

REQUEST FOR PROPOSALS  
GUARANTEED ENERGY SAVINGS CONTRACT - RFP #2020-32  
**Huntley Community School District 158**  
650 Dr. John Burkey Drive, Algonquin, IL 60102

## Introduction

Huntley Community School District 158 with Administrative Offices at 650 Dr. John Burkey Drive, Algonquin, IL 60102 (referred to throughout this document as the “District”) is requesting Qualified Providers to propose Innovative Solutions and Energy Conservation Measures through a Guaranteed Energy Savings Contract. In conjunction with this contract, the District is interested in solutions for the following Baseline Opportunities:

1. Replacement of all existing interior fluorescent lighting systems with an LED lighting solution technology including replacement of fluorescent lamps with LED lamps and ballast with drive or full fixture replacement (; whichever provides the best ROI) throughout the following facilities:
  - a. Heinemann Middle School, 725 Dr. John Burkey Drive, Algonquin, IL 60102
  - b. Martin Elementary School, 10920 Reed Rd., Lake In The Hills, IL 60102
  - c. Leggee Elementary School, 13723 Harmony Rd., Huntley, IL 60142The contractor shall provide photometric layouts all spaces demonstrating best lamp performance selection to verify compliance with the 2015 IBC building code and IES standards for light levels are maintained in these facilities.
2. Installation of temperature sensors, carbon monoxide sensors, and smoke detectors to be wired in parallel to a contactor which will activate the kitchen range hood in all eight Huntley Community School District 158 schools including:
  - a. Heinemann Middle School, 725 Dr. John Burkey Drive, Algonquin, IL 60102
  - b. Conley Elementary School, 750 Dr. John Burkey Drive, Algonquin, IL 60102
  - c. Mackeben Elementary School, 800 Dr. John Burkey Drive, Algonquin, IL 60102
  - d. Marlowe Middle School, 9625 Haligus Rd., Lake In The Hills, IL 60102
  - e. Martin Elementary School, 10920 Reed Rd., Lake In The Hills, IL 60102
  - f. Chesak Elementary School, 10910 Reed Rd., Lake In The Hills, IL 60102
  - g. Huntley High School, 13719 Harmony Rd., Huntley, IL 60142
  - h. Leggee Elementary School, 13723 Harmony Rd., Huntley, IL 60142

These proposals must include the implementation of project monitoring and data collection to verify post-installation energy consumption and energy related operating costs pursuant to 105 ISC 5/19b as recently amended by Public Act 096-1197.

These proposals may include: (a) the implementation of a facility audit, data collection, and other related analysis preliminary to the undertaking of Energy Conservation Measures; (b) the evaluation and recommendation of optional additional Energy Conservation Measures;

This RFP is issued on the following date pursuant to Section 1.4 of Article 19b which provides for a negotiated procurement.

**Date issued:** April 22, 2020

The District will host a **mandatory pre-proposal meeting on May 1, 2020**. The meeting will commence at **9:00 a.m.** at the District Office, 650 Dr. John Burkey Drive, Algonquin, IL. After a brief review of the RFP and Q&A session attendees will have the option of touring of all District 158 facilities or set up future site tours with the district staff.

### Questions

All questions about the RFP are required to be sent via e-mail to [drenkosik@district158.org](mailto:drenkosik@district158.org) and [jwilhelm@district158.org](mailto:jwilhelm@district158.org).

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## **Disclosure**

The School District discloses that it has not recently engaged in **the assistance of an ESCOE** has helped prepare the specifications of this RFP.

## **Confidentiality**

Respondent should be aware that the School District is subject to the Illinois Freedom of Information Act and cannot guarantee that any document provided by a respondent will be considered exempt from public disclosure under such Act.

If a proposal includes any proprietary data or information that the respondent does not want disclosed to the public, such data or information must be specifically identified as such on every page which it is found. Data or information so identified will be used by the District solely for the purpose of evaluating proposals and conducting contract negotiations.

## **Indemnification**

By submitting a proposal, each Qualified Provider agrees to release, indemnify and hold harmless the School District, its Board members, employees, agents, officers and officials, from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages and expenses of every kind, nature and character, including costs and attorney fees, arising out of, or relating to, any and all claims, liens, damages to property or person (including death), obligations, actions, suits, judgments, settlements, or causes of action of every kind, nature and character, in connection with or arising out of the negligent acts or omissions of the Qualified Provider or its employees or its subcontractors related to the performance of the work.

## **Minimum Requirements for Qualified Providers**

- A. Provide comprehensive energy services and innovative solutions for the District, which may include the installation of energy savings equipment. Since the District facilities are relatively new, building envelope modifications are of limited interest to the District and shall not be in the base proposal, but may be proposed as optional additions to the base proposal. The Base Proposal shall attempt to address as many of the District's concerns outlined in the introduction as possible. The specific nature of this equipment and material will be left up to the Qualified Provider and may be based upon the Qualified Providers understanding of the District's needs.
- B. Provide a more comfortable indoor environment for building occupants. This may include repair or modernization of existing environmental systems. The specific nature of repair or modernization will be left up to the Qualified Provider and may be based upon the Qualified Providers understanding of the District's needs.
- C. Provide a financial package that will be customized to meet the financial requirements of the District.
- D. Ability to demonstrate successful implementation of no less than 5 (five) performance contract within the last 5 years including no less than 5 (five) in Public Educational Institutions in Illinois.
- E. Provide evidence that it is a "Qualified Provider" as that term is defined in Section 19b-1.3 of the School Code (105 ILCS 5/19b-1.3).
- F. Provide assistance with processing of Applications for Grants, Incentives, and Rebates from all available sources as a part of the proposed Guaranteed Energy Savings Projects. The estimated savings calculations provided shall clearly define each individual anticipated alternative funding mechanism which is a part of their proposal. The proposal provider shall coordinate deliver of Energy Efficiency Portfolio Solutions Grants on behalf of the School District and the Ill. State Board of Education ISBE School Energy Efficiency Grant thru the District's Architect of Record; Wold Architects and Engineers. The ISBE grant applications,

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Qualified Providers are encouraged to make available the proposed Energy Conservation Measures information on the DCEO grant application format which can be found on the following web link:  
<http://www.ildceo.net/NR/rdonlyres/EDDBE739-F1ED-46C4-ADBD-DFC3126332DE/0/Year3DCEOPublicSectorLocalGovtPublicSchoolsandCommunityCollegesApplicationForms.xls>

For more information on the DCEO Public Sector Electricity Energy Efficiency Program Incentive program see ;  
<http://www.ildceo.net/NR/rdonlyres/7F9153A6-9A82-494D-834F-ECE935515D5A/0/PSEEPY3LocalGovtPublicSchoolsandCommunityColleges.pdf>

For more information on the ISBE Energy Efficiency Grant program opportunities can be found on the following weblink: [http://www.isbe.state.il.us/sbss/ee\\_grants.htm](http://www.isbe.state.il.us/sbss/ee_grants.htm)

- G. Certifies by submission of a proposal, that it does not engage in discriminatory practices regarding employment or delivery of or access to services and programming and that it fully complies with the requirements of federal and State civil rights laws, including but not limited to: the Illinois Civil Rights Act of 2003, P.A. 93-0425; Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.; the Americans with Disabilities Act, 42 U.S.C.12101 et seq., and the Rehabilitation Act of 1973, as amended, 29 USC 701 et seq., as well as the rules and regulations promulgated there under. Qualified Provider acknowledges that the School Board may declare any contract awarded pursuant to this proposal void if this certification pursues false.
- H. Attesting to the fact that they are in compliance with the Illinois Human Rights Act as amended effective July 1, 1993 (formerly the Fair Employment Practice Commission).
- I. Hereby represents, warrants and certifies, by submission of a proposal, that no officer or director of Qualified Provider has any knowledge that any employee thereof has been convicted of committing or attempting to commit any one or more of the following offenses set forth in the Criminal Code of 1961. 720 ILCS 5/1-1 et. seq., Sections 11-6 (Indecent solicitation of a child), 11-9 (public indecency), 11-14 (prostitution), 11-15 (soliciting for prostitute), 11-15.1 (soliciting for a juvenile prostitute), 11-6 (pandering), 11-17 (keeping a place of prostitution), 11-18 (patronizing a prostitute), 11-19 (pimping), 11-19.1 (juvenile pimping), 11-10.2 (exploitation of a child), 11-20 (obscenity), 11-20.1 (child pornography), 11-21 (harmful material), 12-15 (criminal sexual assault), 12-14 (aggravated criminal sexual assault), and/or those offenses defined in the “Cannabis Control Act”, 410 ICS 550/1, et. seq. (except paras. 704 and 705 of that Act), and/or those offenses defined in the “Illinois Controlled Substances Act”, 720 ILCS 570/100 et. seq., and/or any offense committed or attempted in any other state or against the laws of the United States, which if committed or attempted in this State, would have been punishable as one or more of the foregoing offenses.
- J. Certifies, by submission of a proposal, that pursuant to Section 5/10-20.21(b) of the School Code that neither it, nor any of its partners, or officers or owners:
- A. Have been convicted in the past five (5) years of the offense of proposal-rigging under Section 33E of the Illinois Criminal Code of 1961, 720 ILCS 5/33E -1 et seq., as amended;
  - B. Have ever been convicted of the offense of proposal-rotating under Section 33E-4 of the Illinois Criminal Code of 1961, as amended;
  - C. Have ever been convicted of bribing or attempting to bribe an officer or an employee of the State of Illinois; or
  - D. Have made an admission of guilt of any of the above conduct which is a matter of record.

Qualified Providers acknowledges that the School Board may declare any contract awarded pursuant to this proposal void if this certification is false.

## **Preferred Qualifications for Qualified Providers**

- A. Pre-qualified by the Department of Energy (DOE) and Department of Defense (DOD) as an energy services provider and provide documentation to this fact.
- B. Have at least one employee that is a LEED® AP (LEED® Accredited Professional) and provide documentation to this fact.

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To aid Qualified Providers in their response to this RFP, the following items are attached:

- PART I: PROPOSED PROJECT SCHEDULE**
- PART II: EVALUATION CRITERIA**
- PART III: CONTRACT TERMS AND CONDITIONS**
- PART IV: INSTRUCTIONS TO PROPOSERS**
- PART IV-A QUALIFIED PROVIDER PROFILE FORM AND QUALIFICATIONS**
- PART IV-B QUALIFIED PROVIDER APPROACH TO PROJECT**
- PART V: INDEX OF ATTACHED REFERENCED DOCUMENTS**
- PART VI: INDEX OF AVAILABLE ELECTRONIC DOCUMENTS WITH BASE LINE DATA**

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**Part I: Proposed Project Calendar**

Issuance of RFP	April 22, 2020	
Mandatory Pre-Proposal Meeting	May 1, 2020	9:00 am CST
Proposals Due	May 22, 202	1:00 pm CST
Selection of Finalist	June 4, 2020	
Contractual Agreement Finalized	June 18, 2020	

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## **PART II: Evaluation Criteria**

The District reserves the right to reject any and all proposals and/or waive any informality, irregularity or defect in any or all proposals and to accept that proposal which in its opinion is in the best interest of the District. Any such decision will be final.

No proposal shall be withdrawn without the consent of the District after the date and time established for their receipt. All proposals shall be valid for a minimum of 60 days after the date established for their receipt. Providers must satisfy themselves, upon examination of these requirements, as to the intent of these requirements.

Each of the finalist Qualified Providers may participate in a detailed oral interview to answer questions from the Project Evaluation Team and more fully discuss how its approach to this project satisfies the evaluation criteria. All persons with major responsibility for the project's technical design, management and contract negotiation should be present at the interview. Each oral interview may be recorded. A more complete description of the interview process and format will be sent to each of the finalist Qualified Providers.

District intends to negotiate an agreement for the final engineering design. If an acceptable technical energy audit agreement cannot be negotiated within 60 days from the date of Qualified Provider selection, negotiations with the next-ranked Qualified Provider may be initiated.

Each proposal will be evaluated according to the following criteria. Failure to provide any of the requested information may result in disqualification. The criteria listed below will be used in the evaluation of the written proposals, client references and responses of the Qualified Provider finalist during oral interviews, as appropriate.

Experience	35%
Technical Approach	25%
Project Management	20%

### **DEFINITION OF EACH CRITERIA**

#### **Experience**

- Qualifications of experience of Qualified Provider's personnel with guaranteed energy savings contract
- Reliability of equipment performance on past projects
- Quality and completeness of past project documentation

#### **Technical Approach**

- Quality of technical approach, including methods of analysis and an understanding of existing building systems and conditions
- Quality of approach to project commissioning
- Quality of baseline energy calculations
- Quality of proposed training for facility staff
- Quality of approach to savings measurement and verification
- Quality of design documentation

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**Project Management**

- Clear assignment of responsibility for various project tasks to specific individuals
- Ability to effectively manage project construction and complete the project on schedule
- Flexible approach to operations and maintenance
- Quality of monitoring, maintenance, and measurement and verification services on past project
- Clarity, organization and level of detail in written proposal
- Quality of communication skills of the Qualified Provider's representatives at the oral interview (if applicable)

**Financial**

- Reasonableness of implementation and any on-going M&V Costs
- Financial soundness and stability of the Qualified Provider
- Demonstrated ability to provide or arrange project financing if necessary
- Reasonableness of Cash Flow Analysis
- Attractiveness of Qualified Provider's Guarantee

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## **PART III: Contract Terms and Conditions**

The minimum contract terms and conditions District will accept from the selected Qualified Provider include:

### **1. Technical Requirements**

**Standards of Comfort and Service.** The Qualified Provider will be responsible for maintaining the levels of comfort and service for each building as specified by the District. See Attachment A.

