

# US Energy Services, Inc.

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8245 E. Bell Suite 132  
Scottsdale, AZ 85260

PROPOSAL #USES-6521-2  
DATE October 13, 2016

**CUSTOMER:**

Amphitheater Public School  
701 W. Wetmore Rd  
Tucson, AZ 85705

James Burns – Executive Manager, Operational Support

**SERVICES PROVIDED AT:**

Marion Donaldson Elementary (see attached scope)

**SERVICES TO BE PERFORMED:**

Implementation of the TEP K-12 Pilot Program  
See Attachment "B" Scope of Work for a complete listing of the work to be performed.

This Agreement and the Attachments listed below shall constitute the contract (the "Agreement") between the parties only upon signature in the spaces provided below for the Amphitheater School District (the "District") and US Energy Services, Inc. ("USES"). Only an individual duly authorized by USES may change, waive, alter or modify this Agreement. Any change, waiver, alteration, or modification must be in writing and agreed to by the District.

ATTACHMENT A Terms and Conditions  
ATTACHMENT B Lighting Scope – Room by Room

**Planned Completion Schedule & Contract Payment**

The expected duration for installation is 15 days. The initial project schedule will be available for review by District staff at the Initial Project Meeting. This meeting shall be scheduled within 15 day of receipt of the executed contract by USES.

Principal project amount:	\$ 3,745.11
Portion Paid by TEP K-12 Program	\$ 3,745.11
<b>Net Portion Due from the District</b>	<b>\$ 0.00</b>

**Contractor:**

US ENERGY SERVICES, INC.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Customer:**

AMPHITHEATER SCHOOL DISTRICT

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT A TERMS & CONDITIONS

**SUPERVISION AND INSTALLATION PROCEDURES** USES shall be responsible for providing supervision and direction of the Work. USES shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and will coordinate all portions of the Work under the Agreement, unless contract documents give other specific instructions concerning these matters.

USES shall be responsible for the observation of portions of Work already performed under this Agreement to determine that such portions are in proper condition to receive subsequent Work. Notwithstanding anything to the contrary stated above, USES shall not be responsible for any concealed or unknown conditions which could not have been discovered upon reasonable investigation or observation.

**LABOR AND MATERIALS** Unless otherwise provided in the contract documents, USES shall provide and pay for labor, materials, equipment, tools, construction equipment, machinery, heater, heat utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**WARRANTY** USES warrants to the District that materials and equipment furnished under the Agreement will be of good quality and new unless otherwise required or permitted by the contract documents, that the Work will be free from defects not inherent in the quality required or permitted for a period of one year from the date of District's acceptance of the Work. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. This warranty excludes remedy for damage or defect caused by abuse, modifications not executed by USES, improper or insufficient maintenance, or improper operation. District's sole and exclusive remedy under this provision is USES' prompt repair or replacement of the defective Work.

**PROJECT MANAGEMENT** USES shall employ a competent Project Manager and necessary assistants who shall be in attendance at the Project site during performance of the Work. Important communications shall be confirmed in writing.

**CONSTRUCTION SCHEDULES** USES, promptly after being awarded the Agreement, shall prepare and submit, for the District's Information, a construction schedule for the Work. The schedule shall not exceed time limits current under the contract documents, shall be revised at appropriate intervals as required by the conditions of the Work and project, shall be related to the entire Project to the extent required by the contract documents, and shall provide for expeditious and practicable execution of the Work.

**USE OF SITE** USES shall confine operations at the site to areas permitted by law, ordinances, permits and the contract documents and shall not unreasonably encumber the site with materials or equipment. USES shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by its operations under the Agreement. At completion of the Work, USES shall remove from and about the Project waste materials, rubbish, tools, construction equipment, machinery and surplus materials to a dumpster on site provided by District.

**SAFETY PRECAUTIONS AND PROGRAMS** USES shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with its performance of the Work under this Agreement.

**SAFETY OF PERSONS AND PROPERTY** USES shall take reasonable precautions for safety of, and shall provide protection to prevent damage, injury or loss to:

1. USES employees on the Worksite;
2. The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of USES or USES' subcontractors or sub-subcontractors;
3. Other property at the site or adjacent thereto, such as trees, shrubs, lawns walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**INSURANCE AND BONDS: CONTRACTOR'S LIABILITY INSURANCE** USES shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect USES from claims set forth below which may arise out of or result from operations under the contract and for which USES may be legally liable, whether such operations be by USES or by its subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts USES may be liable.

