration all factors, including the average climatic range and usual industrial conditions prevailing in the locality of the building operations.

If Contractor shall neglect, fail or refuse to complete the Work within the times specified in the Agreement, such failure shall constitute a breach of the terms of the Contract and the State of Colorado, acting by and through the Principal Representative, shall be entitled to liquidated damages for such neglect, failure or refusal, as specified in Article 26 of the Energy Services Agreement, Modification of Article 46.

Contractor and Contractor's Surety shall be jointly liable for and shall pay the Principal Representative, or the Principal Representative may withhold, the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the entire Project is 1) substantially completed, and the Notice (or all Notices) of Substantial Completion are issued, 2) finally complete and accepted and the Notice (or all Notices) of Acceptance are issued, or 3) both. Delay in substantial completion shall be measured from the Date of the Notice to Proceed and delay in final completion and acceptance shall be measured from the Date of the Notice of Substantial Completion.

In the first instance, specified in Article 26 of the Energy Services Agreement, Modification of Article 46, liquidated damages, if any, shall be the amount specified therein, for each calendar day of delay beginning after the stipulated number of days for Substantial Completion from the date of the Notice to Proceed, until the date of the Notice of Substantial Completion. Unless otherwise specified in any Supplementary General Conditions, in the event of any partial Notice of Substantial Completion, liquidated damages shall accrue until all required Notices of Substantial Completion are issued.

In the second instance, specified in Article 26 of the Energy Services Agreement, Modification of Article 46, liquidated damages, if any, shall be the amount specified in Article 26 of the Energy Services Agreement, Modification of Article 46, for each calendar day in excess of the number of calendar days specified in Contractor's bid for the Project and stipulated in the Agreement to finally complete the Project (as defined by the issuance of the Notice of Acceptance) after the final Notice of Substantial Completion has been issued.

In the third instance, when so specified in both Articles 26 of the Energy Services Agreement, both types of liquidated damages shall be separately assessed where those delays have occurred.

The parties expressly agree that said amounts are a reasonable estimate of the presumed actual damages that would result from any of the breaches listed, and that any liquidated damages that are assessed have been agreed to in light of the difficulty of ascertaining the actual damages that would be caused by any of these breaches at the time this Contract was formed; the liquidated damages in the first instance representing an estimate of damages due to the inability to use the Project; the liquidated damages in the second instance representing an estimate of damages due to the additional administrative, technical, supervisory and professional expenses related to and arising from the extended closeout period including delivery of any or all warranties, the submittals of sales and use tax payment forms, the calling for the final inspection and the completion of the final punch list.

The parties also agree and understand that the liquidated damages to be assessed in each instance are separate and distinct, although potentially cumulative, damages for the separate and distinct breaches of delayed substantial completion or final acceptance. Such liquidated damages shall not be avoided by virtue of the fact of concurrent delay caused by the Principal Representative, or anyone acting on behalf of the Principal Representative, but in such event the period of delay for which liquidated damages are assessed shall be equitably adjusted in accordance with Article 38, Delays And Extensions Of Time.

ARTICLE 47. DAMAGES

If either party to this Contract shall suffer damage under this Contract in any manner because of any wrongful act or neglect of the other party or of anyone employed by either of them, then the party suffering damage shall be reimbursed by the other party for such damage. Except to the extent of damages liquidated for the Contractor's failure to achieve timely completion as set forth in Article 46, Time of Completion and Liquidated Damages, the Principal Representative shall be responsible for, and at hisor her option may insure against, loss of use of any existing property not included in the Work, due to fire or otherwise, however caused. Notwithstanding the foregoing, or any other provision of this Contract, to the contrary, no term or condition

of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, CRS, as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101, *et seq.*, CRS, as now or hereafter amended and the risk management statutes, Section 24-30-1501, *et seq.*, CRS, as now or hereafter amended.

Notice of intent to file a claim under this clause shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the time of final payment, except that in the case of claims by the Principal Representative involving warranties against faulty Work or materials Notice shall be required only to the extent stipulated elsewhere in these General Conditions. Claims made to the Principal Representative involving extra cost or extra time arising by virtue of instructions to the Contractor to which Article 36, Claims, applies shall be made in accordance with Article
36. Other claims arising under the Contract involving extra cost or extra time which are made to the Principal Representative under this clause shall also be made in accordance with the procedures of Article 36, whether or not arising by virtue of instructions to the Contractor.

Provided written Notice of intent to file a claim is provided as required in the preceding paragraph, nothing in this Article shall limit or restrict the rights of either party to bring an action at law or to seek other relief to which either party may be entitled, including consequential damages, if any, and shall not be construed to limit the time during which any action might be brought. Nothing in these General Conditions shall be deemed to limit the period of time during which any action may be brought as a matter of contract, tort, warranty or otherwise, it being the intent of the parties to allow any and all actions at law or in equity for such periods as the law permits. All such rights shall, however be subject to the obligation to assert claims and to appeal denials pursuant to Article 36, Claims, where applicable.

ARTICLE 48. STATE'S RIGHT TO DO THE WORK; TEMPORARY SUSPENSION OF WORK; DELAY; DAMAGES

A. STATE'S RIGHT TO DO THE WORK

If after receipt of Notice to do so, Contractor should neglect to prosecute the Work properly or fail to perform any provision of the Contract, the Principal Representative, after a second seven (7) days' advance written Notice to Contractor and the Surety may, without prejudice to any other remedy the Principal Representative may have, take control of all or a portion of the Work, as the Principal Representative deems necessary and make good such deficiencies deducting the cost thereof from the payment then or thereafter due Contractor, as provided in Article 30, Correction Of Work Before Acceptance and Article 33, Payments Withheld.

B. TEMPORARY SUSPENSION OF WORK

The State shall have the authority to suspend the Work, either wholly or in part, for such period or periods as may be deemed necessary due to:

1. Unsuitable weather;
2. Faulty workmanship;
3. Improper superintendence;
4. Contractor's failure to carry out orders or to perform any provision of the Contract Documents;
5: Loss of, or restrictions to, appropriations;
6. Conditions, which may be considered unfavorable for the prosecution of the Work.

If it should become necessary to stop Work for an indefinite period, Contractor shall store materials in such manner that they will not become an obstruction or become damaged in any way; and Contractor shall take every precaution to prevent damage to or deterioration of the Work, provide suitable drainage and erect temporary structures where necessary.

Notice of suspension of Work shall be provided to Contractor in writing stating the reasons therefore. Contractor shall again proceed with the Work when so notified in writing.

Contractor understands and agrees that the State of Colorado cannot predict with certainty future revenues and could ultimately lack the revenue to fund the appropriations applicable to this Contract. Contractor further acknowledges and agrees that in such event that State may, upon Notice to Contractor, suspend the Work in anticipation of a termination of the Contract for the convenience of the State, pursuant to Article 50, Termination For the Public Interest of State. If the Contract is not so terminated the Fixed Limit of Construction Cost and the Contract time shall be equitably adjusted at the time the Principal Representative directs the Work to be recommenced and gives Notice that the revenue to fund the appropriation is available.

C. DELAY DAMAGES

The Principal Representative and the State of Colorado shall be liable to Contractor for the payment of any claim for extra costs, extra compensation or damages occasioned by hindrances or delays encountered in the Work only when and to the limited extent that such hindrance or delay is caused by an act or omission within the control of the Principal Representative or other persons or entities acting on behalf of the Principal Representative. Further, the Principal Representative and the State of Colorado shall be liable to Contractor for the payment of such a claim only if Contractor has provided required Notice of the delay or impact, or has presented its claim for an extension of time or claim of other delay or other impact due to changes ordered in the Work before proceeding with the changed Work. Except as otherwise provided, claims for extension of time shall be Noticed and filed in accordance with Article 38, Delays and Extensions of Time, within three (3) business days of the beginning of the delay with any claim filed within seven (7) days after the delay has ceased, or such claim is waived. Claims for extension of time or for other delay or other impact resulting from changes ordered in the Work shall be presented and adjusted as provided in Article 35, Changes in the Work.

