

ENERGY PERFORMANCE CONTRACT (EPC)

This Energy Performance Contract (the "Contract") is made and entered into as of this day of **<Date>**, between **<Name of ESCO>** ("ESCO"), and **<Governmental Unit Name>** ("Customer"), for the purpose of installing certain energy and other operating cost saving equipment, described in Schedule G, and providing other services designed to save energy or other operating costs for the Customer's property and buildings (the "premises").

RECITALS

WHEREAS, the Customer owns and operates the premises, and is in need of energy saving equipment and services designed to save costs at the premises;

WHEREAS, the ESCO has made an assessment of the energy consumption characteristics of the premises and existing equipment described in Schedule F, which the Customer has approved;

WHEREAS, the Customer desires to retain the ESCO to purchase, install and service certain equipment of the type or class described in Schedule G and to provide other services for the purpose of achieving cost reductions within the premises, as more fully set forth herein; and

WHEREAS, the Customer is authorized under the Constitution and the laws of the State of Kansas to enter into this Contract for the purposes set forth herein.

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

1. Energy Management Plan

- 1.1. Plan Details. The ESCO has completed an Investment Grade Audit (IGA) of the Customer's premises, and the Certificate of Acceptance-IGA has been signed by the Customer and the ESCO.
- 1.2. Attachments, Schedules, Exhibits and Appendices. The EPC Terms and Conditions are incorporated here as Attachment A of this Contract. The ESCO has prepared and the Customer has approved and accepted the Schedules as set forth below, and which are attached to and made parts of this Contract.

Attachments

Attachment A Contract Terms and Conditions

Schedules

Savings Guarantee

Schedule A Savings Guarantee

Schedule B Baseline Energy Consumption; Methodology to Adjust Baseline

Schedule C Savings Measurement and Verification (M&V) Plan

Payments and Schedules

Schedule D Final Project Cost and Project Cash Flow Analysis

Schedule E Compensation to ESCO

Design, Construction and Post-Construction Phases

Schedule F Description of Premises; Pre-Existing Equipment Inventory

Schedule G Equipment to be Installed by ESCO

Schedule H Construction and Installation Schedule

Schedule I System Start-Up and Commissioning; Operating Parameters of Installed Equipment

Schedule J	Standards of Comfort
Schedule K	ESCO's Training Responsibilities
Schedule L	ESCO and Customer Maintenance Responsibilities; Facility Maintenance Checklist
Schedule M	FCIP Payback and Fee Calculator
Schedule N	Detailed Pollution Credit Calculations - Optional

Exhibits

Exhibit I	Performance Bond
Exhibit II	Labor and Material Payment Bond
Exhibit III	Certificate of Acceptance – Investment Grade Audit
Exhibit IV	Certificate of Acceptance – Installed Equipment
Exhibit V	Certificate of Acceptance – Project Completion
Exhibit VI	Equipment Warranties

Appendices

Appendix A	ESCO Maximum Construction Markups
Appendix B	Investment Grade Audit Report and Supplement

- 1.3. Other Documents. This Contract incorporates any special provisions set forth in Section 35. It incorporates by references RFP #0006113 and the ESCO's response to the RFP. All architectural and engineering work shall comply with the Manual of Policies and Procedures of the Kansas Department of Administration, Division of Facilities Management, or successor agency/division. The manual being used as of the date of this Contract is incorporated into this Agreement by reference. The provisions of this Contract and the attached Schedules shall govern in the event of any inconsistencies between the Investment Grade Audit and the provisions of this Contract.

2. Savings Guarantee and Payments to ESCOs

- 2.1. Savings Guarantee. The ESCO has calculated the annual level of energy and operations savings to be achieved as a result of the installation and operation of the equipment and provision of services provided for in this Contract as specified in **Schedule A (Savings Guarantee)** and further described the methodology of savings verification in **Schedule C (Savings Measurement and Verification Plan)**.
- 2.2. Annual Review; Savings Shortfall. For a minimum of three years following completion of the project, or longer as negotiated between the Customer and the ESCO or as a result of insufficient savings, the ESCO shall verify annual savings to determine if the ESCO guarantee was satisfied and shall submit a reconciliation report at a mutually agreed-upon time each year. No change to the baseline will be made without approval through the KCC. In the event the energy and cost savings achieved during a year are less than the amount guaranteed by the ESCO in **Schedule A (Savings Guarantee)**, the ESCO shall:
- 2.2.1. Pay the Customer the difference between the guaranteed amount and the actual amount within 30 days of required submittal of the reconciliation report, and
- 2.2.2. Continue to conduct M&V until the guaranteed savings have been met or exceeded for three consecutive years. Any additional M&V that extends beyond the time period negotiated in the contract (minimum three years) shall be performed at the expense of the ESCO.
- 2.3. ESCO Compensation and Fees. The ESCO's fees and compensation ceilings are set forth in **Schedule E (Compensation to ESCO)**. All pricing shall be transparent, shall incorporate actual (not estimated) equipment and labor costs, and shall be provided to the Customer and the KCC. Compensation shall be reasonable for the scope of work and services performed. In

the event actual pricing cannot be obtained, the ESCO will provide an estimate based on engineering experience, RS Means, or similar methods. Subsequent to the start of the construction phase, if the actual cost is lower than the estimate used in the EPC, the ESCO will compensate the Customer the difference in terms of services or scope of work.

- 2.4. Billing Information Procedure. Payments due to the ESCO shall be calculated each month. The Customer shall cause monthly payments to be made to the ESCO for the value, proportionate to the amount of the allowable costs, of all work completed or materials delivered during the preceding calendar month. Ten percent (10%) of the cost of the above amount will be retained and paid upon satisfactory completion of the energy conservation measures. Pay requests shall be prepared and submitted using standard American Institute of Architects (AIA) documents.
- 2.5. Payment. The Customer shall pay the ESCO within thirty days of receipt of the ESCO's undisputed invoice.

3. Fiscal Funding, Non-Appropriation of Funds

Financial obligations of the Customer payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. In the event funds are not appropriated, any resulting contract will become null and void, without penalty to the Customer.

