SE-801: SELECTION PLAN FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

AGENCY: _____
PROJECT NUMBER: _____
PROJECT NAME: _____
PROJECT LOCATION: _____
PROCUREMENT OFFICER: _____

I. Description of Project and Services to be Acquired:

Agency will undertake energy, water, and wastewater conservation measures at the following locations:
(insert buildings, facilities, and/or campuses)

Agency will procure services to accomplish the conservation measures through a guaranteed energy, water, and wastewater savings contract (Contract).

Under the Contract, the selected offeror may be asked to provide all or some of the following:

1. Comprehensive energy, water, and wastewater conservation services for all of the above listed facilities, including the: (a) design, selection and installation of energy, water and wastewater efficient equipment and systems; (b) maintenance and servicing of the installed energy, water and wastewater efficiency measures (Conservation Measures); (c) modification of existing equipment, systems, and/or buildings; (d) revised operations or maintenance procedures to reduce energy costs and the associated operating costs to accomplish same; (e) possible securing of financing for the transaction; and, (f) energy, water, and wastewater management training of selected Agency employees.

2. Structure the terms of Agency's payment obligations for equipment and services on a Performance Contracting basis. Under a performance contract: (a) the successful offeror will guarantee that equipment and services will achieve a predicted level of energy, water, wastewater, and operational savings; (b) Agency will realize equipment and services without the requirement of major capital funding; (c) Agency will be able to meet its payment obligations through guaranteed utility and hard operational savings and, (d) 100% of the savings referenced in Item 2(c) above will be the sole property of Agency.

II. ORGANIZATIONAL STRUCTURE

The Agency will be the final approval authority for all actions of the Selection Committee. The Agency can accept or reject the Selection Committee's recommendations, but cannot change the offeror selected.

A. Duties of the Selection Committee:

Members of the selection committee will perform the following activities:

- Develop qualification criteria to be used to make initial selection by Pre-Qualifying offerors
- Solicit qualified offerors and select a minimum of offerors to respond to the Request for Proposals (RFP)
- Develop a RFP for the project
- Review submitted proposals
- Evaluate technical proposals and attend interviews with all shortlisted offerors
- Make a determination as to which offeror is best qualified to be awarded the project
- The Agency Project Manager will be responsible for scheduling all of the meetings and distributing all materials and information
- All communication with the offerors will be through the Agency Project Manager only.

DRAFT

SE-801: SELECTION PLAN FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

B. Selection Committee Members:

The Selection Committee members are:

Name	**Voting or Non-Voting Member**	**Representative of** *(Agency/Employer)*	**Role/Position/Title**
	None-Voting	Office of State Engineer	Committee Chair and OSE Project Manager

All committee members will be required to sign a Conflict of Interest & Confidentiality of Information Certification statement.

III. Description of the Solicitation Process, Methodology, and Techniques:

Agency will use a two-step selection process starting with a Request for Qualifications (RFQ) followed by a RFP.

A. Advertise the RFQ in South Carolina Business Opportunities (SCBO)
1. State the submission requirements
2. State the contract requirements
3. List the evaluation criteria

B. Selection Committee reviews the RFQ submittals and shortlist at least the top qualified offerors using the criteria established in Part IV of this document and Part V of the RFQ.

C. Notify each offerors as to whether they were shortlisted and send RFP to shortlisted offerors.

D. Pre-Proposal Conference for the RFP
1. Agenda
    a. Welcome/ Introduction
    b. General Project Information/scope/intent
    c. Proposed Deadline
    d. Format of Proposal
    e. Procedures for questions and substitutions
    f. Bonds and Insurance
    g. Questions and Discussions
2. Sign-in sheet

E. As a part of the RFP, Agency will provided selected offerors an opportunity to perform an ☐ Investment Grade Audit (IGA) ☐ Preliminary Energy Study ☐ Other (*Please Specify* _____*)*.

F. Selection Committee review of proposals from the shortlisted offerors:

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1. Reference calls:
   a. Agency procurement officer will make reference checks
   b. The procurement office will use a standard questionnaire
   c. The procurement officer will distribute copies of the questionnaire to each committee member for information

2. The procurement officer will conduct a preliminary review of the proposals to determine if any proposal needs clarification. The procurement officer, with OSE approval, may conduct discussions with offerors submitting proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

3. Formal presentations: The Agency may give the selected short list of qualified offerors the opportunity to present orally their proposals to the selection committee.

4. The selection committee members will conduct separate and independent evaluations on the technical proposals.

5. The committee will consolidate and summarize the individual technical evaluations and will analyze the cost proposals to arrive at a consensus on the proposal most advantageous to the State.

G. Negotiations: Selection Committee will recommend the Agency enter into contract negotiations with the highest ranked offeror.

H. After successful negotiation of a contract, submit a request to OSE for concurrence in posting a Notice of Intent to Award a Contract. Include with request:
1. Copy of Contract
2. Copy of selection committee's report and recommendation along with all supporting documentation:
   a. Signed Conflict of Interest Statements
   b. Individual committee member's scores and narratives
   c. Records of all discussions

I. Post Notice of Intent to Award a Contract and mail copy to all offerors including offerors that were not shortlisted.

H. ☐ *(Agency, check box if this clause is applicable to this solicitation)* The Agency will provide offerors that performed an IGA and submitted a proposal in accordance with the RFP but did not receive a contract award partial reimbursement for the costs associated with conduct of the audit, in the form of a stipend in the amount of $, which amount shall be divided equally among the unsuccessful offerors; provided however, reimbursement to any one offeror shall not exceed that offeror's actual costs. Upon payment of the stipend, the audit and proposal shall become the property of the Agency for its sole use. In the event the Agency does not make an award, through no fault of the prospective offeror, the stipend shall be available to all offerors that conducted an Audit and submitted a proposal.

DRAFT

SE-801: SELECTION PLAN FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

IV. EVALUATION CRITERIA FOR THE RFQ

The following is a list criterion Agency will use to evaluate and Rank offerors. The major categories are listed in order of relative importance from most important to least important.

Major Category	Criterion

Organization, Qualifications, and Experience	• Depth of resources/personnel capability with relevant experience (including outside consultants)
	  o Depth of resources with experience and ability, qualified and available for Project Supervisor/Manager roles
	  o Depth of resources with experience and ability, qualified and available for Development Phase services
	  o Depth of resources with experience and ability, qualified and available for Installation Phase services
	  o Depth of resources with experience and ability, qualified and available for Monitoring and Oversight of Operations Phase services
	  o Specific personnel experience with facilities of the type involved in this project
	• Offerors relevant project experience
	  o Offeror's experience with similar projects
	  o Offeror's experience with Development Phase services
	  o Offeror's experience with Installation Phase services
	  o Offeror's experience with Monitoring and Oversight of Operations Phase services
	  o Offeror's experience on State projects
	  o Offeror's litigation record
	• Offeror's range of energy, water, and wastewater management services
	• Offeror's financial condition

Guarantee	• Means of guaranteeing cost savings generated by the conservation measures will equal or exceed the cost of implementation. • Offeror's approach for monitoring, measuring, and verifying savings • Record of savings/honoring guarantee on past projects
Project Approach	• Methodology for conducting energy audit • Means of calculating the initial baseline of energy and water consumption of a facility • Means of monitoring dynamic baseline over life of contract • Standards of service and comfort typically used for system design and means of verifying and recording same
Training	• How offeror will determine training needs of operations and maintenance personnel • How offeror will provide on-site and off-site training • Location of off-site training facilities • Quality of training program
Equipment, Systems, and Materials	• How offeror will incorporate, remove, surplus, etc., existing equipment • How offeror establishes guidelines to identify when new or upgraded equipment will be installed after the implementation period of the contract. • Warranties offeror provides on equipment, systems, and materials • Maintenance and repair services offeror is capable of providing and normally provides.

DRAFT

SE-801: SELECTION PLAN FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

V. Evaluation Factors for the Proposals and Interviews

Major Category	Criterion
Proposed Scope of Work	• Whether conservation measures can be economically justified to achieve the guaranteed savings • How conservation measures will interface with and impact remaining Agency equipment • Means of systems controls proposed by offeror • Extent to which proposed equipment, systems, and materials are proprietary • Offeror's equipment/process commissioning and re-commissioning procedures, methods, and intervals (if any) • Offeror's use of open systems protocols and how any of the proprietary equipment proposed is compatible with the open systems protocols • Offeror's proposal for incorporating, removing, and/or disposing of existing equipment
Project Costs and Savings	• Cost of each conservation measure and total project cost • Guaranteed savings for each conservation measure and total guaranteed savings • Assumptions used to establish guaranteed savings • Project life cycle cash flow • Agency responsibilities to assure guaranteed savings are achieved
Measurement and Verification	• Offeror's proposed means of establishing, monitoring, and adjusting the "energy, water, and wastewater baseline" up to the point of contract execution and over the life of the contract • Offerors proposed plan for monitoring and verifying energy, water, and wastewater usage through the life of the contract
Support Services and Warranties	• Warranties offeror proposes to provide on equipment and systems • Offeror's proposed operation and maintenance training services • Offeror's proposal for keeping proposed conservation measures up-to-date with new technology and upgrades included within scope of proposal • Offeror's proposed spare parts inventory
Implementation Plan	• Offeror's key personnel responsible for implementation and their experience and knowledge • Offeror's key subcontractors and their personnel • Offeror's plan for implementation of the proposed Guaranteed Savings including completion of all project engineering, construction, installation, startup, and commissioning of all conservation measures • Offeror's safety plan • Offeror's proposed schedule and plan for keeping Agency informed of progress • Offeror's requirements of the Agency.

DRAFT

SE-801: SELECTION PLAN FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

VI. APPROXIMATE SCHEDULE OF SIGNIFICANT MILESTON EVENTS

	Task	Days	Start	Finish
1	Submit SCBO Advertisement			
2	Introductory Session for Selection Committee			
3	Evaluate Statement of Qualifications			
4	Issue RFP to top ranked offeror's			
5	Pre-proposal Conference			
6	Receive Statement of Proposals			
7	Review of Proposals By Committee			
8	Presentation to Committee by offerors			
9	Additional Committee Discussion, Report Submitted to Agency Head, Commission, and A1 Form prepared			
10	Select top ranked offeror			
11	Prepare Final Report for Agency Head			
12	Agency Head and/or Commission Approves Committee Selection			
13	Submit and Approve A-1			
14	Notice of Intent to Award and protest period			
15	Issue Final Contract to ESCO			

APPROVED BY AGENCY: _____ DATE: _____
(Signature of Agency Approving Authority)

APPROVED BY OSE: _____ DATE: _____
(Signature of State Engineer)

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SE-810
2011 Edition

REQUEST FOR ADVERTISEMENT FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

PROJECT NAME: _____

PROJECT NUMBER: _____

PROJECT TYPE: Guaranteed Energy, Water, and Wastewater Savings Contract

PROJECT DESCRIPTION: _____

REQUEST FOR QUALIFICATIONS/SOLICITATION DOCUMENTS MAY BE OBTAINED FROM: _____

AGENCY: _____

NAME OF AGENCY PROCUREMENT OFFICER: _____

ADDRESS: Street/PO Box:_____

City: _____

State: _____ ZIP: _____-____

EMAIL: _____

TELEPHONE: _____ **FAX:** _____

STATEMENT OF QUALIFICATIONS CLOSING DATE: _____ **TIME:** _____ **LOCATION:** _____

STATEMENT OF QUALIFICATIONS DELIVERY ADDRESSES:

HAND-DELIVERY:	**MAIL SERVICE:**
Attn: _____	Attn: _____
_____	_____
_____	_____
_____	_____

PRE-CLOSING DATE CONFERENCE? Yes ☐ **No** ☐ **MANDATORY ATTENDANCE? Yes** ☐ **No** ☐

DATE: _____ **TIME:** _____ **PLACE:** _____

APPROVED BY *(Office of State Engineer)*: _____ **DATE:** _____

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SE-820: REQUEST FOR QUALIFICATIONS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

AGENCY: _____
PROJECT NUMBER: _____
PROJECT NAME: _____
PROJECT LOCATION: _____
PROCUREMENT OFFICER: _____
PROCUREMENT OFFICER CONTACT INFORMATION:

ADDRESS: Street/PO Box:_____
City: _____
State: _____ ZIP: _____-____

EMAIL: _____

TELEPHONE: _____ **FAX: _____**

PART 1- GENERAL INFORMATION/INSTRUCTIONS

A. INTRODUCTION

The Agency is seeking an entity to provide guaranteed energy, water, and wastewater conservation services. Interested entities (hereinafter referred to as "Offerors") should submit to the Agency, as set forth herein, Statements of Qualifications (SOQs) demonstrating their capability to successfully provide guaranteed energy, water and wastewater conservation services (hereinafter, "conservation services").

Interested Offerors must provide all information requested in the Request for Qualification's (RFQ) in Part V of this document. Agency has appointed a selection committee that will evaluate the qualifications of each Offeror from most qualified to least qualified based on the information provided in response to this RFQ. The Agency will submit a Request for Proposals to the top ranked Offerors offering an opportunity to perform an ☐ Investment Grade Audit (IGA) ☐ Preliminary Energy Study ☐ Other (*Please Specify _____)*, and make a proposal to provide guaranteed conservation services. The selection committee will evaluate and rank each proposal in accordance with criteria set forth in the RFP and make a recommendation to the Agency that the top ranked Offeror be offered the opportunity to enter into negotiations for a guaranteed energy, water, and wastewater savings performance contract.

☐ *(Agency, check box if this clause is applicable to this solicitation)* The Agency will provide pre-qualified Offerors that perform an IGA and submit a proposal in accordance with the RFP but do not receive a contract award partial reimbursement for the costs associated with conduct of the audit, in the form of a stipend in the amount of $, which amount shall be divided equally among the unsuccessful Offerors; provided however, reimbursement to any one Offeror shall not exceed that Offeror's actual costs. Upon payment of the stipend, the audit and proposal shall become the property of the Agency for its sole use. In the event the Agency does not make an award, through no fault of the prospective Offeror, the stipend shall be available to all Offerors that conducted an Audit and submitted a proposal.

If the (Agency) successfully negotiates a scope of work and cost with the top ranked Offeror, a Notice of Intent to Award a contract on Form SE-370 will be posted at the location set forth below at a date and time to be announced in the future.

POSTING OF INTENT TO AWARD
Notice of Intent to Award, SE-370, will be posted at the following location:
Room or Area of Posting: _____
Building Where Posted: _____
Address of Building: _____
WEB site address (if applicable): _____

In addition to posting the notice, the Owner will promptly send all Offerors submitting a response to this RFQ, a copy of the notice of intent to award and the final RFQ & RFP tabulations.

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SE-820: REQUEST FOR QUALIFICATIONS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

B. **PROTEST OF SOLICITATION OR AWARD**

Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of intent to award is posted in accordance with Title 11, Chapter 35, Section 4210 of the South Carolina Code of Laws, as amended. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the State Engineer within the time provided.

Any protest must be addressed to the CPO, Office of State Engineer, and submitted in writing:

(a) by email to protest-ose@mmo.sc.gov,
(b) by facsimile at 803-737-0639, or
(c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the e-mail address from which you sent your protest.

Note: Section 11-35-1530 4(b.) provides: "The determination regarding how many proposals to solicit is not subject to review pursuant to Article 17."

C. SUBMISSION OF STATEMENT OF QUALIFICATIONS (SOQ)

Offerors submitting a response to the RFQ shall submit the response in a sealed envelope with the following information placed on the outside of the envelope**:**

Title: SOQ for Energy, Water, and Wastewater Conservation Services
Deadline: _____ *(insert Time and Date)*

Delivery: Offerors shall Mail or Deliver responses to:

HAND-DELIVERY:	**MAIL SERVICE:**
Attn: _____	Attn: _____
_____	_____
_____	_____
_____	_____

D. INFORMATION/INSTRUCTIONS

1. By submission of a Statement of Qualifications to this RFQ, the Offeror is applying for consideration to receive an RFP for the services solicited and described herein.

2. Included with this RFQ is a copy of the contract form the Agency intends to utilize if a contract is awarded pursuant to this solicitation.

3. In accordance with S.C. Code Ann. § 11-35-1530(4), Offerors will be ranked according to selection criteria contained herein and on the basis of the information provided in their SOQs.

4. <u>SUBMITTING CONFIDENTIAL INFORMATION:</u> The information submitted to the Agency in response to this RFQ will become the property of the Agency without restriction or limitation on its use. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in S.C. Code Ann. § 30-4-40(a)(1), or (b) privileged & confidential, as that phrase is used in S.C. Code Ann. 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion

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thereof, that Offeror contends contains a trade secret as that term is defined by S.C. Code Ann. 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by S.C. Code Ann. 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire SOQ or Proposal and supporting documentation as confidential, trade secret, or protected! If your SOQ and/or Proposal, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, & documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, & (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify & hold harmless the State of South Carolina, its officers & employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED".

5. Offerors shall include all information requested in Part V of this RFQ. Offerors must submit ONLY that information that is specifically requested in Part V. The maximum number of pages for a Statement of Qualifications is 50, excluding appendices with charts, graphs, tables, financial statements, resumes and corporate annual reports. 11 x 17 sheets count as two pages. Text shall have a font size of not less than . Lines of text shall be double spaced. Text ☐ shall only be printed on one side of each sheet of paper ☐ may be printed on both sides of each sheet of paper. The Statement of Qualifications shall contain a Table of Contents and all pages shall be numbered.

6. Offerors Statements of Qualifications shall follow the format provided in Part V - *Submittal of Information in Response to RFQ*, except that the Executive Summary shall be the first item of Requested Information. Offerors must supply the required information listed and explain their responses with enough detail to allow a thorough evaluation.

7. Any questions must be transmitted in writing, via fax , UPS, USPS, Fed Ex, or via e-mail (preferred), to the Procurement Officer listed at the beginning of this RFQ no later than *(insert date)*. The Procurement Officer will answer questions in writing with a copy to all Offerors requesting a copy of this RFQ and providing the Procurement Officer with contact information.
8 Offeror shall submit one original and _____ copies of its SOQ to the Agency**.**

PART II - DEFINITIONS

Terms used herein shall have the same meaning as set forth in the definitions section of the sample contract attached hereto.

PART III - DESCRIPTION OF SERVICES TO BE SOLICITED

A. INTRODUCTION

1. The Agency seeks Statements of Qualifications from Offerors capable of providing comprehensive energy, water, wastewater, and operational related capital improvement services. Agency plans to select the most qualified Offeror to enter into a guaranteed energy, water, and wastewater savings performance contract as authorized by the South Carolina Energy Conservation and Efficiency Act 1992 and in accordance with the South Carolina Consolidated Procurement Code. The Agency anticipates a contract that will not exceed _____ years in duration but the contract may be of longer duration if the Agency determines an extended duration to be advantageous to the State.

SE-820: REQUEST FOR QUALIFICATIONS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

2. This RFQ makes a distinction between "Offeror" and "Contractor." An "Offeror" is the person or entity that is submitting a SOQ in response to this RFQ. Offeror specified requirements in this RFQ refer to requirements, terms, and conditions applicable to any SOQ submitted in response to this RFQ. The "Contractor" is the Offeror to whom the Agency, after evaluation of Proposals received in response to the RFP, awards a conservation services contract. This Part of the RFQ sets forth requirements, terms, and conditions pertaining to the Contractor.

B. PROJECT SCOPE OF WORK/TECHNICAL SPECIFICATIONS

The intent of this project is to provide the Agency with the means to realize maximum utility savings, operational savings, and operational improvements without the requirement of capital funds or to reduce the amount of capital funds necessary for planned energy, water systems, and wastewater systems upgrades. The Offeror selected through the RFQ and RFP processes and awarded a contract (i.e. the Contractor) shall provide the Agency with a comprehensive energy, water, and wastewater services program including but not limited to the following:

1. A complete energy, water, and wastewater audit of the Agency's facilities as set forth in Part E(1) of the RFP, Form SE-830. The audit shall include but not be limited to lighting and lighting controls, water conservation, HVAC equipment and controls, energy management systems and controls, steam and condensate optimization and window upgrades or replacement. ☐ Exclude ☐ do not exclude leased site lighting from the energy audit.

2. The design, acquisition, and installation of energy efficient equipment and systems.

3. The monitoring of energy/utility usage and costs on an annual basis.

4. Agency 's payment obligations for equipment and services shall be structured in a Performance Contract:
   (a) The Contractor shall provide a written guarantee that total project costs shall be 100% covered by project utility and hard operational savings
   (b) Agency shall realize equipment and services without the requirement of capital funding; and
   (c) Agency shall be able to meet its payment obligations through the guaranteed project energy and hard operational savings.
   (d) There shall be no carryover of savings from one year to another to make up for any savings shortfall.
   (e) The Contractor shall reimburse the Agency for any shortfall in annual savings within sixty-days of the end of the annual contract period.

5. The Contractor's guarantee shall be a first party direct guarantee from the Contractor to Agency. No third party guarantee, such as from a non-contractor insurance company, shall be accepted.

6. The Contractor may provide maintenance, servicing, and repair of the installed systems under separate agreements.

7. The Contractor shall perform energy management training for Agency employees on all new and modified systems and equipment.

8. Agency shall own all equipment and improvements made as a result of this project once payment has been made.

9. Payment and Performance Bonds, each in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance, and general liability, automobile, workers compensation, and employer's liability insurance shall be required and included in the total project cost.

