AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Engineering Docs; Blackstock HVAC

Action Requested: County Manager Signature

Parties to the Agreement:

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

Summary:

Pre-construction and engineering services for Blackstock HVAC replacement with geothermal system. Cost to be rolled into the Energy Services Agreement for construction of the project. If an Energy Services Agreement is not reached then the engineering cost are due per this contract

Fiscal Impact: $22,000 to be included in project financing

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

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, cost anticipated in total project cost, included in budget. ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 3/13/2020

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

Comments:
ok db 3/13/20

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 3/13/2020 Certificate of Insurance Required

Yes ( ) No (●)

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\emense Discharge Date: 3/13/2020

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 3/17/2020

Revised April 2015

STATE OF COLORADO4
COLORADO ENERGY OFFICE – ENERGY PERFORMANCE CONTRACTING PROGRAM

INVESTMENT GRADE AUDIT REPORT AND ENERGY PERFORMANCE CONTRACTING PROJECT PROPOSAL CONTRACT

FOR COLORADO POLITICAL SUBDIVISIONS (municipality, county, special district, or school district **(§29-12.5-101 (5) C.R.S.**)

POLITICAL SUBDIVISION: Gunnison County, CO

ENERGY SERVICE COMPANY
(STATE REGISTERED NAME): Johnson Controls, Inc

PROJECT NAME: Gunnison County ESA Phase 2

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PARTIES

This Investment Grade Audit Report and Energy Performance Contracting Project Proposal Contract (this "Contract" or this "IGA," as defined below in Article I)is entered into by and between Johnson Controls, Inc, having its offices at 10289 W Centennial Rd, Littleton CO 80127 (the "Contractor" or the "ESCO," as defined below in the Definitions), and the County of Gunnison, CO (the "Political Subdivision"), being a Political Subdivision as defined below in Article 1.

RECITALS

WHEREAS, authority for the Political Subdivision to enter into this Contract exists in the law, including **§29-12.5-101, C.R.S**. 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 authorizations, approvals, clearance and coordination have been accomplished by the Political Subdivision; and

WHEREAS, the Political Subdivision is entering into this Contract in order to (a) engage the Contractor to identify utility cost-savings measures and facility improvement measures, including operation and maintenance cost savings and vehicle fleet operational or fuel cost savings in facilities owned or leased by the Political Subdivision, as set forth in **§29-12.5-101(3), C.R.S.**, and (b) if the savings exceed "annual contract payments" as set forth in **§29-12.5-101(3)(b**), **C.R.S.** and the Governing Body (as defined below) of the Political Subdivision determines to do so, to negotiate an Energy Performance Contract; and

WHEREAS, this Contract was adapted by the Colorado Energy Office (CEO) for use by Colorado "Political Subdivisions," as defined in **§29-12.5-101, C.R.S.** , based on a contract created jointly by CEO and the Office of the State Architect (OSA), in order to obtain an Investment Grade Audit report and a proposal for an Energy Performance Contracting project for a Facility (as defined below) from a CEO pre-approved energy service company (ESCO), the purpose of the IGA being to perform the Work set forth in **Article 3** below; and

WHEREAS, the Contractor was selected and determined to be the most qualified, and fees were negotiated in accordance with the procurement rules of the Political Subdivision; 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 valid 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 19** 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 the Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this 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.

ARTICLE 1 DEFINITIONS

A. 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**.**

B. Contract

"Contract" means this Contract, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to applicable laws, charter and code provisions and policies and procedures of the Political Subdivision.

C. Contract Funds

"Contract Funds" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the Political Subdivision to the Contractor for the performance of the Work under this Contract.

D. Contractor's Intellectual Property

"Contractor's Intellectual Property" means the items purchased, licensed or developed by the Contractor prior to or outside of the Contract or purchased, licensed or developed by the 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.

E. Colorado Open Records Act (CORA)

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

F. C.R.S.

"C.R.S." means the Colorado Revised Statutes, as amended.

G. Exhibits and other Attachments

The following "Exhibits and other Attachments" are attached hereto and incorporated by reference herein: IGA **Exhibit A** - Scope of Work, IGA **Exhibit B** - Location of Energy Audit, and IGA **Exhibit C** -Cost and Pricing Elements.

H. Facility

"Facility" or "Facilities" means any building or utility owned or operated by the Political Subdivision, as set forth on **Exhibit B** - Location of Energy Audit.

I. Fiscal Year

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

J. Goods:

"Goods" means the tangible material acquired, produced, or delivered by the Contractor either separately or in conjunction with the Work performed by the Contractor, and the Services the Contractor renders hereunder.

K. 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 as defined in **§29-12.5-101(1), C.R.S.**

L. Incident

"Incident" means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, pursuant to **§§24-37.5-401 et. seq. C.R.S.** Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.

M. Investment Grade Audit Contract

"Investment Grade Audit Contract" (IGA) means that certain contract between the Contractor and the Political Subdivision and entered into pursuant to **§29-12.5-102, C.R.S.**, and pursuant to which the Contractor conducted the IGA. The IGA Contract shall determine the feasibility of whether to enter into an Energy Performance Contract 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.

N. Investment Grade Audit Report

"Investment Grade Audit" or "IGA" means a detailed audit of Political Subdivision Premises, conducted by Contractor] pursuant to the IGA Contract, pursuant to **§29-12.5-102, C.R.S.**, which may serve as the basis for an Energy Performance Contract.

O. Party or Parties

"Party" means the Political Subdivision or the Contractor and "Parties" means both the Political Subdivision and the Contractor.

P. Political Subdivision

"Political Subdivision" means the Political Subdivision set forth above as a Party to this Contract, being a municipality, county, special district or school district as defined in **§29-12.5-101(5), C.R.S.**

Q. Political Subdivision Confidential Information

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

R. Political Subdivision Records

"Political Subdivision Records" means any and all data, information, and records, regardless of physical form.

S. Premises

"Premises" means the Facilities owned or controlled by the Political Subdivision as identified on **Exhibit B** - Location of Energy Audit.

T. Principal Representative

"Principal Representative" means the person or persons designated by the Governing Body of the Political Subdivision to act as the Principal Representative of the Political Subdivision under the terms of and as set forth in this Contract. The Principal Representative may delegate his or her authority hereunder, in writing, if authorized to do so pursuant to the related authorizing resolution or ordinance of the Governing Body. The Contractor shall have the right to inquire regarding the delegated authority of any of the Principal Representative's designees under the terms of this Contract and shall be provided with a response in writing when requested.

U. Services

"Services" means the required services to be performed by the Contractor pursuant to this Contract.

V. Subcontractor

"Subcontractor" means third parties, if any, engaged by Contractor to aid in performance of the Work.

W. 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.

X. 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.

Y. 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 an Exhibit shall be construed and interpreted as defined in that Exhibit.

ARTICLE 2 TERM and EARLY TERMINATION

A. Initial Term-Work Commencement

The Parties' respective performances under this Contract shall commence on the later of either the Effective Date or January 31, 2020. This Contract shall terminate on December 31, 2020 unless sooner terminated or further extended as specified elsewhere herein.

B. Early Termination in the Public Interest

The Political Subdivision is entering into this Contract for the purpose of carrying out the public policy of the Political Subdivision as determined by the Governing Body. If this Contract ceases to further the public policy of the Political Subdivision, the Governing Body, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the Governing Body of this right shall not constitute a breach of the Political Subdivision's obligations hereunder. This subsection shall not apply to a termination of this Contract by the Political Subdivision for cause or breach by the Contractor, which shall be governed by **Article 10(A)** or as otherwise specifically provided for herein.

i. Method and Content

The Principal Representative shall notify the Contractor of such termination in accordance with **Article 13**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

ii. Obligations and Rights

Upon receipt of a termination notice, the Contractor shall be subject to and comply with the same obligations and rights set forth in **Article 11(A)(i)**.

iii. Payments

If this Contract is terminated by the Governing Body pursuant to this **Article 2B**, the Contractor shall be paid an amount that bears the same ratio to the total reimbursement under this Contract as Contractor's obligations that were satisfactorily performed bear to the total obligations set forth in this Contract, less payments previously made. Additionally, if this Contract is less than 60% completed, the Political Subdivision may, but is not obligated to, reimburse the Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor's obligations hereunder. The sum of any and all reimbursements under this **Article 2B** shall not exceed the maximum amount payable to the Contractor hereunder and any and all such reimbursements shall be payable only from funds that have been budgeted, appropriated and otherwise made available and in respect of which a sufficient unencumbered balance thereof remains available for payment of such reimbursements, all within applicable constitutional, statutory, charter, code or other limitations applicable to the Political Subdivision.