**Professional Engineer Involvement.** As a part of the Energy Savings Project price, the Qualified Provider will provide an Architect or Professional Engineer licensed in the State of Illinois who shall, at a minimum:

- Review and approve design of energy conservation measures under this contract
- Process all building permits necessary for the project
- Review of all commissioning efforts as outlined below here-in
- Process all occupancy permits necessary for the project
- Review and approve the Qualified Provider's annual audit of energy savings under this contract during the payback period

As a part of the Guaranteed Energy Savings Contract, the Qualified Provider's Professional Engineer providing the services listed above shall also gain consensus on designs with the School District's Architect of record. The School District's Architect of Record's time will be funded by the School District for these outlined services.

**Guaranteed Savings** District requires a minimum annual guaranteed level of savings approach to the project. The Qualified Provider, as a part of the proposed savings guarantee calculation shall include all engineering and technical services costs associated with the Design, Construction Administration, Permit processing (Building and Occupancy), Commissioning and Annual Audit requirements of the Guaranteed Energy Savings project. If the project does not generate the guaranteed level of savings in any given year, the Qualified Provider will be responsible for reimbursing the District the amount of any shortfall by payment to be delivered to the District during the District's Fiscal Year associated with the shortfall.

**Construction Management** The Qualified Provider will be required to work with current facilities management personnel in order to coordinate construction and provide appropriate training in operations and maintenance of all installed improvements. The District requires a full time on-site Construction Superintendent during the construction. No equipment or other improvements will be installed that would require District to hire additional personnel unless contract negotiations produce an explicit exemption for a specific installation. Maintenance responsibilities shall be retained by the District, but at their discretion they can negotiate for maintenance services with the selected Qualified Provider.

**Commissioning** The Qualified Provider will be required to commission all new equipment, building systems and control programs installed as a part of the project. Commission shall include:

- factory start-up of all new equipment whenever available from the manufacturer of said equipment
- testing and balancing of water and air flow systems by a TABB or NEBB certified balancer
- functional performance testing of all new control systems and reprogrammed control systems
- delivery of written documentation of all above referenced commissioning efforts to the District with documentation or review and acceptance by the Qualified Provider's Architect or Professional Engineer.

**O & M Manuals** At least two hard copies and one electronic (pdf) version of the operation and maintenance manuals for each site will be provided for all equipment replacements and/or upgrades. Completeness of delivered manuals are subject to approval of District.

**As-Built Drawings** Where applicable, Qualified Provider must provide two (2) hard copies and one electronic (pdf) version of "as built" and record drawings (or such electronic equivalents as may be agreed to with District) of all existing and modified conditions associated with the project, conforming to typical engineering standards. These should include architectural, mechanical, electrical, structural, and control drawings and operating manuals within 30 days of completed project installation.

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**Follow-up Maintenance, Monitoring and Training Services** The Qualified Provider will be responsible for measurement and verification of implemented measures to ensure optimal performance as well as for ongoing training. However, District has the option to negotiate the extent of any contracted on-going maintenance service contract.

**District Energy Improvement Project.** District reserves the right to make energy and water improvements to the facility and to negotiate adjustments to the savings measurement and verification methodology to account for such improvements.

## 2. Minimum Contract Provisions

**Proposal Submissions** The contents of the Qualified Provider's RFP submission will become part of any final agreement between District and the Qualified Provider.

**Project Schedule** The Qualified Provider must provide a final schedule of project milestones including construction, equipment-service and preventive maintenance provisions that will become part of any final contract. In the event any milestone or service provision is not met as scheduled, without prior approval from District, District reserves the right to consider it a default and withdraw from all contractual obligations without penalty.

**District Inspection** District retains the right to have its representative visit the site during the audit and implementation phases of the project, and to attend relevant on-site or off-site meetings of the Qualified Provider and/or its subcontractors. District will have the right to inspect, test and approve the materials and work conducted in the facilities during construction and operation.

**Final Approval of District** District 158 retains final approval over the scope of work and all end-use conditions.

**Ownership of Drawings, Reports and Materials** All drawings, reports and materials prepared by the Qualified Provider specifically in performance of this contract shall become the property of District and will be delivered to District as needed, requested or upon completion of construction.

**Compliance** All work completed under this contract must be in compliance with all applicable federal, state and local laws, rules and regulations including all building codes and appropriate accreditation, certification and licensing standards. Work must be in accordance with sound engineering and safety practices, be installed in a workman-like manner and be in compliance with all District regulations relative to the premises. The Qualified Provider and its subcontractors will be responsible for coordinating acquisition of any and all required permits with the District's Architect of Record (in a pier review format), consents and authorizations, and for payment of any and all state and city required taxes and fees which result from this contract. The Qualified Provider shall gain acceptance of all design work product by the District's Architect of Record for District assurances that the Work is in accordance with sound engineering and safety practices, and in compliance with all District rules relative to the premises.

**Handling of Hazardous Materials** All work completed under this contract must be managed by the Qualified Provider in compliance with all applicable federal, state and local laws, rules and regulations regarding waste disposal and treatment/disposal of any hazardous materials that could result from this project.

**Methodology to Adjust for Material Changes** The contract must contain a mutually acceptable clause whereby unanticipated changes in facility use, occupancy, schedule and/or utility rates can be accommodated in a fair manner agreeable to both parties.

**Hiring and Wage Requirements** The Qualified Provider will comply with all requirements for the payment of prevailing wages and minority and women-owned business enterprises. Qualified Provider's Subcontractors must comply with background screenings and the local prevailing wage rates as established by the Illinois Department of Labor. Qualified Provider's subcontractors are required to pay no less than the prevailing wage for all laborers, workers and mechanics performing work under contract with Consolidated School District 158. Also, it is required that the contractor shall provide assurance such as with a bond or letter containing a statement that will guarantee faithful performance in regard to the prevailing wage law. Enclosed is a form letter which if signed, notarized, and returned with your proposal will satisfy this requirement. Qualified Providers who award portions of their work to subcontractors shall provide it's subcontractors with such a written statement as well.

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All Qualified Provider's subcontractors performing construction work for School District 158 must comply with the requirements of House Bill 188 Prevailing Wage Payroll Reporting (820 ILCS 130/5) which requires all Qualified

Providers and it's subcontractors participating on public works projects must submit monthly a certified payroll to the School District.

According to the Directive from the Office of the Attorney General of the State of Illinois in a letter dated 12-18-08 regarding the Illinois Prevailing Wage Act ("Act"), 820 ILCS section 130/0.01, et seq.

**Payment of Prevailing Wage**

All laborers, workers and mechanics employed by or on behalf of School District 158 in the construction of public works must be paid the general prevailing rate of hourly wages (including allotments for training and approved apprenticeship programs, health and welfare, insurance, vacation and pension benefits) for work of a similar character in the locality in which the work is performed. See 820 ILCS § 130/3.

The Illinois Department of Labor publishes the current prevailing wage rate. The link for the published rates in McHenry County is: <http://www.co.mchenry.il.us/common/countyDpt/Purchase/proposals/prevwage/PrevWage.htm>. A copy of this list of prevailing wages will be forwarded to prospective contractor upon request.

**Record-Keeping Responsibilities**

All Qualified Provider's subcontractors who work for Huntley Community School District 158 on public works construction projects must create, and keep for at least three years, records of all laborers, mechanics, and other workers employed by them on a public works project. See 820 ILCS § 130/5(a)(1).

These records must include each worker's name, address, telephone number (if available), social security number, classification(s) hourly wages paid in each pay period, number of hours worked each day, and the starting and ending times of each work day. Each contractor and subcontractor is required to make these records available for inspection by Consolidated School District 158's agents or Illinois Department of Labor officials at a reasonable time and place upon seven business days notice. See 820 ILCS § 130/5(a) (1), (b).

**Certified Payroll Records**

A contractor or subcontractor participating in a public works project for Huntley Community School District 158 must also submit a Certified Payroll report to **Huntley Community School District 158** every month. This Certified Payroll must consist of a complete copy of the records required to be kept under Section 5(a)(1) of the Act, discussed above (with the exception of daily work starting and ending times). See 820 ILCS §130/5(a)(2).

The monthly Certified Payroll shall also include a statement signed by the contractor or subcontractor submitting that: (1) the records are true and accurate; (2) the hourly rate paid to each worker is not less than the general prevailing wage rate required; and (3) the contractor or subcontractor is aware that filing a Certified Payroll that he or she knows to be false is a class B misdemeanor. See 820 ILCS § 130/5 (a)(2).

**Subcontractor Approval** District retains the right to approve any Qualified Provider selected subcontractor prior to its commencement of work on this project. Names and qualifications of subcontractors must be submitted at least three weeks in advance of subcontractor scheduled start date.

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**Payment Verification**

Prior to final acceptance of all energy conservation measures by the District, the Qualified Provider shall provide Waivers of Lien from prime contractor, prime contractor’s supplier(s), subcontractor(s), and subcontractors’ supplier(s) as verification of payment in full for services rendered. The Qualified Provider shall maintain a naming of all primary suppliers and contractors involved in the project along with a schedule of values during the project and must furnish a copy of the list to the School District at the commencement of the projects and maintain a updated copy on file with the District. All final waivers must state “Paid in Full” in place of a dollar amount. Final payment will not be released until final waivers marked “Paid in Full” are submitted for all subcontractors, suppliers and prime contractor. All waivers must be accompanied by a sworn statement listing subcontractors and suppliers, the amounts of their contract and the amounts requested.

**Criminal Background Check Requirements**

The contractor shall follow the CSD158 criminal background check process for workers and inspectors who will on-site for the capital improvements project as follows:

- A. Contractor sends CSD158 designee; presently send to email address [drenkosik@district158.org](mailto:drenkosik@district158.org), a list of names of tradesman to be background checked with the primary contact for the tradesman’s office (for contact if there is a “ hit” on the check) – 48 hours prior to scheduled visit.
- B. If designee considers the list reasonable, he forwards to the D158 Chief Security Officer’s office as “Heads Up” and asked for available times for contractor to drop in at D158 Administration Center, Dr. John Burkey Dr., Algonquin, IL 60102 or commencement of the background check process.
- C. Tradesman named shall go to the D158 Administration Center and see D158 designee to have their driver license scanned for a search on the Raptor national database of sex offenders. if it comes back clean, then he will take their digital photo (for future printing on an ID badge) and a scan of their fingerprints which will be sent the Illinois State Police for a criminal background search.
- D. Once the Illinois State Police returns the background check clearance,
  - a. if the background clearance is approved, the HR Office will print an ID badge and forward the O&M Office for distribution to the tradesman.
  - b. if the background check shows a “hit”, the D158 Chief Security Officer’s office will contract the tradesman’s supervisor directly for resolution on the matter. Until this matter is resolved, the work shall return the ID badge to the tradesman’s supervisor who shall return it to D158 directly and suspend that worker’s assignment on D158 premises.
- E. Once the D158 Chief Security Officer’s office receives a clean background check report, they will print an ID badge with the tradesman’s photo on it and notify the tradesman’s supervisor that the ID Badge is ready for pickup by the tradesman. The tradesman must personally stop at the District Office to sign for the IDB Badge.
- F. Prior to final payment for the project, D158 will reconcile reimbursement of D158 for all background check expenses (at \$49 each).

**Insurance Requirements**

- 1. School District 158 will only accept carriers on the contractor’s Certificate of Insurance that have an A.M. Best's rating of no lower than A-7.
- 2. The successful bidder shall expressly bind himself/herself to defend and save the District harmless from all suits or actions of every name and description including Scaffolding Act Liability. Successful bidder shall carry insurance, in company or companies acceptable to the District, for Worker’s Compensation, Commercial General Liability, and Automobile liability.
- 3. Each bidder shall submit as part of the bid, a certification of insurance in force to meet the above specifications. That certificate shall name HUNTLEY COMMUNITY SCHOOL DISTRICT 158 as an additional insured and shall state that all insurance listed above is primary. HUNTLEY COMMUNITY SCHOOL DISTRICT 158 shall be notified 30 days prior to any material change in the insurance.
- 4. **Workman's Compensation** - Statutory
  - e.l. - each occurrence \$1,000,000
  - e.l. - disease –each employee \$1,000,000
  - e.l. – disease – policy limit \$1,000,000

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- A. Comprehensive General Liability Insurance:** The successful bidder shall maintain at all times during the contract Comprehensive Liability Insurance (including Broad Form Property Damage) with limits for combined bodily injury and property damage of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 aggregate.
- B. Comprehensive Auto Liability Insurance:** The successful bidder shall maintain at all times during the contract Comprehensive Auto Liability with limits for combined bodily injury and property damage of not less than \$1,000,000 for each occurrence and not less than \$1,000,000 aggregate.
- C. Excess Liability:** An umbrella policy is required with minimum limits of \$5,000,000 per occurrence (*see Notes at end of document for variations in this limit for different forms of contracted services*) and will apply to both bodily injury and property damage. The umbrella policy shall apply over all primary coverage and limits of liability as listed in the preceding section. The umbrella coverage must be as broad as the primary policies and must be free of any restrictions that do not appear in the underlying policies.
- D. Owned/Rented Equipment Insurance:** The Contractor shall secure, pay for and maintain whatever Fire or Extended Coverage Insurance deemed necessary to protect the Contractor against loss of owned or rented capital equipment and tools, including any tools owned by mechanics, and any tools, equipment, scaffoldings, staging, towers and forms owned or rented by the Contractor. The requirement to secure and maintain such insurance is solely for the benefit of the Contractor; Contractor shall require same coverage of Subcontractor. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage shall not obligate District 158, or their agents and employees for any losses of owned or rented requirement. It is expressly understood and agreed that District 158 shall have no responsibility therefore, the Contractor secures such insurance the insurance policy shall include a waiver of subrogation clause as follows: "It is agreed that in no event shall this insurance company have any right of recovery against District 158 or their agents."
- E. Contractor's Obligation:** The procuring of the insurance required under this Contract shall be considered solely as securing Contractor's obligation or liabilities assumed under the Contract. Contractor shall remain fully liable and responsible for all such obligations, whether or not the insurance provided by the Contractor is approved by District 158.