10. Contractor work shall meet or exceed all appropriate federal, state or local permitting, Code or regulatory requirement for implementation of the Contract.

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SE-820: REQUEST FOR QUALIFICATIONS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

☐ *(Agency check if applicable to this procurement)* - 11. Agency plans to provide financing for the project. The Contractor guarantees that the annual energy savings will fully cover the annual principal and interest payments. Agency will specify in the RFP the discount rate to be used to calculate payments and cash flow.

PART IV - RFQ PROCESS

This RFQ is part of a selection process leading to a Performance Contract, for energy, water, and/or wastewater efficient equipment and services, between the Agency and an Offeror. Steps in the process are described below.

1. Agency solicits SOQs from interested Offeror's via this RFQ.

2. Each interested Offeror delivers an original SOQ and the required copies of same, along with a transmittal letter to the Agency by the required deadline. Agency will distribute copies of the SOQ to the Selection Committee for review, scoring, and ranking.

3. Offeror reviews proposed contract attached to this RFQ and includes within its SOQ package delivered to the agency an acknowledgment accepting the contract terms and conditions or listing exceptions taken with the terms and conditions.

4. Based on scoring and ranking, the Selection Committee will rank Offerors from most qualified to least qualified and select not more than the top ranked Offerors to receive the RFP.

PART V - SUBMITTAL OF INFORMATION IN RESPONSE TO RFQ

The selection committee will evaluate and rank Offerors based on the information submitted in their SOQs, provided, however, the selection committee may consider public information about an Offeror discovered independently. The selection committee **will not** consider any information provided by Offeror beyond that, which is responsive to this RFQ. However, Offerors must supply the information required by this RFQ and explain their responses with sufficient detail to allow a thorough evaluation.

A. Information to be Submitted: Offeror shall submit the following information, in their SOQ:

1. Organization, Qualifications and Experience

a. Describe your corporate capabilities in energy management and performance contracting.

b. How many years has your corporation been involved in delivering energy efficient equipment and services?

c. Describe the range of energy management services offered by your corporation.
Describe the financial condition of your firm. Please include a copy of your most recent annual report and financial statement in the appendix.

d. Provide resumes of qualified personnel who will be directly involved in this project. When responding to this request, consider the project as having three phases: I) Development, II) Installation, and III) Monitoring and Oversight of Operations. Identify one or two people who will have a direct, hands-on role in these three phases. No resume shall be longer than one typed singled spaced page. Also provide an organizational chart which shows the project organization with evidence of technical support and supervision. Include retained outside consultants on this chart.

e. Furnish references for Guaranteed Energy Performance Contracting services your company has provided to local, state or federal government facilities. Include the name, address, contact person and telephone number of the party for which the service was/is being performed. Provide a brief description of at least five similar projects that your firm has implemented within the past five years, at least one of which must have been a Guaranteed Energy Performance Contract that has been operating for at least one year. Include

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in this description the number and total square foot area of the buildings involved, equipment installed, services provided, annual energy savings from the project in terms of total dollars and percent reduction in cost and energy usage (by type), and sources and levels of operational savings.

f. Complete the Offeror Profile Form provided.

2. Guarantee

a. Describe in detail the means for guaranteeing (irrevocable letter of credit, bond, escrow account, etc.) cost savings generated by the modifications to a facility will equal or exceed the cost of performing these modifications.

b. Describe in detail the various methods the Offeror has used in measuring savings. Describe how annual energy, water, wastewater, and operational savings are determined and reconciled. What is the policy relative to projects that do not perform as specified? Provide an example from actual project.

c. What is your record of savings on last five guaranteed Energy Performance Contracts completed? Provide figures for 1) estimated savings, 2) guaranteed savings, and 3) actual savings providing both dollar savings and types of energy saved.

d. Has the Offeror had projects that did not meet guaranteed savings within the last five (5) years? If the answer is yes, explain how the Offeror helped the client recover from this and provide a reference with the current telephone number for each project where savings were less than guaranteed. What payments has the Offeror made due to guaranteed savings shortfalls within the past five (5) years?

3. Project Approach

a. Describe your methodology for conducting an energy audit. What involvement would Agency personnel have in such an audit?

b. Describe how you will calculate the initial baseline energy and water consumption of a facility, prior baseline prior to project startup and how you will monitor what will be a dynamic baseline over the life of the contract. Indicate all required information to be provided, if any, from Agency. How are your calculations affected if certain information is not available?

c. What are the standards of service and comfort (temperature, airflow, light levels, etc.) you would typically use for system design and what documentation will be used to verify and record these same standards?

d. How do you monitor contract compliance?

4. Training

a. Describe how Offeror will determine the training needs for Agency's operations and maintenance personnel.

b. Describe how Offeror can provide training, both on-site and off-site, to operating and maintenance personnel.

c. Give specific, verifiable examples of how Offeror trained operating and maintenance personnel with similar responsibilities as Agency personnel.

d. Provide information on the location of your nearest training facility and provide the number of employees and their training capabilities located at this facility.

5. Equipment Systems and Materials

a. Specify how existing equipment will be incorporated, removed, surplused, etc.

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SE-820: REQUEST FOR QUALIFICATIONS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

b. Describe what guidelines are established to identify when new or upgraded equipment will be installed post implementation period.

c. Describe any warranties on equipment, systems, and materials. What factors are necessary to keep warranties valid? Provide samples of warranties and assignments of warranties if used.

d. Describe the types of contract maintenance and/or repair services Offeror could provide. Comment on whether Agency's maintenance staff can perform some or all of these duties if desired, and describe any impact on the guarantee.

B. Relative Importance of Required Information: The relative importance from the above listed items from most important to least important is as follows:

1. _____
2. _____
3. _____
4. _____
5. _____

PART VI - APPROXIMATE SCHEDULE OF SIGNIFICANT MILESTONE EVENTS (Sample)

	Task	Days	Start	Finish
1	Submit SCBO Advertisement			
2	Introductory Session for Committee			
3	Evaluate Statement of Qualifications			
4	Issue RFP to minimum of (X) Firms			
5	Pre-proposal Conference (info. to Offerors)			
6	Receive Statement of Proposals			
7	Review of Proposals By Committee			
8	Presentation to Committee by Proposers			
9	Additional Committee Discussion, Report Submitted to Agency Head, Commission and A1 Form			
10	Select single Offeror			
11	Prepare Final Report for Agency Head			
12	Agency Head & Commission Approves Committee Selection			
13	Submit and Approve A-1			
14	Notice of Intent to Award and protest period			
15	Issue Final Contract to Offeror			

PART VII – GENERAL INFORMATION

Agency reserve's the right to accept or reject any and all responses and/or discontinue the selection process at any time prior to contract execution.

Agency assumes no liability and will not reimburse costs incurred by Offerors (whether selected or not) in developing responses to this RFQ.

Agency reserve's the right to request or obtain additional information about any and all responses to the RFQ. Agency may also issue addenda to the RFQ which will be mailed to all Offerors notifying the Procurement Officer of their interest and providing him/her with contact information.

After initial submittal, Offeror may not change key members of its team without Agency approval.

DRAFT

SE-821: ESCO PROFILE FORM

NOTE: If this project is proposed to be implemented as a joint venture or partnership, this form should be completed for each firm, including client references for energy performance contracting projects implemented by each firm.

1. Firm Name: _____

Business Address: _____

City: _____ State: _____ Zip Code: _____

a. Names and Titles of Two Contact People

1) Name: _____ Title: _____Phone: (_____)_____

2) Name: _____ Title: _____Phone: (_____)_____

b. Submittal is for

☐ Parent Company (List any Division or Branch Offices to be involved in this project)

☐ Division (attach separate list if more than one is to be included)

☐ Subsidiary

☐ Branch Office _____

Name of Entity: _____

Address: _____
_____

2. Date Prepared _____

3. Type of Firm ☐ Corporation ☐ Partnership ☐ Sole Ownership ☐ Joint Venture

4. Federal Employer Identification Number: _____

5. Year Firm was Established: _____

6. Name and Address of Parent Company, (if applicable)

_____
_____
_____

7. Former Firm Name(s), if applicable

_____

8. Minority Business Enterprise

Please indicate if your firm is a Minority Business Enterprise

☐ **Yes** ☐ **No**

If yes, indicate if your firm is registered as such with the SC Governor's Office of Small and Minority Business Assistance: ☐ Yes ☐ No

DRAFT

9. Past Five Year Summary of Contract Values for Energy Performance Contracting Projects currently under contract with your firm

20 : $_____

20 : $_____

20 : $_____

20 : $_____

20 : $_____

NOTE: All questions must be addressed by the ESCO in order for this qualification form to be properly completed. Failure to answer any question or comply with any directive contained in this form may be used as grounds to find them ineligible. If a question or directive does not pertain to your organization in any way, please indicate that fact with the symbol N/A and a brief explanation. For additional space attach 8-1/2" x 11" sheets and indicate reference number (i.e., 12a, 12b, etc.) to correspond to each question.

10. CORPORATE BACKGROUND/HISTORICAL DATA

a. How many years has ESCO been in business under its present business name? _____ Years

b. Indicate all other names by which ESCO has been known and the length of time known by each name.

_____

c. How many years has ESCO been involved in energy-related business? _____ Years

12. FINANCIAL REFERENCES

a. Enclose bonding references including company name, address, contact person, telephone number and information on ESCOs maximum bonding capability.

b. Please certify that ESCO is not currently under suspension or debarment by the State of South Carolina, any other state, or the federal government.

c. Please identify ESCOs legal counsel for this project.

d. Give the name and address of the point of contact for the individuals responsible for contract negotiation.

13. CERTIFICATION

The undersigned hereby certifies that the information provided above is true and accurate and further certifies that the firm will comply with all terms and conditions contained in the Request for Qualifications (RFQ) and solicitation documents.

SIGNATURE:

ESCO'S LEGAL NAME: _____

BY:_____ **DATE:**_____

(Signature)

TITLE:_____

TELEPHONE:_____ **EMAIL:** _____

DRAFT

SE-830: REQUEST FOR PROPOSALS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

AGENCY: _____
PROJECT NUMBER: _____
PROJECT NAME: _____
PROJECT LOCATION: _____

This solicitation does not commit the State of South Carolina (the State) to award a contract, to pay any cost incurred in the preparation of the Proposal or to procure or contract for services. The State reserves the right to accept or reject any or all submittals received as a result of this request, or to cancel in part, or in it's entirety this request if it is in the best interest of the State to do so.

PART I. GENERAL INFORMATION

A. Issuing Office: This Request for Proposals (RFP) is issued by the above named Agency (hereinafter, "Agency"). The following Procurement Officer is the sole point of contact for this RFP:

Procurement Officer: _____
Contact information:
Address: Street/PO Box:_____
City: _____
State: _____ ZIP: _____-____
Email: _____
Telephone: _____ **FAX: _____**

From the date the Agency issues this RFP until the Agency posts a Notice of Intent to Award, all contact with the Agency regarding this RFP by Offeror, its officers, employees, subcontractors, consultants, and agents shall be in writing, except as otherwise expressly provided in this RFP, and only with the Procurement Officer. In no event, shall Offeror, its officers, employees, subcontractors, consultants, and agents contact any member of the selection committee regarding this RFP.

This RFP makes a distinction between "Offeror" and "Contractor." An "Offeror" is the person or entity that is submitting a Proposal in response to this RFP. "Offeror" specified requirements in this RFP refer to requirements, terms, and conditions applicable to any Proposal submitted in response to this RFP. The "Contractor" is the "Offeror" to whom the Agency, after evaluation of Proposals received in response to the RFP, awards a conservation services contract. This RFP also details requirements, terms, and conditions pertaining to the "Contractor." The terms and conditions set forth in the Solicitation and any award pursuant thereto shall apply to "Offeror" and "Contractor" regardless of the terminology used because the logical progression of this Solicitation is from an Offeror to a Contractor is an award is made.

B. Purpose.
Agency seeks Proposals to provide comprehensive energy, water, wastewater, and operational related capital improvement services. Agency is only submitting this RFP to those offerors prequalified by the Agency to prepare and submit a technical and cost proposal for a guaranteed energy, water, and wastewater savings contract (Guaranteed Savings Contract). Each Offeror's response to this RFP (the "Proposal") must be based on the Offeror's assessment of the facilities selected by the Agency and Listed in Appendix A. Agency reserves the right to consider additional energy, water, and wastewater conservation measures (collectively "Conservations Measures") identified during the investment grade audit set forth in Part E(1) for evaluation and inclusion in the Project. This RFP, including any amendments, contains the only instructions governing the proposals and material to be included therein; a description of the services to be provided by the successful applicant, general evaluation criteria; and other Proposal requirements.

C. Pre-Proposal Meeting:

☐ **Mandatory** ☐ **Non-Mandatory**
Date: **Time:**
Location:

Agency will conduct a pre-proposal conference at the location, date, and time set forth above. Attendance will be limited to _____ people per Offeror. Any questions should be directed to the Procurement Officer. If the pre-

DRAFT

proposal conference is designated above as mandatory, the Agency will not consider the proposal of an Offeror that fails to attend the conference.

D. Proposal Receipt and Opening: Agency must receive Proposals with all required information no later than _____, Eastern Standard Time, on _____, 20_____. Offerors responding to this RFP must submit their Proposals containing all required information in a sealed envelope with the following information placed on the outside of the envelope**:**

Title: Proposal to Provide Energy, Water, and Wastewater Conservation Services to _____*(insert Agency name)*

Offerors shall Mail or Deliver responses to:

HAND-DELIVERY:	**MAIL SERVICE:**
Attn: _____	Attn: _____
_____	_____
_____	_____
_____	_____

Agency will reject proposals submitted via facsimile machine or email.

E. Objective: The objective of the Agency is to realize maximum utility savings, operational savings, and operational improvements while minimizing the expenditure of Agency's capital funds or to reduce the amount of capital funds necessary for needed energy, water, and wastewater systems upgrades. The Offeror selected through the RFQ and RFP processes shall provide Agency with a comprehensive energy services program including, but not limited to, the following:

1. Audit as follows: *(Agency, check box for the clause applicable to this solicitation)*
☐ A review and update of the Investment Grade Audit for the facilities listed in Appendix A prepared by an independent contractor.
☐ An Investment Grade Audit for any Agency facilities not included in the original proposal but a part of this solicitation and listed in Appendix B.
☐ Not applicable *(a complete Investment Grade Audit of the Facilities was performed as a part of the proposal preparation).*

2. The design, acquisition, and installation of energy, water, and wastewater efficient equipment, systems and/or procedures (Conservation Measures).

3. A plan for verifying the guaranteed savings as follows: *(Agency, check box if this clause is applicable to this solicitation)*
☐ A monitoring, measurement, and verification process compatible with the requirements of the International Performance Monitoring and Verification Protocol (IPMVP). Any software or other methods used for monitoring, verifying, or auditing Guaranteed Savings must be acceptable to Agency.
☐ A commissioning process to determine if the efficiency measures implemented are performing as designed and if the savings guaranteed by the Contractor have been achieved.

4. A written guarantee that Total Project Costs shall be 100% covered by guaranteed utility savings for the life of the project and that Agency will meet its annual payment necessary to cover principal and interest payments for financing through the annual savings. The following checked forms of security for the guaranteed savings are acceptable:
(Agency check all acceptable forms of security)

☐ ***A corporate guarantee*** by the Contractor provided that the Contractor has a long-term investment grade corporate rating from one or more of the national credit rating agencies. Currently, this would be a minimum rating of BBB from Standard and Poor's, Baa from Moody's Investors Service, or BBB from Fitch Ratings.

☐ ***A corporate guarantee*** from the parent company of the Contractor, provided that the parent company has a long-term investment grade corporate rating from one or more of the national credit rating agencies. Currently, this would

DRAFT

be a minimum rating of BBB from Standard and Poor's, Baa from Moody's Investors Service, or BBB from Fitch Ratings.

☐ ***An irrevocable letter of credit*** from a financial institution that covers the entire term of the contract, without need of renewal.

☐ ***A surety bond*** that covers the entire term of the contract, without need of renewal. The surety must have, at a minimum, a "Best Rating" of "A" as stated in the most current publication of "Best's Key Rating Guide, Property-Casualty", and show a financial strength rating of at least five times the total guaranteed utility savings for the life of the project.

☐ ***Financing by Contractor*** in which the Contractor provides all financing required for the entire term of the contract. Financing may only be transferred or assigned to the extent that energy savings are realized and State property may not be encumbered in any form as part of the financing. The South Carolina Treasurer will need to approve specific instruments of security as a part of a financing contract for conservation measures.

☐ ***Other*** *(specify):* _____

5. Maintenance, repair, and servicing of selected systems as the parties may negotiate.

6. Energy management, operations, and maintenance training for selected Agency employees on all new and modified systems and equipment.

7. Unless provided by Agency as noted below, financing for the project
☐ *(Agency, check box if this clause is applicable to this solicitation)* Agency intends to make arrangements for the financing of this project.

The Guaranteed Savings Contract shall not exceed _____ years in duration from the date of final completion of all conservation measures. The cost savings achieved by the conservation measures must be sufficient to cover all project costs including maintenance and monitoring fees pm am annual basis for the duration of the term of the Guaranteed Savings Contract.

The Contractor must guarantee sufficient cost savings on utility costs to enable the Agency to meet its payment obligations to the Contractor and the entity financing the Guaranteed Savings Contract. **Contractor will be required to guarantee cost savings on an annual basis. No credit for the achievement of savings above and beyond the annual guarantee will be credited to satisfy performance guarantees in other years of the contract. Annual reconciliation of the achieved savings will be required.**

F. Description of the Procurement Process: The process for the procurement of these guaranteed savings services will proceed as follows:

1. Solicitation of Proposals: The Agency will issue an RFP to all Offerors who have been prequalified by the Agency.

2. Offeror Audit and Proposal Preparation: *(Agency, check the box beside the claus(s)e that is applicable to this solicitation)*

☐Responding Offerors shall conduct an audit of the facilities listed in Appendix A. This audit will form the basis of the Offeror's written Technical and Cost Proposal included with its Proposal. Offeror's audit shall be an ☐ Investment Grade Audit (IGA) ☐ Preliminary Energy Study ☐ Other (*Please specify):* _____.

☐The Agency will supply Responding Offerors with a copy of an audit of the facilities listed in Appendix A prepared by an independent contractor. This audit will form the basis of the Offeror's written Technical and Cost Proposal included with its Proposal. The independent contractor's audit will be an ☐ Investment Grade Audit (IGA) ☐ Preliminary Energy Study ☐ Other (*Please specify):* _____.

DRAFT

SE-830: REQUEST FOR PROPOSALS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

☐ *(Agency, check box if this clause is applicable to this solicitation)* The Agency will provide pre-qualified Offerors that perform an IGA and submit a proposal in accordance with the RFP but do not receive a contract award partial reimbursement for the costs associated with conduct of the audit, in the form of a stipend. The amount of $, shall be divided equally among the unsuccessful Offerors, which amount shall constitute the stipend. However, reimbursement to any one Offeror shall not exceed that Offeror's actual costs for conducting an IGA. Upon payment of the stipend, the audit and proposal shall become the property of the Agency for its sole use. In the event the Agency does not make an award, through no fault of the prospective Contractor, a stipend shall be available to all Offerors that conducted an Audit and submitted a proposal.

Each Offeror should submit its best terms from both a cost and technical standpoint. Agency may evaluate the proposals and accept the offer it deems to be most advantageous without any discussions, negotiations, or prior notice. Ordinarily, Agency will reject nonresponsive proposals outright. Nevertheless, Agency may elect to conduct discussions as set forth in 4(b) below.

3. Opening Proposals: Agency will open proposals on the date and at the time set forth above for the receipt of proposals. Agency will only open those proposals received by the deadline specified for receipt of proposals.

4. Evaluation of Proposals:
a. Reference Checks: In addition to any reference checks during the Request for Qualification process, the Procurement Officer and/or his designee(s) may conduct additional reference checks of Offeror's client references in accordance with the evaluation criteria identified in Part II.

b. Discussions: For the purpose of discussions pursuant to SC Code Ann § 11-35-1530(6) and Regs. 1-445.2095(I), the Procurement Officer, with or without the assistance of the selection committee, may initially classify proposals in writing as: 1) acceptable (i.e. reasonably susceptible of being selected for award); 2) potentially acceptable (i.e. reasonably susceptible of being made acceptable through discussions); or 3) unacceptable. With the State Engineer's approval, the Agency may elect to conduct discussions, including the possibility of limited proposal revisions, but only with those Offerors submitting proposals classified as acceptable or potentially acceptable.

c. Oral Interviews: The Agency will invite each Offeror to make an oral presentation of their Proposal to the selection committee. The presentation will not exceed one hour with one additional hour for questions. Offeror representatives at oral interviews shall include senior staff that Offeror proposes to assign to the project. Offeror shall send not more than _____ representatives to oral interviews. Offeror should notify Agency of any audiovisual equipment it will bring, power requirements necessary for its presentation and the number of persons it will bring.

d. Using the criteria stated in this RFP, the selection committee will evaluate and rank the Proposals from the most advantageous to the least advantageous.

5. Selection Committee Recommendation: The selection committee will recommend to the Agency Head that Agency enter into contract negotiations with the Offeror submitting the proposal ranked as most advantageous.

6. Negotiations: If the Agency accepts the selection committee's recommendation, the Agency may request the highest ranked Offeror to enter into contract negotiations for final scope, design, terms, conditions, schedule, cost, etc. to include a cost acceptance period adequate to cover the funding approval process projected by Agency.