ARTICLE 3 STATEMENT OF WORK

A. Work

Contractor shall perform an Investment Grade Audit in accordance with **IGA Exhibit A** – Scope of Work**.** The Investment Grade Audit shall be performed at the location(s) listed in **IGA Exhibit B** – Location of Audit. If the Governing Body, in its sole discretion, desires to accept the Contractor's Investment Grade Audit Report and the EPC Project Proposal, which acceptance, if made, shall be made within [60] days of the Principal Representative's receipt of such proposal in the form of the Notice of Acceptance of the Investment Grade Audit Report and EPC Project Proposal set forth below in **Article 3(E)**. The Parties may, but are not obligated

to, enter into a new contract, entitled "Energy Performance Contract," based on such proposal, the form of which shall be supplied by the Political Subdivision and shall comply with **§29-12.5-101, C.R.S., *et seq.***

B. Time of Performance

The Work under this Contract shall be completed during the initial term, which is set forth in **Article 2**, or any extension thereof.

C. Goods and Services

Contractor shall procure Goods and Services necessary to complete the Work. Such procurement shall be paid from the Contract Funds and shall not increase the maximum amount payable hereunder by the Political Subdivision.

D. Employees or Agents

All persons employed by the Contractor or Subcontractors to perform Work under this Contract shall be the Contractor's or Subcontractors' employee(s) or agents for all purposes hereunder and shall not be employees or agents of the Political Subdivision for any purpose as a result of this Contract.

E. Acceptance

Once the Contractor has signed the draft "Notice of Acceptance" for the Investment Grade Audit Report and EPC Project Proposal, it shall submit that draft Notice of Acceptance to the Principal Representative for review and approval by the Governing Body. If the IGA Report and EPC Project Proposal meet the statutory requirements set forth in **§29-12.5-101,C.R.S., *et seq.*,** and upon receipt of a completed IGA Record of Review from CEO, the Governing Body may, in its discretion, authorize the Principal Representative to issue the Notice of Acceptance.

ARTICLE 4 PAYMENTS TO CONTRACTOR

The Political Subdivision shall, in accordance with the provisions of this **Article 4**, pay the Contractor in the amounts and using the methods set forth below:

A. Project with Insufficient Cost Savings

If the Contractor determines at any time during the Investment Grade Audit that savings cannot be attained to meet the Political Subdivision's statutory requirements set forth in **§29-12.5-101,C.R.S., *et seq.*,** the Investment Grade Audit shall be terminated in accordance with **Article 11(B)** and **Article 13.**

B. Maximum IGA Payment Amount

Except as provided for below in subsections (i) and (ii), and (iii) of this **Article 4**, within [45] days after the Notice of Acceptance is issued by the Governing Body, which indicates the completion of the Investment Grade Audit Report and the related proposal for the Energy Performance Contract Project, Principal Representative shall pay to the Contractor a sum not to exceed $22,000 in accordance with IGA **Exhibits B and C** to this Contract.

i. Payment Without Financing of Energy Performance Contract

After the Notice of Acceptance has been issued, at the Governing Body's sole discretion, the Governing Body may exercise one of the two options set forth below, if the Governing Body of the Political Subdivision determines to pay out of available funds specifically appropriated for the purpose of performance of this Contract:

a. Payment for performance of IGA only without authorization of Energy Performance Contract

If the Governing Body decides not to proceed with an Energy Performance Contract, the Political Subdivision shall pay the Contractor for the due performance of the IGA from available funds which have been specifically appropriated for this purpose by the Governing Body in the ordinance or resolution authorizing the Political Subdivision to enter into this Contract. The Political Subdivision reserves the right to use such information from the Investment Grade Audit Report as it deems appropriate. Any unilateral use by the Political Subdivision of the Investment Grade Audit Report and any related underlying data for completing, using, maintaining or adding to any facilities of the Political Subdivision shall be at the sole risk of the Political Subdivision and without liability to the Contractor or Contractor consultants.

b. Payment Without Financing Arranged Under Energy Performance Contract

If the Governing Body authorizes the Political Subdivision to enter into an Energy Performance Contract with the Contractor, the Governing Body may determine to pay the Contractor for the

due performance of the IGA from available funds specifically appropriated for this purpose or from separate lease purchase, rather than finance the related project from the lease purchase or enterprise revenue bond financing provided through the Energy Performance Contract. The Political Subdivision will pay the Contractor within [90] days after the Notice of Acceptance is issued.

ii. Payment with Financing Arranged Under Energy Performance Contract

If the Governing Body authorizes the Political Subdivision to enter into (a) an Energy Performance Contract with the Contractor and (b) the financing of the IGA cost and the costs of the related project from the lease purchase financing provided through the Energy Performance Contract, the Political Subdivision will have no direct payment obligations to the Contractor under this Contract, provided that the Contractor and the Political Subdivision execute an Energy Performance Contract and enter into such financing within [90] days after the issuance of the Notice of Acceptance. The above stated cost of the completed Investment Grade Audit shall be incorporated into the Contractor's total project costs and paid from the lease purchase provided through the Energy Performance Contract.

iii. Payment Without the issuance of the Notice of Acceptance

Within [60] days after the date on which the Contractor submits the draft Notice of Acceptance to the Principal Representative, the Principal Representative shall review and may object and propose revisions, in writing, to the Contractor regarding the Investment Grade Audit Report and EPC Project Proposal. If the Political Subdivision has received the completed IGA Record of Review from CEO and such IGA Record of Review and the analysis of the Principal Representative reflect that the IGA Report and the EPC Project Proposal each meet the statutory requirements set forth in **§29-12.5-101,C.R.S., *et seq.***, but the Political Subdivision does not issue the Notice of Acceptance, the Notice of Acceptance will be deemed issued as of the [61st] day after the Contractor's submission of the draft Notice of Acceptance. If the Notice of Acceptance is deemed issued, the Political Subdivision shall be obligated to pay the Contractor for its performance hereunder as set forth in **Article 4(B)(i)**, and the Contractor shall provide the complete Investment Grade Audit Report and any related underlying data including building, infrastructure, and equipment specifications, blueprints, etc., to the Political Subdivision for its records and use.

C. Payment

i. Payments

Contractor shall initiate any payment requests by submitting invoices to the Principal Representative in the form and manner set forth and approved by the Principal Representative.

ii. Interest

The Political Subdivision shall fully pay each invoice within the payment terms of the Political Subdivision and within 30 days in accordance with of receipt thereof if the amount invoiced represents performance by the Contractor previously accepted by the Principal Representative. Uncontested amounts not paid by the Political Subdivision within 60 days shall bear interest on the unpaid balance beginning on the following day at a rate not to exceed 2 percent per month until paid in full, provided that such interest amounts have been duly appropriated by the Governing Body; provided, however, that interest shall not accrue on unpaid amounts that the Principal Representative disputes. The Contractor shall invoice the Political Subdivision separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The Political Subdivision is prohibited by law from making financial commitments beyond the term of the current Fiscal Year. This Contract shall not constitute a debt or a multiple Fiscal Year financial obligation under any Colorado constitutional or statutory provisions or limitations. Payment to the Contractor beyond the current Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year. If federal funds or funds from any other source not from the Political Subdivision constitute all or some of the Contract Funds, the obligation of the Political Subdivision to pay the Contractor shall be contingent upon such funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from

Contract Funds, and the Political Subdivision's liability for such payments shall be limited to the amount remaining of such Contract Funds. If other funds are not appropriated, or otherwise become unavailable to fund this Contract, the Political Subdivision may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability in accordance with the provisions hereof.

iv. Erroneous Payments

At the Governing Body's sole discretion, payments made to the Contractor in error for any reason, including, but not limited to overpayments or improper payments and unexpended or excess funds received by the Contractor, the Political Subdivision may recover from the Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the Political Subdivision and the Contractor or by other appropriate methods and collected as a payment due to the Political Subdivision. Such payments shall not be made to any party other than the Political Subdivision.

D. Use of Funds

Contract Funds shall be used only for eligible costs identified herein.

ARTICLE 5 REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this **Article 5** shall be in accordance with the procedures of and in such form as prescribed by the Political Subdivision and in accordance with **Article 13**, if applicable.

A. Litigation Reporting

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision-making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 10 days after being served, notify the Political Subdivision of such action and deliver copies of such pleading or document to the Principal Representative of the Political Subdivision identified in **Article 13**.

B. Performance Outside the State of Colorado and/or the United States

*[This **§5.B** shall not apply if the Contract Funds include any Federal funds]* Following the Effective Date, Contractor shall provide written notice to the Political Subdivision by notice to the Principal Representative, in accordance with **Article 13**, within twenty (20) days of the earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. Knowing failure by Contractor to provide notice to the Political Subdivision under this **Article 5(B)** shall constitute a material breach of this Contract.

C. Noncompliance

Contractor's failure to provide reports and notify the Principal Representative of the Political Subdivision in a timely manner in accordance with this **Article 5** may result in the delay of payment of funds and/or termination as provided under this Contract.

ARTICLE 6 CONTRACTOR RECORDS

A. Maintenance

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date [3] years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if a Contract audit is occurring, or Contractor has received notice that a Contract audit is pending, the date such Contract audit is completed and its findings have been resolved (the "Record Retention Period").