There will be no "Waivers of Subrogation" permitted on the insurance policy or contract between DISTRICT 158 and the contractor. A copy of the Certificate of Insurance shall be furnished to the Director of Operations and Maintenance before the work begins.

**SPECIAL INSURANCE REQUIREMENT NOTES**

- 1. The excess liability insurance limits required in Section F above shall be adjusted as follows:
  - a. Architects', Engineers' and Construction Managers' excess liability umbrella can be limited to \$3,000,000.
  - b. Contractors with small contracts can carry excess liability, umbrella insurance limits of \$3,000,000
  - c. Contractors with large contracts; \$1,000,000 plus should carry excess liability umbrella coverage of \$10,000,000 minimum
- 2. Consultants including architects, engineers, and construction managers shall also have insurance coverage listed on their policies to the District which include Errors and Omissions (i.e. Professional Liability Insurance) with minimum limit of coverage of \$1,000,000 per occurrence/claims-made.

**Preservation of District Amenities** The Qualified Provider, in performance of the energy conservation measures (ECM's), shall provide for preservation of all District amenities in condition as found prior to the commencement the ECM's. Any costs associated with restorative measures required to meet this requirement shall be included in the agreed cost for the ECM's.

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**Annual Reconciliation** Project savings will be verified and reconciled on an annual basis. Qualified Provider will provide timely monthly savings reports to District, unless otherwise agreed to by the parties. The savings in energy and operating costs are guaranteed to cover the cost of the program as required by 105 ISC 5/19b. The savings calculations shall be accepted by an Architect or Professional Engineer with an active license in Illinois. The Performance Contractor shall provide for an Annual Audit to demonstrate the actual the energy savings performance of the District during the Payback period as a part of the Contract. This annual audit shall be provided by the Qualified Provider's Architect or Professional Engineer with an active license in Illinois.

**Contract Term** No contract (i.e. payback period for guaranteed energy savings improvements) shall exceed 10 years in duration and may be subject to annual appropriations.

**Contract Terms and Conditions** The District will utilize the contract terms and conditions included in Attachment 'D' with no exceptions.

**Dispute Resolution** The contract will contain an Alternative Dispute Resolution provision.

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**PART IV: Instructions to Proposers**

Failure to complete any question in whole or in part, or any deliberate attempt by the proposer to mislead District, may be used as grounds to find the proposing Qualified Provider ineligible.

**PROPOSAL SUBMITTAL INFORMATION**

Qualified Providers who wish to have proposals considered by District must submit ten (10) hard copies and one electronic copy of Part IV-A (Qualified

Provider Profile Form) and Part IV-B (Qualified Provider Proposal and Approach to Project)

All proposals shall be sealed and received in the following office no later than the date and time stated in Part I: Proposed Project Calendar to:

The Office of the Superintendent of Schools  
Dr. John Burkey  
Consolidated School District #158  
650 Dr. John Burkey Drive  
Algonquin, IL 60102

Responses will be opened and portions of the proposal will be read out loud at the District Administration Office immediately following the due date and time.

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## **PART IV-A: Qualified Provider Profile Form and Qualifications**

Each Qualified Provider is required to fully answer all questions in each category listed below. Provide responses on 8 ½ " x 11" sheets of paper and number and title each answer to the corresponding category. Font size should be no smaller than 10 point. All pages in your response should be numbered sequentially. Qualified Providers must also include a table of contents which indicates the section and page numbers corresponding to the information included.

**All questions must be addressed by the Qualified Provider in order for this application form to be properly completed. Failure to answer any question, or comply with any directive contained in this form may be used by District as grounds to find the Qualified Provider ineligible. If a question or directive does not pertain to your firm in any way, please indicate with the symbol N/A.**

**A-1 Firm Name** \_\_\_\_\_

Business Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_

County \_\_\_\_\_ Zip Code \_\_\_\_\_

**A-2 Names and Titles of Two Contact People**

1) \_\_\_\_\_ Phone (\_\_\_\_\_) \_\_\_\_\_

2) \_\_\_\_\_ Phone (\_\_\_\_\_) \_\_\_\_\_

**A-3 Submittal is for:**

- Parent Company (List any Division or Branch Offices to be involved in this project)
- Division (attach separate list if more than one is to be included)
- Subsidiary
- Branch Office

Name of Entity: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

**A-4 Type of Firm:**

- Corporation
- Partnership
- Sole Ownership
- Joint Venture

**A-5 Federal Employer Identification Number** \_\_\_\_\_

**A-6 Year Firm was Established** \_\_\_\_\_

**A-7 Name and Address of Parent Company: (if applicable)** \_\_\_\_\_

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**A-8 Minority Business Information** *(If applicable to your agency's policies or requirements)*

**Recognized MWBE.** Is your firm a recognized Minority or Woman-owned Business Enterprise  
**Category.** If yes, please indicate the appropriate category.

- |   |  |
|---|--|
| <input type="checkbox"/> American Indian  | <input type="checkbox"/> Spanish Surname |
| <input type="checkbox"/> Asian-American   | <input type="checkbox"/> Woman-Owned     |
| <input type="checkbox"/> African-American | <input type="checkbox"/> Other           |

**Certifying Agencies.** If yes, indicate which jurisdictions or certifying agencies recognize your firm's MWBE status.  
**Accommodation.** If no, please summarize how you will accommodate MWBE **preferences.**

**A-9 Five Year Summary** of Contract Values for Energy Performance Contracting Projects where your firm was the prime contractor with a first party written savings guarantee to the District: (Note: If you are a branch office of a larger firm indicate only those contract values associated with that specific branch.)

2013: \$ \_\_\_\_\_  
 2012: \$ \_\_\_\_\_  
 2011: \$ \_\_\_\_\_  
 2010: \$ \_\_\_\_\_  
 2009: \$ \_\_\_\_\_

**A-10 Corporate Background/Historical Data**

- How many years has your firm been in business under its present business name?
- Provide documentation showing that your company is Accredited by NAESCO. Proposals will not be accepted by companies without this accreditation.
- Please identify all states in which your firm is legally qualified to do business.
- Indicate all other names by which your organization has been known and the length of time known by each name.
- Certify that your company does not owe the state of Illinois any taxes.
- Certify that your company is not currently under suspension or debarment by the state of Illinois, any other state, or the federal government.
- Identify your firm's legal counsel for this project. Give the name and address of the primary individual responsible for contract negotiation.
- Include an annual financial report for the Qualified Provider which includes the following information
  - Qualified Provider's Standard & Poor's and Moody's credit ratings and provide supporting documentation.
  - Qualified Provider's latest cash on balance sheet
  - Qualified Provider's net assets
  - Qualified Provider's revenue as a percentage of the following:
 

Equipment manufacturing	_____ %
Service and maintenance	_____ %
Guaranteed energy project	_____ %
Proposal	_____ and _____ spec.
% Other	_____ %

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**A-11 Technical Qualifications And Personnel Information**

Indicate the number of all guaranteed energy savings contracting projects currently under contract with your firm. **Limit your response to ONLY those projects that have been managed directly by the specific branch, division, office, or any individual in such branch, division or office who will be specifically assigned to this project.** Indicate the installed project cost value, and identify all project currently in repayment. Attach additional sheets as necessary.

Using the format provided below, briefly describe the relevant experience, qualifications and educational background for **ONLY** those **PRIMARY** team members (no more than 10 individuals) **who will directly be working on this project.** **Do not include individual resumes.**

Name of Project Team Member:	
Current Job Title: Job responsibilities: Number of years with Qualified Provider: Primary Office Location:	
Employment History Company Name: Primary job responsibilities: Number of years with firm:	
Educational Background List all academic degrees, certifications, professional affiliations, relevant publications and technical training.	
List all energy performance contracting projects this individual has been involved with during past 5 years. Include project location, type of facilities, year implemented and dollar value of installed project costs.	
Describe the specific role and responsibilities this individual had for each listed project.	
Provide a detailed description of the role and responsibilities this individual will have for the duration of this project.	
Describe any other relevant technical experience.	
Indicate the total years of relevant energy-related experience for this individual.	

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A-12 Energy Performance Contracting Project History And Client References

Using the form on the following page, list at least five (5) energy performance contracting projects in repayment by and currently under contract with your firm. **Limit your response to ONLY those projects that have been managed directly by the specific branch, division, office or any individual in such branch, division or office who will be specifically assigned to this project.** Attach additional sheets as necessary. Please put an asterisk by those project references involving projects with measures and buildings similar to those proposed for this project.

**PROJECT HISTORY AND CLIENT REFERENCE FORM**

All information requested is required.

Project Name and Location Number of Buildings Primary Use Total square footage	
Project Dollar Amount (installed project costs) Source of Project Financing	
Primary ECMs Installed Qualified Provider Services Provided	
Construction Start & End Dates	
Contract Start & End Dates	
Dollar Value and Type of Annual Operational Cost Savings (if applicable) (e.g., outside maintenance contracts, material savings, etc.)	
Method(s) of Savings Measurement and Verification	
Provide CURRENT and ACCURATE telephone and FAX numbers of the owner(s)' representatives with whom your firm did business on this project. You should ensure that all representatives are familiar with this project.	
Describe the specific roles and responsibilities of Qualified Provider personnel associated with the identified project, limiting your response to only those personnel who will be directly involved in District's project.	
Qualified Provider Notes or Comments	

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## **PART IV-B: Qualified Provider Approach to Project**

### **PROJECT MANAGEMENT**

#### **B-1 Project Summary** (not to exceed 2 pages)

Summarize the scope of services (design, financial, operations, maintenance, training, etc.) offered by your firm for this project including the added value of your firm's services.

#### **B-2 Training Provisions**

Describe your firm's proposed approach to providing technical training for facility personnel. Indicate the proposed number of personnel to be trained and the type and frequency of training to be provided for the duration of the contract. Indicate how your firm will address any turnover of key facility personnel as it relates to project performance.

#### **B-3 Project Financing**

Describe your firm's preferred approach to providing or arranging financing for this project. Describe the structure of the financing arrangement including projected interest rate, financing term, repayment schedule, equipment ownership, security interest required, the responsibilities/liabilities of each party, and any special terms and conditions that may be associated with the financing of this project. Describe how construction will be financed.

#### **B-4 Cost of Detailed Facility Assessment**

The Provider of the proposal shall be responsible for the cost of delivery of the proposal to the District and the final engineering services if no contract is negotiated.

#### **B-5 Energy Baseline Calculation Methodology**

Describe the methods you expect to use to compute baseline energy use for this project. Describe any computerized modeling programs used by your firm to establish baseline consumption. Describe factors that would necessitate a baseline adjustment. Describe the methods you will use to adjust the guaranteed level of savings from any material changes that occur due to such factors as weather, occupancy, facility use changes, etc.

#### **B-6 Procedure for Calculating Energy and Cost Savings**

Please summarize procedures, formulas and methodologies including any special metering or equipment, your firm will use to measure and calculate energy savings for this project. Indicate how your firm identifies, documents and measures operational cost savings opportunities. Describe your firm's proposed approach to the treatment of savings achieved during construction and how those savings will be documented and verified.

#### **B-7 Construction Management**

Describe how your firm would work with current building management and maintenance personnel in order to coordinate construction and avoid conflicts with the building's operation and use.

#### **B-8 Approach to Equipment Maintenance**

Describe any major changes in operations or maintenance for this project that your company anticipates. Include a description of the types of maintenance services that may be proposed for this project. Address how you would approach the role of District's personnel in performing maintenance on the new and existing and equipment. Discuss the relationship of maintenance services to the savings guarantee, any required duration of the maintenance agreement, and what impact termination of

#### **B-9 Technical Approach/Scope of Work**

Include the following information about the respondent's technical approach to meeting the school district's comfort; energy efficiency & operating cost reduction objectives:

1. List of specific innovative solutions and conservation measures the respondent proposes to implement in each of the buildings.
2. Include section explaining each of the innovative solutions and conservation measures in some level of detail.

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3. Additional information about the respondent's technical approach to the project may be included in this section.
4. Proposals must include a preliminary schedule indicating how the project will be completed in 2015 without disruption to the primary mission of the District including School Day, Extra-Curricular, and Summer School activities. The district would also like 25% of the interior lighting upgrades completed by June 30, 2015. Please address how this will be accomplished as part of your project schedule.

**B-10 Additional Information about projected Cost Savings**

The proposal should contain the following additional information about the financial terms of the proposed transaction.

1. Pricing for Baseline opportunities and any additional voluntary alternates. Information about the Qualified Provider's projections as to total annual savings, payments to the respondent, and the net benefit to the District from the proposed transaction (cash flow analysis).
2. Information about the Qualified Provider's projections as to anticipated alternative funding mechanism such as Federal, State, and/or Local Grants, Incentives, and/or Rebates which is a part of their proposal. The estimated savings calculations provided shall clearly define each individual opportunity.
3. A description of important, optional financial terms should be included in the proposal. This section must include:
  - a) Type and source of financing
  - b) Interest rate (including any associated annual fees)
  - c) The frequency of these payments
  - d) The term of the proposed agreement
  - e) Any other terms or information relevant to the financial aspects of the proposed transactions

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## **PART V: Index of Attached References Documents**

- A. Facilities Inventory
- B. Contract Terms and Conditions

DOCUMENTS POSTED ON THE DISTRICT 158 WEBSITE IN THE BUSINESS OPPORTUNITIES SECTION FOR REFERENCE BY INTERESTED PROPOSAL PROVIDERS

## **PART VI: Index of Available Electronic Documents with Base Line Data**

Documents posted on the District 158 website in the Business Opportunities Section for Reference by Interested, Qualified providers.

