

ATTACHMENT A

**ESCO BASE CONTRACT FOR AS-NEEDED ENERGY PERFORMANCE
CONTRACTING SERVICES**

**FOR THE COLORADO ENERGY OFFICE PERFORMANCE CONTRACTING
PROGRAM**



THE COLORADO ENERGY OFFICE

1580 LOGAN STREET, SUITE 100

Denver, CO 80203

ENERGY SERVICE COMPANY (full legal name as Registered with Colorado Secretary of State office)

CONTACT PERSON

FULL ADDRESS:

PHONE:

EMAIL:

- EXHIBIT 1:** Cost and Pricing Elements
- EXHIBIT 2:** Contract Renewal Option Letter
- EXHIBIT 3:** Project Metrics Report for CEO

ESCO BASE CONTRACT FOR AS-NEEDED ENERGY PERFORMANCE CONTRACTING SERVICES

THIS Base Contract is entered into by and between Insert Name of Contractor (hereinafter called “Contractor”), and the Colorado Energy Office (hereinafter called the “CEO”).

WHEREAS, CEO, through its Colorado Energy Performance Contracting Program (EPC) uses a state-approved RFP process to select energy service companies (ESCOs) to provide as-needed energy performance contracting services;

WHEREAS, CEO will maintain a list of pre-qualified ESCOs that are eligible for final selection by the Colorado EPC Program Participants to provide performance contracting services.

NOW, THEREFORE, it is agreed that:

1. Entire Contract

The entire contract consists of the following attachments which are incorporated by reference in electronic format: **Attachment B**, the ESCO Response To Request For Proposals For As-Needed Energy Performance Contracting Services; **Attachment C**, the CEO Secondary ESCO Selection Process; **Attachment D**, the Colorado Statutes of Energy Performance Contracting for State Government; **Attachment E**, the Colorado Statutes of Energy Performance Contracting for Local Government, **Attachments F-1 (state) and F-2 (local)**, the CEO Investment Grade Audit & Project Proposal Contracts for State and for Local Governments; **Attachments G-1 (state) and G-2 (local)**, the CEO Energy Performance Contracts for State and for Local Governments; **Attachments H-1 (state) and H-2 (local)**; **Attachment I**, CEO Facility Owner’s Memorandum Of Understanding issued through this Base Contract, **Attachment J**, the CEO’s EPC Milestone Checklist, and **Attachment K**, Colorado Executive Order.

2. Purpose of Contract

The purpose of this Contract is to provide the Contractor the ability to participate in the Colorado EPC Program for development and implementation of Utility Cost-Saving Measures, to ensure the program’s standard processes, procedures, and documentation are used and to obligate Contractor to follow and adhere to the guidelines, rules, and provisions of the program.

3. Term of Contract, Renewals, Performance Review, Disqualification.

This Base Contract shall become effective on the date it is approved by the Director of the Colorado Energy Office and shall terminate on June 30th, 2019, unless terminated as specified elsewhere herein.

The CEO may require continued performance for a period of 4 years at the same rates and same terms specified in the Contract. If the CEO exercises this option, it shall provide written notice to Contractor at least 30 days prior to the end of the current contract term in form substantially equivalent to Exhibit A. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Contract. The total duration of this Contract, including the exercise of any options under this clause, shall not exceed 5 years.

Contractor's performance shall be reviewed annually by the CEO for compliance with the CEO's EPC Program contractual obligations, guidelines and requirements, processes and documentation as well as adherence to the Office of the State Architect (OSA) policies and procedures (for State work). Contractor shall adhere to all state statutory requirements for all EPC projects. Contractor shall practice and uphold the highest levels of ethical and industry standards in all matters under this program. Failure to comply with the CEO EPC program may result in termination. Should Contractor be deemed non-compliant during any annual review or during a contract year, at the CEO's sole discretion, this Contract may be terminated without regard to any time remaining in the term. A terminated firm shall remain disqualified for the remainder of the Program cycle ending on June 30th 2023.

Services for the program participants for all existing and active projects shall extend beyond the life of the Contract with all terms and conditions remaining in effect until the project is completed and closed.

