



AGREEMENT made as of the 9th day of June in the year two thousand seventeen BETWEEN the Owner: Belle Plaine Public School District with office located at 130 South Willow Street, Belle Plaine, MN 56011 and the Contractor: Apex Efficiency Solutions, SBC, a Minnesota Specific Benefit Corporation, with its principal place of business at 403 Jackson Street, Suite 308, Anoka, MN 55303 for the following Project:

Belle Plaine Public School District  
Lighting Retrofit Project  
130 South Willow Street  
Belle Plaine, MN 56011

The Owner and Contractor agree as follows.

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## **ARTICLE 1 INITIAL INFORMATION**

1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

1.1.1 The Owner's program for the Project: It is the Owner's intent to retrofit the existing lighting systems in accordance with the Apex Efficiency Solutions response dated March 13, 2017 (Exhibit A).

1.1.2 The Project's physical characteristics: The Belle Plaine Public School District is comprised of four (4) buildings: High School, Chatfield Elementary, Oak Crest Elementary and District Office.

1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1 is as follows:

Total Project Budget for Lighting Retrofit Upgrades - \$688,300

1.1.4 The Owner's anticipated construction schedule:

Commencement of Construction: TBD

Substantial Completion: TBD

1.1.5 The Owner identifies the following representative in accordance with Section 5.2:

Chuck Keller  
Director of Business Services  
130 South Willow Street  
Belle Plaine, MN 56011

1.1.6 The persons or entities, in addition to the Owner's representative, who are required to review the Contractor's submittals to the Owner are as follows: N/A

1.1.7 Unless provided by the Contractor, the Owner will retain the following consultants and Subcontractors: N/A

1.1.8 The Contractor identifies the following representative in accordance with Section 2.3:

Apex Efficiency Solutions, SBC  
Jayson Naughton, P.E., C.E.M.  
403 Jackson Street, Suite 308  
Anoka, MN 55303

1.1.9 The Contractor's staffing plan as required under Section 3.3.2 shall include:

Jayson Naughton, P.E., C.E.M. – Project Management & Design Review

1.1.10 The Contractor's consultants retained under Basic Services, if any: N/A

1.1.11 The Contractor's consultants retained under Additional Services: N/A

1.1.12 Other Initial Information on which the Agreement is based: N/A

1.2 The Owner and Contractor may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Contractor shall appropriately adjust the schedules, the Contractor's services and the Contractor's compensation.

## **ARTICLE 2 CONTRACTOR'S RESPONSIBILITIES**

2.1 The Contractor shall provide the services as set forth in this Agreement.

2.2 The Contractor shall perform its services consistent with the skill and care ordinarily provided by Contractors practicing in the same or similar locality under the same or similar circumstances. The Contractor shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

2.3 The Contractor shall identify a representative authorized to act on behalf of the Contractor with respect to the Project.

2.4 Except with the Owner's knowledge and prior written consent, the Contractor shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Contractor's judgment with respect to this Project.

2.5 The Contractor, at its expense, shall maintain the following insurance for the duration of this Agreement.

2.5.1 Commercial General Liability on a ISOCG000, or its equivalent, with policy limits of not less than two million dollars (\$2,000,000) for each occurrence and in the aggregate for bodily injury and property damage through the contractor's operation and completed operations for a period of three years upon completion of the project. Limits required by this contract shall apply solely to this job severability or separation of insureds clauses shall apply. Policy should provide the following: Personal / Advertising Injury \$1,000,000; Products / Completed Operations: \$2,000,000 and Contractual Liability as broad as what is found on a CG000 (No Contractual Limitation Endorsement) and includes acts of independent

consultants.

2.5.2 Automobile Liability covering owned and rented vehicles operated by the Contractor with policy limits of not less than one million dollars (\$1,000,000) combined single limit and aggregate for bodily injury and property damage.

2.5.3 The Contractor may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies.

2.5.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than five hundred thousand (\$500,000). A waiver of subrogation in favor of the additional insureds shall apply.

