

**ENERGY SAVINGS PERFORMANCE CONTRACT**  
**EXHIBIT A**  
**PHASE 2: DESIGN AND CONSTRUCTION CONTRACT**

THIS **PHASE 2 DESIGN AND CONSTRUCTION CONTRACT** is between PHOENIX-TALENT SCHOOL DISTRICT (PTSD the "Owner"), and:

Company	<u>Ameresco, Inc</u>	Contract #	<u>1007504.001</u>
Address	<u>9700 SW Capitol Hwy, Suite 110</u>	PCA Project/Phase	<u>Ph. 1</u>
City, State Zip	<u>Portland, OR 97219</u>	Tax ID #	<u>04-3512838</u>
Phone	<u>503.290.1285</u>	Date	<u>12/16/24</u>

(the "ESCO" or "Consultant") (collectively Owner and Consultant are referred to as the "Parties"). This Contract is for all Services related to completion of the project more particularly described as follows (the "Project"):

**The scope of work for this project will include a roof-mounted solar array, battery energy storage system, and back up load panels at Talent Middle School as described in the PDP, located at 102 Christian Ave, Talent, OR 97540.**

The work to be performed under this contract shall commence as soon as the ESCO has been officially notified to proceed (the "Effective Date"). No Services shall be performed prior to the Effective Date. The Contract shall expire, unless otherwise terminated or extended, on **8/31/27**. The expiration or termination of the Contract shall not extinguish, prejudice, or limit either Party's right to enforce this Contract with respect to any default or defect in performance that has not been cured.

1. RESERVED.
2. SUBSTANTIAL COMPLETION DATE: **2/31/2026** See requirements in Sections 18.2 and 18.3 of this Design and Construction Contract.
3. DEFINITIONS. The key, defined terms used in this Design and Construction Contract, are set forth at Section 1 of Division 1 of the Energy Savings Performance Contract between Owner and ESCO, with an Effective Date of **12/16/24** (the "ESPC" or the "Contract") and Section A, Phoenix-Talent School District General Conditions, Exhibit 1A to this Contract (the "General Conditions"), unless defined in the body of this Contract, and in this Section 3 as follows:
  - 3.1. "Construction Work" means the providing of all work, services, construction management services, materials, equipment, transportation, tools, labor and incidentals necessary to complete the construction work described in and reasonably inferred from this Contract and the other Contract Documents, including but not limited to the services and work set forth in Sections 5.5 and 5.6 of this Design and Construction Contract.
  - 3.2. "Contract Time" means any incremental period of time allowed under the Design and Construction Contract to complete any portion of the Work as reflected in the project schedule.
  - 3.3. "Design Services" means all the design services and construction administration services to be performed by ESCO under this Design and Construction Contract and the other Contract Documents, including but not limited to Sections 5.3 and 5.4 of this Design and Construction Contract.

- 3.4. "Project Management Services" means the project management services that ESCO shall perform throughout the period of performance of this Design and Construction Contract, as more particularly described in Section 5.2 of this Design and Construction Contract.
  - 3.5. "Work" means all Project Management Services, Design Services and Construction Work to be performed by ESCO under this Design and Construction Contract and the other Contract Documents for the Project.
4. CONTRACT DOCUMENTS. The Contract Documents listed at Section 4.1 below are intended to reflect the Parties' understanding of their respective rights and responsibilities concerning completion of the Work under the Design and Construction Contract.
- 4.1. Interpretation. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the following order:
    - 4.1.1. All written modifications, amendments and change orders to this Design and Construction Contract that have been executed by Owner following any required Owner approvals;
    - 4.1.2. This Design and Construction Contract, and all Exhibits, Schedules and Attachments to this Contract, including Exhibit 2A, Supplemental General Conditions to the Phoenix-Talent School District General Conditions;
    - 4.1.3. The Phoenix-Talent School District General Conditions (Exhibit 1A hereto);
    - 4.1.4. All design and construction drawings, Plans, Specifications and documents prepared and approved for the Project;
    - 4.1.5. The Contract;
    - 4.1.6. The RFP;
    - 4.1.7. ESCO's Proposal submitted in response to the RFP.
  - 4.2. Ownership of Work Product. All drawings, Plans, Specifications, audits, reports, and other work product required to be delivered by ESCO under this Contract ("Work Product") shall be the exclusive property of Owner. Owner and ESCO intend that such Work Product be deemed "work made for hire." If for any reason the Work Product is not deemed "work made for hire," ESCO hereby irrevocably assigns to Owner all of its right, title and interest in and to any and all of the Work Product, whether arising from copyright, or any state or federal intellectual property law or doctrine. ESCO shall execute such further documents and instruments as Owner may reasonably request in order to fully vest such rights in Owner. ESCO forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
    - 4.2.1. ESCO, notwithstanding other conditions in this Section 4.2, shall have, with Owner's written permission, the right to utilize such Work Product on its brochures or other literature that it may utilize for marketing and sales, and in addition, ESCO may use standard line drawings, specifications and calculations on other unrelated projects.
    - 4.2.2. If Owner reuses or modifies the Work Product without ESCO's involvement or prior written consent, Owner shall to the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, indemnify ESCO against liability for damage to person or property arising from Owner's reuse or modification of the Work Product, provided Owner shall not be required to indemnify ESCO for any such liability arising out of or related to the wrongful or negligent acts of ESCO or ESCO's employees or agents.

## 5. ESCO's SERVICES

### 5.1. General.

- 5.1.1. ESCO agrees that the Project Development Plan package of Energy related items, Non-Energy-related items and water-saving measures, and the Design Development Documents approved by ESCO and Owner shall serve as the basis for the Statement of Work for Phase II (as described in Section 3 of Division 1 of the Contract.)
- 5.1.2. As the Design-Builder for this Project, ESCO shall perform all Project Management Services, Design Services, and Construction Work necessary to complete the Project.
- 5.1.3. ESCO shall obtain at its own expense, and shall maintain in effect for the duration of this Design and Construction Contract, the insurance coverage required both in Section G of the General Conditions and in Section 9.3 of Division 1 of the Contract. Before execution of this Design and Construction Contract, ESCO shall provide to Owner certificates of insurance in compliance with the foregoing insurance provisions that demonstrate the required coverages are in effect and are being maintained for this Design and Construction Contract and the Work and services to be performed hereunder. In addition, before execution of this Design and Construction Contract, ESCO shall provide to Owner a performance bond and a payment bond, as required by Section G.2 of the General Conditions, on the bond forms furnished by Owner (attached hereto as Exhibit 3A). Each bond shall be in the total amount of those elements of the Contract Price for this Design and Construction Contract as provided in Section 9.1.5 below. Notwithstanding any provision to the contrary herein, any payment and performance bonds associated with this Contract guarantee only the performance of the installation portion of this Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, (2) any support or maintenance service agreement, or (3) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of this Contract. In addition, before beginning work, ESCO and all subcontractors shall file and maintain with the Construction Contractors Board the public works bond required by ORS 279C.836.
- 5.1.4. ESCO shall perform all services in good faith and shall perform all Work as expeditiously as is consistent with the highest professional skill, care and the orderly progress of the Work.
- 5.1.5. Within one week after execution of this Design and Construction Contract, ESCO shall submit for Owner's approval a schedule for the performance of the Work, which shall include allowances for periods of time required for Owner's review and for approval by authorities having jurisdiction over the Project. Time limits established by this schedule and approved by Owner shall not, except for reasonable cause, be exceeded by ESCO or Owner.
- 5.1.6. ESCO shall in good faith provide Owner with the necessary technical documentation for, and assist Owner in the procurement of, any utility rebates or incentives (the "Rebates") and tax credits (the "Tax Credits") that may be available for the Project. ESCO estimates the Rebates to be approximately \$30,000 and the Tax Credits to be approximately \$302,022. ESCO does not guarantee the specific availability or amount of the Rebates or the Tax Credits.
- 5.1.7. Under Section 6.4.3 of Division 3 of the Contract, ESCO was required to provide drafts of Schedules 7 through 10 as provided in that Section. As part of the services under this Design and Construction Contract, ESCO is required to provide final versions of Schedules 7 through 10. ESCO shall provide proposed final versions of these Schedules for review by Owner, and ESCO shall then revise these Schedules as required by Owner or as negotiated between Owner and ESCO to arrive at final versions of Schedules 7 through 10. More than one

version of one or more of these Schedules may be necessary in arriving at accepted final versions.

5.1.8. Reserved

5.2. Project Management.

- 5.2.1. ESCO shall appoint an ESCO staff person as ESCO's Project Manager (the "EPM", who is identified in Section 6.3 of this Design and Construction Contract) who shall be reasonably available to Owner and who shall have the expertise and experience required to supervise the Work for the duration of the Project. EPM shall communicate regularly with Owner and shall have the authority to act on behalf of ESCO. EPM shall consult with Owner's Project Manager (the "OPM") on issues affecting design, construction, Contract performance, Project budget and Project schedule. The EPM may be replaced during the Project only with Owner's prior consent, consistent with the provisions of Section 6.3 and 6.5 of this Design and Construction Contract.
- 5.2.2. The EPM shall provide Owner with a status report every two weeks, in which it shall detail the progress of the Work including the following: 1) whether the Work is proceeding according to schedule; 2) any discrepancies, conflicts, or ambiguities in the Contract Documents that require resolution; 3) any safety issues related to the Work; 4) any other matter that requires resolution to ensure timely and cost-effective completion of the Work. At least four working days prior to the scheduled meeting, ESCO shall submit to Owner a list of identified matters that require resolution; any matters that require Owner approvals, and any proposed deviations from the Project schedule.
- 5.2.3. The EPM shall be the principal contact between the OPM and all other ESCO representatives, and shall be responsible for all communications, including, but not limited to, conveying concerns, decisions and formal actions.
- 5.2.4. The EPM shall be responsible for maintaining thorough and complete project records and regular briefings to the OPM. The EPM shall coordinate the flow of information, communications and formal Documents so that Owner has the material required for its timely action on policy, design and budget matters. The EPM shall be responsible for transmission of Documentation required for Owner approval or actions.
- 5.2.5. Owner's review of, and response to, any of the matters presented above shall not relieve ESCO of its obligation to complete the Work within the Contract Time, and shall not be construed as relieving ESCO of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

5.3. Design.

Based on approved design development documents generated by ESCO and approved by Owner during the Project Development Plan, and any further adjustments in the scope or quality of the Project or in the construction budget authorized by Owner, ESCO shall prepare, for approval by Owner, Construction Documents.

- 5.3.1. The Construction Documents must meet the following requirements:
- 5.3.1.1. ESCO shall provide Specifications that comply with the Construction Specifications Institute's 3-part and 16-division format, shall provide drawings and Plans based on the approved preliminary design documents and shall set forth in detail the architectural, structural, mechanical and electrical construction requirements for the Project.
- 5.3.1.2. ESCO shall provide Owner with catalog cuts of all specified items, if different than design development documents.

- 5.3.1.3. ESCO shall provide Owner with in-progress Construction Documents as needed. At the completion of construction ESCO shall supply record drawings, and a copy of the final Construction Documents on a re-recordable compact disk.
        - 5.3.1.4. ESCO shall prepare 95% Construction Documents for review and approval by Owner, and shall continue with preparation of the final Construction Documents, including final Specifications for all authorized Work on the Project, and shall incorporate into those final Construction Documents the comments and any modifications or changes desired by Owner, and any modifications required for compliance with applicable codes, regulations or standards. The resulting final Construction Documents shall be a complete, fully coordinated, integrated package, suitable for use in the construction of the Project, without significant addenda or further clarifications required. All submittals shall be made in accordance with the schedule made pursuant to Section 5.1.5 of this Design and Construction Contract.
        - 5.3.1.5. ESCO shall file all documents required for the approval of governmental authorities having jurisdiction over the Project and shall obtain all necessary permits. In the event that Owner files any permits, ESCO shall assist Owner as Owner deems necessary.
      - 5.3.2. All specified items shall be standard, cataloged, manufactured items or "off the shelf" items. No custom items are to be designed or specified without prior written authorization of Owner. No proprietary or "sole source" items shall be specified. Brand name products may be specified so long as "or approved equal" is included with their specification.
      - 5.3.3. Recycled products shall be used where they are economically feasible. ESCO shall give preference to materials and supplies manufactured from recycled materials under the following conditions:
        - The recycled product is available;
        - The recycled product meets applicable standards;
        - The recycled product can be substituted for a comparable non-recycled product; and
        - Recycled product costs do not exceed the costs of non-recycled products by more than five percent.
- 5.4. Construction Administration Services
  - 5.4.1. GENERAL OFFICE CONSTRUCTION ADMINISTRATION. ESCO shall process submittals, including without limitation, the receipt, review and disposition of shop drawings, product data, and samples. ESCO shall transmit any such submittals to Owner, as required and shall maintain a master file of submittal communications. ESCO shall keep a submittal log on a spreadsheet program and send a copy to Owner on a weekly basis.
  - 5.4.2. INSPECTION COORDINATION. ESCO shall provide all necessary services relating to independent inspection and testing required by applicable regulatory agencies, or relating to other inspection, testing and commissioning of the systems and equipment installed on the Project site as part of the Work, including but not limited to the following: administration and coordination of field testing as required by the Contract Documents; establishing the scope, standards, procedures and frequency of testing and inspections required to complete the Work; arranging for testing and inspections; notifying inspection and testing agencies of status of any portion of the Work requiring testing and inspection; evaluating compliance by testing and inspection agencies with required scope, standards, procedures and frequency; review of reports on inspections and tests; notifying Owner of any observed deficiencies in the Work; and, providing copies of all reports on inspections

and tests, as well as copies of all correspondence from the testing and inspection agencies, to Owner.

- 5.4.3. SUPPLEMENTAL DOCUMENTS. ESCO shall prepare, reproduce and distribute supplemental drawings, Plans and Specifications and shall issue interpretations in response to requests for clarification by Owner's Project Manager, or subcontractors or as required by construction exigencies. ESCO shall be responsible for notifying the appropriate parties of Owner's instructions and of changed requirements and schedule revisions.
  - 5.4.4. CHANGE REQUESTS/CHANGE ORDERS, requested or approved by Owner: ESCO shall prepare, reproduce and distribute drawings, Plans and Specifications to describe Work to be added, deleted or modified; review proposals from subcontractor(s) for reasonableness of quantities and costs of labor and materials; review and recommend changes in time for substantial completion; assist in preparation of Owner approved modifications to the GMP; coordinate communications, approvals and notifications. ESCO shall keep a log of all change requests on a spreadsheet program and copy Owner bi-weekly.
  - 5.4.5. PAYMENT REVIEW. ESCO shall evaluate and certify applications for payment and shall maintain detailed records supporting approved applications for payment.
  - 5.4.6. PROJECT CLOSEOUT. ESCO shall verify that work is sufficiently complete, in accordance with the Contract Documents, to permit occupancy or utilization for the use for which it is intended. ESCO shall coordinate a detailed inspection with Owner's representative to ensure that the Work conforms to the Contract Documents; to verify the list submitted by the subcontractor(s) of items to be completed or corrected; to determine the amounts to be withheld until final completion; to issue Certificates of Substantial Completion; to perform inspection(s) upon notice by the sub-contractor(s) that the Work is ready for final inspection and acceptance; to notify Owner and subcontractor(s) of deficiencies found in follow-up inspection(s), if any; to perform final inspection with Owner's representative to verify final completion of the Work; receipt and transmittal of warranties, affidavits, receipts, releases and waivers of lien or bonds indemnifying Owner against liens; and issuance of Final Certificate(s) for Payment.
  - 5.4.7. RECORD DRAWINGS services consisting of: Preparation of record drawings in electronic format based on information furnished by the subcontractors including significant changes in the work made during construction including modifying the floor plan layouts including partitions, furniture and equipment; transmittal of record drawings and general data, appropriately identified, to Owner and others as directed.
  - 5.4.8. WARRANTY REVIEW: Prior to the expiration of the warranties of any subcontractors and manufacturers, ESCO and Owner's representative shall perform a warranty review, documenting defects or deficiencies in installation, materials, systems and equipment and preparing instructions to the sub-contractors and manufacturers for correction of noted defects. The ESCO shall then follow through to ensure that each defect or deficiency is appropriately addressed and verify that an appropriate remedy has been accomplished. ESCO shall copy Owner on the correspondence related to these warranty issues.
- 5.5. Construction Services/Construction Management Services.
- 5.5.1. ESCO shall have complete control over and charge of and shall be responsible for construction means, methods, techniques, sequences or procedures, and for safety precautions and programs in connection with the Work on the Project, so that, upon completion of the Work, the Project shall be structurally sound and shall be a complete, fully-functioning facility suitable for the purposes for which it is intended. These roles are solely ESCO's responsibility under this Design and Construction Contract. ESCO shall be fully

responsible for maintaining construction schedules and for any failure to carry out the Work in accordance with the Contract Documents. ESCO shall be deemed to have complete control over or charge of acts or omissions of all ESCO employees, agents, design professionals, and construction managers, as well as subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

- 5.5.2. ESCO's responsibility to provide the Work under this Design and Construction Contract commences with the execution of this Design and Construction Contract and terminates upon ESCO's satisfaction of all obligations set forth in this Design and Construction Contract including those enumerated at Section K of the General Conditions.
- 5.5.3. ESCO shall provide, supervise and administer all Construction Work as set forth in this Design and Construction Contract and in the General Conditions unless otherwise provided in this Design and Construction Contract.
- 5.5.4. ESCO's duties, responsibilities and limitations of authority shall not be modified or extended without the express written agreement of the Parties and any required Owner approvals.
- 5.5.5. Except as may otherwise be provided in the Contract Documents or when direct communications have otherwise been specifically authorized, Owner shall conduct all communications concerning the Work through the EPM.
- 5.5.6. Subject to the right to suspend and terminate as provided in Section J of the General Conditions, in no event shall the existence of any claim, dispute or question constitute a justification for either party to suspend or terminate the progress of the Work, and both parties, in such event, shall continue to prosecute the Work and perform under this Design and Construction Contract diligently, and shall resolve the claim, dispute or question by agreement, mediation or other means.
- 5.5.7. At its own expense, ESCO shall correct Construction Work which does not conform to the Construction Documents.
- 5.5.8. ESCO warrants to Owner that materials and equipment incorporated in the Construction Work shall be new unless otherwise specified, and that the Construction Work shall be of good quality, free from faults and defects, and in conformance with the Contract Documents.
- 5.5.9. ESCO shall pay all sales, consumer, use and similar taxes and shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Construction Work which are either customarily secured or are legally required. Owner shall compensate ESCO for the actual cost of approved changes in the Construction Work including the cost of permits, licenses, inspections or governmental fees and tariffs incurred by ESCO as a direct result of this Project; provided, however, ESCO shall pay all costs of this Project that result from errors or defects in the design of the Project or in the Construction Work.
- 5.5.10. ESCO shall give notices and comply with all laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project, including but not limited to compliance with energy conservation design measures required under ORS 276.900 to 276.915 and rules adopted pursuant to those statutes.
- 5.5.11. ESCO shall be responsible to Owner for the completion of the Construction Work in accordance with this Design and Construction Contract.
- 5.5.12. ESCO shall keep the premises free from accumulation of waste materials or rubbish caused by ESCO's operations. At the completion of the Construction Work, ESCO shall remove from and about the Project all of ESCO's tools, construction equipment, machinery, surplus materials, waste materials and rubbish.

- 5.5.13. ESCO shall prepare Change Orders for Owner's approval and execution and shall have authority to make minor changes in the design of the Project and Construction Work consistent with the intent of the Project, not involving an adjustment in the contract sum or an extension of the contract time. ESCO shall promptly inform Owner, in writing, of all minor changes in the design of the Project and the Construction Work.
  - 5.5.14. ESCO shall notify Owner when the Construction Work or an agreed upon portion thereof is substantially completed by issuing a Certificate of Substantial Completion which shall establish the date of Substantial Completion; state the responsibility for each party for security, maintenance, heat, utilities, and damage to the Construction Work; include a list of items to be completed or corrected; and fix the time within which ESCO shall complete items listed
  - 5.5.15. ESCO shall maintain in good order at the site one true and correct record copy of the drawings, Plans, Specifications, product data, samples, shop drawings, Change Orders, and other modifications, marked currently to record changes made during construction. ESCO shall deliver in-progress construction drawings and Plans to Owner upon completion of the design and construction of the Project, and prior to final payment. The record copy shall be based solely on information obtained by ESCO.
  - 5.5.16. For this Project, the provisions of ORS 279C.800 to 279C.870, relative to prevailing wage rates, shall apply, and ESCO and all subcontractors shall comply with the foregoing requirements and the related requirements as provided in Section C of the General Conditions, including but not limited to the requirement to pay workers at not less than the specified minimum hourly rate of wage. A copy of the Oregon Bureau of Labor and Industries (BOLI) current prevailing wage rate publication applicable to this Project is appended to this Contract as Exhibit 4A and is incorporated herein by this reference. The ESCO's signature on this Design and Construction Contract constitutes a certification that ESCO agrees to be bound by such rates and the foregoing requirements for this Project, and that ESCO agrees to the attachment of a copy of the applicable BOLI publication. (A copy of the then applicable BOLI prevailing wage rates was referenced in the RFP and incorporated into the RFP, together with the BOLI web address where they were available. However, Owner reserves the right to require that the applicable BOLI wage rates current at the time this Design and Construction Contract is executed be attached to, or incorporated into, and apply to this Design and Construction Contract).
  - 5.5.17. Pursuant to ORS 279C.825, the PWR fee shall be paid by Owner according to the administrative rules of the Commissioner of BOLI.
- 5.6. Protection of Persons and Property.
- 5.6.1. ESCO shall be fully responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work.
  - 5.6.2. ESCO shall take reasonable precautions to ensure the safety of and shall provide reasonable protection to prevent damage, injury or loss to: 1) employees of Owner present on the Work site, employees of ESCO, and other persons who may be affected; 2) the Work and materials and equipment to be incorporated therein; and 3) other property at, or adjacent to the Work site.
  - 5.6.3. ESCO shall be liable for damage or loss to property at the site caused by the negligence of ESCO, or anyone directly or indirectly employed by ESCO, or by anyone for whose acts it may be liable, except to the extent that damage or loss is attributable to the acts or omissions of Owner. This subparagraph shall in no way affect the applicability or coverage of the insurance required in Section G of the General Conditions.



5.7. Additional Services. All other services requested by Owner and mutually agreed to in writing by Owner and ESCO, including, among others, changes in the Work exceeding that described in Section 5 of this Design and Construction Contract, shall constitute additional services and shall be paid by Owner as provided in the written agreement applicable thereto.

## 6. RELATIONSHIP BETWEEN AND ROLES OF THE PARTIES

### 6.1. Owner Responsibilities.

- 6.1.1. Owner shall designate a representative authorized to act on Owner's behalf with respect to the Project. Owner or such authorized representative shall examine documents submitted by ESCO and shall promptly render decisions pertain thereto to avoid delay in the orderly progress of the Work. Owner shall render approval of formal submittals on the Schedule of Performance within ten (10) calendar days after receipt of submittals from ESCO.
- 6.1.2. If Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the design documents or Construction Documents, Owner shall give prompt written notice thereof to ESCO.
- 6.1.3. Owner shall furnish required information and services and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the design and construction.
- 6.1.4. No approval or acceptance of Construction Documents or changes herein given by or on behalf of Owner shall establish any warranty or representation on the part of Owner that such Construction Documents or changes are technically sound, complete or correct.
- 6.1.5. Owner shall communicate with the design professionals only through ESCO's Representative except in matters of public safety.

6.2. Independent Contractor. ESCO is an independent contractor and not an officer, employee, or agent of Owner as those terms are used in ORS 30.265.

6.3. ESCO's Key Personnel. ESCO's project staff shall consist of the following personnel. ESCO's personnel identified herein shall be considered unique, key personnel, and shall not be replaced during the Project without the written permission of Owner, which shall not be unreasonably withheld.

- 6.3.1. **Ron Haxton** shall be ESCO's Principal-in-Charge.
- 6.3.2. **Todd Gadawski** shall be the EPM and shall participate in all meetings throughout the Project term.
- 6.3.3. The design professional identified in Section 4.5 of Division 1 of the Contract, namely **Jason Carver**, shall be ESCO's design professional that shall provide all design services or design services oversight provided for in this Design and Construction Contract.
- 6.3.4. **Todd Gadawski** shall be ESCO's on-site job superintendent for the Construction Work throughout the Project.