B. Inspection

Contractor shall permit the Political Subdivision to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than [2] Business Days' notice from the Principal Representative, unless the Principal Representative determines that a shorter period of notice, or no notice, is necessary to protect the interests of the Political Subdivision.

C. Monitoring

The Principal Representative, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the Political Subdivision. The Principal Representative shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

D. Final Contract Audit Report

Contractor shall promptly submit to the Political Subdivision a copy of any final Contract audit report of a Contract audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

ARTICLE 7 CONFIDENTIAL INFORMATION AND POLITICAL SUBDIVISION RECORDS

Contractor shall comply with the provisions of this **Article 7** 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. Such information shall not include information required to be disclosed pursuant to CORA.

A. Confidentiality

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all Political Subdivision Records, unless those Records are publicly available. Contractor shall not, without prior written approval of the Governing Body, 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 Governing Body. Contractor shall provide for the security of all Political Subdivision Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. Contractor shall immediately forward any request or demand for Political Subdivision Records to the Principal Representative.

B. 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 that 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.

C. 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 Governing Body 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 that it will guarantee the confidentiality of, and cease to use, such Political Subdivision Confidential Information.

D. Incident Notice and Remediation

If Contractor becomes aware of any Incident, it shall notify the Principal Representative immediately and cooperate with the Political Subdivision 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 Governing Body at no additional cost to the Political Subdivision. The Governing Body 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 Principal Representative, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse the Political Subdivision for the actual costs thereof.

E. 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.

F. 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.

ARTICLE 8 CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the Political Subdivision, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

B. Apparent Conflicts of Interest

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the Political Subdivision's interests. Absent the Governing Body's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

C. Disclosure to the Political Subdivision

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the Principal Representative a disclosure statement setting forth the relevant details for the Political Subdivision's consideration. Failure to promptly submit a disclosure statement or to follow the Principal Representative's direction in regard to the actual or apparent conflict constitutes a breach of this Contract.

ARTICLE 9 INSURANCE

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Workers' Compensation

Workers' compensation insurance as required by State statute and any other requirements of the Political Subdivision, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
$1,000,000 each occurrence;
$1,000,000 general aggregate;
$1,000,000 products and completed operations aggregate; and
$50,000 any 1 fire.

C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

D. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:
$1,000,000 each occurrence; and
$1,000,000 general aggregate.

E. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:
$1,000,000 each occurrence; and
$1,000,000 general aggregate.

F. Additional Insured

The Political Subdivision shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.

G. Primacy of Coverage

Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the Political Subdivision.

H. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the Principal Representative in accordance with **Article 13** within 7 days of Contractor's receipt of such notice.

I. Subrogation Waiver

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the Political Subdivision, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

J. Public Entities

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, **§24-10-101, et seq., C.R.S.** (the GIA), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintains at all times during the terms of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

K. Certificates

Contractor shall provide to the Principal Representative, for the records of the Political Subdivision, certificates evidencing Contractor's insurance coverage required in this Contract within 7 Business Days following the Effective Date. Contractor shall provide to the Principal Representative, for the records of the Political Subdivision, certificates evidencing Subcontractor insurance coverage required under this Contract within 7 Business Days following the Effective Date; except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the Principal Representative certificates showing Subcontractor insurance coverage required under this Contract within 7 Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the Principal Representative certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the Principal Representative, Contractor shall, within 7 Business Days following the request by the Principal Representative, supply to the Principal Representative evidence satisfactory to the Principal Representative of compliance with the provisions of this **Article 9**.

ARTICLE 10. 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 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, shall also constitute a breach.

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 **§13**. 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 **§11**. Notwithstanding anything to the contrary herein, the Governing Body, 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.

ARTICLE 11. REMEDIES

If Contractor is in breach under any provision of this Contract, the Political Subdivision shall have all of the remedies listed in this **Article 11** in addition to all other remedies set forth in other sections of this Contract following the notice and cure period set forth in **Article 10(B**). The Political Subdivision may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

The Political Subdivision may terminate this entire Contract or any part of this Contract. Exercise by the Political Subdivision of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Contract to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the Principal Representative all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the Governing Body, Contractor shall assign to the Political Subdivision all of Contractor's right, title, and interest under such terminated orders or subcontracts; provided that Contractor's obligations with respect to Contractor's Intellectual Property are set forth in **Article 14** below. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the Political Subdivision has an interest. All materials

owned by the Political Subdivision in the possession of Contractor shall be immediately returned to the Political Subdivision. All Work Product, at the option of the Political Subdivision, shall be delivered by Contractor to the Principal Representative and shall become the Political Subdivision's personal property.

ii. Payments

The Political Subdivision shall reimburse Contractor only for accepted performance up to the date of termination. If, after termination by the Political Subdivision, it is determined that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Contract had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the Political Subdivision, Contractor shall remain liable to the Political Subdivision for any damages sustained by the Political Subdivision by virtue of any breach under this Contract by Contractor and the Political Subdivision may withhold any payment to Contractor for the purpose of mitigating the Political Subdivision's damages, until such time as the exact amount of damages due to the Political Subdivision from Contractor is determined. The Principal Representative may withhold any amount that may be due Contractor as the Governing Body deems necessary to protect the Political Subdivision against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. Contractor shall be liable for excess costs incurred by the Political Subdivision in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination for Insufficient Cost Savings

The Contractor is entering into this Contract for the purpose of carrying out an Investment Grade Audit and Energy Performance Contract Project Proposal. The Contractor may terminate this Contract in accordance with **Article 4(A)(iii)** prior or subsequent to the completion of the Investment Grade Audit. The Contractor shall notify the Governing Body in writing that Contractor is unable to guarantee savings which exceeds the costs associated with performing the audit, installing the improvements, and related maintenance and monitoring services as required and set forth in **§29-12.5-101, C.R.S., et seq**. Exercise by the Contractor of this Early Termination for Insufficient Cost Savings, shall not be deemed a breach of the Contractor's obligations hereunder.

i. Method and Content

The Contractor shall notify Governing Body of such termination in accordance with **Article 13**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

ii. Obligations and Rights

Upon receipt of a termination notice, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the Political Subdivision has an interest. All materials owned by the Political Subdivision in the possession of Contractor shall be immediately returned to the Political Subdivision.

iii. Payments

In this event this Contract shall be terminated and the Political Subdivision shall not be liable to pay Contractor, in whole or part, the amount specified in **Article 4(A)**.

C. Remedies Not Involving Termination

The Governing Body, at its sole discretion, 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 Principal Representative of 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 Principal Representative's directive 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 due 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 Principal Representative of the Governing Body of 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 Governing Body'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 to the Political Subdivision the amounts paid by the Political Subdivision for any such infringing Goods, Services or products.

D. Contractor's Remedies
If the Political Subdivision is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in **Article10.B** and the dispute resolution process in **Article12**, shall have all remedies available at law and equity.

ARTICLE 12 DISPUTE RESOLUTION

A. Initial Resolution
Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract representatives shall be referred in writing to Matthew Birnie, County Manager, designated by the Political Subdivision and a senior manager designated by Contractor for resolution.

B. Resolution of Controversies
If the initial resolution described in **Article12.A** fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the Political Subdivision to the County Manager.

ARTICLE 13 NOTICES and REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered **(i)** by hand with receipt required, **(ii)** by certified or registered mail to such Party's principal representative at the address set forth below or **(iii)** as an email with read receipt requested to the principal representative at the email address or **(iv)** by overnight courier to the address set forth below, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this **Article13** without a formal

amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

A. Political Subdivision Designee:

John Cattles
Facilities & Sustainability
200 E Virginia
Gunnison CO 81230
Jcattles@gunnisoncounty.org

B. Contractor:

Rowena Adams – Account Executive
Performance Infrastructure – Colorado
10289 W Centennial Rd
Littleton, CO 80127
Rowena.patawaran@jci.com

ARTICLE 14 RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Except for Contractor's Intellectual Property, any 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 personal property of the Political Subdivision and all Work Product shall be delivered to the Principal Representative, for the records of the Political Subdivision, by Contractor upon completion or termination hereof. The Political Subdivision's nonexclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer and prepare derivative works.

ARTICLE 15 GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Political Subdivision and its departments, institutions, agencies, boards, officials, and employees, including the members of the Governing Body and the Principal Representative, is controlled and limited by the provisions of the Governmental Immunity Act **§24-10-101,C.R.S.,*et seq.,*** and [INSERT applicable the risk management statutes, code or policies pertaining to or adopted by the Political Subdivision].

ARTICLE 16 GENERAL PROVISIONS

A. Assignment

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the Governing Body. 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 Governing Body shall be subject to the provisions of this Contract.

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 Political Subdivision 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 17(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. 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. Captions and References

The captions and headings in this Contract 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.

F. 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.

G. 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.

H. Jurisdiction and Venue

All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado.

I. Modification

Except as otherwise provided in this Contract, any modification 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 laws and the fiscal rules and policies of the Political Subdivision. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies promulgated by the Political Subdivision.