ARTICLE 49. STATE'S RIGHTS TO TERMINATE CONTRACT

A. GENERAL

If the Contractor should be adjudged bankrupt, or if he or she should make a general assignment for the benefit of Contractor's creditors; or if a receiver should be appointed to take over Contractor's affairs, or if he or she should fail to prosecute Contractor's Work with due diligence and carry the Work forward in accordance with the construction schedule and the time limits set forth in the Contract Documents*, or if he or she should fail to subsequently perform one or more of the provisions of the Contract Documents to be performed by him, the Principal Representative may serve written Notice on Contractor and the Surety on performance and payment bonds, stating his or her intention to exercise one of the remedies hereinafter set forth and the grounds upon which the Principal Representative bases the right to exercise such remedy.*

In such event, unless the matter complained of is satisfactorily cleared within ten (10) days after delivery of such *Notice, the Principal Representative may, without prejudice to any other right or remedy, exercise one of such remedies at once..*

B. CONDITIONS AND PROCEDURES

1. *The Principal Representative may terminate the services of Contractor, which termination shall take effect immediately upon service of Notice thereof on Contractor and his or her Surety, whereupon the Surety shall have the right to take over and perform the Contract. If the Surety does not provide Notice to the Principal Representative of its intent to commence performance of the Contract within ten (10) days after delivery of the Notice of termination, the Principal Representative may take over the Work, take possession of and use all materials, tools, equipment and appliances on the premises and prosecute the Work to completion by such means as he or she shall deem best. In the event of such termination of the Contractor's service, Contractor shall not be entitled to any further payment under the Contract until the Work is completed and accepted. If the Principal Representative takes*

over the Work and if the unpaid balance of the Contract price exceeds the cost of completing the Work, including compensation for any damages or expenses incurred by the Principal Representative through the default of Contractor, such excess shall be paid to Contractor. If, however, the cost, expenses and damages as certified by the State exceed such unpaid balance of the Contract price, Contractor and the Contractor's Surety shall pay the difference to the Principal Representative.

2. *The Principal Representative may require the Surety on Contractor's bond to take control of the Work and see to it that all the deficiencies of Contractor are made good, with due diligence within ten (10) days of delivery of Notice to the Surety to do so. As between the Principal Representative and the Surety, the cost of making good such deficiencies shall all be borne by the Surety. If the Surety takes over the Work, either by election upon termination of the services of Contractor pursuant to Section B(1) of this Article 49, State's Right To Terminate Contract, or upon instructions from the Principal Representative to do so, the provisions of the Contract Documents shall govern the Work to be done by the Surety, the Surety being substituted for Contractor as to such provisions, including provisions as to payment for the Work, the times of completion and provisions of this Article as to the right of the Principal Representative to do the Work or to take control of all or a portion of the Work.*
3. *The Principal Representative may take control of all or a portion of the Work and make good the deficiencies of Contractor, or the Surety if the Surety has been substituted for Contractor, with or without terminating the Contract, employing such additional help as the Principal Representative deems advisable in accordance with the provisions of Article 48A, State's Right To Do The Work; Temporary Suspension Of Work; Delay Damages. In such event, the Principal Representative shall be entitled to collect from Contractor and his or her Surety, or to deduct from any payment then or thereafter due Contractor, the costs incurred in having such deficiencies made good and any damages or expenses incurred through the default of Contractor, provided the State approves the amount thus charged to Contractor. If the Contract is not terminated, a Change Order to the Contract shall be executed, unilaterally if necessary, in accordance with the procedures of Article 35, Changes In The Work.*

C. ADDITIONAL CONDITIONS

If any termination by the Principal Representative for cause is later determined to have been improper, the termination shall be automatically converted to and deemed to be a termination by the Principal Representative for convenience and Contractor shall be limited in recovery to the compensation provided for in Article 50, Termination For Convenience Of State. Termination by Contractor shall not be subject to such conversion.

ARTICLE 50. TERMINATION FOR CONVENIENCE OF STATE

A. NOTICE OF TERMINATION

The performance of Work under this Contract may be terminated, in whole or from time to time in part, by the State *whenever for any reason the Principal Representative shall determine that such termination is in the best interest of State. Termination of Work hereunder shall be effected by delivery to Contractor of a Notice of such termination specifying the extent to which the performance of Work under the Contract is terminated and the date upon which such termination becomes effective.*

B. PROCEDURES

After receipt of the Notice of termination, Contractor shall, to the extent appropriate to the termination, cancel outstanding commitments hereunder covering the procurement of materials, supplies, equipment *and miscellaneous items. In addition, Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of all applicable outstanding commitments covering personal performance of any Work terminated by the Notice. With respect to such canceled commitments, Contractor agrees to:*

1. *settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with approval or ratification of the Principal Representative, to the extent he or*

she may require, which approval or ratification shall be final for all purposes of this clause; and,

2. *assign to the Principal Representative, in the manner, at the time, and to the extent directed by the Principal Representative, all of the right, title, and interest of Contractor under the orders and subcontracts, consultants, subconsultants terminated, in which case the State shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.*

The Contractor shall submit his or her termination claim to the Principal Representative promptly after receipt of a Notice of termination, but in no event later than three (3) months from the effective date thereof, unless one or more extensions in writing are granted by the Principal Representative upon written request of the Contractor within such three (3)-month period or authorized extension thereof. Upon failure of the Contractor to submit his or her termination claim within the time allowed, the Principal Representative may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

Costs claimed, agreed to, or determined pursuant to the preceding and following paragraph shall be in accordance with the provisions of §24-107-101, C.R.S., as amended and associated Cost Principles of the Colorado Procurement Rules as in effect on the date of this Contract.

Subject to the preceding provisions, Contractor and the Principal Representative may agree upon the whole or any part of the amount or amounts to be paid to Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by Contractor and any reasonable loss upon outstanding commitments for personal services which he or she is unable to cancel; provided, however, that in connection with any outstanding commitments for personal services which Contractor is unable to cancel, Contractor shall have exercised reasonable diligence to divert such commitments to other activities and operations. Any such agreement shall be embodied in an Amendment to this Contract and Contractor shall be paid the agreed amount.

The Principal Representative may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the termination portion of this Contract, whenever, in the opinion of the Principal Representative, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder.

Contractor agrees to transfer title and deliver to the Principal Representative, in the manner, at the time, and to the extent, if any, directed by the Principal Representative, such information and items which, if the Contract had been completed, would have been required to be furnished to the State, including:

1. *Completed or partially completed plans, Drawings and information; and,*
2. *Materials or equipment produced or in process or acquired in connection with the performance of the Work terminated by the Notice.*

Other than the above, any termination inventory resulting from the termination of the Contract may, with written approval of the Principal Representative, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Principal Representative. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Principal Representative to the Contractor under this Contract or shall otherwise be credited to the price or cost of work covered by this Contract or paid in such other manners as the Principal Representative may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Principal Representative may direct, for the protection and preservation of the property

related to this Contract which is in the possession of the Contractor and in which the State has or may acquire an interest.

Any disputes as to questions of fact, which may arise hereunder, shall be subject to the Remedies provisions of the Colorado Procurement Code, ***§§24-109-101****, et seq., C.R.S., as amended.*

ARTICLE 51. CONTRACTOR'S RIGHT TO STOP WORK AND/OR TERMINATE CONTRACT

If the Work shall be stopped under an order of any court or other public authority for a period of three (3) months through no act or fault of the Contractor or of any one employed by him, then the Contractor may on seven (7) days' written Notice to the Principal Representative stop Work or terminate this Contract and recover from the Principal Representative payment for all Work executed, any losses sustained on any plant or material, and a reasonable profit only for the Work completed. If the Principal Representative shall fail to issue or otherwise act in writing upon any certificate for payment within ten (10) days after it is due, or if the Principal Representative shall fail to pay the Contractor any sum certified that is not disputed in whole or in part by the Principal Representative in writing to the Contractor within thirty (30) days then the *Contractor* may on ten (10) days' written Notice to the Principal Representative stop Work and/or give written Notice of intention to terminate this Contract.

If the Principal Representative shall thereafter fail to pay the Contractor any amount not disputed in writing by the Principal Representative within ten (10) days after receipt of such Notice, then the *Contractor* may terminate this Contract and recover from the Principal Representative payment for all Work executed, any losses sustained upon any plant or materials, and profit only for Work completed.

ARTICLE 52. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1)

These Special Provisions apply to all contracts except where noted in italics.