6.4. Design Builder's Consultants/Subcontractors. ESCO shall be assisted by the consultants and/ or subcontractors set forth in Exhibit 5A hereto. The Parties acknowledge and agree that the consultants have been reviewed and approved by Owner, prior to the execution of this Design and Construction Contract.

6.5. Replacement of ESCO's Project Team. If ESCO intends to substitute key personnel, consultants, or subcontractors, a request must be given to Owner at least 10 days prior to the intended time of substitution. When Owner has approved replacements, ESCO shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the

Project concurrently, if feasible. Once a replacement for any key personnel, consultants or sub-contractors is authorized, further replacement shall not occur without the written permission of Owner.

## 7. PAYMENT OF COMPENSATION

Owner shall make payments to ESCO for those portions of the Contract Price (as defined in Section 9 herein) pertaining to the Construction Work in the manner set forth at Section E "Payments" of the General Conditions. Owner shall compensate ESCO for design, engineering and all other contracted Work pursuant to the terms of Section 9 herein.

## 8. TERMINATION

8.1. Parties' Right to Terminate by Mutual Agreement. This Design and Construction Contract may be terminated by written agreement of the Parties.

8.2. Owner's Right to Terminate for Convenience. Owner may, in its sole discretion, terminate this Design and Construction Contract by written notice to ESCO specifying the date of termination. If Owner, during Phase II terminates this Design and Construction Contract for convenience by providing 15 days advance written notice thereof to ESCO, Owner shall pay to ESCO that sum equal to the percentage of the Work that is completed and accepted by Owner.

8.3. Owner's Right to Terminate for Cause. Owner may terminate this Design and Construction Contract, in whole or in part, immediately upon notice to ESCO, or such later date as Owner may establish in such notice, upon the occurrence of any of the following events:

8.3.1. Owner fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for ESCO's services;

8.3.2. Federal, state or local laws, regulations or guidelines are modified or interpreted in such a way that either the services under this Contract are prohibited or Owner is prohibited from paying for such services from the planned funding source;

8.3.3. ESCO no longer holds a license or certificate that is required to perform the services;

8.3.4. ESCO commits any material breach or default of any covenant, warranty, obligation or agreement under this Design and Construction Contract, fails to perform the work under this Design and Construction Contract within the time specified herein or any extension thereof, or so fails to perform as to endanger ESCO's performance under this Design and Construction Contract in accordance with its terms, and such breach, default or failure is not cured within 10 calendar days after delivery of Owner's notice, or such longer period of cure as Owner may specify in such notice.

8.4. Cessation of Work. Upon receiving a notice of termination, and except as otherwise directed in writing by Owner, ESCO shall immediately cease all activities related to this Design and Construction Contract.

8.5. ESCO's Right to Terminate for Cause.

8.5.1. ESCO may terminate this Design and Construction Contract if Owner fails to pay ESCO pursuant to the terms of this Design and Construction Contract, provided that Owner does not cure its failure to make payment to ESCO within 15 calendar days after receiving written notice from ESCO of such failure to make payment.

8.5.2. ESCO may terminate this Design and Construction Contract, for reasons other than non-payment, if Owner commits any other material breach or default of this Contract, and fails

to cure such breach or default within 30 calendar days after delivery of ESCO's notice, or such longer period as ESCO may specify in such notice.

## 9. CONTRACT PRICE

The "Contract Price" is the maximum, not-to-exceed, total amount payable under this Design and Construction Contract unless it is increased or decreased by the price of approved change orders, is \$1,299,533, as established by ESCO as part of the Project Development Plan. The execution of this Design and Construction Contract signifies the acceptance of the Contract Price by Owner. The Contract Price is composed of the following component parts:

- 9.1. Guaranteed Maximum Price For Construction Work. ESCO agrees that the portion of the Contract Price attributable to the Construction Work shall not exceed \$1,332,022, that amount having been proposed by ESCO as part of the Project Development Plan. The Guaranteed Maximum Price for Construction Work is composed of the following parts and/or includes the following parts:
  - 9.1.1. Cost of the Work. The Guaranteed Maximum Price For Construction Work includes the Cost of the Work, more particularly described in Section 11 herein. The Cost of Work is \$884,533.
  - 9.1.2. Bonding. The Guaranteed Maximum Price For Construction Work includes Bonding in the amount of \$17,691.
  - 9.1.3. Not to Exceed Contingency. The Guaranteed Maximum Price For Construction Work includes a contingency amount of \$48,649 which is available for ESCO's exclusive use for costs that are incurred in performing the Construction Work that are not included in a specific line item of the Cost of the Work, or the basis for a Change Order under the Contract Documents (the "Contingency"). By way of example, and not as a limitation, such costs include trade buy-out differentials, overtime, unforeseen conditions, acceleration, costs in correcting damaged Work that are not covered by insurance, or Subcontractor defaults. The Contingency is not available to Owner for any reason, including changes in scope or any other item, which would enable ESCO to increase the GMP under the Contract Documents. ESCO shall provide Owner with notice of all anticipated charges against the Contingency; Owner will notify ESCO, within ten (10) days of Owner's receipt of ESCO's notice of anticipated charges against the Contingency, of any objection of Owner to any ESCO-proposed charges against the Contingency.
  - 9.1.4. GMP Savings. In the event that the actual and final Cost of the Work plus the Contingency is less than the GMP as amended, the difference shall accrue to Owner.
  - 9.1.5. Tariffs. Ameresco is not responsible for additional costs related to the impact of tariffs that are levied after the date of execution of this Agreement. If a tariff is established that impacts the cost of equipment purchased, Ameresco may request a change order to recover the additional cost of the tariff.
  - 9.1.6. RESERVED
- 9.2. Design Services Fee. This fee shall be a firm fixed price of \$53,072 (\$53,072 for Mechanical, Water and General, and \$0 for Lighting) to provide those services defined in Sections 5.3 and 5.4 of this Design and Construction Contract. A portion of this amount is payable with each application for payment during the design phase, as a percentage of the completed design services.
- 9.3. Systems Start-up and Commissioning Fee shall be a firm fixed price of \$17,691, to provide those services as agreed upon by ESCO and Owner, based on the Proposal presented by ESCO in the Project

Development Plan. A portion of this amount is payable with each application for payment, as a percentage of the completed systems start-up and commissioning services/work.

- 9.4. Training of Owner's Operations & Maintenance Personnel Fee. This fee shall be a firm fixed price of \$1,769 to provide those services as agreed upon by ESCO and Owner, based on the proposal presented by ESCO in the Project Development Plan. A portion of this amount is payable with each application for payment, as a percentage of the completed training services/work.
- 9.5. Measurement and Verification ("M & V") Services Fee. This fee shall be \$7,001, to be paid upon completion and delivery of the M & V annual report. The annual report shall be based on the prior 12 months beginning with the M & V Commencement Date (as defined in Exhibit 6A). The annual report is due within 60 days after the end of each M&V period. The M & V services shall run parallel with the energy savings guarantee contract provisions (the "Savings Contract") (See Section 9.6 below) and shall terminate when the Savings Contract terminates. Should the M & V services be terminated by Owner, the Savings Contract shall also be terminated.
- 9.6. Energy Savings Guarantee Contract Fee. This fee shall be \$0, to be paid upon completion and delivery of the M & V annual report. The Savings Contract terms and provisions shall be as provided in Exhibit 6A (which is attached hereto and incorporated by this reference). Notwithstanding any term or provision to the contrary in Exhibit 6A, any of the referenced Schedules, or this Design and Construction Contract, the terms of this Section 9.6 shall be controlling for the Savings Contract and ESCO and Owner hereby specifically agree that: (1) The Savings Term (or Energy Savings Term) shall be One (1) Year, beginning on the Notice of Commencement of Energy Savings, defined as the date contracting Agency issues its Notice of Commencement of Energy Savings. (2) Exhibit 6A may contain provisions regarding potential changes to increase savings. Notwithstanding any such provisions to the contrary, any such changes must be made during the eighteen (18) months immediately following the Notice of Commencement of Energy Savings, may be made only with the consent of Owner, and shall be made at sole expense of ESCO unless agreed otherwise in Owner's sole discretion.
  - 9.6.1. If at the end of each twelve (12) month period the guaranteed savings have not been achieved, ESCO shall pay to Owner the difference between the actual amount saved and the guaranteed amount, upon receipt of Owner's written request for payment. Owner also has the option of withholding payments otherwise due ESCO (if any) in the amount of the difference between the actual amount saved and the guaranteed amount.
  - 9.6.2. The Savings Contract term shall commence on the date ESCO issues its Notice of Commencement of Energy Savings for Phase II and shall be one (1) year, unless extended for additional consecutive years up to the project financing term or sooner terminated by Owner before that time. The Owner may terminate the Savings Contract at any time. If cancellation occurs, Owner is responsible for payment to ESCO for the work completed.
- 9.7. ESCO's Overhead and Profit. ESCO's fee shall be included as a firm fixed fee of \$159,216, which is **18%** of the Cost of the Work (as that term is defined in Section 11 herein).
- 9.8. Construction Management. Project Management, Construction Management, and Construction Administration Services shall be a firm fixed fee of \$70,763, which is **7%** of the Cost of Work.
- 9.9. Audit and Development Fee. The Contract Price includes the Audit and Development Fee, which is \$71,637 (Amount contracted in Phase I applied to Phase II at Customer's request).

10. CHANGES IN THE WORK. Adjustments to the GMP required by changes in the Work beyond the stated scope may be determined by any of the methods listed in Section D of the General Conditions, except that the overhead and profit markup for ESCO shall be limited to the Overhead and Profit percentage as noted in Section 9.7 of this Design and Construction Contract and the other firm fixed fees at the same percentage of the Cost of Work as the original scope.

11. COST OF THE WORK. (Covered in the GMP, to be reimbursed) The term "Cost of the Work" shall mean costs necessarily incurred by ESCO in the proper performance of the Construction Work; provided, however, the Cost of the Work shall include only the items specifically identified in this Section 11 and must be directly related to the construction of the Project.

11.1. Labor Costs.

11.1.1. Wages of construction workers directly employed by ESCO to perform the Construction Work at the site.

11.1.2. Wages and salaries of ESCO's supervisory and administrative personnel stationed at the site, and for such personnel off the site when specifically related to the Project and with Owner's agreement after review of any information and Documents required by Owner.

11.1.3. Wages and salaries of ESCO's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time directly required for the Construction Work.

11.1.4. Fringe benefit costs paid or incurred by ESCO for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 11.1 through 11.3 of this Design and Construction Contract.

11.2. Subcontract Costs.

11.2.1. Payments made by ESCO to Subcontractors in accordance with the requirements of the subcontracts toward completion of the Construction Work.

11.2.2. Costs, including transportation, of materials and equipment incorporated or to be incorporated into the completed Construction Work.

11.2.3. Costs of materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be delivered to Owner at the completion of the Work or, at Owner's option, shall be sold by ESCO. Any sale shall be commercially reasonable and ESCO shall provide an accounting for such a sale within 15 days of the transaction. Net amounts realized if any, from such sales shall be credited to Owner as a deduction from the Cost of the Work

11.3. Costs of Other Materials and Equipment, and Related Items.

11.3.1. Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by ESCO at the site and fully consumed in the performance of the Construction Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by ESCO. Cost for items previously used by ESCO shall mean fair market value.

11.3.2. Rental charges for temporary facilities, machinery, and equipment and hand tools not customarily owned by the construction workers, which are provided by ESCO at the site,

whether rented from ESCO or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be according to industry standards, shall not exceed acquisition costs, and for individual items exceeding \$10,000, shall be subject to Owner's prior approval.

11.3.3. Costs of removal of debris from the site.

11.3.4. Cost of telegrams and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, which are solely for the benefit of the Construction Work.

11.3.5. That portion of the reasonable travel and subsistence expenses of ESCO's personnel, at Owner approved rates, but not in excess of the rates allowed State Employees, incurred while traveling in discharge of duties connected with the Construction Work. Main office staff travel shall not be reimbursed unless approved in advance by Owner.

11.4. Miscellaneous Costs.

11.4.1. That portion of premiums for insurance directly attributable to this Design and Construction Contract, including deductible for builders all/risk insurance (but excluding premiums for comprehensive/commercial general liability, automobile liability, professional liability/errors & omissions, and worker's compensation coverage), and payment and performance bonds as required by Section G of the General Conditions (but excluding premiums for Subcontractor bonds unless authorized by Owner), Section 9.3 of Division 1 of the Contract, and Section 9.1.5 this Design and Construction Contract.

11.4.2. Sales, use or similar excise taxes imposed by a governmental authority which are directly related to the Construction Work and for which ESCO is liable.

11.4.3. Fees and assessments for the building permit and for other permits, licenses and inspections for which ESCO is required by the Contract Documents to pay.

11.4.4. Direct costs associated with ESCO's job site safety program.

11.4.5. ESCO deposits lost for causes other than ESCO's fault or negligence.

11.5. Other Costs.

11.5.1. Costs of drawings, Plans, Specifications and other Documents required to complete the Construction Work, except as provided by Owner.

11.5.2. Other costs incurred in the performance of the Construction Work if and to the extent approved in advance in writing by Owner.

11.6. Repairs to Damaged, Defective or Nonconforming Construction Work. The Cost of the Work shall also include costs, which are incurred by ESCO in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

12. COSTS INCLUDED IN OVERHEAD AND PROFIT (Not to be reimbursed). The Overhead and Profit shall include all costs that are not directly attributable to the Construction Work as defined in Section 11 of this Design and Construction Contract. Generally, the Overhead and Profit shall include the following:

12.1. Salaries and other compensation of ESCO's personnel stationed at ESCO's principal office or offices other than the site office except as otherwise allowed under the Contract.

12.2. Expenses of ESCO's principal office and offices other than the site office.

12.3. Any overhead and general expenses, except as may be expressly included in Section 11 of this Design and Construction Contract.

- 12.4. ESCO's capital expenses, including interest on ESCO's capital employed for the Construction Work.
- 12.5. Any cost associated with the Project not specifically and expressly described in Section 11 of this Design and Construction Contract.
- 12.6. Costs due to the fault or negligence of ESCO, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming Construction Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Construction Work.
- 12.7. Any costs which would exceed the GMP.

### 13. DISCOUNTS, REBATES AND REFUNDS

- 13.1. Discounts, Rebates and Refunds. Cash discounts obtained on payments made by ESCO shall accrue to Owner. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to Owner, and ESCO shall use its best efforts to obtain such discounts, refunds and net amounts.
- 13.2. Amounts Credited to Owner. Amounts, which accrue to Owner in accordance with the provisions of Section 13.1 of this Design and Construction Contract, shall be credited to Owner as a deduction from the Cost of the Work.

### 14. ESCO'S OBLIGATIONS UNDER SUBCONTRACTS.

- 14.1. No use of a subcontractor shall relieve ESCO of any of its obligations or liabilities under this Design and Construction Contract. ESCO shall be fully responsible and liable for the acts or omissions of all subcontractors and suppliers including persons directly or indirectly employed by them. ESCO shall have sole responsibility for managing and coordinating the operations of its subcontractors and suppliers, including the settlement of disputes with or between ESCO and any such subcontractor.
- 14.2. ESCO shall include in each subcontract and require each subcontractor to include in any lower tier subcontract, any provisions necessary to make all of the provisions of the General Conditions fully effective as applied to subcontractors. The ESCO shall provide all necessary Plans, Specifications, and instructions to its suppliers and subcontractors to enable them to properly perform their work.

### 15. SUBCONTRACTOR SELECTION.

- 15.1. The selection of all subcontractors shall be the sole responsibility of ESCO.
- 15.2. RESERVED

### 16. MISCELLANEOUS LABOR.

- 16.1. ESCO may provide normal layout, clean up, and other "pick-up" work required to complete the Project with its own forces, without the necessity of subcontracting.
- 16.2. If ESCO desires to perform any other Construction Work through third-party subcontractors or other entities, that Construction Work shall be bid according to the provisions of Section 16 of this Design and Construction Contract.

17. ACCOUNTING; AUDIT ACCESS. ESCO shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Design and Construction Contract; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's representatives, including the Oregon Secretary of State accountants and auditors, shall be afforded reasonable and regular access to ESCO's records, books, correspondence, instructions, drawings, Plans, Specifications, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and ESCO shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. Owner may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. Owner intends to conduct a final audit of reimbursable costs prior to the Agreement closeout. The ESCO shall cooperate fully with Owner in the performance of such audits.
18. CONTRACT TIME
- 18.1. Commencement of Work. The Work shall commence on the date ESCO receives Owner's Notice to Proceed, unless the parties mutually agree otherwise in writing. Owner's Notice to Proceed shall be issued on or after the effective date of this Design and Construction Contract.
- 18.2. Substantial Completion. Substantial Completion for the entire Construction Work shall be achieved no later than **2/31/2026** ("Scheduled Substantial Completion Date"), subject to adjustment as set forth in the Contract Documents.
- 18.3. Acceptance of Work. A prerequisite to Owner's acceptance is that ESCO must first warrant, by written notice to Owner's authorized representative, that ESCO has substantially completed the Statement of Work as follows: Phase II, The Energy Related and Non-Energy related items are substantially complete, commissioning has been performed, and the EEMs are producing savings equal to or greater than the Guaranteed Savings.
- 18.4. Final Completion of the Construction Work. Final Completion of the Construction Work, or identified portions of the Construction Work, shall be achieved as expeditiously as practicable. All of the dates set forth in this Section 18 shall be subject to adjustment in accordance with the General Conditions.
- 18.5. Project Schedule and Work Time Limitations. ESCO shall comply with the "Project Schedule" and "Work Time Limitations" for the Project negotiated by Owner and ESCO as provided in Sections 3.4 and 3.5 of Division 1 of the Contract. Changes, if any, to the Project Schedule and Work Time Limitations, including changes for the Work under this Design and Construction Contract, must be agreed to in writing by Owner and ESCO.
19. LIQUIDATED DAMAGES FOR DELAY. ESCO understands that if it does not attain Substantial Completion by the Scheduled Substantial Completion Date, Owner will suffer damages, which are difficult to determine and accurately specify. ESCO agrees that if it does not attain Substantial Completion by the Scheduled Substantial Completion Date, ESCO shall pay to Owner **\$100 PER DAY** as liquidated damages for each subsequent day until ESCO attains Substantial Completion. The liquidated damages provided herein shall be in lieu of a claim for consequential damages incurred by Owner as a result of delay in achieving Substantial Completion.
20. STANDARD OF CARE; DRAWINGS, PLANS & SPECIFICATIONS. ESCO hereby represents and warrants that all drawings, Plans, Specifications, and other Documents prepared pursuant to this Design and Construction Contract shall be completed in a manner consistent with the highest professional standard of care, and shall



function for the purposes intended, and that the Project, if constructed in accordance with such drawings, Plans, Specifications, and other Documents, shall be structurally sound and a complete and properly functioning and suitable for the purposes for which it is intended.

21. CORRECTION OF DRAWINGS, PLANS & SPECIFICATIONS. ESCO shall be responsible for correcting any inconsistencies, errors or omissions in the drawings, Plans, Specifications, and other documents. ESCO shall correct, at no additional cost to Owner, any and all inconsistencies, errors and omissions in the drawings, Plans and Specifications.
22. FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS. Owner reasonably believes that sufficient funds are anticipated to pay all amounts due hereunder and hereby covenants and agrees that it will use its best efforts to obtain and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in the budget submitted for the purpose of obtaining funds and using its best efforts to have such budget approved. It is Owner's intention to make all payments due hereunder if funds are legally available for this Project and in that regard Owner represents and warrants to ESCO that this Design and Construction Contract is important to Owner's efficient and economic operation. If, despite the above, Owner is not allotted sufficient funds for the next succeeding fiscal period by appropriation, appropriation limitation, grant, or other funds source lawfully available to it for such purposes to continue the Project and make payments hereunder, Owner may terminate this Agreement, by notice to ESCO, without penalty, effective at the end of the current fiscal period for which funds have been allocated and if not so terminated Owner will remain fully obligated for all amounts owing hereunder. Such termination shall not constitute an event of default under any other provision of the Design and Construction Contract, but Owner shall be obligated to pay all charges incurred through the end of such fiscal period. Owner shall give ESCO notice of such non-availability of funds within thirty (30) days after it received notice of such non-availability.
23. MISCELLANEOUS.
  - 23.1. Governing Law; Jurisdiction; Venue. This Design and Construction Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Owner and ESCO that arises from or relates to this Design and Construction Contract shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, the it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon located in Jackson County. In no event shall this Subsection be construed as a waiver by the State of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. ESCO, BY EXECUTION OF THIS DESIGN AND CONSTRUCTION CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
  - 23.2. Foreign Contractor. If ESCO is not domiciled in or registered to do business in the State of Oregon, ESCO shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Design and Construction Contract. ESCO shall demonstrate its legal capacity to perform the work under this Design and Construction Contract in the State of Oregon prior to entering into this Design and Construction Contract.

- 23.3. Notices. Except as otherwise expressly provided in this Design and Construction Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to ESCO or Owner at the addresses or numbers as either party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed shall be deemed to be given five (5) calendar days after the date of mailing. Any notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Owner, such facsimile transmission must be confirmed by telephone notice to Owner's Representative for the Project. Any notice by personal delivery shall be deemed to be given when actually delivered.
- 23.4. Disclosure of Tax Identification Number. ESCO must provide its federal tax ID number to Owner. This number is required pursuant to ORS 305.385. The Tax Identification Number provided pursuant to this authority will be used for the administration of state, federal and local tax laws.
- 23.5. Compliance with Applicable Law. ESCO agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Services to be provided under this Design and Construction Contract. ESCO specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. ESCO also shall comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of ESCO to comply with any or all such laws, ordinances, rules, and regulations shall not relieve ESCO of these obligations nor of the requirements of this Design and Construction Contract. ESCO further agrees to make payments promptly when due, to all persons supplying to such ESCO labor or materials for the performance of the Services to be provided under this Design and Construction Contract; pay all contributions or amounts due the Industrial Accident Fund from such ESCO incurred in the performance of this Design and Construction Contract; not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If ESCO fails or refuses to make any such payments required herein, the appropriate Institution official may pay such claim. Any payment of a claim in the manner authorized in this Section shall not relieve ESCO from obligation with respect to any unpaid claims.

Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and the Oregon Building Codes require all new construction to be totally accessible to people with physical limitations. Owner expects that all spaces in designs for new facilities and in remodel projects shall be accessible to people with physical limitations.

- 23.6. Tax Compliance Certification. By signature on this Design and Construction Contract, the undersigned hereby swears or affirms under penalty of perjury that the undersigned is authorized to act on behalf of ESCO and has authority and knowledge regarding the payment of taxes, and that ESCO is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means those programs listed in ORS 305.380(4), namely any state tax imposed by ORS chapters 118, 314, 316, 317, 318, 321 and 323 and sections 10 to 20, chapter 533, Oregon Laws 1981, as amended by chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Department of Revenue under ORS 305.620.

- 23.7. Severability. If any term or provision of this Design and Construction Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Design and Construction Contract did not contain the particular term or provision held to be invalid.
- 23.8. Waiver. The failure of Owner to enforce any provision of this Design and Construction Contract shall not constitute a waiver by Owner of that provision or any other provision.
- 23.9. Media Contacts; Confidentiality. ESCO shall provide no news release, press release, or any other statement to a member of the news media regarding this Project, without Owner's prior written authorization. Furthermore, except in the case where Owner specifically authorizes disclosure of Owner's confidential information in writing, ESCO shall maintain the confidentiality of Owner's information pertaining to the Project, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent ESCO from establishing a claim or defense in an adjudicatory proceeding. ESCO shall require of its subcontractors similar agreements to maintain the confidentiality of Owner's information.
- 23.10. Conflict of Interest. Except with Owner's prior written consent, ESCO shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise ESCO's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

THIS DESIGN AND CONSTRUCTION CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER ADDRESSED HEREIN. THE TERMS OF THIS DESIGN AND CONSTRUCTION CONTRACT CAN NOT BE WAIVED, ALTERED, MODIFIED, SUPPLEMENTED, OR AMENDED, IN ANY MANNER WHATSOEVER, EXCEPT BY WRITTEN INSTRUMENT SIGNED BY THE PARTIES AND CONTAINING ALL REQUIRED OWNER APPROVALS. ANY SUCH WAIVER, ALTERATION, MODIFICATION, SUPPLEMENTATION, OR AMENDMENT, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, REGARDING THIS DESIGN AND CONSTRUCTION CONTRACT EXCEPT AS CONTAINED, INCORPORATED OR REFERENCED HEREIN. ESCO, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS DESIGN AND CONSTRUCTION CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. THIS DESIGN AND CONSTRUCTION CONTRACT MAY BE EXECUTED IN SEVERAL COUNTERPARTS, EACH OF WHICH SHALL BE AN ORIGINAL, AND ALL OF WHICH SHALL CONSTITUTE THE SAME INSTRUMENT.