G. Anticipated Project Schedule:

Task	Days	Start	Finish
Issue RFP to prequalified Offerors			
Pre-proposal conference			
Offeror's conduct utility audit			
Deadline for receipt of questions			
Receipt of proposals			
Selection Committee review of proposals			
Offeror presentation to selection committee			

DRAFT

SE-830: REQUEST FOR PROPOSALS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

Selection committee final ranking of proposals			
Selection committee preparation of final report and recommendation to Agency Head			
Agency Head and governing board of Agency approve selection			
Agency submits project for required permanent improvement project approvals			
Agency post Notice of Intent to Award			
Protest period			
Agency tenders contract to Offeror			

H. Site Visits: The Procurement Officer or his designated representative will arrange inspection tours of the facilities to be audited. Site representatives will be available to escort Offerors and their representatives through the facilities but not to answer questions regarding this solicitation. Offerors shall submit questions arising out of these tours in writing to the Procurement Officer. Technical information supplemental to material contained in this RFP may be made available for review and inspection onsite. Only pre-qualified Offerors responding to this RFP and whose representatives have attended the pre-bid meeting are eligible to participate in these site visits.

I. Notice of Intent to Award
Agency will post the Notice of Intent to Award a contract at the location set forth below at a date and time to be announced in the future. Agency will post all announcements regarding the date and time for posting of the Notice of Intent to Award at the same location.

POSTING OF INTENT TO AWARD
Notice of Intent to Award, SE-370, will be posted at the following location:
Room or Area of Posting: _____
Building Where Posted: _____
Address of Building: _____
WEB site address *(if applicable)*: _____

In addition to posting the notice, the Owner will promptly send all Offerors submitting a response to this RFQ, a copy of the notice of intent to award and the final RFQ & RFP tabulations.

K. Protest of Solicitation or Award
Any prospective bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the solicitation of a contract shall protest within fifteen days of the date of issuance of the applicable solicitation document at issue. Any actual bidder, offeror, contractor, or subcontractor who is aggrieved in connection with the intended award or award of a contract shall protest within ten days of the date notification of intent to award is posted in accordance with Title 11, Chapter 35, Section 4210 of the South Carolina Code of Laws, as amended. A protest shall be in writing, shall set forth the grounds of the protest and the relief requested with enough particularity to give notice of the issues to be decided, and must be received by the State Engineer within the time provided.
Any protest must be addressed to the CPO, Office of State Engineer, and submitted in writing:
(a) by email to protest-ose@mmo.sc.gov,
(b) by facsimile at 803-737-0639, or
(c) by post or delivery to 1201 Main Street, Suite 600, Columbia, SC 29201.

By submitting a protest to the foregoing email address, you (and any person acting on your behalf) consent to receive communications regarding your protest (and any related protests) at the e-mail address from which you sent your protest.

L. Definitions – See the form of the contract, SE-860, Energy, Water, and Wastewater Services Performance Contract, attached hereto for definitions that are applicable to this Request for Proposals (RFP).

DRAFT

SE-830: REQUEST FOR PROPOSALS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

PART II - PROJECT CRITERIA AND EVALUATION OF PROPOSALS

A. Project Criteria: The following criteria are listed in order of relative importance from the most heavily weighted items first to the least weighted last. Some criteria may be equal in relative importance.

Offeror Qualifications and Quality of Proposal	
	General reputation, reliability, working relationship, and performance capability of Offeror
	Quality of project staff Offeror proposes to assign to project
	Conservation measures included in proposal meet Agency's expectations
	Proposed training meets Agency's requirements
	Substantial conformity with RFP requirements
	Clarity, organization, and level of detail in written proposal
Technical Approach	
	Quality of conservation measure's in Proposal
	Offeror identified additional conservation measures not referenced in this RFP
	Quality of baseline calculations and knowledge of existing conditions
	Understanding of Agency's operation and challenges
	Additional benefits to Agency identified in Proposal
	Achievability of implementation schedule
	Quality of proposed project-specific commissioning plan
	Quality of proposed project-specific measurement and verification plan
	Quality of proposed project-specific maintenance plan
Financial Approach	
	Markups fair and reasonable
	Dollar value of projected utility and operational savings and clarity of supporting documentation
	Proposed costs of construction, financing, maintenance, and training
	If required to be included in Proposal by this RFP, reasonableness of proposed financing arrangement and financial analysis assumptions proposed for project
	Reasonableness of investment grade energy audit costs
Oral Interview	
	Demonstrated clear understanding of the Agency's needs
	Quality of communication skill exhibited by Offeror representatives
	Answered questions in concise manner staying on topic
	Knowledge and professionalism of Offeror representatives
	Offeror had appropriate project specific employees present

B. Evaluation of Proposals: Agency will evaluate and rank Offerors responding to the RFP based on the information submitted. Agency will evaluate proposals for clarity, organization, level of detail in written submission and the interview. Agency will verify references to confirm past Offeror performance. Agency or an independent consultant retained by the Agency will verify calculations. In accordance with SC Code Ann. § 11-35-1530(5), (6), and (7), Agency will rank Offerors on the basis of the project criteria from most advantageous to least advantageous.

PART III – SUBMISSION OF PROPOSALS

A. Form of Proposal: Offerors are to include all information requested herein. Agency will not consider any additional information furnished by the Offeror. All pages of the Proposal should be returned in the format specified. Offerors must submit **only** that information specifically addressed in this PART III. Proposals must contain a table of contents, all pages must be numbered, and all categories of Requested Information must be tabbed and labeled. Proposals must have an executive summary at the beginning of the document. Proposals shall comply with the following limitations: *(Agency, check all that apply to this RFP)*

☐ Proposals shall not exceed _____ pages excluding appendices with charts, graphs, and tables. A 11" x 17" page shall count as two pages.

DRAFT

SE-830: REQUEST FOR PROPOSALS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

☐ Line spacing shall be double space.

☐ Font size shall not be less than size _____.

☐ Shall be printed on both sides of each sheet of paper. Each side shall count as one page of the Proposal.

Offeror shall submit to the Agency one original and _____ copies of its Proposal.

B. Submitting Confidential Information: For every document Offeror submits in response to or with regard to this solicitation or request, offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged and confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire response (bid, proposal, quote, etc.) as confidential, trade secret, or protected! If your response, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation or request, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, and documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, and (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify and hold harmless the State of South Carolina, it's officers and employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED". (All references to S.C. Code of Laws.)

C. Content of Proposal: Proposals must contain the following information in the order provided:

1. Executive Summary

Provide a concise abstract of the Proposal for a Guaranteed Savings Contract. Abstract shall not exceed Click here to enter text. pages in length.

2. Project Scope of Work

a. Provide a detailed written scope of work proposed for the project. The scope of Work should be based upon the Proposal and contain those Conservation Measure's to be considered.

b. Include a list of Conservation Measure's proposed for the project that includes equipment brand and model (if possible) and specifications. Describe how these Conservation Measures will interface with and affect remaining Agency equipment.

c. Agency would like the following Conservation Measures to be evaluated as a part of the proposal: *(Agency, list any requested Conservation Measures).*

d. Describe in detail any remote operation/control of energy and water consuming equipment or control systems proposed by the Offeror.

DRAFT

e. Describe any equipment, systems, materials, operating procedures, and/or training that Offeror proposes that are proprietary to your company.

f. Describe your equipment/process commissioning procedures and methods and your re-commissioning intervals (if any).

g. Describe the use of any open systems protocols proposed in the project and how any of the proprietary equipment proposed is compatible with open systems protocols.

h. Describe how you will incorporate, remove, or surplus existing equipment. Describe how your company will determine the value of surplus equipment. Describe the options available if Agency wants to maintain possession of surplus equipment.

i. Describe in detail any responsibilities of Agency in order to insure the Guaranteed Savings.

3. Project Cost and Savings Summary

a. Provide a detailed summary of the Total Project Cost. Break costs out as (1) design; (2) equipment and materials; (3) installation and startup; (4) manufacturer recommended maintenance costs for new equipment for the entire Guaranteed Savings period; (5) employee training (All training costs both in the base year and during the life of the contract shall include cost of off-site training required to include travel, lodging and meals); (6) and performance and payment bonds); (7) surety bonds for any shortfall between guaranteed savings and actual savings; and (8) Measurement and Verification (M&V). **NOTE: Interest costs for the loan shall be included in the "Annual Financing Payment" in Column "e" in the table on the following page.**

b. Quantify the guaranteed savings for each conservation measure in energy or utility units (i.e. lighting, heat/cooling loss, steam/condensate, water, etc.) and the cost of each conservation measure including all overhead and profit for each conservation measure. For energy savings, quantify by both energy type or utility units (kwh, btu, etc.) and dollars saved. State all assumptions used in establishing guaranteed savings. (use energy, water, and wastewater unit costs from baseline period.) **NOTE: In savings calculations, do not include deferred capital expenditures.** The Offeror shall use the following escalation rates to quantify the guaranteed savings for each conservation measure:

Escalation Rate by Utility/Fuel

Electric:	Click here to enter text.
Natural Gas:	Click here to enter text.
Steam:	Click here to enter text.
Water:	Click here to enter text.
Other(specify)	Click here to enter text.
Escalation Rate for Annual Fees	Click here to enter text.

c. Quantify any operational or maintenance savings used in the proposal. These savings must be "hard" savings that shall result in a reduction of cash outflow to Agency. **NOTE**: **Do not include any labor reductions in calculations.**

d. Agency tentatively plans to provide financing for this project through the State Treasurer's Office Master Lease Program. The Offeror ☐ shall ☐ shall-not ☐ may provide optional financing plans for consideration; however, Agency is not interested in utilizing lease or lease purchase plans. Any optional financing plan should provide for annual financing payments by Agency based on list interest rate(s). Indicate on the chart a yearly termination value for the Contract if Agency decides to terminate the Contract for convenience. Use separate charts for each interest rate.

DRAFT

SE-830: REQUEST FOR PROPOSALS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

e. Complete a cash flow chart for the life of the project showing all expected cash expenditures for total project costs and guaranteed savings. Provide a separate cash flow chart for each interest rate. Use the format shown below. Use an interest rate to calculate column "(e)" based on _____.

Project Cost in Year "0":

1. Cost of design, equipment & materials, installation and start-up	$
2. Cost of initial training	$
3. Cost of surety/bonds for construction	$
4. Cost of surety/bonds for guarantee	$
5. Cost of maintenance and repair of existing equipment to be reused as part of the Conservation Measure	$
Total Cost – Year "0"	**$**

DRAFT

SE-830: REQUEST FOR PROPOSALS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

CASH FLOW CHART							
(a) Contract Year	**(b) Annual Training Cost**	**(c) Annual Routine Scheduled & Preventative Maintenance Cost** *(if provided by Contractor or if required in addition to current situation)*	**(d) Annual M&V Cost**	**(e) Annual Financing Payment**	**(f) Annual Guaranteed Savings** *based on utility rates provided by Agency at time of proposal)*	**(h) Annual Net Cash Flow** **h=f-e-d-c-b**	**(i) Termination Value**
1	$	$	$	$	$	$	$
2	$	$	$	$	$	$	$
3	$	$	$	$	$	$	$
4	$	$	$	$	$	$	$
5	$	$	$	$	$	$	$
6	$	$	$	$	$	$	$
7	$	$	$	$	$	$	$
8	$	$	$	$	$	$	$
9	$	$	$	$	$	$	$
10	$	$	$	$	$	$	$
Total	$	$	$	$	$	$	$

NOTES:

1. Agency reserves the right to enter into maintenance and/or repair contracts with the Contractor based on the costs given in the table above or as negotiated based upon changes to the conservation measures proposed to be installed. Agency may choose to perform maintenance and/or repairs with Agency personnel. If Agency performs maintenance, the Contractor shall provide a detailed list of all maintenance required to maintain savings guarantee.
2. Do not include any escalation in table above.
3. **There may not be any annual training costs in Column "b" in the table above. The Contractor may provide any additional annual training at no cost. If this is the case, place zeroes in the yearly blanks in column "b" in the table above.**

DRAFT

SE-830: REQUEST FOR PROPOSALS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

D. Verification and Monitoring of Guaranteed Savings *(Agency, check box for the clause applicable to this solicitation)*

☐ 1. Describe in detail how you propose to establish, monitor, and adjust the energy, water, and/or wastewater baseline up to the point of signing the final contract and over the life of the Energy Performance Contract. Describe how you propose to factor changes in climate conditions into the energy, water, and/or wastewater baseline and the weather data you will use to establish changes in climate conditions. **NOTE: Contractor shall provide to the Agency a licensed copy of any computer program required to establish or monitor the baseline.** Provide annualized baseline energy usage, by energy type, water usage, and wastewater generation and provide cost of each using the utility cost during the annual baseline period specified by Agency.

2. Describe the reporting responsibilities of the Agency regarding installation of new energy and water using equipment, or the shutting down of equipment or buildings, or the construction of new buildings.

3. Describe in detail your proposed plan to monitor and verify energy and water usage and wastewater generation through the life of the Contract. Include specific hardware, metering, and software that will be necessary. Describe the alarms or alarm systems you propose to install.

4. Describe in detail how guaranteed savings (both in dollars and energy, water, and wastewater) will be verified. Include the specific responsibilities of your and the Agency's employees to provide monitoring and verification.

☐ Describe in detail your proposed procedures for commissioning the work to determine the conservation measures implemented are performing as designed and the savings guaranteed have been achieved.

E. Support Services and Warranties

List all major equipment and components of the Proposal and the warranties supplied with each. Provide a detailed maintenance plan required for major equipment and components of the Proposal including descriptions of maintenance required, frequency of maintenance, repairs, and expected downtime to perform maintenance and make repairs.

Describe in detail all operation and maintenance training services planned for Agency employees to insure the Guaranteed Savings for the project.

Describe in detail how you propose to keep the conservation measures included in the proposal up-to-date with new technology. Describe the upgrades that are included in the Proposal.

List any spare parts and supplies that you propose to provide to the Agency for maintenance after the project is complete. Describe how you propose to handle warranty issues during the life of the contract. The Contractor will be responsible for returning defective parts and equipment, and installing replacement parts and equipment while they are under warranty. Contractor shall repair or replace any components failing during the warranty period and provide an additional one-year warranty on such components.

F Implementation Plan

Provide a detailed plan for implementation of the proposed Guaranteed Savings including completion of all project engineering, construction, and installation, and startup of all Conservation Measure's. Describe in detail your commissioning program for all conservation measures.

<u>NOTE:</u> The Office of State Engineer will review specifications and drawings for code compliance and will issue any building permits as required.

Describe how you propose to organize the project. Describe step-by-step the process that you will use to implement the Contract beginning with final design, data gathering, and measurement through installation, operation, and maintenance. Provide evidence that you have clearly assigned responsibilities for the various elements of the

DRAFT

process, that you have allocated various tasks to organizations and individuals who can handle them expeditiously, and that the logistics of engineering, construction, service, and emergency repairs are manageable.

Describe in detail your responsibilities during construction and the lifetime of the Energy Performance Contract. Identify any tasks you expect to use subcontractors to perform and state how you will manage the subcontractors. Describe the reports you propose to submit and frequency of submittals. Provide a detailed plan as to how the you will keep Agency informed of all phases of the project from initial design through start up and, if applicable, operations.

Describe in detail the responsibilities and support required of Agency (including record keeping, maintenance, etc.) during the lifetime of the project.

Identify key personnel who you and your subcontractors will assign to the project and provide detailed descriptions of their responsibilities. Identify the employees you employee that you will have on site during construction, start up and, if applicable, operation of equipment. Include a Project Organization Chart that identifies specific personnel employed by you who will be responsible for overseeing the activities of each subcontractor.

Describe in detail how you and any subcontractors will implement a Safety Program in accordance with all OSHA guidelines and safe work practices to minimize the likelihood of recordable injuries occurring during the project from construction through start-up of system components.

Describe your minority business (subcontractor) utilization plan.

Describe your business approach to sustainable design/use of renewable resources in project design.

Assuming that the Agency accepts your proposal without change, provide a schedule of the number of days that it will take to install conservation measures to the point where they are substantially complete. This completion schedule may become a part of the final contract establishing the substantial completion date. The substantial completion date will start the first twelve (12) month period of guaranteed savings.

PART IV – Approximate Schedule

	Task	Days	Start	Finish
1	Issue RFP to minimum of (X) Firms			
2	Pre-proposal Conference (info. to Offerors)			
3	Receive Proposals			
4	Review of Proposals By Committee			
5	Presentation to Committee by Proposers			
6	Additional Committee Discussion, Report Submitted to Agency Head, Commission and A1 Form			
7	Select single Offeror			
8	Prepare Final Report for Agency Head			
9	Agency Head & Commission Approves Committee Selection			
10	Submit and Approve A-1			
11	Notice of Intent to Award and protest period			
12	Issue Final Contract to Offeror			

Part V – Miscellaneous

A. Disclosure of Conflicts of Interest or Unfair Competitive Advantage (*2011*): You warrant and represent that your offer identifies and explains any unfair competitive advantage you may have in competing for the proposed contract

DRAFT

and any actual or potential conflicts of interest that may arise from your participation in this competition or your receipt of an award. Without limitation, an unfair competitive advantage exists where a contractor competing for award possesses either proprietary information that was obtained from a government official without proper authorization or source selection information (as defined in Regulation 19-445.2010(C)) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract. If you have an unfair competitive advantage or a conflict of interest, the state may withhold award. Before withholding award on these grounds, an offeror will be notified of the concerns and provided a reasonable opportunity to respond. Efforts to avoid or mitigate such concerns, including restrictions on future activities, may be considered.

B. CERTIFICATION OF INDEPENDENT PRICE DETERMINATION: GIVING FALSE, MISLEADING, OR INCOMPLETE INFORMATION ON THIS CERTIFICATION MAY RENDER YOU SUBJECT TO PROSECUTION UNDER SECTION 16-9-10 OF THE SOUTH CAROLINA CODE OF LAWS AND OTHER APPLICABLE LAWS.

(a) By submitting an offer, the offeror certifies that—

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to—
(i) Those prices;
(ii) The intention to submit an offer; or
(iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory—

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this offer, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; or

(2)(i) Has been authorized, in writing, to act as agent for the offeror's principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this certification [As used in this subdivision (b)(2)(i), the term "principals" means the person(s) in the offeror's organization responsible for determining the prices offered in this bid];

(ii) As an authorized agent, does certify that the principals referenced in subdivision (b)(2)(i) of this certification have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this certification.

(c) If the offeror deletes or modifies paragraph (a)(2) of this certification, the bidder must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

C. CERTIFICATION REGARDING DEBARMENT AND OTHER RESPONSIBILITY MATTERS:
(a)(1) By submitting an Offer, Offeror certifies, to the best of its knowledge and belief, that-

(i) Offeror and/or any of its Principals-

DRAFT

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any state or federal agency;
(B) Have not, within a three-year period preceding this bid, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of bids; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and
(C) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.

(ii) Offeror has not, within a three-year period preceding this bid, had one or more contracts terminated for default by any public (Federal, state, or local) entity.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

(b) Offeror shall provide immediate written notice to the Procurement Officer if, at any time prior to contract award, Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) If Offeror is unable to certify the representations stated in paragraphs (a)(1), Offer must submit a written explanation regarding its inability to make the certification. The certification will be considered in connection with a review of the Offeror's responsibility. Failure of the Offeror to furnish additional information as requested by the Procurement Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly or in bad faith rendered an erroneous certification, in addition to other remedies available to the State, the Procurement Officer may terminate the contract resulting from this solicitation for default.

D. ETHICS CERTIFICATE: By submitting a offer, the offeror certifies that the offeror has and will comply with, and has not, and will not, induce a person to violate Title 8, Chapter 13 of the South Carolina Code of Laws, as amended (ethics act). The following statutes require special attention: Section 8-13-700, regarding use of official position for financial gain; Section 8-13-705, regarding gifts to influence action of public official; Section 8-13-720, regarding offering money for advice or assistance of public official; Sections 8-13-755 and 8-13-760, regarding restrictions on employment by former public official; Section 8-13-775, prohibiting public official with economic interests from acting on contracts; Section 8-13-790, regarding recovery of kickbacks; Section 8-13-1150, regarding statements to be filed by consultants; and Section 8-13-1342, regarding restrictions on contributions by contractor to candidate who participated in awarding of contract. The state may rescind any contract and recover all amounts expended as a result of any action taken in violation of this provision. If contractor participates, directly or indirectly, in the evaluation or award of public contracts, including without limitation, change orders or task orders regarding a public contract, contractor shall, if required by law to file such a statement, provide the statement required by Section 8-13-1150 to the procurement officer at the same time the law requires the statement to be filed.

E. RESTRICTIONS APPLICABLE TO OFFEERORS & GIFTS: Violation of these restrictions may result in disqualification of your bid, suspension or debarment, and may constitute a violation of the state Ethics Act. (a) After issuance of the solicitation, ***offeror agrees not to discuss this procurement activity in any way with the Owner or its employees, agents or officials.*** All communications must be solely with the Procurement Officer. This restriction may be lifted by express written permission from the Procurement Officer. This restriction expires once a contract has been formed. (b) Unless otherwise approved in writing by the Procurement Officer, ***offeror agrees not***

SE-830: REQUEST FOR PROPOSALS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

to give anything to the Owner, any affiliated organizations, or the employees, agents or officials of either, prior to award. (c) Offeror acknowledges that the policy of the State is that a governmental body should not accept or solicit a gift, directly or indirectly, from a donor if the governmental body has reason to believe the donor has or is seeking to obtain contractual or other business or financial relationships with the governmental body. Regulation 19-445.2165(C) broadly defines the term donor.

F. NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING (IMPORTANT TAX NOTICE - NONRESIDENTS ONLY**)**: Withholding Requirements for Payments to Nonresidents: Section 12-8-550 of the South Carolina Code of Laws requires persons hiring or contracting with a nonresident conducting a business or performing personal services of a temporary nature within South Carolina to withhold 2% of each payment made to the nonresident. The withholding requirement does not apply to (1) payments on purchase orders for tangible personal property when the payments are not accompanied by services to be performed in South Carolina, (2) nonresidents who are not conducting business in South Carolina, (3) nonresidents for contracts that do not exceed $10,000 in a calendar year, or (4) payments to a nonresident who (a) registers with either the S.C. Department of Revenue or the S.C. Secretary of State and (b) submits a Nonresident Taxpayer Registration Affidavit - Income Tax Withholding, Form I-312 to the person letting the contract.

For information about other withholding requirements (e.g., employee withholding), contact the Withholding Section at the South Carolina Department of Revenue at 803-898-5383 or visit the Department's website at: www.sctax.org

This notice is for informational purposes only. This Owner does not administer and has no authority over tax issues. All registration questions should be directed to the License and Registration Section at 803-898-5872 or to the South Carolina Department of Revenue, Registration Unit, Columbia, S.C. 29214-0140. All withholding questions should be directed to the Withholding Section at 803-898- 5383.

PLEASE SEE THE "NONRESIDENT TAXPAYER REGISTRATION AFFIDAVIT INCOME TAX WITHHOLDING" FORM (FORM NUMBER I-312) LOCATED AT: **http://www.sctax.org/Forms+and+Instructions/withholding/default.htm**

G. SUBMITTING CONFIDENTIAL INFORMATION: For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Offeror contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged & confidential, as that phrase is used in Section 11-35-410. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Offeror contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Offeror submits in response to or with regard to this solicitation or request, Offeror must separately mark with the word "PROTECTED" every page, or portion thereof, that Offeror contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. Do not mark your entire bid as confidential, trade secret, or protected! If your bid, or any part thereof, is improperly marked as confidential or trade secret or protected, the State may, in its sole discretion, determine it nonresponsive. If only portions of a page are subject to some protection, do not mark the entire page. By submitting a response to this solicitation, Offeror (1) agrees to the public disclosure of every page of every document regarding this solicitation or request that was submitted at any time prior to entering into a contract (including, but not limited to, documents contained in a response, documents submitted to clarify a response, & documents submitted during negotiations), unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED", (2) agrees that any information not marked, as required by these bidding instructions, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act, & (3) agrees that, notwithstanding any claims or markings otherwise, any prices, commissions, discounts, or other financial figures used to determine the award, as well as the final contract amount, are subject to public disclosure. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by these bidding instructions, as being either "Confidential" or "Trade Secret" or "PROTECTED". By submitting a response, Offeror agrees to defend, indemnify & hold harmless the State of South Carolina, its officers & employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Offeror marked as "confidential" or "trade secret" or "PROTECTED".

DRAFT

SE-830: REQUEST FOR PROPOSALS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

H. SOLICITATION INFORMATION FROM SOURCES OTHER THAN OFFICIAL SOURCE: South Carolina Business Opportunities (SCBO) is the official state government publication for State of South Carolina solicitations. Any information on State agency solicitations obtained from any other source is unofficial and any reliance placed on such information is at the offeror's sole risk and is without recourse under the South Carolina Consolidated Procurement Code.

I. TAX CREDIT FOR SUBCONTRACTING WITH MINORITY FIRMS: Pursuant to Section 12-6-3350, taxpayers, who utilize certified minority subcontractors, may take a tax credit equal to 4% of the payments they make to said subcontractors. The payments claimed must be based on work performed directly for a South Carolina state contract. The credit is limited to a maximum of fifty thousand dollars annually. The taxpayer is eligible to claim the credit for 10 consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Taxpayers must maintain evidence of work performed for a State contract by the minority subcontractor. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. The subcontractor must be certified as to the criteria of a "Minority Firm" by the Governor's Office of Small and Minority Business Assistance (OSMBA). Certificates are issued to subcontractors upon successful completion of the certification process. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734-0657, Fax: (803) 734-2498. Reference: SC §11-35-5010 – Definition for Minority Subcontractor & SC §11-35-5230 (B) – Regulations for Negotiating with State Minority Firms.

J. CLARIFICATION: Pursuant to Section 11-35-1520(8), the Procurement Officer may elect to communicate with you after opening for the purpose of clarifying either your offer or the requirements of the solicitation. Such communications may be conducted only with offerors who have submitted an offer which obviously conforms in all material aspects to the solicitation. Clarification of an offer must be documented in writing and included with the offer. Clarifications may not be used to revise an offer or the solicitation. [Section 11-35-1520(8); R.19-445.2080]

K. DISCUSSIONS & NEGOTIATIONS: Submit your best terms from a cost or price and from a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright. Nevertheless, the State may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. If improper revisions are submitted, the State may elect to consider only your unrevised initial proposal. [11-35-1530(6); R.19-445.2095(I)] The State may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers, as provided in Section 11-35-1530(8). If negotiations are conducted, the State may elect to disregard the negotiations and accept your original proposal.

I. Utility Rebates and Tax Incentives
The implementation of Conservation Measures may result in Agency being eligible for a rebates from the serving utilities. Contractor shall be responsible for preparing any and all documentation required to apply for such rebates. The Contractor shall submit the rebate application and documentation to Agency for submission to the serving utility.

The implementation of Conservation Measures may create eligibility for a federal tax credit as described in the Energy Policy Act of 2005. In such event, the Agency will assign the tax credit to the Contractor and the Contractor shall return 50 percent of the benefit to Agency, as per the rules of EPACT 2005.

APPENDIX 1 – FORMS, FORMAT AND INSTRUCTIONS FOR PERFORMING THE ENERGY STUDY

The Offeror shall perform the following tasks in performing the RFP response and preparing the report:

1. Format

DRAFT

SE-830: REQUEST FOR PROPOSALS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

Provide a Table of Contents that is complete with page numbers and descriptive title for each section, table, exhibit attachment, etc. List tables, charts, attachments, and exhibits separately by part number, title, and page number. Number and date each page. Should revisions occur, provide a listing of original pages and replacement pages. Indicate the revision date for each revised page on the bottom right corner of the page.

2. Executive Summary

Provide a short (no more than three pages) narrative summary of the project, including discussion of the project's total construction costs, and energy savings stated both in dollars and in units of energy or water saved. Include the following in the Executive Summary:

a. Official Offeror statement signed by an Offeror representative authorized to enter into contractual agreements that the Offeror will finalize the Proposal.

b. a Savings Guarantee as follows:
_____ (Hereafter referred to as the Offeror) will provide Conservation Measures (Conservation Measures) for a total cost of $_____ and the Offeror guarantees that these Conservation Measures will cause Agency to realize a total cumulative savings at the end of the _____ year contract term of at least $_____ based on current energy costs as defined in the "Baseline" year.

c. a description of the security (e.g. irrevocable letter of credit, bond or escrow account, etc.) Offeror will provide to back up the Guaranteed Savings and the cost of that security.

3. Existing Conditions

Agency will provide Offeror general building information (size, age, and general use of each building) and a summary of utility cost and consumption data for the most recent 36-month period.

Agency will furnish (or ask its utility suppliers to furnish) all available records and data concerning energy and water usage for the most current _____ months *(Agency list period of time, 36 months recommended minimum)*, including but not necessarily limited to: utility records; occupancy information; descriptions of any changes in the structure of the Facility or its heating, cooling, lighting or other systems or energy requirements; descriptions of all major energy and water consuming or energy and water saving equipment used in the Facility; and a description of energy management procedures presently utilized. Agency will furnish a record of any energy, water, and wastewater related improvements or modifications that have been installed during the past three years, or the Agency is currently installing independent of the scope of this RFP. Agency will provide copies of facility and utility infrastructure drawings to the Offeror insofar as this information is readily available.

4. Conservation Measure's

The Offeror shall:

a. Identify and propose potential Conservation Measure's for installation or implementation in the Agency's facilities, including cut sheets on proposed equipment. For non-standard Conservation Measure's provide information regarding product site installations.

b. Provide a detailed estimate of the cost, savings, and life expectancy of each proposed Conservation Measure. Ancillary costs, such as for painting and patching or repairing damage caused by installation of new Conservation Measures, shall be included.

c. Specify Facility operations and maintenance that the installation/implementation of the proposed Conservation Measures will affect.

d. Provide analysis methodology, supporting calculations and assumptions used to derive baselines (e.g. lighting operating hours) and estimated savings. Provide the existing and proposed air and hot water temperatures, amount of outdoor air ventilation (CFM), lighting, water usage, wastewater generation, and acoustic levels. Provide copies of the utility tariffs and commodity price histories used in savings calculations.

DRAFT

Manual calculations should disclose essential data, assumptions, formulas, etc. so that a reviewer could replicate the calculations based on the data provided.

e. Unless Agency has elected herein to verify savings through a commissioning process, provide a savings measurement and verification plan for each proposed Conservation Measure.

f. Provide detailed supporting calculations for any proposed maintenance, material or other operational savings. Do not include labor savings,

g. For all proposed Conservation Measure's, comply with all applicable state, federal and local codes, and regulations in effect at the time of the signing of the construction contract.

h. Provide a narrative description of each proposed Conservation Measure Offeror proposes to install, including:

i. The proposed upgrade, replacement, operational change, or maintenance requirement, if any;
ii. Any impact on standards of service and comfort, if any;
iii. A completed Table A-1 for all measures, and,
iv. A description of Conservation Measure's analyzed but disqualified under cost effectiveness criteria. Provide explanations and calculations supporting Conservation Measure's considered but not recommended as well as for those recommended.

General Information

1. Present Conservation Measure's in the order that interactions are considered;

2. Provide a Conservation Measure summary sheet for each measure (See Table A-1x).

3. Include all conditions, modifications, repairs, and improvements necessary to make the Conservation Measure fully functional. Offeror's proposal shall provide for the correction of all known deficiencies affecting the functionality of a Conservation Measure. For example, if a Conservation Measure is to install new controls for an AHU that is known to have damaged OA dampers, the proposal must provide for the repair of the dampers to a fully operational condition. Offeror's proposal shall provide a fully-functioning, code-compliant and commissioned project for every Conservation Measure. Offeror shall not rely on the Agency to make repairs or take other actions to make the Conservation Measure work.

A known deficiency is a defect in a system, equipment, or machinery, which the Agency has identified in writing or which is readably observable by the naked eye of an engineer performing a utility audit of the type Offeror is required to perform in preparation of its Proposal

4. For each Conservation Measure proposed, identify any necessary utility interruptions and any Owner support that may be required during installation.

5. For each Conservation Measure provide a proposed implementation schedule. Include the following milestones in the schedule:

a. Design completed and approved with plans and specifications;
b. Equipment/Material deliveries;
c. Installation;
d. Startup/Testing/Commissioning; and
e. Notice of Substantial Completion and Final Inspection

5. <u>Energy Baseline and Savings Measurement</u>
The Offeror shall establish and document:

a. An Energy Baseline, including data, methodology, and variables used to compute it. Baseline shall include **<u>annualized</u>** usage by utility type and **<u>annualized</u>** cost for baseline period;

DRAFT

b. The methods used to measure energy, water, and wastewater savings and associated cost savings for each utility type after proposed Conservation Measures have been installed. Give examples of specific measurements, calculations, etc.;

c. The method of determining energy savings and compliance with Standards of Service and Comfort annually throughout the contract term; and,

d. If Offeror will use a computer program or programs to establish the baseline, modify the baseline, or measure savings, furnish the name of the program, the name, address, and phone number of the program developer or supplier, and descriptive literature. Agency may require Offeror to furnish, at no cost to Agency, a properly licensed copy of the program(s) to Agency for its use in administering the contract.

All tables and other calculations shown in the sample tables included herein are based on a typical year in the contract term. All calculations must be complete and easy to follow. Spreadsheet formats must include a description of the assumptions and calculations;

Units must be indicated and only so many significant digits as the accuracy of the calculation warrants included;

Weather data source should be described; and,

Calculation details and supporting documentation shall be placed in an Appendix.

6. Description of Maintenance Services and Training

Provide a complete description of the maintenance services Offeror proposes to provide, including schedules. If Agency will perform maintenance and repairs separate from the Offeror, provide specific information or required maintenance necessary to maintain the contract guarantee.

Describe all training Offeror proposes to provide in base year 0 and during the life of the contract.

DRAFT

SE-830: REQUEST FOR PROPOSALS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

Table A-1 Conservation Measure Summary

Offeror Name: _____

Facility Name: _____
(Aggregates data from summary sheets)
State Project Number: _____

Conservation Measure No	Conservation Measure	Electricity Savings (kWh/yr)	Peak Demand Reduction (kW)	Fuel Savings (include units)	Water Savings (include units)	Other Savings	Total Cost Savings ($/yr)	Estimated Measure Cost ($) from Table A-1X	Estimated Life of Measure (years)
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DRAFT

SE-830: REQUEST FOR PROPOSALS FOR GUARANTEED ENERGY, WATER, AND WASTEWATER CONSERVATION SERVICES

Table A-1x

Summary Sheet for Conservation Measure Number _____

Building: _____
Name of Conservation Measure: _____

1. DESCRIPTION (include quantities, types, sizes, locations, etc)
   A. Existing Conditions: _____
   B. Proposed Conditions with Conservation Measure: _____

2. NET FIRST YEAR SAVINGS

Utility Type (electric, gas, oil, water, etc.)	Units of Measure for Utility Type (kWh, Therms, KW, gallons)	Savings in Utility Units of Measure (kWh, Therms, KW, gallons)	Unit Cost for the Utility	Cost Savings
TOTALS				

3. Cost Estimate Summary of Measure

Materials	$_____
Labor	$_____
Contingency	$_____
Other (Specify)	$_____
Total	$_____

4. Expected useful life: _____ years.

5. Provide a description of training required for this Conservation Measure during Base Year 0 and during the life of the contract.
_____

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SE-860
ENERGY, WATER, AND WASTEWATER SERVICES PERFORMANCE CONTRACT

This Energy, Water, and Wastewater Services Performance Contract (this ***"Contract"***) is entered into by and between the Owner:

Agency Name: _____
Address: _____

and the Energy, Water, and Wastewater Service Company (Contractor):

Contractor Name: _____
Address: _____

as of the date of execution set forth below; whereby the Contractor agrees to implement the energy, water , and wastewater conservation measures and perform the other services set forth in this Contract, including in the attached schedules:

The Contractor agrees to implement the Project and perform the Contract Services, as hereinafter defined, at the buildings owned by the Owner:

Project Name: _____
Project Number: _____
Buildings: _____
Site(s): _____
(insert location of Buildings, e.g. campus)

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year written below.

By	_____	By	_____
Signature	_____	Signature	_____
Title	_____	Title	_____
Date	_____	Date	_____
	Owner		Contractor

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SE-860
ENERGY, WATER, AND WASTEWATER SERVICES PERFORMANCE CONTRACT

RECITALS

WHEREAS the Owner is willing to have installed within the Site the equipment and related work described in Schedule A that comprises the Project;

WHEREAS the Owner desires to retain the Contractor to complete the Project and provide initial start-up, training, monitoring, verification of savings, and other services, as more fully set forth herein; and

WHEREAS the Owner desires to enter into a contract with the Contractor to achieve energy and maintenance cost reductions within the Site, subject to the terms and conditions of the Contract; and for other good and valuable consideration, the Parties, intending to be legally bound, hereby agree as follows:

PART I - REPRESENTATIVES

1. OWNER'S REPRESENTATIVES:

a. Costumer designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the responsibility for and, subject to Section 8.2 of this Contract, the authority to resolve disputes under Section 7.3 of the Contract:

Name: _____
Title: _____
Address: _____
Telephone: _____ FAX: _____
Email: _____

b. Owner designates the individual listed below as the Owner's Representative, which individual has the authority and responsibility set forth in Section 3.2 of the Contract:

Name: _____
Title: _____
Address: _____
Telephone: _____ FAX: _____
Email: _____

2. CONTRACTOR'S REPRESENTATIVES: Pursuant to Section 5.3 of the Contract, Contractor shall designate key personnel including a Senior Representative and a Contractor's Representative.

PART II - DEFINITIONS

All capitalized terms used in this Contract shall have the meaning set forth below, or in Schedule B, Section I:

1. "Change Order" means a written change in the Project executed by both Parties that, pursuant to Article 8, specifies changes in the Contract Services and, if applicable, changes in the Contract Sum and Contract Time, all of which is within the general scope or intent of the project.

2. "Concealed Conditions" means subsurface or otherwise concealed physical conditions at the Site of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in construction activities of the type and character as the Work, and that the Contractor could not have discovered through the exercise of reasonable diligence during the performance of the Investment Grade Audit.

3. "Confidential Information" is defined in Section 15.3.

4. " Conservation Measures" and each, an "Conservation Measure", means the equipment, devices, materials, and/or software to be installed at the Site by the Contractor and all related services as described in Schedule A.

DRAFT

5. "Construction Operations Phasing Plan" means a construction operation phasing plan detailing the Contractor's phasing and staging of the Work at the Site.

6. "Construction Schedule" means the Contractor's construction schedule for the Work that includes, without limitation, a schedule related to the entire Project and for each Conservation Measure, and that provides for expeditious and practicable execution of all aspects of the Work.

7. "Contract Documents", which comprise the entire agreement, means this Contract with conditions set forth herein, the Schedules identified below, the Design & Engineering Documents (once approved by the Owner as provided in Section 4.2), the Construction Schedule, any Change Orders, the other documents listed in the Contract, and any modifications to the foregoing documents issued after execution of this Contract. The Contract Documents, which comprise the entire agreement, consist of the following:

a. Modifications and change orders to this Contract issued in accordance with Section 8;

b. This Contract along with the following Schedules which are a part of this Contract:

Schedule A: Project Description;

Schedule B: Performance Guarantee;

Schedule C: Methodology and Baseline;

Schedule D: Performance Tracking Services;

Schedule E: Payment Schedule;

Schedule F: Project Specific Owner Responsibilities; and

Schedule G: Required Maintenance;

c. Supplementary Conditions, if any, to this Contract (Supplementary Conditions);

d. Design & Engineering Documents prepared by the Contractor and Approved by the Owner in accordance with Section 4.2;

e. Owner's Requirements as set forth in the Request for Proposals

f. Contractor's Proposal submitted in response to Owner's Requirements; and

g. The following other documents, if any:

Certificate of procurement authority issued by the SC Budget & Control Board

_____

In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the order in which they are listed above.

8. "Contractor's Fee" is defined in Section 2.2.

9. "Contractor's Representative" is defined in Section 5.3.

10. "Contract Services" means the Work and the Guarantee Period Services.

11. "Contract Sum" is defined in Section 2.1.

12. "Contract Time" is defined in Section 1.1.

13. "Cost of the Work" is defined in Section 2.2.

14. "Date of Commencement" means the date established pursuant to Section 1.2.

15. "Day" means calendar day unless otherwise specifically designated.

16. "Deliverables" means the Design Materials that are necessary for all construction work and/or for the Owner to operate and maintain the Project or otherwise intended for conveyance to the Owner.

DRAFT

17. "Design & Engineering Documents" is defined in Section 4.2.1.

18. "Design Materials" means the copies and other tangible embodiments of the drawings, specifications, designs, plans, "architectural work" (as such term is defined in the Architectural Works Copyright Protection Act of 1990) and other documents, prepared by or on behalf of the Owner, the Contractor, and/or Subcontractors in connection with the Project or the Contract Services.

19. "Final Acceptance" means the date that the Owner determines, in consultation with the Contractor, that Contractor has completed all of the required Work for constructing and commissioning the Project in accordance with the Contract Documents.

20. "Final Acceptance Date" is defined in Section 1.4.

21. "Guarantee Period" is defined in Section 1.1.

22. "Guarantee Period Services" means the performance guarantee, monitoring, Project modification, guarantee reconciliation, Performance Tracking Services, and other services to be performed during the Guarantee Period as described in Schedules B, C, and D of this Contract.

23. “Hard Operational Savings” means quantifiable and measureable labor, materials, or service contract operating expense savings that are a direct result of conservation measures implemented. Labor hours saved that would be redirected to other activities does not result in dollar savings and are not Hard Operational Savings.

24. "Hazardous Material" means (A) any substance that is listed, defined, designated, or classified under any state, federal, or local law relating to the protection of the environment or human health as a (i) hazardous material, constituent, or waste, (ii) toxic material, substance, constituent, or waste, (iii) radioactive material, substance, constituent, or waste, (iv) dangerous material, substance, constituent, or waste, (v) pollutant, (vi) contaminant, or (vii) special waste; or (B) petroleum, petroleum products, radioactive matters, polychlorinated biphenyl, pesticides, asbestos, or asbestos-containing materials.

25. "Installation Period" is defined in Section 1.1.

26. "Installation Period Savings" is defined in Section 2.2.

27. "Intellectual Property Rights" means any patents, copyrights, trademarks, service marks, trade secrets and similar and related intellectual property rights protected by law.

28. "Interim Completion" means the achievement of the requirements for Substantial Completion for a particular Conservation Measure prior to the Substantial Completion Date.