A CONTROLLER'S APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee.

B FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C GOVERNMENTAL IMMUNITY

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, §24-10-101, *et seq.* C.R.S., or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

D INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall **(i)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(ii)** provide proof thereof when requested by the State, and **(iii)** be solely responsible for its acts and those of its employees and agents.

F COMPLIANCE WITH LAW.

Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

G CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not 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 shall not invalidate the remainder of this Contract, to the extent capable of execution.

H BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Contract or incorporated herein by reference shall be null and void.

I SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of

this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

J EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §24-18-201 and §24-50-507, C.R.S.

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 in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

K VENDOR OFFSET. §24-30-202(1) and §24-30-202.4, C.R.S.

[*Not applicable to intergovernmental agreements*] Subject to **§24-30-202.4(3.5), C.R.S.,** the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in **§§39-21-101, *et seq.*, C.R.S.**; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

L PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq. C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to **§8-17.5-102(5)(c), C.R.S.**, Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to **§8-17.5-102(5), C.R.S.**, by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or **§§8-17.5-101, *et seq.*, C.R.S.**, the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

M PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Contractor, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that he or she **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of **§§24-76.5-101, *et seq*., C.R.S.**, and **(iii)** has

produced one form of identification required by **§24-76.5-103, C.R.S.** prior to the Effective Date of this Contract.

ARTICLE 53. MISCELLANEOUS PROVISIONS

A. CONSTRUCTION OF LANGUAGE

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with Article 2C, the intent of the Contract. .

B. SEVERABILITY

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.

C. CAPTIONS AND REFERENCES

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

D. AUTHORITY

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

E. INTEGRATION OF UNDERSTANDING

This Contract is intended as the complete integration of all understandings between the parties and supersedes all prior negotiations, representations, or agreements, whether written or oral. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written Change Order or Amendment to this Contract.

F. JURISDICTION AND VENUE

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the County of Gunnison, except that in any suit or action in which the County of Gunnison, Colorado, its Board of County Commissioners, or any of its agents, officers, attorneys or employees are not parties, the any such suit or action may be brought in the City and County of Denver.

G. NO THIRD PARTY BENEFICIARIES

Except for the Parties' respective successors and assigns described in §24.B, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

H. WAIVER

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

I. INDEMNIFICATION

1. General Indemnification

Contractor shall indemnify, save, and hold harmless the State, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

2. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Contractor in violation of §10 may be cause for legal action by third parties against Contractor, the State, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the State in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of §10.

J. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Contractor under this Contract is $500,000 or greater, either on the Effective Date or at any time thereafter, this section shall apply.

Contractor agrees to be governed, and to abide, by the provisions of CRS 24-102-205, 24-102-206, 24-103-601, 24-103.5-101, 24-105-101, and 24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including C.R.S 24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Principal Representative, and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS 24-105-102(6)), or (b) under CRS 24-105-102(6), exercising the debarment protest and appeal rights provided in CRS 24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon a showing of good cause.

K. CORA DISCLOSURE

To the extent not prohibited by federal law, this Agreement and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act.

ESA SCHEDULE B
ENERGY SERVICES AGREEMENT
DESCRIPTION OF WORK

Executive Summary

The proposed Gunnison County Energy Services Agreement project is comprised of two (2) Facility Improvement Measures (FIMs). FIM 1 – LED Lighting Retrofit and FIM 2 - Solar Photovoltaic that have been selected for inclusion in the Energy Services Agreement. The equipment installed for these FIMs is neither an addition to nor an improvement to the existing buildings and can be removed from the respective building without damaging the building or hindering its operation.

Table 1: Project Summary

Project Executive Summary			
Facility Improvement Measures (FIM)	**Term**	**Total Project Savings over Term**	**Project Cost**
FIM 1 - LED Lighting Retrofit	10 Years	$270,367	$402,464
FIM 2 - Solar Photovoltaic	10 Years	$306,777	$1,265,725

Note 1: DOLA Grant of $497,500 has been approved for Gunnison County and will be applied to the project cost.
Note 2: Project cost above excludes $150,000 for Family Services Center roofing project which will be executed by Gunnison County.
Note 3: Total project cost is $1,818,189 will be funded via DOLA grant, capital funds from Gunnison County (i.e. annual capital contribution) and third-party financing.

The following table summarizes FIM Cost, Rebates, Maintenance Costs (if any), Weighted Average Useful Life, and Service life.

Table 2: Project FIM Summary

FIM	Project Cost ($)	O&M Savings ($)	One Time Rebates ($) (Non-Guarantee)	1st Year Utility Avoidance (Unit)	1st Year Utility Avoidance ($)	Weighted Average Useful Life (Yrs)	Service Life (Yrs)
FIM 1 - LED Lighting Retrofit	$402,464	$2994	$0	215,799 kWh	$19,526		10
FIM 2 – Solar Photovoltaic	$1,265,725	$0	$0	349,920 kWh	$32,830		25
Total	**$1,668,189**	**$2994**	**$0**	**565,719 kWh**	**$52,356**	**21**	

Key Participants

- Gunnison County
  - Matthew Birnie, Gunnison County Manager
  - John Cattles, Sustainability Director of Operations
  - Linda Nienhueser, County Finance Manager
- Johnson Controls
  - Rowena Adams, Account Executive
  - Doug Mahnken, Area Engineering Manger
  - Fred Travis, Market Team Operation Manager
  - Pat Howard, Development Engineer
- Colorado Energy Office
  - Taylor Lewis, Colorado Energy Office Program Engineer
  - DeLynne Southern, Colorado Energy Office Program Technical Specialist

Baseline Period Utility Consumption

Utility Invoices

Utility invoices were obtained from the Customer. More than a year of historical data set was obtained (January 2018 to December 2018). Billing extracts and electric interval data were also obtained on the electric accounts associated with the Gunnison facilities and was used in the Lighting and the Solar PV analysis.

Electrical Power Services

Electrical power for all locations is provided by the City of Gunnison, Colorado.

Natural Gas Services

Atmos Energy operates the natural gas utility system for Gunnison County. Since no scope of work proposed involves any natural gas use, natural gas usage and billing was not analyzed for this scope.

Utility Bill Summary (Baseline Year 2018)

The following tables summarize the utility data obtained. A total of twelve (12) months of data was obtained for each of the applicable utility types: electricity and natural gas. As described above, since no scope of work proposed involves any natural gas use, natural gas usage and billing was not analyzed. Additionally, it should be noted the City of Gunnison provides water and wastewater services and any water/wastewater related measures are not part of the scope.

Table 3: Gunnison County Public Works Baseline Electric

Gunnison County Public Works			
195 Basin Park Dr			
Month	Reading	Usage (kWh)	Electric Cost
January	6300	22400	$ 1,752.14
February	6645	27600	$ 2,156.86
March	6645	25520	$ 1,994.97
April	7265	24080	$ 1,882.90
May	7554	23120	$ 1,808.18
June	7780	18080	$ 1,415.92
July	7953	13840	$ 1,156.40
August	8126	13840	$ 1,156.40
September	8314	15040	$ 1,254.93
October	8477	13040	$ 1,090.71
November	8648	13680	$ 1,143.26
December	8854	16480	$ 1,373.17
	Total	**226720**	**$ 18,185.84**

Table 4: Gunnison County Public Works Baseline Electric

Gunnison County Public Works			
195 Basin Park Dr Available			
Month	Reading	Usage (kWh)	Electric Cost
January	105	70	$14.20
February	188	83	$15.21
March	270	82	$15.13
April	341	71	$14.28
May	421	80	$14.98
June	495	74	$14.51
July	570	75	$26.16
August	641	71	$25.83
September	715	74	$26.08
October	786	71	$25.83
November	853	67	$25.50
December	926	73	$25.99
	Total	**891**	**$243.70**

Table 5: Gunnison County Water Treatment Baseline Electric

Gunnison County (Water Treatment)				
38130 W US Hwy 50				
Month	Reading	Usage (kWh)	Light Charge	Total Bill
January	431	4992	$ 8.40	$ 405.68
February	488	5472	$ 8.40	$ 443.04
March	544	5376	$ 8.40	$ 435.56
April	592	4608	$ 8.40	$ 375.79
May	645	5088	$ 8.40	$ 413.15
June	698	5088	$ 8.40	$ 413.15
July	769	6816	$ 9.25	$ 588.91
August	840	6816	$ 9.25	$ 588.91
September	907	6432	$ 9.25	$ 557.38
October	962	5280	$ 9.25	$ 462.79
November	1015	5088	$ 9.25	$ 447.03
December	1070	5280	$ 9.25	$ 462.79
	Total	**66336**	**$ 105.90**	**$ 5,594.18**