- A. Original For Construction Drawings for Lighting in Heinemann, Martin and Leggee Schools
- B. Records of Lighting retrofits including delamping completed by the CTS Group in 2010.
- C. Records of Lighting retrofits including delamping completed by the Performance Services in 2014.
- B. One year of electric bills for each building
- C. One year of gas bills for each building

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## ATTACHMENT A Facilities Inventory

Campus/Building	Year	Square Footage by Addition	Square Footage by Building
<b>Harmony Road Campus</b>			
Huntley High School	1996/2000	167,000	
	2002 Addition	193,388	
	14.15 under construction	102,356	462,744
Leggee Elementary	2000/2001	105,317	120,083
	2003 Addition	14,766	
<b>Reed Road Campus</b>			
Marlowe Middle School	2005	130,579	200,379
	2007 Addition	69,800	
Chesak Elementary	2000/2001/2002	134,651	158,907
	2003 Addition	24,256	
Martin Elementary	2002	148,286	148,286
<b>Square Barn Rd. Campus</b>			
Heineman Middle School	2005	130,579	130,579
Mackeben School	2005	120,192	120,192
Conley School	2005	120,192	120,192
Transportation/Administration	2004	66,746	66,746
<b>Grand Total</b>			<b>1,528,108</b>

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**ATTACHMENT B**  
**Contract Terms and Conditions**

Following is the contract form which the proposal provider agrees to enter by submission of a proposal.

**ESCOE AGREEMENT**

CUSTOMER NAME:  
DATE OF SUBMISSION:

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**Note Regarding Modifications Made to this Agreement:** Provisions in the printed document that are not to be included in the agreement may be deleted by striking through the word, sentence or paragraph to be omitted. It is recommended that unwanted provisions not be made illegible. The parties should be clearly aware of the material deleted from the standard form. **Do not make any modifications to this Agreement unless approval to do so has been granted. Changes may be made only by deletion as explained above, or, by addendum.**

**ARTICLE 1 GENERAL PROVISIONS**

- 1.1** This Agreement, including all Attachments, Exhibits, and Schedules referenced herein (hereinafter the "Agreement") is made this day of \_\_\_\_\_, 2020 (the "Effective Date") by and between ESCOE ("ESCOE"), a (*State*) Corporation, with a principal place of business at (*Address*), and Board of Education of Huntley Community School District 158 ("CUSTOMER") with a principal place of business at Dr. John Burkey Dr., Algonquin, IL 60102, (collectively the "Parties").
- 1.2** EXTENT OF AGREEMENT: This Agreement, including all attachments and exhibits hereto, represents the entire agreement between CUSTOMER and ESCOE and supersedes all prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both CUSTOMER and ESCOE. None of the provisions of this Agreement shall be modified, altered, changed or voided by any subsequent Purchase Order issued by CUSTOMER, which relates to the subject matter of this Agreement.
- 1.3** As used in this Agreement, the term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by ESCOE to fulfill ESCOE's obligations, as described in Attachment A and otherwise set forth in the Contract Documents. The Work may constitute the whole or a part of the Project. The Work specifically excludes certain design and construction, which are the subject of separate agreements between CUSTOMER and parties other than ESCOE.
- 1.4** The Project is the total construction of which the Work performed by ESCOE under this Agreement may be the whole or a part.
- 1.5** The Contract Documents consist of this Agreement, its attachments, exhibits, schedules, and addenda.
- 1.6** Installation Schedule means that schedule set out in Attachment B describing the Parties' intentions respecting the times by which the components or aspects of the Work therein set forth shall be installed and/or ready for acceptance or beneficial use by CUSTOMER.

**ARTICLE 2 ESCOE'S RESPONSIBILITIES**

**2.1 ESCOE Services**

- 2.1.1** ESCOE shall be responsible for construction of the Project.
- 2.1.2** ESCOE will assist in securing permits necessary for the Work. CUSTOMER shall pay such proper and legal fees to public officers and others as may be necessary to the due and faithful performance of the Work and which may arise incidental to the fulfilling of these specifications.

**2.2 Responsibilities with Respect to the Work**

- 2.2.1** ESCOE will provide construction supervision, inspection, labor, materials, tools, construction equipment and subcontracted items necessary for the execution and completion of the Work.
- 2.2.2** ESCOE shall keep the premises in an orderly fashion and free from unnecessary accumulation of waste materials or rubbish caused by its operations. If ESCOE damages property not needed for the Work, ESCOE shall repair the property to its pre-existing condition unless CUSTOMER directs otherwise. At the completion of the Work, ESCOE shall remove waste material supplied by ESCOE under this Agreement as well as all its tools, construction equipment, machinery and surplus material. ESCOE shall dispose of all waste materials or rubbish caused by its operations; provided, that unless otherwise specifically agreed to in this Agreement, ESCOE shall not be responsible for disposal of toxic or hazardous materials removed from the facilities, such as fluorescent lights, potential polychlorinated biphenyl containing light ballasts and mercury-containing controls, but shall store those materials neatly at a location designated by CUSTOMER.

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**2.2.3** ESCOE shall give all notices and comply with all laws and ordinances legally enacted as of the date of execution of the Agreement governing the execution of the Work. Provided, however, that ESCOE shall not be responsible nor liable for the violation of any code, law or ordinance caused by CUSTOMER or existing in CUSTOMER's property prior to the commencement of the Work.

**2.2.4** ESCOE shall comply with all applicable federal, state and municipal laws and regulations that regulate the health and safety of its workers while providing the Work, and shall take such measures as required by those laws and regulations to prevent injury and accidents to other persons on, about or adjacent to the site of the Work. It is understood and agreed, however, that ESCOE shall have no responsibility for elimination or abatement of health or safety hazards created or otherwise resulting from activities at the site of the Work carried on by persons not in a contractual relationship with ESCOE, including CUSTOMER, CUSTOMER's contractors or subcontractors, CUSTOMER's tenants or CUSTOMER's visitors. CUSTOMER agrees to cause its contractors, subcontractors and tenants to comply fully with all applicable federal, state and municipal laws and regulations governing health and safety and to comply with all reasonable requests and directions of ESCOE for the elimination or abatement of any such health or safety hazards at the site of the work.

**2.2.5** ESCOE shall pay not less than the prevailing hourly rate of wages, and the generally prevailing rate of hourly wages for legal holiday and overtime work, as determined by the Illinois Department of Labor to all laborers, workers, and mechanics performing work under this Agreement.

**2.2.6** ESCOE shall, at its sole cost and expense, conduct criminal background checks for all employees prior to the commencement of any Work hereunder for all employees that will be working on site. ESCOE shall require its subcontractors to conduct criminal background checks for said subcontractor's employees that are working on site. ESCOE agrees that it shall not employ any person who has or may have direct, daily contact with the pupils of any school in the district, and for whom a criminal background check has not been conducted pursuant hereto, and further represents and agrees that all employees or applicants who may have direct contact with employees shall be required to furnish a written "Authorization for Criminal Background Information" on forms provided by CUSTOMER authorizing ESCOE to request a criminal background investigation of said person pursuant to Section 10-21.9 of the School Code of Illinois and to receive criminal history record information pursuant thereto to determine if the applicant has been convicted of committing or attempting to commit any of the criminal or drug offenses enumerated above. ESCOE further agrees to submit with said authorization a request for any costs and expenses associated with the criminal background investigation. ESCOE further represents, warrants and certifies that no employee with respect to whom the criminal investigation reveals any conviction for committing and/or attempting to commit any of the above enumerated offenses, including the Sex Offender Registry Act, and the Statewide Child Murder and Violent Offender Against Youth Database, shall be employed thereby in any position that involves or may involve contact with the students of the district.

**2.2.7** ESCOE shall comply with the provisions of the Employment of Illinois Workers on Public Works Act.

### **2.3 Patent Indemnity**

**2.3.1** ESCOE shall, at its expense, defend or, at its option, settle any suit that may be instituted against CUSTOMER for alleged infringement of any United States patents related to the hardware manufactured and provided by ESCOE, provided that:

1. Such alleged infringement consists only in the use of such hardware by itself and not as part of, or in combination with, any other devices, parts or software not provided by ESCOE hereunder;
2. CUSTOMER gives ESCOE immediate notice in writing of any such suit and permits ESCOE, through counsel of its choice, to answer the charge of infringement and defend such suit; and
3. CUSTOMER gives ESCOE all needed information, assistance and authority, at ESCOE's expense, to enable ESCOE to defend such suit.

**2.3.2** If such a suit has occurred, or in ESCOE's opinion is likely to occur, ESCOE may, at its election and expense: obtain for CUSTOMER the right to continue using such equipment; or replace, correct or modify it so that it is not infringing; or remove such equipment and grant CUSTOMER a credit therefore, as depreciated.

**2.3.3** In the case of a final award of damages in any such suit, ESCOE will pay such award. ESCOE shall not, however, be responsible for any settlement made without its written consent.

**2.3.4** This article states ESCOE's total liability and CUSTOMER's sole remedy for any actual or alleged infringement of any patent by the hardware manufactured and provided by ESCOE hereunder. In no event shall ESCOE be liable for any indirect, special or consequential damages resulting from any such actual or alleged infringement, except as set forth in this section 2.3.

### **2.4 Warranties and Completion**

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- 2.4.1** ESCOE warrants CUSTOMER good and clear title to all equipment and materials furnished to CUSTOMER pursuant to this Agreement free and clear of liens and encumbrances. ESCOE hereby warrants that all such equipment and materials shall be of good quality and shall be free from defects in materials and workmanship, including installation and setup, for a period of one (1) year from the date of beneficial use or substantial completion of the equipment or portion of the Work in question, provided that no repairs, substitutions, modifications, or additions have been made, except by ESCOE or with ESCOE's written permission, and provided that after delivery such equipment or materials have not been subjected by non-ESCOE personnel to accident, neglect, misuse, or use in violation of any instructions supplied by ESCOE. ESCOE's sole liability hereunder shall be to repair promptly or replace defective equipment or materials, at CUSTOMER'S option and at ESCOE's expense. Any defect on work or materials shall be replaced or corrected to the satisfaction of the customer within fourteen (14) days upon notification by customer at no cost to customer. The limited warranty contained in this Section 2.4.1 shall constitute the exclusive remedy of CUSTOMER and the exclusive liability of ESCOE for any breach of any warranty related to the equipment and materials furnished by ESCOE pursuant to this Agreement.
- 2.4.2** In addition to the warranty set forth in Section 2.4.1 above, ESCOE shall, at CUSTOMER's request, assign to CUSTOMER any and all manufacturer's or installer's warranties for equipment or materials not manufactured by ESCOE and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the one (1) year limited warranty set forth in Section 2.4.1.
- 2.4.3** The warranties set forth herein are exclusive, and ESCOE expressly disclaims all other warranties, whether written or oral, implied or statutory, including but not limited to, any warranties of merchantability and fitness for a particular purpose, with respect to the equipment and materials provided hereunder. ESCOE shall not be liable for any special, indirect, incidental or consequential damages arising from, or relating to, this limited warranty or its breach.
- 2.4.4** ESCOE's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by ESCOE, improper or insufficient maintenance, if required by manufacturer, or improper operation.

**2.5 Hazardous Materials**

- 2.5.1** ESCOE and its subcontractors shall not be required to handle, remove, come into contact with, dispose of, or otherwise work with hazardous materials existing on the project site at the date of this Agreement or resulting, either directly or indirectly, from any acts or omissions of CUSTOMER, its employees, agents or assigns, or any of its other contractors or subcontractors. "Hazardous materials" as used herein includes all hazardous or toxic substances or materials as may be so designated by federal, state or local governmental entities. "Hazardous materials" shall also include fungus and mold. If, during the performance of the Work, the presence of hazardous materials is discovered or reasonably suspected, ESCOE shall notify CUSTOMER of such discovery or suspicion and shall be permitted to immediately cease all work which requires contact with or exposure to such hazardous materials, until the CUSTOMER has made arrangements for the removal of the same. ESCOE shall be entitled to an extension of the Contract Time for ceasing work pursuant to this Section.
- 2.5.2** To the extent permitted by law CUSTOMER shall indemnify, defend, and hold ESCOE and its respective officers, directors, employees, agents and subcontractors (collectively the "Indemnified Parties"), harmless from, against, and in respect of any and all rights, claims, demands, liabilities, obligations, orders, assessments, interest, penalties, fines, settlement payments, costs, expenses and damages, including, without limitation, reasonable legal fees and out-of-pocket expenses ("Damages") imposed upon or incurred by any Indemnified Party and that arise from claims asserted by third parties or by CUSTOMER concerning any Hazardous Materials; provided that the Damages are not the direct result of any act or omission of ESCOE or its agents.
- 2.5.3** Unless prior to the execution of this Agreement, ESCOE received written notification from CUSTOMER of the existence of Hazardous Materials on the site, and said notice included a description of the Hazardous Materials, and the quantity and location of the Hazardous Materials, CUSTOMER is hereby representing to ESCOE that CUSTOMER is not aware of any Hazardous Materials present at the site.
- 2.5.4** If the structure(s) where the Contract Work is to be performed was built before 1978, CUSTOMER understands that it may contain lead paint. CUSTOMER also understands that the only way to know whether lead paint is present is to have one or more paint samples in the work area tested. CUSTOMER authorizes, upon request of ESCOE, those tests to be done by ESCOE and agrees to pay ESCOE for the costs of those tests, in addition to the Contract Price. Alternatively, as a condition of accepting this Contract, CUSTOMER agrees to provide ESCOE with documentation demonstrating, to ESCOE's reasonable satisfaction, that:
- (1) the areas where the Contract Work is to be performed has been tested and determined to be lead free by a certified risk assessor, certified lead inspector or certified renovator;
  - (2) the areas where the Contract Work is to be performed is paint free; and/or
  - (3) the areas where the Contract Work is to be performed were built after 1977.
- 2.5.5** ESCOE shall indemnify, defend, and hold CUSTOMER and its respective officers, directors, employees, agents and subcontractors (collectively the "Indemnified Parties"), harmless from, against, and in respect of any and all rights,

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claims, demands, liabilities, obligations, orders, assessments, interest, penalties, fines, settlement payments, costs, expenses and damages, including, without limitation, reasonable legal fees and out-of-pocket expenses (“Damages”) imposed upon or incurred by any Indemnified Party and that arise from claims asserted by third parties or by ESCOE concerning any Hazardous Materials that were brought to the project site by ESCOE or its subcontractors.