2.5.5 Professional Liability covering the Contractor's negligent acts, errors and omissions in its performance of services with policy limits of not less than one million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.

2.5.5.A Excess or umbrella liability insurance with policy limits of not less than one million (\$5,000,000).

2.5.6 The Contractor shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.5 within 15 days after this Agreement is signed. The certificates will show the Owner as an additional insured on the Comprehensive General Liability on a primary non-contributory basis on forms CG2010 (10/01) and CG2037 (10/01), Automobile Liability, umbrella and excess policies.

### **ARTICLE 3 SCOPE OF CONTRACTOR'S BASIC SERVICES**

3.1 Definition: The Contractor's Basic Services consist of those described in Sections 3.2 and 3.3 and include usual and customary construction coordination and scheduling, constructability review, cost estimating, and allocation of construction activities among the Multiple Prime Subcontractors, and any other duties of the Contractor described in the "A232 General Conditions" defined in Section 3.3.3 below.

#### **3.2 Preconstruction Phase**

3.2.1 The Contractor shall review the program furnished by the Owner, to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

3.2.2 The Contractor shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

3.2.3 The Contractor shall prepare, and deliver to the Owner, a written Construction Management Plan that includes, at a minimum, the following: (1) preliminary evaluations required in Section 3.2.2, (2) a Project schedule, (3) cost estimates, (4) and recommendations for Project delivery method. The Contractor shall periodically update the Construction Management Plan over the course of the Project.

3.2.4 The Contractor shall prepare and periodically update the Project schedule included in the Construction Management Plan for the Owner's acceptance.

3.2.5 The Contractor shall provide recommendations and information to the Owner regarding the responsibilities for safety programs among the Subcontractors and this does not relieve Subcontractors from complying with all State and Federal safety requirements. No third party shall be granted any rights hereby, nor has any right to enforce this subsection.

3.2.6 The Contractor shall update the Project schedule to include the components of the Work, including phasing of construction, times of commencement and completion required of each Subcontractor, ordering and delivery of products, including those that must be ordered well in advance of construction, and the occupancy requirements of the Owner.

3.2.7 The Contractor shall expedite and coordinate, to the extent possible, the ordering and delivery of materials, including those that must be ordered well in advance of construction.

3.2.7 The Contractor shall prepare and issue Construction Contracts to Subcontractors and material suppliers as required.

### 3.3 Construction Phase Administration of the Construction Contract

3.3.1 Subject to Section 4.3, the Contractor's responsibility to provide Construction Phase Services commences with the award of the initial Contract for Construction and terminates on the date of final completion.

3.3.2 The Contractor shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever key portions of the Work is being performed.

3.3.3 The Contractor shall provide administrative, management and related services to coordinate scheduled activities and responsibilities of the Subcontractors with each other and with those of the Contractor and the Owner. The Contractor shall coordinate the activities of the Subcontractors in accordance with the latest approved Project schedule.

3.3.4 Utilizing the construction schedules provided by the Subcontractors, the Contractor shall update the Project schedule,

3.3.5 The Contractor shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Contractor shall prepare and promptly distribute minutes.

3.3.6 Utilizing information from the Subcontractors, the Contractor shall schedule and coordinate the sequence of construction and assignment of space in areas where the Subcontractors are performing Work, in accordance with the Contract Documents and the latest approved Project schedule.

3.3.7 The Contractor shall schedule all tests and inspections required by the Contract Documents or governmental authorities, and arrange for the delivery of test and inspection reports to the Owner.

3.3.8 The Contractor shall endeavor to obtain satisfactory performance from each of the Subcontractors.

3.3.9 The Contractor shall review the safety programs developed by each of the Subcontractors solely and exclusively for purposes of coordinating the safety programs with those of the other Subcontractors and for making recommendations to the Owner for any safety programs not included in the Work of the Multiple Prime Subcontractors. The Contractor's responsibilities for coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Subcontractor, agents or employees of the Subcontractors, or any other persons performing portions of the Work and not directly employed by the Contractor. No third party shall be granted any right hereby, nor has any right to enforce this subsection.