Table 6: Gunnison County Water Treatment Baseline Electric

Gunnison County (Water Treatment)			
38130 W US Hwy 50 Garage			
Month	Reading	Usage (kWh)	Electric Cost
January	1663	80	$ 14.98
February	1739	76	$ 14.67
March	1822	83	$ 15.21
April	1894	72	$ 14.35
May	1980	86	$ 15.44
June	2071	91	$ 15.83
July	2184	113	$ 29.28
August	2386	202	$ 36.59
September	2479	93	$ 27.64
October	2524	45	$ 23.69
November	2555	31	$ 22.55
December	2564	9	$ 20.74
	Total	**981**	**$ 250.97**

Table 7: Gunnison County Water Treatment Baseline Electric

Gunnison County (Water Treatment)			
38130 W US Hwy 50 River Camera			
Month	Reading	Usage (kWh)	Electric Cost
January	138	10	$ 9.53
February	151	13	$ 9.76
March	164	13	$ 9.76
April	174	10	$ 9.53
May	183	9	$ 9.45
June	191	8	$ 9.37
July	197	6	$ 20.49
August	202	5	$ 20.41
September	214	12	$ 20.99
October	233	19	$ 21.56
November	256	23	$ 21.89
December	278	22	$ 21.81
	Total	**150**	**$ 184.55**

Table 8: Gunnison County Courthouse Baseline Electric

Courthouse			
200 E Virginia			
Month	Reading	Usage (kWh)	Electric Cost
January	8094	31560	$ 2,465.06
February	8375	33720	$ 2,633.18
March	8700	39000	$ 3,044.12
April	8957	30840	$ 2,409.03
May	9204	29640	$ 2,315.63
June	9455	30120	$ 2,352.99
July	9649	23280	$ 1,931.52
August	9920	32520	$ 2,690.22
September	10132	25440	$ 2,108.88
October	10382	30000	$ 2,483.30
November	10587	24600	$ 2,039.91
December	10853	31920	$ 2,640.95
	Total	**362640**	**$ 29,114.79**

Table 9: Gunnison County Family Services Baseline Electric

Family Services			
225 N Pine ST / 220 N Spruce			
Month	Reading	Usage (kWh)	Electric Cost
January	34649	4040	$ 323.18
February	34812	6520	$ 516.20
March	34876	2560	$ 207.99
April	34949	2920	$ 236.01
May	35068	4760	$ 379.22
June	35404	13440	$ 1,054.79
July	35434	1200	$ 118.53
August	35506	2880	$ 256.48
September	35572	2640	$ 236.77
October	25717	5800	$ 496.24
November	35885	6720	$ 571.78
December	36135	10000	$ 841.10
	Total	**63480**	**$ 5,238.29**

Table 10: Blackstock School Baseline Electric

Blackstock School			
221 N Wisconsin St			
Month	Reading	Usage (kWh)	Electric Cost
January	61517	18800	$ 1,471.95
February	61758	19280	$ 1,509.31
March	61973	17200	$ 1,347.43
April	62167	15520	$ 1,216.67
May	62427	20800	$ 1,627.61
June	62658	18480	$ 1,447.05
July	62899	19280	$ 1,603.08
August	63114	17200	$ 1,432.29
September	63420	24480	$ 2,030.05
October	63740	25600	$ 2,122.02
November	63966	18080	$ 1,504.55
December	64213	19760	$ 1,642.49
		234480	**$ 18,954.50**

Table 11: Public Safety Baseline Electric

Public Safety			
510 W Bidwell Ave			
Month	Reading	Usage (kWh)	Electric Cost
January	28739	39360	$ 3,072.14
February	29118	45480	$ 3,548.46
March	29455	40440	$ 3,156.20
April	29771	37920	$ 2,960.06
May	30118	41640	$ 3,249.59
June	30514	47520	$ 3,707.23
July	30939	51000	$ 4,207.61
August	31299	43200	$ 3,567.15
September	31651	42240	$ 3,488.33
October	287	46440	$ 3,833.19
November	636	41880	$ 3,458.77
December	987	42120	$ 3,478.47
	Total	**519240**	**$ 41,727.20**

Figure 1: Electric Consumption (Gunnison County Facilities)

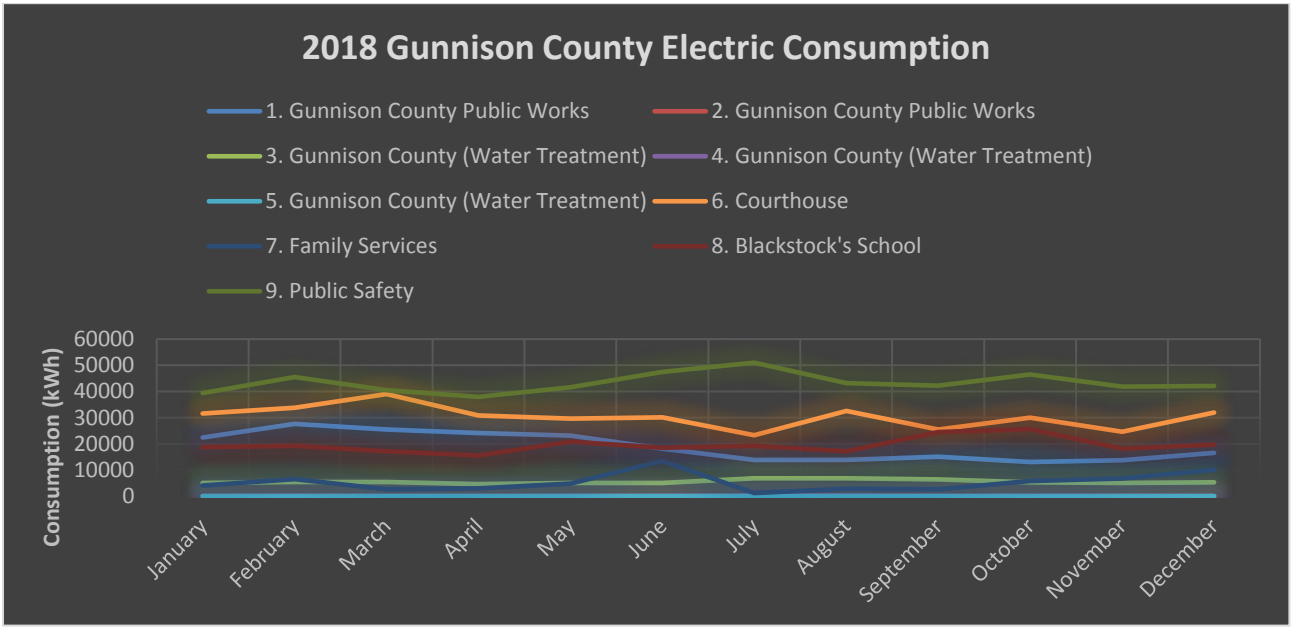
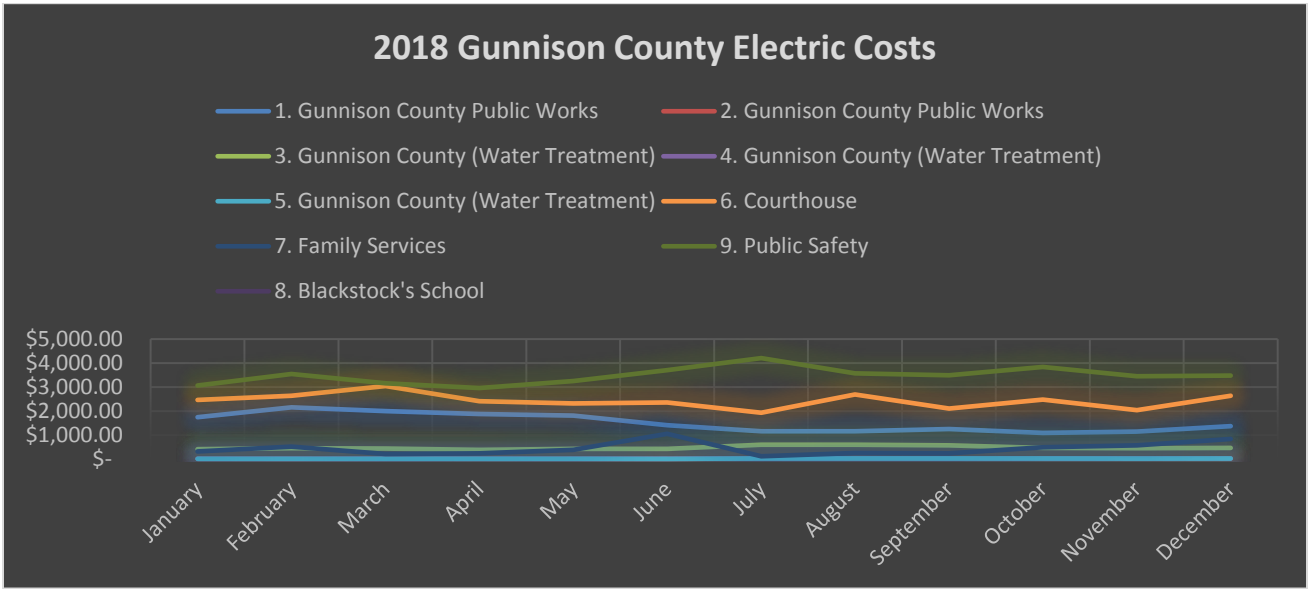