J. 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.

K. Order of Precedence

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

i. Political Subdivision General Provisions in the main body of this Contract,
ii. The provisions of the other sections of the main body of this Contract,
iii. IGA Exhibit A - Scope of Work,
iv. IGA Exhibit B - Location of Audit and
v. IGA Exhibit C - Cost and Pricing Elements.

L. Severability

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 the intent of the Contract.

M. 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.

N. 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.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in Article 17**,** 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.

P. 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.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Contract and the performance measures and standards required if any, are subject to public release through CORA.

R. 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.

S. Licenses, Permits, and Other Authorizations.

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and 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.

T. Indemnification

i. General Indemnification

Contractor shall indemnify, save, and hold harmless the Political Subdivision, 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.

ii. Confidential Information Indemnification

Disclosure or use of Political Subdivision Confidential Information by Contractor in violation of **Article 7** may be cause for legal action by third parties against Contractor, the Political Subdivision, 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 Political Subdivision in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of **Article 7**.

iii. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

ARTICLE 17 COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1)

A. APPROVAL

Approval of this agreement will be by the governing body or its designee.

B. FUNDS AVAILABILITY

Financial obligations of the Political Subdivision payable after the current Fiscal Year are contingent upon funds for that purpose being budgeted, appropriated and encumbered for the purposes of this Contract as given in **§24-30-202(5.5), C.R.S.**

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 Political Subdivision. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the Political Subdivision and the Political Subdivision 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 Political Subdivision 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 Principal Representative, and **(iii)** be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

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

F. 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.

G. BINDING ARBITRATION PROHIBITED.

The Political Subdivision 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.

H. SOFTWARE PIRACY PROHIBITION Political Subdivision 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 Political Subdivision determines that Contractor is in violation of this provision, the Political Subdivision 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.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST

The signatories aver that to their knowledge, no employee of the Political Subdivision 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.

J. VENDOR OFFSET

The Political Subdivision's Controller may withhold payment for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges;**(iii)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the Political Subdivision as a result of final agency determination or judicial action.

K. PUBLIC CONTRACTS FOR 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 to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the Principal Representative 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 Principal Representative, 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 Political Subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS

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.

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ARTICLE 18. SIGNATURE PAGE

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** _____ **By: Matthew Birnie, County Manager** **Date: _____**

IGA EXHIBIT A – SCOPE OF WORK

IGA EXHIBIT B – LOCATION OF ENERGY AUDIT

IGA EXHIBIT C - COST AND PRICING ELEMENTS

IGA Exhibit A
Scope of Work

SECTION 1. Energy Performance Contract Definitions and Terms

SECTION 2. Pre-Audit Conference

SECTION 3. Data Collection and Building/Equipment Schedules

SECTION 4. Establish Baseline Period Consumption

SECTION 5. Preliminary Analysis and Discussion of Utility Cost-Savings Measures and FIMs and other ESCO Services

SECTION 6. Detailed Analysis of Utility Cost-Savings Measures and FIMs and other ESCO Services

SECTION 7. Draft Investment Grade Audit Report

SECTION 8. Post Draft Investment Grade Audit Report Conference

SECTION 9. Final Investment Grade Audit Report and Energy Performance Contract Project Proposal

Purpose of the Investment Grade Audit and this Scope of Work Exhibit

The purpose of the Investment Grade Audit (IGA) is to review the Political Subdivision's facilities and infrastructure with the intent to present an IGA audit report and an Energy Performance Contract (EPC) Project Proposal. The Scope of Work exhibit is a general outline of the process from the initial Pre-Audit Conference to an accepted IGA report and an EPC Project Proposal. The Scope of Work outlines the information collected, how it is analyzed, the methodology used for calculations, an initial but not exclusive list of Utility Cost-Savings Measures and FIMs to consider, a proposed financing performance, and a format for the report. The EPC Project Proposal should include proposed equipment (or equal) to be installed, proposed facility modifications, expected utility savings, expected project costs, proposed project design and construction schedule, a measurement and verification plan, and long-term Energy Service Company (ESCO) and Political Subdivision maintenance requirements.

The ESCO shall conduct all necessary conference(s) and produce associated documentation to initiate and complete Work under the IGA Contract. The ESCO will facilitate all reviews and collect all the comments starting with the Pre-Audit Conference (reference this **Section 2**) through the Post-Audit Conference (reference **Section 8**). The ESCO will develop the draft and final Investment Grade Audit report and develop the Energy Performance Contract Project Proposal.

If the Political Subdivision (Municipality, County, School District, or Special District) and the ESCO (with CEO review) determine that any of the following services detailed below are not required for a given project, the Scope of Work can be modified by the Political Subdivision by striking through the identified services.

SECTION 1. Energy Performance Contract Definitions and Terms

The following terms are used in the Investment Grade Audit and Project Proposal Contract. The Energy Performance Contract 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. 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.

G. 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.

H. Energy

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

I. Energy Conservation Measure (ECM)

"Energy Conservation Measure" or "ECM" means an Energy Saving Measure or Utility Cost-Savings Measure as defined in **§29-12.5-101(4) and §29-12.5-101(9), C.R.S.**, respectively**.** 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.

J. Energy Cost-Savings Contract

"Energy Cost-Savings Contract" means a Utility Cost-Savings Contract or a Vehicle Fleet Operational and Fuel Cost-Savings Contract as defined in **§29-12.5-101(2.5), C.R.S.**

K. 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.

L. Energy Performance Contract

"Energy Performance Contract" ("EPC") as defined in **§29-12.5-101(3), C.R.S.,** 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;
ii. Provides that the amount of actual savings for each year during the Contract Term shall exceed annual contract payments, including maintenance costs, to be made during such year by the Political Subdivision contracting for the Energy Cost-Savings Measures;
iii. Requires the party entering into the Energy Performance Contract with the Political Subdivision to provide a written guarantee that the sum of Energy Cost-Savings and Operation and Maintenance Cost

Savings for each year during the first three years of the Contract period shall not be less than the calculated savings for that year;

iv. Requires a minimum of one-tenth of payments by the Political Subdivision to be made within the first two years. Requires remaining payments by the Political Subdivision to be made within 12 years after the date of the execution of the contract, except that the maximum term of the payments shall be less than the Cost-Weighted Average Service Life of energy cost-savings equipment for which the contract is made, not to exceed 25 years.

M. 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.

N. 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.

O. 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.

P. 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.

Q. Guarantee Period

"Guarantee Period" means a period of time commencing upon M&V Commencement Date and terminating on the termination of the M&V Term. The Guarantee Period is a mutually agreed to time period after the M&V Commencement Date, during which Guaranteed Annual Cost Savings resulting from the Project are measured and verified by the ESCO set forth in **EPC Schedule D**.

R. International Performance Measurement and Verification Protocol

"International Performance Measurement and Verification Protocol" or "IPMVP" means the current document prepared by the Efficiency Valuation Organization on the Effective Date of the IGA contract. It is the industry standard for current best practice techniques available for verifying results of energy efficiency, water efficiency, and renewable energy projects associated with the Investment Grade Audit Report and Energy Performance Contract Project Proposal (**reference Section 7**).

S. kW

"kW" is Kilowatt (abbreviation)

T. kWh

"kWh" is Kilowatt-hour (abbreviation)

U. Measurement and Verification

"Measurement and Verification" or "M&V" means the process of using measurements to reliably determine and verify the actual savings created within buildings, infrastructure, or systems resulting from an energy management program. Savings cannot be directly measured, since they represent the absence of energy

use. Instead, savings are determined by comparing measured use before and after implementation of a project, making appropriate adjustments for changes in conditions. M&V follows the standards and definitions in the current International Performance Measurement and Verification Protocol ("IPMVP"), as may be amended by the Efficiency Valuation Organization on the Effective Date of this contract. The CEO Measurement and Verification Policy may allow alternative verification standards as appropriate for select Utility Cost-Savings Measures or FIMs.

V. M&V Commencement Date

"M&V Commencement Date" means the first day of the month following the completion by ESCO and acceptance by the Governing Body of the Political Subdivision of the Project.

W. M&V Fee

"M&V Fee" means an annual fee paid to ESCO by the Political Subdivision for ESCO's satisfactory performance of the M&V Services, as set forth in **EPC contract Article 13**. The M&V Fee is included as a part of the EPC Maximum Contract Price.

X. M&V Plan

"M&V Plan" defines how savings will be calculated and specifies any ongoing activities that will occur during the Contract Term. The details of the M&V Plan are in **EPC Contract Schedule D**.

Y. M&V Services

"M&V Services" means Services or activities relating to the measurement and verification by ESCO of the efficiency and effectiveness of the Project, pursuant to this Contract and the CEO Measurement and Verification Policy as applied.

Z. M&V Term

"M&V Term" has the meaning as described to it in **EPC Contract Article 13**.

AA. MMBtu

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

BB. O&M

"O&M" means Operations and Maintenance (abbreviation).