29. "Investment Grade Audit" means the report prepared by the Contractor that sets forth, among other things, (a) an assessment of the energy, and water consumption characteristics of the Site, (b) specific energy, water, and wastewater analysis related to the Site and its operation, and (c) recommendations for projects or programs to achieve cost and/or energy, water, and wastewater savings in the operation of the Site.

30. "Manufacturers' Warranties" is defined in Section 4.14.

31. "Mold" means any type or form of fungus or similar biological material or agent, including mold, mildew, moisture, yeast and mushrooms, and any mycotoxins, spores, scents, or by-products produced or released by any of the foregoing.

32. “OSE” means the South Carolina Office of State Engineer.

33. "Parties" means the Contractor and the Owner. "Party" means either the Contractor or the Owner.

34. "Performance Tracking Payment" is defined in Section 2.3.

35. "Performance Tracking Services" means those services to be provided by the Contractor to measure and verify the performance of the Conservation Measures described in Schedule D.

36. "Project" means the building analysis and recommendation services, design, engineering, installation, repairs, retrofit, complete implementation of the Conservation Measures, and training program for the Owner's employees as more fully described in the “Project Description” attached hereto as Schedule A and the other terms and provisions

DRAFT

of this Contract.

37. "Punch List" means minor adjustments, and/or corrections to the Work to be completed after Substantial Completion and prior to Final Acceptance that do not interfere with the Owner's use and occupancy of the Conservation Measure or Project and that will not prevent the issuance of applicable permits or certificates for such use.

38. "Site" means the location of the Work as set forth on the first page of this Contract.

39. "Subcontractor" means any partnership, firm, corporation or entity other than an employee of the Contractor, who contracts with the Contractor to furnish services, labor, materials, or labor and materials at the Site. This term also includes subcontractors of any tier, consultants, suppliers, fabricators or manufacturers, whether or not in privity with the Contractor.

40. "Substantial Completion" means the date the Owner determines, in consultation with the Contractor, that the Contractor has, in accordance with the Contract Documents, sufficiently implemented the Work for the Project or a particular Conservation Measure, excluding Punch List items, so that the Owner may utilize the Project or the Conservation Measure for the use for which it is intended. Substantial Completion shall not occur until after completion of any required commissioning of systems that are a part of the Work for the Project or particular Conservation Measure. If the nature of the Work is such that the OSE must issue a certificate of occupancy before use and/or occupancy by the Owner, Substantial Completion means the date of issuance of the required certificate of occupancy.

41. "Substantial Completion Date" is defined in Section 1.3.

42. "Work" means the work and services required by the Contract Documents during the Installation Period and any period of time during which the Contractor is required to correct or replace its work and services pursuant to this Contract. The Work includes all labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under this Contract.

PART III – GENERAL CONDITIONS OF THE CONTRACT

ARTICLE 1 – CONTRACT TIME AND PROJECT SCHEDULE

1.1 Contract Time: The "Contract Time" is the time from the Date of Commencement, as established pursuant to Section 1.2, until the end of the Guarantee Term, as defined in Schedule B, Section I. The Contract Time consists of the Installation Period and the Guarantee Period.

a. The "Installation Period" is the period from the Date of Commencement until Final Acceptance of the entire Project.
b. The "Guarantee Period" is the period from the Savings Guarantee Commencement Date, as defined in Schedule B, Section I, until the end of the Guarantee Term.

1.2 Date of Commencement: The "Date of Commencement" shall be the date fixed in a notice to proceed issued by the Owner.

1.3 Substantial Completion: The Contractor will commence the Work within _____ days after the Date of Commencement and will successfully achieve Substantial Completion of the Project within _____ days from the Date of Commencement, subject only to adjustments of the Contract Time as provided in the Contract Documents.

1.3.1 When the Contractor believes that the entire Project or a particular Conservation Measure has achieved Interim or Substantial Completion, the Contractor will submit a certificate of Interim or Substantial Completion and a Punch List to the Owner on a form agreed to by the Parties. If the Owner concurs that the described portion of the Work as performed has achieved Interim or Substantial Completion, the Owner will accept that Work by signing the certificate of Interim or Substantial Completion and the Punch List and returning both to the Contractor. If the Owner does not concur that the Work has achieved Interim or Substantial Completion and/or that the Punch List is

DRAFT

not complete or correct, then the Owner shall notify the Contractor within ten (10) business days of any discrepancies. To the extent the Contractor does not dispute the discrepancies raised by the Owner, the Contractor shall (i) promptly and diligently correct the Work to conform to the description of the Work set forth herein, and resubmit the certificate of Interim or Substantial Completion to the Owner, and (ii) promptly complete all items on the Punch List. If the Contractor disagrees with the discrepancies raised by the Owner, the Contractor shall notify the Owner of a dispute and such dispute shall be resolved in accordance with the provisions of Article 7 herein. If the Owner does not deliver written notice to the Contractor within ten (10) business days of receiving the certificate of Interim or Substantial Completion and the Punch List, the Owner will be deemed to have agreed to the certificate of Interim or Substantial Completion, but not the Punch List.

1.3.2 Reserved.

1.4 Final Acceptance: The Contractor will successfully achieve Final Acceptance of the entire Project within _____ days from the Date of Commencement, subject only to adjustments of the Contract Time as provided in the Contract Documents ("Final Acceptance Date"). The Contractor acknowledges that the Savings Guarantee Commencement Date, as defined in Schedule B, Section I, will commence on the Final Acceptance Date, even if the Contractor has failed to achieve Final Acceptance of the entire Project by that date.

1.5 Construction Schedule and Construction Operations Phasing Plan:

☐ If the preceding box is checked, the Contractor will, within _____ days after the Date of Commencement prepare and submit the Construction Schedule and Construction Operations Phasing Plan, prepared in form and substance reasonably acceptable to, or as specifically prescribed by the Owner.

☐ If the preceding box is checked, the Construction Schedule and Construction Operations Phasing Plan are included as attachments to Schedule A.

The Construction Schedule shall be updated by the Contractor and submitted to the Owner at least monthly and, if requested by the Owner, in electronic format. The Contractor shall submit a revised Construction Schedule when the Contractor's planned sequence is changed or when Project changes are made that affect the Construction Schedule. Any changes to the Construction Schedule and Construction Operations Phasing Plan are subject to review and approval by the Owner. When performing the Work, the Contractor shall comply with the Construction Operations Phasing Plan and the Construction Schedule.

DRAFT

ARTICLE 2 – COMPENSATION TO THE CONTRACTOR

2.1 Contract Sum: The Owner shall pay the Contractor for the performance of the Work as required hereunder and for the performance of all other obligations and duties imposed upon this Contractor pursuant to this Contract, other than the Performance Tracking Services, the "Contract Sum" of _____ and No/100 Dollars ($_____), subject to additions and deductions by Change Order as provided in this Contract.

2.2 Reserved

2.3 Compensation for Performance Tracking Services: The Contractor will perform the Performance Tracking Services set forth in Schedule D, if any, commencing upon Final Acceptance (or such other time identified in Schedule D). The Owner shall make annual payments to the Contractor for the Performance Tracking Services for each Performance Guarantee Year such services are required by Schedule D in the amounts set forth in Schedule E, Section II (the "Performance Tracking Payment"). If, any Performance Guarantee Year, the Owner fails to pay for the Performance Tracking Services in accordance with this Contract or does not permit the Contractor to perform the Performance Tracking Services, the Contractor shall have no obligation to achieve the performance guarantees set forth in Schedule B with respect to such Performance Guarantee Year.

ARTICLE 3 – OWNER

3.1 Project Specific Owner Responsibilities: The Owner agrees to undertake the Project specific Owner responsibilities set forth on Schedule F.

3.2 Owner Representative: The Owner will appoint one individual who is authorized to act on behalf of the Owner either to approve, reject, or otherwise facilitate the orderly execution of the Contract Services and with whom the Contractor may consult at all reasonable times. The Representative's written instructions, requests, and decisions shall be binding upon the Owner as to all matters pertaining to this Contract. The Owner may substitute a new Owner's representative upon prior notice to the Contractor.

3.3 Information to the Contractor: The Owner shall furnish, with reasonable promptness, information requested by the Contractor that is necessary for the performance of the Contract Services and under the Owner's control. Any information or documentation provided by the Owner to the Contractor relating to the Project or Site is provided only for the convenience of the Contractor. The Owner makes no representation or warranty to as to the sufficiency, completeness, or accuracy of such information.

3.4 Telephone and Network Access: The Owner is responsible for providing all required telephone lines and telephone service and/or all required network LAN/WAN access including but not limited to VPN tunneling, firewall coordination, and static/dynamic IP address maintenance to allow the Contractor 24/7 remote access to performance tracking monitoring systems to the extent required to perform and complete the Contract Services.

3.5 Utility Access and Use:
☐ If the preceding box is checked, the Owner shall allow the Contractor to use reasonable quantities of water and electricity for construction purposes without charge as long as these utilities are available and in close proximity to the work area. Contractor shall be conscientious in controlling excessive or frivolous use of the utilities or the Owner may charge the Contractor for wasteful useage.

3.6 Sanitary Facilities:
☐ If the preceding box is checked, the Contractor may use those sanitary facilities designated by the Owner as available for use.

☐ If the preceding box is checked, the Contractor may not use the Owner's sanitary facilities. The contractor shall provide sanitary facilities at the job site and maintain same in a clean and sanitary condition for the use of its employees and employees of its subcontractors for the duration of construction. The sanitary facilities shall conform to the requirements of the South Carolina Department of Health and Environmental Control.

DRAFT

ARTICLE 4 – INSTALLATION PERIOD SERVICES

4.1 Permits, Approvals and Building Codes:
4.1.1Except for those permits and fees that are specified as the responsibility of the Owner under the Contract Documents, the Contractor shall secure and pay for necessary permits, approvals, assessments and charges required for the proper execution and completion of the Work.

4.1.2 In designing and constructing the Project, the Contractor shall comply with all Building Codes and Standards as adopted in the Manual for Planning and Execution of State Permanent Improvements, Part II.

4.2 Design and Engineering Documents
4.2.1 The Contractor shall prepare, for written approval by the Owner, working drawings and specifications setting forth in detail the requirements of the construction and installation of the Project in accordance with the Contract Documents ("Design & Engineering Documents"). The Design & Engineering Documents shall include all drawings, specifications, schedules, diagrams, and plans, and such content and detail as is necessary to complete properly the construction of the Project, and shall provide information customarily necessary for the use of such documents by those in the building trades. The Design & Engineering Documents shall include manufacturer's descriptive literature including performance and characteristics data and catalog cuts and shop drawings showing in detail the interface between Conservation Measure equipment and existing equipment and the location of Conservation Measure equipment on building floor plans. Where required by law, the Design & Engineering Documents must bear the stamp or seal of architects or engineers licensed by the State of South Carolina. The Design & Engineering Documents need not be submitted to the Owner as a complete set, but may be submitted in successive packages, each of which address separate construction trades or systems applicable to the Project. Within Click here to enter text. days after submission, the Owner shall review each package of Design & Engineering Documents and either (i) approve such documents; or (ii) disapprove such documents, specifying in writing the basis for disapproval.

4.2.2 The Contractor shall submit to OSE for approval, Design & Engineering Documents for any Conservation Measure or portion of the Project subject to the permitting requirements set forth in Chapter 1 of the edition of International Building Code adopted by the OSE. Documents submitted to OSE shall comply with the requirements of Chapters 5.1 and 5.2 of the Manual for Planning and Execution of State Permanent Improvements, Part II.

4.2.3 The Contractor shall not commence the procurement or construction of any portion of the Project until the Owner and OSE, when OSE approval is required, approve the completed Design & Engineering Documents relevant to such part or portion in writing. The Contractor covenants and agrees that Design & Engineering Documents shall be accurate and free from any errors or omissions, and shall be in compliance with and accurately reflect all applicable laws. The Contractor shall promptly modify any Design & Engineering Documents that are not in accordance with laws, are inaccurate, or contain errors or omissions, at no expense to Owner.

4.2.4 The Owner and OSE, in reviewing, approving, commenting on, or evaluating any plans, drawings, specifications, or other documents, shall have no responsibility or liability for the accuracy or completeness of such documents, for any defects, deficiencies, or inadequacies therein or for any failure of such documents to comply with the requirements set forth in the Contract Documents. In no event shall any review, approval, comment, or evaluation by the Owner or OSE relieve the Contractor of any liability or responsibility under this Contract, it being understood that the Owner is at all times ultimately relying upon the Contractor's skill, knowledge, and professional training and experience in preparing any plans, drawings, specifications, or other documents.

4.3 Supervision and Performance of the Work: The Contractor shall supervise, perform, and direct the Work, using the professional skill, care, and attention reasonably required for projects similar to the Project. The Contractor shall be solely responsible for and have control over means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. The Contractor agrees to faithfully and fully perform the terms of this Contract, and shall complete the Work free and clear of all liens. The Contractor shall, at all times during the progress of the Work, employ enough skilled workers and have on hand and maintain an adequate supply of

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materials and equipment to complete the Work in accordance with the Construction Schedule.

4.4 The Contractor acknowledges that it has investigated and satisfied itself regarding all the conditions of the specific areas in and about the Site affected by the Work and the conditions under which it is to perform the Work. The Contractor further acknowledges that it has executed this Contract based on such investigation, study, and determination.

4.5 Employee Discipline: The Contractor shall enforce discipline and good order among the Contractor's employees and other persons carrying out the Work.

4.6 Safety: The Contractor shall comply with all federal and state work site safety requirements and shall be responsible for initiating, maintaining, and supervising reasonable safety precautions and programs in connection with the performance of the Contract Services. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable and appropriate protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein; and (3) other property at the Site or adjacent thereto.

4.7 Waste Materials and Rubbish: The Contractor shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by the Work. Upon Final Acceptance of the Project, the Contractor shall, to the Owner's satisfaction, remove from and about the Site, all waste materials, rubbish, surplus material , and Contractor's tools, equipment, machinery..

4.8 Recycling: The Contractor shall give preference to the use of products containing recycled content in the performance of the Work. The Contractor shall cooperate with any recycling program established for the Site or available through the state or a political subdivision of the state.

4.9 Access to the Work: The Contractor shall provide the Owner with unrestricted access to the Work in preparation and progress wherever located in the Site.

4.10 Use of Site: The Contractor shall confine its operations to the portions of the Site identified in the Contract Documents or otherwise approved by the Owner, and shall not unreasonably encumber the portions of the Site used for the Work with materials, equipment, or similar items. The Contractor and all Subcontractors shall use only such entrances to the Site as are designated by the Owner. During occupied hours, Contractor shall limit construction operations to methods and procedures that do not adversely affect the environment of occupied spaces within the Site, including but not limited to creating noise, odors, air pollution, ambient discomfort, or poor lighting.

4.11 Project Meetings: The Contractor shall provide for periodic project meetings as mutually agreed upon between the parties during the Installation Period, and shall give timely advance written notice of such meetings and the agenda to the Owner. The Contractor shall record minutes and distribute copies of minutes of meetings to the Owner and the OSE within five (5) business days after each meeting. The Contractor shall schedule additional project meetings if requested by the Owner.

4.12 Correction of the Work:
4.12.1 The Owner shall have the right and authority to reject Work that does not conform to the Contract Documents. The Contractor shall promptly correct Work rejected by the Owner for failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed. The provisions of this Section 4.12 apply to Work done by Subcontractors as well as to Work done by direct employees of the Contractor.

4.12.2 If the Contractor fails to correct the Work, or any portion thereof, that is not in accordance with the requirements of the Contract Documents or fails to carry out Work or provide information in accordance with the Contract Documents, the Owner may make written demand upon the Contractor to cure its defaults within seven days. Within seven days after receipt of the Owner's demand, the Contractor shall cure its defaults unless the default is such that it is not capable of cure within seven days. If the default is such that it is not capable of cure within seven days, the Contractor shall reach an agreement with the Owner on a plan to cure its defaults within five days

after receipt of the Owner's demand. The Contractor shall commence and diligently and continuously pursue the cure of such defaults in accordance with the agreed plan. If the Contractor fails to cure its defaults as heretofore provided, the Owner may order the Contractor, in writing, to stop the Work, or any portion thereof, until the Contractor has eliminated the cause for such order or has provided the Owner with a plan for corrective action acceptable to the Owner. The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

4.12.3 Correction after Substantial Completion: If, within one year after the date of Substantial Completion of the Work or designated portion thereof, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so. The Contractor's obligation set forth in this Section 4.12.3 is in addition to the Contractor's obligations under Section 4.16,

4.12.4 Nothing contained in this Section 4.12 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of such time period as described in this Section 4.12 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

4.13 Performance and Payment Bonds: Before commencing any services hereunder, the Contractor shall provide the Owner with Performance and Payment Bonds, each in an amount not less than the Contract Price set forth in Article 2 of the Agreement. The Surety shall have, at a minimum, a "Best Rating" of "A" as stated in the most current publication of "Best's Key Rating Guide, Property-Casualty". In addition, the Surety shall have a minimum "Best Financial Strength Category" of "Class V", and in no case less than five (5) times the contract amount. The Performance Bond shall be written on Form SE-355, "Performance Bond" and the Payment Bond shall written on Form SE-357, "Labor and Material Payment Bond", and both shall be made payable to the Owner. Owner

4.13.1 The Performance and Labor and Material Payment Bonds shall:

(a) be issued by a surety company licensed to do business in South Carolina;
(b) be accompanied by a current power of attorney and certified by the attorney-in-fact who executes the bond on the behalf of the surety company; and
(c) remain in effect for a period not less than one (1) year following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.

4.13.2 Any bonds required by this Contract shall meet the requirements of the South Carolina Code of Laws and Regulations, as amended.

4.13.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

4.14 Startup/Commissioning: The Contractor shall conduct a thorough and systematic performance test of each element and total system of the installed Conservation Measures in accordance with Schedule A, and demonstrate that all Conservation Measures comply with the requirements of the Contract Documents. The tests shall be performed by the commissioning entity designated in Schedule A, or, if no entity is designated, a qualified commissioning entity reasonably acceptable to the Owner. The Contractor shall provide advance written notice of at least ten (10) business days to the Owner of the scheduled test(s). The Owner shall have the right to designate representatives to be present at any or all such tests including representatives of the manufacturers of the Conservation Measures. The Contractor, or its Subcontractor(s), shall correct or adjust all deficiencies in operation of the Conservation Measures identified during the course of the tests described in this Section. The Contractor shall provide to the Owner a description of the ongoing training requirements for the Site's operations and maintenance

DRAFT

personnel necessary to maintain proper Conservation Measure performance after Final Acceptance.
4.15 Manufactures' Warranties: At Final Acceptance of the Work or Interim Completion of a particular Conservation Measure, the Contractor shall furnish the Owner two (2) original complete sets of all manufacturers' warranties, guarantees, parts lists, and literature applicable to equipment, systems, fittings, and furnishings included in the Work for that Conservation Measure (collectively referred to as "***Manufacturers' Warranties***"), completed in favor of the Owner. These Manufacturers' Warranties are in addition to and not in lieu of the Contractor's warranty set forth in Section 4.16, and the Owner is entitled to look to the Contractor for remedy in all cases where the Contractor's warranty applies regardless of whether a Manufacturer's Warranty also applies. The Owner shall acknowledge receipt of the sets of Manufacturers' Warranties on the set itself, and the Contractor shall cause six (6) copies of an acknowledged set to be made and furnished to the Owner. All Manufacturers' Warranties will be for applicable periods and contain terms not less favorable to the Owner than those terms that are standard for the applicable industries, and will either be issued in the first instance in the name of and for benefit of the Owner, or be in a freely assignable form and be assigned to the Owner without limitations.

4.16 Contractor Warranty: The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from faults and defects not inherent in the quality required or permitted, that the materials, equipment and Work will conform with the requirements of the Contract Documents, and that the Work will be free from any encumbrances, liens, security interests, or other defects in title upon conveyance of title to the Owner. The Contractor's warranty excludes remedy for damage or defect to the extent caused by (i) abuse by anyone other than the Contractor or those for whose acts the Contractor is responsible, (ii) modifications not approved or executed by the Contractor or Subcontractors, (iii) improper or insufficient maintenance or operation that is not in accordance with Schedule G, or (iv) normal wear and tear under normal usage. The Contractor shall furnish evidence, reasonably satisfactory to the Owner, as to the kind and quality of materials and equipment and the recommended maintenance thereto to meet the requirements of this Section.

4.17 After complete installation of the Conservation Measures but no later than the date of Substantial Completion, the Contractor shall submit operation and maintenance manuals, recommended spare parts lists, and copies of all warranties to the Owner. As-Built drawings shall be submitted no later than the Final Completion Date.

ARTICLE 5 – OTHER SERVICES AND REQUIREMENTS OF CONTRACTOR

5.1 Contract Documents: The Contractor hereby covenants and agrees that it shall duly and properly perform the Contract Services and implement the Project in accordance with the Contract Documents. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for design and consultant services, labor, materials, tools, equipment, and machinery necessary for the proper execution and completion of the Contract Services. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Contract Services including, without limitation, all items and services that are consistent with, contemplated by, or reasonably inferable from the Contract Documents, whether or not such items and services are specifically mentioned therein. The Contract Documents are complementary, and what is required by one shall be binding as if required by all.

