
Attachment G - Energy Performance Contract

Attachment G – Energy Performance Contract

TABLE OF CONTENTS

ARTICLE 1: _DEFINITIONS, SCHEDULES AND EXHIBITS AND APPENDICES

Section 1.1.	Definitions.
Section 1.2.	Schedules.
Section 1.3.	Exhibits
Section 1.4.	Appendices

ARTICLE 2: PAYMENTS

Section 2.01.	Purchase and Sale
Section 2.2.	Contractor Compensation – Interim Period.
Section 2.3.	Energy and Cost Savings Guarantee.
Section 2.4.	Allowable Payment Sources
Section 2.5.	Capital Contribution from Agency
Section 2.6.	Independent Monitoring
Section 2.7.	Annual Review and Reimbursement/Reconciliation.
Section 2.8.	Monitoring Information Procedure.
Section 2.9.	Monitoring Fee.
Section 2.10.	Late Payment.

ARTICLE 3: UTILITY AWARD PAYMENTS

Section 3.1	Utility Award Payments
-------------	------------------------

ARTICLE 4: TIME FOR COMPLETION; COMMENCEMENT DATE; TERM OF CONTRACT

Section 4.1.	Construction Commencement Date and Time for Completion of Work.
Section 4.2.	Performance Commencement Date.
Section 4.3.	Performance Term of Contract.

ARTICLE 5: ENERGY USAGE RECORDS AND DATA

Section 5.1.	Energy Usage Records and Data
--------------	-------------------------------

ARTICLE 6: CONSTRUCTION AND INSTALLATION BY CONTRACTOR

Section 6.1.	Permits and Approvals.
Section 6.2.	Construction and Installation Contractor
Section 6.3.	Contractor’s Duty of Proper Installation.

Section 6.4. Use of Stated Markups
Section 6.5 Open Book Pricing
Section 6.6. Administration

ARTICLE 7: ENVIRONMENTAL REQUIREMENTS

Section 7.1. Excluded Material and Activities.
Section 7.2. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps.

ARTICLE 8: ACCEPTANCE TESTING

Section 8.1. Modification of Schedules.
Section 8.2. Systems Startup and Equipment Commissioning.

ARTICLE 9: MAINTENANCE/MONITORING

Section 9.1. Ownership of Certain Proprietary Property Rights.
Section 9.2. Ownership of Documents.
Section 9.2.1. Instruments of Service
Section 9.2.2. As-Built Drawings/Record Drawings
Section 9.3. Ownership of Existing Equipment.
Section 9.4. Ownership of Measurement and Verification Equipment.

ARTICLE 10: STANDARDS OF COMFORT

Section 10.1 Standards of Comfort

ARTICLE 11: EQUIPMENT WARRANTIES

Section 11.1. Actions by Contractor.
Section 11.2. Malfunctions and Emergencies.
Section 11.3. Actions by Agency.

ARTICLE 12: MODIFICATION, UPGRADE OR ALTERATION OF EQUIPMENT

Section 12.1. Modification of Equipment
Section 12.2. Upgrade or Alteration of Equipment

ARTICLE 13: LOCATION AND ACCESS

Section 13.1. Contractor Access.
Section 13.2. Utility Access.

ARTICLE 14: MATERIAL CHANGES

Section 14.1. Material Change Defined
Section 14.2. Reported Material Changes; Notice by Agency
Section 14.3. Other Adjustments

ARTICLE 15: TRAINING AND FOLLOW-UP ACTIVITIES BY CONTRACTOR

Section 15.1. Training.
Section 15.2. Application for Energy Star or LEED.
Section 15.3. Emissions Reductions Documentation and Reporting.

ARTICLE 16: GENERAL CONTRACTUAL PROVISIONS

Section 16.1. Additional Insurance Requirements-Professional Liability Insurance

ARTICLE 17: EVENTS OF DEFAULT

Section 17.1. Events of Default by Agency.
Section 17.2. Events of Default by Contractor

ARTICLE 18: ASSIGNMENT

Section 18.1. Assignment by Contractor.
Section 18.2. Assignment by Agency.

ARTICLE 19: REPRESENTATIONS AND WARRANTIES

Section 19.1. General Representation and Warranties

ARTICLE 20: ADDITIONAL REPRESENTATIONS OF THE PARTIES

Section 20.1. By Agency
Section 20.2. By Contractor

ARTICLE 21: MISCELLANEOUS DOCUMENTATION PROVISIONS

Section 21.1. Waiver of Liens, Performance Bonds, Labor and Material Payment Bonds.

Section 21.2. Further Documents
Section 21.3. Agency's Responsibilities.

ARTICLE 22: CONFLICTS OF INTEREST

Section 22.1. Conflicts of Interest.

ARTICLE 23: CONTRACT DOCUMENTS

Section 23.1. Plan Details. Section 23.2. General Conditions.
Section 23.3. Order of Precedence.
Section 23.4 Facsimile Signatures

ARTICLE 24: STATE OF COLORADO SPECIAL PROVISIONS

SCHEDULES

Schedule A	Equipment to be Installed by Contractor
Schedule B	Description of Premises; Pre-Existing Equipment Inventory
Schedule C	Energy and Cost Savings Guarantee
Schedule D	Contractor Monitoring, Maintenance and Service Contract
Schedule E	Baseline Energy Consumption
Schedule F	Savings Measurement & Calculation Formulae; Methodology to Adjust Baseline; Monitoring and Verification Plan
Schedule G	Construction and Installation Schedule
Schedule H	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule I	Standards of Comfort
Schedule J	Contractor's Maintenance Responsibilities
Schedule K	Agency's Maintenance Responsibilities
Schedule L	Facility Maintenance Checklist
Schedule M	Contractor's Training Responsibilities
Schedule N	General Conditions
Schedule O	Payment Schedule and Schedule of Values
Schedule P	Pre-Existing Service Agreements
Schedule Q	Current and Known Capital Projects at Facility
Schedule R	Projected Financial Performance
Schedule S	Certificate of Insurance

EXHIBITS

Exhibit I	Performance Bond
Exhibit II	Labor and Material Payment Bond
Exhibit III (i)	Notice of Acceptance—Technical Energy Audit and Monitoring and Verification Plan
Exhibit III (ii)	Notice of Substantial Completion
Exhibit IV	Equipment Warranties
Exhibit V	Minority and Women-Owned Business Enterprises
Exhibit VI	Certification that Lifetime of Equipment Exceeds Financing Term

APPENDICES

Appendix A	Lease Agreement and Documents
Appendix B	RFP for Contractor Solicitation
Appendix C	Contractor Proposal

ENERGY PERFORMANCE CONTRACT

This Energy Performance Contract (the “Contract”) is made and entered into as of this [Day of Month day of Month, Year], by and between [Formal Name of Agency such as “Board of...”, “a Department of the State of Colorado”, etc.], (“ Agency”) and [Contractor name](“Contractor”), [Contractor Address], a [State of Contractor Headquarters] corporation doing business in Colorado (the “State”).

Editing Note: Search and replace on “Agency” to change to abbreviated Agency name.

WITNESSETH:

WHEREAS, Agency is[a department of the State of Colorado] [a political subdivision of the State of Colorado] [describe other entity], and is authorized and empowered under the laws of the State, particularly Colorado Revised Statute [§29-30-2001] [§29-12.5 for local governments] to enter into this Contract for the purpose of the sale and installation of certain energy and water saving equipment, and provision of other services designed to save energy and reduce related costs as per the guarantee described herein for certain property and buildings owned by the Agency; and

WHEREAS, authority exists in the Colorado law and sufficient funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this Contract; and

WHEREAS, Agency has been authorized to enter into a lease-purchase agreement for all professional services, construction/improvements, project contingencies, reimbursable expenses and miscellaneous expenses for the purchase and installation of energy and water conservation measures, collectively referred to as the Work(as herein after defined); and

WHEREAS, required approval, clearance, and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, Contractor has developed or become knowledgeable about certain procedures for controlling energy and water consumption through services provided and equipment installed and maintained at facilities similar in scope and scale of Agency; and

WHEREAS, Contractor was selected after a determination that its proposal was the most advantageous to Agency pursuant to a Request for Proposal and contract for the Technical Energy Audit Contract(as hereinafter defined); and

WHEREAS, Contractor has made an assessment of the utility consumption characteristics of facilities, which was delivered to Agency as a Technical Energy Audit which Agency has approved; and

WHEREAS, Agency owns and operates the Premises (as hereinafter defined); and

WHEREAS, Agency desires to retain Contractor to sell to it, install and service certain energy efficiency equipment of the type or class described herein and to provide other services for the purpose of achieving utility cost reductions within Premises; and

WHEREAS, Contractor has selected the Equipment (as hereinafter defined) on the basis of competitive quality, compliance with Contractor's specifications, and price;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Agency and Contractor hereto covenant and agree that the following Schedules, Exhibits and Appendices are attached hereto (or will be, as provided in this Contract) and are made a part of this Contract by reference.