CC. Operations and Maintenance Cost Savings

"Operation and Maintenance Cost Savings" as defined in **§29-12.5-101 (4.5), C.R.S.**, 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.

DD. Rebate

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

EE. Repair or Replace

"Repair or Replace" means to repair or replace equipment or components as necessary based upon the age, usage, O&M cost, potential efficiency improvement, etc.

FF. Savings Calculations

"Savings Calculations" means the manner in which Savings is calculated, as set forth in **EPC contract Schedule C**.

GG. Simple Payback

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

HH. 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.

II. 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.

JJ. Utility Cost Savings

"Utility Cost Savings" means the definition set forth in **§29-12.5-101(7), C.R.S.,** 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.

KK. Utility Cost-Savings Contract

"Utility Cost-Savings Contract" means an Energy Performance Contract or any other agreement in which Utility Cost Savings are used to pay for services or equipment set forth in **§29-12.5-101(8), C.R.S**.

LL. Utility Cost-Savings Measure

"Utility Cost-Savings Measure" means the definition set forth in **§29-12.5-101(9), C.R.S.,** 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, multiglazed 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, as set forth in **§29-12.5-103(3), C.R.S.**

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.

MM. Vehicle Fleet Operational and Fuel Cost Savings

"Vehicle Fleet Operational and Fuel Cost Savings" means 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.

NN. Vehicle Fleet Operational and Fuel Cost-Savings Contract

"Vehicle Fleet Operational and Fuel Cost-Savings Contract" means the definition set forth in **§29-12.5-101(11), C.R.S.,** means an Energy Performance Contract 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.

OO. Vehicle Fleet Operational and Fuel Cost-Savings Measure

"Vehicle Fleet Operational and Fuel Cost-Savings Measure" is defined in **§29-12.5-101(12), C.R.S.,** 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 performance contract.

SECTION 2. Pre-Audit Conference

The Pre-Audit Conference is the initial meeting including the Political Subdivision's key staff, the Colorado Energy Office (CEO) representative, and all critical ESCO staff to present and discuss the Investment Grade Audit (IGA) approach, its activities, individual and mutual responsibilities, and proposed schedule.

ESCO shall prepare an agenda and conference record to include, but not be limited to, the following agenda outline and topics:

A. Introductions/Roles

i. Roles of key representatives
ii. Preferred means of communication and protocols
iii. Contact Information

B. Objectives and Goals

i. Political Subdivision's interests, goals, objectives and priorities (Owner/Political Subdivision project requirements)
ii. Level of management, facility, and staff support
iii. Discussion by ESCO of their approach to the project
iv. Review of CEO program support documents, process, forms (CEO IGA/EPC Review Matrix, Record of Review, M&V Policy, other items)

C. Technical Expectations

i. General discussion on EPC scope, buildings and potential Utility Cost-Savings Measures or FIMS to be considered
ii. Discussion of any Federal, State, Local, or Political Subdivision environmental, occupancy, construction specifications, performance or other reporting or certification requirements
iii. Long-term plans at the facilities including additional capacity, demolition, new construction
iv. Operations and maintenance, training and educational needs and expectations
v. Commissioning (Cx) and Retro-Commissioning (RCx) priorities for EPC scope and the existing facilities
vi. Deferred maintenance project priorities of the facilities
vii. Code Compliance: State and local jurisdiction building code requirements, as applicable
viii. Hazardous materials and other considerations/issues
ix. Other studies, reports information available

D. Project Financial Parameters

i. Simple payback, contract term, utility escalation rates, inflation rate, capital and other financial contributions, and other investment parameters
ii. Potential cost of Political Subdivision's Maintenance Responsibilities (as indicated in an **EPC Schedule**) or any other long-term Operation and Maintenance (O&M) services as applicable, and the Political Subdivision's desire or ability to support these costs
iii. M&V savings verification options and extent

iv. Rebates and other financial incentives

E. Investment Grade Audit Process and Schedule

i. Logistics and access; testing/metering to be accomplished
ii. Security and access requirements to restricted areas, escorts, tool control, etc.
iii. Safety requirements, training, hazards

F. Schedule/timeline with significant milestones

i. Action Items & Next Steps
ii. Recap of action items including directives from the Political Subdivision
iii. Set next meeting or conference call time.

SECTION 3. Data Collection and Building/Equipment Schedules

ESCO shall coordinate collection of Political Subdivision-provided facility data and additional information with the goal of developing the existing conditions, operating schedules and utility usage/cost to determine the Political Subdivision's accepted baselines. The Political Subdivision shall provide the necessary and available information referenced in this **Section 3** or as required for ESCO to perform Work under the IGA Contract, concerning facility operation and energy use.

A. Building Data (by Building/infrastructure as listed in IGA Exhibit B):

i. Construction date(s) of buildings and major additions including building envelope.
ii. Infrastructure information as necessary (tunnels, steam lines, chiller water lines, water treatment plants, etc.).
iii. Inventory and description of the existing facilities and their major mechanical, electrical, water systems and any other systems as necessary (itemized by energy source, equipment type, capacity, services years, and condition.
iv. Building operation/occupancy schedules, equipment operation schedules (including weekly and seasonal use schedules, unoccupied buildings and areas).
v. Drawings of mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, infrastructure, modifications and remodels, etc., as available.
vi. Original construction submittals and factory data such as equipment specifications, pump curves, etc., as available.
vii. Operating engineer logs, maintenance work orders, etc., as available.
viii. Records of maintenance expenditures on energy-using equipment, including service contracts.
ix. Prior energy audits or studies.

B. Utility Data:

Political Subdivision shall provide, at a minimum, one year of actual historical utility invoices, and provide access to utility service providers for historical energy and water use (by energy source provider and master, sub-metered areas), for the designated three years (last three years or selected number of years by mutual agreement, as available.

C. Energy Management:

i. Description of energy management program
ii. Description of any building automation systems and other control systems/procedures
iii. Description of any energy or water-related improvement projects, completed or in progress
iv. Description of any changes in the facility or energy-using or water-using equipment

D. Capital Construction Projects:

i. Description of existing capital construction projects
ii. Description of future plans regarding building modifications, renovations, repairs, decommissioning, or equipment modifications, replacements

E. Interviews:

ESCO shall coordinate and conduct, in conjunction with the Political Subdivision, the interviews. The Political Subdivision shall make available individuals with knowledge of the facility such as the facility or plant manager, maintenance staff, and occupants of each building regarding:

i. Facility operation, including energy management systems and procedures
ii. Equipment maintenance problems including deferred and un-scheduled maintenance
iii. Occupant comfort problems and standards of comfort requirements

iv. Equipment reliability including frequency of unscheduled or emergency maintenance and potential loss-of-use of facility, building, or portions thereof
v. Projected equipment needs including upgrade, replacement, and/or repairs
vi. Occupancy and weekly use schedules for the facility and specific equipment
vii. Facility improvements – past, planned and desired

F. Systems Survey:
Political Subdivision shall provide site-knowledgeable escorts and facility access to ESCO who shall identify major utility-impacting components, which may include, but is not limited to, lighting, both indoor and outdoor; heating and heat distribution systems, cooling systems and related equipment, central plants, automatic temperature control systems and equipment, air distribution systems and equipment, outdoor ventilation systems and equipment; exhaust systems and equipment; hot water generation and distribution systems, electric motors, transmission and drive systems, special systems such as kitchen/dining equipment, laundry equipment, renewable energy systems, other energy using systems, water consuming systems, such as restroom fixtures, water treatment plant, wastewater treatment plant, water features and irrigation systems; and building envelope.

SECTION 4. Establish Baseline Period Consumption

Establish appropriate baseline period consumption by evaluation of appropriate utility meter data, and utility bills (reference **Section 3**) for electricity, natural gas, propane, steam, water, and any other applicable utilities. Compile baseline period consumption in terms of:

A. Utility provider accounts:
Prepare summary of all utility bills for all fuel types and water. Develop description and itemization of current accounts, billing rates, schedules, riders, and related terms or agreements that affect consumption and energy costs. Consult with Political Subdivision to account for any anomalous schedule or operating conditions on billings that could skew the Baseline. ESCO shall account for periods of time when equipment was broken or malfunctioning in calculating the Baseline Period, provided this information is available from the Political Subdivision's representative.

i. Energy and Water Units: Units of energy in kWh, kW, ccf, "Therms", thousand gallons, or other units used in bills. List appropriate, supplier-verified conversion factors and convert natural gas, methane, fuel oil, biomass, and propane to MMBtu; show electricity in both kW and kWh and the MMBtu equivalent. Units of water (kgal).
ii. Energy and Water Units per building square foot per year
iii. Energy Cost (in dollars) per building square foot per year

B. Describe the process used to determine the baseline period and baseline energy
C. Describe the process to reconcile the proposed utility baseline information with the actual consumption

SECTION 5. Preliminary Analysis and Discussion of Utility Cost-Savings Measures and FIMs and other ESCO Services

ESCO shall prepare and present a preliminary analysis of all Utility Cost-Savings Measures or FIMs considered, initial construction cost estimates and schedule, initial utility and other savings, initial measurement and verification plan, initial training, initial operation and maintenance cost impacts, and other items as requested (mutual agreement between Political Subdivision and ESCO) to determine prioritization of measures for the draft EPC Project Proposal. A draft financial package should be reviewed that includes potential interest rates and potential financing terms, grants, rebates, Political Subdivision capital contributions (one-time or annually), and other potential project funding sources.