5.2 Subcontractors: The Contractor shall furnish in writing to the Owner for its approval the names of the Subcontractors to whom the Contractor plans to award any portion of the Contract Services. Contracts between the Contractor and Subcontractors shall require each Subcontractor, to the extent of the Contract Services to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Owner all the obligations and responsibilities which the Contractor, by the Contract Documents, assumes toward the Owner. The Contractor shall be responsible to the Owner for acts and omissions of the Subcontractors, their agents and employees, and any other persons performing portions of the Contract Services, to the same extent as the acts or omissions of the Contractor hereunder.

5.3 Contractor's Key Personnel:
5.3.1Included within Schedule A attached hereto is a list of the Contractor's key personnel who will be responsible for supervising the performance of the Contract Services. The Contractor shall not remove any such key personnel

DRAFT

from the Project without the Owner's prior written consent, which the Owner shall not unreasonably withhold. If, after execution of this Contract, the Owner reasonably objects to any of the Contractor's key personnel, the Contractor shall promptly remove such personnel. If any of the Contractor's key personnel are removed as provided above, any replacement personnel shall be subject to the prior written approval of the Owner, which the Owner shall not unreasonably withhold.

5.3.2 Contractor's Representative: Contractor shall designate an authorized Representative, which individual shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's Representative.

5.4 Taxes: Unless otherwise provided in the Contract Documents, the Contractor shall pay all federal, state or local sales, consumer, use, and other similar taxes for which it bears the incidence of taxation that are legally enacted as of the date of execution of this Contract, whether or not effective or merely scheduled to go into effect.

5.5 Compliance with Law: The Contractor shall comply with and give all notices required by federal, state, county, and municipal laws, ordinances, regulations, and orders bearing on the performance by the Contractor of the duties or responsibilities under this Contract. The Contract Sum is based upon laws, codes, and regulations in existence as of the date this Contract is executed. Any changes in or to applicable laws, codes, and regulations affecting the cost of the Work shall entitle the Contractor to an equitable adjustment in the Contract Sum and Contract Time through a Change Order.

5.5.1 The Contractor shall promptly remedy any violation of any such law, ordinance, rule, regulation, or order that comes to its attention to the extent that the same results from its performance of the Work. The Contractor shall promptly, and in no event later than the close of the next business day following receipt, give notice to the Owner by telephone, with confirmation in writing, of receipt by the Contractor of any information relating to violations of laws, ordinances, rules, regulations, and orders.

5.6 Remedy to Damage or Loss: The Contractor shall promptly remedy damage, injury, or loss at the Site to the extent caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

5.7 Royalties and License Fees: The Contractor shall pay all royalties and license fees related to the Contract Services; shall defend suits or claims for infringement of patent rights required for the Contract Services to be performed; and shall hold the Owner harmless from loss on account thereof.

5.8 Publicity: Contractor shall not publish any comments or quotes by State employees, or include the State in either news releases or a published list of Owners, without the prior written approval of the Owner.

5.9 Retention and Inspection of Documents: The Contractor and its Subcontractors shall furnish the Owner with such information as the Owner reasonably requests regarding the progress and execution of the Contract Services. For three (3) years after the Contractor receives its final payment in connection with the Contract Services, the Contractor and its Subcontractors shall maintain and allow the Owner to inspect and copy records on the Contract Services showing utilization of Subcontractors, work performed, and data and information necessary to support all energy savings calculations.

5.12 Indemnification
5.12.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner and the Owner's agents and employees from and against claims, damages, losses and expenses, including, but not limited to, attorney's fees, arising out of or resulting from performance of the Contract Services, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, , regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

DRAFT

5.12.2 In claims against any person or entity indemnified under Section 5.12.1 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 5.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or a Subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts.

5.13 Insurance

5.13.1 Commercial General Liability, Business Automobile Liability, and Worker's Compensation: The Contractor shall purchase from and maintain, in a company or companies lawfully authorized to do business in South Carolina, such insurance as will protect Contractor from claims set forth below, which may arise out of or result from Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(a) claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

(b) claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

(c) claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

(d) claims for damages insured by usual personal injury liability coverage;

(e) claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

(f) claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

(g) claims for bodily injury or property damage arising out of completed operations; and

(h) claims involving contractual liability insurance applicable to the Contractor's obligations under Section 13.

5.13.1.1 The insurance required by Section 5.13.1 shall be written for not less than the limits of liability specified below or required by law, whichever is greater. Coverage shall be written on an occurrence basis and shall be maintained without interruption from the date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work set forth in Section 4.12.3 or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

(a) COMMERCIAL GENERAL LIABILITY:

(1) General Aggregate (per project) $2,000,000
(2) Products/Completed Operations $2,000,000
(3) Personal and Advertising Injury $2,000,000
(4) Each Occurrence $2,000,000
(5) Fire Damage (Any one fire) $50,000
(6) Medical Expense (Any one person) $5,000

(b) BUSINESS AUTO LIABILITY (including All Owned, Non-owned, and Hired Vehicles):

DRAFT

(1) Combined Single Limit ..... $1,000,000 **OR**
(2) Bodily Injury & Property Damage (each) $750,000

(c) WORKER'S COMPENSATION:
(1) State Statutory
(2) Employers Liability ..... $100,000 Per Acc.
..... $500,000 Disease, Policy Limit
..... $100,000 Disease, Each Employee

In lieu of separate insurance policies for Commercial General Liability, Business Auto Liability, and Employers Liability, the Contractor may provide an umbrella policy meeting or exceeding all coverage requirements set forth in this Section 11.1.2. The umbrella policy limits shall not be less than $5,000,000.

5.13.1.2 Prior to commencement of the Work, and thereafter upon replacement of each required policy of insurance, Contractor shall provide to the Owner a written endorsement to the Contractor's general liability insurance policy that:

(i) names the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations;
(ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless all additional insureds have been given at least ten (10) days prior written notice of cancellation for non-payment of premiums and thirty (30) days prior written notice of cancellation for any other reason; and
(iii) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of the Owner as secondary and noncontributory.

5.13.1.3 Before commencement of the Work, and thereafter upon renewal or replacement of each required policy of insurance, Contractor shall provide to the Owner a signed, original certificate of liability insurance (ACORD 25). Consistent with this Section 5.13.1, the certificate shall identify the types of insurance, state the limits of liability for each type of coverage, name the Owner Consultants as Certificate Holder, provide that the general aggregate limit applies per project, and provide that coverage is written on an occurrence basis. Both the certificates and the endorsements must be received directly from either the Contractor's insurance agent or the insurance company. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, naming the Owner as an additional insured for claims made under the Contractor's completed operations, and otherwise meeting the above requirements, shall be submitted with the Contractor's final request for payment for the Work and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 5.13.1. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

5.13.1.4 A failure by the Owner either (i) to demand a certificate of insurance or written endorsement required by Section 5.13.1, or (ii) to reject a certificate or endorsement on the grounds that it fails to comply with Section 5.13.1 shall not be considered a waiver of Contractor's obligations to obtain the required insurance.

5.13.2 Contractor's Property Insurance

5.13.2.1 Contractor's Installation Floater: For projects with equipment, materials, or fixtures valued over $10,000 to be installed, in-transit, or stored off-site Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, an Installation Floater for coverage of Contractor's labor, materials, and equipment to be used for completion of work performed under this Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contractor's labor, equipment, materials, or fixtures to be installed, in-transit, or stored off-site during the performance of this Contract. The policy shall include the Owner, the Contractor and its sub-contractors as their interest may appear as loss payees.

DRAFT

5.13.2.2 Builder's Risk Insurance: In the event the Contractor constructs a new building, building addition, or adds a major new building system under this contract, then the Contractor shall purchase Special Form Builder's Risk Insurance without optional deductible and with a limit equal to 100% of the replacement cost of the new building, building addition, or major new building system. The Owner and subcontractors at all tiers shall be named insured on this policy. The Contractor shall maintain such property insurance until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required by this Section 5.13.2.2 to be covered, whichever is later. Contractor's Builder's Risk Insurance shall:

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

(b) cover portions of the work stored off the site and in transit.

Partial occupancy or use of the new building, building addition, or building system shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.

5.13.2.3 In the event the Contractor installs and runs and/or operates (whether for testing or other purposes) heating, air conditioning, and electrical machinery and equipment, the Contractor shall purchase and maintain equipment breakdown (boiler and machinery) insurance, which shall specifically cover such objects during installation and until final acceptance by the Owner. This insurance shall include interests of the Owner, Contractor, and Subcontractors at any tier in the Work, and the Owner and Contractor shall both be named insureds.

5.13.2.4 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverage required by this Section 5.13.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Owner.

5.13.2.5 Waiver of Subrogation: The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent the property insurance provided by the Contractor pursuant to this Section 5.13.2 covers and pays for the damage, except such rights as they have to proceeds of such insurance held by the Contractor. The Owner or Contractor, as appropriate, shall require of the subcontractors, sub-subcontractors, agents and employees, each of the other, by appropriate written agreements, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

5.13.3 Owner's Property Insurance: Upon Contractor's substantial completion and Owners approval and acceptance of a Conservation Measure and associated systems, the Owner shall obtain through the South Carolina Insurance Reserve Fund property insurance on such Conservation Measure and associated systems. The Owner shall maintain such insurance throughout the term of the contract.

5.13.4 Contractor's Professional Liability (Errors & Omissions) Insurance: Contractor shall procure Professional Liability Errors and Omissions Insurance with limits of not less than $2,000,000 per claim and in the aggregate. Contractor shall maintain this coverage in effect during the Installation Period of the Contract and for two (2) years

DRAFT

after the Date of Substantial Completion of the entire Project. Contractor shall give prompt written notice to Owner of any and all claims made against this policy during the period in which this policy is required to be maintained pursuant to this Contract. Contractor agrees to require any architects and/or engineers retained by Contractor to provide design services required by the Contract ("Sub-consultants) to comply with the insurance provisions required of the Contractor pursuant to this Contract unless Contractor and Owner mutually agree to modify these requirements for Sub-consultants whose work is of relatively small scope.

5.13.4.1 Contractor shall require that Contractor's Sub-consultants indemnify and hold harmless Owner and each officer, director and employee against all claims against any of them, for personal injury or bodily injury, wrongful death or property damage arising out of negligent performance of professional services or caused by an error, omission, or negligent act of the Contractor's Sub-consultant or anyone employed by the Contractor's Sub-consultant.

5.14 Financing Contract Requirements: If one or more Financing Contracts are entered into for the Project, the Contractor agrees to provide the parties to the Financing Contract such written information, certificates, copies of invoices, receipts, lien waivers, affidavits, and other like documents as such parties may reasonably request. The Contractor hereby subordinates any liens or security interests that it may be entitled by law or under the provisions of this Contract to any lien or security interest granted in favor of the party or parties to a Financing Contract.

5.15 Software Licenses: If Contractor's Conservation Measures, including but not limited to equipment, includes software, Contractor shall acquire for or grant to the Owner, and any contractor working for the Owner, a paid-up, perpetual, non-exclusive license to use the software. Contractor shall notify the Owner of any available upgrades to the software as soon as the Contractor becomes aware of the existence of such upgrades.

ARTICLE 6 – LIMITATION OF LIABILITY

6.1 Notwithstanding any other provision of the Contract Documents, but subject to a duty of good faith and fair dealing, the Contractor and Owner waive Claims against each other for listed damages arising out of or relating to this Contract. This mutual waiver includes

6.1.1 For the Owner, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) costs suffered by a third party unable to commence work, (vi) attorney's fees, (vii) any interest, except to the extent allowed by Section 15.14 (Interest), (viii) lost revenue and profit for lost use of the property, (ix) costs resulting from lost productivity or efficiency. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

6.1.2 For the Contractor, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) attorney's fees, (vi) any interest, except to the extent allowed by Section 15.14 (Interest); (vii) unamortized equipment costs; and (viii) losses incurred by subcontractors for the types of damages the Contractor has waived as against the Owner.

6.2 This mutual waiver is applicable, without limitation, to all listed damages due to either party's termination in accordance with Article 13. Nothing contained in this Article 6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. This mutual waiver is not applicable to amounts due or obligations under Section 5.12 (Indemnification).

ARTICLE 7 – CLAIM AND DISPUTES - DUTY OF COOPERATION, AND NOTICE

7.1 Contractor and Owner are fully committed to working with each other throughout the Project to avoid or minimize claims. To further this goal, Contractor and Owner agree to communicate regularly with each other at all times notifying one another as soon as reasonably possible of any issue that if not addressed may cause loss, delay,

DRAFT

and/or disruption of the Work. If claims do arise, Contractor and Owner each commit to resolving such claims in an amicable, professional, and expeditious manner to avoid unnecessary losses, delays, and disruptions to the Work.

7.2 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of the Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

7.3 In the event of a dispute, both parties shall attempt to resolve the dispute at the field level through discussions between Contractor's Representative and Owner's Representative. If a dispute cannot be resolved through Contractor's Representative and Owner's Representative, then the Contractor's Senior Representative and the Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than twenty-one days after such a request is made, to attempt to resolve such dispute. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute. The meetings required by this Section are a condition precedent to resolution pursuant to Section 7.4.

7.4 If after meeting in accordance with the provisions of Section 7.3, the Senior Representatives determine that the dispute cannot be resolved on terms satisfactory to both the Contractor and the Owner, then either party may submit the dispute by written request to South Carolina's Chief Procurement Officer for Construction (CPOC). Except as otherwise provided in Article 7, all claims or controversies relating to the Contract shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for or a federal court located in, Richland County, State of South Carolina. Contractor agrees that any act by the State regarding the Contract is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United State's Constitution.

7.5 If any party seeks resolution to a dispute by the appropriate Chief Procurement Officer pursuant to Section 7.4, the parties shall participate in non-binding mediation to resolve the claim. If the amount in controversy is $100,000.00 or less, the CPOC shall appoint a mediator, otherwise, the mediation shall be conducted by an impartial mediator selected by mutual agreement of the parties or, if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator.

7.6 Without relieving any party from the other requirements of Section 7.3, either party may initiate proceedings in the appropriate forum prior to initiating or completing the procedures required by Section 7.3 if such action is necessary to preserve a claim by avoiding the application of any applicable statutory period of limitation or repose.

7.7 Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any claims or controversies relating to the Contract; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided for the Contractor's Senior Representative or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

7.8 Continuation of Work: Pending final resolution of any dispute under this Contract, the Contractor will proceed diligently with the performance of its duties and obligations under the Contract Documents, and the Owner will continue to make payments of undisputed amounts in accordance with the Contract Documents.

ARTICLE 8 – CHANGES IN THE WORK

8.1 Change Orders: The Owner may order, or the Contractor may request of the Owner (which request may be approved, rejected, conditioned, or delayed in the Owner's sole and absolute discretion), changes in the Work consisting of additions, deletions, or modifications to the Work. Such changes in the Work shall be authorized only

by written Change Order signed by the Owner and the Contractor (and, when required, approved by OSE), stating their agreement upon all of the following:

a. The change in the Work;
b. The amount of the adjustment, if any, in the Contract Sum; and
c. The extent of the adjustment, if any, in the Contract Time.

8.2 If a Change Order provides for an adjustment to the Contract Sum, the adjustment must be calculated in accordance with Section 8.10.

8.3 At the Owner's request, the Contractor shall prepare a proposal to perform the work of a proposed Change Order setting forth the amount of the proposed adjustment, if any, in the Contract Sum; and the extent of the proposed adjustment, if any, in the Contract Time. Any proposed adjustment in the Contract sum shall be prepared in accordance with Section 8.2. Within fifteen days of receiving the request, the Contractor shall submit the proposal to the Owner along with all documentation required by Section 8.19.

8.4 If a Change to the Contract Sum resulting from a Change in the Work exceeds the limits of the Owner's Construction Change Order Certification (reference certificate of procurement authority issued by the SC Budget & Control Board and made a part of this Contract), then the Owner's agreement is not effective, and Work may not proceed, until approved in writing by the OSE.

8.5 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, any adjustments to the Contract Sum or the Contract Time.

8.6 Change Directive: If the Parties do not agree on an adjustment, if any, in the Contract Sum or Contract Time, or both for the ordered changes to the Work, then the Owner may, in writing, direct Contractor to commence with such changes in the Work. The costs of such Work shall be determined in accordance with Section 8.10.

8.7 No Changes That Impact Guarantee: To the extent the Contractor reasonably determines that any change in the Work requested or directed by the Owner will materially and adversely impact the Contractor's ability to meet or sustain achievement of the performance guarantees set forth in Schedule B, the Contractor has the right, in its sole and absolute discretion, to decline such change in the Work.

8.8 Concealed or Unknown Conditions: Contractor shall immediately notify Owner if it encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, prior to significantly disturbing the same. If such Concealed or Unknown Conditions cause an increase in Contractor's cost of, or time required for, performance of any part of the Work the Contractor and Owner shall agree, by Change Order, on how to proceed and the extent of any adjustment to the time required for performance of the Work and to the Contract Sum.

8.9 Changes to Contract Sum and Contract Time. The parties may only change the Contract Sum, Substantial Completion Date, Final Acceptance Date, and time-periods set forth in Schedule B by Change Order.

8.10 Price Adjustments:
8.10.1 If any Modification, including a Change Directive, provides for an adjustment to the Contract Sum, the adjustment shall be based on whichever of the following methods is the most valid approximation of the actual cost to the contractor, with overhead and profit as allowed by Section 8.18:

a. Mutual acceptance of a lump sum;
b. Unit prices stated in the Contract Documents, except as provided in Section 8.11, or subsequently agreed upon;

DRAFT

c. Cost attributable to the events or situations under applicable clauses with adjustment of profits or fee, all as specified in the contract, or subsequently agreed upon by the parties, or by some other method as the parties may agree; or
d. As provided in Section 8.14.

8.10.2 Consistent with Section 8.19, costs must be properly itemized and supported by substantiating data sufficient to permit evaluation before commencement of the pertinent performance or as soon after that as practicable. All costs incurred by the Contractor must be justifiably compared with prevailing industry standards. Except as provided in Section 8.14, all adjustments to the Contract Price shall be limited to job specific costs and shall not include indirect costs, overhead, home office overhead, or profit.

8.11The parties shall equitably adjust unit prices stated in the Contract Documents or subsequently agreed upon, if a proposed Change Order or Change Directive materially changes the quantities originally contemplated such that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor.

8.12 Upon receipt of a Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum and/or Contract Time.

8.13 A Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

8.14 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner may make an initial determination, consistent with Section 8.10, of the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in Section 8.18. In such case, and also under Section 8.10.1(c), the Contractor shall keep and present, in such form as the Owner may require, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 8.14 shall be limited to the following:

a. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
b. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
c. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; and
d. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work.

8.15 Using the percentages stated in Section 8.19, any adjustment to the Contract Sum for deleted work shall include any overhead and profit attributable to the cost for the deleted Work. .

8.16 Pending final determination of the Contract Sum adjustment, the Contractor may include its actual costs as set forth in Section 8.14, plus profit and overhead as provided in Section 8.10, along with an itemized accounting and appropriate supporting data in such form as the Owner may require, in its payment requests submitted pursuant to Article 10.

8.17 When the Owner and Contractor reach agreement upon the adjustments, such agreement shall be effective immediately and the parties shall prepare and execute a Change Order. The parties may execute a Change Order for all or any part of a Change Directive.

DRAFT

8.18 Agreed Overhead and Profit Rates:
For any adjustment to the Contract Sum for which overhead and profit may be recovered, other than those made pursuant to Unit Prices stated in the Contract Documents, the Contractor agrees to charge and accept, as full payment for overhead and profit, the following percentages of costs attributable to the change in the Work. The percentages cited below shall be considered to include all indirect costs including, but not limited to field and office managers, supervisors and assistants, incidental job burdens, small tools, and general overhead allocations. The allowable percentages for overhead and profit are as follows:

a. To the Contractor for work performed by the Contractor's own forces, 17% of the Contractor's actual costs.

b. To each Subcontractor for work performed by the Subcontractor's own forces, 17% of the subcontractor's actual costs.

c. To the Contractor for work performed by a subcontractor, 10% of the subcontractor's actual costs (not including the subcontractor's overhead and profit).

8.19 Pricing Data and Audit
8.19.1 Cost or Pricing Data:
Upon request of the Owner, Contractor shall submit cost or pricing data prior to execution of a Modification that exceeds $100,000. Contractor shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted is accurate, complete, and current as of a mutually determined specified date prior to the date of pricing the Modification. Contractor's price, including profit, shall be adjusted to exclude any significant sums by which such price was increased because Contractor furnished cost or pricing data that was inaccurate, incomplete, or not current as of the date specified by the parties. Notwithstanding any provision in this contract to the contrary, such adjustments may be made after final payment to the Contractor.

8.19.2 Cost or pricing data means all facts that, as of the date specified by the parties, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred.

18.19.3 Records Retention.
As used in Section 8.19, the term "records" means any books or records that relate to cost or pricing data that Contractor is required to submit pursuant to Section 8.19.1. Contractor shall maintain records for three years from the date of final payment, or longer if requested by the chief procurement officer. The Owner may audit Contractor's records at reasonable times and places.

ARTICLE 9 – TIME

9.1 Time Limits: Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Contract, the Contractor confirms that the Final Acceptance Date provides a reasonable period of time for performing the Work.