IN WITNESS WHEREOF, and intending to be legally bound, the authorized representatives of the parties hereto subscribe their names.

ESCO:	_____	OWNER:	_____
	Signature		Signature
By	<b>Ron Haxton</b>	By	<b>Brent Barry</b>
Title	<b>Vice President, Northwest Region</b>	Title	<b>Superintendent</b>
Date	_____	Date	_____
Federal I.D. #:	<b>04-3512838</b>		_____

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**PHOENIX-TALENT SCHOOL DISTRICT  
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January 2018**

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- L.3 STATE AGENCIES
- L.4 LOCAL AGENCIES

**PHOENIX-TALENT SCHOOL DISTRICT  
GENERAL CONDITIONS FOR PUBLIC IMPROVEMENT CONTRACTS  
("General Conditions")**

**SECTION A  
GENERAL PROVISIONS**

**A.1 DEFINITION OF TERMS**

To the extent used in the Contract Documents, the following terms shall be as defined below:

**ARCHITECT/ENGINEER** means the Person appointed by the Owner to make drawings and specifications and, to provide contract administration of the Work contemplated by the Contract to the extent provided herein or by supplemental instruction of Owner (under which Owner may delegate responsibilities of the Owner's Authorized Representative to the Architect/Engineer), in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted thereunder.

**CHANGE ORDER** means a written order issued by the Owner's Authorized Representative to the Contractor requiring a change in the Work within the general scope of the Contract Documents, issued under the changes provisions of Section D.1 including Owner's written change directives as well as changes reflected in a writing executed by the parties to this Contract and, if applicable, establishing a Contract Price or Contract Time adjustment for the changed Work.

**CLAIM** means a demand by Contractor pursuant to Section D.3 for review of the denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, submitted in accordance with the requirements and within the time limits established for review of Claims in these General Conditions.

**CONTRACT** means the written agreement between the Owner and the Contractor comprised of the Contract Documents which describe the Work to be done and the obligations between the parties.

**CONTRACT DOCUMENTS** means the Solicitation Document and addenda thereto, **the Contract**, these General Conditions, Supplemental General Conditions, if any, the accepted Offer, Plans, Specifications, amendments and Change Orders.

**CONTRACT PERIOD** as set forth in the Contract Documents, means the total period of time beginning with the issuance of the Notice to Proceed and concluding upon Final Completion.

**CONTRACT PRICE** means the total of the awarded Offer amount, as increased or decreased by the price of approved alternates and Change Orders.

**CONTRACT TIME** means any incremental period of time allowed under the Contract to complete any portion of the Work as reflected in the project schedule.

**CONTRACTOR** means the Person awarded the Contract for the Work contemplated.

**DAYS** are calendar days, including weekdays, weekends and holidays, unless otherwise specified.

**DIRECT COSTS** means, unless otherwise provided in the Contract Documents, the cost of materials, including sales tax, cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; project specific insurance (including, without limitation, Builder's Risk Insurance and Builder's Risk Installation Floater); bond premiums, rental cost of equipment, and machinery required for execution of the work; and the additional costs of field personnel directly attributable to the Work.

**FINAL COMPLETION** means the final completion of all requirements under the Contract, including Contract Closeout as described in Section K but excluding Warranty Work as described in Section I.2, and the final payment and release of all retainage, if any.

**FORCE MAJEURE** means an act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes or any other act, event or occurrence that is beyond the control of the party to this Contract who is asserting Force Majeure.

**NOTICE TO PROCEED** means the official written notice from the Owner stating that the Contractor is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, Contractor shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.

**OFFER** means (a) a bid in connection with an invitation to bid, and/or (b) a proposal in connection with a request for proposals.

**OFFEROR** means (a) a bidder in connection with an invitation to bid, and/or (b) a proposer in connection with a request for proposals.

**OVERHEAD** means those items which may be included in the Contractor's markup (general and administrative expense and profit) and that shall not be charged as Direct Cost of the Work, including without limitation such Overhead expenses as wages or salary of personnel above the level of foreman (i.e., superintendents and project managers), expenses of Contractor's offices at the job site (e.g. job trailer) including expenses of personnel staffing the job site office, and Commercial General Liability Insurance and Automobile Liability Insurance.

**OWNER** means Jackson County School District #4.

**OWNER'S AUTHORIZED REPRESENTATIVE** means those individuals identified in writing by the Owner to act on behalf of the Owner for this project. Owner may elect, by written notice to Contractor, to delegate certain duties of the Owner's Authorized Representative to more than one party, including without limitation, to an Architect/Engineer. However, nothing in these General Conditions is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.

**PERSON** means an entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, or any other entity possessing the legal capacity to contract.

**PLANS** means the drawings which show the location, type, dimensions, and details of the Work to be done under the Contract.

**PUNCHLIST** means the list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Contract.

**RECORD DOCUMENT** means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer to Owner, operational and maintenance manuals, shop drawings, Change Orders, correspondence, certificate(s) of occupancy, and other documents listed in Subsection B.9.1 of these General Conditions, recording all Services performed.

**SOLICITATION DOCUMENT** means an invitation to bid or request for proposal or request for quotes.

**SPECIFICATION** means any description of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item. Specifications may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the work to be performed. Specifications may be incorporated by reference and/or may be attached to the Contract.

**SUBCONTRACTOR** means a Person having a direct contract with the Contractor, or another Subcontractor, to perform one or more items of the Work.

**SUBSTANTIAL COMPLETION** means the date when the Owner accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose. Substantial Completion of facilities with operating systems occurs only after

thirty (30) continuous Days of successful, trouble-free operation of the operating systems as provided in Section K.4.2.

**SUBSTITUTIONS** means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Approval of any substitute item shall be solely determined by the Owner's Authorized Representative. The decision of the Owner's Authorized Representative is final.

**SUPPLEMENTAL GENERAL CONDITIONS** means those conditions that remove from, add to, or modify these General Conditions. Supplemental General Conditions may be included in the Solicitation Document or may be a separate attachment to the Contract.

**WORK** means the furnishing of all materials, equipment, labor, transportation, services and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out of duties and obligations imposed by the Contract Documents.

## **A.2 SCOPE OF WORK**

The Work contemplated under this Contract includes all labor, materials, transportation, equipment and services for, and incidental to, the completion of all construction work in connection with the project described in the Contract Documents. The Contractor shall perform all Work necessary so that the project can be legally occupied and fully used for the intended use as set forth in the Contract Documents.

## **A.3 INTERPRETATION OF CONTRACT DOCUMENTS**

A.3.1 Unless otherwise specifically defined in the Contract Documents, words which have well-known technical meanings or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Contract Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following descending order of precedence:

1. Contract amendments and Change Orders, with those of later date having precedence over those of an earlier date;
2. The Supplemental General Conditions;
3. **The Contract;**
4. The General Conditions
5. The Plans and Specifications
6. The Solicitation Document and any addenda thereto;
7. The accepted Offer.

A.3.2 In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner or Owner's Authorized Representative's interpretation in writing.

A.3.3 If the Contractor finds discrepancies in, or omissions from the Contract Documents, or if the Contractor is in doubt as to their meaning, the Contractor shall at once notify the Owner or Owner's Authorized Representative. Matters concerning performance under, and interpretation of requirements of, the Contract Documents will be decided by the Owner's Authorized Representative, who may delegate that duty in some instances to the Architect/Engineer. Responses to Contractor's requests for interpretation of Contract Documents will be made in writing by Owner's Authorized Representative (or the Architect/Engineer) within any time limits agreed upon or otherwise with reasonable promptness.

Interpretations and decisions of the Owner's Authorized Representative (or Architect/Engineer) will be consistent with the intent of and reasonably inferable from the Contract Documents. Contractor shall not proceed without direction in writing from the Owner's Authorized Representative (or Architect/Engineer).

A.3.4 References to standard specifications, manuals, codes of any technical society, organization or association, to the laws, regulations, or policies of any governmental authority (including but not limited to any policies adopted by Owner's board), whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws, regulations or policies in effect in the jurisdiction where the project is occurring on the first

published date of the Solicitation Document, except as may be otherwise specifically stated.

## **A.4 EXAMINATION OF PLANS, SPECIFICATIONS, AND SITE**

A.4.1 It is understood that the Contractor, before submitting an Offer, has made a careful examination of the Contract Documents; has become fully informed as to the quality and quantity of materials and the character of the Work required; and has made a careful examination of the location and conditions of the Work and the sources of supply for materials. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Contractor as a result of the Contractor's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner, or with the Architect/Engineer either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

A.4.2 Should the Plans or Specifications fail to particularly describe the materials, kind of goods, or details of construction of any aspect of the Work, Contractor shall have the duty to make inquiry of the Owner and Architect/Engineer as to what is required prior to performance of the Work. Absent Specifications to the contrary, the materials or processes that would normally be used to produce first quality finished Work shall be considered a part of the Contract requirements.

A.4.3 Any design errors or omissions noted by the Contractor shall be reported promptly to the Owner's Authorized Representative, including without limitation, any nonconformity with applicable laws, statutes, ordinances, building codes, rules and regulations.

A.4.4 If the Contractor believes that additional cost or Contract Time is involved because of clarifications or instructions issued by the Owner's Authorized Representative (or Architect/Engineer) in response to the Contractor's notices or requests for information, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt by Contractor of the clarifications or instructions issued. If the Owner's Authorized Representative denies Contractor's request for additional compensation, additional Contract Time, or other relief that Contractor believes results from the clarifications or instructions, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process. If the Contractor fails to perform the obligations of Sections A.4.1 to A.4.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

## **A.5 INDEPENDENT CONTRACTOR STATUS**

The service or services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee or agent of the Owner.

## **A.6 RETIREMENT SYSTEM STATUS AND TAXES**

Contractor represents and warrants that it is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under this Contract. Contractor will not be eligible for any benefits from these Contract payments of federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual. Unless the Contractor is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover Contractor's federal or state tax obligations.

## **A.7 GOVERNMENT EMPLOYMENT STATUS**

A.7.1 If this payment is to be charged against federal funds, Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Contractor from holding another contract with the Federal Government.

A.7.2 Contractor represents and warrants that Contractor is not an employee of the State of Oregon for purposes of performing Work under this Contract.



SECTION B  
**ADMINISTRATION OF THE CONTRACT**

**B.1 OWNER'S ADMINISTRATION OF THE CONTRACT**

- B.1.1 The Owner's Authorized Representative will provide administration of the Contract as described in the Contract Documents (1) during construction (2) until final payment is due and (3) during the one-year period for correction of Work. The Owner's Authorized Representative will act on behalf of the Owner to the extent provided in the Contract Documents, unless modified in writing in accordance with other provisions of the Contract. In performing these tasks, the Owner's Authorized Representative may rely on the Architect/ Engineer or other consultants to perform some or all of these tasks.
- B.1.2 The Owner's Authorized Representative will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner's Authorized Representative will neither have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.
- B.1.3 Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the Owner and Contractor shall endeavor to communicate with each other through the Owner's Authorized Representative or designee about matters arising out of or relating to the Contract. Communications by and with the Architect/Engineer's consultants shall be through the Architect/Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner's Authorized Representative.
- B.1.4 Based upon the Architect/Engineer's evaluations of the Contractor's Application for Payment, or unless otherwise stipulated by the Owner's Authorized Representative, the Architect/Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**B.2 CONTRACTOR'S MEANS AND METHODS; MITIGATION OF IMPACTS**

- B.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.
- B.2.2 The Contractor is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.
- B.2.3 The Contractor is responsible for the actions of all its personnel, laborers, suppliers, and Subcontractors on the project. The Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of persons who are unfit or unskilled for the tasks assigned to them.

**B.3 MATERIALS AND WORKMANSHIP**

- B.3.1 The intent of the Contract Documents is to provide for the construction and completion in every detail of the Work described. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Contractor shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.

- B.3.2 The Contractor is responsible to perform the Work as required by the Contract Documents. Defective Work shall be corrected at the Contractor's expense.
- B.3.3 Work done and materials furnished shall be subject to inspection and/or observation and testing by the Owner's Authorized Representative to determine if they conform to the Contract Documents. Inspection of the Work by the Owner's Authorized Representative does not relieve the Contractor of responsibility for the Work in accordance with the Contract Documents.
- B.3.4 Contractor shall furnish adequate facilities, as required, for the Owner's Authorized Representative to have safe access to the Work including without limitation walkways, railings, ladders, tunnels, and platforms. Producers, suppliers, and fabricators shall also provide proper facilities and access to their facilities.
- B.3.5 The Contractor shall furnish Samples of materials for testing by the Owner's Authorized Representative and include the cost of the Samples in the Contract Price.

**B.4 PERMITS**

Contractor shall obtain and pay for all necessary permits and licenses, except for those specifically excluded in any Supplemental General Conditions, for the construction of the Work, for temporary obstructions, enclosures, opening of streets for pipes, walls, utilities, environmental Work, etc., as required for the project. Contractor shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise. Contractor shall give all requisite notices to public authorities. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, the Owner and its directors, officers, agents and employees.

**B.5 COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS**

- B.5.1 Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and the Contract. Failure to comply with such requirements shall constitute a breach of Contract and shall be grounds for Contract termination. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following as applicable: i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Owner's performance under the Contract is conditioned upon Contractor's compliance with the provisions of ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are incorporated by reference herein.
- B.5.2 Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and
- (a) Contractor shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as that term is defined in ORS 408.225, in the awarding of subcontracts.
  - (b) Contractor shall maintain, in current and valid form, all licenses and certificates required by law, regulation, or this Contract when performing the Work.
- B.5.3 Unless contrary to federal law, Contractor shall certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless such Subcontractors are

registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Contractor.

B.5.4 Unless contrary to federal law, Contractor shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.

B.5.5 The following notice is applicable to Contractors who perform excavation Work. ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.

B.5.6 Failure to comply with any or all of the requirements of B.5.1 through B.5.5 shall be a breach of Contract and constitute grounds for Contract termination. Damages or costs resulting from such noncompliance shall be the responsibility of Contractor.

## **B.6 SUPERINTENDENCE**

If required by Owner, Contractor shall keep on the site, during the progress of the Work, a competent superintendent and any necessary assistants who shall be satisfactory to the Owner and who shall represent the Contractor on the site. Directions given to the superintendent by the Owner's Authorized Representative shall be confirmed in writing to the Contractor.

## **B.7 INSPECTION**

B.7.1 Owner's Authorized Representative shall have access to the Work at all times.

B.7.2 Inspection of the Work will be made by the Owner's Authorized Representative at its discretion. The Owner's Authorized Representative will have authority to reject Work that does not conform to the Contract Documents. Any Work found to be not in conformance with the Contract Documents, in the discretion of the Owner's Authorized Representative, shall be removed and replaced at the Contractor's expense.

B.7.3 Contractor shall make or obtain at the appropriate time all tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work. The Contractor shall give the Owner's Authorized Representative timely notice of when and where tests and inspections are to be made so that the Owner's Authorized Representative may be present for such procedures. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner's Authorized Representative.

B.7.4 As required by the Contract Documents, Work done or material used without inspection or testing by the Owner's Authorized Representative may be ordered removed at the Contractor's expense.

B.7.5 If directed to do so any time before the Work is accepted, the Contractor shall uncover portions of the completed Work for inspection. After inspection, the Contractor shall restore such portions of Work to the standard required by the Contract. If the Work uncovered is unacceptable or was done without sufficient notice to the Owner's Authorized Representative, the uncovering and restoration shall be done at the Contractor's expense. If the Work uncovered is acceptable and was done with sufficient notice to the Owner's Authorized Representative, the uncovering and restoration will be paid for as a Change Order.

B.7.6 If any testing or inspection reveals failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including

those of repeated procedures and compensation for the Owner's Authorized Representative's and Architect/Engineer's services and expenses, shall be at the Contractor's expense.

B.7.7 When the United States government participates in the cost of the Work, or the Owner has an agreement with other public or private organizations, or if any portion of the Work is being performed for a third party or in close proximity to third party facilities, representatives of these organizations have the right to inspect the Work affecting their interests or property. Their right to inspect shall not make them a party to the Contract and shall not interfere with the rights of the parties of the Contract. Instructions or orders of such parties shall be transmitted to the Contractor, through the Owner's Authorized Representative.

## **B.8 SEVERABILITY**

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

## **B.9 ACCESS TO RECORDS**

B.9.1 Contractor shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Change Orders and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner's Authorized Representative access thereto.

B.9.2 Contractor shall retain and the Owner and its duly authorized representatives shall have access to, for a period not less than ten (10) years, all Record Documents, financial and accounting records, and other books, documents, papers and records of Contractor which are pertinent to the Contract including records pertaining to Overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Contract is involved in litigation, Contractor shall retain all such records until all litigation is resolved. The Owner and/or its agents shall continue to be provided full access to the records during litigation.

## **B.10 WAIVER**

Failure of the Owner to enforce any provision of this Contract shall not constitute a waiver or relinquishment by the Owner of the right to such performance in the future nor of the right to enforce any other provision of this Contract.

## **B.11 SUBCONTRACTS AND ASSIGNMENT**

B.11.1 Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound by the terms and conditions of these General Conditions, and to assume toward the Contractor all of the obligations and responsibilities which the Contractor assumes toward the Owner thereunder, unless (1) the same are clearly inapplicable to the subcontract at issue because of legal requirements or industry practices, or (2) specific exceptions are requested by Contractor and approved in writing by Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with sub-subcontractors at any level.

B.11.2 At Owner's request, Contractor shall submit to Owner prior to their execution either Contractor's form of subcontract, or the subcontract to be executed with any particular Subcontractor. If Owner disapproves such form, Contractor shall not execute the form until the matters disapproved are resolved to Owner's satisfaction. Owner's review, comment upon or approval of any such form shall not relieve Contractor of its obligations under this Agreement or be deemed a waiver of such obligations of Contractor.

B.11.3 Contractor shall not assign, sell, or transfer its rights, or delegate its responsibilities under this Contract, in whole or in part, without the prior written approval of the Owner. No such written approval shall relieve Contractor of any obligations of this Contract, and any transferee shall be considered the agent of the Contractor and

bound to perform in accordance with the Contract Documents. Contractor shall remain liable as between the original parties to the Contract as if no assignment had occurred.

performance.

## **B.12 SUCCESSORS IN INTEREST**

The provisions of this Contract shall be binding upon and shall accrue to the benefit of the parties to the Contract and their respective permitted successors and assigns.

## **B.13 OWNER'S RIGHT TO DO WORK**

Owner reserves the right to perform other or additional work at or near the project site with other forces than those of the Contractor. If such work takes place within or next to the project site, Contractor will coordinate work with the other contractors or forces, cooperate with all other contractors or forces, carry out the Work in a way that will minimize interference and delay for all forces involved, place and dispose of materials being used so as not to interfere with the operations of another, and join the Work with the work of the others in an acceptable manner and perform it in proper sequence to that of the others. The Owner's Authorized Representative will resolve any disagreements that may arise between or among Contractor and the other contractors over the method or order of doing all work (including the Work). In case of unavoidable interference, the Owner's Authorized Representative will establish work priority (including the Work) which generally will be in the sequence that the contracts were awarded.

## **B.14 OTHER CONTRACTS**

In all cases and at any time, the Owner has the right to execute other contracts related to or unrelated to the Work of this Contract. The Contractor of this Contract will fully cooperate with any and all other contractors without additional cost to the Owner in the manner described in section B.13.

## **B.15 GOVERNING LAW**

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

## **B.16 LITIGATION**

Any Claim between Owner and Contractor that arises from or relates to this Contract and that is not resolved through the Claims Review Process in Section D.3 shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon located in Jackson County. In no event shall this section be construed as a waiver by Owner of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. CONTRACTOR BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION B.16.

## **B.17 ALLOWANCES**

B.17.1 The Contractor shall include in the Contract Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct.

B.17.2 Unless otherwise provided in the Contract Documents:

- (a) when finally reconciled, allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- (b) Contractor's costs for unloading and handling at the site, labor, installation costs, Overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Price but not in the allowances;
- (c) whenever costs are more than or less than allowances, the Contract Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (i) the difference between actual costs and the allowances under Section B.17.2(a) and (2) changes in Contractor's costs under Section B.17.2(b).
- (d) Unless Owner requests otherwise, Contractor shall provide to Owner a proposed fixed price for any allowance work prior to its

## **B.18 SUBMITTALS, SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

B.18.1 The Contractor shall prepare and keep current, for the Architect's/Engineer's approval (or for the approval of Owner's Authorized Representative if approval authority has not been delegated to the Architect/Engineer), a schedule and list of submittals which is coordinated with the Contractor's construction schedule and allows the Architect/Engineer reasonable time to review submittals. Owner reserves the right to finally approve the schedule and list of submittals. Submittals include, without limitation, Shop Drawings, Product Data, and Samples which are described below:

- (a) Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor (including any sub-subcontractor), manufacturer, supplier or distributor to illustrate some portion of the Work.
- (b) Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- (c) Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

B.18.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of submittals by the Architect/Engineer is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, or for approval of safety precautions or, unless otherwise specifically stated by the Architect/Engineer, of any construction means, methods, techniques, sequences or procedures, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect/Engineer's review of the Contractor's submittals shall not relieve the Contractor of its obligations under the Contract Documents. The Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Informational submittals upon which the Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect/Engineer without action.

B.18.3 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect/Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect/Engineer without action.

B.18.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

B.18.5 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect/Engineer.

B.18.6 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect/Engineer's review or approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor

has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and (i) the Architect/Engineer has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order has been executed by Owner authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect/Engineer's review or approval thereof.

B.18.7 In the event that Owner elects not to have the obligations and duties described under this Section B.18 performed by the Architect/Engineer, or in the event no Architect/Engineer is employed by Owner on the project, all obligations and duties assigned to the Architect/Engineer hereunder shall be performed by the Owner's Authorized Representative.

### **B.19 SUBSTITUTIONS**

The Contractor may make Substitutions only with the consent of the Owner, after evaluation by the Owner's Authorized Representative and only in accordance with a Change Order. Substitutions shall be subject to the requirements of the bid documents. By making requests for Substitutions, the Contractor represents that the Contractor has personally investigated the proposed substitute product; represents that the Contractor will provide the same warranty for the Substitution that the Contractor would for the product originally specified unless approved otherwise; certifies that the cost data presented is complete and includes all related costs under this Contract including redesign costs, and waives all claims for additional costs related to the Substitution which subsequently become apparent; and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

### **B.20 USE OF PLANS AND SPECIFICATIONS**

Plans, Specifications and related Contract Documents furnished to Contractor by Owner or Owner's Architect/Engineer shall be used solely for the performance of the Work under this Contract. Contractor and its Subcontractors and suppliers are authorized to use and reproduce applicable portions of such documents appropriate to the execution of the Work, but shall not claim any ownership or other interest in them beyond the scope of this Contract, and no such interest shall attach. Unless otherwise indicated, all common law, statutory and other reserved rights, in addition to copyrights, are retained by Owner.

### **B.21 FUNDS AVAILABLE AND AUTHORIZED**

Owner reasonably believes at the time of entering into this Contract that sufficient funds are available and authorized for expenditure to finance the cost of this Contract within the Owner's appropriation or limitation. Contractor understands and agrees that, to the extent that sufficient funds are not available and authorized for expenditure to finance the cost of this Contract, Owner's payment of amounts under this Contract attributable to Services performed after the last day of the current fiscal period for which funds have been allocated is contingent on Owner receiving appropriations, limitations or other expenditure authority sufficient to allow Owner, in the exercise of its reasonable administrative discretion, to continue to make payments under this Contract.