4. Material Changes

- 4.1. Material Changes Defined. A Material Change shall include any change in or to the premises, whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Customer, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)** by at least *<number>* % after adjustments for climatic variations. Actions by the Customer which may result in a Material Change include but are not limited to the following:
- 4.1.1. Manner of use of the premises by the Customer
 - 4.1.2. Hours of operation for the premises or for any equipment or energy-using systems operating at the premises
 - 4.1.3. Permanent changes in the comfort and service parameters set forth in **Schedule J (Standard of Comfort)**
 - 4.1.4. Occupancy of the premises
 - 4.1.5. Structure of the premises
 - 4.1.6. Types and quantity of equipment used at the premises
 - 4.1.7. Modification, renovation or construction at the premises
 - 4.1.8. The Customer's failure to provide maintenance of or repairs to the equipment in accordance with **Schedule L (ESCO and Customer Maintenance Responsibilities; Facility Maintenance Checklist)**
 - 4.1.9. Any other conditions other than climate affecting energy use at the premises
- 4.2. Reported Material Changes: Notice by Customer. The Customer shall use its best efforts to deliver to the ESCO a written notice describing all actual or proposed Material Changes in the

premises or in the operation of the premises at least thirty (30) calendar days before any actual or proposed Material Changes are implemented or as soon as is practicable after any emergency or unplanned event. The Customer shall use its best efforts to notify the ESCO or its designee(s) within forty-eight (48) hours after the Customer's actual knowledge and occurrence of Material Changes which result because of a *bona fide* emergency or other situation which precludes advanced notification.

- 4.3. Deviations Not Associated With Material Change. In the absence of any Material Changes in the premises or in operations, the baseline energy consumption as set forth in **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)** should not change more than *<number>* % during any month from the projected energy use for that month, after adjustments for changes in climate conditions. If, after climate adjustments, the deviation exceeds *<number>* %, the ESCO shall make a review to determine the cause. The ESCO shall report its findings to the Customer in a timely manner and determine what, if any action should be taken.

5. Energy Usage Records and Data

The ESCO agrees to input utility data continuously into the Energy Star Portfolio Manager or other approved system until the Measurement and Verification period is complete, and to share this data with the Customer and the KCC electronically. Any alternate system must allow the Customer to take over full use without ESCO involvement.

6. Commencement Date and Terms; Interim Period

See **Schedule H (Construction and Installation Schedule)**.

7. Construction Schedule and Equipment Installation; Approval

- 7.1. Schedule. Construction and equipment installation shall proceed in accordance with the construction schedule approved by Customer and attached hereto as **Schedule H (Construction and Installation Schedule)**.
- 7.2. System Start-Up and Equipment Commissioning. The ESCO shall conduct a thorough and systematic performance test of each element and total system of the installed equipment in accordance with the procedures specified in **Schedule I (System Start-Up and Commissioning; Operating Parameters of Installed Equipment)** and prior to acceptance of the project by the Customer. The ESCO shall provide notice to the Customer of the scheduled test(s) and the Customer and/or its designees shall have the right to be present at any or all such tests conducted by the ESCO and/or manufacturers of the equipment. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in systems and equipment operations that may be observed during system commissioning procedures.

8. Upgrading or Altering the Equipment

The ESCO shall at all times have the right, subject to the Customer's prior written approval, which approval shall not be unreasonably withheld, to change the equipment, revise any procedures for the operation of the equipment or implement other energy saving actions in the premises, provided that:

- 8.1. The ESCO complies with the standards of comfort and services set forth in **Schedule J (Standards of Comfort)**;
- 8.2. Such modifications or additions to, or replacement of the equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the energy savings at the premises or have equal or better potential to reduce energy consumption at the premises than the equipment being replaced;

- 8.3. Any additional cost incurred relative to such modifications, additions or replacement of the equipment, or operational changes or new procedures shall be the responsibility of the ESCO;
- 8.4. Any replacement equipment shall be new;
- 8.5. All modifications, additions or replacements of the equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the Customer;
- 8.6. The ESCO shall update any and all software to be used in connection with the equipment in accordance with the provisions of **Section 11.1 (Ownership of Certain Proprietary Property Rights)**; and
- 8.7. All replacements of and alterations or additions to the equipment shall become part of the equipment described in **Schedule G (Equipment to be Installed by ESCO)** and shall be covered by the provisions and terms of **Section 7 (Construction Schedule and Equipment Installation; Approval)**.

9. Performance by ESCO

- 9.1. The ESCO shall perform all tasks/phases under the Contract, including construction, and install the equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in **Schedule J (Standards of Comfort)** and the construction schedule specified in **Schedule H (Construction and Installation Schedule)**. The ESCO shall repair and restore to its original condition any area of damage caused by the ESCO's performance under this Contract. The Customer reserves the right to review the work performed by the ESCO and to direct the ESCO to take certain corrective action if, in the opinion of the Customer, the structural integrity of the premises or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by the ESCO's performance of the work shall be borne by the ESCO.
- 9.2. The ESCO shall remain responsible for the professional and technical accuracy of all services performed, whether by the ESCO or its subcontractors or others on its behalf, throughout the term of this Contract.

10. Standards of Comfort

The ESCO will maintain and operate the equipment in a manner which will provide the standards of heating, cooling, hot water, and lighting as described in **Schedule J (Standards of Comfort)**.

11. Ownership

- 11.1. Ownership of Certain Proprietary Property Rights. The Customer shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the equipment. The ESCO shall grant to the Customer a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Customer to continue to operate, maintain, and repair the equipment in a manner that will yield maximal energy consumption reductions.
- 11.2. Ownership of Existing Equipment. Ownership of the equipment and materials presently existing at the premises at the time of execution of this Contract shall remain the property of the Customer even if it is replaced or its operation made unnecessary by work performed by the ESCO pursuant to this Contract. If applicable, the ESCO shall advise the Customer in

writing of all equipment and materials to be replaced at the premises and the Customer shall within thirty (30) calendar days designate in writing to the ESCO which equipment and materials that should not be disposed of off-site by the ESCO. It is understood and agreed to by both parties that the Customer shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. The ESCO shall be responsible for the disposal of all equipment and materials designated by the Customer as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

- 11.3. New Equipment. All new equipment or materials supplied to the Customer shall become the property of the Customer, to the extent quantity and quality are as agreed upon.

12. Location and Access

The Customer shall provide sufficient space on the premises for the installation and operation of the equipment and shall take reasonable steps to protect such equipment from harm, theft and misuse. The Customer shall provide access to the premises for the ESCO to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by the ESCO and acceptable to the Customer. The ESCO's access to the premises to make necessary emergency repairs or corrections shall not be unreasonably restricted by the Customer.

13. Training by ESCO

The ESCO shall conduct the training program described in **Schedule K (ESCO's Training Responsibilities)** regarding operation of all new equipment.