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The insurance required shall be written for not less than limits of liability specified in the contract documents. An insurance certificate naming the City as additional insured shall be provided prior to the commencement of any work. Any insurance carrier will notify the City any change in coverage no less than 30 days prior to the effective date of such a change in insurance coverage. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. USES agrees to indemnify and defend the City with respect to all claims for injury or damage to property that are not specifically caused by the negligence of the City.

USES shall maintain limits no less than:

- **General Liability:** \$1,000,000 per occurrence for bodily injury and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage.
- **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

**PERFORMANCE BOND AND PAYMENT BOND** District shall have the right at their additional expense to require USES to furnish bonds covering faithful performance of the Agreement and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the contract documents on the date of execution of the Agreement.

**GENERAL PROVISIONS** The District or USES may not assign its rights or delegate its obligations under this Agreement, in whole or in part, without the prior consent of the other. USES may assign its right to receive payment to a third party.

**LIMITATION OF LIABILITY** USES will not be liable for damages caused by delay in installation or interrupted service due to fire, flood, strike, lockout, dispute with workmen, inability to obtain material or services, war, acts of God such as lightning, delays caused by District or any other cause beyond USES' reasonable control.

USES' responsibility for damage or injury to persons or property that may be caused by or arise through furnishing, installing, maintaining, servicing, monitoring or performing any obligation under the Agreement will be limited only to the extent caused by USES' negligence. In no event will USES be liable for indirect, special, incidental, liquidated or consequential damages.

**UTILITY REBATES, TAX CREDITS AND INCENTIVES** District shall assign any and all utility rebates, state and local incentives or credits, federal tax credits or design deductions (such as 179d) to USES. USES shall prepare all forms and applications for the District's representative's signature.

**PAYMENT TERMS** District shall pay all invoices Net 15 from date of invoice. If District fails to pay USES any amount that becomes due, USES may, upon written notice to District, stop work unless said event is cured within seven (7) days from District's receipt of USES' notice. All payments due and unpaid shall bear interest at the rate 1.5% per month compounded daily or at the legal rate prevailing where the Work is located, whichever is greater.

**DISPUTE RESOLUTION** The disputing party shall give the other party written notice of the dispute. Both parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between senior executives of the parties who have authority to settle the controversy.

Any dispute arising under this Agreement that a) is not settled by negotiation of the parties hereto or b) has not been resolved within sixty days of the disputing party's notice shall be settled in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association before an arbitrator selected in accordance with such rules or any other mutually agreeable method of dispute resolution. If the parties cannot mutually agree on a method of dispute resolution, each party is free to pursue its remedies by law or equity.

**COMPLETE AGREEMENT** This Agreement constitutes the complete and entire Agreement between the parties and supersedes any previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. The waiver by either party of any default by, or requirement imposed on, the other party shall not be deemed a waiver by the first party of any other default or requirement.

**GOVERNING LAW** The laws of the State in which the Work is located shall govern this Agreement.

## ATTACHMENT B SCOPE OF WORK

### GENERAL CONDITIONS

USES shall provide the District with the design of a complete turnkey energy retrofit project, as identified in the following summary scope of work. A more detailed "room-by-room" design is attached. USES is responsible for the design, TEP approvals, warranty and insurance specifically associated with the work to be performed.

Item #	Location	Qty.	Existing Description	Replacement Description	Ctrl. Qty.	Op. Hrs/Wk	% Lumen Change	Estimated Annual Savings (\$)	Total Cost
1	see rm x rm	1	150 Watt High Pressure Sodium	New LED wall pack forward throw, 50,000 hour L70 r	0	84	-82	\$88.06	\$259.50
2	see rm x rm	4	400 Watt High Pressure Sodium	New LED area light pole mount, 100,000+ hour L70 r	0	84	-75	\$744.31	\$2,949.76
9	see rm x rm	2	70 Watt High Pressure Sodium	(1) LED 25w retrofit kit, 50,000 hour life at L70	0	84	-65	\$73.38	\$430.22
10	see rm x rm	3	60 Watt Incandescent Lamp	(1) LED 9w A19 screw in lamp	0	55	-8	\$52.51	\$105.63