### **B.22 NO THIRD PARTY BENEFICIARIES**

Owner and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

## **SECTION C WAGES AND LABOR**

### **C.1 MINIMUM WAGE RATES ON PUBLIC WORKS**

Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to or are incorporated by reference in the Contract Documents. Contractor shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts.

### **C.2 PAYROLL CERTIFICATION; ADDITIONAL RETAINAGE; FEE REQUIREMENTS**

C.2.1 In accordance with ORS 279C.845, the Contractor and every Subcontractor shall submit written certified statements to the Owner's Authorized Representative, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Contractor or the Subcontractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Contractor or the Subcontractor that the Contractor or Subcontractor has read the certified statement, that the Contractor or Subcontractor knows the contents of the certified statement and that to the Contractor's or Subcontractor's best knowledge and belief the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which the Contractor or Subcontractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month.

The Contractor and Subcontractors shall preserve the certified statements for a period of ten (10) years from the date of completion of the Contract.

C.2.2 Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Contractor on this public works project until the Contractor has filed the certified statements required by section C.2.1. The Owner shall pay to the Contractor the amount retained under this subsection within 14 days after the Contractor files the required certified statements, regardless of whether a Subcontractor has failed to file certified statements.

C.2.3 Pursuant to ORS 279C.845(8), the Contractor shall retain 25 percent of any amount earned by a first-tier Subcontractor on this public works project until the first-tier Subcontractor has filed with the Owner the certified statements required by C.2.1. Before paying any amount retained under this subsection, the Contractor shall verify that the first-tier Subcontractor has filed the certified statement. Within 14 days after the first-tier Subcontractor files the required certified statement the Contractor shall pay the first-tier Subcontractor any amount retained under this subsection.

C.2.4 In accordance with statutory requirements, and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

### **C.3 PROMPT PAYMENT AND CONTRACT CONDITIONS**

C.3.1 Pursuant to ORS 279C.505 and as a condition to Owner's performance hereunder, the Contractor shall:

C.3.1.1 Make payment promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the Work provided for in this Contract.

C.3.1.2 Pay all contributions or amounts due the State Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract.

C.3.1.3 Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against Owner, or assign any sums due by Owner, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors a claim or standing to make a claim against the Owner.

C.3.1.4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

C.3.1.5 Demonstrate that an employee drug testing program is in place as follows:

(a) Contractor represents and warrants that Contractor has in place at the time of the execution of this Contract, and shall maintain during the term of this Contract, a Qualifying Employee Drug Testing Program for its employees that includes, at a minimum, the following:

- (1) A written employee drug testing policy,
- (2) Required drug testing for all new Subject Employees or, alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
- (3) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.

A drug testing program that meets the above requirements will be deemed a "Qualifying Employee Drug Testing Program." For the purposes of this section, an employee is a "Subject Employee" only if that employee will be working on the project job site.

(b) Contractor shall require each Subcontractor providing labor for the project to:

- (1) Demonstrate to the Contractor that it has a Qualifying Employee Drug Testing Program for the Subcontractor's Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug Testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract, or
- (2) Require that the Subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug Testing Program for the duration of the subcontract.

C.3.2 Pursuant to ORS 279C.515, and as a condition to Owner's performance hereunder, Contractor agrees:

C.3.2.1 If Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the Contractor or a Subcontractor in connection with the project as such claim becomes due, the proper officer that represents the Owner may pay the amount of the claim and charge the amount of the payment against funds due or to become due Contractor under this Contract. Paying a claim in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim.

C.3.2.2 If the Contractor or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public contract for a public improvement within thirty (30) Days after receiving payment from Owner or a contractor, the contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-Day period within which payment is due under ORS 279C.580(3) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

C.3.2.3 If the Contractor or a Subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Every contract related to this Contract must contain a similar clause.

C.3.3 Pursuant to ORS 279C.580, Contractor shall include in each subcontract for property or services the Contractor enters into with a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under the subcontract within ten (10) Days out of amounts the Owner pays to the Contractor under the Contract;

(b) A clause that requires the Contractor to provide the first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor;(c) A clause that requires the Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:

- (1) Notifies the Subcontractor in writing at least 45 days before the date on which the Contractor makes the change; and
- (2) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

(d) An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier Subcontractor within thirty (30) Days after receiving payment from Owner, to pay the first-tier Subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. Contractor or first-tier Subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and is computed at the rate specified in ORS 279C.515(2).

(e) A clause which requires each of Contractor's Subcontractors to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor shall pay its lower-tier Subcontractors and suppliers in accordance with the provisions of paragraphs (a) through (d) above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.

C.3.4 All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

#### **C.4 PAYMENT FOR MEDICAL CARE**

Pursuant to ORS 279C.530, and as a condition to Owner's performance hereunder, Contractor shall promptly, as due, make payment to any person, partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, all sums of which the Contractor agrees to pay for such services and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

#### **C.5 HOURS OF LABOR**

As a condition to Owner's performance hereunder, Contractor shall comply with ORS 279C.520, as amended from time to time and incorporated herein

by this reference:

Pursuant to ORS 279C.520 and as a condition to Owner's performance hereunder, no person shall be employed to perform Work under this Contract for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor shall pay the employee at least time and a half pay:

- (a) For all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; or
- (b) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and
- (c) For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

This section C.5 will not apply to Contractor's Work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization.

This Section C.5 shall not excuse Contractor from completion of the Work within the time required under this Contract.

## SECTION D CHANGES IN THE WORK

### D.1 CHANGES IN WORK

D.1.1 The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Owner's Authorized Representative, and then only in a manner consistent with the Change Order provisions of this Section D.1 and after any necessary approvals required by public contracting laws have been obtained. Otherwise, a formal contract amendment is required, which shall not be effective until its execution by the parties to this Contract and all approvals required by public contracting laws have been obtained.

D.1.2 It is mutually agreed that changes in Plans, quantities, or details of construction are inherent in the nature of construction and may be necessary or desirable during the course of construction. Within the general scope of this Contract, the Owner's Authorized Representative may at any time, without notice to the sureties and without impairing the Contract, require changes consistent with this Section D.1. All Change Order Work shall be executed under the conditions of the Contract Documents. Such changes may include, but are not limited to:

- (a) Modification of specifications and design.
- (b) Increases or decreases in quantities.
- (c) Increases or decreases to the amount of Work.
- (d) Addition or elimination of any Work item.
- (e) Change in the duration of the project.
- (f) Acceleration or delay in performance of Work.
- (g) Deductive changes.

Deductive changes are those that reduce the scope of the Work, and shall be made by mutual agreement whenever feasible, as determined by Owner. In cases of suspension or partial termination under Section J, Owner reserves the right to unilaterally impose a deductive change and to self-perform such Work, for which the provisions of B.13 (Owner's Right to Do Work) shall then apply.

Adjustments in compensation shall be made under the provisions of D.1.3, in which costs for deductive changes shall be based upon a Direct Costs adjustment together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by Owner.

D.1.3 The Owner and Contractor agree that Change Order Work shall be administered and compensated according to the following:

- (a) Unit pricing may be utilized at the Owner's option when unit prices or solicitation alternates were provided that established the cost for additional Work, and a binding obligation exists under the Contract on the parties covering the terms and

conditions of the additional Work.

- (b) If the Owner elects not to utilize unit pricing, or in the event that unit pricing is not available or appropriate, fixed pricing may be used for Change Order Work. In fixed pricing the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. The mark-ups set forth in D.1.3(c) shall be utilized by the parties as a guide in establishing fixed pricing, and will not be exceeded by Owner without adequate justification. Cost and price data relating to Change Orders shall be supplied by Contractor to Owner upon request, but Owner shall be under no obligation to make such requests.

- (c) In the event that unit pricing and fixed pricing are not utilized, then Change Order Work shall be performed on a cost reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Subcontractor's own forces:

On Labor .....	15%
On Equipment .....	10%
On Materials.....	10%

When Change Order Work under D.1.3(c) is invoiced by an authorized Subcontractor at any level, each ascending tier Subcontractor or Contractor will be allowed a 5% supplemental mark-up on each piece of subcontract Work covered by such Change Order.

Payments made to the Contractor shall be complete compensation for Overhead, profit, and all costs that were incurred by the Contractor or by other forces furnished by the Contractor, including Subcontractors, for Change Order Work. Owner may establish a maximum cost for Change Order Work under this Section D.1.3(c), which shall not be exceeded for reimbursement without additional written authorization from Owner. Contractor shall not be required to complete such Change Order Work without additional authorization.

- D.1.4 Any necessary adjustment of Contract Time that may be required as a result of a Change Order must be agreed upon by the parties before the start of the Change Order Work unless Owner's Authorized Representative authorizes Contractor to start the Work before agreement on Contract Time adjustment. Contractor shall submit any request for additional compensation (and additional Contract Time if Contractor was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of the Change Order. If Contractor's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) day time limit, Contractor's requests pertaining to that Change Order are barred. The thirty (30) day time limit for making requests shall not be extended for any reason, including without limitation Contractor's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process. No other reimbursement, compensation, or payment will be made, except as provided in Section D.1.5 for impact claims.

- D.1.5 If any Change Order Work under Section D.1.3 causes an increase or decrease in the Contractor's cost of, or the Contract Time required for the performance of, any other part of the Work under this Contract, the Contractor must submit a written request to the Owner's Authorized Representative, setting forth the nature and specific extent of the request, including all time and cost impacts against the Contract as soon as possible, but no later than thirty (30) Days after receipt of the Change Order by Contractor.

The thirty (30) day time limit applies to claims of Subcontractors, suppliers, or manufacturers that may be affected by the Change

Order and that request additional compensation or an extension of Contract Time to perform; Contractor has responsibility for contacting its Subcontractors, suppliers, or manufacturers within the thirty (30) day time limit, and including their requests with Contractor's requests. If the request involves Work to be completed by Subcontractors, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Contractor in writing with full analysis and justification for the compensation and additional Contract Time requested. The Contractor will analyze and evaluate the merits of the requests submitted by Subcontractors, suppliers, and manufacturers to Contractor prior to including those requests and Contractor's analysis and evaluation of those requests with Contractor's requests for additional compensation or Contract Time that Contractor submits to the Owner's Authorized Representative. Failure of Subcontractors, suppliers, manufacturers or others to submit their requests to Contractor for inclusion with Contractor's requests submitted to Owner's Authorized Representative within the time period and by the means described in this section shall constitute a waiver of these Subcontractor claims. The Owner's Authorized Representative and the Owner will not consider direct requests or claims from Subcontractors, suppliers, manufacturers or others not a party to this Contract. The consideration of such requests and claims under this section does not give any person, not a party to the Contract the right to bring a claim against Owner, whether in this claims process, in litigation, or in any dispute resolution process.

If the Owner's Authorized Representative denies the Contractor's request for additional compensation or an extension of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

D.1.6 No request or Claim by the Contractor for additional costs or an extension of Contract Time shall be allowed if made after receipt of final payment application under this Contract. Contractor agrees to submit its final payment application within ninety (90) days after Substantial Completion, unless written extension is granted by Owner. Contractor shall not delay final payment application for any reason, including without limitation nonpayment of Subcontractors, suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Contractor fails to submit its final payment application within ninety (90) days after Substantial Completion, and Contractor has not obtained written extension by Owner, all requests or Claims for additional costs or an extension of Contract Time shall be waived.

D.1.7 It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. The Contractor is notified that numerous changes may be required and that there will be no compensation made to the Contractor directly related to the number of changes. Each change will be evaluated for extension of Contract Time and increase or decrease in compensation based on its own merit.

## D.2 DELAYS

D.2.1 Delays in construction include "Avoidable Delays", which are defined in Section D.2.1.1, and "Unavoidable Delays", which are defined in Section D.2.1.2. The effect of Avoidable Delays is described in Section D.2.2 and the effect of Unavoidable Delays is described in Section D.2.3.

D.2.1.1 Avoidable Delays include any delays other than Unavoidable Delays, and include delays that otherwise would be considered Unavoidable Delays but that:

- (a) Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (b) Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole Work within the Contract Time.
- (c) Do not impact activities on the accepted critical path schedule.

- (d) Are associated with the reasonable interference of other contractors employed by the Owner that do not necessarily prevent the completion of the whole Work within the Contract Time.

D.2.1.2 Unavoidable Delays include delays other than Avoidable Delays that are:

- (a) Caused by any actions of the Owner, Owner's Authorized Representative, or any other employee or agent of the Owner, or by separate contractor employed by the Owner.
- (b) Caused by any site conditions which differ materially from what was represented in the Contract Documents or from conditions that would normally be expected to exist and be inherent to the construction activities defined in the Contract Documents. The Contractor shall notify the Owner's Authorized Representative immediately of differing site conditions before the area has been disturbed. The Owner's Authorized Representative will investigate the area and make a determination as to whether or not the conditions differ materially from either the conditions stated in the Contract Documents or those which could reasonably be expected in execution of this particular Contract. If Contractor and the Owner's Authorized Representative agree that a differing site condition exists, any additional compensation or additional Contract Time will be determined based on the process set forth in Section D.1.5 for Change Order Work. If the Owner's Authorized Representative disagrees that a differing site condition exists and denies Contractor's request for additional compensation or Contract Time, Contractor may proceed to file a Claim under Section D.3, Claims Review Process.
- (c) Caused by Force Majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Contractor or its Subcontractors.
- (d) Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Contractor, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:
  - (i) Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25 %) or more.
  - (ii) daily rainfall equal to, or greater than, 0.75 inch at any time.

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the project site shall be considered the official agency of record for weather information.

D.2.2 Except as otherwise provided in ORS 279C.315, Contractor shall not be entitled to additional compensation or additional Contract Time for Avoidable Delays.

D.2.3 In the event of Unavoidable Delays, based on principles of equitable adjustment, Contractor may be entitled to the following:

- (a) Contractor may be entitled to additional compensation or additional Contract Time, or both, for Unavoidable Delays

described in Section D.2.1.2 (a) and (b).

- (b) Contractor may be entitled to additional Contract Time for Unavoidable Delays described in Section D.2.1.2(c) and (d).

In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section D.2.3 for Unavoidable Delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under Section D.2.1.2 (b), Contractor shall submit a written notification of the delay to the Owner's Authorized Representative within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time or the additional compensation, or both, as applicable, resulting from the delay. Within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the Contractor shall submit to the Owner's Authorized Representative, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay.

If the Owner's Authorized Representative denies Contractor's request for additional compensation or adjustment of Contract Time, the Contractor may proceed to file a Claim under Section D.3, Claims Review Process.

If Contractor does not timely submit the notices required under this Section D.2., then unless otherwise prohibited by law, Contractor's Claim shall be barred.

### **D.3 CLAIMS REVIEW PROCESS**

D.3.1 All Contractor Claims shall be referred to the Owner's Authorized Representative for review. Contractor's Claims, including Claims for additional compensation or additional Contract Time, shall be submitted in writing by Contractor to the Owner's Authorized Representative within five (5) Days after a denial of Contractor's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in these General Conditions. Within thirty (30) Days after the initial Claim, Contractor shall submit to the Owner's Authorized Representative, a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section D.3.2. Unless the Claim is made in accordance with these time requirements, it shall be waived.

D.3.2 The Detailed Notice of the Claim shall be submitted in writing by Contractor and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time extension requested for the Claim. If the Claim involves Work to be completed by Subcontractors, the Contractor will analyze and evaluate the merits of the Subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner's Authorized Representative. The Owner's Authorized Representative and the Owner will not consider direct claims from Subcontractors, suppliers, manufacturers, or others not a party to this Contract. Contractor agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any Subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Owner.

D.3.3 The Owner's Authorized Representative will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Contractor; (2) inform the Contractor and Owner in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.

D.3.4 The Owner's Authorized Representative's decision shall be final and binding on the Contractor unless appealed by written notice

to the Owner within fifteen (15) Days of receipt of the decision. The Contractor must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, the Owner shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.

D.3.5 The decision of the Owner shall be final and binding unless the Contractor delivers to the Owner its requests for mediation, which shall be a non-binding process, within fifteen (15) Days of the date of the Owner's decision. The mediation process will be considered to have commenced as of the date the Contractor delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein.

In the event that a lawsuit must be filed within this sixty (60) day period in order to preserve a cause of action, the parties agree that notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the parties agree to promptly submit the appropriate motions and orders documenting the settlement to the Court for its signature and filing.

D.3.6 The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Owner and the Contractor. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to comply with Owner's administrative rules governing the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality rules. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

D.3.7 Owner may at any time and at its discretion issue a construction change directive adding to, modifying or reducing the scope of Work. Contractor and Owner shall negotiate the need for any additional compensation or additional Contract Time related to the change, subject to the procedures for submitting requests or Claims for additional compensation or additional Contract Time established in this Section D. Unless otherwise directed by Owner's Authorized Representative, Contractor shall proceed with the Work while any request or Claim is pending, including but not limited to, a request or Claim for additional compensation or additional Contract Time resulting from Work under a Change Order or construction change directive. Regardless of the review period or the final decision of the Owner's Authorized Representative, the Contractor shall continue to diligently pursue the Work as identified in the Contract Documents. In no case is the Contractor justified or allowed to cease Work without a written stop work order from the Owner or Owner's Authorized Representative.

## **SECTION E PAYMENTS**

### **E.1 SCHEDULE OF VALUES**

The Contractor shall submit, at least ten (10) Days prior to submission of its first application for progress payment, a schedule of values ("Schedule of Values") for the contracted Work. This schedule will provide a breakdown of values for the contracted Work and will be the basis for progress payments.



The breakdown will demonstrate reasonable, identifiable, and measurable components of the Work. Unless objected to by the Owner's Authorized Representative, this schedule shall be used as the basis for reviewing Contractor's applications for payment. If objected to by Owner's Authorized Representative, Contractor shall revise the schedule of values and resubmit the same for approval of Owner's Authorized Representative.

## E.2 APPLICATIONS FOR PAYMENT

E.2.1 Owner shall make progress payments on the Contract monthly as Work progresses. Payments shall be based upon estimates of Work completed and the Schedule of Values. All payments shall be approved by the Owner's Authorized Representative. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Contractor interest on the progress payment, not including retainage, due the Contractor. The interest shall commence thirty (30) Days after the receipt of invoice ("application for payment") from the Contractor or fifteen (15) Days after the payment is approved by the Owner's Authorized Representative, whichever is the earlier date. The rate of interest shall be two-thirds of one percent (.00667%) per month. Notwithstanding the foregoing, in instances when an application for payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Owner shall so notify the Contractor within fifteen (15) Days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) Days of being notified by the Owner, shall not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.

Owner reserves the right, instead of requiring the Contractor to correct or resubmit a defective or improper application for payment, to reject the defective or improper portion of the application for payment and pay the remainder of the application for payment that is correct and proper.

Owner, upon written notice to the Contractor, may elect to make payments to the Contractor only by means of Electronic Funds Transfers (EFT) through Automated Clearing House (ACH) payments. If Owner makes this election, the Contractor will be required to arrange to receive EFT/ACH payments.

E.2.2 Contractor shall submit to the Owner's Authorized Representative, an application for each payment and, if required, receipts or other vouchers showing payments for materials and labor, including payments to Subcontractors. Contractor shall include, in its application for payment, a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

"I, the undersigned, hereby certify that the above bill is true and correct, and the payment therefore, has not been received.

Signed: \_\_\_\_\_ "

E.2.3 Generally, applications for payment will be accepted only for materials that have been installed. Under special conditions, applications for payment for stored materials will be accepted at Owner's sole discretion. Such a payment, if made, will be subject to the following conditions:

- (a) The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- (b) The Contractor shall submit applications for payment showing the quantity and cost of the material stored.
- (c) The material shall be stored in a warehouse approved in advance by Owner and, if required by Owner, the warehouse shall be bonded. Owner's Authorized Representative shall be granted the right to access material stored in any warehouse

for the purpose of removal or inspection at any time during the Contract Period.

- (d) The Contractor shall name the Owner as co-insured on the insurance policy covering the full value of the property while in the care and custody of the Contractor until it is installed. A certificate noting this coverage shall be issued to the Owner.
- (e) Payments shall be made for materials only. The submitted amount of the application for payment shall be reduced by the cost of transportation and for the cost of an inspector to check the delivery at out of town storage sites. The cost of said inspection shall be borne solely by the Contractor.
- (f) Within sixty (60) Days of the application for payment, the Contractor shall submit evidence of payment covering the material stored.
- (g) Payment for stored materials shall in no way indicate acceptance of the materials or waive any rights under this Contract for the rejection of the Work or materials not in conformance with the Contract Documents.
- (h) All required documentation must be submitted with the respective application for payment.

E.2.4 The Owner reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because of:

- (a) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with the Contract Documents,
- (b) third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Owner is provided by the Contractor;
- (c) failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment (in which case Owner may issue checks made payable jointly to Owner and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level under Section C.3.2.1);
- (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (e) damage to the Owner or another contractor;
- (f) reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- (g) failure to carry out the Work in accordance with the Contract Documents; or
- (h) assessment of liquidated damages, when withholding is made for offset purposes.

E.2.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- (a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section E.5. Pending final determination of cost to the Owner of changes in the Work, no amounts for changes in the Work can be included in application for payment until the Contract Price has been adjusted by Change Order;
- (b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section E.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section E.5;
- (c) Subtract the aggregate of previous payments made by the Owner; and
- (d) Subtract any amounts for which the Owner's

Authorized Representative has withheld or nullified payment as provided in the Contract Documents.

E.2.6 Contractor's applications for payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier.

E.2.7 The Contractor warrants to Owner that title to all Work covered by an application for payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an application for payment all Work for which payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

E.2.8 If Contractor disputes any determination by Owner's Authorized Representative with regard to any application for payment, Contractor nevertheless shall continue to prosecute expeditiously the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Contractor of any of its obligations hereunder.

### **E.3 PAYROLL CERTIFICATION REQUIREMENT**

Payroll certification is required before payments are made on the Contract. Refer to Section C.2 for this information.

### **E.4 DUAL PAYMENT SOURCES**

Contractor shall not be compensated for Work performed under this Contract from any public body other than Owner.

### **E.5 RETAINAGE**

E.5.1 Retainage shall be withheld and released in accordance with ORS 279C.550 to 279C.580:

E.5.1.1 Owner may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly Contract payments after 50 percent of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Contractor, which application shall include written approval of Contractor's surety; except that when the Work is 97-1/2 percent completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner shall respond in writing within a reasonable time.

E.5.1.2 In accordance with the provisions of ORS 279C.560 and any applicable administrative rules, unless the Owner finds in writing that accepting a bond, security or other instrument described in options (a) or (c) below poses an extraordinary risk that is not typically associated with the bond, security or instrument, the Owner will approve the Contractor's written request:

(a) to be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds, securities or other instruments of equal value with Owner or in a custodial account or other mutually-agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner. Interest or earnings on the bonds, securities or other instruments shall accrue to the Contractor. The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Owner may require to protect its interests. To be permissible the bonds, securities and other instruments must be:

- (i) Bills, certificates, notes or bonds of the United States.
  - (ii) Other obligations of the United States or agencies of the United States.
  - (iii) Obligations of a corporation wholly owned by the federal government.
  - (iv) Indebtedness of the Federal National Mortgage Association.
  - (v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.
  - (vi) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.
- (b) that retainage be deposited in an interest-bearing account in a bank, savings bank, trust company or savings association for the benefit of Owner, with interest from such account accruing to the Contractor; or
- (c) that the Contractor be allowed, with the approval of the Owner, to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds therefrom shall be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to ORS 279C.625.

Where the Owner has accepted the Contractor's election of any of the options above, Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Owner has agreed to Contractor's request to deposit a surety bond under option (c), Contractor shall accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainage.

E.5.1.3 The retainage held by Owner shall be included in and paid to the Contractor as part of the final payment of the Contract Price. The Owner shall pay to Contractor interest at the rate of one and one-half percent per month on the final payment due Contractor, interest to commence thirty (30) Days after the Work under the Contract has been completed and accepted and to run until the date Contractor shall notify Owner in writing when the Contractor considers the Work complete and Owner shall, within fifteen (15) Days after receiving the written notice, either accept the Work or notify the Contractor of Work yet to be performed on the Contract. If Owner does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run thirty (30) Days after the end of the 15-Day period.

E.5.1.4 In accordance with the provisions of ORS 279C.560, if the Owner accepts bonds, securities or other instruments deposited as provided in paragraphs (a) and (c) of subsection E.5.1.2, the Owner shall reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and other instruments and pay the amount of the reduction to the Contractor in accordance with ORS 279C.570.