- 13.1. Training shall include, but not be limited to, any HVAC equipment installed, controls, utilities, lighting, safety, manufacturer's warranties, and operation and maintenance manuals. Such training shall, at minimum, meet the standards established by the equipment manufacturers.
- 13.2. Training activities shall be conducted at locations agreed upon by the Customer and the ESCO, and the locations shall be pertinent to the type of training. The ESCO will provide sign-in sheets and agendas for each training session.
- 13.3. Training specified in **Schedule K** must be completed prior to signing of **Exhibit IV (Certificate of Acceptance – Installed Equipment)**.
- 13.4. The ESCO shall provide additional training when requested by the Customer with respect to updated or altered equipment, including upgraded software.
- 13.5. Training required to be provided prior to the signing of **Exhibit IV**, and training on updated or altered equipment (including upgraded software) shall be provided at no additional charge to the Customer during the term of the project.

14. Customer's Compliance with Facilities Maintenance Checklist

- 14.1. The parties acknowledge and agree that the guaranteed energy savings would not likely be obtained unless certain procedures and methods of operation designed for energy conservation are implemented, and followed by the Customer on a regular and continuous basis.
- 14.2. The Customer agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on **Schedule L (ESCO and Customer Maintenance Responsibilities; Facility Maintenance Checklist)**.

- 14.3. The Customer agrees the ESCO shall have the right once a month, with prior notice, to inspect the premises to determine if the Customer is complying, and shall have complied with its obligations as set forth above in Section 14.2. The checklist in **Schedule L (ESCO and Customer Maintenance Responsibilities; Facility Maintenance Checklist)** as completed and recorded by the ESCO during its monthly inspections, shall be used to measure and record the Customer's compliance. The Customer shall make the premises available to the ESCO for each monthly inspection, and shall have the right to witness each inspection and the information recorded on the checklist, as well as to obtain a copy of the completed checklist.

15. Equipment Service

- 15.1. Actions by ESCO. The ESCO shall provide all service, repairs, and adjustments to the equipment installed under terms of this Contract pursuant to **Schedule L (ESCO and Customer Maintenance Responsibilities; Facility Maintenance Checklist)**. The Customer shall incur no cost for equipment service, repairs, and adjustments, except as set forth in **Schedule E (Compensation to ESCO)** and **Schedule L (ESCO and Customer Maintenance Responsibilities; Facility Maintenance Checklist)**, provided, however, that when the need for maintenance or repairs principally arises due to the negligence or willful misconduct of the Customer or any employee or other agent of the Customer, and the ESCO can so demonstrate such causal connection, the ESCO may charge the Customer for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.
- 15.2. Malfunctions and Emergencies. The Customer shall use its best efforts to notify the ESCO or its designee(s) within forty-eight (48) hours after the Customer's actual knowledge and occurrence of:
- 15.2.1. Any malfunction in the operation of the equipment or any preexisting energy-related equipment that might have a material impact upon the guaranteed energy savings,
- 15.2.2. Any interruption or alteration to the energy supply to the premises, or
- 15.2.3. Any alteration or modification in any energy-related equipment or its operation.

Where the Customer exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration, it shall be deemed not at fault in failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings. The Customer shall notify the ESCO within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the equipment. The ESCO shall respond or cause its designee(s) to respond within twenty-four (24) hours and shall promptly proceed with corrective measures. Any telephonic notice of such conditions by the Customer shall be followed within three (3) business days by written notice to the ESCO from Customer. If the Customer fails to notify the ESCO of a malfunction or emergency within twenty-four (24) hours of the Customer's actual knowledge of any emergency condition affecting the equipment, and the malfunction or emergency is not otherwise corrected or remedied, such conditions will be treated as a Material Change and the applicable provisions of **Section 4 (Material Changes)** shall be applied.

- 15.3. Actions by the Customer. The Customer shall not move, remove, modify, alter, or change in any way the equipment or any part thereof without the prior written approval of the ESCO except as set forth in **Schedule L (ESCO and Customer Maintenance Responsibilities; Facility Maintenance Checklist)**. Notwithstanding the foregoing, the Customer may take reasonable steps to protect the equipment if, due to an emergency, it is not possible or reasonable to notify the ESCO before taking any such actions. In the event of such an emergency, the Customer shall take reasonable steps to protect the equipment from damage

or injury. If applicable, the Customer shall follow instructions for emergency action provided in advance by the ESCO. The Customer agrees to maintain the premises in good repair and to protect and preserve all portions thereof which may in any way affect the operation or maintenance of the equipment.

16. Permits and Approvals; Coordination

- 16.1. Permits and Approvals. The Customer shall use its best efforts to assist the ESCO in obtaining all necessary permits and approvals for installation of the equipment. In no event shall the Customer, however, be responsible for initial payment of any permit fees prior to execution of **Exhibit V (Certificate of Acceptance – Project Completion)**. The equipment and the operation of the equipment by the ESCO shall at all times conform to all federal, state and local code requirements. The ESCO shall furnish the Customer copies of each permit or license which is required to perform the work before the ESCO commences the portion of the work requiring such permit or license.
- 16.2. Coordination During Installation. The Customer and the ESCO shall coordinate the activities of the ESCO's equipment installers with those of the Customer, its employees, and agents. The ESCO shall not commit or permit any act which will interfere with the performance of business activities conducted by the Customer or its employees without prior written approval of the Customer.

17. Equipment Warranties

The ESCO covenants and agrees that all equipment installed as part of this Contract is new, in good and proper working condition and protected by appropriate written warranties covering all parts and equipment performance. The ESCO further agrees to deliver to the Customer for inspection and approval, all such written warranties and which shall be attached and set forth as **Exhibit VI (Equipment Warranties)**; to pursue rights and remedies against manufacturer and supplier of the equipment under the warranties in the event of equipment malfunction or improper or defective function, and defects in parts, workmanship and performance, to notify the Customer whenever defects in equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by the ESCO. The cost of any risk of damage or damage to the equipment and its performance, including damage to property and equipment of the Customer or the premises, due to the ESCO's failure to exercise its warranty rights shall be borne solely by the ESCO.

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

All warranties required hereunder shall be in force for a minimum of one year from the date of **Exhibit IV (Certificate of Acceptance – Installed Equipment)**.

18. Conditions Beyond Control of the Parties

If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of Nature, insurrections or riots, or similar events, this Contract shall at the other party's option:

- 18.1. Remain in effect but said performing party's obligations shall be suspended until the said events shall have ended, or
- 18.2. Be terminated upon ten (10) calendar days notice to the performing party, in which event neither party shall have any further liability to the other.