4. EPC Documentation

a. ESCO Documentation Use Requirements

ESCO and Client shall use all of the most recent CEO provided documentation as described in Attachment J – ESCO Milestone Checklist.

b. Acceptable Use of Older EPC Documentation

It shall be deemed acceptable to use a previous version of a CEO EPC document only when there is an existing contract in place that preceded the most recently signed ESCO Base Contract. In this situation, the older documentation is recognized as usable, but its use shall be mutually agreed upon by the ESCO and the contracted Agency. Any contracts signed under the current Base Contract year shall use the most recent CEO EPC documentation.

c. Commissioning and Measurement and Verification Procedures

All commissioning and measurement and verification procedures as explained in the Commissioning *Guidelines for Energy Saving Performance Contracts for the Colorado Energy Office*¹ on the Effective Date of the IGA contract, shall apply to all contracts signed within the current ESCO Base Contract year.

5. Breach

a. Defined

¹ Located on CEO's website at [Colorado Energy Office/Energy Efficiency/Commercial Buildings/Energy Performance Contracting](https://www.coloradoenergyoffice.com/energy-efficiency/commercial-buildings/energy-performance-contracting) for program participants.

In addition to any breaches specified in other sections of this Contract, the failure of the Contractor to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach.

b. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the CEO to the Contractor. If such breach is not cured within 30 days of receipt of written notice, or if cure of the breach has not begun within 30 days and pursued with due diligence, the CEO may exercise any of the remedies set forth in **§6**. Notwithstanding anything to the contrary herein, the CEO, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

6. Remedies

If Contractor is in breach under any provision of this Contract, the CEO shall have all of the remedies listed in this **§6** in addition to all other remedies set forth in other sections of this Contract following the notice and cure period set forth in **§5(b)**. The CEO may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

a. Termination for Cause and/or Breach

The CEO may terminate this entire Contract or any part of this Contract. Exercise by the CEO of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Contract to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Contractor shall not incur further obligations past the effective date of such notice. At the time of termination, Contractor agrees to fulfill all obligations for any current contracts under CEO's EPC Program and shall still be held to the standard of conduct set forth in this Base Contract until said contracts are fulfilled.

b. Early Termination in the Public Interest

The CEO is entering into this Contract for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Contract ceases to further the public policy of the State, the CEO, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the CEO of this right shall not constitute a breach of the CEO's obligations hereunder. This subsection shall not apply to a termination of this Contract by the CEO for cause or breach by Contractor, which shall be governed by **§6(a)** or as otherwise specifically provided for herein.

i. Method and Content

The CEO shall notify Contractor of such termination via written notice to the contact person and address set forth on Page 1. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

ii. Obligations and Rights

Upon receipt of a termination notice, Contractor shall be subject to and comply with the same obligations and rights set forth in **§6(A)(i)**.

7. Consideration

In consideration for entering into this Contract, Contractor shall be eligible for participation in the Colorado EPC Program.

8. Contractor Participation

In consideration for annual renewal of this Contract and to be maintained on the list of pre-qualified ESCOs, the Contractor must have demonstrated reasonable participation in the Colorado EPC Program. Reasonable participation is defined as qualifying with at least one of the following guidelines:

- a) Contractor has or has had one (1) active contract through the Colorado EPC Program in the last 365 calendar days. An active Contract is defined as a signed investment grade audit contract, a signed energy performance contract, or Contractor was in the 1st year of the measurement and verification phase for a project.
- b) Contractor has submitted a full proposal for at least 50% of all RFP's released through the Colorado EPC Program in the last 365 calendar days.
- c) Contractor has engaged the CEO to attend at least two (2) meetings, in person or via telephone, with or without ESCO participation, to introduce the Colorado EPC program to potential clients within the last 365 calendar days.