E.5.1.5 Contractor agrees that if Contractor elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, such retainage shall not exceed five percent of the payment, and such retainage withheld from Subcontractors and suppliers shall be subject to the same terms and conditions stated in Subsection E.5 as apply to Owner's retainage from any progress payment due to Contractor. Provided, however, if in accordance with the provisions of ORS 279C.560 the Contractor has

deposited bonds, securities or other instruments or has elected to have the Owner deposit accumulated retainage in an interest-bearing account, the Contractor shall comply with the provisions of ORS 701.435 respecting the deposit of bonds, securities or other instruments by Subcontractors and suppliers and the sharing of interest earnings with Subcontractors and suppliers.

E.5.2 As provided in subsections C.2.2 and C.2.3, additional retainage in the amount of 25% of amounts earned shall be withheld and released in accordance with ORS 279C.845(7) when the Contractor fails to file certified statements as required by section C.2.1.

## **E.6 FINAL PAYMENT**

E.6.1 Upon completion of all the Work under this Contract, the Contractor shall notify the Owner's Authorized Representative, in writing, that Contractor has completed Contractor's part of the Contract and shall request final payment. Upon receipt of such notice the Owner's Authorized Representative will inspect the Work, and if acceptable, submit to the Owner a recommendation as to acceptance of the completed Work and the final estimate of the amount due the Contractor. If the Work is not acceptable, Owner will notify Contractor within fifteen (15) Days of Contractor's request for final payment. Upon approval of this final estimate by the Owner and compliance by the Contractor with provisions in Section K. 3 AFFIDAVIT/ RELEASE OF LIENS AND CLAIMS, and other provisions as may be applicable, the Owner shall pay to the Contractor all monies due under the provisions of these Contract Documents.

E.6.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner's Authorized Representative (1) a notarized affidavit/release of liens and claims in a form satisfactory to Owner that states that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

E.6.3 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final application for payment.

## **SECTION F JOB SITE CONDITIONS**

### **F.1 USE OF PREMISES**

Contractor shall confine equipment, storage of materials and operation of Work to the limits indicated by Contract Documents, law, ordinances, permits or directions of the Owner's Authorized Representative. Contractor shall follow the Owner's Authorized Representative's instructions regarding use of premises, if any.

### **F.2 PROTECTION OF WORKERS, PROPERTY, AND THE PUBLIC**

F.2.1 Contractor shall maintain continuous and adequate protection of all of the Work from damage, and shall protect the Owner's Authorized Representative, workers and property from injury or loss arising in

connection with this Contract. Contractor shall remedy acceptably to the Owner, any damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by authorized representatives or personnel of the Owner. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents.

F.2.2 Contractor shall take all necessary precautions for the safety of all personnel on the job site, and shall comply with the Contract Documents and all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for protection of workers and the public against any hazards created by construction. Contractor shall designate a responsible employee or associate on the Work site, whose duty shall be the prevention of accidents. The name and position of the person designated shall be reported to the Owner's Authorized Representative. The Owner's Authorized Representative has no responsibility for Work site safety. Work site safety is the responsibility of the Contractor.

F.2.3 Contractor shall not enter upon private property without first obtaining permission from the property owner or its duly authorized representative. Contractor shall be responsible for the preservation of all public and private property along and adjacent to the Work contemplated under the Contract and shall use every precaution necessary to prevent damage thereto. In the event the Contractor damages any property, the Contractor shall at once notify the property owner and make, or arrange to make, full restitution. Contractor shall immediately and in writing, report to the Owner's Authorized Representative, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage.

F.2.4 Contractor is responsible for protection of adjacent work areas including impacts brought about by activities, equipment, labor, utilities, and materials on the site.

F.2.5 Contractor shall at all times direct its activities in such a manner as to minimize adverse effects on the environment. Handling of all materials will be conducted so no release will occur that may pollute or become hazardous.

F.2.6 In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner's Authorized Representative, shall act reasonably to prevent threatened loss or injury, and shall so act, without appeal, if instructed by the Owner's Authorized Representative. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with Section D.

### **F.3 CUTTING AND PATCHING**

F.3.1 Contractor shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or Subcontractors shown upon, or reasonably implied by, the Contract Documents.

F.3.2 Contractor shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then Contractor shall be responsible for restoring such surfaces to the condition specified in the Contract Documents.

### **F.4 CLEANING UP**

From time to time as may be ordered by the Owner the Contractor shall, at its own expense, clean up and remove all refuse and unused materials of any kind resulting from the Work. If Contractor fails to do so within twenty-four hours after notification by the Owner the work may be done by others and the cost charged to the Contractor and deducted from payment due the Contractor.

## **F.5 ENVIRONMENTAL CONTAMINATION**

F.5.1 Contractor will be held responsible for and shall indemnify, defend (with counsel of Owner's choice) and hold harmless Owner from and against any costs, expenses, damages, claims, and causes of action, (including attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Contract which occur as a result of, or are contributed by, the negligence or actions of Contractor or its personnel, agents, or Subcontractors or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this section F.5.1 shall limit Contractor's responsibility for obtaining insurance coverages required under Section G.3 of these General Conditions, and Contractor shall take no action that would void or impair such coverages

F.5.1.1 Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner and be performed by properly qualified personnel.

F.5.1.2 Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:

- (a) properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
- (b) be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Work site; and
- (c) promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

F.5.2 Contractor shall report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR 340-142-0050 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to Owner within 48 hours of the telephonic report. Such written report shall contain, as a minimum:

- (a) Description of items released (identity, quantity, manifest no., and all other documentation required by law.)
- (b) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.
- (c) Exact time and location of release, including a description of the area involved.
- (d) Containment procedures initiated.
- (e) Summary of communications about the release Contractor has had with members of the press or State officials other than Owner.
- (f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
- (g) Personnel injuries, if any, resulting from, or aggravated by, the release.

## **F.6 ENVIRONMENTAL CLEAN-UP**

F.6.1 Unless disposition of environmental pollution is specifically a part of this Contract, or was caused by the Contractor (reference F.5 Environmental Contamination), Contractor shall immediately notify

Owner of any hazardous substance(s) which Contractor discovers or encounters during performance of the Work required by this Contract. "Hazardous substance(s)" means any hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any federal, state, or local law, regulation, or ordinance, including without limitation asbestos, polychlorinated biphenyl (PCB), or petroleum, and any substances, materials or wastes regulated in 40 CFR, Part 261 and defined as hazardous in 40 CFR S 261.3. In addition to notifying Owner of any hazardous substance(s) discovered or encountered, Contractor shall immediately cease working in any particular area of the project where a hazardous substance(s) has been discovered or encountered if continued work in such area would present a risk or danger to the health or well-being of Contractor's or any Subcontractor's work force.

F.6.2 Upon being notified by Contractor of the presence of hazardous substance(s) on the project site, Owner shall arrange for the proper disposition of such hazardous substance(s).

## **F.7 FORCE MAJEURE**

A party to this Contract shall not be held responsible for delay or default due to Force Majeure acts, events or occurrences unless they could have been avoided by the exercise of reasonable care, prudence, foresight, and diligence by that party. The Owner may terminate this Contract upon written notice after determining that delay or default caused by Force Majeure acts, events or occurrences will reasonably prevent successful performance of the Contract.

## **SECTION G INDEMNITY, BONDING, AND INSURANCE**

### **G.1 RESPONSIBILITY FOR DAMAGES / INDEMNITY**

G.1.1 Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay that may be caused by, or result from, the carrying out of the Work to be done under this Contract, or from any act, omission or neglect of the Contractor, its Subcontractors, personnel, or agents.

G.1.2 To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel approved by Owner) and hold harmless the Owner, Owner's Authorized Representative, Architect/Engineer, Architect/Engineer's consultants, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to, (a) any damage, injury, loss, expense, inconvenience or delay described in this Section G.1.2, (b) any accident or occurrence which happens or is alleged to have happened in or about the project site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects, (c) any failure of the Contractor to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by the Contractor, or any breach of any agreement, representation or warranty of the Contractor contained in the Contract Documents or in any subcontract, (d) the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of 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 (except to the extent otherwise void under ORS 30.140), and (e) any lien filed upon the project or bond claim in connection with the Work. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section G.1.2.

G.1.3 In claims against any person or entity indemnified under this Section G.1.2 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 Section G.1.2 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## **G.2 PERFORMANCE AND PAYMENT SECURITY; PUBLIC WORKS BOND**

G.2.1 When the Contract Price is \$100,000 or more (or \$50,000 or more in the case of Contracts for highways, bridges and other transportation projects) the Contractor shall furnish and maintain in effect at all times during the Contract Period, a performance bond in a sum equal to the Contract Price, and a separate payment bond also in a sum equal to the Contract Price. The bonds may be required if the Contract Price is less than the above thresholds, if required by the Contract Documents.

G.2.2 Bond forms furnished by the Owner and notarized by awarded Contractor's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Contract Documents.

G.2.3 Before execution of the Contract Contractor shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Laws 2005, Chapter 360, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Contractor shall also include in every subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Subcontractor has filed a public works bond before permitting the Subcontractor to start Work.

## **G.3 INSURANCE**

G.3.1 Primary Coverage: Insurance carried by Contractor under this Contract shall be the primary coverage and non-contributory with any other insurance and self-insurance, and the Owner's insurance is excess and solely for damages or losses for which the Owner is responsible. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

G.3.2 Workers' Compensation: All employers, including Contractor, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. This shall include Employer's Liability Insurance with coverage limits of not less than \$100,000 for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Contractor certifies so in writing. Contractor shall ensure that each of its Subcontractors complies with these requirements. The Contractor shall require proof of such Workers' Compensation by receiving and keeping on file a certificate of insurance from each Subcontractor or anyone else directly employed by either the Contractor or its Subcontractors.

G.3.3 Builder's Risk Insurance:

G.3.3.1 Builder's Risk: During the term of this Contract, for new construction the Contractor shall obtain and keep in effect Builder's Risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Contract. Any deductible shall not exceed \$50,000 for each loss, except the earthquake deductible shall not exceed five percent (5%) of total insured value, subject to Earthquake Zones 1 and 2, and flood deductible shall not exceed \$100,000. The policy will include as loss payees the Owner, the Contractor and its Subcontractors as their interests may appear.

G.3.3.2 Builder's Risk Installation Floater: For other than new construction the Contractor shall obtain and keep in effect during the term of this Contract, a Builder's Risk Installation Floater for coverage of the Contractor's labor, materials and equipment to be used for completion of the Work performed under this Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. This insurance shall include as loss payees the State of Oregon, the Owner, the Contractor and its Subcontractors as their interests may appear.

G.3.3.3 Such insurance shall be maintained until Owner has occupied the facility.

G.3.3.4 A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

G.3.4 Liability Insurance:

G.3.4.1 Commercial General Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Commercial General Liability Insurance covering bodily injury and property damage in a form satisfactory to Owner and in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 aggregate limit. Said insurance shall include personal injury liability, products and completed operations, and contractual liability coverage for the indemnity provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis.

G.3.4.2 Automobile Liability: Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Contract, Automobile Liability Insurance covering owned, non-owned and/or hired vehicles, as applicable. The coverage may be written in combination with the Commercial General Liability Insurance. Contractor shall provide proof of insurance of not less than \$4,000,000 combined single limit. Contractor and its Subcontractors shall be responsible for ensuring that all non-owned vehicles maintain adequate Automobile Liability insurance while on site.

G.3.5 Excess/Umbrella Insurance: A combination of primary and excess/umbrella insurance is acceptable to meet the minimum coverage requirements for Commercial General Liability and Automobile Liability Insurance. In such case, the insurance certificate must include a list of the policies that fall under the excess/umbrella insurance. Sample wording is "The Excess/Umbrella policy is excess over primary Commercial General Liability and primary Automobile Liability Insurance."

G.3.6 Additional Insured: The liability insurance coverage, except Professional Liability and Workers' Compensation, if included, required for performance of this Contract shall include Owner, its directors, officers, agents and employees, as Additional Insureds but only with respect to the Contractor's activities to be performed under this Contract.

G.3.7 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, the Contractor shall furnish certificate(s) of insurance to the Owner prior to execution of the Contract. The certificate(s) will specify all of the parties who are Additional Insureds or Loss Payees. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to the Owner that are allowed to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to do an insurance business in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and are approved by the Owner. The Contractor shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of \$50,000 shall be approved by the Owner in writing prior execution of the Contract and is subject to Owner's approval. Owner acknowledges that Contractor's deductible for General Liability and Workers' Compensation insurance is \$100,000, and the deductible for Contractor's Professional/Pollution insurance is \$500,000. The Contractor shall immediately notify the Owner's Authorized Representative in writing of any change in insurance coverage.

**SECTION H  
SCHEDULE OF WORK**

**H.1 CONTRACT PERIOD**

H.1.1 Time is of the essence on this Contract. The Contractor shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. Contractor shall commence Work on the site within fifteen (15) Days of Notice to Proceed, unless directed otherwise.

H.1.2 Unless specifically extended by Change Order, all Work shall be complete by the date contained in the Contract Documents. The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work under Section D.1.2 (f) and shall be subject to the Change Order process of Section D.1.

H.1.3 The Owner shall not waive any rights under the Contract by permitting the Contractor to continue or complete in whole or in part the Work after the date described in Section H.1.2 above.

**H.2 SCHEDULE**

H.2.1 Contractor shall provide, by or before the pre-construction conference, a detailed schedule for review and acceptance by the Owner. The submitted schedule must illustrate Work by significant project components, significant labor trades, long lead items, broken down by building and/or floor where applicable. Each schedule item shall account for no greater than 5 % of the monetary value of the project or 5 % of the available Contract Time. Schedules with activities of less than one day or valued at less than 1% of the Contract will be considered too detailed and will not be accepted. Schedules lacking adequate detail, or unreasonably detailed, will be rejected. Included within the schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Schedules will be updated monthly and submitted with the monthly payment application. Acceptance of the Schedule by the Owner does not constitute agreement by the Owner, as to the Contractor's sequencing, means, methods, or allocated Contract Time. Any positive difference between the Contractor's scheduled completion and the Contract completion date is float owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner's best interest to do so. In no case shall the Contractor make a request for additional compensation for delays if the Work is completed within the Contract Time but after Contractor's scheduled completion.

**H.3 PARTIAL OCCUPANCY OR USE**

H.3.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have reasonably accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, insurance or self-insurance, maintenance, heat, utilities, and damage to the Work, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents with respect to such portion of the Work. Approval by the Contractor to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the Owner and Contractor shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**SECTION I  
CORRECTION OF WORK**

**I.1 CORRECTION OF WORK BEFORE FINAL PAYMENT**

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 defects, and that the Work will conform to the requirements of the

Contract Documents. Work failing to conform to these requirements shall be deemed defective. Contractor shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner's Authorized Representative, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Contractor shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement. Contractor shall be allowed a period of no longer than thirty (30) Days after Substantial Completion for completion of defective (punch list) work, unless otherwise agreed. At the end of that period, or earlier if requested by the Contractor, Owner shall arrange for inspection of the Work by the Architect/Engineer. Should the Work not be complete, and all corrections made, the costs for all subsequent re-inspections shall be borne by the Contractor. If Contractor fails to complete the punch list work within the above time period, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) days after demand without affecting Contractor's obligations.

**I.2 WARRANTY WORK**

I.2.1 Neither the final certificate of payment nor any provision of the Contract Documents shall relieve the Contractor from responsibility for defective Work and, unless a longer period is specified, Contractor shall correct all defects that appear in the Work within a period of one year from the date of issuance of the written notice of Substantial Completion by the Owner except for latent defects which will be remedied by the Contractor at any time they become apparent.

The Owner shall give Contractor notice of defects with reasonable promptness. Contractor shall perform such warranty work within a reasonable time after Owner's demand. If Contractor fails to complete the warranty work within such period as Owner determines reasonable, or at any time in the event of warranty work consisting of emergency repairs, Owner may perform such work and Contractor shall reimburse Owner all costs of the same within ten (10) Days after demand without affecting Contractors obligations.

I.2.2 This provision does not negate guarantees or warranties for periods longer than one year including without limitation such guarantees or warranties required by other sections of the Contract Documents for specific installations, materials, processes, equipment or fixtures.

I.2.3 In addition to Contractor's warranty, manufacturer's warranties shall pass to the Owner and shall not take effect until affected Work has been accepted in writing by the Owner's Authorized Representative.

I.2.4 The one-year period for correction of Work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work, and shall be extended by corrective Work performed by the Contractor pursuant to this Section, as to the Work corrected. The Contractor shall remove from the site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner. I.2.5 Nothing contained in this Section I.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the period for correction of Work as described in this Section I.2 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.

I.2.6 If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## SECTION J

### **SUSPENSION AND/OR TERMINATION OF THE WORK**

#### **J.1 OWNER'S RIGHT TO SUSPEND THE WORK**

J.1.1 The Owner and/or the Owner's Authorized Representative has the authority to suspend portions or all of the Work due to the following causes:

- (a) Failure of the Contractor to correct unsafe conditions;
- (b) Failure of the Contractor to carry out any provision of the Contract;
- (c) Failure of the Contractor to carry out orders;
- (d) Conditions, in the opinion of the Owner's Authorized Representative, which are unsuitable for performing the Work;
- (e) Time required to investigate differing site conditions;
- (f) Any reason considered to be in the public interest.

J.1.2 The Owner shall notify Contractor and the Contractor's Surety in writing of the effective date and time of the suspension and Owner shall notify Contractor and Contractor's surety in writing to resume Work.

#### **J.2 CONTRACTOR'S RESPONSIBILITIES**

J.2.1 During the period of the suspension, Contractor is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.

J.2.2 When the Work is recommenced after the suspension, the Contractor shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

#### **J.3 COMPENSATION FOR SUSPENSION**

J.3.1 Depending on the reason for suspension of the Work, the Contractor or the Owner may be due compensation by the other party. If the suspension was required due to acts or omissions of Contractor, the Owner may assess the Contractor actual costs of the suspension in terms of administration, remedial work by the Owner's forces or another contractor to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension. If the suspension was caused by acts or omissions of the Owner, the Contractor shall be due compensation which shall be defined using Section D, Changes in Work. If the suspension was required through no fault of the Contractor or the Owner, neither party owes the other for the impact.

#### **J.4 OWNER'S RIGHT TO TERMINATE CONTRACT**

J.4.1 The Owner may, without prejudice to any other right or remedy, and after giving Contractor seven (7) Days' written notice and an opportunity to cure, terminate the Contract in whole or in part under the following conditions:

- (a) If Contractor should voluntarily or involuntarily, seek protection under the United States Bankruptcy Code and Contractor as debtor-in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
- (b) If Contractor should make a general assignment for the benefit of Contractor's creditors;

- (c) If a receiver should be appointed on account of Contractor's insolvency;
- (d) If Contractor should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
- (e) If Contractor should repeatedly fail to make prompt payment to Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner or its Authorized Representative; or
- (f) If Contractor is otherwise in material breach of any part of the Contract.

J.4.2 At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Contractor shall not be entitled to receive further payment until the Work is completed. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Contractor shall pay the difference to the Owner.

#### **J.5 TERMINATION FOR CONVENIENCE**

J.5.1 Owner may terminate the Contract in whole or in part whenever Owner determines that termination of the Contract is in the best interest of the public.

J.5.2 The Owner will provide the Contractor with seven (7) Days' prior written notice of a termination for public convenience. After such notice, the Contractor shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Contractor received progress payment under Section E. Compensation for Work terminated by the Owner under this provision will be according to Section E. In no circumstance shall Contractor be entitled to lost profits for Work not performed due to termination.

#### **J.6 ACTION UPON TERMINATION**

J.6.1 Upon receiving a notice of termination, and except as directed otherwise by the Owner, Contractor shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, Contractor shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.

J.6.2 As directed by the Owner, Contractor shall upon termination transfer title and deliver to the Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.

## SECTION K **CONTRACT CLOSE OUT**

#### **K.1 RECORD DOCUMENTS**

As a condition of final payment (refer also to section E.6), Contractor shall comply with the following: Contractor shall provide to Owner's Authorized Representative, Record Documents of the entire project. Record Documents shall depict the project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the Owner's issuance of final payment. Record Documents include all modifications to the Contract Documents unless otherwise directed.

## **K.2 OPERATION AND MAINTENANCE MANUALS**

As part of the Work, Contractor shall submit two completed operation and maintenance manuals ("O & M Manuals") for review by the Owner's Authorized Representative prior to submission of any pay request for more than 75% of the Work. No payments beyond 75% will be made by the Owner until the O & M Manuals have been received. The O & M Manuals shall contain a complete set of all submittals, all product data as required by the specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The Owner's Authorized Representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, Contractor shall deliver three (3) complete and approved sets of O & M Manuals to the Owner's Authorized Representative.

## **K.3 AFFIDAVIT/RELEASE OF LIENS AND CLAIMS**

As a condition of final payment, the Contractor shall submit to the Owner's Authorized Representative a notarized affidavit/release of liens and claims form, in a form satisfactory to Owner, which states that all Subcontractors and suppliers have been paid in full, all disputes with property owners have been resolved, all obligations on the project have been satisfied, all monetary claims and indebtedness have been paid, and that, to the best of the Contractor's knowledge, there are no claims of any kind outstanding against the project. The Contractor shall indemnify, defend (with counsel of Owner's choice) and hold harmless the Owner from all claims for labor and materials finished under this Contract. The Contractor shall furnish complete and valid releases or waivers, satisfactory to the Owner, of all liens arising out of or filed in connection with the Work.

## **K.4 COMPLETION NOTICES**

K.4.1 Contractor shall provide Owner notice of both Substantial and Final Completion. The certificate of Substantial Completion shall state the date of Substantial Completion, the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which the Contractor shall finish all items on the punchlist accompanying the Certificate. Both completion notices must be signed by the Contractor and the Owner to be valid. The Owner shall provide the final signature on the notices. The notices shall take effect on the date they are signed by the Owner.

K.4.2 Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Owner's Authorized Representative. All equipment contained in the Work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The Contractor may request that a punch list be prepared by the Owner's Authorized Representative with submission of the request for the Substantial Completion notice.

## **K.5 TRAINING**

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Owner's Authorized Representative, training sessions for all equipment and systems, as required in the individual specifications sections. Contractor shall schedule training sessions at least two weeks in advance of the date of training to allow Owner personnel adequate notice.

The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment.

## **K.6 EXTRA MATERIALS**

As part of the Work, Contractor shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the specifications, prior to final payment. Delivery point for extra materials shall be designated by the Owner's Authorized Representative.

## **K.7 ENVIRONMENTAL CLEAN-UP**

As part of the Final Completion notice, or as a separate written notice submitted with or before the notice of Final Completion, the Contractor shall notify the Owner that all environmental pollution clean-up performed as a part of this Contract has been disposed of in accordance with all applicable rules, regulations, laws, and statutes of all agencies having jurisdiction over such environmental pollution. The notice shall reaffirm the indemnification given under Section F.5.1 above.

## **K.8 CERTIFICATE OF OCCUPANCY**

The Contractor shall not be granted Final Completion or receive final payment if the Owner has not received an unconditioned certificate of occupancy from the appropriate state and/or local building officials, unless failure to obtain an unconditional certificate of occupancy is due to the fault or neglect of Owner.

## **K.9 OTHER CONTRACTOR RESPONSIBILITIES**

The Contractor shall be responsible for returning to the Owner all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. The Contractor shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Contractor to the Owner. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion, if the Owner does not take beneficial use of the facility and the Contractor's forces continue with the Work.

## **K.10 SURVIVAL**

All warranty and indemnification provisions of this Contract, and all of Contractor's other obligations under this Contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract.