19. Events of Default

- 19.1. Events of Default by the Customer. Each of the following events or conditions shall constitute an "Event of Default" by the Customer:
- 19.1.1. Any failure by the Customer to pay the ESCO any sum due for a service and maintenance period of more than thirty (30) calendar days after written notification by the ESCO that the Customer is delinquent in making payment and provided that the ESCO is not in default in its performance under the terms of this Contract.
 - 19.1.2. Any other material failure by the Customer to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) calendar days after notice to the Customer demanding that such failures to perform be cured or if such cure cannot be effected in thirty (30) calendar days, the Customer shall be deemed to have cured default upon the commencement of a cure within thirty (30) calendar days and diligent subsequent completion thereof.
 - 19.1.3. Any representation or warranty furnished by the Customer in this Contract which was false or misleading in any material respect when made.
- 19.2. Events of Default by the ESCO. Each of the following events or conditions shall constitute an "Event of Default" by the ESCO:
- 19.2.1. The standards of comfort and service set forth in **Schedule J (Standards of Comfort)** are not provided due to failure of the ESCO to properly design, install, maintain, repair or adjust the equipment except that such failure, if corrected or cured within thirty (30) calendar days after written notice by the Customer to the ESCO demanding that such failure be cured, shall be deemed cured for purposes of this Contract.
 - 19.2.2. Any representation or warranty furnished by the ESCO in this Contract is false or misleading in any material respect when made.
 - 19.2.3. Failure to furnish and install the equipment and make it ready for use within the time specified by this Contract as set forth in **Schedule G (Equipment to be Installed by ESCO)** and **Schedule H (Construction and Installation Schedule)**.
 - 19.2.4. Provided that the operation of the facility is not adversely affected and provided that the standards of comfort in **Schedule J (Standards of Comfort)** are maintained, any failure by the ESCO to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within thirty (30) calendar days after written notice by the Customer to the ESCO demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract.
 - 19.2.5. Any lien or encumbrance upon the equipment by any subcontractor, laborer or material man of the ESCO.
 - 19.2.6. The filing of a bankruptcy petition whether by the ESCO or its creditors against the ESCO which proceeding shall not have been dismissed within thirty (30) calendar days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of the ESCO.
 - 19.2.7. Any change in ownership or control of the ESCO without the prior approval of the Customer, which shall not be unreasonably withheld.

- 19.2.8. Failure by the ESCO to pay any amount due the Customer or perform any obligation under the terms of this Contract or the Energy Savings Guarantee as set forth in **Schedule A (Savings Guarantee)**.

20. Remedies Upon Default

- 20.1. Remedies upon Default by the Customer. All disputes shall be submitted to the Customer's management for resolution. If resolution is not obtained, the ESCO may appeal to the KCC to assist with resolution or to arrange mediation or arbitration.
- 20.2. Remedies Upon Default by the ESCO. In the event of default by the ESCO, the Customer shall exercise any and all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred.

21. Assignment

The ESCO acknowledges that the Customer is induced to enter into this Contract by, among other things, the professional qualifications of the ESCO. The ESCO agrees that neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the Customer.

- 21.1. Assignment by the ESCO. The ESCO may, with prior written approval of the Customer, which consent shall not be unreasonably withheld, delegate its duties and performance under this Contract, and/or utilize contractors, provided that any assignee(s), delegate(s), or contractor(s) shall fully comply with the terms of this Contract. Notwithstanding the provisions of this paragraph, the ESCO shall remain jointly and severally liable with its assignee(s), or transferee(s) to the Customer for all of its obligations under this Contract.
- 21.2. Assignment by the Customer. The Customer may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the premises or an interest therein.

22. Disputes

Disputes that cannot be resolved by negotiation between the Customer and the ESCO may be submitted to the KCC to establish processes for mediation or arbitration.

23. Representations and Warranties

Each party warrants and represents to the other that:

- 23.1. It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder.
- 23.2. Its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation.
- 23.3. Its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected.

23.4. It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

24. Additional Representations of the Parties

The Customer hereby warrants, represents and promises that it has provided or shall provide timely to the ESCO, all records relating to energy usage and energy-related maintenance of premises requested by the ESCO and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be, true and accurate in all material respects.

The ESCO hereby warrants, represents and promises that:

24.1. Before commencing performance of this Contract:

24.1.1. It shall have become licensed or is otherwise permitted to do business in the State of Kansas

24.1.2. It shall have provided proof and documentation of required insurance pursuant to **Section 3 of Attachment A (Contract Terms and Conditions)**.

24.2. It shall make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into.

24.3. It shall use qualified subcontractors and delegates, licensed and bonded in this state to perform any work subcontracted or delegated pursuant to the terms hereof.

24.4. It is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the work and perform its obligations under this Contract.

25. Waiver of Liens

All property of the State or any agency of the State is exempt from attachment and levy, K.S.A. 60-723(d). A public works bond pursuant to K.S.A. 60-1111 shall be required.

26. Compliance with Law and Standard Practices

The ESCO shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of the Customer relative to the premises. The ESCO shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder.

27. Independent Capacity of the Contractor

The parties hereto agree that the ESCO, and any agents and employees of the ESCO, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the Customer.

28. No Waiver

The failure of the ESCO or the Customer to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's

right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of the ESCO or the Customer.

29. Severability

In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable or unconscionable.

30. Complete Contract

This Contract, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Contract shall constitute the entire Contract between both parties and this Contract may not be amended, modified, or terminated except by a written Contract signed by the parties hereto, and with the approval of the KCC.

30.1. Amendments to Project Scope. Section 8 of the EPC provides latitude for upgrading or altering equipment under specific circumstances. Proposed changes that are more extensive than addressed in Section 8 must be submitted to the KCC for review as contract amendments and will be subject to the following conditions.

- 30.1.1. An amendment may be used only for changes in scope that include energy savings and a performance guarantee.
- 30.1.2. An amendment must be based on project concepts or elements identified within the original IGA.
- 30.1.3. An amended contract must meet statutory and programmatic payback requirements outlined in Section 5.4 of the IGAA.
- 30.1.4. The proposed amendment submitted for review must contain the following information:
 - 30.1.4.1. An overview of the proposed change, including description, rationale, cost, and a list of any previously-approved ECMs that will be deleted if the amendment is executed;
 - 30.1.4.2. Complete information about proposed new ECMs or sites, consistent with the information previously included in the executed EPC for ECMs and sites, along with the offsetting information for any ECMs or sites being removed;
 - 30.1.4.3. Updated Schedules A – N, highlighting any changes that would result from the proposed amendment.

31. Further Contracts

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

32. Applicable Law

This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of Kansas.

33. Notice

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered in person or delivered or sent by registered or certified mail, return receipt requested, addressed as follows:

TO ESCO: *<ESCO Name, Attention:, Complete address.>
< Include COPY TO: information for ESCO, if applicable.>*

TO CUSTOMER: *<Customer Name, Attention:, Complete address.>
< Include COPY TO: information for CUSTOMER, if applicable. >*

TO KCC: KANSAS CORPORATION COMMISSION, Attention: Energy Division, 1500 SW Arrowhead Rd., Topeka, KS 66604-4027

34. Headings

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

35. Special Provisions - Optional

The signatures of the parties follow the attached Special Provisions, which are included as part of this Contract.