ARTICLE 1: DEFINITIONS, SCHEDULES, EXHIBITS AND APPENDICES

Section 1.1. Definitions.

Certificate of Acceptance: The certificate substantially in the form provided in **Appendix A**.

Contract: This Energy Performance Contract and all Schedules and Exhibits attached hereto.

Contract Sum: The sum of all materials, labor, auditing, design, engineering, project construction management fees, overhead, profit, contingency, outside services, and bidding and construction contingencies related to the project.

Energy and Water Cost Savings: The savings as provided in **Schedule C**

Energy and Cost Savings Guarantee: The guarantee that is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract as specified in **Schedule D** and in accordance with the Savings Calculation Formula as set forth in **Schedule F**.

Equipment: The goods enumerated on **Schedule A** that is now or hereafter from time to time become attached hereto and incorporated herein by reference, together and with any and all additions, modifications, attachments, replacements and parts thereof.

Event of Default: Those events described in **Section 17.1** and **Section 17.2** hereof .

Interim Period: The period from contract execution until the Performance Commencement Date.

Monitoring Fee: An annual fee according to **Schedule D** for monitoring the Energy and Cost Savings

Performance Commencement Date: The date described in **Section 4.2.**

Premises: The facilities of the Agency, and is in need of energy and water saving equipment and services designed to reduce consumption and associated costs at said Premises

Professional Services: Architecture, engineering, project/construction management related to the Contract.

Work: Collectively, the Equipment, Professional Services and project construction related to the project.

Section 1.2. Schedules.

Schedule A	Equipment to be Installed by Contractor
Schedule B	Description of Premises; Pre-Existing Equipment Inventory
Schedule C	Energy and Cost Savings Guarantee
Schedule D	Contractor Monitoring, Maintenance and Service Agreement
Schedule E	Baseline Energy Consumption
Schedule F	Savings Measurement & Calculation Formulae; Methodology to Adjust Baseline; Monitoring and Verification Plan
Schedule G	Construction and Installation Schedule
Schedule H	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule I	Standards of Comfort
Schedule J	Contractor's Maintenance Responsibilities
Schedule K	Agency's Maintenance Responsibilities
Schedule L	Facility Maintenance Checklist
Schedule M	Contractor's Training Responsibilities
Schedule N	General Conditions
Schedule O	Payment Schedule and Schedule of Values
Schedule P	Pre-Existing Service Agreements
Schedule Q	Current and Known Capital Projects at Facility
Schedule R	Projected Financial Performance
Schedule S	Certificate of Insurance

Schedule 1.3 Exhibits

Exhibit I	Form of Performance Bond
Exhibit II	Form of Labor and Material Payment Bond
Exhibit III (i)	Form of Notice of Acceptance—Technical Energy Audit and Monitoring and Verification Plan
Exhibit III (ii)	Form of Notice of Substantial Completion
Exhibit IV	Form of Equipment Warranties
Exhibit V	Form of Minority and Women-Owned Business Enterprises

Exhibit VI Form of Certification that Lifetime of Equipment Exceeds Financing Term

Section 1.4. Appendices

Appendix A Lease Agreement and Documents
Appendix B RFP for Contractor Solicitation
Appendix C Contractor Proposal

ARTICLE 2: PAYMENTS

Section 2.01: Purchase and Sale

Agency agrees to lease Equipment through a third party lessor, name of lessor, as provided for in a separate lease document, **Appendix A (Lease Agreements and Related Documents)**. Contractor agrees to provide the Equipment, together with installation, maintenance and other services as provided herein, as in **Schedule A**, based upon the terms and conditions set forth in **Appendix A**.

The agreed to Contract Sum for the Work is a Guaranteed Maximum Price of \$[Dollar Amount] as set forth in Schedule R. Payment terms are described in **Schedule O**.

Contractor will provide the Work and all related services identified on **Schedule A** and the services detailed on **Schedule D**. Contractor shall supervise and direct the Work and shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Contract. Contractor shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the Work.

Section 2.2. Contractor Compensation – Interim Period.

Agency shall pay Contractor the Contract Sum in accordance with **Schedule O** and **Appendix A**. Payments will be made on a progress basis in accordance with **CRS 24-91-103** and **Article 31** of the **Schedule N**, for Work completed and authorized by Agency during the Interim Period. The Progress Payments outlined in **Appendix A** will not be applicable to this Contract. Retainage will be withheld from each payment until the construction installation is completed as set forth in **Section 4.2**. Professional Services shall not be subject to retainage.

Section 2.3. Energy and Cost Savings Guarantee.

Subsequent to the Performance Commencement Date and throughout the term of this Contract, Contractor hereby guarantees the level of Energy and Cost Savings as detailed in **Schedule C**. Contractor shall provide the guarantee and monitoring as defined in **Schedule D**, for every year of the contract term as legislated by [C.R.S. 24-30-2001(1)(c) for Colorado state agencies and higher education institutions] [C.R.S.29-12.5-101(3)(c) for Colorado local governments], or until such time that Agency issues a notice to terminate the guarantee and monitoring service. Agency may terminate the Energy and Cost Savings Guarantee and related Monitoring Fee, as set forth in **Section 2.9** and defined in **Schedule R**, after the first three years of the performance period as legislated by [C.R.S. 24-30-2001(1)(c) for Colorado state agencies and higher education institutions][C.R.S.29-12.5-

101(3)(c) for Colorado local governments] and this Contract shall terminate and Contractor shall have no further obligations hereunder.

This Energy and Cost Savings Guarantee is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract as specified in **Schedule D** and in accordance with the Savings Calculation Formula as set forth in **Schedule F**. The Annual Energy and Cost Savings Guarantee per **Schedule C** shall not be reduced even in the event of a Material Change per **Section 14.1**, except as the parties may mutually agree to such a reduction and act in good faith in determining such an agreement. In the event this Contract is terminated due to an uncured Event of Default, as defined in **Section 17.1**, by Agency, the Energy and Cost Savings Guarantee shall be cancelled and Contractor shall have no further obligations hereunder, except to guarantee Agency the prorated portion of the annual Energy and Cost Savings Guarantee. The prorated portion shall include all Guaranteed Savings incurred prior to the termination date except that such portion should only go up until the Event of Default if the Event is related to the non-payment or other violations impacting the Energy and Cost Savings including but not limited to providing utility bills and access to the Equipment.

Contractor has structured the Energy and Cost Savings Guarantee to be sufficient to exceed any and all annual payments required by the Agency in connection with the acquisition of Equipment to be installed by Contractor under this Contract and the Agency's lease financing obligations. Actual energy and operations savings achieved by Contractor through the operation of Equipment and performance of services by Contractor, including the annual Energy and Cost Savings Guarantee, shall be sufficient to cover any and all annual fees to be paid by Agency to Contractor for the provision of services as set forth and in accordance with the provisions of **Schedule D** all payments to the third party lessor under the terms of the lease documents contained in **Appendix A**.

Section 2.4. Allowable Payment Sources. Agency has pre-determined allowable payment sources to be applied to annual payments, may include: Energy and water cost savings; material/commodity savings (including avoided cost from replacement lamps, ballasts, etc.), including scheduled replacement of parts; and other cost savings including maintenance contracts.

Section 2.5. Capital Contribution from Agency.

In addition to the funds provided by the equipment lease described in **Appendix A**, Agency elects to make an initial capital contribution of \$ **Dollar Amount** to pay for part of the initial cost as described in **Schedule O**.

Section 2.6. Independent Monitoring

Agency will hire, with consultation of Contractor and paid for with guaranteed savings, an independent third party monitor to review the Contractor's monitoring and verification reports and advise Agency of compliance in monitoring and verifying savings. The independent monitor's responsibilities could also include verifying the prorated share of Guaranteed Savings in the Event of Contract Termination. Compliance checks will relate to the established baseline (**Schedule E**), baseline adjustments monitoring and verification plan and savings calculations of (**Schedule F**).

Section 2.7. Annual Review and Reimbursement/Reconciliation.

Energy-related cost savings shall be measured and/or calculated as specified in **Schedule E** and **Schedule F** and a report provided within ninety (90) days of receipt of all Needed Data (as defined in **Schedule D** hereof) for the previous year for each anniversary of the Performance Commencement Date. Contractor has developed the measurement and verification procedures specified in **Schedule F** which is based on the *International Performance Measurement and Verification Protocol 2002*.

In the event the Energy and Cost Savings achieved during such Contract Year is less than the Guaranteed Energy and Cost Savings (as defined in **Schedule C** hereof), set forth for such year during the years the guarantee is in effect, Contractor shall pay the Agency an amount equal to the deficiency.