3.3.10 The Contractor shall determine in general that the Work of each Subcontractor is being performed in accordance with the requirements of the Contract Documents

3.3.11 The Contractor shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Contractor shall submit written progress reports to the Owner, showing percentages of completion and other information identified below:

1. Work completed for the period;
2. Project schedule status;
3. Submittal schedule and status report, including a summary of remaining and outstanding Submittals;
4. Request for information, Change Order, and Construction Change Directive status reports;
5. Tests and inspection reports;
6. Status report of nonconforming and rejected Work;
7. Issues logs;

3.3.12 The Contractor shall arrange for the delivery, storage, protection and security of Owner purchased materials, systems and equipment that are a part of the Project until such items are incorporated into the Work.

3.3.13 With the Owner's maintenance personnel, the Contractor shall observe the Subcontractor's final testing and start-up of utilities, operational systems and equipment and observe any commissioning as the Contract Documents may require.

3.3.14 When the Contractor considers each Subcontractor's Work or a designated portion thereof is substantially complete, the Contractor shall, jointly with the Subcontractor, prepare a list of incomplete or unsatisfactory items and a schedule for their completion. The Contractor shall conduct inspections with the owner to determine whether the Work or designated portion thereof is substantially complete.

3.3.15 When the Work or designated portion thereof achieves Substantial Completion the Contractor shall prepare and execute, a Certificate of Substantial Completion. The Contractor shall submit the executed Certificate to the Owner and Subcontractor. The Contractor shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Contractor shall evaluate the completion of the Work of the Subcontractor and conduct final inspections.

3.3.16 The Contractor shall deliver all keys, manuals, record drawings and maintenance stocks to the Owner.

#### **ARTICLE 4 ADDITIONAL SERVICES**

4.1 Additional Services listed below are not included in Basic Services but will be required for the Project. The Contractor shall provide the listed Additional Services.

4.1.1 Turn-key project installation per Exhibit A

4.1.2 Commissioning Services per Exhibit A

4.2 Additional Services Scope of Work.

4.2.1 Contractor shall (a) provide all of those services, furnish any required materials and labor, and enter into and cause to be performed all Trade Contracts necessary to achieve complete, correct and timely completion of the complete construction of the Project in accordance Exhibit B and (b) warrant all of such Work and services for a period of One-Year from the date of Final Completion.

4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Contractor, any Additional Services provided in accordance with this Section 4.3 with the prior written consent of the Owner shall entitle the

Contractor to compensation pursuant to Section 11.3.

4.3.1 Upon recognizing the need to perform the following Additional Services, the Contractor shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Contractor shall not proceed to provide the following services until the Contractor receives the Owner's written authorization:

1. Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or additional bid packages;
2. Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
3. Preparation of documentation for alternate bid or proposal requests proposed by the Owner;
4. Preparation for, and attendance at, a public presentation, meeting or hearing;
5. Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Contractor is party thereto;
6. Providing consultation concerning replacement of Work resulting from fire or other cause during construction and furnishing services required in connection with the replacement of such Work;

## **ARTICLE 5 OWNER'S RESPONSIBILITIES**

5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including the Owner's program, other objectives, schedule, constraints and criteria, special equipment, systems, and site requirements. Within 30 days after receipt of a written request from the Contractor, the Owner shall furnish the requested information as necessary and relevant for the Contractor to evaluate, give notice of, or enforce any bond rights, if any.

5.2 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions pertaining to documents the Contractor submits in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Contractor's services.