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

ESCO:

_____ By: _____
Date

CUSTOMER:

_____ By: _____
Date

The KCC's approval of this contract is for the Customer to proceed with energy conservation measures, as provided under K.S.A. 75-37,125, within the Facilities Conservation Improvement Program. However, the KCC makes no representations or warranties, express or implied, pertaining to the subject matter contained herein, and shall not be held liable in the event the ESCO or the Customer fail to perform any contractual obligations. Nor shall the KCC be held liable for any tortious conduct performed by either the ESCO or the Customer in furtherance of the contract.

APPROVED, KANSAS CORPORATION COMMISSION

By: _____ Title: _____
Date

EPC ATTACHMENT A: TERMS AND CONDITIONS

General Issues

1. Contractual Provisions Attachments

- 1.1. The Provisions found in Contractual Provisions Attachment (Form DA146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof.
- 1.2. The Customer may incorporate its standard contract provisions as an attachment to this contract. The KCC must approve this attachment.

2. Assignment and Delegation

Except for assignment of antitrust claims, neither party to any resulting contract may assign or delegate any portion of the agreement without the prior written consent of the other party.

3. Insurance

Prior to the commencement of work, the ESCO must provide evidence of insurance for both the construction and operations phases of the project in the amounts specified in this Contract.

The ESCO shall procure, at its own expense, and maintain for the duration of the work, the following insurance coverages; the Customer shall be issued certificates as an additional insured.

- 3.1. Standard Workers' Compensation and Employer Liability as required by state statute, including occupational disease, covering all employees on or off the work site, acting within the course and scope of their employment.
- 3.2. General and/or Personal Injury and/or Professional and/or Automobile Liability -(including bodily injury, personal injury and property damage) with the following minimum coverage, depending on the policy format:
 - 3.2.1 Occurrence basis policy - combined single limit of \$500,000.
 - 3.2.2 Annual Aggregate limit policy - not less than \$1 million plus agreement that ESCO will purchase additional insurance to replenish the limit to \$1,000,000 if claims reduce the annual aggregate below \$500,000.
 - 3.2.3 Claims-Made policy - Combined single limit of \$500,000, plus an endorsement that extends coverage two years beyond the policy expiration date.
- 3.3 The ESCO shall provide such other insurance as may be required by law, or in a specific solicitation.
- 3.4 The Customer shall be named as an additional insured on all liability policies.
- 3.5 The insurance shall include a provision preventing cancellation without 60-calendar days prior written notice to the Customer by certified mail.
- 3.6 The ESCO shall provide the following documentation to the Customer within 7 working days of a request therefore, unless otherwise provided:

3.6.1. Certificates of adequate insurance coverage, each with a reference to the Customer being named as an additional insured, or

3.6.2. Certificates of adequate insurance coverage and endorsement/s of additional insured coverage.

4. Indemnification

To the extent authorized by law, the ESCO shall indemnify, save and hold harmless the Customer, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the ESCO or its employees, agents, subcontractors, or assignees pursuant to the terms of this contract.

5. Venue

The laws of the State of Kansas, U.S.A. shall govern in connection with the formation, performance and the legal enforcement of any resulting contract.

6. Non-Discrimination

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

7. Incurring Costs

The Customer is not liable for any cost incurred by the ESCO prior to issuance of a legally-executed contract, purchase order, or other authorized acquisition document. No property interest, of any nature, shall occur until a contract is awarded and signed by all concerned parties.

8. Documents Provided to KCC

All notices, reports, and other documents provided by the ESCO to the Customer, and by the Customer to the ESCO, must be provided at the same time to the KCC

Construction/ Implementation Phase

9. Transparent Pricing

Transparent pricing will be required, such that the ESCO will fully disclose all costs. The ESCO will maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. The ESCO will afford the Customer access to these records and preserve them for a period of three (3) years after final payment. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices.

10. Meeting Project Schedule

The ESCO is responsible for meeting scheduled deadlines established in **Schedule H (Construction and Installation Schedule)** of the EPC or notifying customer of any schedule changes. In the event any milestone or service provision is not met as scheduled without prior approval from the Customer, the Customer reserves the right to consider it a default and withdraw from all contractual obligations without penalty.

11. Customer Inspection

The Customer must have the right to inspect, test and approve the work conducted in the facilities during construction and operation. The Customer shall have the right and access to the account books, records, and other compilations of data that pertain to the performance of the provisions and requirements of this agreement. Records shall be kept on a generally recognized accounting basis, and calculations will be kept on file in legible form and retained for three years after close-out. The Customer retains the right to have its representative visit the site during the audit and implementation phases of the project, and to attend relevant on-site or off-site meetings of the ESCO and/or its subcontractors.

12. Property of Drawings, Reports and Materials

All drawings, reports and materials prepared by the ESCO specifically in performance of this contract shall become the property of the Customer and will be delivered to the Customer no later than 45 days after completion of construction.

13. Compliance

All work completed under this contract must be in compliance with all applicable federal, state and local laws, rules and regulations such as building codes and appropriate accreditation, certification and licensing standards. Work must be in accordance with sound engineering and safety practices and in compliance with all of the Customer's regulations relative to the premises. The ESCO and its subcontractors will be responsible for obtaining any and all required governmental permits, consents and authorizations, and for payment of any and all state and city required taxes and fees which result from this contract. The Customer and the ESCO will work jointly to ensure necessary permits are issued.

14. Handling of Hazardous Materials

All work completed under this contract must be in compliance with all applicable federal, state and local laws, rules and regulations regarding waste disposal and treatment/disposal of any hazardous materials that could result from this project. Work must also be in accordance with sound engineering and safety practices, and in compliance with all reasonable rules of the Customer relative to the premises. In the event the ESCO encounters any such materials, the ESCO shall immediately notify the project manager and stop work pending further direction from the project manager. The Customer may, in its sole discretion, suspend work on the project pending removal of such materials or terminate this Agreement.

15. Hiring and Wage Requirements

The ESCO will comply with all requirements for the payment of prevailing wages and minority and women-owned business enterprises, if applicable.

16. Subcontractor Approval

The Customer retains the right to approve any ESCO selected subcontractor prior to its commencement of work on this project. Names and qualifications must be submitted at least two weeks in advance.

17. Bonding Requirements

The ESCO will provide to the Customer at contract signing separate performance and labor and material payment (public works) bonds, each in the sum of 100 percent of the cost of the construction work. Copies of these bonds comprise Exhibits I and II of the EPC, respectively.