If during the Contract Year the Energy and Cost Savings achieved are greater than the Guaranteed Energy and Cost Savings, such excess Energy and Cost Savings shall be retained by the Agency.

Section 2.8. Monitoring Information Procedure.

Energy and Cost Savings shall be calculated [monthly, quarterly, or annually] in the following manner:

- (i) Each month, by the [Number of Days – suggest 10] th day after receipt, Agency shall provide Contractor with copies of all relevant energy bills received for the preceding month;
- (ii) Reporting to Agency is outlined in **Schedule D**.

Section 2.9. Monitoring Fee.

Throughout the Term of this Contract, or until the Contractor Monitoring Agreement is cancelled by Agency, Agency shall pay Contractor an annual fee according to **Schedule D** for monitoring the Energy and Cost Savings. Annual guaranteed energy and cost savings achieved shall be sufficient to cover any and all fees to be paid to Contractor pursuant to the provisions of **Schedule D**.

Notwithstanding the above provisions in **Section(s) 4.1, 4.2 and 4.3** hereof,, Agency shall not be required to begin any Monitoring Fee payments to Contractor under this Contract unless and until all equipment installation is completed by Contractor in accordance with the provisions of **Article 6** and **Article 9, Schedule H** and **Schedule L**, and accepted by Agency as evidenced by the signed Notice of Substantial Completion as set forth in **Exhibit III (ii)**, and unless and until said equipment is fully and properly functioning in accordance with **Schedule A** and related details and specifications.

Section 2.10. Late Payment.

Payment during construction will be in accordance with **Schedule N**. Payment due during the Performance Period shall be due and payable within forty-five (45) days of the invoice date. Interest shall accrue on Guaranteed Savings not in dispute and rightfully owned for past due balance, owed to Agency hereunder at the rate of one percent (1%) per month (or the highest rate not prohibited by law, whichever is lower).

ARTICLE 3. UTILITY AWARD PAYMENTS

Section 3.1. Utility Award Payments

[Example: Contractor has entered into a Demand Side Management Agreement with Public Service Company of Colorado (the “Utility”) wherein a portion of the Contract Sum will be subsidized by the Utility (the “Award Payment”) upon the Utility’s inspection and approval of the work performed. Based upon the reduced energy consumption to be achieved at the Premises and the energy efficiency Equipment to be installed, the total Award Payment is as indicated in **Schedule O**. This amount has been applied by Contractor in determining the Contract Sum. There shall be no adjustment to the Contract Sum, Guarantee, or Schedule of Values if the Award Payment allowed by the Utility is other than the amount specified herein, unless the disallowance or reduction is attributable to delay caused by neglect or an act of Agency constituting a breach of its obligations under this Contract. Agency understands that Contractor is not a representative or an agent of Xcel Energy.]

ARTICLE 4: TIME FOR COMPLETION; COMMENCEMENT DATE; TERM OF CONTRACT

Section 4.1. Construction Commencement Date and Time for Completion of Work.

Work must commence within thirty (30) days of execution of this Contract and shall be completed as set forth in **Schedule G**. The Time for Completion of Work is of the essence of this Contract. By executing this Contract, the parties hereto confirm the Time of Completion of Work is a reasonable period for performing the Work. Except for obligation to make payments of money, Contractor shall not be responsible for any failure to fulfill, or any delay in fulfilling, its obligations hereunder, if such failure or delay is beyond the reasonable ability of such party to control, avoid or mitigate and is due to storm, flood, or other Act of God, or to fire, war, rebellion, scarcity of water, insurrection, riots, strikes (other than strikes directed at subcontractor), or is the result of some order, rule or regulation of any federal, state, municipal, or other governmental agency that could not have been reasonably anticipated or that was not scheduled to take effect. Time for Completion of the Work and the costs related thereto shall be extended and modified by Change Order, for such reasonable time and amount as the parties hereto may determine. Change Orders in excess of contingency funds and/or completion date shall not be allowed unless mutually re-negotiated by both parties.

Section 4.2. Performance Commencement Date.

The Performance Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by Agency and when Contractor shall have delivered a Notice to Agency that it has installed and commenced operating all of the Equipment specified in **Schedule A** and in accordance with the provisions of **Article 6** and **Schedule H**, Agency has inspected and accepted said installation and operation as evidenced by the Notice of Substantial Completion as set forth in **Exhibit III (ii)** . Notwithstanding anything to the contrary in **Article 2** and **Article 4** the Performance Commencement Date shall not occur and the Agency shall not be required to accept the work under this Contract unless and until: all Equipment installation for the subject Premises is completed by Contractor in accordance with the terms and conditions of this Contract. Agency shall have fifteen (15) days after notification by the Contractor to inspect and accept the Equipment. Agency reserves the right to reject the Equipment if installation fails to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. Contractor shall not be paid in full, including retainage, until the Notice of Acceptance and Notice of Contractor’s Settlement have been issued after the punch list is worked down to less than

ten items. The retainage will be released after punch list is completed and Contractor has satisfied any and all claims for labor and materials.

Section 4.3. Performance Term of Contract.

Unless otherwise terminated pursuant to the terms of this Contract, the Performance Term of this Contract shall begin with the Performance Commencement Date and continue up to a maximum of [number of years] years, or for a maximum of 25 years if the cost-weighted average lifetime of the equipment exceeds the lease financing term, as legislated by [C.R.S. 24-30-2001(1)(d) for Colorado state agencies and higher education institutions] [C.R.S.29-12.5-101(3)(d) for Colorado local governments]. This Contract shall be effective and binding upon the parties immediately upon its execution. All energy savings achieved during the Interim Period shall not be applicable to the Guaranteed Savings after the Performance Commencement Date.

ARTICLE 5: ENERGY USAGE RECORDS AND DATA

Section 5.1 Energy Usage Records and Data

Agency has furnished and shall continue to furnish (or authorize its energy suppliers to furnish) during the Term of this Contract to Contractor or its designee, upon its request, all of its records and complete data concerning energy and water usage and related maintenance for the Premises.

ARTICLE 6: CONSTRUCTION AND INSTALLATION BY CONTRACTOR

Section 6.1. Permits and Approvals.

Agency shall use its best efforts to assist Contractor in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Agency, however, be responsible for direct payment of any permit or license fee or the delay of any such permit or license fee.

As directed by Agency, design documentation will be submitted to Agency for review. As deemed necessary by Agency, design documentation will be forwarded by Agency to the appropriate code review Contractor for review. Agency agrees that the Agency's review process at each phase will not be longer than 14 calendar days, not including code review. All costs of code review will be borne by Agency.

Section 6.2. Contractor's Duty of Proper Installation.

All services called for by this Contract which constitute the "practice of architecture" or the "practice of engineering", as those terms are defined in Title 12, Colorado Revised Statutes, as amended (C.R.S.), shall be performed by properly qualified and licensed professionals employed by Contractor and shall be performed in accordance with applicable law. Contractor shall perform all tasks/phases under this Contract, including construction, and shall install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in **Schedule I** and **Schedule G**.

Section 6.3. Use of Stated Markups.

In establishing the Contract Sum the Contractor has used the markups for overhead and profit as disclosed in the Contractor Proposal (**Appendix C**), as negotiated in the Contract for Technical Energy Audit and applied to the labor and material costs as shown in **Schedule O**. It has also provided a contingency equal to a percentage of the labor, material and direct cost budget. The Contract Sum shall be adjusted based on the actual costs of labor and materials to the Contractor multiplied by the markups agreed to by the Contractor, but in no event shall the Contract Sum be increased. In the event it is possible to reduce the Contract Sum because the actual labor and material costs are less than budgeted, the Agency can, at its sole option, increase the Work to include additional equipment such that the original Contract Sum is reached. If the Agency declines to increase the Work, at its sole option, the Contract Sum shall be reduced to an amount consistent with the pricing using the stated markups and the balance shall be applied to the lease financing amount.

Section 6.4. Open Book Pricing.

Open book pricing will be required, such that the Contractor will fully disclose all costs. Contractor will maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. Contractor will afford Agency access to these records and preserve them for a period of three (3) years after final payment. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices. The pricing methodology and individual cost markups disclosed during preliminary contract negotiations will be expected to be applied, providing the scope and size of the project remain the same as assumed when markups were disclosed.

Section 6.5. Administration. The Contractor’s contact person (Project Manager) shall forward all communications in writing and all documents to the Principal Representative’s contact person and the Program Manager’s contact person simultaneously as listed below:

For the Principal Representative:

For the Program Manager:

For the Contractor Project Manager:

For the Contractor Superintendent:

ARTICLE 7: ENVIRONMENTAL REQUIREMENTS

Section 7.1. Excluded Material and Activities.