9. Responsibilities of Contractor to the Colorado Energy Office

Responsibilities of the Contractor shall include, but are not limited to the following tasks:

- a) Provide a dedicated contact person and company URL which the CEO will post on its website.
- b) Promote the CEO Energy Performance Contracting Program when marketing directly to Facility Owners (Clients) (with potential CEO program clients within market sectors targeted by CEO),
- c) Engage the CEO Prior to the Client signing the CEO Memorandum of Understanding (MOU) with the Facility Owner. If client declines CEO support for the project via the MOU, provide the CEO with the signed MOU indicating such decision,
- d) If project is executed outside of the EPC program, as validated by the MOU, the following statutory requirements shall be met:
 - a. carry forward of savings
 - b. cost weighted average life
 - c. 3 years M&V
 - d. cash flow neutral
- e) Use CEO's/OSA's standard Investment Grade Audit and Project Proposal Contract and Energy Performance Contract and all supporting and associated documents (for state projects, all requests for contract modifications require OSA approval),
- f) Provide information to CEO of all EPC projects. The information shall include all projects started within this reporting period (initial contact or IGA phase), all projects in engineering design or construction (EPC signed), all additional phases to projects (contract amendments), all projects in post construction (M&V, training, warranty, etc), and all completed projects (no contractual requirements). A started project is

defined as when the ESCO has had two or more meetings with a potential client. The information required includes process and procedural documents (amendments, project acceptance form, code compliance, etc) plus information as indicated on Exhibit 3,

- g) Provide a list of RFPs responded to in this reporting period. A list of contacted potential clients shall be required if the ESCO cannot provide a list of RFPs.

10. Responsibilities of Contractor to the Facility Owners (Clients)

Responsibilities of the Contractor shall include, but are not limited to the following items:

Initial Contractor discussions with potential Clients (CO EPC program participates)

- a) Promote at the first meeting, the CEO Energy Performance Contracting Program, including CEO Program Manager contact information, when marketing directly to Facility Owners (Clients) (with potential CEO program clients within market sectors targeted by CEO),
- b) Immediately notify CEO of your selection by the Client for EPC work,
- c) Engage the CEO Prior to the Client signing the CEO Memorandum of Understanding with the Facility Owner.
- d) Perform an initial evaluation of project potential and discuss with the Facility Owner.

Contractor Investment Grade Audit and Project Development Responsibilities

- e) Develop an Investment Grade Audit and Project Proposal Contract with the Facility Owner. Contractor shall not modify the contract documents unless directed by the Facility Owner. All modification shall require approval of CEO and OSA (as applicable). Modifications of the contract are generally not accepted.
- f) Provide CEO/OSA an electronic copy of the IGA contract and all supporting documents for review prior to signatures. Plan on a two-week review period.
- g) Provide the CEO/OSA with an electronic copy of the fully executed final IGA contract and all supporting documents.
- h) Comply with all requirements of the Investment Grade Audit and Project Proposal Contract (Attachment F-1 or F-2), including but not limited to: conduct an Investment Grade Audit, prepare a detailed technical and project proposal for the project, help arrange for or procure financing, and develop a measurement and verification plan.
- i) Assign individuals to the project team representing project development, engineering, project management, monitoring and verification, and upper management support.
- j) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed.
- k) Address issues, recommendations and requests from CEO or OSA (as applicable) in support of the CEO independent technical review and facilitation process.
- l) Adhere to the limitations on cost, markups, and fees outlined in EXHIBIT 1: Cost and Pricing Elements of this Contract.
- m) Contractor shall secure on behalf of the Facility Owner all available energy/demand/water saving and renewable energy utility incentives available to each project,

- n) Before owner accepts the IGA Project Proposal CEO and OSA (as applicable for State Departments and Institutions of Higher Education) shall review and submit a final Record of Reviews document. CEO requires two weeks to review signature ready documents.