A. Preliminary Utility Cost-Savings Measures and FIMs List

i. Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, other infrastructure systems (steam, chilled water, compressed air, etc), and water saving devices

ii. Consider services that modify existing equipment/systems/procedures through programs including, but not limited to: commissioning, deep retrofits, ENERGY STAR rating, an existing buildings registration/certification program, or another verification or certification program

iii. Include services to complete applications/forms for compliance with State statute or policies, for compliance with applicable executive orders, or any other Political Subdivision reporting requirements (if requested by Political Subdivision)

B. Review the Project Financial Parameters

At this stage in the development of the Investment Grade Audit, the project financial parameters need review and updates prior to refining the list of Utility Cost-Savings Measures and FIMs for further analysis. To keep the project on schedule and control the number of re-analyses of the project's financial performance, it is to the benefit of the project that the financial parameters be refined. To sufficiently change the project financial parameters after the detailed analysis is presented by the ESCO could add sufficient time to the delivery of an acceptable report.

i. Discuss the capability of Political Subdivision to make capital contributions to the project to improve the Project's Financial Performance. Capital contribution could be from a one-time addition of appropriated funds

ii. Discuss an acceptable range on the financial term and interest rate

iii. Discuss an acceptable escalation rate for each utility for each year. Reference the CEO/OSA Escalation Policy

iv. Discuss an acceptance of any operation or maintenance savings. Discuss how these would be determined, escalated, and the maximum number of years allowed

v. List any known utility rebates, grants, or other financial incentives that affect cost of installation or final maximum project cost

C. Preliminary Measurement and Verification Plan Discussion

The goal of measurement and verification is to reduce the risk to Political Subdivisions by providing a mechanism to evaluate the performance of a project throughout the term of the contract. The challenge of M&V is to balance M&V costs with the value of increased certainty in the cost savings from the conservation measure. At the heart of a performance contract is a guarantee of a specified level of cost savings and performance. One of the primary purposes of M&V is to reduce the risk of non-performance to an acceptable level, which is a subjective judgment based on the Political Subdivision's priorities and preferences.

i. ESCO should provide a presentation on measurement and verification. The presentation should cover important project risks, assess their potential impacts, and clarify the party responsible for managing the risk. The presentation should discuss the CEO Measurement and Verification Policy. The presentation should cover the four IPMVP M&V options and their advantages and disadvantages.

ii. For each potential Utility Cost-Savings Measure or FIM, the ESCO shall present the initial M&V options. The ESCO shall provide sufficient information to understand the risk, cost, and responsibilities for each M&V option.

iii. ESCO shall record for the final M&V plan and post construction M&V discussion, the Political Subdivision's and ESCO's M&V initial responsibilities.

D. Develop a list of recommended measures for further analysis.

Describe how the projected project economics meet the Political Subdivision's Project Financial Goals for completing the final Investment Grade Audit report and the Energy Performance Contract Project Proposal. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an energy performance contract. The Political Subdivision shall at its discretion have the option to reject any presented calculation of savings; potential savings allowed or project recommendations.

SECTION 6. Detailed Analysis of Utility Cost-Savings Measures and FIMs and other ESCO Services

ESCO shall conduct detailed analysis of recommended measures for further analysis, including construction cost and schedule, utility and other savings, code compliance estimate and permit costs (reference section 2, C, vii), measurement and verification plan, training, operation and maintenance cost impacts, and other items as requested (mutual agreement between Political Subdivision and ESCO) to complete the final Investment Grade Audit report and the negotiated Energy Performance Contract Project Proposal. A financial package should be prepared that

includes potential interest rates and financing terms, grants, rebates, Political Subdivision capital contributions (one time or annual), and other potential project funding sources. The ESCO may need to work with the Colorado Department of the Treasury to verify financial options.

ESCO shall evaluate facility and equipment schedules and baseline utility use and costs relative to Work and EPC Project Proposed associated with this IGA Contract including, but not limited to:

A. Weekly Use and Operational Schedule:
ESCO to perform "late-night," weekend trend monitoring devices, and field surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules "impacting measures for further analysis."

B. Evaluate actual operation schedules, conditions for the facilities, equipment and buildings (hours, temperatures, air flows, humidity, etc.):

i. Estimate loads as necessary and applicable. Equipment loads can change over time. Changes in load can show up as increases or decreases in "savings," depending on the M&V Services. Clarify whether equipment loads are to be measured or stipulated and what the impact will be if they change.
ii. Where loading or usage is highly uncertain (including variable loads such as cooling), ESCO will use its best judgment, spot measurements or short-term monitoring. ESCO should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

C. Description of Utility Cost-Savings Measures and FIMs:
Provide a technical description for each Utility Cost-Savings Measure and FIM. Consider the following parameters for each system, component, and associated conservation measure:

i. Comfort and maintenance problems
ii. Energy or water source, use, loads, proper sizing, efficiencies and hours of operation
iii. Current existing systems, controls, and operating condition
iv. Remaining service life
v. Feasibility of system replacement
vi. Hazardous materials and other environmental concerns
vii. Political Subdivision's future plans for equipment replacement or building renovations
viii. Facility operation and maintenance procedures that could be affected
ix. Procedure to measure and verify savings (M&V) (necessary M&V equipment including meters, sub-meters, data-loggers, and control system monitoring/reporting capabilities)

D. Cost Estimate Analysis:
ESCO shall identify and perform next-level analysis on measures which appear potentially cost-effective. The analysis shall include itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs and estimates of vehicle fleet operational and fuel cost measures, as set forth in **§29-12.5-102(2), C.R.S**. The analysis may consider the following sources of data for design and construction cost, potential operation and maintenance costs or other categories as identified by ESCO or Political Subdivision:

i. Political Subdivision's representative list of acceptable/preferred manufacturers or vendors
ii. Political Subdivision's construction specifications, requirements, standards
iii. ESCO's Subcontractor material and labor cost estimates
iv. ESCO's Subcontractor professional design firm's cost estimates
v. ESCO's pricing information from historical projects
vi. ESCO's product specification information
vii. ESCO's or Political Subdivision's pricing information for hazardous/environmental work

E. Cost Savings Analysis:
For each potentially cost-effective measure, prepare an estimate of utility cost savings, operation and maintenance cost savings and vehicle fleet operational and fuel cost savings**.** Analysis shall include the description of analysis methodology and supporting calculations and assumptions used to estimate savings. Include itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs, all costs of vehicle operational and fuel cost savings measures, and debt service as required under **§29-12.5-102(2), C.R.S.**

i. Follow the methodology of the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) or other nationally-recognized authorities following the engineering principle(s) identified for each retrofit option

ii. Utilize assumptions, projections and the baseline period energy consumption and/or the mutually agreed-upon adjusted baseline energy, whichever best represents the value of future energy or operational savings
iii. Include accurate energy unit costs at the time the analysis is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility, and calculations which account for the interactive effects of the recommended measures
iv. Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use
v. Develop a preliminary measurement and verification plan for each measure

F. Finalize Project Financial Parameters

i. Discuss the willingness and capability of Political Subdivision to make capital contributions to the project to improve the Project's Financial Performance. Capital contribution could be from a one-time addition of funds, monetized value of capital cost avoidance from equipment replacement, or any other Political Subdivision acceptable contribution.
ii. Discuss an acceptable financial term and interest rate or a range on term and interest rate.
iii. Discuss an acceptable escalation rate for each utility for each year. The escalation rates may be different each year. Reference the CEO/OSA Escalation Policy.
iv. Discuss an acceptance of any operation or maintenance savings. Discuss how these would be determined, escalated, and the maximum number of years allowed.
v. List any known utility rebates, grants, or other financial incentives that effect cost of insulation or final maximum project cost.