## **SECTION L LEGAL RELATIONS & RESPONSIBILITIES**

### **L.1 LAWS TO BE OBSERVED**

In compliance with ORS 279C.525, Sections L.2 through L.4 contain lists of federal, state and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract:

### **L.2 FEDERAL AGENCIES**

Agriculture, Department of  
Forest Service  
Soil Conservation Service  
Coast Guard  
Defense, Department of  
Army Corps of Engineers  
Energy, Department of  
Federal Energy Regulatory Commission  
Environmental Protection Agency  
Health and Human Services, Department of  
Housing and Urban Development, Department of  
Solar Energy and Energy Conservation Bank  
Interior, Department of  
Bureau of Land Management  
Bureau of Indian Affairs  
Bureau of Mines  
Bureau of Reclamation  
Geological Survey  
Minerals Management Service  
U.S. Fish and Wildlife Service  
Labor, Department of  
Mine Safety and Health Administration



Occupation Safety and Health Administration  
Transportation, Department of  
Federal Highway Administration  
Water Resources Council

**L.3 STATE AGENCIES**

Administrative Services, Department of  
Agriculture, Department of  
Soil and Water Conservation Commission  
Columbia River Gorge Commission  
Energy, Department of  
Environmental Quality, Department of  
Fish and Wildlife, Department of  
Forestry, Department of

Geology and Mineral Industries, Department of  
Human Resources, Department of  
Consumer and Business Services, Department of  
Land Conservation and Development Commission  
Parks and Recreation, Department of  
State Lands, Division of  
Water Resources Department of

**L.4 LOCAL AGENCIES**

City Councils County Courts  
County Commissioner, Board of  
Design Commissions  
Historical Preservation Commission  
Planning Commissions

**ENERGY SAVINGS PERFORMANCE CONTRACT  
EXHIBIT 2A  
SUPPLEMENTAL GENERAL CONDITIONS**

Compliance With Owner Policies. At all times while on Owner's properties, Consultant shall comply with the following policies adopted by Owner's Board of Directors:

Identification. Contractors and subcontractors performing work on Owner's property shall carry photo identification and will present such to anyone on request. If such identification cannot be produced by Consultant, or is not acceptable to Owner, Owner may provide, at its sole discretion, such identification tags to Consultant.

No Smoking. Smoking or other use of tobacco is prohibited on Owner's property.

No Drugs. Owner's property and schools are drug-free zones.

No Weapons or Firearms. Weapons and firearms are prohibited on Owner's property.

Safety. Owner requires a state background check by all workers onsite. Background checks will be paid for by the School District.

No Unsupervised Contact with Students. "Unsupervised contact with students" means contact with students that provide the person opportunity and probability for personal communication or touch when not under direct supervision. Consultant will ensure that Consultant, any subcontractors, and their officers, agents, and employees will have no direct unsupervised contact with students while on Owner's property. Consultant will work with Owner to ensure compliance with this requirement. If Consultant is unable to ensure through a security plan that none of its officers, agents, or employees will have direct, unsupervised contact with students in a particular circumstance or circumstances, Contractor shall so notify Owner prior to beginning any work that could result in such contact. Consultant authorizes Owner to obtain information about Consultant and Consultant's history and to conduct a criminal background check, including fingerprinting, of any officer, agent, or employee of Consultant that will have unsupervised contact with students. Consultant also agrees to cause Consultant's employees and/or subcontractors, if any, to authorize Owner to conduct such background checks. Consultant shall pay all fees assessed by Oregon Department of Education for processing the background check. Owner may deduct the cost of such fees from a progress or final payment to Consultant under this Contract, unless Consultant elects to pay such fees directly.

Child Abuse and Sexual Conduct Obligations. Owner does not tolerate child abuse or sexual conduct in any form. All employees and contractors of Owner, including Consultant, are required to report known or suspected incidents of child abuse and sexual harassment. Consultant acknowledges Owner's obligations related to child abuse, as defined in ORS 419B.005, and sexual conduct, as defined in ORS 339.370(11). If there are reports or allegations of sexual conduct or child abuse involving any of Consultant's employees, officers or agents, Consultant agrees to immediately comply with Owner's requests for removal of such person. Consultant will cooperate in any investigation being conducted by Owner, law enforcement, Oregon Department of Human Services, Oregon Department of Education, and/or Oregon Teacher Standards and Practices Commission. Consultant has received information from Owner related to the prevention and identification of child abuse and sexual conduct, the obligations of school employees to report child abuse and sexual conduct, and appropriate electronic communications with students. Consultant agrees to provide this information to any of its employees, officers and agents, as well as to Consultant's subcontractors and suppliers, having direct, unsupervised contact with students.

Employment Standards. Consultant agrees that upon request by Owner, it shall remove from all of Owner's premises any employee of Consultant or any subcontractor who, in the sole opinion of Owner, is guilty of improper conduct or is not qualified to perform the work assigned.

**ENERGY SAVINGS PERFORMANCE CONTRACT  
EXHIBIT 3A  
PERFORMANCE AND PAYMENT BONDS**

To be provided upon contract execution.

**ENERGY SAVINGS PERFORMANCE CONTRACT  
EXHIBIT 4A  
PREVAILING WAGE RATE SCHEDULES**

See next page.

**PREVAILING WAGE RATES**

**FOR**

**PUBLIC WORKS CONTRACTS IN OREGON**

Please reference the Bureau of Labor and Industries (BOLI) website, or contact them directly, for the prevailing wage rate information using the Prevailing Wage Rates for Public Works Contracts in Oregon effective October 5, 2024. All amendments pertinent to the current prevailing wage rate booklet will also apply.

The website for BOLI is [http://www.oregon.gov/boli/WHD/PWR/Pages/pwr\\_state.aspx](http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx).

**ENERGY SAVINGS PERFORMANCE CONTRACT  
EXHIBIT 5A  
SUBCONTRACTOR/ SUB-CONSULTANT LIST**

TrueSouth Solar

**ENERGY SAVINGS PERFORMANCE CONTRACT  
EXHIBIT 6A  
SAVINGS CONTRACT PROVISIONS**

See next page.



CONTRACT # 1007504.001  
PHOENIX TALENT SCHOOL DISTRICT



# TALENT MIDDLE SCHOOL - SOLAR AND BATTERY PH1 PROJECT DEVELOPMENT PLAN

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12/2/2024

**SCHEDULE 1 to PDP**

**EQUIPMENT TO BE INSTALLED BY ESCO**

The provisions of the Schedules to the PDP, including this Schedule 1, shall govern in the event of any inconsistencies between the provisions of the other Contract Documents and the Schedules.

This Schedule 1 sets forth a description of existing equipment and the Energy Conservation Measures (ECM) and related equipment to be installed by ESCO at the Facilities. Installation of the ECM(s) and the included equipment is subject to change if ESCO discovers unforeseen conditions at the Facilities that render its preliminary analysis of the Facilities inaccurate, or significantly affect achievement of the Annual Guaranteed Savings Amount. Any changes to the installation of the ECM(s) and the included equipment are subject to approval of Owner, which approval shall not be unreasonably withheld, conditioned or delayed.

**List of Energy Efficiency Measures**

The ECMs described below are included in the Scope of Services.

<b>ECM #</b>	<b>Conservation Measure</b>
<i>Talent Middle School</i>	
TMS-G1	Installation of an 143.99 kW solar PV roof-mounted system, 125kW / 144kWh battery storage system, and new backup load management equipment providing emergency back-up power to selected loads.

**Table 1 - List of Energy Efficiency Measures**

**List of Facilities**

The following is a list of the buildings, facilities, and areas that will be impacted by the list of Energy Efficiency Measures listed above.

<b>Building Name</b>	<b>Building Address</b>
Talent Middle School	102 Christian Ave, Talent, OR 97540

**Table 2 - List of Buildings, Facilities and Areas**

**List of All Energy Efficiency Measures Studied and Selected Measures for the Project**

The following tables detail the energy efficiency measures studied and the energy efficiency measures that were selected to be included in the Design and Construction Contract. The first table, “All Measures Studied”, comes from the TEA report. The second table, “Selected Measures”, excludes all measures that are not going forward and shows the cost and savings with remaining measure interactions included. The savings has been cascaded as to avoid double counting benefits from the selected ECMs. Also, some pricing has been updated based on additional information collected since publishing the TEA.

ECM #	Conservation Measure	Baseline										Proposed								Savings					
		Current Annual Use - Electrical		Current Gas Use (Therms)	Current Oil Use (Gal)	Current Electric Cost (\$)	Current Gas Cost (\$)	Current Oil Cost (\$)	Current Propane Cost (\$)	Current Water Cost (\$)	Current Total Cost (\$)	Future Total Annual Use - Electric		Future Gas Use (Therms)	Future Oil Use (Gal)	Future Electric Cost (\$)	Future Gas Cost (\$)	Future Oil Cost (\$)	Future Total Cost (\$)	Annual Savings Electric		Annual Gas Savings (Therms)	Annual Oil Savings (Gal)	Annual Resource Savings (\$)	
		Consume	Demand									Consume	Demand							Consume	Demand				
		(kWh)	(kW)	(kWh)	(kW)																				
	<b>Phoenix Talent Middle School (TMS)</b>																								
	<i>General Conservation Measures</i>																								
<b>TMS-G1</b>	Installation of a 143.99 kW solar PV roof-mounted system, 125kW / 144kWh battery storage system, and new backup loads panel, providing emergency back-up power to selected loads.	724,950			\$ 74,978	\$ -	\$ -	\$ -	\$ -	\$ 74,978	510,080			\$ 52,755	\$ -	\$ -	\$ 52,755	214,870	-	-	-	\$ 22,223			

Table 3 – All Measures Studied

ECM #	Conservation Measure	Baseline										Proposed								Savings						
		Current Annual Use - Electrical		Current Gas Use (Therms)	Current Oil Use (Gal)	Current Propane Use (Gal)	Current Water Use (CCF)	Current Electric Cost (\$)	Current Gas Cost (\$)	Current Oil Cost (\$)	Current Total Cost (\$)	Future Total Annual Use - Electric		Future Gas Use (Therms)	Future Oil Use (Gal)	Future Propane Use (Gal)	Future Water Use (CCF)	Future Electric Cost (\$)	Future Gas Cost (\$)	Future Oil Cost (\$)	Future Total Cost (\$)	Annual Savings Electric		Annual Gas Savings (Therms)	Annual Oil Savings (Gal)	Annual Resource Savings (\$)
		Consume	Demand									Consume	Demand									Consume	Demand			
		kWh	kW	kWh	kW																					
	<b>Phoenix Talent Middle School (TMS)</b>																									
	<i>General Conservation Measures</i>																									
<b>TMS-G1</b>	Installation of a 143.99 kW solar PV roof-mounted system, 125kW / 144kWh battery storage system, and new backup loads panel, providing emergency back-up power to selected loads.	724,950					74,978			\$74,978	510,080					\$52,755			\$52,755	214,870				\$22,223		

Table 4 – Selected Measures

## **Equipment to be Installed by ESCO**

### **General Scope of Work**

Descriptions of work in this section are provided for a general description of scope and are not inclusive to all work required to be performed for a working system. Design documentation and specifications generated during the project may add or delete scope in order to provide a working, safe and code-compliant system. The owner will be notified if additional work is discovered due to unseen, unknown, or undisclosed conditions and it will be the owner's discretion to approve scope changes for additional work, to self-perform the work, or to abandon the measure.

Equipment and materials provided on this project will be new, and will be free of faults and defects. Owner equipment that is removed during demolition activities will be returned to the owner at the owner's discretion. Equipment will be installed level and true and per manufacturer's installation instructions. Equipment will be installed to maintain manufacturer's recommended clearances, and to provide convenient access. Equipment and utility shutdowns will be clearly coordinated with the owner, city, utility and facility staff as required.

Work will be performed to avoid interruption of facility function including swing shift as required. Saw-cutting, drilling, or other noise generating activities will be scheduled to minimize disruption to occupants. As much as possible, functional areas of the facility where after-hours work is done will be returned to the state existing prior to the start of work including relocating furniture, vacuuming floors and cleaning surfaces. Existing surfaces impacted by installation of new equipment including floors, ceilings, paint, tile, and paving, will be restored as well as possible to match the existing finished surface. It may be required to install oversized escutcheon plates or other devices to cover finished surfaces rather than repair them.

### **General Work Scope Comments:**

- Permitting through AHJ is included with scope of work.
- Start-up, training, and commissioning of new equipment only is included.
- Retrocommissioning measures do not include new equipment or equipment repairs. Repairs or replacement of failed equipment identified during the discovery phase will be budgeted and presented to the owner for approval.
- Control valves and actuators are included in the direct digital controls scopes of work only as required to achieve the level of control described for each ECM.
- Some amount of delay is unavoidable. There will be provisions for continuation of work if a work area becomes unavailable due to owner circumstances or a security event. Unusual or excessive owner delays will be handled according to the contract.
- Unless specifically noted in the scope of work – abatement of ACM and other hazardous materials is excluded.

- As final engineering is not started and equipment is not ordered until Ameresco has a signed contract / notice to proceed - Ameresco cannot guarantee delivery dates / system start-up and is not responsible for costs associated with additional mobilizations, temporary equipment, etc. if long lead times affect construction schedule.
- Ameresco is not responsible for the cost impact of tariffs that are levied after the date of execution of this Agreement. If a tariff is established that impacts the cost of equipment purchased, Ameresco may request a change order to recover the additional cost of the tariff.
- Material ordering and final scheduling will not occur until a signed agreement is received.
- Unless specifically noted in the scope of work – paint / patch is excluded. If noted in the work scope – only the affected areas will be addressed (not the entire area / wall). Paint will match existing adjacent as close as possible but an exact match cannot be guaranteed.
- Piping / conduit / wire mold may be run exposed in occupied spaces (as applicable). Wiring in secure places will not use surface mount conduit or plug mold.
- Unless specifically noted in the scope of work – conduit / wire mold is un-painted.
- Some existing equipment may be left abandoned in place.
- Unless specifically noted in the scope of work – no piping covers have been included.
- If applicable - tile and carpet in-fill strips will match adjacent existing as close as possible but an exact match cannot be guaranteed.
- If applicable - existing ceiling tiles will be removed and reinstalled. New ceiling / grid is not included in the work scope unless specifically noted.

**Warranty:**

Materials and labor provided in the scope of work will be warranted for a period of 1 year from substantial completion.

**Project scope associated with each facility is as follows:**

**WWTP-G1: Solar PV System and Canopy**

This measure includes the installation of a new roof mounted approximately 143.99 kW solar PV array with SolarEdge 120kW 480V Inverter, and 242 Hanwha Q Cell 595W Panels, or equivalent. All electrical gear needed for interconnection will be provided and installed including a 600A main disconnect, 150kva XFMR, BESS 600A panel, and trenching for conduit and electrical lines as well as equipment pads. The install also includes back-up load panel and system including a new 1.75kva XFMR, 200A 208/120V 54 space panel board labeled "I", conduit on roof to feed the new "I" panel, and moving 32 circuits to the "I" panel via roof conduit.

The measure also includes the installation of a new ELM MG 125 - 220K - ESS Package with integrated FieldSight Microgrid Controller, Dynapower 125kW 3P Inverter, HVAC/Fire Suppression, and 220 kWh KORE Power MARK Li-Ion battery. The storage capacity will be expanded with a new 125 ESS Expansion Package, providing 440 kWh total of energy storage. The price provided includes battery shipping, battery commissioning and start-up, and a 5 year ELM warranty extension, for a total 10 year warranty.

Managing the utility interconnection process is included as well as applying for Energy Trust of Oregon (ETO) solar and battery incentives. Ameresco will assist the District with meeting the reporting requirements for the Oregon Community Renewable Energy Program (C-REP) grant and provide necessary information for pursuing the Federal Solar Investment Tax Credits (ITC).

**SCHEDULE 2 to PDP**

**CALCULATION OF ENERGY SAVINGS GUARANTEE**

The provisions of the Schedules to the PDP, including this Schedule 2, shall govern in the event of any inconsistencies between the provisions of the other Contract Documents and the Schedules.

ESCO guarantees that the Annual Savings to be achieved as a result of installation and operation of the ECMs shall equal or exceed the Annual Guaranteed Savings Amount for each Guarantee Year during the Guarantee Period, subject to and as more particularly set forth in the Guaranteed Savings Contract Provisions set forth in “Schedule 6 – Measurement and Verification Plan and Guaranteed Savings Contract Provisions”. Annual Savings, as such term is defined in Schedule 6, shall be determined as provided in the M&V Plan set forth in “Schedule 6 - Measurement and Verification Plan and Guaranteed Savings Contract Provisions”, and the savings calculation methodologies and adjustments to baseline set forth in “Schedule 5 - Savings Calculation Formulae; Methodology to Adjust Baseline”.

Utility	Estimated Annual Energy Savings	Guaranteed Annual Energy Savings
Electricity (kWh)	214,870	193,383

**Table 1- Guaranteed Annual Savings**

The unit prices to be used to calculate the Annual Savings for the purposes of the Guarantee of Energy Savings are described in Schedule 4 – Baseline Energy Use.

Year	Annual Value of Guaranteed Savings at Baseline Rates
1	\$20,001

**SCHEDULE 3 to PDP**

**COMPENSATION TO ESCO**

The provisions of the Schedules to the PDP, including this Schedule 3, shall govern in the event of any inconsistencies between the provisions of the other Contract Documents and the Schedules.

- A) **ESCO Compensation for the Construction Work.** In consideration of ESCO’s performance of the work necessary for the procurement, construction and installation of the equipment (Schedule 1 Equipment to be Installed by ESCO), ESCO shall be paid a sum of **One Million, Three Hundred and Thirty-Two Thousand and Twenty-two dollars (\$1,332,022)** herein the “Contract Price”, as a Guaranteed Maximum Price (GMP), subject, however, to adjustment as set forth in the Contract, including, without limitation, Section 7.1.3 of Division 3 Phase 1 of the Contract, Division 3 Phase 2, and in this Schedule 3.

Items Included in Guaranteed Maximum Price (GMP) are listed below:

<b>PROJECT COSTS</b>	<b>Mech, Water, General</b>	<b>Lighting</b>	<b>Total Project Costs</b>
Engineering Audit		\$ -	\$ 71,637
<b>Guaranteed Maximum Price for Construction Work</b>			
Cost of Work	\$ 884,533	\$ -	\$ 884,533
Bonding @ 2.0% of Cost of Work	\$ 17,691	\$ -	\$ 17,691
Construction Contingency @ 5.5% of Cost of Work	\$ 48,649	\$ -	\$ 48,649
<b>Guaranteed Maximum Price for Construction Work (GMP):</b>			<b>\$ 950,873</b>
<b>Fixed Project Fees</b>			
M,W,G Design @ 6.0% of Cost of Work	\$ 53,072		\$ 53,072
Lighting Design @ 6.0% of Cost of Work		\$ -	\$ -
Construction Mgt @ 8.0% of Cost of Work	\$ 70,763	\$ -	\$ 70,763
ESCO Overhead and Profit @ 18.0% of Cost of Work	\$ 159,216	\$ -	\$ 159,216
System Start-Up and Commissioning Fee @ 2.0% of Cost of Work	\$ 17,691	\$ -	\$ 17,691
Training of Owner’s O&M Personnel Fee @ 0.2% of Cost of Work	\$ 1,769	\$ -	\$ 1,769
1st Year of Ameresco M&V			\$ 7,001
Energy Savings Guarantee Contract Fee			\$ -
<b>Fixed Fees Subtotal:</b>			<b>\$ 309,512</b>
<b>Project Cost Summary</b>			
<b>Contract Price</b>			<b>\$ 1,332,022</b>
Client Initial Cash Payment			\$ 1,332,022
Estimated Utility Incentive and Grant	\$ 1,030,000	\$ -	\$ 1,030,000
Federal ITC Incentive 30%	\$ 302,022	\$ -	\$ 302,022
<b>Net Amount After Incentives:</b>			<b>\$ (0)</b>

**Table 1 - Project Costs**

1. Contract Price of **\$1,332,022** includes the following:
  - a. Technical Energy Audit (TEA) and Project Development Plan (PDP). This is a fixed cost of **\$71,637**.
  - b. Engineering Design Services. This is a fixed fee, based on estimated labor & material cost, of **\$53,072** (Mechanical, Water and General Design is **\$53,072** and Lighting Design is **\$0**).



- c. Construction management services. This is a fixed fee, based on estimated labor & material cost, of **\$70,763**.
- d. Performance and payment bond. This is an estimated cost, based on estimated labor and material cost, of **\$17,691**.
- e. Estimated labor and material costs for installation of the ESCO equipment. This is an estimated cost of work of **\$884,533**, and a contingency of **\$48,649**, to cover the following:
  - i. All costs paid by the ESCO for the installation of the ESCO equipment. This includes costs paid to subcontractors or directly to ESCO personnel, when related to installation or system verification of the ESCO equipment.
  - ii. The portion of reasonable travel, lodging & meals expenses of the ESCO or of its officers or employees incurred while traveling in discharge of duties connected with the Work.
  - iii. Cost of all equipment, materials, supplies and equipment incorporated in the Work, including costs of transportation thereof.
  - iv. Cost or rental charges, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less salvage value on such items used but not consumed which remain the property of the ESCO.
  - v. Cost of premiums for all insurance which the ESCO is required to purchase and maintain.
  - vi. Sales, use or similar taxes related to the Work and for which the ESCO is liable imposed by a governmental authority.
  - vii. Permit fees, royalties, and deposits lost for causes other than the ESCO's negligence.
  - viii. Losses and expenses not compensated by insurance or otherwise, sustained by the ESCO in connection with the Work, provided they have resulted from causes other than the fault or neglect of the ESCO. Such losses shall include settlements made with the written consent and approval of the Owner. If, however, such loss requires reconstruction and the ESCO is placed in charge thereof, the ESCO shall be paid for their services a fee.
  - ix. Minor expenses such as copies, long distance telephone calls, telephone service at the site, express mail services, and similar petty cash items.
  - x. Demolition cost and cost of removal of all debris.

- xi. Costs incurred due to an emergency affecting the safety of persons and property.
  - xii. Metering equipment costs for any permanent metering or monitoring equipment left on site to the extent included in the Scope of Services set forth in Schedule 1.
  - f. ESCO overhead and profit. This is a fixed fee, based on estimated labor & material cost, of **\$159,216**, and will be subject to adjustment as a result of any Change Orders. This includes the ESCO's remuneration for compensation of personnel, expenses, risks related to the project, and profit.
  - g. One year of the Measurement & Verification Services. This is a fixed cost of **\$7,001**, detailed in Schedule 6 – Measurement and Verification Plan and Guaranteed Saving Contract Provision.
  - h. System Start-Up and Commissioning Fee. Cost of equipment startup, training, system commissioning and balancing performed by the ESCO in accordance with “Schedule 7 - Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment”. This is a fixed cost of **\$17,691**.
  - i. Training of Owner's Operations and Maintenance Personnel Fee. This is a fixed cost of **\$1,769**.
2. The ESCO shall provide a revised Schedule of Values at the end of construction. The schedule of values will include all costs related to the installation of the ESCO equipment including fixed fee items.
- B) **ESCO Compensation for Technical Energy Audit and Project Development Plan Analysis of the Premises.** The Owner has agreed to pay the ESCO for work performed on the Technical Energy Audit and Project Development Plan in a separate contract.
- C) **Monthly Progress Payments.** During the performance of the Construction Work ESCO shall submit invoices to the Owner for monthly progress payments to ESCO based upon the percentage of the Equipment construction and procurement completed at the end of each month (the “Monthly Completion Percentage”), so that ESCO is paid the percentage of the Contract Price (less the Audit Fee), that is commensurate with the Monthly Completion Percentage (less retainage in the amount of 5.0%, if required by (D) below). The Owner shall make payment to ESCO, within thirty (30) days after the submission of each such invoice. The Owner shall not unreasonably withhold, condition or delay the payment of any invoice.
- D) **Retainage.** Until such time as the Monthly Completion Percentage is equal to or exceeds ninety-five percent (95%) (“95% Completion”) each disbursement of a monthly progress payment pursuant to (C) above shall be subject to retainage in the amount of 5.0 percent (5.0%) of such disbursement. Retainage shall be released and paid to ESCO on Substantial Completion less one and one half times the anticipated value of remaining punch list items.

Notwithstanding the forgoing, the Owner may elect, in its sole discretion, to release and pay some or all of the retainage at or prior to Substantial Completion.