Figure 2: Electric Cost (Gunnison County Facilities)



Utility Baseline Summary

The 12-month of historical utility data was analyzed. Table 21 summarizes the electric baseline consumption and cost.

Table 12: Electric Baseline

Utility	Value	Unit	$
Electric Consumption (Facilities)	1,474,918	kWh	$119,600

Note: Electric baseline data does not include street lighting usage and billing.

Utility Rates

The following table summarizes the electric rate utilized to calculate the savings.

Table 13: Electric Baseline Rate

$/kWh	$0.0870

Utility Escalation

Based on discussions with John Cattles and available regional data, it is determined an escalation factor of 4% annually for the electrical rate is a reasonable assumption for Gunnison County.

Scope of Work

FIM 1 – LED Lighting Retrofit

Johnson Controls will furnish and install LED tubes, lamps and fixtures to retrofit or replace existing inefficient lighting at the following Gunnison County buildings:

Table 14: Buildings in Lighting Scope

Site
ARFF Building
Blackstock Building
Public Safety Building
Public Works

Scope of Work

As a general scope of work, the existing F32W T8 linear fluorescent fixtures located throughout the county buildings will be upgraded with new direct-wired LED TLEDs. Additionally, existing incandescent and compact fluorescent screw-in lamps will be upgraded with new LED lamps, existing recessed can, pin-based compact fluorescent lamps will be upgraded with new LED recessed can kits, and existing exterior metal halide and high pressure sodium fixtures will be replaced with new LED fixtures.

Table 15: Lighting Retrofit Summary

No Retrofit	Retrofit	Re-lamp	Retrofit with a Kit or Reflector	New/ Replacement Fixture	Total Fixture Count
16	372	10	89	0	487
12	375	10	17	0	414
10	187	0	1	5	203
0	8	4	0	0	12
6	6	0	0	14	26
16	102	4	18	0	140
0	0	0	0	11	11
0	0	0	0	0	0
0	41	0	0	20	61

Further scope of work details can be found in Appendix 1.

Warranty

Labor is warranted for one (1) year from date of installation for workmanship repairs. LED T8 Tubes and drivers have a five (5) year manufacturer warranty. Fixtures and other products will be warranted as per manufacturer cut sheets starting from date of installation.

All warranty information for associated product cut sheets will be provided in the warranty workbook upon substantial completion of the project.

Inclusions and Exclusions

Inclusions

- This Proposal is for a turnkey project, which includes material, labor, engineering, design and recycling/disposal costs.
- Pricing assumes 100% access will be granted to all facilities during the construction schedule. Keys, escort and security clearance requirements will be provided in a timely manner.
- All work shall be performed in accordance with industry standards and approved safety practices. Professional performance by licensed, insured and certified personnel skilled in lighting retrofit services.
- Lamps and ballasts removed as part of the work shall be recycled and/or disposed of in compliance with applicable regulations.
- All work performed during standard 40 hour work week, Monday through Friday; weekends or overtime not included.
- All circuit breakers, contactors, switches/controls, existing fixtures, and the electrical system in general are assumed to be operational working order and compliant with current NEC requirements.
- Johnson Controls shall be given ample notice for security clearance procedures required for access to any facility included in the project.
- Maintenance stock of 1.5% is included in this proposal (LED tubes & LED lamps only).
- If specified materials become either temporarily or permanently unavailable for reasons beyond the control of Johnson Controls, then the expected time for performance of the work will be extended. Johnson Controls reserves the right to provide equivalent substitutions at no price increase.
- Where ULC listed tubular LED lamp (TLED) retrofits are proposed, external drivers will be utilized where noted in the line-by-line scope of work. Existing ballasts will be removed.
- Where ULB listed tubular LED lamp (TLED) retrofits are proposed, the tubes will be direct wired and the existing ballast will be removed.
- Where retrofits of existing fixtures are proposed, the scope includes wiping down prismatic lenses with dry cloth.
- Labor Warranty – One (1) year workmanship guarantee in accordance with the terms and conditions of the proposal from the date of acceptance by the customer.
- Material Warranties - Manufacturer warranties of lamps, retrofit kits, and fixtures installed as part of the project are covered by the individual manufacturer's published documentation. Johnson Controls will furnish contact information for each manufacturer. Alleged defective product may be required for return to factory for analysis.
- Design illumination levels: In the absence of code-mandated lighting requirements, industry standards have been used as a guide, primarily the most recent edition of the Illuminating Engineering Society of North America (IESNA), IESNA Recommended Practice documents and IESNA Design Guides.
- Existing lighting systems were presumed to be designed based on IESNA recommended practices. In the event current light levels are above IESNA recommendations for the space type (i.e., over-lit), light levels will be reduced. In the event light levels are below IESNA recommendations for the space type, JCI will meet or exceed current light levels. If the space is under-lit due to an inadequate spacing or quantity of fixtures from initial design, which requires adding fixtures, adding circuits, reconfiguration or new construction, this will be brought to the attention of the customer. LED fixtures or components specified for the project are based on comparable original light outputs of existing equipment rather than depreciated light output values.

Exclusions

- Construction permitting and fees. It is JCI's understanding that County will coordinate permits if needed. If permits are required, JCI to provide County with information as needed for permits. If there are costs for permits, these costs will be from Owner's contingency.
- Replacement or repair of concrete pole footings or rusted bolts on footings.