18. Standards of Comfort

Specific standards of comfort, safety and functionality will not be degraded from the existing condition

without the Customer's approval and will meet minimum established industry standards. The ESCO will be responsible for maintaining the levels of comfort for each building as specified in **Schedule J (Standards of Comfort)**. Persistent failure to maintain the defined climate and lighting conditions will constitute a default.

19. Construction Management

The ESCO will be required to work with current building management and maintenance personnel in order to coordinate construction and provide appropriate training in operations and maintenance of all installed improvements.

20. Equipment Compatibility or Standardization

All equipment installed that is comparable to similar equipment at other sites operated by the Customer shall be of the same manufacturer for standardization of equipment agency-wide and/or for compatibility with existing systems, unless excepted by Customer.

21. As-Built Drawings

Where applicable, the ESCO must provide durable, reproducible record drawings (or such electronic equivalents as may be agreed to with the Customer) from the "as-built drawings" of all existing and modified conditions associated with the project, conforming to typical engineering standards. These should include architectural, mechanical, electrical, structural, and control drawings and operating manuals; such documents will be delivered prior to execution of **Exhibit V (Certificate of Acceptance – Project Completion)**.

22. Professional Architect/Engineer Involvement

A registered architect or professional engineer must review and approve design work done under this contract and be involved throughout the process of auditing, design, construction, and installation. The engineer may be an employee of the ESCO and must be registered in the State of Kansas.

Commissioning/ Monitoring Phase

23. Contract Term

The term shall be equal to the length of the financing period, however no contract shall exceed thirty years in duration and is subject to annual appropriations.

24. Guaranteed Cost Savings

Improvements and services must result in guaranteed minimum cost and energy savings to be achieved each year. The combined annual guaranteed savings for each year must be sufficient to cover all project costs for the year for the duration of the contract term. Annual cost savings beyond the guaranteed minimum savings will be held by the Customer, and will not be allocated to shortfalls in other years.

25. Customer Final Payment

Payments to the ESCO during construction will be made in the manner described in Section 2.4 of the EPC. The final payment must be based on actual measurements comparing post-retrofit improvements to building performance before the installation of any energy systems and service improvements.

26. Pre-Payment Non-Penalty

The contract must permit the Customer to prepay the debt, in part or in whole, without penalty.

27. Preventive Maintenance Schedule

The ESCO shall provide the Customer a single comprehensive schedule of necessary preventive maintenance for all installations for the five (5) years following execution of **Exhibit V (Certificate of Acceptance – Project Completion)**.

28. Maintenance Responsibilities

No equipment or other improvements will be installed that would require the Customer to hire additional personnel unless contract negotiations produce an explicit exemption for a specific installation. Maintenance responsibilities are defined in **Schedule L (ESCO and Customer Maintenance Responsibilities; Facility Maintenance Checklist)**.

29. Follow-up Monitoring and Adjustment Services

Following the installation and implementation of improvements, the ESCO will be responsible for monitoring and adjusting the improvements to ensure optimal performance during the mandatory three-year M&V period, which time period can be extended at the Customer's discretion prior to signing the EPC. All M&V fees must be paid through guaranteed savings.

30. Operation and Maintenance Manuals

At least three (3) maintenance manuals for each site will be provided for all equipment replacements and/or upgrades at each location. Manuals are subject to approval of the Customer.

Schedule A
Savings Guarantee

Fully describe all provisions and conditions of the energy and operations and maintenance (O&M) savings guarantee. The guarantee should be defined in units of energy and costs to be saved after implementation. This schedule highlights the levels of risk assumed by the ESCO and the Customer. Schedule D, Final Project Cost and Project Cash Flow Analysis, includes cost savings over time as affected by agreed-upon levels of escalation in energy and O&M costs.

Electronic tables are provided allowing the information required in this schedule to be reported by building or by ECM. You must use one of the attached formats unless you have received advance approval from the KCC to modify the format, it must be filled out in its entirety, and the table must be submitted electronically in Excel, not as a PDF. KCC reserves the right to modify its format.

NOTE: Stipulated savings are not considered to be guaranteed.

Schedule B
Baseline Energy Consumption; Methodology to Adjust Baseline

The validity and usefulness of the energy savings guarantee is entirely dependent on the establishment of a robust baseline that can be adjusted to account for changes to facilities, rates, and other important variables.

The baseline energy consumption is the “yardstick” by which all savings achieved by the installed project will be measured. At least annually during the Measurement and Verification period, the baseline will be adjusted to account for the prevailing conditions (eg., weather, billing days, occupancy, etc.) during the measurement period.

Baseline Consumption: Present the methodology and all supporting documentation used to calculate the baseline, including unit consumption and current utility rates for each fuel type.

- Provide details of baseline data analysis performed, including analysis using results of measurements, weather normalized regressions, weather data used and source of data
- Define the key system performance factors characterizing the baseline conditions, including factors such as comfort conditions, lighting intensities, temperature set points, etc.

Methodology to Adjust Baseline: All methodologies that will be used to account for any adjustments to the baseline need to be clearly defined.

Schedule C
Savings Measurement and Verification (M&V) Plan;
Annual M&V Reporting Requirements

Plans and reports in this schedule must comply with the most current version of the International Performance Measurement and Verification Protocol (IPMVP).

An M&V plan shall begin on the first day of the month following execution of **Exhibit V, Certificate of Acceptance – Project Completion** (following commissioning), shall continue for a minimum of three years, and may be extended to the length of project financing if desired by the Customer.

Schedule D
Final Project Cost and Project Cash Flow Analysis

Complete and submit the attached electronic spreadsheet in Excel (not PDF) showing the estimated total cost of the project, including financing, and the projected cash flow of the project by year for the number of years for which the project is anticipated to be financed, (not to exceed 30 years). The guaranteed savings amount must equal or exceed the debt service payment in each year. Guaranteed savings must reflect the service life of the equipment; e.g., if the service life of a particular ECM is 15 years but the project is financed for 20 years, utility savings cannot be included for that ECM in years 16 through 20 of the cash flow analysis.

Schedule E Compensation to ESCO

Complete and submit an electronic version of the Excel table below, which details the total project costs for which the ESCO will be compensated.

If included, expense categories for contingencies and allowances must contain an explanation of how the use of those monies will be tracked and documented, and how such information will be provided to the Customer. Upon completion of construction, unused funds in these categories must be returned to the Customer.