- E) **Late Payment.** All amounts not paid to ESCO on or before the due dates specified in Subsections 4(b) and (d), shall accrue interest at the Prime Rate of interest as published in the Wall Street Journal for major banks, or such lower rate as is prescribed by applicable law.
- F) **Measurement and Verification Fees.** The fee for Measurement and Verification Services for the first Year of the Guarantee Period, as listed in the GMP above, is **\$7,001** and is included in the Contract Price. The Energy Savings Guarantee Contract Fee associated with the Measurement and Verification Services has been waived for this project.
- G) In the event Owner elects, by written notice to ESCO at least 90 days prior to the end of the current M&V year, to continue M&V Services, which may be for consecutive years only, beyond the first Guarantee Year, the M&V Services Fee for the following Year shall be **\$7,211** and, in each subsequent Year, the M&V Services Fee shall increase by 3%. The Owner shall pay the ESCO the M&V Services Fee within thirty (30) days following the first day of each Year for which the Owner has elected to continue the M&V Services following Year 1.
- H) The following table outlines the cost of Measurement and Verification over a 15 year term.

<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
\$7,001	\$7,211	\$7,427	\$7,650	\$7,880
<b>Year 6</b>	<b>Year 7</b>	<b>Year 8</b>	<b>Year 9</b>	<b>Year 10</b>
\$8,116	\$8,360	\$8,610	\$8,869	\$9,135
<b>Year 11</b>	<b>Year 12</b>	<b>Year 13</b>	<b>Year 14</b>	<b>Year 15</b>
\$9,409	\$9,691	\$9,982	\$10,281	\$10,590

**Table 2- Measurement and Verification Fee Schedule**

**PROJECT SAVINGS BASED ON ESTIMATED ENERGY SAVINGS (100%)**

Year ending	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045
Reference year	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Mechanical, General, and Water savings	\$ -	\$ 22,223	\$ 22,556	\$ 22,895	\$ 23,238	\$ 23,587	\$ 23,940	\$ 24,300	\$ 24,664	\$ 25,034	\$ 25,409	\$ 25,791	\$ 26,177	\$ 26,570	\$ 26,969	\$ 27,373	\$ 27,784	\$ 28,201	\$ 28,624	\$ 29,053	\$ 29,489
Lighting Savings:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Lighting Maintenance Savings	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Maintenance Savings	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Depreciation Tax Credit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Savings:</b>	\$ -	\$ 22,223	\$ 22,556	\$ 22,895	\$ 23,238	\$ 23,587	\$ 23,940	\$ 24,300	\$ 24,664	\$ 25,034	\$ 25,409	\$ 25,791	\$ 26,177	\$ 26,570	\$ 26,969	\$ 27,373	\$ 27,784	\$ 28,201	\$ 28,624	\$ 29,053	\$ 29,489
<b>Cumulative Savings:</b>	\$ -	\$ 22,223	\$ 44,779	\$ 67,674	\$ 90,912	\$ 114,498	\$ 138,439	\$ 162,738	\$ 187,402	\$ 212,436	\$ 237,846	\$ 263,636	\$ 289,814	\$ 316,384	\$ 343,353	\$ 370,726	\$ 398,510	\$ 426,710	\$ 455,334	\$ 484,387	\$ 513,876

**PROJECT SAVINGS BASED ON GUARANTEED ENERGY SAVINGS (90%)**

Year ending	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045
Mechanical, General, and Water savings	\$ -	\$ 20,001	\$ 20,300.65	\$ 20,605	\$ 20,914	\$ 21,228	\$ 21,546	\$ 21,870	\$ 22,198	\$ 22,531	\$ 22,869	\$ 23,212	\$ 23,560	\$ 23,913	\$ 24,272	\$ 24,636	\$ 25,005	\$ 25,381	\$ 25,761	\$ 26,148	\$ 26,540
Lighting Savings:	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Lighting Maintenance Savings	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other Maintenance Savings	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Depreciation Tax Credit	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Savings:</b>	\$ -	\$ 20,001	\$ 20,301	\$ 20,605	\$ 20,914	\$ 21,228	\$ 21,546	\$ 21,870	\$ 22,198	\$ 22,531	\$ 22,869	\$ 23,212	\$ 23,560	\$ 23,913	\$ 24,272	\$ 24,636	\$ 25,005	\$ 25,381	\$ 25,761	\$ 26,148	\$ 26,540
<b>Cumulative Savings:</b>	\$ -	\$ 20,001	\$ 40,301	\$ 60,906	\$ 81,821	\$ 103,049	\$ 124,595	\$ 146,465	\$ 168,662	\$ 191,193	\$ 214,061	\$ 237,273	\$ 260,833	\$ 284,746	\$ 309,017	\$ 333,653	\$ 358,659	\$ 384,039	\$ 409,801	\$ 435,948	\$ 462,488

**ANNUAL PROJECT COSTS**

Amount Financed: \$ -  
 Cash Payment: \$ 1,332,022 \$ (1,030,000) \$ (302,022)

Year ending	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045
Annual Financing Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Ameresco Measurement and Verification	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Annual Costs to Client</b>	<b>\$ 1,332,022</b>	<b>\$ (1,030,000)</b>	<b>\$ (302,022)</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

**NET ANNUAL CASH FLOW WHEN FINANCING PROJECT:**

Year ending	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045
Cash Flow from Estimated Energy Savings (with inflation)	\$ (1,332,022)	\$ 1,052,223	\$ 324,578	\$ 22,895	\$ 23,238	\$ 23,587	\$ 23,940	\$ 24,300	\$ 24,664	\$ 25,034	\$ 25,409	\$ 25,791	\$ 26,177	\$ 26,570	\$ 26,969	\$ 27,373	\$ 27,784	\$ 28,201	\$ 28,624	\$ 29,053	\$ 29,489
<b>Cumulative</b>	<b>\$ (1,332,022)</b>	<b>\$ (279,799)</b>	<b>\$ 44,779</b>	<b>\$ 67,674</b>	<b>\$ 90,912</b>	<b>\$ 114,499</b>	<b>\$ 138,439</b>	<b>\$ 162,739</b>	<b>\$ 187,403</b>	<b>\$ 212,437</b>	<b>\$ 237,846</b>	<b>\$ 263,637</b>	<b>\$ 289,814</b>	<b>\$ 316,384</b>	<b>\$ 343,353</b>	<b>\$ 370,726</b>	<b>\$ 398,510</b>	<b>\$ 426,711</b>	<b>\$ 455,334</b>	<b>\$ 484,387</b>	<b>\$ 513,876</b>
Cash Flow from Guaranteed Energy Savings (with inflation)	\$ (1,332,022)	\$ 1,050,001	\$ 322,323	\$ 20,605	\$ 20,914	\$ 21,228	\$ 21,546	\$ 21,870	\$ 22,198	\$ 22,531	\$ 22,869	\$ 23,212	\$ 23,560	\$ 23,913	\$ 24,272	\$ 24,636	\$ 25,005	\$ 25,381	\$ 25,761	\$ 26,148	\$ 26,540
<b>Cumulative</b>	<b>\$ (1,332,022)</b>	<b>\$ (282,021)</b>	<b>\$ 40,302</b>	<b>\$ 60,907</b>	<b>\$ 81,821</b>	<b>\$ 103,049</b>	<b>\$ 124,595</b>	<b>\$ 146,465</b>	<b>\$ 168,662</b>	<b>\$ 191,193</b>	<b>\$ 214,062</b>	<b>\$ 237,273</b>	<b>\$ 260,833</b>	<b>\$ 284,746</b>	<b>\$ 309,018</b>	<b>\$ 333,654</b>	<b>\$ 358,659</b>	<b>\$ 384,040</b>	<b>\$ 409,801</b>	<b>\$ 435,948</b>	<b>\$ 462,488</b>

# Cumulative (Estimated) Cash Flow

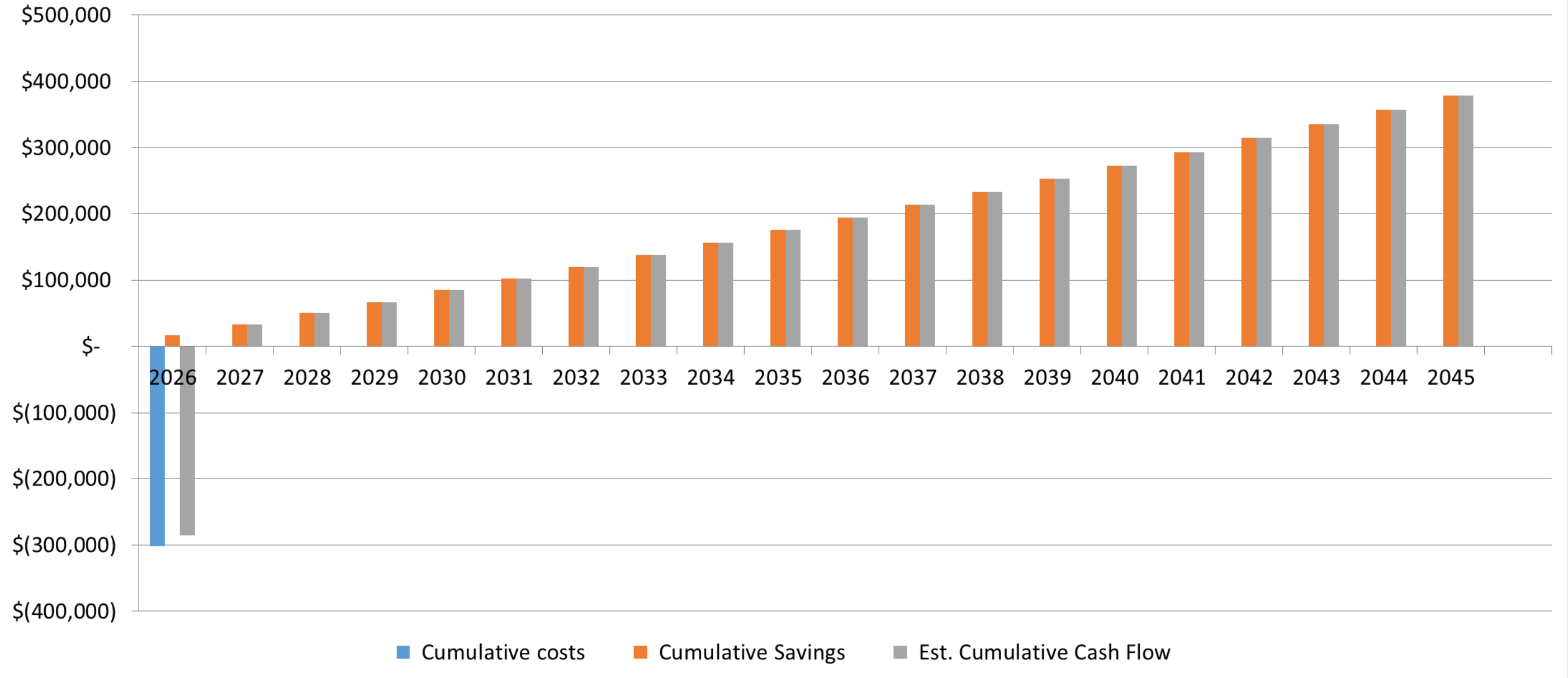


Figure 1 – Cumulative Cash Flow

# Annual (Estimated) Cash Flow

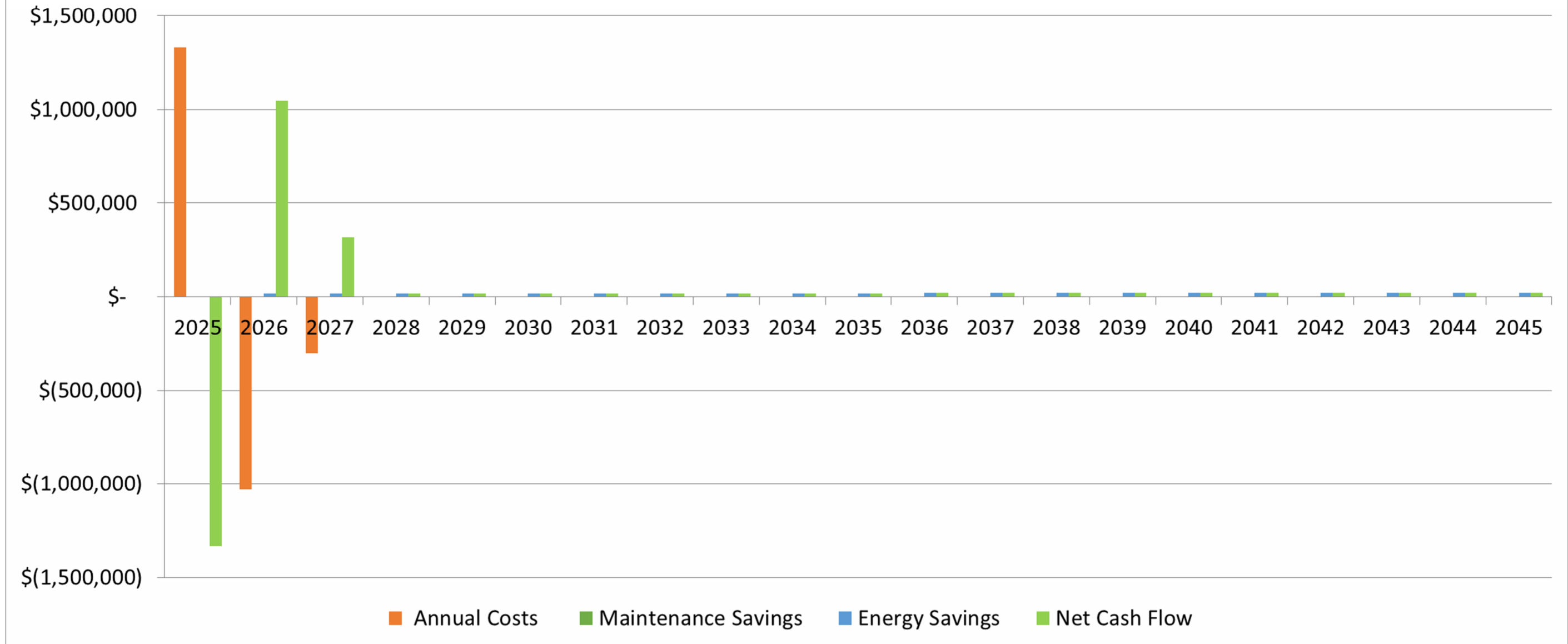


Figure 2 – Annual Cash Flow

**SCHEDULE 4 TO PDP**

**BASELINE ENERGY USE**

The provisions of the Schedules to the PDP, including this Schedule 4, shall govern in the event of any inconsistencies between the provisions of the other Contract Documents and the Schedules.

**Utility Rates**

“Table 1 – Utility Rates” summarizes the baseline utility rates for each building based on the baseline data received by ESCO from Owner. The rates are based on the current rates as of December 2024. These rates were used in establishing the Baseline Energy Use and Energy Savings Calculations. The Owner acknowledges and accepts the utility rates set forth in “Table 1 – Utility Rates” as reasonable.

Facility	Electric	
	\$/kWh	\$/kW
Talent Middle School	\$0.103/kWh	\$6.300/kW

**Table 1 - Utility Rates**

**Existing Utility Information**

The baseline annual energy usage including electrical usage (kWh), demand (kW), and gas usage (Therms) for each building is presented below. The period analyzed was from January 2022 through December 2023.

	Area (ft <sup>2</sup> )	Annual Electricity Usage (kWh)	Annual Electricity Demand (kW)	Annual Gas Usage (therms)	Energy Use Index (kBtu/ft <sup>2</sup> )	Energy Cost (\$/Yr.)	Energy Cost Index (\$/ft <sup>2</sup> )
Facility		Base	Base	Base	Base	Base	Base
Talent Middle School	97,006	724,950	2,518	44,410	71.3	\$132,196	\$1.36
<b>Total</b>	<b>97,006</b>	<b>724,950</b>	<b>2,518</b>	<b>44,410</b>	<b>71.3</b>	<b>\$132,196</b>	<b>\$1.36</b>

**Table 2 - Total Baseline Energy Use and Cost**

## SCHEDULE 5 TO PDP

### SAVINGS CALCULATION FORMULAE; METHODOLOGY TO ADJUST BASELINE

The provisions of the Schedules to the PDP, including this Schedule 5, shall govern in the event of any inconsistencies between the provisions of the other Contract Documents and the Schedules.

#### I. Methodology Used to Calculate Project Savings

Measurement and Verification (M&V) involves two components: (1) verifying the ability of the project to generate all the projected savings; and (2) measuring actual performance of the project against the established baseline(s). These baselines are developed from a rigorously derived data logging, end-use analysis, and historical energy consumption data.

There are a variety of ways to accomplish the two primary M&V tasks, but a critical prerequisite is the establishment of the aforementioned baseline(s). Techniques range from stipulating all factors affecting Energy Conservation Measure (ECM) performance to installing extensive, highly accurate metering systems. When deciding the appropriate level of sophistication for a particular plan, factors such as complexity of the measure, expected magnitude of savings from the measure, and the customer's aversion to risk all weigh upon the decision. In an effort to aid agencies in gaining an understanding of measurement and verification, an international guideline was established.

ESCO bases all of its site-specific measurement and verification plans on the International Performance Measurement and Verification Protocol (IPMVP). The general approach to determining energy savings in these plans involves comparing the energy use associated with a facility, or certain energy consuming systems within a facility, before installation of the ECM (baseline) and after installation of the ECM (post-installation). In general:

$$\text{Energy Savings} = (\text{Baseline Energy Use}) - (\text{Post Installation Energy Use}) \pm \text{Adjustment}$$

ECM #	Conservation Measure	Annual Production		Annual
		Consump.	Demand	Resource
		kWh	kW	\$
WWTP-G1	Installation of a 143.99 kW solar PV roof-mounted system, 125kW / 144kWh battery storage system, and new backup loads panel, providing emergency back-up power to selected loads.	214,870	0	\$22,223
	<b>Total:</b>	214,870	0	\$22,223

**Table 1- Summary of Annual Savings**



The energy savings calculations are included in the Helioscope model provided to the customer. These savings calculations have been reviewed and accepted by the Owner and the ESCO.

The following details the savings calculation methodology associated with each Energy Conservation Measure (ECM) included in Table 1 – Summary of Annual Savings.

## **Multiple Measures Calculation Formulas**

### ***General Conservation Measures***

The mechanical energy conservation measures were calculated on the system design of a solar PV array and estimated output of the system through modeling software.

## **II. Methodology to Adjust Baseline**

ESCO has developed the M&V plan and calculated the estimated energy savings based on the assumption that the buildings and systems will continue to operate under the same conditions as observed during the Technical Energy Audit. The savings calculations, baseline and/or M&V methodologies are subject to adjustment as set forth in Schedule 6, in the Contract and herein. In addition, in the event that changes are made to the buildings, systems, operations, or utilization of the buildings other than those made by ESCO during the performance of the Scope of Services, ESCO may, at its discretion, make reasonable adjustments to the savings calculations and/or the M&V methodologies to account for such changes. Any adjustments will be included in the M&V Report.

Baseline adjustments for routine and non-routine adjustments are discussed below:

### **Routine Adjustments**

Routine adjustments are changes to the baseline energy consumption due to factors which are both significant to the energy consumption and vary predictably. Factors resulting in routine adjustments include, but are not limited to, weather, building temperature setpoint, hours of operation, and number of occupants. Routine adjustments, if required according to the respective measurement and verification plan, will be performed annually and will affect the performance period in which the adjustment occurs only, and will not be continued into later performance periods. If routine adjustments result in a reduction of energy savings and are beyond the control of ESCO, the value of the savings guarantee will be reduced by the magnitude of the routine adjustment.

### **Non-Routine Adjustments**

Non-routine adjustments are changes to the baseline energy consumption due to factors that are significant to the energy consumption but do not vary predictably. Factors resulting in non-routine adjustments include, but are not limited to, additions or reductions to the area of a building, changes to the use of a building, installation, modification, or replacement of equipment, and changes to the building envelope. Non-routine adjustments, if required according to the respective measurement and verification plan, will be performed once and will be affective for the remainder of the performance period. If non-routine adjustments result in a reduction of energy savings and are beyond the control of ESCO, the value of the savings guarantee will be reduced by the magnitude of the routine adjustment.

### **Reporting of Routine and Non-Routine Adjustments**

Both ESCO and Owner share responsibility in identifying routine and non-routine adjustments. ESCO will monitor key parameters and perform site visits as required per the measurement and verification plan. If, during the course of these actions, ESCO identifies operations or changes to

the buildings or systems that would result in a baseline adjustment, ESCO will notify Owner accordingly as outlined in the measurement and verification plan. Owner is obligated to notify ESCO when material changes occur within the facilities and provide additional information, if required, to perform baseline adjustments, including, but not limited to, equipment submittals, building plans, and dates that such changes occurred. ESCO will calculate baseline adjustments, when required, and submit the results to Owner and its agents.

The energy savings guarantee is based on the proper performance of the conservation measures as indicated in "Schedule 2 – Calculation of Energy Cost Savings Guarantee". Should the performance of the conservation measures be adversely impacted by changes in weather, occupancy patterns, building modifications, or inadequate maintenance, the baseline may require an adjustment.

**SCHEDULE 6 TO PDP**

**MEASUREMENT AND VERIFICATION PLAN; GUARANTEED SAVINGS CONTRACT PROVISIONS**

The provisions of the Schedules to the PDP, including this Schedule 6, shall govern in the event of any inconsistencies between the provisions of the other Contract Documents and the Schedules.

**I. MEASUREMENT AND VERIFICATION PLAN**

**Schedule & Reporting of M&V Services**

**Table 6-1: Schedule of Reports**

Item	Schedule
First Year Annual M&V Report	60 days after the end of the first Guarantee Year
Subsequent Annual M&V Reports, if any	60 days after the end of each subsequent Guarantee Year

**Measurement & Verification Overview**

Ameresco shall perform the M&V Services as set forth in this Schedule 6 in order to determine and document the Annual Savings under this Agreement. As used herein, the term “Guarantee Year” refers to a “Savings Year.”

The approach to M&V is based on the International Performance Measurement and Verification Protocol (IPMVP) Volume 1 2012 (January 2012). IPMVP Volume 1 is a guidance document describing common practice in measuring, computing, and reporting savings achieved by energy or water efficiency projects at end user facilities. The IPMVP presents a framework and the four M&V methods. For purposes of this Agreement, the Parties have also included an additional M&V Method – “Agreed Upon” savings. “Agreed Upon” savings are not subject to measurement or verification and do not include M&V activities. This method is utilized on ECMs with savings that are too low to justify the costs associated with verification.

<b>Method A: Partially Measured with Stipulated Values</b>
Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the ECM’s affected system(s). Estimates of the non-key parameter are used for the savings calculations.
<b>Method B: Fully Measured</b>
Savings are determined by field measurement of the energy use of the ECM-affected system.
<b>Method C: Whole Facility Meter Analysis</b>
Savings are determined by measuring energy use at the whole facility or sub-facility level.

<b>Method D: Calibrated Simulation</b>
Savings are determined through simulation of the energy use of the whole facility or of a sub-facility. Simulation routines are demonstrated to adequately model actual energy performance measured in the facility. The model is closely calibrated with data collected for each ECM.
<b>Agreed Upon Savings: No M&amp;V, Operational Verification</b>
Used when savings are not enough to justify the cost of accurately calculating and/or measuring the savings.

Table 6-2 below sets forth the M&V methods to be used for the various ECMs and the details of the plan execution.

ECM	Conservation Measure	IPMVP Option	Work to be Performed	Key Performance Indicators	Stipulated Variables	Years to be Done	Work To Be Performed By	Owner Responsibilities
TMS-G1	Installation of a 143.99 kW solar PV roof-mounted system, 125kW / 144kWh battery storage system, and new backup loads panel, providing emergency back-up power to selected loads.	B	<ul style="list-style-type: none"> <li>Ameresco will monitor solar PV production through the installed metering equipment and compare to the calculated amount adjusted for weather variations.</li> </ul>	Annual kWh produced	Average expected insolation conditions, up time, and load	1	Ameresco	Maintain equipment per manufacturer recommendations

**Operating Parameters/Stipulated Variables and Owner Responsibilities**

In addition to any of its other obligations under this Agreement, the Owner agrees to operate and maintain all ECMs to the standards set forth in Table 6-2 of this Schedule 6 and in the O&M Manuals delivered to the Owner at Substantial Completion and/or Final Completion, as appropriate. Deviation from these standards may result in adjustments to the Baseline, the Annual Guaranteed Savings, or the determination of Annual Savings.