9.2 Delays in the Progress of the Work: If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work by the Owner, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions that affect the Work not reasonably anticipatable, unavoidable casualties or any other causes which are beyond the control of the Contractor, then the Contract Time shall be extended by Change Order provided that: (i) the Contractor has notified the Owner in writing of such delay within ten (10) days following the date when the Contractor becomes aware, or should have become aware through the exercise of reasonable diligence, of such delay; (ii) the Contractor has taken all reasonable steps to avoid any such delay (including its continuance); and (iii) such delay is not a theoretical delay but does actually adversely affect the critical path of the Work. Otherwise, the

DRAFT

Contractor shall not be entitled to an extension of the Contract Time for any delays in the progress of the Work.

ARTICLE 10 – PAYMENTS AND COMPLETION

10.1 Payments

10.1.1 The Owner shall make payment to the Contractor for the Work performed during the Installation Period as set forth in this Article 10 and in Schedule E: Payment Schedule. The total of all payments for the Work performed during the Installation Period shall constitute the Contract Sum.

10.1.2 During the Guarantee Period, the Owner shall pay each Performance Tracking Payment due from the Owner, as set forth on Schedule E, to the Contractor within thirty days following commencement of the Performance Guarantee Year for which such Performance Tracking Payment is due.

10.2 Withholding of Payments: Payments may be withheld to the extent of, and on account of (1) defective Work not remedied, or Contract Services not in accordance with the Contract Documents; (2) claims filed by third parties; (3) failure of the Contractor to make payments promptly to the Subcontractors for labor, materials, or equipment; (4) persistent failure to carry out the Contract Services in accordance with the Contract Documents; (5) failure by the Contractor to perform its obligations under the Contract Documents; or (6) a default by the Contractor under the Contract Documents. The Owner shall promptly notify the Contractor of any reason for withholding payment.

10.3 Retainage: Subject to applicable law and subject to Title 12, Chapter 8, Section 550 of the South Carolina Code of Laws, as amended (Withholding Requirements for Payments to Non-Residents), retainage of three and one half percent (3.5%) of the total amount earned shall be withheld from partial payments to the Contractor. The Owner shall release the retainage upon Final Acceptance of the entire Project.

10.4 Payment Requests: With each payment request submitted by the Contractor during the Installation Period, the Contractor shall submit the following, all in form and substance satisfactory to the Owner:

(a) A duly executed and acknowledged Contractor's certification showing all Subcontractors with whom the Contractor has entered into subcontracts, the amount of each subcontract, the amount requested for any Subcontractor in the invoice and the amount to be paid to the Contractor, together with similar certifications from all Subcontractors;

(b) Documentation showing satisfactory completion of the Work covered by such payment request; and

(c) Such other documents and information as the Owner may reasonably request to verify satisfactory completion of the Work covered by such payment request.

10.5 Payment Due Date: The Owner shall make payment within twenty-one (21) days of submission of a payment request meeting the requirements of this Article 10 and Schedule E. If the Owner disputes any portion of a payment request, the Owner shall notify the Contractor in writing of the amount the Owner disputes and the reason for such dispute. Notwithstanding any dispute over a portion of a payment request, the Owner shall make payment of all undisputed amounts.

10.5.1 Subcontractor Payments (Chapter 6 of Title 29 of the South Carolina Code of Laws, as amended): The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. By appropriate agreement with its subcontractors, the Contractor shall require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

10.5.3 If the Owner does not pay the Contractor within seven days after the time established in Section 10.5 the undisputed amount of a payment request, then upon seven additional days' written notice to the Owner, the Contractor may stop the Work until the Contractor has received payment of the undisputed amount owing. The

DRAFT

Contract Time shall be extended appropriately and the Contract Sum shall be increased, in accordance with the provisions of Article 8, by the amount of the Contractor's reasonable costs of shut down, delay and start-up, plus interest as provided for in the Contract Documents.

10.6 Punchlist Items: In the event that the Contractor has not completed or corrected all Punchlist items at the time of submission of its final payment request for the Work, final payment will be made by the Owner to the Contractor, less the value assigned by the Owner to the Punchlist items not yet completed or corrected and less retainage on the division(s) of work not yet completed or corrected. Owner shall make payment with respect to such final Punchlist items on an item-by-item basis within twenty-one (21) days following receipt of a Request for Payment for completed items.

10.7 Ownership of Contractor Installed Equipment:
10.7.1 Upon the Owner making payment to the Contractor pursuant to a Payment Request, all systems, equipment, materials, etc., covered by that Payment Request shall become the property of the Owner. However, any systems, equipment, materials, etc. that are not installed, fully operational, and accepted by the Owner or that are part of a Conservation Measure that is not fully installed, operational, and accepted by the Owner, shall be covered by the Contractor's Installation Floater or Builder's Risk Insurance as this is considered "work-in-progress."

10.7.2 Upon final payment by the Owner to the Contractor, all rights, title, and interest in and to all improvements and equipment constructed or installed on the premises shall vest in the Owner at no additional cost, free and clear of all any liens and encumbrances created or caused by the Contractor.

ARTICLE 11 – HAZARDOUS MATERIALS

11.1 Contractor's Responsibilities With Respect to Hazardous Materials: The scope of Work the Contractor is to perform pursuant to this Contract excludes any work or service of any nature associated or connected with the discovery, identification, abatement, cleanup, control, or removal of any currently existing Hazardous Materials or Hazardous Mold on, in, or nearby the Site beyond what is specifically defined and identified in Schedule A of this Contract. The Owner agrees that all duties and obligations in connection with any Hazardous Materials or Hazardous Mold currently located in, on or nearby the Site or brought into the Site by a party other than the Contractor or its Subcontractors, other than those defined in Schedule A, are not the Contractor's responsibility. Should the Contractor become aware, discover or based on reasonable evidence suspect the presence of Hazardous Materials or Hazardous Mold beyond those addressed in Schedule A, the Contractor will immediately cease work in the affected area, and will promptly notify the Owner of the conditions discovered. Should the Contractor stop work because of such discovery or suspicion of Hazardous Materials or Hazardous Mold, then the Contract Time will, should the Owner elect to choose to continue the Work after remedy thereof, be reasonably extended by Change Order to cover the period required for abatement, cleanup, or removal of the Hazardous Materials or Hazardous Mold. The Contractor will not be held responsible for any claims, damages, costs, or expenses of any kind associated with such period during which work has been stopped as a result of Hazardous Materials or Hazardous Mold.

11.2 Owner's Representations and Responsibilities With Respect to Hazardous Materials: The Owner warrants and represents that to the best of the Owner's knowledge, other than as identified in Schedule A of this Contract, there are no Hazardous Materials or Mold in or on the premises that will affect, be affected by, come in contact with, or otherwise impact upon or interfere with the Work. Unless otherwise specified in Schedule A, the Owner will be responsible for taking all necessary steps to correct, abate, clean up, or control Hazardous Materials or Mold.

11.3 Hazardous Materials Introduced to the Site by Contractor: If the Contractor, its Subcontractors, and any party for whom they may be liable, introduces any Hazardous Materials to the Site then the Contractor, at its sole cost and expense, shall be responsible for any response, removal, cleanup, and/or other remedial action required by applicable law. If any Mold occurs within the Site as the result of the negligent implementation of the Project or the improper functioning of the Conservation Measures, then the Contractor, at its sole cost and expense, shall be responsible for any response, removal, cleanup, or other remedial action required by applicable law. Except as to the Contractor's initial response to an emergency, any such remedial action(s) shall require the prior review and

approval of the Contractor.

ARTICLE 12 – OWNERSHIP OF DESIGN MATERIALS

12.1 Copies Deliverables: The Deliverables are and shall remain the exclusive property of the Owner. The Contractor shall use its best efforts to ensure all copies of the Deliverables are delivered or returned to the Owner or suitably accounted for upon the Owner's request or upon final payment, whichever is earlier. The Contractor may retain one copy of the Deliverables for its records, but shall not use such copies for any purpose other than with respect to the Contract Services without the Owner's prior written consent. The Intellectual Property Rights, if any, relating to the Design Materials or the contents of or concepts embodied in the Design Materials shall remain with and belong to the Contractor or its Subcontractors, as the case may be.

12.2 License for the Use of Design Materials: The Contractor hereby grants to the Owner a perpetual, non-exclusive, irrevocable license to use and authorize others to use, at any time and in any manner the Contractor's Design Materials for purposes including, but not limited to, constructing, using, maintaining, repairing, altering and adding to the building systems within the Project that are the subject of the Design Materials. The Owner shall not use such Design Materials for the construction of any other Project. The Contractor shall obtain and provide to the Owner licenses from the Contractor's Subcontractors that have terms identical to those that obligate the Contractor to the Owner as expressed above in this **S**ection 12.2.

12.3 Delivery of Deliverables and As-built Drawings: Upon the earlier of the date of Interim Completion for a particular Conservation Measure or the date of termination of this Contract, the Contractor shall deliver to the Owner any Deliverables not previously submitted to the Owner for that Conservation Measure. Upon the date of Final Acceptance of the entire Project, the Contractor must provide "as-built" drawings of all existing and modified conditions associated with the Project, conforming to typical engineering standards. The Contractor shall also submit as-built drawings to the Owner in an electronic format compatible with the AutoCAD or other similar system in use by the Owner.

ARTICLE 13 – DEFAULT AND TERMINATION

13.1 Owner's Right to Cure Default: If the Contractor defaults, persistently fails or neglects to carry out the Contract Services in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner shall provide written notice of such default, failure, or neglect to the Contractor. If the Contractor fails to cured such default, failure, or neglect within thirty (30) days from receipt of the Owner's notice, the Owner may. without prejudice to any other right or remedy the Owner may have, make good such deficiencies and may deduct the cost thereof, including compensation for the Owner's services and expenses made necessary thereby, from the payment then or thereafter due the Contractor. Additionally, in the case of an "emergency" (defined herein as any default, neglect or defect in or with respect to the Contract Services endangering life, the Owner's or a tenant's ability to occupy all or any portion of the Site, and/or property damage in excess of $10,000), the Owner shall provide the Contractor with written notice of such default, failure or neglect constituting such emergency, but the Owner may immediately commence and continue correction of such emergency, without waiting for the expiration of the above-described notice and cure period. In any case where the Owner makes good any deficiencies as provided herein, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor all reasonable and necessary costs incurred by the Owner for the correction of such deficiencies. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner upon demand.

13.2 Termination Upon Default: Alternatively, at the Owner's option, if the Contractor has not cured such default or failure within thirty (30) days from receipt of the Owner's notice, Owner may terminate the Contract and take possession of the area at the Site affected by the Work and remove all materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor (or require the Contractor to immediately remove all such materials, equipment, tools and construction equipment and machinery from the Site) and the Owner may finish (or cause another contractor to finish) the Work by whatever method the Owner may deem expedient. After termination by the Owner pursuant to this Section 13.2, the Contractor shall not be entitled to any further payment under this Contract, except to the extent of any amount by which the value of the Work completed prior to such

DRAFT

termination and not previously paid for by the Owner exceeds the amount due by the Contractor to the Owner under this Section (including all damages that the Owner would be entitled to recover at law from the Contractor by reason of the Contractor's breach), and even then only at such time as the Work is finally completed by the Owner. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for any consultant's or architect's services and expenses made necessary thereby (including, without limitation, the Owner's reasonable attorney's fees and costs), such excess shall be paid to the Contractor following completion of the Work by the Owner, but if such cost exceeds such unpaid balance, the Contractor shall pay the difference to the Owner. The Owner shall not be responsible to the Contractor for any loss of anticipated profits on Work not performed on account of a termination under this Section.

13.3 Termination For Convenience: The Owner reserves the right, for its convenience, to terminate all or any portion of the Contract Services or to terminate this Contract by ten (10) days written notice stating the effective date of the termination. In that case, the Contractor and its Subcontractors shall (except for services necessary for the orderly termination of the Contract Services):

a. stop all Contract Services so terminated;

b. place no further order or subcontracts for materials, services, equipment, or supplies on the terminated Contract Services;

c. assign to the Owner (in the manner and to the extent directed) all of the rights of the subcontracts relating to the terminated Contract Services;

d. take any action necessary to protect property of the Owner and property in the Contractor's possession in which the Owner has, or may acquire, an interest; and

e. take any other action toward termination of the Contract Services that the Owner may direct.

Thereafter, the Owner shall pay the Contractor for the terminated Contract Services, subject to the limitations set forth herein, the proportion of the Contract Sum or payment for Performance Tracking Services that the terminated Contract Services actually performed (including materials delivered to the Site) at the date of termination bears to the Contract Services required to be performed for such portion of the Contract Services. No payments shall be made for Contract Services not actually performed, and no payment shall be made or due for lost profits for portions of the Contract Services not actually performed.

13.4 Contractor Termination: Subject to the Owner's right to withhold payments pursuant to Section 10.2, if the Owner fails to make payments to the Contractor as set forth in Article 10 and Schedule E: Payment Schedule, the Contractor may, upon thirty (30) days' prior written notice to the Owner, terminate the Contract and recover from the Owner payment for all Contract Services executed and for proven loss with respect to materials, equipment, tools, and machinery, including reasonable overhead, profit and damages applicable to the Project for the Contract Services performed through the date thereof.

13.5 Funds Not Available: The State's obligation under this contract is contingent upon the availability of funds from which payment for contract purposes can be made. Pursuant to SC Code Ann § 11-35-2030(3), when funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled. Any such cancellation shall be considered a termination for the convenience.

ARTICLE 14 - ASSIGNMENT

14.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements and obligations contained in this Contract. Neither party to the Contract shall assign the Contract as a whole, or in part, without written consent of the other and then only in accordance with and as permitted by Regulation 19-445.2180 of the South Carolina Code of Regulations, as amended. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible

DRAFT

for all obligations under the Contract.

ARTICLE 15 – OTHER CONDITIONS OR PROVISIONS

15.1 Representations and Warranties: Each Party warrants and represents to the other that:

(a) It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

(b) Its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its governing documents, 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;

(c) Its execution, delivery, and performance of this Contract will not result in a breach or violation of, or constitute a default under, any agreement, lease or instrument to which it is a party, or by which it or its properties may be bound or affected; and

(d) 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 that would materially and adversely affect its ability to perform hereunder.

15.2 Cooperation: Each Party will cooperate with and assist the other Party, its advisors, consultants, attorneys, employees, agents, and representatives, at all times during the Contract Time so as to complete the Contract Services in an efficient, timely, and economical manner. Such cooperation and assistance by the Contractor shall include, without limitation, any cooperation or assistance required in connection with the Owner's efforts to obtain financing for the Project.

15.3 Confidential Information

15.3.1 The term "Confidential Information" means any documentation or information defined as either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged & confidential, as that phrase is used in Section 11-35-410.

15.3.2 For every document Contractor submits to Owner, Contractor must separately mark with the word "CONFIDENTIAL" every page, or portion thereof, that Contractor contends contains information that is exempt from public disclosure because it is either (a) a trade secret as defined in Section 30-4-40(a)(1), or (b) privileged & confidential, as that phrase is used in Section 11-35-410. For every document Contractor submits to Owner, Contractor must separately mark with the words "TRADE SECRET" every page, or portion thereof, that Contractor contends contains a trade secret as that term is defined by Section 39-8-20 of the Trade Secrets Act. For every document Contractor submits to Owner, Contractor must separately mark with the word "PROTECTED" every page, or portion thereof, that Contractor contends is protected by Section 11-35-1810. All markings must be conspicuous; use color, bold, underlining, or some other method in order to conspicuously distinguish the mark from the other text. If only portions of a page are subject to some protection, do not mark the entire page. Contractor (1) agrees to the public disclosure of every page of every document submitted to the Owner, unless the page is conspicuously marked "TRADE SECRET" or "CONFIDENTIAL" or "PROTECTED" and (2) agrees that any information not marked, as required by this Section 15.3.2, as a "Trade Secret" is not a trade secret as defined by the Trade Secrets Act. In determining whether to release documents, the State will detrimentally rely on Offeror's marking of documents, as required by this Section 15.3.2, as being either "Confidential" or "Trade Secret" or "PROTECTED". Contractor agrees to defend, indemnify & hold harmless the State of South Carolina, its officers & employees, from every claim, demand, loss, expense, cost, damage or injury, including attorney's fees, arising out of or resulting from the State withholding information that Contractor improperly marked as "confidential" or "trade secret" or "PROTECTED".

15.4 Amendments: No amendment to this Contract shall be effective until and unless reduced to writing and executed by the Parties.

DRAFT

15.5 Governing Law: This Contract shall be governed by the laws of South Carolina.

15.6 Severability: If any provision of this Contract shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

15.7 No Waiver: No course of dealing or failure of the Owner and/or the Contractor to enforce strictly any term, right or condition of this Contract shall be construed as a waiver of such term, right or condition. No express waiver of any term, right, or condition of this Contract shall operate as a waiver of any other term, right, or condition.

15.8 Entire Agreement: This Contract represents the entire agreement between the Owner and the Contractor with respect to the subject matter hereof, and supersedes all prior negotiations, representations, or agreements, whether written or oral.

15.9 Rights Cumulative: Except as otherwise provided in this Contract, (i) rights and remedies available to the Owner and/or the Contractor as set forth in this Contract shall be cumulative with and in addition to, and not in limitation of, any other rights or remedies available to the Parties at law and/or in equity, and (ii) any specific right or remedy conferred upon or reserved to the Owner and/or the Contractor in any provision of this Contract shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

15.10 Further Assurances: Each Party hereto shall, from time to time, at the request of the other Party and without further consideration, execute and deliver and cause to be executed and delivered such other instruments and take such other actions as the requesting Party may reasonably request to undertake the Contract Services and carry out the intent and purposes of this Contract.

15.12 Notices: Any information or notices required to be given under this Contract shall be in writing and shall be delivered either by (i) certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid, in the U.S. mail; (ii) a reputable messenger service or a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with such messenger or courier; or (iii) personal delivery with receipt acknowledged in writing, in which case notice shall be deemed delivered when received. All notices shall be addressed as follows:

If to Owner: _____

If to Contractor: _____

The foregoing addresses may be changed from time to time by notice to the other Party in the manner herein before provided for.

15.14 Interest: Payments due to the Contractor and unpaid under the Contract Documents shall bear interest only if and to the extent allowed by Title 29, Chapter 6, Article 1 of the South Carolina Code of Laws. Amounts due to the Owner shall bear interest at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due.

15.15 Economic Conflict of Interest: A contractor shall not have or exercise any official responsibility regarding a public contract in which the contractor, or a business with which he is associated, has an economic interest. A person working for contractor shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom he is associated, or his family members have an economic interest. If contractor is asked by any person to violate, or does violate, either of these restrictions, contractor shall immediately communicate such information to the procurement officer. The state may rescind, and recover any amount expended as a result of, any action taken or contract entered in violation of this provision. The terms " business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in Section 8-13-100.

15.16 Illegal Immigration: Contractor certifies and agrees that it will comply with the applicable requirements of

DRAFT

Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the State upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable both to Contractor and its subcontractors or sub-subcontractors; or (b) that Contractor and its subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, "A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both." Contractor agrees to include in any contracts with its subcontractors language requiring its subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14. (An overview is available at www.procurement.sc.gov)

15.17 Drug-Free Workplace: The Contractor certifies to the Owner that Contractor will provide a Drug-Free Workplace, as required by Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

15.18 False Claims: According to the S.C. Code of Laws § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.

15.19 Non-Indemnification: Any term or condition is void to the extent it requires the State to indemnify anyone. It is unlawful for a person charged with disbursements of state funds appropriated by the General Assembly to exceed the amounts and purposes stated in the appropriations. (§ 11-9-20) It is unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the amount appropriated for that purpose. It is unlawful for an authorized public officer to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of an indebtedness contracted or incurred for a previous year. (§ 11-1-40)

15.20 Minority Business Enterprises: Contractor shall notify Owner of each Minority Business Enterprise (MBE) providing labor, materials, equipment, or supplies to the Project under a contract with the Contractor. Contractor's notification shall be via the first monthly status report submitted to the Owner after execution of the contract with the MBE. For each such MBE, the Contractor shall provide the MBE's name, address, and telephone number, the nature of the work to be performed or materials or equipment to be supplied by the MBE, whether the MBE is certified by the South Carolina Office of Small and Minority Business Assistance, and the value of the contract.

15.22 Interpretation of Building Codes: As required by Title 10, Chapter 1, Section 180 of the South Caroline Code of Laws, as amended, OSE shall determine the enforcement and interpretation of all building codes and referenced standards on state buildings. The Contractor shall refer any questions, comments, or directives from local officials to the Owner and OSE for resolution.

15.23 Intellectual Property Indemnity: Without limitation and notwithstanding any other provision in this agreement, Contractor shall, upon receipt of notification, defend and indemnify the Indemnitees against all actions, proceedings or claims of any nature (and for all damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities attributable thereto) by any third party asserting or involving Intellectual Property (IP) rights related to the Instruments of Service. Contractor's obligations under this paragraph do not apply to a claim to the extent (i) that the claim is caused by Contractor's compliance with a detailed, exact statement of particulars (such as a statement prescribing materials, dimensions, and quality of work) furnished by the State unless Contractor knew its compliance with the State's specifications would infringe an IP right, or (ii) that the claim is caused by Contractor's compliance with a detailed, exact statement of particulars furnished by the State if the State knowingly relied on a third party's IP right to develop the specifications provided to Contractor and failed to identify such product to Contractor. State must reasonably cooperate with Contractor's defense of such claims or suits and, subject to Title 1, Chapter 7 of the South Carolina Code of Laws, may allow Contractor sole control of the defense, so long as the defense is diligently and capably prosecuted. State may participate in the defense of any action. Contractor's obligations under this clause shall survive the termination, cancellation, rejection, or expiration of this Agreement. "IP rights" means any rights protected by the laws governing patents, copyrights, trademarks, trade secrets, or any other proprietary rights. As used in this paragraph, "Indemnitees" means the State (including its instrumentalities,

DRAFT

agencies, departments, boards, and political subdivisions), the contractor, the subcontractors at all tiers, and the officers, agents and employees of all the forgoing.