5.3 Unless provided by the Contractor, the Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

5.4 Unless provided by the Contractor, the Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

5.5 The Owner shall coordinate the services of its own consultants with those services provided by the Contractor. Upon the Contractor's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner may furnish the services of consultants other than those designated in this Agreement, or authorize the Contractor to furnish them as an Additional Service, when the Contractor requests such services and demonstrates that they are reasonably

required by the scope of the Project. If the Owner decides not to retain consultants to provide those services, the Contractor is not responsible for consequences of not providing those services. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

5.6 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

5.7 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

5.8 The Owner and Contractor shall provide prompt written notice to each other if either of them becomes aware of any fault or defect in Project, including errors, omissions or inconsistencies in the Engineer's Instruments of Service or any fault or defect in either of their obligations.

5.9 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Subcontractor and the Contractor's consultants through the Contractor about matters arising out of or relating to the Contract documents. The Owner shall promptly notify the Contractor of any direct communications that may affect the Contractor's services.

5.10 Before executing the Contract for Construction, the Owner shall coordinate the Contractor's duties and responsibilities set forth in the Contract for Construction with the Contractor's services set forth in this Agreement.

5.11 The Owner shall provide the Contractor access to the Project site prior to commencement of the Work and shall obligate the Subcontractor to provide the Contractor access to the Work wherever it is in preparation or progress.

## **ARTICLE 6 COST OF THE WORK**

6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project per Exhibit A.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

The Contractor and the Contractor's consultants, if any, shall not own or claim a copyright in the Instruments of Service. The Contractor, the Contractor's consultants, if any, and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Contractor intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **8.1 General**

8.1.1 The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 5 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

8.1.2 Contractor waive all rights against the owner for damages caused by fire and other perils and any other risk to the extent covered by contractor's policies of insurance or required to be covered by contractor's policies of insurance as set forth.

8.1.3 The Contractor shall defend, indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by a) the Contractor's breach of the agreement, b) negligent acts or omissions of the Contractor, its employees and its consultants in the performance of professional services under this Agreement, or c) willful misconduct of the Contractor.

8.1.4 In the event of litigation, each party would be responsible for its expenses of enforcing its rights under this Agreement.

## 8.2 Mediation

8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to litigation. If such matter relates to or is the subject of a bond arising out of the Contractor's services, the Contractor may proceed in accordance with applicable law to comply with the bond notice or filing deadlines prior to resolution of the matter by facilitative mediation or by litigation.

8.2.2 The mediator will be jointly selected by the parties from the list of certified mediators maintained by the State of Minnesota Supreme Court.

8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following: Litigation in a court of competent jurisdiction

## ARTICLE 9 TERMINATION OR SUSPENSION

9.1 If the Owner fails to make payments to the Contractor in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Contractor's option, cause for suspension of performance of services under this Agreement. If the Contractor elects to suspend services, the Contractor shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Contractor shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Contractor shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Contractor's services. The Contractor's fees for the remaining services and the time schedules shall be equitably adjusted.

9.2 If the Owner suspends the Project for reasons other than the fault of the Contractor, the Contractor shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Contractor shall be compensated for expenses incurred in the interruption and resumption of the Contractor's services. The Contractor's fees for the remaining services and the time schedules shall be equitably adjusted.

9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Contractor, the Contractor may terminate this Agreement by giving not less than seven days' written notice.



9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Contractor for the Owner's convenience and without cause.

9.6 In the event of termination not the fault of the Contractor, the Contractor shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

9.7.1 In the event of termination for the Owner's convenience prior to commencement of construction, the Contractor shall be entitled to receive payment for services performed and costs incurred by reason of such termination.

9.7.2 In the event of termination for the Owner's convenience after commencement of construction, the Contractor shall be entitled to receive payment for services performed and costs incurred by reason of such termination.

#### **ARTICLE 10 MISCELLANEOUS PROVISIONS**

10.1 This Agreement shall be governed by the law of the place where the Project is located: Belle Plaine, MN.

10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A232-2009, General Conditions of the Contract for Construction, except for purposes of this Agreement, the term "Work" shall include the work of all Subcontractors under the administration of the Contractor.

10.3 The Owner and Contractor, respectively, bind themselves to this Agreement. Neither the Owner nor the Contractor shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project or to a building authority. If that occurs, Contractor will execute any documents reasonable required by the lender.