SECTION 7. Draft Investment Grade Audit Report

ESCO shall prepare a draft IGA Report. The Draft and Final IGA Report shall follow this outline format including, but not limited to:

A. Executive Summary:

i. Project Background and Introduction
ii. Political Subdivision's Project Requirements (accepted changes to original)
iii. Summary of Recommended Facility Improvement Measures
iv. Summary of Total Savings (energy, (units and cost by utility) water, maintenance or other Political Subdivision approved items)
v. Summary of Project Financials including initial total project cost, potential interest rates (from recent projects or current industry rates), capital contributions (projected or identified), and financing term (per Political Subdivision's requirements). Total project cost is the maximum, not-to-exceed amount Political Subdivision shall pay for the project and ESCO's services.
vi. Conclusions and Recommendations

B. Facility and Building Data:

For each facility identified in Exhibit B, the ESCO shall provide a brief building description, including the use, square footage, hours of operation and lighting, mechanical and water systems and building envelope/construction;

C. Baseline Period Utility Consumption:

Compile and provide a concise and well organized analysis and written report of the data gathered and necessary to provide baseline utility consumption pursuant to the baseline period consumption **Section 4** of this **Exhibit A** which may include, but not limited to:

i. Description and itemization of current billing rates, including schedules and riders
ii. Summary of all utility bills for all energy types
iii. Identification and definition of baseline energy and period and description of how established
iv. Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc.) with base year (include discussion of any unusual findings)

D. Utility Cost-Savings Measures and FIMs:

IGA Exhibit A
Scope of Work

Update, compile, and provide comprehensive analysis of recommended Utility Cost-Savings Measures and FIMs for consideration, review and comments by the Political Subdivision which include, but are not limited to the following**:**

Conservation Measure List – Prepare a summary, in table format, of recommended Utility Cost-Savings Measures and FIMs as referenced in **Section 6** of this **Exhibit A**. The summary shall include an itemization for each measure of total design and construction cost, annual operation and maintenance costs, the first year savings (cost avoidance), (in dollars and appropriate utility units), Simple Payback and major equipment service life. The summary shall further include tabulated utility consumption savings per system, building, or facility separated out by contributing Utility Cost-Savings Measure or FIM. For each recommended energy and utility saving conservation measures, provide a summary of the following:

a. **Existing Conditions** Describe existing conditions, systems, etc. to be affected by the proposed utility conservation measures, and the specific benefits of each to modify each condition, including but not limited to, energy, water or resource conservation, capital improvement, deferred maintenance, long-term performance and reduction of operating costs, etc.

b. **Project Scope of Work:** Description of improvements, equipment, etc. to be installed and how it shall function

c. **O&M Procedures:** Include discussion of facility operations and maintenance procedures that shall be affected by installation or implementation

d. **Implementation Plan:** Present a conceptual plan for the proposed EPC project indicating design and construction timeframes for the Utility Cost-Savings Measure or FIM. Indicate any potential installation time constraints or critical start/completion dates

e. **Utility Savings Calculations**:

   a) **Base -Year Consumption:** base year utility use and cost

   b) **End-Use Consumption Estimate:** Post-retrofit utility use and cost

   c) **Annual Savings Estimates:** The Utility Cost Savings and Operation and Maintenance Cost Savings shall be determined for each year during the contract period. Savings shall be achieved by the implementation of such measures on an annual basis. Savings shall be limited to savings allowed by the State Statute or Governing Body of the Political Subdivision

   d) **O&M Savings:** Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment. Operation and Maintenance Cost Savings if considered in the EPC Project Proposal will require Political Subdivision approval and signature on the Record of Reviews

   e) Methodology for Savings Estimates:

      1. Savings estimates including the methodology used in analysis, supporting calculations and assumptions used. Analysis and methodology shall also include description and calculations for any proposed rate changes. Analysis shall further include an explanation of how savings between retrofit options are accounted for in calculations

      2. If computer simulation is used, include a short description and indicate key input data. If requested by Political Subdivision, access shall be provided to the program and all assumptions and inputs used. Printouts shall also be provided of all input files and important output files and included in the Investment Grade Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts

      3. If manual calculations are employed, formulas, assumptions and key data shall be stated

f. Conclusions and Analysis: Provide other observations, caveats, etc.

E. M&V Plan:

Summary of the Measurement and Verification Plan. Cost of the M&V services per year through the financing term.

F. Cost Estimate Analysis:

Summary and update of cost assessment initiated under **Section 6.D** of this **Exhibit A**.

G. Cost Savings Analysis:

Summary and update of analysis initiated under **Section 6.E** of this **Exhibit A**, including calculation of cost savings expected if all recommended measures are implemented and total percentage savings of total facility utility cost.

G. Excluded Measures:
List all Utility Cost-Savings Measures or FIMs considered but not recommended with a short paragraph on why it was not included.

H. Political Subdivision Review, Comments, and Prioritization:
Summary of documentation or conference records of Political Subdivision priorities, stipulations, and designated compliance with statute, requirements and policies.

I. Draft Investment Grade Audit Report:
Pursuant to **Section 9** of this **Exhibit A** the Draft IGA Report shall be prepared in the format of the final IGA Report (as required in the IGA Contract and **Section 7** of this **Exhibit A**). The ESCO shall comply with the following items:

i. Draft IGA Report shall be submitted in a format acceptable to the Political Subdivision labeled to include the project title "Investment Grade Audit report and Energy Performance Contract Project Proposal," the Political Subdivision facility name, name of the ESCO, and date of issuance or revision. Provide additional sets of these documents as requested or required by the Project Representative.
ii. Contents shall be formatted and tabbed in the exact form and alphanumeric sequence of the outline of **Section 7.A. – Section 7.H** of this **Exhibit A**, with additional outlined formats for other referenced sections of this **Exhibit A**. Content elements not otherwise referenced or required in this **Exhibit A**, if provided, shall appear at the end of the IGA Report under its own tab(s) or in separate document(s).
iii. Contents contained in the IGA Report shall be complete. ESCOs are encouraged to respond in a concise manner. The use of charts and spreadsheets to summarize certain information is especially encouraged; said information may be accompanied by an explanatory narrative.
iv. An electronic version of the draft IGA Report and any additional provided or requested information shall be submitted with the written report.

SECTION 8. Post Draft Investment Grade Audit Report Conference

A. The ESCO shall prepare an agenda consistent with the format of the Pre-Audit Conference in **Section 2** of this **Exhibit A**, including any modifications as a result of the Pre-Audit Conference. ESCO shall conduct all necessary conference(s) and produce associated documentation to engage the Political Subdivision to review the recommendations, savings calculations and impact of the measures on the operations of the facility. Describe how the projected project economics meet the Political Subdivision's terms for completing the IGA Report. Revise audit as directed by Political Subdivision.

B. Political Subdivision Review and Comments

i. ESCO shall provide all services and deliverables to include, but not be limited to, draft, project proposal(s), supplemental documents and ESCO's responses, etc. necessary to support written acceptance by Political Subdivision.
ii. The Political Subdivision and CEO shall perform concurrent reviews and all comments are shared by all parties, including CEO third party reviews.
iii. The Political Subdivision and CEO may submit written comments at any time during the IGA Contract and the ESCO shall provide supplemental responses.

C. Finalize Political Subdivision Financial Targets: Capital contribution, maximum financial term and interest rate, utility escalation rates, and operation and maintenance information.

D. Responses to Political Subdivision Comments – Revise IGA Report as directed by Political Subdivision which shall be included in the final Energy Performance Contract Proposal.

SECTION 9. Final Investment Grade Audit Report and Energy Performance Contract Project Proposal

A. Present Final IGA Report. ESCO to complete and deliver final documents defined in this **Section 7** to Political Subdivision for approval.

B. EPC Project Proposal. Pending approval of the Final IGA Report, and the execution of the Notice of Acceptance, prepare an Energy Performance Contract using CEO's Energy Performance Contract documents, subject to IGA Contract terms and provisions, and subject to negotiation and agreement

between the Parties pursuant to applicable Federal and State regulatory requirements and the CEO Standards for Success. ESCO shall prepare the applicable schedules to be incorporated in an Energy Performance Contract that includes the following:

i. Total Project Cost Proposal: the maximum, not-to-exceed amount Political Subdivision shall pay for the project and ESCO's services. Costs shall be consistent with mutually agreed on markups and fees established in IGA **Exhibit C**.
ii. Cost Estimate: Include all information required under Cost Savings Analysis in **Section 6** above**,** as well as a detailed scope of the construction work suitable for cost estimating. Include all anticipated costs associated with installation, implementation, and categories outlined in **IGA Exhibit C**. Provide preliminary specifications for major mechanical components as well as detailed lighting and water fixture counts. The following shall also be included:
    a. Engineering/design costs
    b. ESCO/vendor estimates for labor, materials, and equipment; include special provisions, overtime, and all other appropriate items, as needed to accomplish the work with minimum disruption to the operations of the facilities
    c. Code compliance estimate and permit costs (reference section 2, C, vii)
    d. Costs (disposal, avoided emissions, handling of hazardous materials, and any other related costs) as relates to handling and disposal of hazardous lighting materials, but not as relates to remediation or abatement work
iii. Base-Year Consumption: Disclose baseline basis for cost savings. Summary of annual utility use by type and costs of existing or base year condition.
iv. Cost Savings Calculations: Calculation of cost savings expected if all recommended utility conservation measures are implemented and total percentage savings of total facility utility cost.
v. End-Use Consumption Estimate: Outline the proposed utility use reduction and end use consumption for the system or facility.
vi. Contract Term: Years of the Energy Performance Contract.
vii. Utility Rate Escalation Factor: Escalation or decline based on historical trends, utility provider rate forecasts, and economic forces of supply and demand (global, national, local or regional), natural resource availability, technology, utility capital investment, and environmental requirements. (Consistent with CEO/OSA Utility Escalation Policy).
viii. Financial Terms: Description of how the project may be financed, including available indicative interest rates and potential financing terms, based on interest rates likely available to Political Subdivision at this time and based on interest rate lock options available. Analysis of annual cash flow for Political Subdivision during the contract term.
ix. Weather Adjustments: If applicable, proposed modification to how the savings shall be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors.
x. Measurement and Verification: Proposal consistent with the CEO Measurement and Verification Policy at time this contract is made:
xi. Commissioning Plan: Preliminary Commissioning plan
xii. Operations and Maintenance Plan
xiii. Implementation Plan and Schedule
    The ESCO shall propose a milestone schedule with activity durations of all Energy Performance Contract phases, including, but not limited to, ESCO services, commissioning, M&V activities, etc. to include written acceptance by the Political Subdivision, as follows:
    a. The ESCOs shall submit an implementation plan for all Utility Savings and Cost Savings measures with a narrative describing design-build and bidding strategies and recommended delivery options;
    b. Training, operation and maintenance activities, interim and milestone responsibilities for maintenance, etc.