Agency recognizes that in connection with the installation and/or service or maintenance of Equipment at Agency’s Premises, Contractor may encounter, but is not responsible for, any work relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment thereof, or (ii) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in this Section below (collectively “Hazardous Materials”), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof. The materials and activities listed in the foregoing sentence are referred to as “Excluded Materials and Activities”. Agency agrees that if performance of work involves any Excluded Materials and Activities, Agency will perform or arrange for the performance of such work and shall bear the sole risk and responsibility therefore. In the event Contractor discovers Hazardous or Excluded Materials, Contractor shall immediately cease work, remove all Contractor personnel or

subcontractors from the site, and notify the Agency. The Agency shall be responsible to handle such Materials at its expense. Contractor shall undertake no further work on the Premises except as authorized by the Agency in writing. Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Agency shall not constitute a default by the Agency. In the event of such stoppage of work by Contractor, the Time for Completion of Work will be automatically extended by the amount of time of the work stoppage and any additional costs incurred by Contractor as a result will be added by Change Order.

Contractor shall be responsible for any hazardous or other materials, including, without limitation, those listed in this **Section 7.1** that it may bring to the Premises.

Section 7.2. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps.

Contractor will enter into an agreement with an approved PCB ballast disposal Contractor who will provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, and recycling or incineration services for PCB ballasts. All capacitors and asphalt potting compound materials removed from Agency's PCB ballasts will be incinerated in a federally approved facility. After proper disposal, a Certificate of Destruction will be provided by the approved facility to Agency. Contractor's responsibility shall be for the proper and legal management of any of Agency's PCB ballasts removed as a result of the installation of the Equipment and shall be limited only until said PCB ballasts are loaded onto an approved PCB ballast disposal Contractor's vehicle for transportation.

Contractor will enter into an agreement with an approved lamp disposal contractor who will provide approved containers, materials required to label, transportation, recycling or incineration in accordance with EPA requirements, and a copy of the manifest.

Agency agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Premises.

ARTICLE 8: ACCEPTANCE TESTING

Section 8.1. Modification of Schedules.

To ensure this Contract properly accounts for as-installed conditions, which conditions may vary from the pre-installation analyses, the Contractor shall re-validate or modify **Schedule A** and **Schedule H** prior to System Start-Up.

Section 8.2. Systems Startup and Equipment Commissioning.

The Contractor shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in **Schedule H** and prior to acceptance of the project by Agency as specified in **Exhibit III (ii)**. Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this Contract, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The Contractor shall provide notice to the Agency of the scheduled test(s) and the Agency and/or its designees shall have the right to be present at any or all such tests conducted by Contractor and/or manufacturers of the

Equipment. The Contractor shall be responsible for correcting and/or adjusting all deficiencies in the Equipment operation that may be observed during system commissioning procedures of **Schedule H**. The Contractor shall be responsible for correcting and/or adjusting all deficiencies in Equipment operation that may be observed during system testing procedures. Prior to Agency acceptance Contractor shall also provide Agency with reasonably satisfactory documentary evidence that the Equipment installed is the Equipment specified in **Schedule A**.

ARTICLE 9: MAINTENANCE/MONITORING

Section 9.1. Ownership of Certain Proprietary Property Rights.

Agency shall not, by virtue of this Contract, acquire any ownership interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. Agency shall, however, have a nonexclusive license to utilize all such intellectual or proprietary rights obtained by Contractor related to Equipment in connection with its use of the Equipment under this Contract. The Contractor hereby grants to the Agency a perpetual, irrevocable, royalty-free license to any and all software or other intellectual property or proprietary rights it obtains from Equipment manufacturers necessary for the Agency to continue to operate, maintain, and repair the Equipment in a manner that will yield maximal energy consumption reductions. This license shall continue subsequent to any termination or expiration of this Contract other than termination due to breach by Agency.

Section 9.2. Ownership of Documents.

(a) **Instruments of Service** Drawings, specifications and other documents, including those in electronic form, prepared by the Architect/Engineer and the Architect/Engineer's consultants are Instruments of Service for use solely with respect to this Project. The Architect/Engineer and the Architect/Engineer's consultants shall be deemed the authors and owners of their respective instruments of service and shall retain all common law, statutory and other reserved rights, including copyrights.

Upon execution of this Contract, the Architect/Engineer hereby grants to the State a perpetual nonexclusive license to reproduce and use, and permit others to reproduce and use for the State, the Architect/Engineer's Instruments of Service solely for purposes of constructing, using and maintaining the Project or for future alterations, or additions to the Project. The Architect/Engineer shall obtain similar nonexclusive licenses from the Architect/Engineer's consultants consistent with this Contract. If, and upon the date the Architect/Engineer is adjudged in default of this Contract, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the State to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project, or for future alterations, or additions to the Project.

Any unilateral use by the State of the Instruments of Service for completing, using, maintaining, adding to or altering the Project or facilities shall be at the State's sole risk and without liability to the Architect/Engineer and the Architect/Engineer's consultants; provided, however, that if the State's unilateral use occurs for completing, using or maintaining the Project as a result of the Architect/Engineer's breach of this Contract, nothing in this Article shall be deemed to relieve the Architect/Engineer of liability for its own acts or omissions or breach of this Contract.

(b) As-Built Drawings/Record Drawings The Architect/Engineer and its consultants shall, upon completion of the Construction Phase receive redline As-Built Drawings from the Contractor. These redline changes shall describe the built condition of the Project. This information and all of the incorporated changes directed by Bidding Addenda, Change Order/Amendment or Architect/Engineer's Supplementary Instructions shall be incorporated by the Architect/Engineer and its consultants into a Record Drawings document provided to the Principal Representative in the form of an electro-media format and a reproducible format as agreed between the parties. The Architect/Engineer shall also provide the Principal Representative with the As-built Drawings received from the Contractor.

Section 9.3. Ownership of Existing Equipment.

Ownership of the equipment and materials existing at the Premises at the time of execution of this Contract shall remain the property of Agency even if it is replaced or its operation made unnecessary by work performed by Contractor pursuant to this Contract. If applicable, Contractor shall advise the Agency in writing of all equipment and materials to be replaced at the Premises and the Agency shall within fifteen (15) days designate in writing to the Contractor which equipment and materials should not be disposed of off-site by the Contractor. It is understood and agreed to by both Parties that the Agency shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. Except as may be otherwise provided in this Contract, the Contractor shall be responsible for the disposal of all equipment and materials designated by the Agency as disposable off-site in accordance with all applicable laws and regulations regarding such disposal. Except as indicated in **Section 7.1** and **Section 7.2**, under no circumstance shall Contractor be obligated to dispose of or take responsibility for any materials identified in **Section 7.1** or **Section 7.2** of this Contract.

Section 9.4. Ownership of Measurement and Verification Equipment.

Agency agrees to own the equipment required to provide the ongoing measurement of energy and water savings (the "Metering Equipment"). If required, Agency shall provide and maintain a non-dedicated telephone line to facilitate remote monitoring of the Equipment.

ARTICLE 10: STANDARDS OF COMFORT

Section 10.1 Standards of Comfort. Contractor will design and install the Equipment so that it is able to provide the standards of heating, cooling, ventilation, hot water supply, lighting quality and levels described in **Schedule I**. During the term of this Contract, Contractor and Agency will maintain, according to **Schedule D**, **Schedule J** and **Schedule K**, and operate the Equipment in a manner that will provide the standards of comfort and levels of operation as described in **Schedule I**.

ARTICLE 11: EQUIPMENT WARRANTIES

Section 11.1 Equipment Warranties.

Contractor warrants that all equipment sold and installed as part of this Contract is new, unless otherwise agreed, will be materially free from defects in materials or workmanship, will be installed properly in a good and workmanlike manner, and will function properly for a period of one (1) year

from the date of the Substantial Completion for the particular energy conservation measure if operated and maintained in accordance with the procedures established per building. Substantial Completion shall be defined as the stage in the progress of the Work where the Work is sufficiently complete in accordance with the Contract Documents so that the Agency can utilize and take beneficial use of the Work for its intended use or purpose. Substantial Completion does not occur until the Equipment or system has been commissioned, accepted, and the “Substantial Completion” form fully executed.

After the warranty period, Contractor shall have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims relating to the Equipment, except as provided in **Schedule D** and **Schedule J**.

Contractor further agrees to assign to Agency all available manufacturer’s warranties relating to the Equipment and to deliver such written warranties and which shall be attached and set forth as **Exhibit IV**; pursue rights and remedies against the manufacturers under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance. Contractor shall, during the warranty period, notify the Agency whenever defects in Equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by Contractor. During this period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property and equipment of the Agency or the Premises, due to Contractor’s failure to exercise its warranty rights shall be borne solely by Contractor.

All warranties, to the extent transferable, shall be transferable and extend to the Agency. The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction.

Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve the Contractor from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

Section 11.2 Actions by Contractor.

Incorporated herein by reference **Schedule D**, **Schedule J**, and **Schedule N**.

Section 11.3. Malfunctions and Emergencies.

Agency shall use its best efforts to notify the Contractor or its designated subcontractor within twenty-four (24) hours after the Agency's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the Energy Savings or Energy Savings Guarantee, (ii) any interruption or alteration to the energy supply to the Premises, or (iii) any alteration or modification in any energy-related equipment or its operation.

Where Agency exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify any such conditions as having a material impact upon the savings. Agency shall notify Contractor within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. If such malfunction, interruption, or alteration occurs during the Warranty Period, Contractor shall respond to any such notice within twenty-four (24) hours for non-critical equipment,

and eight (8) hours for critical equipment, and shall promptly thereafter proceed with corrective measures. Any telephonic notice of such conditions by Agency shall be followed within three business days by written notice to Contractor from Agency. If Agency unreasonably delays in so notifying Contractor of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, Contractor may charge Agency for its loss, due to the delay, associated with the guaranteed savings under this Contract for the particular time period, provided that Contractor is able to show the direct causal connection between the delay and the loss.

The Contractor will provide a written record of all service work performed. This record will indicate the reason for the service, description of the problem and the corrective action performed.

Section 11.4 Actions by Agency.

During the term of this Contract, Agency shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of Contractor except as set forth in **Schedule K**. Notwithstanding the foregoing, Agency may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify Contractor before taking any such actions. In the event of such an emergency, Agency shall take reasonable steps to protect the Equipment from damage or injury. Agency agrees to maintain the Premises in good repair and to protect and preserve all portions thereof, which may in any way affect the operation or maintenance of the Equipment, all in accordance with the same standard of care the Agency applies to the Premises generally, that of a reasonably prudent government owner.

ARTICLE 12: MODIFICATION, UPGRADE OR ALTERATION OF EQUIPMENT

Section 12.1. Modification of Equipment. During the Term of this Contract, Agency will not, without the prior written consent of Contractor, affix or install any accessory Equipment or device on any of the Equipment if such addition will change or impair the originally intended functions, value or use of the Equipment without Contractor's prior written approval, which shall not be unreasonably withheld.

Section 12.2. Upgrade or Alteration of Equipment.

Contractor shall at all times have the right, subject to Agency's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Premises, provided that: (i) the Contractor complies with the standards of comfort and services set forth in **Schedule I** herein; (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the Contractor to achieve greater energy and cost savings at the Premises and; (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the Contractor.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the Agency for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall, unless otherwise agreed, be new and have equal or better potential to reduce energy consumption at the Premises than the Equipment being replaced. The Contractor shall update any and all software

necessary for the operation of the Equipment in accordance with the provisions of **Section 9.1 of Schedule J**. All replacements of and alterations or additions to the Equipment shall become part the Equipment described in **Schedule A** and shall be covered by the provisions and terms of **Article 6** and **Article 8**.

ARTICLE 13: LOCATION AND ACCESS

Section 13.1. Contractor Access.

Contractor acknowledges that there exists sufficient space on the Premises for the installation and operation of the Equipment. Agency shall take reasonable steps to protect such Equipment from harm, theft and misuse during the term of this Contract. Agency shall provide access to the Premises for Contractor to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by Contractor and acceptable to the Agency. Contractor shall be granted immediate access to make emergency repairs or corrections as it may, in its discretion, determine are needed. Contractor's access to the Premises to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by Agency. Contractor shall immediately notify the Agency when emergency action is taken and follow up with written notice with three (3) business days specifying the action taken, the reasons therefore, and the impact upon the Premises, if any.

Section 13.2. Utility Access.

If a Utility Award Payment is made as described in **Section 3 (Utility Award Payments)**, the following applies. Upon request by the Utility (or its agent) and with prior consent of the Agency which consent shall not be unreasonably withheld, the Agency shall agree to allow Utility to interview the Agency and to enter the Premises at reasonable times throughout the life of the installed equipment to install metering equipment, perform energy audits or inspect the facilities and any equipment installed. The Agency also agrees to cooperate with the Utility or its agent upon request and with prior consent of the Agency, in conducting such activities and/or in analyzing energy savings. At all times a representative of the Agency (or its agent) shall be present during such inspections.

ARTICLE 14: MATERIAL CHANGES

Section 14.1. Material Change Defined.

A Material Change shall include any change or cumulative changes in or to the Premises, whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Agency, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in **Schedule E** (and **Schedule F** after adjustments for climatic variations and provided a correlation exists between usage and Material Change.

Actions by the Agency that may result in a Material Change include but are not limited to the following: (i) manner of use of the Premises by the Agency; or (ii) hours of operation for the Premises or for any equipment or energy using systems operating at the Premises; or (iii) permanent changes in the comfort and service parameters set forth in **Schedule I**; or (iv) occupancy of the Premises; or (v)

structure of the Premises; or (vi) types and quantities of equipment used at the Premises or (vii) modification, renovation or construction at the Premises; or (viii) the Agency's failure to provide maintenance of and repairs to the Equipment in accordance with **Schedule K**; or (ix) casualty or condemnation of the Premises or Equipment, or (x) changes in utility provider or utility rate classification, or (xi) any other conditions other than climate affecting energy or water use at the Premises.

Section 14.2. Reported Material Changes; Notice by Agency

The Agency shall use its best efforts to deliver to the Contractor a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises at least 14 days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the Contractor of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the Agency within five (5) business days after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Agency to have occurred.

Section 14.3. Other Adjustments.

As agreed in Section 16.1 Agency will alert Contractor of materials changes as known. Both parties have a vested interest in meeting the guaranteed savings of the Contract. As such, the Contractor will work with Agency to investigate, identify and correct any changes that prevent the guaranteed savings from being realized. As a result of such investigation, Contractor and Agency shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in **Schedule F** and **Schedule E**.

ARTICLE 15: TRAINING AND FOLLOW-UP ACTIVITIES BY CONTRACTOR

Section 15.1. Training.

The Contractor shall conduct the training program described in **Schedule M**. Appropriate training must be completed prior to acceptance of the Equipment installation. The Contractor shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software. Such training shall be provided at no charge to the Agency.

Section 15.2. Application for Energy Star or LEED.

The Contractor shall conduct an Energy Star benchmarking study for each facility and apply for an Energy Star Label on behalf of Agency for all buildings that meet or exceed the necessary requirements for the Energy Star Label. Contractor shall use the US Green Building Council's Leadership in Energy and Environmental Design (LEED) approach and apply for LEED certification where deemed applicable.

Section 15.3 Emissions Reductions Documentation and Reporting.

The Contractor shall include emissions reductions quantities in each annual report and advise the Agency on opportunities to achieve monetary benefit from such credits.

ARTICLE 16: GENERAL CONTRACTUAL PROVISIONS

Section 16.1 Additional Insurance Requirements- Professional Liability Insurance.

Contractor promises and agrees to maintain in full force and effect an Errors and Omissions Professional Liability Insurance Policy in the amounts indicated in the following table as minimum coverage. The policy, including claims made forms, shall remain in effect for the duration of the Interim Period and for at least three years beyond the completion and acceptance of the Equipment. The Contractor shall be responsible for all claims, damages, losses or expenses, including attorney fees, arising out of or resulting from the performance of professional services contemplated in this Contract, provided that any such claim, damage, loss or expense is caused by any negligent act, error or omission of the Contractor, any consultant or associate thereof, or anyone directly or indirectly employed by the Contractor. The Contractor shall submit a Certificate of Insurance verifying said coverage at the signing of this Contract and also any notices of renewals of Renewals of the said policy as they occur.

For a Fixed Limit of Construction Cost	Minimum Coverage per Claim	Minimum Coverage in the Aggregate
\$999,999 and under	\$250,000	\$500,000
\$1,000,000 to \$4,999,999	\$500,000	\$1,000,000
\$5,000,000 to \$19,999,999	\$1,000,000	\$2,000,000
\$20,000,000 and Above	\$2,000,000	\$2,000,000

ARTICLE 17: EVENTS OF DEFAULT

Section 17.1. Events of Default by Agency.

Each of the following events or conditions shall constitute an "Event of Default" by Agency:

- (i) any failure by Agency to pay Contractor any sum due that is not in dispute, hereunder for a service and maintenance period of more than thirty (30) days after written notification by Contractor that Agency is delinquent in making payment;
- (ii) any other mutually determined material failure by Agency to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after notice to Agency demanding that such mutually determined failures to perform be cured or if such cure cannot be effected in such forty-five (45) days, Agency shall be deemed to have cured default upon the commencement of a cure within such forty-five (45) days and diligent subsequent completion thereof;

-
- (iii) any representation or warranty furnished by Agency in this Contract that was false or misleading in any material respect when made.