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SCHEDULE A
PROJECT DESCRIPTION

Section I: Description of the Project, and Each Conservation Measure

[*Information should be provided from the Investment Grade Audit (with any necessary and appropriate revisions) to sufficiently detail the Project as a whole and each Energy, Water, and/or Wastewater Conservation Measure, including modifications to existing systems, building or area of building. The description should also describe in detail the Contractor's obligations for performing Energy Star benchmarking, obtaining LEED EB certification, reporting greenhouse gas emission reductions, or other services agreed to by the parties. Also, this description must include any Contractor responsibilities relating to Hazardous Materials (including ACM removal and abatement).*][1]

Section II: Training Prior to Final Acceptance Date

[*The description of the Contractor's training program for facility personnel should be contained in this schedule. Training must be completed before equipment acceptance. The duration and frequency of the specified training should also be included. Any provisions for on-going training, potential commitments to train newly hired facility personnel, and training in regard to possible future equipment or software upgrades should also be described. Any fees associated with requests for training beyond what the Contractor is contractually required to provide must also be specified*.]

Section III: Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment.

[*This Section should specify the process that will be used to commission the installed equipment and system(s). Procedures should be defined for developing and implementing a commissioning (Cx) plan, and should specify any requirements for Owner and/or third party review and approvals, pre-functional inspections, use of manufactures' start-up procedures, and for executing functional performance tests. Provisions should be included on how the Owner's project requirements or design intent for each Conservation Measure or system will be defined. This section can also define the qualifications and affiliation of the Commissioning Agent (CxA), (if the CxA is a contractor other than the Contractor and/or a specific individual on Contractor team), and provide an overview of the roles and responsibilities of the CxA, Contractor, and Owner in the Cx process. (In essence, the Owner should ensure that commissioning specifications are written so that there is no question to the commissioning tasks required, including the level of testing and documentation required and the specific performance targets and roles/responsibilities.)*]

Section IV: Warranty Period

[*Identify warranty periods for any Conservation Measures that extend beyond the period identified in Section 4.12.3 of the Contract for Correction after Substantial Completion of work not within the requirements of the Contract Documents.*]

Section V: Identification of Contractor's Key Personnel

1. Contractor designates the individual listed below as its Senior Representative ("Contractor's Senior Representative"), which individual has the responsibility for and authority to resolve disputes under Section 7.3 of the Contract:

Name: _____
Title: _____

[1] For provisions regarding guaranteed energy, water, or wastewater savings contracts see SC Code Ann § 48-52-670.

DRAFT

Address: _____
Telephone: _____ FAX: _____
Email: _____

2. Contractor designates the individual listed below as the Contractor's Representative, which individual has the authority and responsibility set forth in Section 5.3.2 of the Contract:

Name: _____
Title: _____
Address: _____
Telephone: _____ FAX: _____
Email: _____

3. Other Key Personnel:

Design Personnel

Design Professional in overall charge of the design effort: _____
Mechanical Engineer: _____
Electrical Engineer: _____
Other Design Professionals: _____

Construction Personnel

_____
_____

Section VI: Construction Schedule and Construction Operations Plan

[*Either attach to Schedule A, or provide the date when these will be submitted in Section 1.6 of the Contract*]

DRAFT

SCHEDULE B
PERFORMANCE GUARANTEE

Section I: Definitions.

All capitalized terms used in this Schedule B shall have the meaning set forth below or in the "Definitions" Section of the Contract.

A. Causes for Adjustment: The causes for adjustment to the energy savings calculations set forth in Section II(E) of Schedule C.

B. Closing Stub Year: This term is defined in Section III of this Schedule B.

C. Guarantee Term: The period running from and after the Savings Guarantee Commencement Date for a period of _____[1] years.

D. Guaranteed Annual Savings Amount: $_____[2] for each Performance Guarantee Year. However, if the Performance Guarantee Year is an Opening Stub Year or Closing Stub Year, the Guaranteed Annual Savings Amount applicable to such Performance Guarantee year shall be $_____[3] multiplied by a fraction, the numerator of which is the number of days in such Performance Guarantee Year and the denominator of which is 365, provided, if the Performance Guarantee Year includes a February 29, the denominator shall be 366.

E. Guaranteed Project Savings Amount: $_____[4]

F. Reserved.

G. Measured Savings Amount: Savings to the Owner resulting from the implementation of the Project, measured and calculated in accordance with Schedule C, Subsection I(C), multiplied by the rates for each energy savings category set forth in Schedule C, Subsection II(D).

H. Non-measured Savings Amount: Savings to the Owner resulting from the implementation of the Project in the amounts stipulated in Schedule C, Subsection I(D).

I. Opening Stub Year: This term is defined in Section III of this Schedule B.

J. Performance Guarantee Payment: This term is defined in Section II of this Schedule B.

K. Performance Guarantee Year: Each period during which energy savings are measured, as specified in Section III of this Schedule B.

L. Prior Year Calculations: This term is defined in Section IV of this Schedule B.

M. Project Savings Amount: The Measured Savings Amount and the Non-measured Savings Amount.

N. Savings Guarantee Commencement Date: The first day of the first utility billing period following the earlier to occur of: (1) the month in which Final Acceptance of the entire Project occurs in accordance with the Contract; or (2) the Final Acceptance Date set forth in Section 1.4 of the Contract.

Section II: Performance Guarantee.

[1] Insert number of years of the performance guarantee.
[2] Insert currency equivalency of guarantee amount.
[3] Insert same number from earlier in this definition.
[4] Insert amount equal to Guaranteed Annual Savings Amount multiplied by years in the Guarantee Term.

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The Contractor guarantees that the Project Savings Amount over the Guarantee Term will equal or exceed the Guaranteed Project Savings Amount. For each Performance Guarantee Year, the Contractor guarantees that the Project Savings Amount will equal or exceed the Guaranteed Annual Savings Amount. Subject to Section VI of this Schedule B, in the event the Project Savings Amount in any Performance Guarantee Year is less than the Guaranteed Annual Savings Amount, the Contractor will pay the Owner the difference between the Guaranteed Annual Savings Amount and the Project Savings Amount ("Performance Guarantee Payment").

Section III: Performance Guarantee Year.

Each of the following periods during the Guarantee Term shall serve as a Performance Guarantee Year for purposes of the performance guarantee set forth in this Schedule B:

☐ If the preceding box is checked, each Performance Guarantee Year shall consist of the 365 day period (or 366 day period, if the calendar year includes 366 days) running from the Savings Guarantee Commencement Date and each anniversary of the Savings Guarantee Commencement Date until the expiration of the Guarantee Term.

☐ If the preceding box is checked, the Owner seeks to align the Performance Guarantee Year with the calendar year for budgeting purposes, and therefore each of the following periods shall serve as a Performance Guarantee Year:

(i) the period from the Savings Guarantee Commencement Date through the next following December 31 (such initial period referred to herein as the "Opening Stub Year");
(ii) [5] 12-calendar month periods, each running from January 1 through the next following December 31, with the first such period including the first January 1 following the Savings Guarantee Commencement Date and continuing through the next following December 31; and
(iii) the period running from the January 1 following conclusion of the [6] 12-month period described in subparagraph (ii) immediately preceding and continuing through and including the [7] anniversary of the Savings Guarantee Commencement Date (such final period referred to herein as the "Closing Stub Year").

As set forth in Schedule C, the formulae for calculating the Project Savings Amount are designed to accommodate and yield accurate results for Performance Guarantee Years of varying lengths, including both periods exceeding 12 months in length, any stub years and the Implementation Period.

Section IV: Calculation of Project Savings Amount.

To the extent required by the parties Performance Tracking Methodology set forth in Schedule C, , the Owner will provide the Contractor with all utility bills pertinent to the energy performance calculations described in this Contract within thirty days of receipt. The Owner may provide the Contractor with copies of bills, or access to invoices via an on-line system. Within thirty days of the Contractor's receipt of all pertinent utility bills with meter-reading ending dates falling within a Performance Guarantee Year (including where applicable, the Opening Stub Year or Closing Stub Year), the Contractor will prepare and provide to the Owner its proposed calculation of the Project Savings Amount (as calculated pursuant to Schedule C) and, if applicable, the amount of the Performance Guarantee Payment for the immediately preceding Performance Guarantee Year (the "Prior Year Calculations"). The Contractor must account for all Causes for Adjustment to the energy performance calculations permitted by Schedule C arising during the preceding Performance Guarantee Year within the Prior Year Calculations. The Contractor waives the right to make any claim for Causes for Adjustments not specified within the Prior Year Calculations. Within thirty days of the Owner's receipt of the Prior Year Calculations, the Owner will notify the Contractor of (1) the Owner's approval of all or any portion of the Prior Year Calculations; and/or (2) the Owner's disapproval of all or any portion of the Prior Year Calculations, including the basis for the disapproval. Within thirty

[5] Insert a number equal to the years in the Guarantee Term minus one.
[6] Insert a number equal to the years in the Guarantee Term minus one (e.g., if the Guarantee Term is 10 years, insert "9th").
[7] Insert a number equal to the years in the Guarantee Term (e.g., if the Guarantee Term is 10 years, insert "10th").

days of receiving notification of the Owner's approval of all or any portion of the Prior Year Calculations, the Contractor will pay to the Owner the Performance Guarantee Payment, if any, due to the Owner on account of the approved portion of the Prior Year Calculations. If the Owner disapproves all or any portion of the Prior Year Calculations, the Parties will use good faith efforts to resolve such dispute within thirty days of notification to the Contractor. If the Parties are unable to resolve the matter within a thirty day period, the dispute shall be resolved in accordance with Section VII.

Section V: Reserved

Section VI: Reserved

Section VII: Disputes Regarding Energy Performance Calculations.

Any disputes concerning the calculation of the Prior Year Calculations, Causes for Adjustment, or other energy or consumption calculations described in Schedule C shall be resolved as follows:

(i) First, the Parties will use good faith efforts to resolve such dispute within thirty days of written notification from the other Party of the dispute.
(ii) If the Parties are unable to resolve the matter they shall proceed with dispute resolution in accordance with the provisions of Article 7 of the Contract.

The disputed calculation shall not take effect until there is a final adjudication or resolution of the dispute.

Section VIII: Examples.

Section IV of Schedule C sets forth examples of calculations of energy savings for illustrative purposes.

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SCHEDULE C
METHODOLOGY AND BASELINE

SECTION I: PERFORMANCE TRACKING METHODOLOGY

A. Determination of Project Savings Amount
B. Baseline Definition
C. Measured Savings
D. Non-measured Savings

A. Determination of Project Savings Amount

For purposes of the performance guarantee described in Schedule B, the Project Savings Amount will be determined as follows:

$$\$ = \$_F + \$_O + \$_N$$

Where:

$\$$ = Project Savings Amount
$\$_F$ = Whole Facility Savings Amount, calculated as set forth in Subsection C(1) below.
$\$_O$ = Other Measured Energy Savings Amount, calculated as set forth in Subsection C(2) below.
$\$_N$ = Non-measured Savings Amount, stipulated as set forth in Subsection D below.

B. Baseline Definition

The "Base Year" means the period from and including January 1, 20____ through and including December 31, 20____.

The baseline is that set of parameters that describes both the energy consumed in the Base Year and the conditions that caused that consumption to occur. This set of parameters includes utility consumption, facility use information, weather data, and other information as may be necessary to describe the Base Year conditions. In addition, the baseline includes certain mathematical values, calculated by a model and set forth in Section III of this Schedule C, that are used to correlate the Base Year energy consumption with the factors that caused that consumption. The baseline to be used for this Project is fully defined in Schedule C Section II.

C. Measured Savings

[*Specify the means of measuring and verifying savings realized by the conservation measures implemented under the Contract]*

Click here to enter text.

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SECTION II: BASELINE & SUPPORTING INFORMATION

A. Meter Tuning Contract
B. Meter List
C. Weather Source
D. Utility Rates
E. Causes for Adjustment
F. Calendar and Schedules
G. Standards of Service and Comfort
H. Other Information

A. Meter Tuning Contract

The purpose of meter tuning is to establish a relationship between the weather and the consumption and demand measured by a particular meter. Tuning consists of identifying relationships between "historic" utility performance and weather (heating degree days and/or cooling degree days). The result is a set of coefficients, which will be used in modeling the energy use of a facility to calculate the energy savings or increase associated with weather normalizing the baseline energy usage.

In Section III of this Schedule C, the parties have established the meter tuning coefficients using the twelve (12) month baseline period (typically, the 12 months prior to the beginning of installation) for each guarantee meter, as listed in Section II(B) of this Schedule C.

B. Meter List

[*Specify the meter the parties will use to measure consumption of energy and water for both the Base Year and Performance Guarantee Years.]*

1. Guarantee Meters

The following meters will be used to measure actual energy consumption for both the Base Year and Performance Guarantee Years.

Electric Meters

Meter Name	Account Number	Utility Co.	Rate	Units
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

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Gas Meters

Meter Name	Account Number	Utility Co.	Rate	Units

Water Meters

Meter Name	Account Number	Utility Co.	Rate	Units

2. Supplemental Sub-Meters

The consumption measured by these meters is not guaranteed. Information from these meters may be used to determine baseline adjustments due to modifications to the Site or changes in operation.

Meter Name	Account Number	Utility Co.	Rate	Units

C. Weather Source

Data for weather-related calculations used in this Contract will be Daily High-Low Temperatures obtained from the National Weather Service Station at [*WEATHER STATION NAME*]. In the event the specified weather station is de-activated, weather data will be collected from the nearest weather station with suitable observations. If the data source becomes unavailable or a superior source is identified, the Contractor may select an alternative data source with the Owner's approval.

D. Energy Rates

The rates set forth in this Subsection will be used to determine the Measured Savings Amount.

1. Electricity

Name of Utility: **Rate Schedule:**			
	Charge	**Unit**	**Comments**
Owner Charge:		Per Billing Period Per Billing Period	

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Demand Charges:		Per Billed kW Per Billed kW	
Consumption Charges: (T&D + Generation)		Per kWh Per kWh Per kWh	
Other Charges:		Per kWh Per kWh Per kWh	
Determination of Billed Demand:		kW kW	
Other Rate Details:			

2. Natural Gas

Name of Utility: **Rate Schedule:**			
	Charge	**Unit**	**Comments**
Owner Charge:		Per Billing Period Per Billing Period	
Consumption Charges:		Per MCF Per MCF Per MCF	
Other Charges:		Per MCF Per MCF Per MCF	
Other Rate Details:			

3. Water

Name of Utility: **Rate Schedule:**			
	Charge	**Unit**	**Comments**
Owner Charge:		Per Billing Period Per Billing Period	
Consumption Charges:		Per Click here to enter text. Per Click here to enter text. Per Click here to enter text.	
Other Charges:		Per Click here to enter text. Per Click here to enter text. Per Click here to enter text.	
Other Rate Details:			

E. Causes for Adjustment

[*Specify the events that will constitute a "Cause for Adjustment" to the utility savings calculations for the Measured*

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Savings Amounts]

Click here to enter text.

Notwithstanding the foregoing, the Parties agree that the following activities or occurrences shall not be deemed Causes for Adjustment under this Contract: [*Specify here any activities the Owner seeks to specifically exclude from consideration as a Cause for Adjustment*.]

Click here to enter text.

In the event the Contractor has reason to believe that any action or failure to act by the Owner or a measurable deviation from the baseline may constitute a Cause for Adjustment to the energy performance calculations set forth in this Contract, the Contractor must notify the Owner of a possible Cause for Adjustment within sixty days of becoming aware of such action, failure to act, or measurable deviation. If the Contractor fails to notify the Owner within such sixty day period, the Contractor thereafter waives the right to present any claim for an adjustment to the energy performance calculations on account of such action or failure to act. In all instances, the Contractor must account for all Causes for Adjustment to the energy performance calculations arising during the preceding Performance Guarantee Year within the Prior Year Calculations (as defined in Schedule B), and the Contractor waives the right to present any Causes for Adjustments not specified within the Prior Year Calculations.

F. Calendar and Schedules
[Specify any calendars and schedules setting forth Owner's obligations regarding the operation of conditioned spaces during days of the week and various seasons of the year]

Click here to enter text.

G. Standards of Service and Comfort
[Specify mandatory operating temperature ranges, if any, forming the basis for energy savings for occupied and unoccupied spaces]

Click here to enter text.

SECTION III: METER TUNING COEFFICIENTS - GUARANTEE METERS

[*Specify the meter tuning coefficients for all of the guarantee meters listed in Schedule C, Section II.B.]*

Click here to enter text.

SECTION IV: EXAMPLES OF UTILITY SAVINGS CALCULATIONS

[*Insert examples demonstrating how the calculations will be performed using prior year data.*]

Click here to enter text.

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SCHEDULE D: PERFORMANCE TRACKING SERVICES

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SCHEDULE E
PAYMENT SCHEDULE

SECTION I: INSTALLATION PERIOD PROGRESS PAYMENTS

☐ If the preceding box is checked, within fifteen (15) working days after the Date of Commencement, the Contractor must submit to the Owner a "Schedule of Values" that lists in detail the estimated value of each construction activity included in the Contract Sum (including insurance credits and other credit items required to be listed) for the Project. The Schedule of Values must be prepared in form and substance acceptable to or as specifically prescribed by the Owner. Construction progress payments shall be made to the Contractor monthly based on the percentage completion of items delineated on the Schedule of Values during the prior month.

☐ If the preceding box is checked, a Schedule of Values is attached to Schedule A. Construction progress payments shall be made to the Contractor monthly based on the percentage completion of items delineated on the Schedule of Values during the prior month.

SECTION II: PERFORMANCE TRACKING SERVICES PAYMENTS

The Contractor shall be paid the following amounts for Performance Tracking Services. Payments shall be made in accordance with Section 10.1.2 of the Contract. "Performance Guarantee Year 1" in the following table refers to the first 12-month Performance Guarantee Year, as defined in Schedule B. No payment shall be required for any Opening Stub Year, as defined in Schedule B.

Performance Guarantee Year	Payment for Performance Tracking Services
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
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16	
17	
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19	
20	

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SCHEDULE F
PROJECT SPECIFIC OWNER RESPONSIBILITIES

1. The Owner shall undertake the duties and responsibilities set forth in this Schedule, either using the Owner's own forces or through one or more contractors.

2. The Owner shall maintain the Energy Conservation Measures in accordance with the Required Maintenance checklist attached as Schedule G, with allowance for normal wear and tear.

3. Owner shall maintain the Site in accordance with the Required Maintenance checklist attached as Schedule G.

4. Owner Shall maintain equipment and systems in proper working condition in accordance with Schedule G in all cases where the performance of said equipment affects or could affect the guarantee. Should the Owner refuse to perform the required maintenance as per Schedule G, such failure shall constitute a Cause for Adjustment.

5. If the Contractor or the Owner find that an Conservation Measure requires repair or replacement, the other Party must be notified and the Contractor will repair or replace the Conservation Measure if required to do so pursuant to its obligation to correct the Work or its warranty obligations under this Contract. If the Manufacturers' Warranties apply to the Conservation Measure requiring repair or replacement, the Owner shall cause the repair or replacement of the Conservation Measure in accordance with the Manufacturers' Warranties. If the Contractor is not required to repair or replace the Conservation Measure and the Manufacturers' Warranties do not apply, the Contractor and the Owner shall agree to a schedule for the repair or replacement of the Conservation Measure, at the Owner's expense, that establishes reasonable timeframes for the engineering, procurement, and construction and installation associated with such work. The Parties will use good faith efforts to agree to adjustments to the energy performance calculations that accounts for the energy savings attributable to the period of time needed to repair or replace the Conservation Measure.

Any adjustment to the energy performance calculations in accordance with the preceding paragraphs is subject to the terms and provisions of Section II(E) to Schedule C.

GENERAL RESPONSIBILITIES

The Owner agrees to: a) provide, or cause its suppliers to provide, periodic utility invoices to the Contractor in accordance with Schedule C; b) execute all the Owner responsibilities as defined in Article 3 of the Contract; c) provide to the Contractor reasonable access to the Site and information necessary for the Contractor to perform its responsibilities. Access will include, but is not limited to, the following items:

- All mechanical equipment rooms in the Site
- All temperature control and energy management systems that control part or all of any of the Site
- Personnel with responsibility for operating and/or managing the Site
- Monthly utility invoices and billing history for all of the meters listed in Schedule C Section II-B.
- Construction documents, equipment inventories, and other documents that may be helpful in evaluating a cause for adjustment as listed in Schedule C Section II-E.
- Any data from meters or sub-meters relevant to the Performance Tracking Services.

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SCHEDULE G: REQUIRED MAINTENANCE

[*This checklist is a tool by which the Contractor may record and track compliance with operations and maintenance procedures performed by facility staff. It typically specifies a list of tasks and the corresponding schedule for the performance of the prescribed procedures. Facility personnel will complete the checklist and forward it to the Contractor, usually on a predetermined basis. (This checklist is a useful method for both the Contractor and Owner to verify that the required maintenance activities are being performed at the scheduled intervals and should be comprehensive).*]

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