**ARTICLE 3 CUSTOMER'S RESPONSIBILITIES**

- 3.1** CUSTOMER shall provide ESCOE full information regarding the requirements for the Work.
- 3.2** CUSTOMER shall designate a representative who shall be fully acquainted with the Work, and who has authority to approve changes in the scope of the Work and render decisions promptly.
- 3.3** CUSTOMER shall furnish to ESCOE all information regarding legal limitations, utility locations and other information reasonably pertinent to this Agreement, the Work and the Project.
- 3.4** CUSTOMER shall secure and pay for all necessary approvals, easements, assessments, permits and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities, including charges for legal and auditing services.
- 3.5** If CUSTOMER becomes aware of any fault or defect in the Work, it shall give prompt written notice thereof to ESCOE, however, the CUSTOMER's failure to give timely notice within (14) days of the date of discovery of the defect in the work shall not relieve ESCOE of its responsibilities under Section 2.4 WARRANTIES AND COMPLETION of this AGREEMENT.
- 3.6** The services and information required by the above paragraphs shall be furnished with reasonable promptness at CUSTOMER's expense and ESCOE shall be entitled to rely upon the accuracy and the completeness thereof.
- 3.7** Prior to the commencement of the Work and at such future times as ESCOE shall reasonably deem appropriate, CUSTOMER shall furnish evidence in a form satisfactory to ESCOE that sufficient funds are available and committed to pay for the Work. Unless such evidence is furnished, ESCOE is not required to commence or continue any Work. Further, if CUSTOMER does not provide such evidence, ESCOE may stop work upon fifteen (15) days notice to CUSTOMER. The failure of ESCOE to insist upon the providing of this evidence at any one time shall not be a waiver of CUSTOMER's obligation to make payments pursuant to this Agreement, nor shall it be a waiver of ESCOE's right to request or insist that such evidence be provided at a later date.
- 3.8** CUSTOMER shall comply with all applicable federal, state and municipal laws and regulations governing occupational health and safety in the areas where ESCOE will perform services and/or perform the Work. CUSTOMER represents and warrants that, except as otherwise disclosed in this Agreement, in the areas where ESCOE will undertake Work or provide services, there are no: (a) materials or substances classified as toxic or hazardous either (i) on or within the walls, floors, ceilings or other structural components, or (ii) otherwise located in the work area, including asbestos or presumed asbestos-containing materials, formaldehyde, containers or pipelines containing petroleum products or hazardous substances, etc.; (b) situations subject to special precautions or equipment required by federal, state or local health or safety regulations; or (c) unsafe working conditions. CUSTOMER shall notify ESCOE of any changes or updates that occur during the course of the Agreement. If any such materials, situations or conditions, whether disclosed or not, are in fact discovered by ESCOE or others and provide an unsafe condition for the performance of the Work or services, the discovery of the material, situation or condition shall constitute a cause beyond ESCOE's reasonable control and ESCOE shall have the right to cease or not commence the Work until the area has been made safe by CUSTOMER or CUSTOMER's representative, at CUSTOMER's expense. To the fullest extent allowed by law, customer shall indemnify and hold ESCOE harmless from and against any and all claims and costs of whatever nature, including but not limited to, consultants' and attorneys' fees, damages for bodily injury and property damage, fines, penalties, cleanup costs and costs associated with delay or work stoppage, that in any way results from or arises under the breach of the representations and warranties in this section, the existence of mold or a hazardous substance at a site, or the occurrence or existence of the situations or conditions described in this section, whether or not customer provides ESCOE advance notice of the existence or occurrence and regardless of when the hazardous substance or occurrence is discovered or occurs. Nothing in this section shall be construed to require that customer indemnify and hold harmless ESCOE from claims and costs resulting from the negligent use by ESCOE of any hazardous substance brought to the site by ESCOE (and customer acknowledges that ESCOE may bring to the site lubricants or other materials that are routinely used in performing maintenance and that may be classified as hazardous).
- 3.9** In addition to the price set forth in Article 6 of this Agreement, CUSTOMER shall pay any present and future taxes or any other governmental charges now or hereafter imposed by existing or future laws with respect to the sale, transfer, use, ownership or possession of the Work provided hereunder, excluding taxes on ESCOE's net income.
- 3.10** ESCOE shall be entitled to rely on the accuracy of the information furnished by CUSTOMER. The CUSTOMER shall furnish information and services required of CUSTOMER by the Contract Documents with reasonable promptness.

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**ARTICLE 4 SUBCONTRACTS**

- 4.1** At its option, ESCOE may subcontract some or all of the Work subject to the District's approval of all subcontractors. Approval will not be unreasonably withheld. Names and qualifications of subcontractors must be submitted at least three weeks in advance of subcontractor scheduled start date, unless otherwise agreed by the parties.
- 4.2** A Subcontractor is a person or entity who has a direct contract with ESCOE to provide work, labor and materials in connection with the Work. The term Subcontractor does NOT include any separate contractors employed by CUSTOMER or such separate contractors' subcontractors.
- 4.3** For the purposes of this Agreement, no contractual relationship shall exist between CUSTOMER and any Subcontractor. ESCOE shall be responsible for the management of its Subcontractors in their performance of their Work.
- 4.4** CUSTOMER shall not hire any of ESCOE's Subcontractors without the prior written approval of ESCOE.

**ARTICLE 5 INSTALLATION AND ACCEPTANCE**

- 5.1** The Work to be performed under this Agreement shall be commenced and substantially completed as set forth in the Installation Schedule attached hereto as Attachment B.
- 5.2** If ESCOE is delayed at any time in the progress of performing its obligations under this Agreement by any act of neglect of CUSTOMER or of any employee or agent of CUSTOMER or any contractor employed by CUSTOMER; or by changes ordered or requested by CUSTOMER in the Work performed pursuant to this Agreement; or by labor disputes, fire, unusual delay in transportation or deliveries, adverse weather conditions or other events or occurrences which could not be reasonably anticipated; or unavoidable casualties; or any other problem beyond ESCOE's reasonable control (an "Excusable Delay"), then the time for performance of the obligations affected by such Excusable Delay shall be extended by the period of any delay actually incurred as a result thereof.
- 5.3** ESCOE shall provide Delivery and Acceptance Certificates in a form acceptable to CUSTOMER and ESCOE (the "Delivery and Acceptance Certificates") for the Work provided pursuant to the Schedule identified in Attachment F. Upon receipt of each Delivery and Acceptance Certificate, CUSTOMER shall promptly inspect the Work performed by ESCOE identified therein and execute each such Delivery and Acceptance Certificate as soon as reasonably possible, but in no event later than ten (10) days after delivery of the same by ESCOE, unless CUSTOMER provides ESCOE with a written statement identifying specific material performance deficiencies that it wishes ESCOE to correct. ESCOE will use reasonably diligent efforts to correct all such material deficiencies and will give written notice to CUSTOMER when all such items have been corrected. The Parties intend that a final Delivery and Acceptance Certificate will be executed for the Work as soon as all Work is installed and operating. Execution and delivery by CUSTOMER of such final Delivery and Acceptance Certificate with respect to the Work shall constitute "Final Acceptance" of such Work performed by ESCOE pursuant to the Installation Schedule.
- 5.4 Payment Verification** Prior to final acceptance of all energy conservation measures by the District, ESCOE shall provide Waivers of Lien as verification of payment in full for services rendered. ESCOE shall provide a schedule of values during the project. All final waivers must state "Paid in Full" in place of a dollar amount. Final payment will not be released until final waivers marked "Paid in Full" are submitted.

**ARTICLE 6 PRICE AND PAYMENT**

- 6.1 Price**
- 6.1.1** The price for the Work is \$ \_\_\_\_\_ (written) Dollars (\$ \_\_\_\_\_ (numbers), subject to the adjustments set forth in Articles 5 and 7.
- 6.1.2** The price is based upon laws, codes and regulations in existence as of the date this Agreement is executed. Any future changes after commencement of the work in or to applicable laws, codes and regulations affecting the cost of the Work shall be the responsibility of CUSTOMER and shall entitle ESCOE to an equitable adjustment in the price and schedule.
- 6.1.3** The price will be modified for delays caused by CUSTOMER and for Changes in the Work, all pursuant to Article 7.
- 6.1.4** The license fees for all licensed software are included in the price to be paid by CUSTOMER as identified in this Article 6.
- 6.1.5** If, at any time, CUSTOMER requests overtime work which requires overtime or premium pay, ESCOE shall be entitled to add such premium or overtime pay to the Contract Price, plus ESCOE's overhead and profit, subject to the review and approval of CUSTOMER.
- 6.1.6** The Contract Price does not include the items of work specifically excluded in Attachment A. If CUSTOMER requests ESCOE to perform any of the work expressly excluded in said Attachment, the cost for this additional work, plus ESCOE's overhead and profit, shall be added to the Contract Price.

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**6.2 Payment**

- 6.2.1** Upon execution of this Agreement, CUSTOMER shall pay or cause to be paid to ESCOE the full price for the Work, in accordance with the Payment Schedule, Attachment C. Payment shall be made net forty five (45) days of invoice date.
- 6.2.2** Payments due and unpaid shall bear interest from the date payment is due at the rate of 1 ½% per month, compounded monthly. In the event that Customer failed to pay ESCOE any sums due, Customer shall pay ESCOE all attorney's fees incurred by ESCOE in collecting amounts owed to ESCOE under this Agreement. If a progress payment is not paid by the due date, ESCOE reserves the right (without further notice) to immediately stop work until the progress payment then due is made, increased by the amount of ESCOE' costs of shutdown, delay and startup and, in such event, ESCOE will not be liable or responsible for any damages, costs or delays whatsoever due to such work stoppage. ESCOE reserves the right (without further notice) to terminate this Agreement altogether if work is stopped for thirty (30) or more days (whether or not consecutive days) because of a failure to make progress payments, and, in such event, also reserves the right to recover payment for all work executed and losses from stoppage of the work including reasonable overhead and profit.

**ARTICLE 7 CHANGES IN THE PROJECT**

- 7.1** A Change Order is a written order signed by CUSTOMER and ESCOE authorizing a change in the Work or adjustment in the price, or a change to the Installation Schedule described in Attachment B. Each Change Order shall describe the change in the work, the amount of adjustment, if any, to the Contract Price, and the extent of any adjustment to the completion date.
- 7.2** CUSTOMER may request ESCOE to submit proposals for changes in the Work. .
- 7.3 Claims for Concealed or Unknown Conditions** The Contract Price has been based on normal site conditions, without allowance for any additional work that might be caused by unanticipated site conditions. If conditions are encountered at the site that are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions, and, if appropriate, an equitable adjustment to the Contract Price and Installation Schedule shall be made by a Change Order. Said adjustment in Contract Price shall include ESCOE's overhead and profit. If agreement cannot be reached by the Parties, the party seeking an adjustment in the Price or Installation Schedule may assert a claim in accordance with Paragraph 7.4.
- 7.4** If ESCOE wishes to make a claim for an increase in the Contract Price or an extension in the Installation Schedule it shall give CUSTOMER written notice thereof within fourteen days (14) after the occurrence of the event giving rise to such claim. This notice shall be given by ESCOE before proceeding to execute the Work, upon approval by CUSTOMER to proposal of work except in an emergency endangering life or property, in which case ESCOE shall have the authority to act, in it's discretion, to prevent threatened damage, injury or loss. Claims arising from delay shall be made within a fourteen days (14) after the delay. Increases based upon design and estimating costs with respect to possible changes requested by CUSTOMER shall be made within fourteen days (14) after the decision is made not to proceed with the change. No such claim shall be valid unless so made. If CUSTOMER and ESCOE cannot agree on the amount of the adjustment in the Price, or the Installation Schedule, it shall be determined pursuant to the provisions of Article 12. Any change in the Price or the Installation Schedule resulting from such claim shall be authorized by Change Order.
- 7.5 Emergencies** In any emergency affecting the safety of persons or property, ESCOE shall act, at its discretion, to prevent threatened damage, injury or loss. Any increase in the Price or extension of time claimed by ESCOE on account of emergency work shall be determined as provided in Section 7.4.
- 7.6 Minor Changes** ESCOE shall, with CUSTOMER's approval, have the authority to make minor changes in the Work so long as they do not result in a material alteration or modification or cause an adjustment to the Contract Price or an extension of the Contract Time.