10.4 If the Owner requests the Contractor to execute certificates, the proposed language of such certificates shall be submitted to the Contractor for review at least 14 days prior to the requested dates of execution. If the Owner requests the Contractor to execute consents reasonably required to facilitate assignment to a lender, the Contractor shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Contractor for review at least 14 days prior to execution. The Contractor shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Contractor.

10.6 Unless otherwise required in this Agreement, the Contractor shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site, except to the extent the Contractor has actual knowledge of those materials or substances and fails to promptly notify the Owner.

10.7 The Contractor shall have the right to include photographic or artistic representations of the design of the Project among the Contractor's promotional and professional materials. The Contractor shall be given reasonable access to the completed Project to make such representations. However, the Contractor's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Contractor in writing of the specific information considered by the Owner to be confidential or

proprietary. The Owner shall provide professional credit for the Contractor in the Owner's promotional materials for the Project.

10.8 The Energy Policy Act of 2005 (EPAct) created a Federal tax incentive under Internal Revenue Code §179D called the Energy Efficient Commercial Building Deduction. This incentive encourages efficient construction practices. While the tax incentive usually goes to building owners, public agencies cannot use it since they pay no income tax. A special rule allows public agencies to assign the incentive to the designer who assists in the creation of technical specifications for the energy efficient building features. If available, Client agrees to assign this tax incentive to Subcontractor.

#### 10 Lighting Scope Clarifications

10.9.1 The scope includes retrofit of the noted fixtures only and does not address or include any fix-up / upgrade / replacement of existing wiring, switching, conduits, hangers, etc. If items are found to be in need of repair or replacement – this is not included in the Scope of Services and associated costing. This scope does include replacement of existing broken lighting sockets when replacing bulbs.

10.9.2 It is assumed that all emergency lighting is on generator or independent battery control. Replacements of emergency ballasts are not included in the project.

10.9.3 Replacement or repair of fixture lenses or louvers are not included, fixture lenses will be wiped with a dry cloth.

10.9.4 Contractor is not responsible for fixtures that are found to be damaged prior to commencement of its Scope of Work.

10.9.5 All manufacturers' warranties (and related information) will be transferred to Customer at project close-out.

10.9.6 With respect to the specific lighting scope - Contractor will remove and lawfully recycle / dispose of existing lamps and PCB ballasts. All ballasts that are determined to be non-PCB shall be disposed of with non-hazardous waste. Noted items will be carefully recycled and disposed of through a licensed recycling firm in accordance with all state and federal guidelines. Certificates verifying the proper disposal and recycling of PCB containing materials will be provided by the vendor.

10.9.7 Lighting levels, if existing is identified to be over-lit per recommended standards, may be reduced.

10.9.8 Contractor is not responsible for any pre-existing electrical code violations or electrical system deficiencies.

#### **ARTICLE 11 COMPENSATION**

11.1 For the Contractor's Basic Services described under Article 3, the Owner shall compensate the Contractor as follows:

11.1.1 For Preconstruction Phase Services in Section 3.2:

1. Preconstruction service fees are included as part of the Construction Phase Services.
2. These amounts are included as part of the total fee and not in addition to the fee outlined in Section 11.1.2.



11.1.2 For Construction Phase Services in Section 3.3:

Six-hundred sixty-eight thousand three hundred dollars and no cents (\$668,300.00) for Construction Phase Services.

11.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Contractor’s invoice. Amounts unpaid thirty (30) days after invoice date shall bear interest at a rate entered below.

6.0% six percent annual interest

**ARTICLE 12 SCOPE OF THE AGREEMENT**

12.1 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Contractor.

IN WITNESS WHEREOF the CONTRACTOR and OWNER have executed this agreement, effective the date of the last authorized signature.

**APEX EFFICIENCY SOLUTIONS, SBC**

**OWNER**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mark Rasmussen, P.E.

\_\_\_\_\_  
Authorized Signature Client