ECM number, location, description	Material & Labor Cost	
ECM 1	\$8,000	
ECM 2	\$800	
ECM 3	\$80	
ECM...N	\$10,000	
Total	\$18,880	
ESCO Project Pricing Breakdown	Project Costs	% of Total Project Cost
CONSTRUCTION COSTS	\$37,748	56.13%
Material & Labor	\$18,880	28.07%
System Commissioning & Training (Site-Specific/Hands-On)	\$5,000	7.44%
Construction Management (ESCO On-Site Manager)	\$10,000	14.87%
Project Contingency (% for Unforeseen Conditions)	2.50% \$472	0.70%
Abatement/Repair Allowance	\$0	0.00%
Payment & Performance Bonds	\$3,000	4.46%
PROFESSIONAL SERVICES COSTS	\$17,500	26.02%
Energy & Design Engineering	\$9,000	13.38%
Project Management	\$5,000	7.44%
M&V (Prescriptive End-Use Approach)	\$3,500	5.20%
ESCO FEES	\$12,000	17.84%
Overhead	\$6,000	8.92%
Profit	\$6,000	8.92%
Total Turnkey Installed Cost	\$67,248	100.00%
Investment Grade Audit Fee	\$1,500	

Schedule F
Description of Premises; Pre-Existing Equipment Inventory

This schedule contains basic information about the condition of the project site(s) at the time of contract execution, including facility square footage, building construction, use, occupancy, hours of operation, etc., and any special conditions that may exist.

The inventory is important to include for the purpose of identifying what equipment was in place, and how it was configured at the time of contract execution. This schedule is important to the accurate establishment of baseline saving measurement and may need to be referred to in the later years of the contract.

At minimum, list all existing facility equipment that will be affected or replaced during the project. If possible, list all energy consumption-related building equipment. Identify existing control and monitoring points and zones. Line-by-line listings are not required for large quantities of identical equipment; it is sufficient to note the total numbers for various types of lighting and water fixtures.

Note: Can be organized by building or by system

Schedule G
Equipment to be Installed by ESCO

List all equipment to be installed, and attach specification sheets for each. For any Energy Management Systems (EMS) to be installed, identify all monitoring points, list equipment to be controlled, and explain appearance and function of front end user interface. For any change in or creation of zoning, explain zone boundaries and location of zone controls and monitoring. For large volume identical items such as lighting or water fixture upgrades, it is acceptable to list types of upgrades to be performed and numbers of fixtures that will be upgraded. Any instances where equipment will be provided but not installed by the ESCO must be noted.

Note: This schedule can be structured by ECM, building, or individual equipment as long as the other categories are apparent in the descriptions.

Schedule H
Construction and Installation Schedule

Create a timeline showing all steps/milestones involved in completing the project.

Schedule I
System Start-Up and Commissioning: Operating Parameters of Installed Equipment

Specify the performance testing procedures that will be used for start-up and commissioning of the installed equipment and total system. Define procedures for developing and implementing the commissioning plan, and specify any requirements for the Customer and/or third-party review and approvals, pre-functional inspections, use of manufacturers' start-up procedures, and for executing functional performance tests. Include operating parameters for the operation of the installed equipment such as temperature setbacks, equipment run times, load controlling specifications and other conditions for the operation of the equipment.

Provide a general commissioning schedule, including any seasonal testing, and outline commissioning tracking and reporting requirements, including periodic and final commissioning reports, and any other required submittals. Prescribe any requirements for warranty walk-through or other commissioning follow-up procedures.

Because of the design-build nature of energy performance contracts, explicit details of the commissioning plan will be developed after the equipment is selected. Pre-functional inspections should be completed and certified by the ESCO prior to start-up. In the project acceptance phase, functional performance tests are executed and the procedures are documented, explicitly including how the Customer's project requirements or design intent prescribed for each system were met. Any items that did not pass shall be tracked and presented in a deficiency log. The ESCO will rectify the items and perform a retest in the presence of the Customer or Customer's agent to confirm that the items have been fixed.

In some cases, functional testing must be postponed due to seasonal conditions. In those instances, acceptance of the project is conditional on the success of the scheduled tests. Most equipment will have a one-year warranty provided by the manufacturer. A warranty check-out with the ESCO after 8 – 10 months of operation is recommended to ensure all equipment is operating as expected.

Schedule J
Standards of Comfort

Explicitly describe the standards of comfort to be maintained for heating, cooling, lighting levels, hot water temperatures, humidity levels and/or any special conditions for occupied and unoccupied areas of each building.

A simple chart showing heating/cooling set points for occupancy/vacancy will suffice for temperature, and expected light level listings will suffice for lighting. The level of granularity (e.g., by building or by room/function) is at the discretion of the ESCO, but the KCC will ask for elaboration if the information provided appears too limited.

Schedule K
ESCO's Training Responsibilities

Describe the ESCO's training program or sessions for customer personnel, including the duration and frequency of the specified training. Describe any provisions for on-going training, commitments to train newly hired facility personnel, and training with respect to possible future equipment or software upgrades. Also specify any fees associated with the Customer's request for training beyond what the ESCO is contractually bound to provide (set out in EPC Section 13).

Schedule L
ESCO and Customer Maintenance Responsibilities;
Facility Maintenance Checklist

ESCO Maintenance Responsibilities

All maintenance plans, warranties, and surplus stocks provided by the ESCO must be listed here, grouped by ECM or system.

Include a complete description of the ESCO's specific operations and maintenance responsibilities along with the time intervals for performance of the stated O&M activities. This should include but is not limited to:

- Description of ESCO's operations and maintenance responsibilities
- Performance period for ESCO's performance of these activities
- Period of time for maintenance during or after warranty period
- Payment terms for maintenance: annually and for how much

Customer Maintenance Responsibilities

All maintenance plans, warranties, and replacement stocks that need to be provided and administered by the Customer or an uninvolved vendor must be listed here, grouped by ECM or system.

Include a complete description of the specific operations and maintenance responsibilities assigned to Customer's staff for new equipment installed under the performance contract.

Note: Customer shall provide all maintenance tasks on all pre-existing equipment at all times.

Facility Maintenance Checklist

All maintenance necessary to achieving savings and continued system functionality must be listed here with a schedule for performance, grouped by ECM or system, and assigned to either the ESCO or the Customer. Maintenance that will have a significant effect on savings if not performed should be noted for the benefit of the Customer.

The checklist, if filled out on an ongoing basis and shared, can be a useful tool for both the Customer and the ESCO to verify that required maintenance activities are being performed at the scheduled intervals.

**SCHEDULE M
FCIP Payback and Fee
Calculator**

Enter information in the green cells. An electronic version of this spreadsheet will calculate the remaining (blue) fields. FCIP staff will verify all entries and calculations.