Section 17.2. Events of Default by Contractor.

Each of the following events or conditions shall constitute an "Event of Default" by Contractor:

- (i) the standards of comfort and service set forth in **Schedule I** are not provided due to failure of Contractor to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within twenty-one (21) days after written notice by Agency to Contractor demanding that such failure be cured, shall be deemed cured for purposes of this Contract.
- (ii) any representation or warranty furnished by Contractor in this Contract is false or misleading in any material respect when made;
- (iii) provided that the operation of the facility is not adversely affected and provided that the Standards of Comfort in **Schedule I** are maintained, any failure by Contractor to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within thirty (30) days after written notice to Contractor demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract;
- (iv) any lien or encumbrance upon the equipment by any subcontractor, laborer or materialman of Contractor which is not released in thirty days after notice of said filing;
- (v) the filing of a bankruptcy petition whether by Contractor or its creditors against Contractor which proceeding shall not have been dismissed within 90 days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of Contractor.
- (vi) failure by the Contractor to pay any amount due that is not in dispute, or perform any material obligation under the terms of this Contract, unless such amount due or failure to perform is excused pursuant to the provisions of this Contract.

ARTICLE 18: ASSIGNMENT

Section 18.1. Assignment by Contractor. The Contractor acknowledges that the Agency is induced to enter into this Contract by, among other things, the professional qualifications of the Contractor. The Contractor agrees that except as set forth below, neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the Agency.

-
- (i) The Contractor agrees that except as provided below, neither this Contract nor any right of obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the Agency.
 - (ii) The assignment of this Contract, in whole or in part, within the Enterprise of which Contractor is a part does not require the consent of the other party.

Section 18.2. Assignment by Agency.

Agency may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Premises or an interest therein with the consent of Contractor, which shall not be unreasonably withheld. The lack of financial qualification of the new owner shall be grounds for withholding such consent.

ARTICLE 19: REPRESENTATIONS AND WARRANTIES

Section 19.1. Representations and Warranties. Each party warrants and represents to the other that:

- (i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
- (ii) its execution, delivery, and performance of this Contract will not result in a breach or violation of, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or

ARTICLE 20. ADDITIONAL REPRESENTATIONS OF THE PARTIES.

Section 20.1. By Agency.

Agency hereby warrants, represents and promises that:

- (i) Agency is authorized under the Constitution and laws of the State of Colorado to enter into this Contract, each transaction contemplated hereby, and to perform all of its obligations under this Contract.
- (ii) Subject to the provisions contained herein, Agency has provided or shall provide timely to Contractor, all records relating to energy and water usage and energy-related maintenance of Premises requested by Contractor and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects and Contractor shall be entitled to rely thereon; and
- (iii) Agency has not entered into any prior leases, contracts or agreements with other persons or entities regarding the leasing or acquisition of water or energy efficiency equipment or the provision of energy management services for the Premises or with regard to servicing any of the Equipment located in the Premises that would encroach upon the scope of this Contract. Agency shall provide Contractor with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Premises that may be executed from time to time hereafter within seven days after execution thereof.

Section 20.2. By Contractor.

Contractor hereby warrants, represents and promises that:

- (i) before commencing performance of this Contract:
 - (a) Contractor shall have become licensed or otherwise permitted to do business in the State of Colorado
 - (b) Contractor shall have provided proof and documentation of all required insurance and bonds pursuant to this Contract.

- (i) Contractor shall make available, upon reasonable request, documents relating to its performance under this Contract, including contracts and subcontracts it shall enter into;

- (ii) Contractor shall use subcontractors who are qualified, licensed and bonded in this State to perform the work so subcontracted pursuant to the terms hereof;

- (iii) Contractor has all requisite authority to license the use of proprietary property, both tangible and intangible, contemplated by this Contract;

- (iv) The Equipment will meet or exceed the Acceptance Testing Standards set forth in this Contract.

- (v) The Equipment is or will be compatible with all other Premises mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation or operation;

- (v) That Contractor is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Installation and perform its obligations under this Contract.

ARTICLE 21: MISCELLANEOUS DOCUMENTATION PROVISIONS.

Section 21.1. Waiver of Liens, Performance Bonds, Labor and Material Payment Bonds. Such executed bonds are incorporated herein by reference as **Exhibit I (Performance Bond)** and **Exhibit II (Labor and Material Payment Bond)** per **Schedule N (General Conditions; Article 26)**.

Section 21.2. Further Documents

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

Section 21.3 Agency's Responsibilities.

- (a) **Methods of Operation by Agency**

The parties acknowledge and agree that said Energy and Cost Savings would not likely be obtained unless certain procedures and methods of operation designed for energy and water conservation shall be implemented, and followed by Agency on a regular and continuous basis.

(b) Agency Maintenance Responsibilities

Agency agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on **Schedule K**, to be attached hereto and made a part hereof after Agency's approval, such approval not to be unreasonably withheld, conditioned or delayed.

(c) Inspection of Premises

Agency agrees that Contractor shall have the right once a month, with prior notice, to inspect Premises to determine if Agency is complying, and shall have complied with its obligations as set forth in **Section 21.3(b)**. For the purpose of determining Agency's said compliance, the checklist to be set forth at **Schedule L** as completed and recorded by Contractor during its monthly inspections, shall be used to measure and record Agency's said compliance. Agency shall make the Premises available to Contractor for and during each monthly inspection, and shall have the right to witness each inspection and Contractor's recordation on the checklist. Agency may complete its own checklist at the same time. Contractor agrees to not interfere with the Agency operations during any monthly inspection.

ARTICLE 22: CONFLICTS OF INTEREST

Section 22.1 Conflicts of Interest. Conflicts of interest relating to this Contract are strictly prohibited. Except as otherwise expressly provided herein, neither party hereto nor any director, employee or agent of any party hereto shall give to or receive from any director, employee or agent of any other party hereto any gift, entertainment or other favor of significant value, or any commission, fee or rebate in connection with this Contract. Likewise, neither party hereto nor any director, employee or agent of either party hereto, shall without prior notification thereof to the other party enter into any business relationship with any director, employee or agent of the other party or of any affiliate of the other party, unless such person is acting for and on behalf of the other party or any such affiliate. A party shall promptly notify the other party of any violation of this section and any consideration received as a result of such violation shall be paid over or credited to the party against whom it was charged. Any representative of any party, authorized by that party, may audit the records of the other party related to this Contract, upon reasonable notice and during regular business hours including the expense records of the party's employees involved in this Contract, upon reasonable notice and during regular business hours, for the sole purpose of determining whether there has been compliance with this section.

ARTICLE 23: CONTRACT DOCUMENTS

Section 23.1. Plan Details.

Contractor prepared a complete Technical Energy Audit which has been approved and accepted by Agency as set forth in **Exhibit III** (i) (Notice of Acceptance – Technical Energy Audit and Monitoring and Verification Plan.

Section 23.2. General Conditions. The State of Colorado General Conditions Articles summarized below and attached hereto as **Schedule N** shall be incorporated and made a part hereof as follows. .

- (a) Contract or SC6.21: shall be defined to be this Energy Performance Contract and all related Schedules, Exhibits and Appendices.
- (b) Architect/Engineer: shall be defined to be the Contractor where services are required to be performed by this Contract.
- (c) Overhead/Profit/Commission: amounts shall be as specified in Contractor's proposal and **Schedule R**.

*The **Schedule N** (General Conditions) were prepared by the State of Colorado's Department of Personnel and Administration's State Buildings Programs and are required for state building projects. These are recommended for use by non-state governments as well since they are based on sound industry practices. If this schedule is desired, specify your own General Conditions and the articles and paragraphs apply to this contract or refer to the State of Colorado's General Conditions for information.>*

Section 23.3. Order of Precedence.

Notwithstanding, the provisions of this Contract and the attached Schedules, Exhibits and Appendices shall govern in the event of any inconsistencies between the Technical Energy Audit and the provisions of this Contract.

In the event of conflicts or inconsistencies between this Contract and its Schedules, Exhibits or Appendices, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: a) Colorado Special Provisions, **Section 42**, b) Contract body, c) Schedule, d) Schedules/Exhibits/Appendices, e) Agency RFP #Number, f) Contractor Proposal.

In the event of any conflicts between **Schedule C** and other parts of this Contract regarding Energy and Water Cost Savings calculations or measurement of the guarantee, **Schedule C** shall govern.

Section 23.4. Facsimile Signatures. Parties agree that facsimile signatures shall be accepted as originals.

ARTICLE 24: STATE OF COLORADO SPECIAL PROVISIONS

These provisions are required only for State of Colorado agencies and institutions.