**ARTICLE 8 INSURANCE, INDEMNITY, WAIVER OF SUBROGATION, AND LIMITATION OF LIABILITY**

**8.1 Indemnity**

- 8.1.1** ESCOE agrees to indemnify and hold CUSTOMER, and CUSTOMER's consultants, agents and employees harmless from all claims for bodily injury and property damages [other than the Work itself and other property insured under Paragraph 8.4] to the extent such claims result from or arise under ESCOE's negligent actions or willful misconduct in its performance of the Work, nothing in this article shall be construed or understood to alter the limitations of liability contained in this article, article 2, or the indemnification contained in section 3.8. Except as otherwise

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provided herein, ESCOE's obligation, if any, to indemnify the CUSTOMER does not extend to losses sustained in whole or in part as a result of the CUSTOMER's (or its agent's) acts or omissions.

- 8.1.2** To the extent permitted by law, CUSTOMER shall indemnify and hold harmless ESCOE and ESCOE's consultants, agents and employees from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, or resulting from, any negligent act or omission of CUSTOMER or CUSTOMER's contractors, consultants, agents or employees.
- 8.1.3** CUSTOMER shall require any other contractor who may have a contract on this project with CUSTOMER to perform work in the areas where Work will be performed under this Agreement to agree to indemnify CUSTOMER and ESCOE and hold them harmless from all claims for bodily injury and property damage [other than property insured under Paragraph 8.4] that may arise from that contractor's operations. Such provisions shall be in a form satisfactory to ESCOE.
- 8.1.4** Notwithstanding anything to the contrary herein, if a portion of the Work involves the installation, maintenance, monitoring and/or testing of systems associated with security and/or the detection of and/or reduction of risk of loss associated with fire, the terms and conditions listed in Attachment H herein will apply and govern that portion of the Work. In the event of a conflict between the terms and conditions of the Contract Documents and the terms and conditions of Attachment H, the terms and conditions of Attachment H shall govern.

**8.2 Contractor's Liability Insurance**

- 8.2.1** ESCOE shall purchase and maintain such insurance as will protect it from claims that may arise out of or result from ESCOE's operations under this Agreement. ESCOE shall name the Customer as an additional insured. All insurance will meet customer's requirements set forth in the RFP document; Guaranteed Energy Savings Contract – RFP #2020-32.
- 8.2.2** The Commercial General Liability Insurance shall include premises-operations (including explosion, collapse and underground coverage), elevators, independent contractors, completed operations, and blanket contractual liability on all written contracts, all including broad form property damage coverage.
- 8.2.3** ESCOE's Commercial General and Automobile Liability Insurance, as required by Subparagraphs 8.2.1 and 8.2.2, shall be written for not less than limits of liability as outlined in the RFP document; Guaranteed Energy Savings Contract – RFP #2014-32.
- 8.2.4** ESCOE shall maintain at all times during the performance of the Work and Services hereunder, Worker's Compensation Insurance in accordance with the laws of the State in which the Work is performed.

**8.3. CUSTOMER's Liability Insurance**

- 8.3.1** CUSTOMER shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will protect it against claims that may arise from operations under this Agreement.

**8.4 Insurance to Protect Project**

- 8.4.1** CUSTOMER shall purchase and maintain replacement property insurance for the length of time to complete the Project. This insurance shall include as named additional insureds ESCOE and ESCOE's Subcontractors and Sub-subcontractors and shall include, at a minimum, coverage for fire, windstorm, flood, earthquake, theft, vandalism, malicious mischief, transit, collapse, testing, and damage resulting from defective design, workmanship, or material in the existing facilities,. CUSTOMER will increase limits of coverage, if necessary, to reflect estimated replacement costs. CUSTOMER will be responsible for any coinsurance penalties or deductibles. If the Work covers an addition to or is adjacent to an existing building, ESCOE and its Subcontractors and Sub-subcontractors shall be named additional insureds under CUSTOMER's Property Insurance covering such building and its contents.
- 8.4.1.1** If CUSTOMER finds it necessary to occupy or use a portion or portions of the Facilities prior to Substantial Completion thereof, such occupancy shall not commence prior to a time mutually agreed to by CUSTOMER and ESCOE and to which the insurance company or companies providing the property insurance have consented by endorsement to the policy or policies. This insurance shall not be canceled or lapsed on account of such partial occupancy. Consent of ESCOE and of the insurance company or companies to such occupancy or use shall not be unreasonably withheld.
- 8.4.2** CUSTOMER shall purchase and maintain such insurance as will protect CUSTOMER and ESCOE against loss of use of CUSTOMER's property due to those perils insured pursuant to Subparagraph 8.4.1. Such policy will provide coverage for expenses of expediting materials, continuing overhead of CUSTOMER and ESCOE, necessary labor expense including overtime, loss of income by CUSTOMER and other determined exposures. Exposures of CUSTOMER and ESCOE shall be determined by mutual agreement and separate limits of coverage fixed for each item.

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**8.4.3** ESCOE and CUSTOMER shall provide Certificate(s) of Insurance to each other before work on the Project begins. All insurance coverage(s) must be with a carrier rated A or better by one of the National Insurance Rating Agencies such as A.M. Best or if customer is self-insured then a certificate of self-insurance shall be provided. ESCOE and customer will be given sixty (60) days notice of cancellation, nonrenewal, or any endorsements restricting or reducing coverage. ESCOE will maintain a file of sub-contractors insurance certificates evidencing compliance with these requirements. All insurers shall be licensed by the State of Illinois and rated A-Vu or better by A.M. Best or comparable rating service or be an authorized Risk Retention Group acceptable to the School District.

**8.5 Property Insurance Loss Adjustment**

**8.5.1** Any insured loss shall be adjusted with CUSTOMER and ESCOE and made payable to CUSTOMER and ESCOE as trustees for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

**8.5.2** Upon the occurrence of an insured loss, monies received will be deposited in a separate account and the trustees shall make distribution in accordance with the agreement of the parties in interest, or in the absence of such agreement, in accordance with an arbitration award pursuant to Article 12. If the trustees are unable to agree between themselves on the settlement of the loss, such dispute shall also be submitted to arbitration pursuant to Article 12.

**8.7 Limitation of Liability**

**8.7.1** In no event shall ESCOE be liable for any special, incidental, indirect, speculative, remote, or consequential damages arising from, relating to, or connected with the work, equipment, materials, or any goods or services provided hereunder. The CUSTOMER waives claims against ESCOE for consequential damages arising out of or relating to this Agreement. This waiver includes damages incurred by CUSTOMER for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons.

**ARTICLE 9 TERMINATION OF THE AGREEMENT**

**9.1** If ESCOE defaults in, or fails or neglects to carry forward the Work in accordance with this Agreement, CUSTOMER may provide notice in writing of its intention to terminate this Agreement to ESCOE. If ESCOE, following receipt of such written notice, neglects to cure or correct the identified deficiencies within Seven (7) business days, CUSTOMER may provide a second written notice. If ESCOE has not, within Seven (7) business days after receipt of such notice, acted to remedy and make good such deficiencies, CUSTOMER may terminate this Agreement and take possession of the site together with all materials thereon, and move to complete the Work itself expediently. If the expense to finish the work exceeds the unpaid balance of the contract sum, ESCOE shall pay the difference to CUSTOMER.

**9.2** If CUSTOMER fails to make payments as they become due, or otherwise defaults or breaches its obligations under this Agreement, ESCOE may give written notice to CUSTOMER of ESCOE's intention to terminate this Agreement. If, within fourteen (14) days following receipt of such notice, CUSTOMER fails to make the payments then due, or otherwise fails to cure or perform its obligations, ESCOE may, by written notice to CUSTOMER, terminate this Agreement and recover from CUSTOMER payment for Work executed and for losses sustained for materials, tools, construction equipment and machinery, including but not limited to, reasonable overhead, profit and applicable damages.

**ARTICLE 10 ASSIGNMENT AND GOVERNING LAW**

**10.1** This Agreement shall be governed by the law of the State where the Work is performed and subject to the jurisdiction of the circuit court of McHenry County, Illinois.

**10.2** Neither party to the Agreement shall assign this Agreement or sublet it as a whole without the written consent of the other party. Such consent shall not be reasonably withheld, except that ESCOE may assign to another party the right to receive payments due under this Agreement. ESCOE may enter into subcontracts for the Work without obtaining CUSTOMER's consent.

**ARTICLE 11 MISCELLANEOUS PROVISIONS**

**11.1** The Table of Contents and headings in this Agreement are for information and convenience only and do not modify the obligations of this Agreement.

**11.2 Confidentiality.** As used herein, the term "CONFIDENTIAL INFORMATION" shall mean any information in readable form or in machine readable form, including software supplied to CUSTOMER by ESCOE that has been identified or labeled as "Confidential" and/or "Proprietary" or with words of similar import. CONFIDENTIAL INFORMATION shall also mean any information that is disclosed orally and is designated as "Confidential" and/or "Proprietary" or with words of similar import at the time of disclosure and is reduced to writing, marked as "Confidential" and/or "Proprietary" or with words of similar import, and supplied to the receiving party within ten (10) days of disclosure. All rights in and to

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CONFIDENTIAL INFORMATION and to any proprietary and/or novel features contained in CONFIDENTIAL INFORMATION disclosed are reserved by the disclosing party; and the party receiving such disclosure will not use the CONFIDENTIAL INFORMATION for any purpose except in the performance of this Agreement and will not disclose any of the CONFIDENTIAL INFORMATION to benefit itself or to damage the disclosing party. This prohibition includes any business information (strategic plans, etc.) that may become known to either party. Each party shall, upon request of the other party or upon completion or earlier termination of this Agreement, return the other party's CONFIDENTIAL INFORMATION and all copies thereof. Notwithstanding the foregoing provisions, neither party shall be liable for any disclosure or use of information disclosed or communicated by the other party if the information: (a) is publicly available pursuant to the provisions of the Open Meetings Act (OMA) and the Freedom of Information Act (FOIA) at the time of disclosure or later becomes publicly available other than through breach of this Agreement; or (b) is known to the receiving party at the time of disclosure; or (c) is subsequently rightfully obtained from a third party on an unrestricted basis; or (d) is approved for release in writing by an authorized representative of the disclosing party; or (e) is otherwise required by law. The obligation of this Article shall survive any expiration, cancellation or termination of this Agreement.

- 11.3** If any provision is held illegal, invalid or unenforceable, the remaining provisions of this Agreement shall be construed and interpreted to achieve the purposes of the Parties.
- 11.4** Risk of loss for all equipment and materials provided by ESCOE hereunder shall transfer to CUSTOMER upon delivery to CUSTOMER's Facilities from ESCOE or its Subcontractor and title shall pass upon final acceptance or final payment by CUSTOMER to ESCOE, whichever occurs later.
- 11.5** Final notice or other communications required or permitted hereunder shall be sufficiently given if personally delivered to the person specified below, or if sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To ESCOE:

ESCOE  
Attention: \_\_\_\_\_((name of agent))  
(street address)  
(city, state, zip code)

To CUSTOMER:

Consolidated School District 158  
Dr. John Burkey Dr.  
Algonquin, IL 60102  
Attn: Director of Operations and Maintenance

- 11.6 Waiver.** Customer or ESCOE's failure to insist upon the performance or fulfillment of any of each party's obligations under this Agreement shall not be deemed or construed as a waiver or relinquishment of the future performance of any such right or obligation hereunder.
- 11.7** If any provision of this Agreement or the application thereof to any circumstances shall be held to be invalid or unenforceable, then the remaining provisions of this Agreement or the application thereof to other circumstances shall not be affected hereby and shall be valid and enforceable to the fullest extent permitted by law.
- 11.8 Performance/Payment Bond.** ESCOE shall furnish a performance bond and payment bond covering the construction of the work in an amount equal to the contract price prior to commencement of work in a form acceptable to CUSTOMER.
- 11.9** The bond identified in Section 11.8 shall cover only the performance and payment exposure associated with the performance of the construction portion of the work. The energy savings, additional savings, guaranteed savings, savings shortfalls shall be covered by the Performance Guaranty Bond, as set forth in Section 3.1.8 of Attachment D.
- 11.10** ESCOE will provide an energy guarantee bond equal to the guaranteed savings as defined in Attachments D and E in an amount not to exceed \$ \_\_\_\_\_(value equal to first two years of energy savings guarantee) in a form mutually agreeable to ESCOE and Customer. This will be a two year term. In the event of a guarantee shortfall in years 1 or 2 ESCOE will deposit an amount equal to 110% of the shortfall into an escrow account. This amount will be available for any guarantee savings shortfalls in years 3 through 10. After year 10, any remaining funds will be returned to ESCOE.
- 11.11 Ambiguities.** The parties have each had the opportunity to review and negotiate the terms of this Agreement, and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement.
- 11.12 Headings.** The section headings contained herein are intended for convenience and reference only, and are not a part of this Agreement.

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**11.13 Authority to Enter into this Contract.** The persons signing the Agreement on behalf of the parties are authorized to execute and accept contracts of this nature.

**11.14 CUSTOMER Representations.** To the extent applicable, ESCOE and CUSTOMER warrant that they have the necessary power and authority to enter into this Agreement and this Agreement has been duly authorized by its duly elected representatives. This Agreement is a legal, valid and binding obligation of ESCOE and CUSTOMER.