END OF EXHIBIT A – SCOPE OF WORK

Supplement to IGA Exhibit A – Scope of Work – Project Criteria

CRITERIA
The following project Criteria is added for clarity associated with the geo-exchange system development.

Payment Success Criteria

In addition to the provisions of Article 4 of this IGA, the Political Subdivision will have no obligation to pay Contractor if:

a. The project fails to meet the Success Criteria described below;

Success Criteria

1. The goal of the project will be to design and implement for the Political Subdivision a Geo-Exchange project at the BlackStock building to offset electrical and natural gas usage at their respective meter, however, at a minimum Johnson Controls will provide;

    a. Building envelope improvements including a geo-exchange (ground source heat pump) system that will offset at least **10%** of the current total electric and natural gas use of the Blackstock building.

IGA Exhibit B –
Phase 2
Location of Audit

Buildings and Infrastructure Included in Scope of Work
(Update the tables as necessary for the IGA contract.
Update the tables for the IGA audit report and the
Energy Performance Contract Project Proposal)

Political Subdivision Name: Gunnison County

The following tables list~~s~~ the buildings included in the Investment Grade Audit (IGA) Scope of Work. Add additional rows as necessary to list all buildings and non-typical facilities. Since building names may change over time, a unique agency building shall be included.

EXHIBIT B, TABLE 1 - BASE COST TABLE

Building Name & Address	Building Type	Building Age	Building Gross Square Feet-GSF	Bldg. Audit $/SF	Bldg. Total Audit $
Blackstock Building		1922, reno 2000	26,200	0.30	Phase 1
BASE COST TOTAL					**Phase 1**

Indicate the cost for Non-Typical facilities (buildings or infrastructure) where the GSF audit fee may not be appropriate, e.g., water treatment plants, wastewater treatment plants, warehouses, arenas, street lighting and others. (Consult with CEO for appropriateness of fees).

EXHIBIT B, TABLE 2 - NON-TYPICAL FACILITY COST TABLE

Building or Infrastructure	Facility Type	Facility Age	Facility GSF (or other applicable measurement)	Unit cost for audit (if applicable)	Facility Total Audit Cost $
Ground source	Blackstock	1922			$22,000
Heat Pumps					
Final Development					
And Engineering					
NON-TYPICAL FACILITY COST TOTAL					**$22,000**

TOTAL COST OF IGA: **$22,000**

IGA Exhibit C – Phase2
COST AND PRICING ELEMENTS

COST AND PRICING

The cost of the IGA is calculated from the Base Cost plus the cost for any Non-Typical Facilities. The Base Cost is established by the Colorado Energy Performance Contracting Program for participating ESCOs and is determined by the sum of the cost associated with each building's total square footage and location. The Non-Typical Facilities cost for infrastructure and other non-building projects is negotiated prior to signing the IGA contract. The Pricing for the Project Percentages and Annual Cost are calculated based upon the specific project scope of Work and the information each ESCO submitted in the proposal/renewal provided to the Colorado Energy Office (CEO). The calculated cost is equal to or less than the ESCO's maximum established percentages submitted to CEO.

IGA Costs (base cost plus non-typical facilities cost)

The proposal includes the initial list of buildings with their square footage and the distance from the CEO office.

The Base cost of the IGA is determined by the CEO-established table similar to the table below. All ESCOs shall use the CEO-developed IGA costs in their proposal.

Standard IGA Pricing Table				
Tiered Pricing ($/sq ft)		Total Facility Square Footage		
		Under 250K	250 – 500K	500K +
Distance from CEO at 1580 Logan St., Denver	Under 75 miles	$ 0.250	$ 0.225	$ 0.200
	75 – 150 miles	$ 0.275	$ 0.250	$ 0.225
	Over 150 miles	$ 0.300	$ 0.275	$ 0.250

Political Subdivisions with Non-Typical Facilities (e.g. waste water treatment, irrigation systems, pools, street lighting, etc.) should incorporate information about these types of facilities and infrastructure in their proposal. The additional costs for performing the IGA on these Non-Typical Facilities shall be negotiated with the selected ESCO as part of finalizing the IGA contract. The final, negotiated cost of the IGA is indicated on an updated IGA Exhibit B.

The Base Cost (from Exhibit B, Table 1) is	$0
The Non-Typical Facility Cost (from Exhibit B, Table 2) is	$22,000
Total Investment Grade Audit Cost is	$22,000

Project Percentages

Percentages of the total project for each line item shall be calculated and should not exceed what is stated for the duration of the project. Use only the categories shown. Supplying ranges for the percentages is acceptable.

	Project Costing Categories	IGA Contract Maximum % of Total Project Cost	Actual Final IGA Calculated % of Total Project Cost	Actual Final IGA Cost	Sub-Totals	Totals	Notes
1	Investment Grade Audit (IGA)						
2	Total Facility Area	225,000					Unique for each project
3	$ / Sq Ft	$ 0.30					See Standard IGA Pricing Table tab.
4	Investment Grade Audit Total Cost				$ -		G4 = F2*F3
5							
6	Implementation Costs						
7	Pre-Construction Costs*						
8	Design and Other Engineering	10.00%	0.00%				% in column E is calculated from estimated project amount
9	Pre-Construction Services	4.00%	0.00%				% in column E is calculated from estimated project amount
10	Other Pre-Construction Costs	2.00%	0.00%				% in column E is calculated from estimated project amount
11	Pre-Construction Cost Subtotal		0.00%		$ -		G11 = sum (F8:F10)
12	Construction Costs*						
13	Trade Subcontracts		0.00%				% in column E is calculated from estimated project amount
14	Design/Build Subcontracts		0.00%				% in column E is calculated from estimated project amount
15	Direct Purchase Equipment		0.00%				% in column E is calculated from estimated project amount
16	Construction Management	10.00%	0.00%				% in column E is calculated from estimated project amount
17	Project Engineering	5.00%	0.00%				% in column E is calculated from estimated project amount
18	General Conditions	8.00%	0.00%				% in column E is calculated from estimated project amount
19	Construction Completion	6.00%	0.00%				% in column E is calculated from estimated project amount
20	Other Construction Costs	6.00%	0.00%				% in column E is calculated from estimated project amount
21	Construction Cost Subtotal		0.00%		$ -		G21 = SUM(F13:F20)
22	Implementation Costs Subtotal*					$ -	H22 = SUM(G11+G21)
23							
24	Profit*	22.00%				$ -	Value in column H is calculated from estimated project amount
25							
26	Estimated Project Amount*					$ -	H26 = SUM(H22 + H24)
27							
28	Contingency*	5.00%				$ -	Value in column H is calculated from estimated project amount
29							
30	Total Funded Amount*					$ -	H30 = SUM(G4+H26+H28)

Note the following:

- The submitted percentages are **max** % submitted to the CEO, and may remain the same or are subject to change to lower % as the project scope develops.
- The profit in the above table includes overhead and profit.

Annual Costs

Use only the categories shown. Proper cost determination and expected length of service should be noted for all services.

Category of Annual Cost	Total Annual Cost	How Price is Determined	Years Applied (One-time, Annual, etc.)
Warranty	TBD	See Below	One time but extensions can be offered
Measurement and Verification	TBD	See Below	Annual required for 3 years per State statute, but may be extended up to the term of the project
Other:	TBD	See Below	Variable

Note the following:

Warranty period is subject to project scope, and is typically not an annual cost. Typical warranties for equipment are manufacturer warranties including but not limited to labor and equipment.

Measurement and Verification (M&V) is based on project scope and determination of Option A, B, C, or D through IPMVP for M&V for each measure. Johnson Controls will provide an M&V workshop that outlines all improvements, their corresponding M&V approach, and cost

Planned Service Agreements may be developed and offered per County desire as part of the project for equipment and controls support.