1. CONTROLLER'S APPROVAL. CRS 24-30-202 (1)

This contract shall not be deemed valid until it has been approved by the Controller of the State of Colorado or such assistant as he may designate.

2. FUND AVAILABILITY. CRS 24-30-202 (5.5)

Financial obligations of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

3. INDEMNIFICATION.

The Contractor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the Contractor, or its employees, agents, subContractors, or assignees pursuant to the terms of this contract.

4. INDEPENDENT CONTRACTOR. 4 CCR 801-2

THE CONTRACTOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE CONTRACTOR NOR ANY AGENT OR EMPLOYEE OF THE CONTRACTOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. CONTRACTOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID BY THE STATE PURSUANT TO THIS CONTRACT. CONTRACTOR ACKNOWLEDGES THAT THE CONTRACTOR AND ITS EMPLOYEES ARE NOT ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE CONTRACTOR OR THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. CONTRACTOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. CONTRACTOR SHALL PROVIDE AND KEEP IN FORCE WORKERS' COMPENSATION (AND PROVIDE PROOF OF SUCH INSURANCE WHEN

REQUESTED BY THE STATE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE CONTRACTOR, ITS EMPLOYEES AND AGENTS.

5. NON-DISCRIMINATION.

The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws respecting discrimination and unfair employment practices.

6. CHOICE OF LAW.

The laws of the State of Colorado and rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-

judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent that the contract is capable of execution.

At all times during the performance of this contract, the Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

7. VENDOR OFFSET. CRS 24-30-202 (1) & CRS 24-30-202.4

Pursuant to CRS 24-30-202.4 (as amended), the State Controller may withhold debts owed to State agencies under the vendor offset intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) owed amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to

the State or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

8. EMPLOYEE FINANCIAL INTEREST. CRS 24-18-201 & CRS 24-50-507

The signatories aver that to their knowledge, no employee of the State of Colorado has any personal or beneficial interest whatsoever in the service or property described herein.

Revised: 12/1/01

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

CONTRACTOR:

STATE OF COLORADO:

GOVERNOR

Legal Name of Contracting Entity

By _____

Executive Director

Social Security Number or FEIN

Department of _____

Signature of Authorized Officer

LEGAL REVIEW:

ATTORNEY GENERAL

Print Name & Title of Authorized Officer

By _____

CORPORATIONS:

(A corporate attestation is required and seal, if available.)

Attest (Seal) By _____

(Corporate Secretary or Equivalent, or Town/City/County Clerk)

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The Contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:

By _____

Date _____

SCHEDULES

SCHEDULE A. EQUIPMENT TO BE INSTALLED BY CONTRACTOR

This schedule will be furnished by the Contractor based on the final Technical Energy Audit. The Technical Energy Audit is not an Attachment to this Contract, so all detail from the Technical Energy Audit as modified or amended in negotiations for this Contract should be included in this Schedule. It should specify all of the newly installed equipment including manufacturer, quantity, location and warranties (you can also have a separate schedule for warranties). The information should be provided in sufficient detail by building or area of building so that the Agency can verify the number of units installed under the contract. This is particularly important for a lighting retrofit and is used as the basis for making adjustments to the Contract Sum if the number of fixtures actually retrofitted is different than the number estimated. Detailed specifications of major pieces of equipment such as boilers, chillers, motors should be provided. A detailed points list of any energy management control system should be provided along with the major control strategies being implemented. This schedule should also describe any modifications that may have to be made to existing equipment, if applicable.

SCHEDULE B. DESCRIPTION OF PREMISES; PRE-EXISTING EQUIPMENT INVENTORY

This schedule is based on the final Technical Energy Audit. It contains basic information about the condition of the premises at the time of contract execution. The Technical Energy Audit is not an Attachment to this Contract, so all detail from the Technical Energy Audit as modified or amended in negotiations for this Contract should be included in this Schedule. Such information would include facility square footage, building construction, use, occupancy, hours of operation etc., and any special conditions that may exist.

The inventory is important to include for the purpose of identifying what equipment was in place and how it was configured at the time of contract execution. This schedule is important to the accurate establishment of baseline, savings measurement and may need to be referred to in the later years of the contract. It is critical that if M&V option C of the International Performance Monitoring and Verification protocol is used for establishing the savings, then a detailed list of the existing energy consuming equipment of the facility be documented in great detail. If Option A or B is used, then the pre-existing equipment inventory can be eliminated.

SCHEDULE C: ENERGY AND COST SAVINGS GUARANTEE

This schedule should fully describe all provisions and conditions of the energy saving guarantee provided by the Contractor. The guarantee should be defined in units of energy to be saved for the duration of the contract term and dollar savings. Reference to the annual reconciliation of achieved vs. guaranteed savings should be included (there is also language in the body of the contract regarding annual reconciliation See Section 2.6 (Annual Review and Reimbursement/Reconciliation)). Guidelines for the guarantee were established in the RFP, so ensure compliance with RFP intent.>

This schedule should contain the projected energy savings in units for each year of the contract. Often these projections are broken down on a measure-by-measure basis, although some measures may be aggregated into general categories such as lighting or HVAC. If there are several buildings involved in the project, this schedule should contain projections for each facility, even though they may all be covered under a single guarantee.

**SCHEDULE D:
MONITORING, MAINTENANCE AND SERVICE AGREEMENT**

This should contain the amount and frequency of any payments that may be made to the Contractor for maintenance, monitoring or other services negotiated as part of the contract. It should contain information about how the compensation is calculated (e.g. a percentage of savings above and beyond the guarantee, flat fee etc.), and if an annual inflation index is to be used to escalate fees over the duration of the contract term. An hourly fee structure can also be included to cover Contractor costs for any services provided beyond the scope agreed to at the time of contract execution.

**SCHEDULE E:
BASELINE ENERGY CONSUMPTION**

The baseline energy consumption is the "yardstick" by which all savings achieved by the installed project will be measured. The methodology and all supporting documentation used to calculate the baseline should be in this schedule including unit consumption and current utility rates for each fuel type. This schedule may also include baseline documentation regarding other cost savings such as material savings (e.g. bulbs, ballast, filters, chemicals etc.), and cost savings associated with the elimination of outside maintenance contracts. >

<For each site or project, the baseline and post-installation energy use will usually be defined using metering, billing analysis and/or engineering calculations (including computer simulations) either individually or in combination. In addition, values for certain factors that affect energy use and savings that are beyond the Contractor's control may be stipulated using historical data, analyses and/or results of spot or short-term metering. The owner or the Contractor can define baseline conditions. If the owner defines the baseline, the Contractor will have the opportunity to verify it. If the baseline is defined by the Contractor, the owner will have the opportunity to verify.

<Baseline physical conditions (equipment inventory and conditions, occupancy, nameplate data, energy consumption rate, control strategies, etc.) are typically determined through well-documented audits, surveys, inspections and/or spot or short-term metering. This documentation will define the baseline for calculating savings and document baseline conditions in case future changes require baseline energy use adjustments.

**SCHEDULE F:
SAVINGS MEASUREMENT AND CALCULATION FORMULAE; METHODOLOGY TO
ADJUST BASELINE; MONITORING AND VERIFICATION PLAN**

This schedule contains a description of the energy savings measurement, monitoring and calculation procedures used to verify and compute the savings performance of the installed equipment will be contained in this schedule. The Agency should consider requiring the Contractor to use the International Performance Monitoring and Verification Protocol 2002 as the basis of the savings calculation methodology. This protocol provides four options for M&V and covers all possible energy and water efficiency measures and is the accepted international standard for M&V of performance contracts.

This calculation will include a method to compare the level of energy that would have been consumed without the project (referred to as the "Baseline") with what amount of energy was actually consumed during a specific time period (monthly, quarterly, etc.). All methods of measuring savings including engineered calculations, metering, equipment run times, pre- and post-installation measurements, etc. should be explicitly described for all equipment is installed.

A clear methodology for converting energy savings into energy cost savings should be provided. The utility rates to be used for the baseline and actual energy costs should be defined. How the calculations are affected by rising or lowering utility rates should be clearly described.

Periodically (typically on an annual basis), the baseline will be adjusted to account for the prevailing conditions (e.g., weather, billing days, occupancy, etc.) during the measurement period. All methodologies used to account for any adjustments to the baseline needs to be clearly defined in this schedule.

Examples of baseline adjustments include: change in the amount of space being air conditioned, changes in auxiliary systems (towers, pumps, etc.), and changes in occupancy or schedule. For example, if a chiller retrofit was completed in a building with 100,000 square feet of conditioned space and during the contract term the conditioned space is reduced to 75,000 square feet, post-installation energy use would be lower making savings higher. If there are no records of the amount of originally conditioned space, the baseline could not be adjusted. Baseline adjustments for issues such as changes in production shifts, facility closures, adding new wings or loads (such as computer labs) require a conceptual approach versus a method to cover each eventuality. Clearly predictable annual variations are usually handled through established procedures for each identified factor in the savings formulas. Permanent changes, such as changes in square footage, are handled through agreement clauses that allow predictable or expected changes and/or through a "re-open" clause that allows either party to renegotiate the baseline.