- Existing light poles will be re-used. Repair of wiring to poles, if required, is not included.
- Pole mounted lighting is reusing existing poles. Customer is responsible for pole maintenance, repair and replacement throughout the term of the guarantee.
- Lighting Poles will be checked for contact voltage. If any hazardous voltage is noted, work on that pole will be stopped and the customer and/or the utility company be notified immediately to correct the fault before any work will be performed.
- Existing task lighting and table type light fixtures unless specified in detailed, room by room description of work.
- Removal or replacement of ceiling tiles unless specified in detailed, room by room description of work.
- Existing decorative and stage light fixtures unless noted in detailed, room by room description of work.
- The addition of lighting fixtures in areas with existing illumination deficiencies is not covered under this scope of work unless otherwise noted in detailed, room by room description of work. If foot-candle levels do not meet minimum standards, the customer will be notified.
- Existing fluorescent dimming systems or fixtures will remain “as is” unless otherwise noted in detailed, room by room description of work
- Reconfiguration of existing fixture layout unless otherwise noted in detailed, room by room description of work.
- Replacement of existing wiring and/or electrical issues in exterior fixtures.
- Existing fixtures that are not in a well-maintained condition including, but not limited to, rusted or embrittled in a manner which would impede retrofit.
- Any electrical wiring other than that required for the retrofit or replacement within the existing lighting fixtures, the installation of new fixtures as scheduled, the installation of occupancy sensors and other controls.
- Double or bi-level switching of in-board and out-board sockets is not included unless specified in detailed, room by room description of work.
- Repair, replacement and adjustments of existing sensors, time clocks, switches or energy management systems unless otherwise noted in detailed, room by room description of work.
- Calibration or adjustment of the lighting control devices post installation. JCI will set controls to the agreed upon settings at time of installation only.
- Repair or replacement of louvers or other components unless denoted in detailed, room by room description of work.
- Repair or replacement of yellowed, cracked, damaged or missing fixture lenses, louvers or other components unless denoted in detailed room by room scope of work.
- Repair or replacement of the existing Emergency and Egress Lighting Systems unless otherwise noted in detailed, room by room description of work.
- Replacement of defective emergency battery back-up ballast unless otherwise noted in detailed, room by room description of work.
- No work can be performed in asbestos contaminated areas. If asbestos is present, the scope of work may have to be adjusted unless the asbestos is abated by the Customer.
- Project will be installed to meet current NEC code; No previsions have been made to accommodate or meet any other construction, energy, or other codes.
- Unless specified in the scope of work, no previsions are made to ensure that the light levels will comply with existing surveillance camera requirements. Proposed light levels will meet or exceed the current light levels of the exterior fixtures.
- Replacement of existing lighting sockets and ballast unless otherwise noted.
- Correction or repair of electrical system deficiencies or any NFPA, NEC, or Local Code deficiencies unless provided for in the scope.
- Painting, plastering or any other type of repair to existing mounting surfaces after the removal or replacement of fixtures, unless otherwise noted.
- Situations that could not be reasonably documented during the audit (i.e. concealed locations or hidden conditions).
- Work in buildings or areas not specifically indicated on the line-by-line scope of work is excluded. Should additional areas or buildings require addition into the project, Johnson Controls will provide a

written estimate for change order.

FIM 2 – Solar Photovoltaic

Johnson Controls will furnish and install photovoltaic (PV) electric power generation systems on the rooftops of the following buildings with the scope for each as identified herein.

Table 16: Buildings in Solar PV Scope

Site	System Size (kW-DC)
Blackstock Building	30.0 kWDC
County Courthouse	105.9 kWDC
Family Services Center	32.7 kWDC
Public Safety	97.0 kWDC
Public Works	32.7 kWDC
Total	**298.3 kWDC**

The PV systems will be installed on the rooftops of each building and connected the main electrical service. The preliminary layout of each PV system is shown in the figures below.

Scope of Work

1. Solar PV Array System
    a. Solar PV and Racking System
        i. Provide and install anchoring systems for standing seam metal roofing installations.
        ii. Provide and install ballasted systems for flat roof installations.
        iii. Provide and install racking and accessories to attach PV modules to roofing or ballasted framing system.
        iv. Provide and install PV modules onto the racking system. By JA Solar or equivalent as approved by Johnson Controls.
        v. Provide and install inverters. By SMA or equivalent as approved by Johnson Controls.
        vi. Provide and install the electrical balance of system. This includes conduit, wiring, electrical connections, and interconnection at or near the existing facility grid interconnection.
        vii. Provide cutting, core drilling and boring as needed to route conduits.

    b. Data Acquisition System (DAS)
        i. Provide and install a revenue grade metering and web based DAS including monitoring system manufactured by Locus or equivalent as approved by Johnson Controls.
            1. DAS shall transmit data via Ethernet, or Wi-Fi.
            2. Monitoring system includes one meteorological station to monitor plane-of-array irradiance, cell temperature, ambient temperature, and wind speed by Vaisala SP-12 or equivalent as approved by Johnson Controls.
            3. Monitoring system includes one year (1 Year) subscription for monitoring service. After the initial one year period, customer must contract to maintain the monitoring service for the term of the M&V period (3 Years).

        ii. Configure web based data monitoring of solar PV systems provided as part of this contract from a single web interface.

Warranty

The PV modules are warrantied by the manufacturer (JA Solar or Equivalent) for:

- Workmanship and material for 10 years,
- Electric power generation (Performance) for 25 years.

The DC to AC inverters are warranted by the manufacturer for:

- 10 years.

Workmanship is warranted by Johnson Controls for a period of one (1) year.

Inclusions and Exclusions

Inclusions

1. Provide engineering plans prepared by a licensed engineer in CO, calculations, and documents for permit issuance. Provide as-built record documentation after the completion of the work.
2. Utility Coordination
    a. With Customer assistance and sign off, complete applications for utility interconnection.
    b. Attend Customer meetings with the Utility provider to address design and interconnection items as needed.
    c. The interconnection process of the output from the PV system to the building electrical supply will require momentary interruption of the building operations. Johnson Controls will work closely with Gunnison County to minimize and plan ahead for any scheduled interruptions.
    d. With Customer assistance and sign off, complete applications for utility rate change/net metering tariff.
3. Provide startup of new equipment in accordance with manufacturer's written instructions.
4. Including one initial module washing at the time of startup. Subsequent washing/cleaning/snow removal and maintenance is the responsibility of the customer.
5. Provide functional performance testing of new equipment.

Exclusions

1. Additional Design Rework
    a. The cost of additional design rework and bidding, subsequent to stakeholder review meetings, is excluded. The cost of additional design work beyond that which is typically required for obtaining building permits (e.g.: 3D renderings of facilities, additional design review meetings, multiple design alternatives, bidding of multiple designs) is excluded. Johnson Controls will provide these items at the request of key stakeholders identified by County Staff and the additional cost incurred will be paid by the Customer, including overhead and profit, through the change order process.
2. Repair or replacement of electrical equipment and the electrical distribution system, except the equipment described in the Scope of Work (Defective equipment identified by JCI during implementation of the Scope of Work will be brought to the attention of the Customer).
3. Resolution of existing design, service, and or distribution conditions known or unknown.
4. Temporary power provisions during interconnection to Solar PV system.
5. Correction of any existing applicable building code violations and Federal Americans with Disabilities Act (ADA) violations identified by JCI during the execution of the Work. Such violations will be brought to the attention of the Customer for remedy.