**ARTICLE 12  
ARBITRATION**

**12.1** The Parties agree that any controversy or claim between ESCOE and CUSTOMER arising out of or relating to this Agreement, or the breach thereof, at the sole discretion of CUSTOMER shall be settled by arbitration, conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association at a location specified by CUSTOMER. The arbitration will be conducted at a mutually agreeable location. Any award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

**ARTICLE 13 LIMIT OF LIABILITY – FIRE AND/OR SECURITY SYSTEMS**

**13.1** The parties agree that ESCOE is not an insurer; that the fire and/or security system and/or Service purchased herein is designed only to reduce the risk of loss; that CUSTOMER chose such system and/or Service from several levels of protection offered by ESCOE; that ESCOE will not be held liable for any loss, whether in tort or contract, which may arise from the failure of the system and/or Service; and that customer will indemnify, defend and save ESCOE harmless from any and all loss, claims, actions, causes of actions or expense, including attorneys' fees, arising from the actual or alleged malfunction or non-function of the system and/or service. The parties further agree that this Agreement shall not confer any rights on the part of any person or entity not a party hereto, whether as a third-party beneficiary or otherwise. Because it is extremely difficult to assess actual damages arising from the failure of a system and/or service, the parties agree that if any liability is imposed on ESCOE for damages or personal injury to either customer or any third party, such liability shall be limited to an aggregate amount not to exceed the value of the system installed. This sum shall be paid either as (i) liquidated damages and not as a penalty, or (ii) a limitation of liability agreed upon by the parties. No suit or action shall be brought against ESCOE more than one (1) year after the accrual of the cause of action thereof.

**ARTICLE 14 GOVERNING LAW**

This Agreement and the performance thereof shall be governed, interpreted, construed, and regulated by the laws of the State of Illinois. Any litigation concerning this Agreement shall be conducted in the courts located in McHenry County, and the parties hereto agree to the venue and personal jurisdiction of these courts.

**APPROVALS:**

The parties hereby execute this Agreement as of the date first set forth herein by the signatures of their duly authorized representatives:

**ESCOE** \_\_\_\_\_  
**By** \_\_\_\_\_  
**Name** \_\_\_\_\_  
**Title** \_\_\_\_\_  
**Date** \_\_\_\_\_

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**ATTACHMENT A TO CONTRACT  
SCOPE OF WORK**

**ESCOE includes the following requirements taken from District 158 RFP #2020-32**

**Grant Services:** Provide assistance with processing of Applications for Grants, Incentives, and Rebates from all available sources as a part of the proposed Guaranteed Energy Savings Projects. This proposal provider shall coordinate delivery of Energy Efficiency Portfolio Solutions Grants (DCEO) on behalf of the School District and the Illinois State Board of Education ISBE School Energy Efficiency Grant through the District's Architect of Record; Wold Architects and Engineers.

**Professional Engineer Services:** ESCOE will provide a Professional Engineer licensed in the State of Illinois who shall, at a minimum:

- Review and approve design of energy conservation measures under this contract
- Process all building permits necessary for the project
- Review of all commissioning efforts as outlined below herein
- Process all occupancy permits necessary for the project
- Review and approve ESCOE's annual audit of energy savings under this contract during the payback period

As a part of the Guaranteed Energy Savings Contract, ESCOE's Professional Engineer providing the services listed above shall also gain consensus on designs with the School District's Architect of record; consensus shall not be unreasonably withheld. The School District's Architect of Record's time will be funded by the School District for these outlined service.

**Construction Management:** ESCOE will be required to work with current facilities management personnel in order to coordinate construction and provide appropriate training in operations and maintenance of all installed improvements. The District requires a full time on-site Construction Superintendent during the construction. No equipment or other improvements will be installed that would require the District to hire additional personnel unless contract negotiations produce an explicit exemption for a specific installation. Maintenance responsibilities shall be retained by the District, but at their discretion, they can negotiate for maintenance services with ESCOE.

**Commissioning:** ESCOE will be required to commission all new equipment, building systems and control programs installed as a part of the project. Commission shall include:

- Start-up of all new building control equipment whenever available from a qualified representative of the manufacturer of said equipment
- Functional performance testing of all new control systems and reprogrammed control systems
- Delivery of written documentation of all above referenced commissioning efforts to the District

**O&M Manuals:** At least two hard copies and one electronic (pdf) version of the operation and maintenance manuals for each site will be provided for all equipment replacements and/or upgrades. Completeness of delivered manuals are subject to approve of District.

**As-Built Drawings:** Where applicable, ESCOE must provide two hard copies and one electronic (pdf) version of "as built" and record drawings (or such electronic equivalents as may be agreed to with District) of all existing and modified conditions associated with the project, conforming to typical engineering standards. These should include controls drawings and operating manuals within 30 days of completed project installation.

**District Inspection:** District retains the right to have its representative visit the site during the audit and implementation phases of the project, and to attend relevant on-site or off-site meetings of ESCOE and or its subcontractors. District will have the right to inspect, test and approve the materials and work conducted in the facilities during construction and operation.

**Final Approval of District:** District retains final approval over the scope of work and all end use conditions.

**Ownership of Drawings, Reports and Materials:** All drawings, reports and materials prepared by ESCOE specifically in performance of this contract shall become the property of District and will be delivered to District as needed, required or upon completion of construction.

**Training Provisions:**

As a part of this contract, ESCOE has included a two year Remote Systems Support program for the newly installed System at no additional costs to the District. This will assure that the new controls are operating at optimum performance and are maintaining a quality environment for students and staff. These support services are provided to insure that:

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1. Employees become comfortable operating the new systems
2. Operations are monitored so that the energy savings projected with the new system become a reality
3. Retraining is accomplished as may be required for current or new employees
4. Technical assistance is available as needed which establishes a routine communications comfort level between your employees and the ESCOE support services personnel
5. Customer's specified HVAC service contractor is trained in the use of the system

The support services for any HVAC control work shall include:

1. Maintaining Internet Interfaces: This enables remote operation of the new automation system and allows ESCOE software specialists to monitor operations to assure all parts of the system are operating properly.
2. Updating Software Programs as Required: Remote support of the operating software in the system often needs initial 'tuning' as we pass through the seasons. This is included as is the occasional update of third party software that may be part of your system.
3. Backing Up The System: Although you should always backup your system locally, ESCOE will perform a remote backup which will be held off site in the ESCOE office.
4. Training/Retraining of Personnel. Included is remote retraining of your operating staff as required until they are comfortable with the system. This also includes training of new hires.
5. Training of HVAC Contractor: Training the customer's specified HVAC service contractor in the use of the system for trouble shooting is included in this contract.
6. Response to Remote Critical Alarms: Alarms customer deems critical will be monitored by ESCOE on a 24 hour basis and will be handled as directed.
7. Operation Monitoring for Energy Savings. The software discipline in your new system is designed to provide a good learning environment as well as achieve energy cost savings. Although these efforts usually work in harmony, they can occasionally work at odds with each other. ESCOE will remotely monitor your operating program to uncover changes that may have been made that could frustrate these objectives and communicate correction recommendations to you.
8. Technical Support. ESCOE will be available for remote technical support to help you identify problems you may be having with your mechanical HVAC systems.

**Project Scope Development**

*(The Energy Conservation Measures (ECMs) shall be clearly defined in this section.)*

**Savings Calculations and Methodology**

*(The energy savings calculation methodology will be defined in this section.)*

**Measurement & Verification (M&V) Plan**

*(The proposed Measurement and Verification Plan will defined in this section and shall require a minimum of three years of calculation by the ESCOE and not additional cost by the ESCOE and for additional years at a defined cost.)*

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**ATTACHMENT B TO CONTRACT  
INSTALLATION SCHEDULE**

*(ESCOE's construction schedule shall be input here-in.)*

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**ATTACHMENT C TO CONTRACT**  
**CONTRACT PAYMENT SCHEDULE**  
*(ESCOE's anticipated payment schedule shall be input here)*

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**ATTACHMENT D TO SAMPLE CONTRACT  
ENERGY GUARANTEE**

**1. DEFINITIONS**

When used in this Agreement, the following capitalized words shall have the meanings ascribed to them below:

**"Baseline Period"** is the period of time which defines the Baseline Usage and is representative of the facilities' operations, consumption, and usage that is used as the benchmark for determining cost avoidance.

**"Baseline Usage or Demand"** the calculated or measured energy usage (demand) by a piece of equipment or a site prior to the implementation of the ECMs. Baseline physical conditions, such as equipment counts, nameplate date, and control strategies, will typically be determined through surveys, inspections, and/or metering at the site.

**"Energy and Operational Cost avoidance Guarantee Practices"** are those practices identified in Attachment E, intended to achieve avoided costs in energy and/or operating expenses.

**"Energy Costs"** may include the cost of electricity and fuels to operate HVAC equipment, facility mechanical and lighting systems, and energy management systems, and the cost of water and sewer usage, as applicable.

**"ECM"** the Energy Conservation Measure (ECM) is the installation of equipment or systems, or modification of equipment or systems as described in Attachment A.

**"Facilities"** shall mean those buildings where the energy and operational cost savings will be realized.

**"F.E.M.P."** shall mean the Federal Energy Management Program of the U.S. Department of Energy and its Measurement and Verification Guidelines for Federal Energy Projects (DOE/GO-10096-248, February 1996, or later versions). The F.E.M.P. guidelines classify measurement and verification approaches as Option A, Option B, Option C, and Option D. The F.E.M.P. guidelines are based on the International Performance Measurement and Verification Protocol (I.P.M.V.P.) and are written to be fully consistent with it. It is intended to be used by Federal procurement teams consisting of contracting and technical specialists. The focus of F.E.M.P. guidelines is on choosing the M&V option and method most appropriate for specific projects.

**"Financing Document"** refers to that document executed between CUSTOMER and a third-party financing entity providing for payments from CUSTOMER to third-party financing entity.

**"Final Project Acceptance"** refers to the CUSTOMER acceptance of the installation of the ECMs as described in Attachment A.

**"First Guarantee Year"** is defined as the period beginning on the first (1<sup>st</sup>) day of the month following the date of Final Retrofit Acceptance of the Work installed and ending on the day prior to the first (1<sup>st</sup>) anniversary thereof.

**"Guarantee Period"** is defined as the period beginning on the first (1<sup>st</sup>) day of the First Guarantee Year and ending on the last day of the final Guarantee Year.

**"Guarantee Year"** is defined as the First Guarantee Year and each of the successive twelve (12) month periods commencing on the anniversary of the commencement of the First Guarantee Year throughout the Term of this Agreement.

**"Guaranteed Savings"** is defined as the amount of avoided Energy and Operational Costs necessary to pay for the cost of the Work incurred by CUSTOMER in each Guarantee Year (as identified in Section 3.1 hereof).

**"I.P.M.V.P."** International Performance Measurement and Verification Protocol (July 1997, or later version) provides an overview of current best practice techniques available for measurement and verification of performance contracts. This document is the basis for the F.E.M.P. protocol and is fully consistent with it. The techniques are classified as Option A, Option B, Option C, and Option D.

**"Measurement and Verification Plan"** (M&V Plan) is defined as the plan providing details on how the Guarantee Savings will be verified.

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**"Operational Costs"** shall include the cost of operating and maintaining the facilities, such as, but not limited to, the cost of inside and outside labor to repair and maintain Covered Systems and Equipment, the cost of custodial supplies, the cost of replacement parts, the cost of deferred maintenance, the cost of lamp and ballast disposal, and the cost of new capital equipment.

**"Option A"** is a verification approach that is designed for project in which the potential to perform needs to be verified, but the actual performance can be stipulated based on the results of the "potential to perform and generate savings" verification and engineering calculations. Option A involves procedures for verifying that:

- Baseline conditions have been properly defined; and
- The equipment and/or systems that were contracted to be installed have been installed; and
- The installed equipment components or systems meet the specifications of the contract in terms of quantity, quality, and rating; and
- The installed equipment is operating and performing in accordance with the specifications in the contract and meeting all functional tests; and
- The installed equipment components or systems *continue, during the term of the contract*, to meet the specifications of the contract in terms of quantity, quality and rating, and operation and functional performance.

**"Option B"** is for projects in which the potential to perform and generate Savings needs to be verified; and actual performance during the term of the contract needs to be measured (verified). Option B involves procedures for verifying the same items as Option A plus verifying actual achieved energy savings during the term of the contract. Performance verification techniques involve engineering calculations with metering and monitoring.

**"Option C"** is also for projects in which the potential to perform needs to be verified and actual performance during the term of the contract needs to be verified. Option C involves procedures for verifying the same items as Option A plus verifying actual achieved energy savings during the term of the contract. Performance verification techniques involve utility whole building meter analysis and/or computer simulation calibrated with utility billing data.

**"Option D"** is a verification technique where calibrated simulations of the baseline energy use and/or calibrated simulations of the post-installation energy consumption are used to measure Savings from the Energy Conservation Measures. Option D can involve measurements of energy use both before and after the Retrofit for specific equipment or energy end use as needed to calibrate the simulation program. Periodic inspections of the equipment may also be warranted. Energy consumption is calculated by developing calibrated hourly simulation models of whole-building energy use, or equipment sub-systems in the baseline mode and in the post-installation mode and comparing the simulated annual differences for either an average year or for conditions that correspond to the specific year during either the baseline or post-installation period.

**"Retrofit"** is the work provided by ESCOE as defined by the "ECMs".

**"Savings"** is defined as avoided, defrayed, or reallocated costs.

**"Term"** shall have the meaning as defined in Section 2 hereof.

**"Total Guarantee Year Savings"** is defined as the summation of avoided Energy and Operational Costs realized by facilities in each Guarantee Year as a result of the Retrofit provided by ESCOE as well as Excess Savings, if any, carried forward from previous years.

**"Two-Year Savings Shortfall"** shall mean the combined Savings Shortfall (as defined in Section 3.1.5) for the First Guaranty Year and the Second Guaranty Year.