## **II. GUARANTEED SAVINGS CONTRACT PROVISIONS**

The “Annual Guaranteed Savings” are:

<b>Utility</b>	<b>Guaranteed Annual Energy Savings</b>
Electricity (kWh)	193,383

The Guarantee Term (also known as the Savings Term or Energy Savings Term) shall be the consecutive twelve (12) month period (“Guarantee Year”) beginning with the date of Notice of Commencement of Energy Savings of the ECMs, (the “M&V Commencement Date”), as set forth in the Notice of Commencement of Energy Savings letter provided by ESCO. ESCO guarantees that the Annual Savings (as such term is defined below) to be achieved as a result of installation and operation of the ECMs shall equal or exceed the Annual Guaranteed Savings for the Guarantee Term, determined as provided in Schedules 1, 2, 4, 5 and Section I of this Schedule 6.

ESCO guarantees that the Annual Guaranteed Savings will be achieved by operation and beneficial use of all ECMs taken in the aggregate, but does not guarantee the savings amount achieved by each ECM individually.

ESCO’s obligations in respect of this Savings Guarantee are subject to the Owner performing all of its maintenance, repair, service, and other obligations under this Agreement, including, without limitation, the Owner’s maintenance responsibilities set forth in Schedule 9 , maintenance of the Standards of Service and Comfort set forth in Schedule 10, and the Owner’s obligations with respect to the Premises as set forth in the Contract Documents, that may affect achievement of the Annual Guaranteed Savings. If the Owner fails to perform its obligations under the Contract Documents, including the PDP, and related Schedules and Exhibits, or interferes with or permits any third party to take any action which, in the reasonable opinion of ESCO, may prevent the achievement of the Annual Guaranteed Savings under this Agreement, ESCO may adjust the Annual Guaranteed Savings during the period in which such savings were affected to reflect the impact such actions had on same. ESCO’s rights set forth in this Schedule 6A shall not be in limitation of any other rights it is entitled to by law and under this Agreement.

### **OWNER REVIEW**

The Owner has reviewed and accepted the Annual Guaranteed Savings, calculations, assumptions, and methodologies contained in the M&V Plan set forth in Schedule 6, the Calculation Methodology set forth in Schedule 2, the Baseline set forth in Schedule 4, and the Stipulations and Operating Parameters set forth in Schedules 6 and 7, as well as the assumptions set forth in Schedule 1.

### **MEASUREMENT AND VERIFICATION PLAN**

The “Measurement and Verification Plan” consists of the measurement and verification plan and the savings calculation methodologies set forth in Schedules 1, 2, 4, 5, and 6. The total savings achieved



by the combined ECMs, determined as provided in the M&V Plan, including any “Agreed upon Savings,” as such term is defined in the M&V Plan, shall be deemed the total “Annual Savings.” Agreed Upon Savings amounts shall be deemed achieved upon Substantial Completion of installation of the related ECMs.

For each Guarantee Year for which measurement and verification services are to be performed, measurements shall be completed and Annual Savings determined as described in the M&V Plan, and ESCO will submit to the Owner a report documenting the guarantee reconciliation (the “Annual M&V Report”) within 60 days following the end of such Guarantee Year (collectively, the “M&V Services”). The Annual M&V Report will include a calculation of the Annual Savings achieved.

If, for the Guarantee Year during the Guarantee Period/Savings Term, the Annual Guaranteed Savings is not achieved, as evidenced by the fact that the Annual Savings as detailed in the Annual M&V Report is less than the Annual Guaranteed Savings for the Guarantee Year being reconciled, ESCO shall pay or provide in-kind services to the Owner the amount (“Savings Shortfall”) by which the Annual Guaranteed Savings Amount exceeds the Annual Savings, or, by mutual written agreement of the Parties, in lieu of making a payment of the Savings Shortfall, ESCO may rectify the Savings Shortfall through installation of additional ECM(s) or modifications. Such payment, installation, or modification shall be the sole and exclusive remedy of Owner in the event of a Savings Shortfall.

In addition, in the event of a Savings Shortfall, ESCO shall have the right but not the obligation, at Ameresco’s sole discretion and expense, to install additional ECM(s) or modifications to mitigate any future Savings Shortfall with the approval of Owner, such approval not to be unreasonably withheld, conditioned, or delayed. If, in any Guarantee Year, the Annual Savings exceed the Annual Guaranteed Savings Amount for such Guarantee Year, the excess savings will be used first to reimburse ESCO for any Savings Shortfall payments made in previous years, whether such payment was made in cash or through installation of additional ECMs.

### **M&V SERVICES**

The M&V Services will be performed, the Annual M&V Report delivered for the Guarantee Year which comprises the Guarantee Period, and the M&V Service Fees shall be due and payable for each year in which an Annual M&V Report is delivered, as provided in Section 9.5 of the Design and Construction Contract, and in Schedule 3 PDP.

In the event of early termination of this Agreement or of the M&V Services, unless termination is effective on the last day of the Guarantee Year, no Annual M&V Report will be produced for the Guarantee Year then in effect and the Annual Guaranteed Savings shall be deemed achieved for the Guarantee Year then in effect, i.e. for the balance of the Savings Term.

### **ADJUSTMENTS TO SAVINGS CALCULATIONS OR M&V PLAN**

ESCO has developed the M&V Plan and calculated the Annual Guaranteed Savings based on the assumption that the buildings and systems will continue to operate under the baseline conditions as

observed during performance of the Technical Energy Audit and development of the Project Development Plan. The savings calculations, baseline, and/or M&V methodologies are subject to adjustment as set forth in the Schedules to the PDP. In addition, in the event that changes are made to the buildings, systems, operations, or utilization of the buildings other than those made by ESCO during the performance of the Scope of Services, ESCO may, at its discretion, make reasonable adjustments to the savings calculations and/or the M&V methodologies to account for such changes. Any adjustments will be included in the M&V Report.

### **DISPUTE RESOLUTION PLAN**

Notwithstanding anything else to the contrary in the Agreement, any dispute, claim, or disagreement of any kind or nature between the Parties (a "Dispute") arising out of or in connection with this M&V Plan, Adjustment to the Baseline, or the Energy Savings Guarantee shall be subject to a meeting of senior management and, if necessary, mediation as a condition precedent to any and all remedies at law or in equity and shall be resolved in accordance with this Dispute Resolution Plan.

Any Dispute arising concerning the M&V Plan, Adjustment to the Baseline, or the Energy Savings Guarantee, if not amicably settled by the Parties within thirty (30) days following notice of dispute, shall be referred to senior management of the Parties for resolution. A representative from management of both Parties shall meet in person or by phone within ten (10) business days after either Party gives the other Party written notice of the Dispute (the "Dispute Notice"). The Dispute Notice shall set forth in reasonable detail the aggrieved party's position and its proposal for resolution of the Dispute. In the event the Dispute has not been resolved within forty-five (45) days following referral to senior management, or such longer period as the Parties may mutually agree, then a request for mediation shall be made in writing and delivered to the other Party. The request may be made concurrently with the filing of any and all remedies at law or in equity but, in such event, mediation shall proceed in advance of any proceedings filed in a judicial forum, which shall be stayed pending mediation for a period of 60 days from the date of filing unless stayed for a longer period of time by agreement of the parties or court order.

The Parties shall share the fees of the mediation 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.

If the parties do not resolve the Dispute through informal dispute resolution or mediation, either Party may then pursue available remedies at law in the state or federal courts of the State of Oregon.

## SCHEDULE 7 TO PDP

### SYSTEMS START-UP AND COMMISSIONING; OPERATING PARAMETERS OF INSTALLED EQUIPMENT

The provisions of the Schedules to the PDP, including this Schedule 7, shall govern in the event of any inconsistencies between the provisions of the other Contract Documents and the Schedules.

#### **I. Systems Start-Up and Commissioning**

Create Master List of Commissioned Equipment: Based on the final design, addendum and submittal information, a master list of equipment and systems is created. This list identifies each piece of equipment and system to be commissioned. It further identifies all modes of operation and any integrated system relationships. This list is integrated into the final commissioning plan and is used to track equipment and systems as they move through the commissioning process.

Create Final Commissioning Plan: The final commissioning plan outlines the entire commissioning process including roles and responsibilities, scheduling, installation verification forms and functional test forms. Depending on the overall project schedule, the installation verification and functional test forms may be “sample” versions only at this time.

Develop Installation Verification Documents: Based on the master equipment list, a pre-functional installation verification checklist is created for every piece of equipment and system scheduled to be commissioned. These checklists are used to help assure that equipment and systems are installed correctly and ready for functional testing.

Develop Functional Performance Documents: Based on the master equipment list, a functional performance test is created for every piece of equipment and system that is to be commissioned. These tests are designed to simulate as many potential modes of operation as is within the commissioning scope of work.

Conduct Installation Verification: Using the installation verification sheets, the facility is reviewed to verify that equipment and systems are properly installed and ready for functional testing. Issues are noted on a “Commissioning Issues” list. This list becomes a working and regularly revised document that records the eventual resolution of all issues.

Conduct Functional Performance Tests: Once the installation verification is complete, functional performance testing may commence. Ameresco completes the functional testing with the help of the Controls Contractor. Issues are noted on the Commissioning Issues list.

Conduct Acceptance Tests: Once the functional performance tests are completed, acceptance testing may commence. Ameresco completes the acceptance testing with the help of the Controls Contractor by focusing on system performance measured via trend-logging and with testing equipment.

Re-Testing and Issue Resolution: All issues reported as corrected by the responsible contractors are verified by Ameresco prior to being considered as fully resolved. In some cases this may involve a

repeat of the initial functional testing procedures. Issue resolution may also involve working with the members of the Design Team to develop and implement appropriate changes or retrofits to design.

Final Report: At the close of the project, a final report based on the commissioning plan is created. This report will contain all previously generated commissioning documentation and a project summary that identifies any unresolved issues and makes further recommendations.

Training: Once commissioning is complete the Commissioning Agent will participate in the formal training presented by the system installers and supplier. The Commissioning Agent's role in the training is to share specific input regarding the system function in the owner's facility.

Start Up: ESCO will ensure that all major equipment is started up by a factory authorized technician and that all start up documents are registered as required to start the warranty process. The start-up is witnessed by the Commissioning Agent and the owner's staff is also encouraged to participate in the start-up process.

The following is a sample of a Variable Frequency Drive Commissioning Report for a K-12 project. It is representative of the start-up and commissioning reports that are completed for all of the installed measures that are part of an Energy Savings Performance Contract.

The final Start-Up and Commissioning report will be developed during project implementation and will be delivered at the close-out of the ESPC project and will be part of the final Operations & Maintenance Manuals.

**System Testing Manual**

Variable Pump Speed Control

**I. VFD INSTALLATION VERIFICATION**

Provide and install two VFD's with bypass, one 7.5hp, one 10hp. VFD's to have Bacnet/lonworks communication to building controls for general point's supervision. Hardwire enable, speed and status points.

<b>Equipment:</b>	CP-2	<b>Mark:</b>	CP-2
<b>Location:</b>	Mech. Rm. Attic above Custodial Rm.	<b>Serves:</b>	Hydronic Loop

**II. INSTALLATION VERIFICATION**

Validation Description	Yes	No	N/A	Comments
<b>Unit/ Casing/ Maintenance Access</b>				
Permanent labels affixed		X		
Unit condition good: no dents, no leaks	X			
Maintenance access acceptable for unit and components	X			
Drive location not subject to excessive temperatures, moisture, or dirt	X			
Drive size matches motor size	X			
Provide and install new VFDs with factory-installed bypass contactors and switching.	X			
<b>Electrical</b>				
Power disconnects in place and labeled	X			
<b>Controls</b>				
Internal setting designating the model is correct	X			
Input of motor FLA represents 100% to 105% of motor FLA rating	X			
Appropriate Volts vs Hz curve is being used	X			
Accel. And decel. Times are around 10-60 seconds, except for special applications. Record actual for each unit.	X			Set for 120 seconds
VFD interlocked to control system	X			
VFD minimum speed setting set >15.0Hz	X			
Controlling DP sensors calibrated and properly located and per drawings	X			

**System Testing Manual**

Variable Pump Speed Control

**I. VFD INSTALLATION VERIFICATION**

Provide and install two VFD's with bypass, one 7.5hp, one 10hp. VFD's to have Bacnet/lonworks communication to building controls for general point's supervision. Hardwire enable, speed and status points.

<b>Equipment:</b>	CP-3	<b>Mark:</b>	CP-3
<b>Location:</b>	Mech. Rm. Attic above Custodial Rm.	<b>Serves:</b>	Hydronic Loop

**II. INSTALLATION VERIFICATION**

Validation Description	Yes	No	N/A	Comments
<b>Unit/ Casing/ Maintenance Access</b>				
Permanent labels affixed		X		
Unit condition good: no dents, no leaks	X			
Maintenance access acceptable for unit and components	X			
Drive location not subject to excessive temperatures, moisture, or dirt	X			
Drive size matches motor size	X			
Provide and install new <i>ABB VFDs</i> with factory-installed bypass contactors and switching.	X			
<b>Electrical</b>				
Power disconnects in place and labeled	X			
<b>Controls</b>				
Internal setting designating the model is correct	X			
Input of motor FLA represents 100% to 105% of motor FLA rating	X			
Appropriate Volts vs Hz curve is being used	X			
Accel. and decel. times are around 10-60 seconds, except for special applications. Record actual for each unit.	X			Set for 120 seconds
VFD interlocked to control system	X			
VFD minimum speed setting set >15.0Hz	X			
Controlling DP sensors calibrated and properly located and per drawings	X			

**III. OPERATION VERIFICATION**

Provide and install two loop differential pressure sensors located toward end of loop in East and West Attic. From drawings this would be near HP-6 and HP-53, respectively. Location for sensors to be chosen by Controls Contractor.

Verify the following sensors have been calibrated. Physically measure each device with an independent meter and compare to readings on DDC. Differential pressure transducer shall have an accuracy of +/- 2%

Sensor Calibration	DDC	Field	Offset	Comments
Loop DP Sensor #1 (HP-6)	16.0	Pass	-----	
Loop DP Sensor #2 (HP-53)	18.0	Pass	-----	

Analog Output Verification	DDC	Field	Comments
P-1 VFD Speed Command	Pass	Pass	
P-2 VFD Speed Command	Pass	Pass	

Digital Output Verification	DDC	Field	Comments
P-1 Enable / Disable	Pass	Pass	
P-2 Enable / Disable	Pass	Pass	

Digital Input Verification	DDC	Field	Comments
P-1 Status	Pass	Pass	
P-2 Status	Pass	Pass	

Set Points	Design	Actual	Comments
Loop Static Pressure Set point	na	15.0	

**IV. SEQUENCE OF OPERATION**

**Variable Pump Speed Control**

- A. The VFD shall vary loop pump speed to maintain 5 psi differential pressure (adjustable) when any heat pump compressor is running.
- B. Pumps to modulate and stage to maintain the lower of the two differential pressure sensors to the loop differential set point (adj.). Pumps to be engaged with a call for compressor from any one heat pump, do not schedule the pumps. If pump is commanded on and status from vfd does not indicate it's enabled, than generate alarm and enable back-up pump.
- C. If no heat pumps are calling for compressor then shut down loop pump.
- D. Two pumps are to be sequenced in a lead / lag configuration, with the lead pump rotating every two weeks (adj.).

Show all applicable status points and all alarm points on graphics.





## **II. Operating Parameters for ECMs / Standards of Comfort and Service**

In addition to any of its other obligations under this Contract, the Owner agrees to operate and maintain all ECMs to the standards set forth in this Schedule 7, in Schedule 9 and in the O&M Manuals delivered to the Owner at beneficial use, Substantial Completion and/or Final Acceptance, as appropriate. Deviation from these standards may result in adjustments to the Baseline, the Annual Guaranteed Savings, and/or the determination of Annual Savings.

## **SCHEDULE 8 TO PDP**

### **ESCO'S TRAINING RESPONSIBILITIES**

The provisions of the Schedules to the PDP, including this Schedule 8, shall govern in the event of any inconsistencies between the provisions of the other Contract Documents and the Schedules.

- ESCO will implement a comprehensive training program that involves classroom and hands-on/field training. Training sessions will include a review of the overall installation and performance characteristics of installed Energy Efficiency Measures. Documentation will include review of O&M manuals, drawings, and equipment specification literature. Facilities personnel, and select building occupants, will receive comprehensive manuals for reference. The primary goal of Ameresco's training program will be to educate designated operations, maintenance, and building staff in the key areas that relate to the ECMs installed throughout the project. ESCO has identified three (3) levels of training which may be required depending on the specific ECMs which are installed. Refer to the Training Matrix on the next page for applications of Training Levels.
  - Level 1: For systems and equipment which are essentially direct replacements of existing equipment, such that no additional skills will be required to perform operations and maintenance functions, the training will be limited to a general overview of the equipment installed, a review of the manufacturer's O&M manuals, and an explanation of equipment warranties. This level of training will provide operations and maintenance staff the familiarity with the equipment that is installed, manufacturer's recommended maintenance procedures, and all warranty information. This training will be conducted one time and will include up to 8 hours of classroom instruction for all ECMs designated for Level 1 training.
  - Level 2: For systems and equipment which are new to the site, and require some general understanding as to their function and operation, training will include a minimum amount of classroom instruction that will provide an overview of the specific technology selected, specific equipment installed, review of the manufacturer's O&M manuals, and an explanation of equipment warranties. Following the classroom training session, a site tour will be scheduled to view the specific installation and operation of the equipment. This level of training will provide operations and maintenance staff with additional equipment details (including equipment cut sheets), familiarity with the equipment that is installed, manufacturer's recommended maintenance procedures, and all warranty information. This training will be conducted one time and will include up to 12 hours of combined classroom and field instruction for all ECMs designated for Level 2 training.
  - Level 3: For systems and equipment which are new to the site, and are more complex in nature - training will be directed to facilities engineering and the operations and maintenance staff. Level 3 training will require more extensive classroom training to discuss design intent, specific system design, energy efficiency considerations, seasonal

modes of operations, comfort conditions, operation of individual components, emergency conditions, sequences of operations, alarms, diagnostics, and any additional ECM specific information as required. This training will be conducted up to two (2) sessions and will include up to 12 hours per session of combined classroom and field instruction for all ECMs designated for Level 3 training.

- Level 3 classroom training will also include a review of the manufacturer’s operation and maintenance manuals, and an explanation of equipment warranties. Following the classroom training session, a site tour will be scheduled to view the specific installation, operation of the equipment, and hands on maintenance instructions by qualified personnel and manufacturers’ representatives. This level of training will provide staff with a comprehensive understanding of all equipment details as well as hands on familiarity with the equipment that is installed and a detailed review of manufacture’s recommended maintenance procedures and warranty information.
- Note: “Classroom” refers to a setting where information is presented to Agency personnel and may occur on-site in a meeting room, office, boiler room, etc.).

The Agency shall provide suitable space and make personnel available, as reasonably required for ESCO to conduct training under this Schedule 8.

Training Matrix					
ECM #	Conservation Measure	Level 1	Level 2	Level 3	Not Applicable
TMS-G1	Installation of an 143.99 kW solar PV roof-mounted system, 125kW / 144kWh battery storage system, and new backup load management equipment providing emergency back-up power to selected loads.			X	

## SCHEDULE 9 TO PDP

### OWNER'S MAINTENANCE RESPONSIBILITIES

The provisions of the Schedules to the PDP, including this Schedule 9, shall govern in the event of any inconsistencies between the provisions of the other Contract Documents and the Schedules.

Owner, at its own expense, will keep and maintain, or cause to be kept and maintained, the ECMs and all equipment in as good operating condition as when delivered to the Owner hereunder, ordinary wear and tear resulting from proper use thereof alone excepted, and will provide maintenance and service and make all repairs necessary for such purpose. Responsibility for the proper maintenance, service, repair and adjustments to each ECM, ECM system and related ancillary systems and equipment, including related expenses, shall transfer to the Owner on an ECM by ECM basis on the date of **“Substantial Completion”** of each ECM as such date is determined in accordance with Section 2 and Section 18.2 of the **“Phase II – Design and Construction Contract”**. The Owner will be responsible for such maintenance, service, repair and adjustments for the remainder of the Term. Operation and Maintenance Manuals (O&M Manuals) will be provided to the Owner, by the ESCO. Included with the O&M manuals will be a list of maintenance responsibilities and tasks for the Owner, as well as the final **“Schedule 10 – Facility Maintenance Checklist”**.

***Start-up and Shutdown:*** The Owner's responsibilities include all system start-ups and shut-downs. System start-up (beginning of season) and shut-down (end of season) refers to specific manufacturer recommendations with respect to “proper” system start-up, operation, maintenance, and shut-down as defined in the manufacturer's installation / operation / maintenance (O&M) manuals which will be provided to the Owner upon Beneficial Use, Substantial Completion and / or Final Completion, as appropriate.

***Operations:*** The Owner shall operate the equipment installed hereunder in accordance with parameters noted in the manufacturers' recommendations, and any supplemental procedures supplied to the Owner by ESCO, including those set forth in the O&M manuals. The Owner shall also operate the equipment and systems (including ancillary related systems) in accordance with Table 6.2 in **“Schedule 6, M&V Plan; Guaranteed Savings Contract Provisions”** and **“Schedule 7, System Start-Up and Commissioning, Operating Parameters of Installed Equipment”**.

***Maintenance:*** The Owner's maintenance responsibilities include the proper operation and prompt repair and maintenance of each ECM, ECM system and related ancillary systems and equipment such that they are maintained in good working order during the Term. The Owner shall repair and maintain (i) the equipment and all other components which comprise the ECM and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of the ECM, including performance of the maintenance tasks, manufacturer's recommendations and supplemental procedures included in the O&M Manuals. Maintenance also refers to performing required maintenance of ancillary systems.

## SCHEDULE 10 to PDP

### FACILITY MAINTENANCE CHECKLIST

The provisions of the Schedules to the PDP, including this Schedule 10, shall govern in the event of any inconsistencies between the provisions of the other Contract Documents and the Schedules.

The following is a draft Facility Maintenance Checklist for the ECMs that require maintenance. A final Facility Maintenance Checklist will be delivered at the close-out of the ESPC project and will be part of the final Operations & Maintenance Manuals.

#### **Solar PV Array**

Tasks	Frequency
Ensure panels are relatively clean and free from debris. Rainfall should be adequate to maintain the required cleanliness level most of the time, but during dusty or heavy forest fire conditions, they may need to be washed off.	As-Needed
Visual inspection of inverters and electrical infrastructure to confirm operation.	Monthly
Review of web-based production information and utility bills to confirm net metering operation and production.	Monthly
Monitor the solar data system for alarms and faults and respond as appropriate.	As-Needed

#### **Battery Energy Storage System**

Tasks	Frequency
Environmental Inspection: Check monthly average ambient temperatures and humidity inside BESS container. Average temperature should be between 25C +/- 5C. Average relative humidity should be less than 80%.	Monthly
Battery Visual Inspection: Check if the form or the color of the communication & power cable has changed. Check if the contact areas and battery exterior have rusted. Check if the battery room environment is well-managed (dust). Check if you smell chemicals.	Monthly
DC Protection Inspection: SPD normal status check. (check LED at the front of the SPD, Normal: grey, Replacement required: red)	Monthly
Visually inspect container for noticeable intrusion of dust, rodents & pests, and water. Remove dust from all surfaces.	Every 6 Months
Ensure door latches are not loose.	Every 6 Months
Check fire suppression gauge to ensure system is nominal. Perform fire suppression visual inspection per SevoSystems operation manual. Inspect fire suppression pressure gauges to make sure they are still being maintained in the green zone of the gauge. Contact ELM FieldSight if the pressure is no longer in the green zone.	Every 6 Months

Inspect and re-torque any loose connections inside of container.	Every 6 Months
Clean HVAC air filter and reinstall. Inspect all heat exchanger coolant lines, fittings, and seals. Retighten or replace any lines that are visibly damaged.	Every 6 Months
Annual inspection and cleaning. Perform all monthly and 6 month inspections.	Every 12 Months
Battery Function: Perform a discharge capacity measurement and State of Health update. Perform a DC contactor operation inspection. Verify 48 V and 24 V auxiliary voltage is within +/-5%V. Perform an insulation resistance check. Perform a FAN operation check.	Every 12 Months
Perform replacement of UPS battery.	Every 5 Years

**ENERGY SAVINGS PERFORMANCE CONTRACT  
EXHIBIT B  
RESERVED**

**ENERGY SAVINGS PERFORMANCE CONTRACT  
EXHIBIT C  
RESERVED**