Figure 3: Blackstock Building – 200 W. Virginia Ave

Figure 4: County Courthouse – 200 E. Virginia Ave

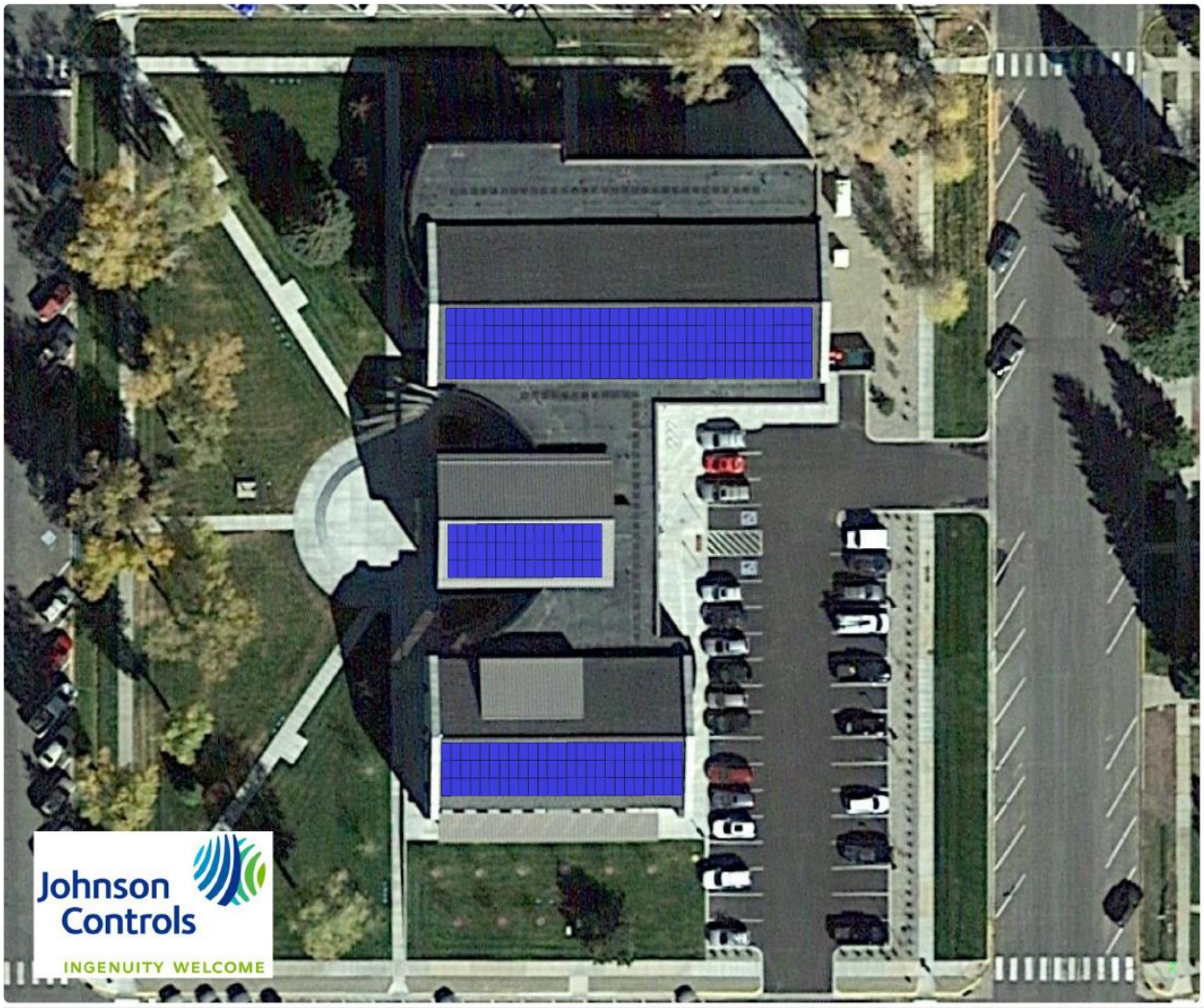


Figure 5: Family Services Center – 225 N. Pine St

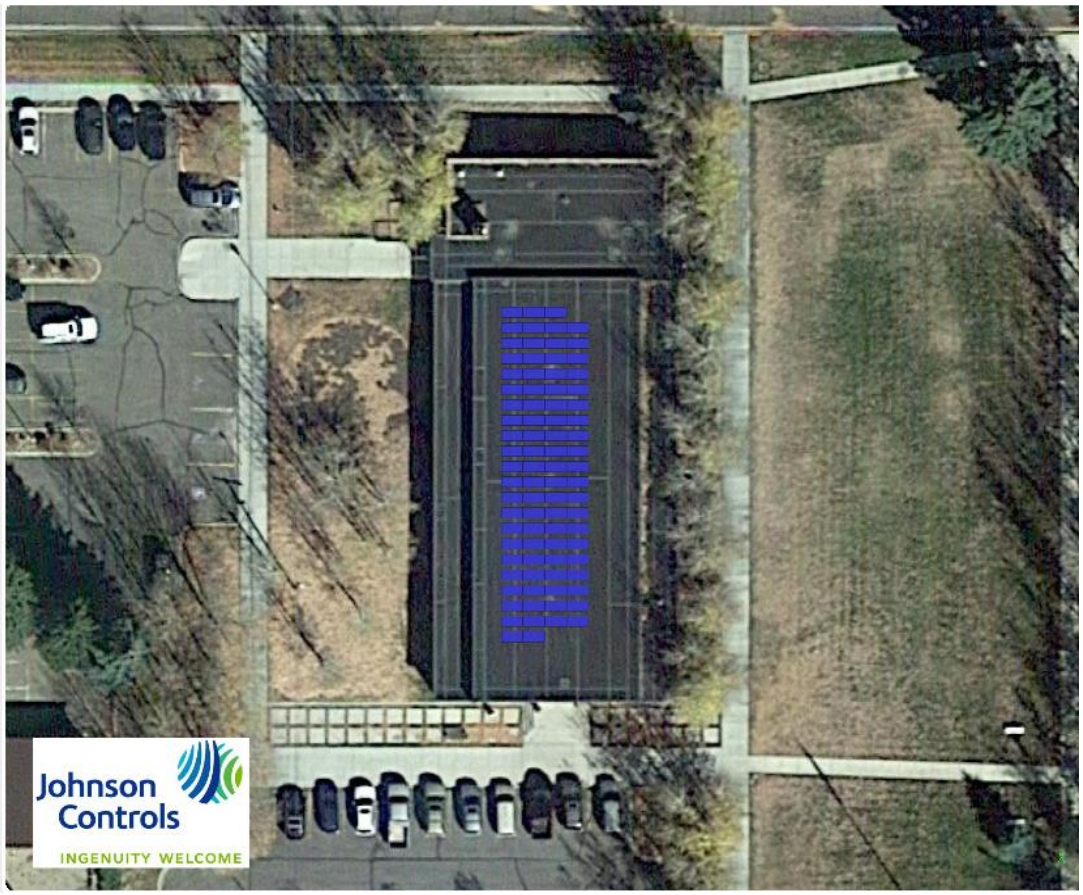


Figure 6: Public Safety – 510 W. Bidwell Ave

Figure 7: Public Works – 195 Basin Park Dr

ESA SCHEDULE E
CODE COMPLIANCE REQUIREMENTS

Code Compliance Requirement

It is the intent of this schedule to initially determine the requirements for code review, construction permits, and the cost for said items with the building official and the code authority. An ESA project might include replacement of existing systems; it is not within the ESCO's or Principal Representative's authority to waive any code compliance or local permit requirements. The code official should be contacted after the list of recommended measures is developed to confirm the requirements and the potential cost of code work. While the code review agents are expected to conduct their work with due diligence, this in no way relieves the ESCO and any contractors from their obligations to design and construct the project in conformance with the adopted codes nor is it intended to transfer any duties, obligations, or liabilities of the design and construction teams to the code review agents.

Below is an example of a table to indicate code compliance requirements and cost. The total cost carried in the project is indicated in SCHEDULE F: *Contractor's Application for Payment*.

Table 1: Code Compliance Requirements and Cost

Utility Cost Savings /FIM Measure	Code required (Y/N)	Documentation review cost ($)	Field inspection/permit cost ($)
FIM 1 – LED Lighting Retrofit	No. Existing systems assumed to be code compliant. Non-compliant systems will be reported to City.	NA	N/A
FIM 2 – Solar Photovoltaic	Yes. Fees to be determined once project design is completed; may be waived as the project is owned by Gunnison County.	TBD	TBD
Total cost			**TBD**

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SCHEDULE F: Contractor's Application for Payment

STATE OF COLORADO

OFFICE OF THE STATE ARCHITECT
STATE BUILDINGS PROGRAMS

DATE: _____

CONTRACTOR'S APPLICATION FOR PAYMENT

Detail of Schedule of Values					Totals of Work Completed and Stored to Date				
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)
Item No.	Description of Work	Material	Labor and Other	Totals (C+D)	Materials On-Site But Not In Place	WORK IN PLACE Material	WORK IN PLACE Labor & Other	Total Amount Due to Date (F+G+H)	% Complete and in Place (I / E)
1	FIM 1 - LED Lighting Retrofit	$ 269,213.00		$269,213.00				$0.00	0%
2	FIM 2 - Solar Photovoltaic	$ 846,655.00		$846,655.00					
3	Investment Grade Audit	$ 49,360.00		$49,360.00					
4	Design & Other Engineering	$ 114,070.00		$114,070.00					
5	Pre-Construction Services	$ -		$0.00					
6	Other Preconstruction Costs	$ -		$0.00					
7	Construction Management	$ 144,437.00		$144,437.00					

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8	Project Engineering	$ 22,265.00		$22,265.00					
9	General Conditions	$ 110,742.00		$110,742.00					
10	Construction Completion	$ 46,604.00		$46,604.00					
11	Other Construction Costs	$ 64,843.00		$64,843.00					
12				$0.00					
13				$0.00					
				$0.00					
				$0.00					
				$0.00				$0.00	
				$0.00				$0.00	
(K)	ORIGINAL CONTRACT TOTALS (SUM)	$1,668,189.00	$0	$1,668,189.00	$0.00	$0.00	$0.00	$0.00	0%
(L)	AMENDMENTS/CHANGE ORDER DEDUCTIONS	$ -		$0.00				$0.00	
(M)	AMENDMENTS/CHANGE ORDER ADDITIONS	$ -		$0.00				$0.00	
(N)	PRESENT CONTRACT TOTALS	$1,668,189.00	$0	$1,668,189.00	$0.00	$0.00	$0.00	**$0.00**	0%

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EPC SCHEDULE G
Proposed Financial Cost and Cash Flow Analysis

The tables below are examples of information that should be included in the Projected Financial Cost and Cash Flow Analysis schedule. The presented information could be new on the table or copied/summarized from previous schedules. The ESCO should complete this table, or present equivalent information in any format provided it presents all the required information.