A Facility Changes Checklist or other method may be provided by the Contractor for the Agency to notify the Contractor of any changes in the facility that could have an impact on energy use (occupancy, new equipment, hours of use, etc.). This checklist is generally submitted on a monthly or quarterly basis.

The Monitoring and Verification Plan Guidelines will be used (see Attachment F to this RFP: Technical Energy Audit and Project Proposal Contract).

**SCHEDULE G:
CONSTRUCTION AND INSTALLATION SCHEDULE**

The timetables and milestones for project construction and installation should be contained in this schedule. Any penalties for late installation should also be documented here. Documentation of required insurance, subContractor lists and any MBE/WBE required subcontracts can be included in this schedule or broken out into a separate schedule. NOTE: It is important that the construction/installation phase of the project (for example bonds and insurance) be treated in compliance with individual institutional requirements and the appropriate governing statutes. Since construction is just one component of the overall project, a separate construction contract may be desirable and in some cases necessary. The construction contract would then be referred to in the body of the contract and attached as an exhibit, appendix or other type of attachment. Another approach would be to consolidate the appropriate construction language for inclusion in the body of the final contract. This will need to be decided as appropriate on a case-by-case basis.

**SCHEDULE H:
SYSTEMS START-UP AND COMMISSIONING; OPERATING PARAMETERS OF
INSTALLED EQUIPMENT**

This section should specify the performance testing procedures that will be used to start-up and commission the installed equipment and total system. The schedule also provides for the Agency to be notified of and have the right to be present during all commissioning procedures. This schedule should contain a provision for the documentation of the client's attendance at the various tests and acceptance of the Contractor's certification that the tests followed the specified procedures and met or exceed the expected results. Use of manufacturer's start up and performance sheets are required.

The operating parameters should contain any specified parameters for the operation of the installed equipment such as temperature setbacks, equipment run times, load controlling specifications and other conditions for the operation of the equipment.

**SCHEDULE I:
STANDARDS OF COMFORT**

The standards of comfort to be maintained for heating, cooling, lighting levels, hot water temperatures, humidity levels and/or any special conditions for occupied and unoccupied areas of the facility should be explicitly described in this schedule.

**SCHEDULE J:
CONTRACTOR'S MAINTENANCE RESPONSIBILITIES**

A complete description of the Contractor's specific operations and maintenance responsibilities should be included in this schedule along with the time intervals for their performance of the stated O&M activities (through Acceptance, through monitoring period, etc.).

**SCHEDULE K:
AGENCY'S MAINTENANCE RESPONSIBILITIES**

This schedule describes the operations and maintenance responsibilities that may be assigned to facility staff as agreed to by both parties. In some instances it will contain no more than a description of routine O&M currently being performed on existing energy consuming equipment in the facility. In other cases, facility staff may be used to provide some maintenance on the new equipment installed under the performance contract, with the Contractor providing any specialized services as needed.

**SCHEDULE L:
FACILITY MAINTENANCE CHECKLIST**

This checklist is a method by which the Contractor may record and track compliance with operations and maintenance procedures performed by facility personnel. The checklist typically specifies simple list of tasks and the corresponding schedule for the performance of the prescribed procedures. Facility staff will complete the checklist and forward it to the Contractor, usually on a monthly basis. (This checklist is a very useful tool for both the Contractor and Agency to verify that the required maintenance activities are being performed at the scheduled intervals). It could be stated here that the checklist will be provided as a part of the Operation and Maintenance Manuals.

**SCHEDULE M:
CONTRACTOR'S TRAINING RESPONSIBILITIES**

The description of the Contractor's training program or sessions for facility personnel should be contained in this schedule. The duration and frequency of the specified training should also be included. Any provisions for on-going training, commitments to train newly hired facility personnel, and training with respect to possible future equipment or software upgrades should also be described. Any fees associated with requests for training beyond what the Contractor is contractually bound to provide should also be specified.

**SCHEDULE N:
GENERAL CONDITIONS**

The General Conditions required by Colorado state government shall apply for all state agencies and institutions. See <http://www.colorado.gov/dpa/dfp/sbrep/formstable.htm>, General Conditions of the Contract, Document Number SC-6.23. Local governments may use this document or apply their own conditions.

**SCHEDULE O:
PAYMENT SCHEDULE AND SCHEDULE OF VALUES**

This schedule contains the schedule of payments from the Agency to the Contractor based on the level of work completed. This can be structured on an overall % project completion basis or on a ECM or Building by Building basis. A detailed Schedule of Values should be provided by ECM and by building so that the % completion can be established. The Schedule of Values should show a breakdown of the total cost to show labor, material, contingency, overhead and profit markup of each ECM and related services (i.e. energy audit). The amount of Agency contribution should also be clearly indicated.

**SCHEDULE P:
PRE-EXISTING SERVICE AGREEMENTS**

Information regarding the scope and cost of pre-existing equipment service contracts should be located in this schedule. This gives both the Agency and Contractor information about how and when the existing equipment is being serviced. As well, if the Contractor is credited with any maintenance savings or is taking over any existing service contracts, the scopes and costs of such Contracts will be useful in tracking the performance of the Contractor in providing the required services and documenting any attributable cost savings.

**SCHEDULE Q:
CURRENT AND KNOWN CAPITAL PROJECTS AT FACILITY**

If there are any current or planned capital projects to be implemented in the facility, that information should be contained in this schedule. This information could prove to be very useful in the out-years of the contract to avoid potential disputes over long-term energy savings performance, overall facility energy consumption and costs..

**SCHEDULE R:
PROJECTED FINANCIAL PERFORMANCE**

This schedule should contain the projected energy savings in units for each year of the contract. Oftentimes these projections are broken down on a measure-by-measure basis although some measures may be aggregated into general categories such as lighting or HVAC. If there are several buildings involved in the project, this schedule should contain projections for each facility, even though they may all be covered under a single guarantee

*It should also include a spreadsheet depiction of expected financial performance of the project for the entire contract term. It should clearly identify all financial components of the project including interest rates and lease-purchase costs to the leasing company, current fuel prices, any escalation rates to be applied (if an escalation rate is going to be agreed upon with the Contractor then it should be clearly documented in **Schedule F**), guaranteed savings, Contractor compensation figures (up front payment and monitoring fees), cash-flow projections and projected Net Present Value of any cumulative positive cash flow benefits to the building owner.*

**SCHEDULE S
CERTIFICATE OF INSURANCE**

EXHIBITS

**EXHIBIT I
PERFORMANCE BOND**

To be provided after execution of this Contract.

**EXHIBIT II
LABOR AND MATERIAL PAYMENT BOND**

To be provided after execution of this Contract.

**EXHIBIT III (i)
NOTICE OF ACCEPTANCE—TECHNICAL ENERGY AUDIT AND MONITORING
AND VERIFICATION PLAN**

To be provided by the Agency.

**EXHIBIT III (ii)
Notice of Substantial Completion**

Notice of Substantial Completion

For state agencies and higher education institutions, use first page and delete second page.

For others, delete first page and use second page.



State of Colorado

Notice of Acceptance

Date of Notice _____

Notice is hereby given that *Customer* accepts the installed equipment and establishes a performance period start date of _____.

Department of Personnel & Administration
State Buildings & Real Estate Programs

Customer Name

By _____

By _____

Date

Date

When completely executed, this form is to be sent by certified mail to the Contractor by *Customer*.

For non-state projects only:

Notice of Substantial Completion

Date of Notice _____

Notice is hereby given that **Customer** accepts the installed equipment and establishes a performance period start date of _____.

Agency Name

By _____

Date

When completely executed, this form is to be sent by certified mail to the Contractor by Agency Name.

**EXHIBIT IV
EQUIPMENT WARRANTIES**

**EXHIBIT V
MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES**

**EXHIBIT VI
CERTIFICATION THAT LIFETIME OF EQUIPMENT EXCEEDS FINANCING
TERM**

APPENDICES

**APPENDIX A:
LEASE AGREEMENTS AND DOCUMENTS**

**EXHIBIT IV
EQUIPMENT WARRANTIES**

**EXHIBIT V
MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES**

**EXHIBIT VI
CERTIFICATION THAT LIFETIME OF EQUIPMENT EXCEEDS FINANCING
TERM**

APPENDICES

**APPENDIX A:
LEASE AGREEMENTS AND DOCUMENTS**

**APPENDIX B:
RFP FOR CONTRACTOR SOLICITATION**

**APPENDIX C:
CONTRACTOR PROPOSAL**