## **2. TERM AND TERMINATION**

**2.1 Guarantee Term.** The Term of this Guarantee Period shall commence on the first (1<sup>st</sup>) day of the month following the date of Final Project Acceptance of the Work installed pursuant to this agreement and shall terminate at the end of the Guarantee Period unless terminated earlier as provided for herein. The Term of this Guarantee Period is defined in Section 1 of Attachment E.

**2.2 Guarantee Termination.** Should this Agreement be terminated in whole or in part for any reason prior to the end of the Term, the Guaranteed Savings for the Guarantee Year in which such termination becomes effective shall be prorated as of the effective date of such termination, with a reasonable adjustment for seasonal fluctuations in Energy and Operational Costs, and the Guaranteed Savings for all subsequent Guarantee Years shall be null and void.

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**3. SAVINGS GUARANTEE**

**3.1 Guaranteed Savings.** ESCOE guarantees to CUSTOMER that the identified Facilities will realize the total energy and operational cost avoidance through the combined value of all ECMs over the Term of the contract as defined in Section 1 of Attachment E. In no event shall the savings guarantee provided herein exceed the total installation, maintenance, and financing costs for the Work under this Agreement. Notwithstanding any other provision of this Agreement required savings reconciliation or verification, the Total Guarantee Year Savings in each Guarantee Year are stipulated and agreed to by both parties to this Agreement to equal the Energy Costs and Operational Cost Avoidance amounts set forth in Attachment E (Schedule of Savings), and shall be deemed realized upon the date of final Project Acceptance.

**3.1.1 Additional Savings.** Additional energy and/or operational cost avoidance that can be demonstrated as a result of ESCOE's efforts that result in no additional costs to CUSTOMER beyond the costs identified in this Agreement will be included in the guarantee savings reconciliation report for the applicable Guarantee Year(s).

**3.1.2 Savings Prior to Final Retrofit Acceptance.** All energy and operational cost avoidance realized by CUSTOMER that result from activities undertaken by ESCOE prior to Final Project Acceptance, including any utility rebates or other incentives earned as a direct result of the installed Energy Conservation Measures provided by ESCOE, will be applied toward the Guaranteed Savings for the First Guarantee Year.

**3.1.3 Accumulation of Savings.** The Guaranteed Savings in each Guarantee Year are considered satisfied if the Total Guarantee Year Savings for such Guarantee Year equals or exceeds the Retrofit and Support Costs for such Guarantee Year or the amount identified in Section 1 of Attachment E hereto.

**3.1.4 Excess Savings.** In the event that the Total Guarantee Year Savings in any Guarantee Year exceed the Guaranteed Savings required for that Guarantee Year, such Excess Savings shall be billed to CUSTOMER (up to any amounts previously paid by ESCOE for a Guaranteed Savings shortfall pursuant to Section 3.1.5), which amount shall be payable within thirty (30) days after the amount of such Total Guarantee Year Savings has been determined and any remaining Excess Savings shall be carried forward and applied against Guaranteed Savings shortfalls in any future Guarantee Year.

**3.1.5 Savings Shortfalls.** In the event that the Total Guarantee Year Savings in any Guarantee Year is less than the Guaranteed Savings required for that Guarantee Year, after giving credit for any Excess Savings carried forward from previous Guarantee Years pursuant to Section 3.1.4. ESCOE shall, upon receipt of written demand from CUSTOMER, compensate CUSTOMER the amount of any such shortfall, limited by the value of the guarantee, within thirty (30) days. Resulting compensation shall be ESCOE's sole liability for any short fall in the Guaranteed Savings.

**3.1.6.** If there is a Two-Year Savings Shortfall, ESCOE shall pay the CUSTOMER an amount equal to one hundred and ten (110%) percent of the Two-Year Savings Shortfall which the customer shall hold in escrow (the "Escrow") as security against a Savings Shortfall in years 3 through 10. ESCOE shall pay the Escrow to the CUSTOMER within sixty (60) days after the determination of the Savings Shortfall (or Excess Savings) for the Second Guaranty Year.

**3.1.7.** The CUSTOMER may draw upon the Escrow to satisfy any Savings Shortfall in years 3 through 10. If there is any amount remaining in the Escrow after satisfying Savings Shortfalls in years 3 through 10, the CUSTOMER shall remit such remaining amount back to ESCOE (or to its surety if the surety had paid the escrow amount to the CUSTOMER pursuant to its bond obligations).

**3.1.8.** ESCOE shall furnish to the Customer a "Performance Guaranty Bond" in an amount of \$640,090 prior to commencement of work, which shall be in a form mutually acceptable to the CUSTOMER and ESCOE. The Performance Guaranty Bond shall cover the following obligations of ESCOE to the Customer: (a.) The payment of the Savings Shortfall for the First Guaranty Year; (b.) The payment of the Savings Shortfall for the Second Guaranty Year; and (c.) The payment of the Escrow to the CUSTOMER, as set forth in Section 3.1.6.

**3.1.9.** The Performance Guaranty Bond shall be null and void in the event there is no Two-Year Savings Shortfall or if ESCOE pays to the CUSTOMER in full the Savings Shortfall(s) for the First and Second Guaranty Years and pays to the CUSTOMER in full the Escrow. Otherwise, the Performance Guaranty Bond remains in full force and effect until the payment obligations, as identified in this Section 3.1.9., are satisfied in full.

**3.2 Savings Reconciliation Documentation.** ESCOE will provide CUSTOMER with a guarantee savings reconciliation report after the first Guarantee Year. CUSTOMER will assist ESCOE in generating the savings reconciliation report by providing ESCOE with copies of all bills pertaining to Energy Costs within two (2) weeks following the CUSTOMER's receipt thereof, together with access to relevant records relating to such Energy Costs. CUSTOMER will also assist ESCOE by permitting access to any maintenance records, drawings, or other data deemed necessary by ESCOE to generate the said report. Data and calculations utilized by ESCOE in the preparation of its guarantee cost savings reconciliation report will be made available to CUSTOMER along with such explanations and clarifications as CUSTOMER may reasonably request.

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**3.2.1 Acceptance of Guarantee Reconciliation.** At the end of the first Guarantee Year the CUSTOMER will have forty-five (45) days to review the guarantee savings reconciliation report and provide written notice to ESCOE of non-acceptance of the Guarantee Savings for that Guarantee Year. Failure to provide written notice within forty-five (45) days of the receipt of the guarantee savings reconciliation report will deem it accepted by CUSTOMER. If the annual guarantee savings have been met after the first year, the guarantee will be deemed realized for the entire guarantee term.

**3.2.2 Guarantee Savings Reconciliation.** Guarantee Savings will be determined in accordance with the methodology(s), operating parameters, formulas, and constants as described below and/or defined in Attachment E and/or additional methodologies defined by ESCOE that may be negotiated with CUSTOMER at any time. For reconciliation of Guarantee Savings employing the method of utility bill analysis consistent with F.E.M.P. Option C. Energy usage for the Facilities for such Guarantee Year will be summarized and compared with the adjusted Baseline Period energy usage for the Facilities through the use of energy accounting software. The difference between the adjusted Baseline Period energy usage and the Guarantee Year energy usage will be multiplied by the applicable energy rate as defined in Attachment E, to calculate the Energy Cost avoidance. Energy Cost avoidance may also include, but are not limited to, Savings from demand charges, power factor correction, taxes, ratchet charges, rate changes and other utility tariff charges that are reduced as a result of the ESCOE involvement. A Baseline Period will be specified (Section 1 of Attachment E) for the purpose of utility bill analysis. AND/OR for those energy audits employing the method consistent with I.P.M.V.P. and/or F.E.M.P. Options A and/or B: For each ECM, ESCOE will employ an M&V Plan which may be comprised of any or all of the following elements:

1. Pre-retrofit model of energy consumption or demand
2. Post-retrofit measured energy consumption
3. Post-retrofit measured demand and time-of-use
4. Post-retrofit energy and demand charges
5. Sampling plan
6. Stipulated Values

The value of the energy savings will be derived from the measured data and engineering formulae included herein, and the applicable energy charges during each Guarantee Year. In some cases, energy usage and/or demand will be calculated from measured variables that directly relate to energy consumption, demand or cost, such as, but not limited to, measured flow, temperature, current, voltage, enthalpy or pressure. AND/OR for those energy audits employing the method consistent with I.P.M.V.P. and/or F.E.M.P. Option D:

For each Energy Conservation measure, ESCOE will employ an M&V Plan which may be comprised of any or all of the following elements:

1. Pre-retrofit model of energy consumption or demand
2. Post-retrofit model of energy consumption or demand
3. Post-retrofit measured energy consumption
4. Post-retrofit measured demand and time-of-use
5. Post-retrofit energy and demand charges
6. Sampling Plan
7. Stipulated values

The value of the energy savings will be derived from a calibrated simulation of either the whole building or of subsystems in the building to determine the difference in the performance of the specific equipment being replaced. This method may entail as needed one-time measurements of the performance of the energy consuming systems in the building in order to calibrate the simulation model. Energy usage for the Facilities for such Guarantee Year will be derived through the use of simulation programs.

The value of the energy savings will be derived from a calibrated simulation of either the whole building or of subsystems in the building to determine the difference in the performance of the specific equipment being replaced. This method may entail as needed one-time measurements of the performance of the energy consuming systems in the building in order to calibrate the simulation model. Energy usage for the Facilities for such Guarantee Year will be derived through the use of simulation programs.

**3.3 Operational Cost Avoidance.** The agreed-upon Operational Cost Avoidance as described in Attachment E (Schedule of Savings) will be deemed realized upon execution of this Agreement and will begin to accrue on the date of the completion and acceptance of each Retrofit improvement. These Savings are representative of information provided by the CUSTOMER consisting of either whole or partial budgeted operational costs and as such, it is hereby understood and agreed that the CUSTOMER is wholly responsible for assuring that these budgeted Operational Costs are accurate and achievable.

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**3.4 Base Year Adjustments.** Baseline Period shall be adjusted to reflect: changes in occupied square footage; changes in energy-consuming equipment; changes in the Facilities; changes in Energy and Operational Cost Avoidance Guarantee Practices adversely affecting energy consumption and/or demonstrated operational changes; changes in weather between the Baseline Period and the Guarantee Year; and documented or otherwise conclusively established metering errors for the Baseline Period and/or any Guarantee Year adversely affecting energy usage measurement.

**3.4.1 Facility Operational Changes.** Except in the case of emergencies CUSTOMER agrees it will not, without the consent of an Authorized Representative of ESCOE: make any significant deviations from the applicable Energy and Operational Cost Avoidance Guarantee Practices; put any system or item of equipment in a permanent "on" position, if the same would constitute a deviation from the applicable Energy and Operational Cost Avoidance Guarantee Practices; or assume manual control of any energy management system or item of equipment, if the same would constitute a deviation from the applicable Energy and Operational Cost Avoidance Guarantee Practices.

**3.4.2 Hours and Practices.** To achieve these energy savings, ESCOE and CUSTOMER agree upon the operating practices listed in Attachment E.

**3.4.3 Activities and Events Adversely Impacting Savings.** CUSTOMER shall promptly notify ESCOE of any activities known to CUSTOMER which adversely impact: ESCOE's ability to realize the Guaranteed Savings and ESCOE shall be entitled to reduce its Guaranteed Savings by the amount of any such adverse impact to the extent that such adverse impact is beyond ESCOE's reasonable control.

**3.5 Guarantee Adjustment.** ESCOE's Guaranteed Savings obligations under this Agreement are contingent upon:

- (1) CUSTOMER following the Energy and Operational Cost Avoidance Guarantee Practices set forth herein and in Attachment E;
- (2) no alterations or additions being made by CUSTOMER to any of the Covered systems and Equipment without prior notice to and agreement by ESCOE;
- (3) CUSTOMER sending all current utility bills to ESCOE within two (2) weeks after receipt by CUSTOMER, if CUSTOMER fails to provide current utility bills for a period of time in excess of six (6) months ESCOE may, at its sole discretion, deem the Guarantee Savings obligation met during that period and any successive periods, and
- (4) ESCOE's ability to render services not being impaired by circumstances beyond its control. To the extent CUSTOMER defaults in or fails to perform fully any of its obligations under this Agreement, ESCOE may, in its sole discretion, adjust its Guaranteed Savings obligation; provided, however, that no adjustment hereunder shall be effective unless ESCOE has first provided CUSTOMER with written notice of CUSTOMER's default(s) or failure(s) to perform and CUSTOMER has failed to cure its default(s) to perform within thirty (30) days after the date of such notice.

The bond provided for the construction of the project only covers the performance of materials and workmanship for the completion of said construction work, not the energy guarantee. ESCOE will provide an energy guarantee bond equal to the guaranteed savings as defined in Attachments D and E in an amount not to exceed \$640,090.00 in a form mutually agreeable to ESCOE and CUSTOMER. This will be a two year term. In the event of a guarantee shortfall in years 1 or 2 ESCOE will deposit an amount equal to 110% of the shortfall into an escrow account. This amount will be available for any guarantee savings shortfalls in years 3 through 10. After year 10, any remaining funds will be returned to ESCOE.

**3.6 CUSTOMER Inspections.** CUSTOMER retains the right to have its representative visit the site during the audit and implementation phases of the project, and to attend relevant on-site or off-site meetings of ESCOE and/or its subcontractors. CUSTOMER will have the right to inspect, test and approve the materials and work in the facilities during construction and operation.

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**ATTACHMENT E TO SAMPLE CONTRACT**  
**SCHEDULE OF SAVINGS**

*(A detailed definition of ESCOE's energy savings calculation for the project to be inserted be inserted here.)*

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**ATTACHMENT F TO SAMPLE CONTRACT  
CONSTRUCTION PROJECT ACCEPTANCE FORM**  
*(Construction project acceptance form to be inserted here)*