Table 1: Projected Financial Performance

Type		Value	Applicable Schedule
Investment Grade Audit (IGA)		$49,360	**IGA Contract, Exhibit B**
Fixed Limit of Construction – JCI Scope		$1,618,829	**Schedule F**
Health and Human Services Center Roofing – County Scope		$150,000	
Contingency		$0	**Schedule B**
Maximum Contract Price (MCP) (total of items)		$1,818,189	
Rebates (minimum amount guaranteed by ESCO)		$0	**Schedule B**
Political Subdivision Cash Contribution (one time, not annual)		$497,500	**Schedule F**
Other Political Subdivision Funds (gifts, grants, donations, etc.),		$0	**Schedule F**
Total Amount Financed (MCP minus items above)		$1,320,689	
Financial Term in Years	10	Other items	**NA**
Projected Interest Rate	2.431%	Other items	**NA**
Other items	NA	Other items	

Contingency identified above is not part of JCI's contract amount; however, it is jointly controlled by JCI and the County and its use shall be mutually agreed upon. Upon completion of the project, any remaining contingency remains under the ownership of the County to use at its discretion.

The cash flow analysis below is inclusive of all project costs including JCI's contract, costs for County implemented Health and Human Services Center roofing scope, M&V, DAS fees, and financing costs.

Table 2: Cash Flow Analysis Table

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Performance Year	JCI Guaranteed Benefit	County Capital Contribution	Total Benefit	Loan Payment	Performance Management	Balance
1	$44,690	$95,000	$139,690	$149,795	$18,880	$(28,986)
2	$46,477	$95,000	$141,477	$149,795	$19,635	$(27,954)
3	$48,336	$95,000	$143,336	$149,795	$20,421	$(26,880)
4	$62,261	$95,000	$157,261	$149,795	$1,552	$5,913
5	$64,751	$95,000	$159,751	$149,795	$1,614	$8,341
6	$67,341	$95,000	$162,341	$149,795	$1,679	$10,867
7	$70,035	$95,000	$165,035	$149,795	$1,746	$13,493
8	$72,836	$95,000	$167,836	$149,795	$1,816	$16,225
9	$75,750	$95,000	$170,750	$149,795	$1,889	$19,066
10	$78,780	$95,000	$173,780	$149,795	$1,964	$22,020
Total	$631,256	$950,000	$1,581,256	$1,497,953	$71,197	$12,107

Cash flow presented is for illustrative purposes only. Actual loan payments and subsequent cash flow will be provided by third party finance provider.

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ESA SCHEDULE H
Certification that Cost-weighted Average Service Life of Equipment Exceeds Financing Term

The table below is an example of the information and calculations to determine the Cost-Weighted Average Service Life of utility cost-savings equipment (**ESA Article 1-X (iv)**).

Table 1: Weighted Average Calculation

Utility Cost-Saving Measure or Facility Improvement Measure(1)	Construction Cost(2)	Service Life(3)	Source of Service Life Value(4)	Average Service Life Value(5)
FIM 1 - LED Lighting Retrofit	$402,464	10	Manufacturer	$4,024,640
FIM 2 - Solar Photovoltaic	$1,265,725	25	Manufacturer	$31,643,125
Total Construction Cost (6)	$1,668,189			$35,667,765
Cost-Weighted Average Service of all ECM/FIMs(7)				**21.38 Years**
Financing Agreement Term				**10 Years**

Notes
(1) Final Accepted List of Improvements
(2) Construction Cost as defined on the CEO Cost Estimating Tool
(3) Service Life (indicate source of service life by ECM on the following table)
(4) Provide an abbreviation of the source, then below this table the source full name, date of publication, and any additional information necessary to confirm the value
(5) Formula: Cost of Improvement multiplied by Service Life then divided by Total Construction Cost
(6) Total Construction Cost per CEO Cost Estimating Tool
(7) Total of ECM/FIM Individual Average Service Life Values *Formula: Cost-Weighted Average Service Life = ∑ each ECM ÷ total construction cost × service life*

Service life source data can be found in the below cut sheets which identify service life of the major component of each FIM.

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Cut sheet for T8 LED tube showing rated life of 50,000 hours.

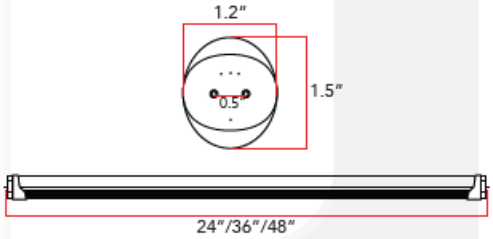
LED MAGIC TUBE

Works with or without a ballast

The LED Magic Tube serves as a special energy efficient replacement for all traditional fluorescent T8 lamps. Designed to operate on all existing rapid-start, instant-start, programmed-start, and emergency fixture ballasts... or simply **no ballast** at all.

-Available with standard frosted lens or custom clear lens

DIMENSIONS



CERTIFICATIONS

E358903

LISTED E358956

FEATURES

- Works both with or without a ballast
- Works both with shunted or non-shunted sockets
- Fantastic replacement "plug and play" tube or retrofit kit
- Compatible with over 90% of all North American electronic ballasts
- Versatility supports massive projects with different types of ballasts
- Suitable for damp or dry environments
- Minimize labor and recycling costs
- Stable lumen output for different ballast brands with different ballast factors
- UL Type A & B
- Globally patented technology
- 5 Year Manufacturer's Warranty

COMMON TECHNICAL DATA

Color Temperature	2700K to 5000K
Beam Angle	120 Degrees
Color Consistency	4 Steps
CRI	> 80
Operation Temperature	-30°C to 40°C
Efficiency with ballast	More than 110 LPW
Efficiency without ballast	More than 125 LPW
Input Voltage with ballast	100-277VAC, 347 V
Input Voltage without ballast	100-277VAC
Frequency	50-60Hz
Power Factor	More than 0.99
Rated Life	50,000 hours
LED Type	SMT2835
Housing	Aluminum/PC

WARRANTY

This product has a warranty for a period of 5 years from the date of purchase. The warranty is invalid in the case of improper installation, tampering, or removal of the Q.C. date label. Installation in an improper working environment or installation not according to the current edition of the National Electric Code also invalidates the warranty. Should this product fail during the warranty period, it will be replaced free of charge, subject to correct installation and return of the faulty unit. JL Lighting does not accept responsibility for any installation costs associated with the replacement of this product. This warranty is in addition to the statutory rights in the country of purchase. JL Lighting reserves the right to alter specifications without prior notice.

4505 Peachtree Industrial Blvd I Suite D I Berkeley Lake, GA 30092
678-608-2751 I INFO@getJL.com I www.getJL.com

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10/02/18

Cut sheet for solar photovoltaic panels showing 25 year linear power output warranty:

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ESA SCHEDULE T
Notice of Substantial Completion

Notice of Substantial Completion (per ECM / FIM)

Date of Notice _____

Local Government Entity: _____

Contractor: _____

Contract Name / #: _____

Notice is hereby given that Gunnison County, CO accepts the installed equipment for ECM / FIM _____ and establishes a warranty period start date of _____.

Gunnison County, CO

By _____

Title _____

Date _____

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

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ESA SCHEDULE U
Notice of Final Acceptance

Notice of Final Acceptance

Date of Notice _____

Gunnison County, CO: _____

Contractor: _____

Contract Name / #: _____

Notice is hereby given that Gunnison County, CO accepts the Project.

Gunnison County, CO

By _____

Title _____

Date _____

When completely executed, this form is to be sent by certified mail to the Contractor by Gunnison County, CO.

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