Key	Enter value
	Calculated value

Project Name :

Total Fees and Costs, including those payable to the ESCO, finance company, consultant and interest for the term of the project. DOES NOT include FCIP Fee. =>

Total Guaranteed First Year Cost Savings in Dollars for Energy and O&M =>

Statutory Payback in Years => -

Financing costs* (subtracted to determine basis for FCIP Fee) =>

Basis for FCIP Fee Calculation => \$0.00

<u>FCIP Fee</u>	<u>Table</u>	
0 - 100,000	0.040	-
100,001 - 500,000	0.030	-
500,001 - 1,000,000	0.020	-
1,00,001 - 5,000,000	0.010	-
> 5,000,000	0.005	-

FCIP Fee Invoiced to Customer=> \$0.00

Total EPC Amount Including FCIP Fee => \$0.00

***Financing costs** are defined as any costs incurred by the customer for financing the project, including interest charges that may be paid by the customer to lending/financing parties. The KCC is not involved in making project financing arrangements.

Guaranteed Cost Savings. Improvements and services must result in guaranteed minimum cost savings to be achieved each year. Guaranteed annual savings must be sufficient to cover all annual project costs for the duration of the contract term. Annual cost savings beyond the guaranteed minimum savings will be held by Customer, and will not be allocated to shortfalls in other years.

KSA 75-37,125 (a) (4) "Energy conservation measure" means an energy study, audit, improvement or equipment which is designed to provide energy and operational cost savings at least equivalent to the amount expended by a participating political subdivision or state agency for such energy study, audit, improvement or equipment over a period of not more than 30 years after the date such improvement or equipment is installed or becomes operational, as the case may be."

Schedule N (Optional)
Detailed Pollution Credit Calculations

This schedule may be used to calculate the impact implementing the identified energy conservation measures would have on greenhouse gases. Emission reduction amounts should be based on the guaranteed kWh (electric) and MCF (gas) values identified in Schedule A, which then may be converted using the Environmental Protection Agency's *P2 Greenhouse Gas Calculator* or a similar calculator.

Exhibit I
Performance Bond

1. The ESCO will provide a performance bond in the sum of 100% of the Cost of Work as described in **Schedule G: Equipment to be Installed by ESCO**. The performance bond shall apply to the performance of the work and warranty as defined in **Schedule G: Equipment to be Installed by ESCO**.
2. Any and all bonds obtained by the ESCO for this project shall specifically exclude coverage for those portions of the contract or the work pertaining to design services, efficiency guarantees, and any other parts of this contract and the contract documents that do not relate specifically to construction management and supervision of work for purchasing and installing of equipment, or for work to be accomplished by the Customer.
3. A copy of the required performance bonds shall be provided to the Customer prior to the ESCO commencing any installation work in the Customer's facilities.
4. Upon receipt of performance bonds as required, a copy shall be included in Exhibit I.

Exhibit II
Labor and Material Payment Bond

1. The ESCO will provide a payment bond in the sum of 100% of the cost of work as described in **Schedule G: Equipment to be Installed by ESCO**. The payment bond shall apply to and cover those providing labor, materials, equipment, supplies and services in connection with the performance of the work covered in **Schedule G: Equipment to be Installed by ESCO**.
2. Any and all bonds obtained by the ESCO for this project shall specifically exclude coverage for those portions of the contract or the work pertaining to design services, efficiency guarantees, and any other parts of this contract and the contract documents that do not relate specifically to construction management and supervision of work for purchasing and installing of equipment, or for work to be accomplished by the Customer.
3. A copy of the required labor and material bonds shall be provided to the Customer prior to the ESCO commencing any installation work in the Customer's facilities.
4. Upon receipt of payment bonds as required, a copy shall be included in Exhibit II.

Exhibit III
Certificate of Acceptance – Investment Grade Audit

This is to certify that the ESCO has prepared the complete investment grade audit of the premises including all energy conservation measures agreed upon by the parties and pursuant to the signed Investment Grade Audit Agreement.

Signature below indicates that the investment grade audit has been approved and accepted by the Customer in accordance with the terms and conditions outlined within the Investment Grade Audit Agreement.

ESCO

CUSTOMER

Signed _____

Signed _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

ENERGY OFFICE, KANSAS CORPORATION COMMISSION

Signed _____

Name _____

Title _____

Date _____

**Exhibit IV
Certificate of Acceptance – Installed Equipment**

The Customer and the ESCO agree that the Work described in **Schedule G: Equipment to be Installed by ESCO** has been completed on the date listed below, which shall become the date of Substantial Completion.

The commencement of the equipment warranty will adhere to the dates initialed in the table below (and any addenda table thereto). The Customer acknowledges that the energy conservation measures have been designed to perform according to the operating schedules and set points agreed upon and defined in **Schedule J: Standards of Comfort**. Equipment is of a size, design, capacity and manufacturer as submitted to the Customer by the ESCO (or its authorized agents or representatives), is in good condition, and has been satisfactorily delivered and installed.

Facility	Equipment	Warranty Start Date	Warranty End Date	ESCO Initials	Customer Initials

ESCO
 Signed _____
 Name _____
 Title _____
 Date _____

CUSTOMER
 Signed _____
 Name _____
 Title _____
 Date _____

Exhibit V
Certificate of Acceptance – Project Completion

This is to certify that a final inspection of the project has been conducted jointly by the ESCO and the Customer, and that the parties have determined that the project has been fully completed in accordance with the contract documents. All guarantees and warranties that have not commenced previously shall commence as of the latest date of signature below.

The Customer accepts the project as being fully completed and assumes responsibility for maintenance, custodial care, and utilities for the premises. The ESCO remains responsible to correct errors and omissions discovered subsequent to the execution of this document and to respond to claims made under applicable warranties.

ESCO

CUSTOMER

Signed _____

Signed _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

Exhibit VI Equipment Warranties

The ESCO shall provide, on its own or through its representative or agents, the following warranties:

1. One year full parts and labor warranty for all items installed as part **of Schedule G: Equipment to be Installed by ESCO**. Warranty start and end dates shall be documented in **Exhibit IV: Certificate of Acceptance – Installed Equipment**.
2. Warranties begin at Substantial Completion of an individual energy conservation measure, as documented in **Exhibit IV: Certificate of Acceptance – Installed Equipment**. Substantial Completion is defined as the date on which the Customer begins receiving beneficial use of the equipment.
3. Extended warranties may be provided by equipment manufacturers as detailed in the warranty information. Extended warranty information will be provided upon completion of construction along with operations and maintenance manuals.

All applicable warranty information shall be provided to the Customer, both electronically and in printed form, in an Operations and Maintenance Manual prior to project completion.

Appendix A
ESCO Maximum Construction Markups

The ESCO will attach a copy of its maximum construction markups from the award of RFP #0006113.

Appendix B
Investment Grade Audit Report and Supplement

The ESCO will attach a copy of the Investment Grade Audit Report and Supplement accepted by the Customer prior to commencement of this EPC.