Contractor Energy Performance Contract Project Implementation Responsibilities

- o) Develop an Energy Performance Contract with the Facility Owner based upon results of the Investment Grade Audit and Project Proposal. Contractor shall not modify the contract documents unless directed by the Facility Owner. All modifications shall require approval of CEO and OSA (as applicable). Modifications of the contract are generally not accepted.
- p) Provide CEO/OSA an electronic copy of the EPC contract and all supporting documents for review prior to signatures. Plan on a two-week review period.
- q) Provide the CEO with an electronic copy of the fully executed final EPC contract and all supporting schedules, exhibits, financial documents, and any other requested and relevant documents. Include signed addenda as necessary.
- r) Comply with all requirements of the Colorado Energy Performance Contract (ATTACHMENT G-1 or G-2)
- s) Adhere to the limitations on cost, markups, and fees outlined in IGA EXHIBIT B: Cost and Pricing Elements.
- t) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed.
- u) Address issues, recommendations and requests from CEO in support of the CEO independent technical review and facilitation process.
- v) Provide the CEO with addenda or additional phases to EPC contract.
- w) Provide CEO electronic copy of fully executed EPC Notice of Final Acceptance (Local) or Notice of Final Acceptance (SBP-6.27) (State)
- x) Provide a post-implementation report to Facility Owner and CEO. To fulfill requirements of the Energy Performance Contract, contractor must provide a post installation report to facility owner clearly showing all changes and revisions that occurred during the construction phase, including equipment, cost, and energy and cost savings changes.

Contractor Performance Period Responsibilities

- y) Comply with all requirements of the Colorado Energy Performance Contract, including but not limited to: measurement and verification reporting and services, guarantee of performance and cost savings, maintenance and/or repair of equipment, training for facility personnel on maintenance and operation of systems, and training for occupants.
- z) Provide the Facility Owner and the CEO with the minimum of annual reports on project cost, status, savings achieved, and square footage impacted by the project as given in Exhibit 3. Update the appropriate EPC schedules to indicate final scope of work (facilities, energy/water savings, guarantee, installed equipment, etc),

- aa) Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed
- bb) Address issues, recommendations and requests from the CEO in support of the CEO independent technical review and facilitation process.

11. Responsibilities of CEO and Participating Facility Owners

The responsibilities for the CEO and participating Facility Owners include the following, but may not be limited to:

CEO Responsibilities:

- a) Actively promote the program and educate potential participants about the benefits and implementation of energy performance contracts.
- b) Work with Facility Owners to become program participants and to commit to a Facility Owner Memorandum of Understanding.
- c) Help Facility Owner procure services of an ESCO from the pre-qualified list.
- d) Provide contact information on the CEO EPC website for currently pre-qualified ESCOs, as provided and updated by the ESCO, providing a link to the ESCO's website for more detailed information.
- e) Help Facility Owner develop and initiate a performance contracting project.
- f) Facilitate the performance contracting process to help ensure commitments are met by both the Facility Owner and the ESCO.
- g) Provide technical guidance to the Facility Owner attending on-site meetings between the Facility Owner and ESCO as needed and subject to availability.
- h) Help develop the CEO EPC Program standard Investment Grade Audit and Energy Performance Contracts for state and local governments and support facility owners with amendments, as needed.
- i) Review Facility Owner's audits, proposals, calculations, contracts, and measurement and verification reports.
- j) Monitor project implementation.
- k) Identify solutions to mediate any conflicts between Facility Owner and ESCO.

Facility Owner Responsibilities:

- a) Agree to program participation by executing a Facility Owner Memorandum of Understanding and engage the CEO EPC program for assistance in project development.
- b) Select an ESCO from CEO's current pre-qualified list, using a secondary selection process that fulfills the Facility Owner's procurement policies.
- c) Assign members to the facility project team including operations, maintenance, financial and upper management personnel.
- d) Ensure appropriate personnel attend project development meetings dependent upon the subject matter to be discussed.
- e) Provide access and escort to buildings under reasonable conditions.
- f) Provide information as needed for the feasibility study (if performed), the Investment Grade Audit and Project Proposal, and other project development activities.

- g)** Work with the ESCO to develop/refine project parameters.
- h)** Review/approve ESCO proposals, designs, and reports.
- i)** Ensure recommendations of the CEO EPC program during reviews are addressed to the extent that such recommendations are reasonable.
- j)** Make payments for ESCO services per IGA contract terms.
- k)** Execute the CEO approved contracts with the ESCO
- l)** Make arrangements for project financing, and with the assistance and upon the advice of legal counsel, execute appropriate financing and EPC contracts.
- m)** Provide project management.
- n)** Provide information to CEO as needed for measurement and verification activities.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect and accept personal responsibility for any and all damages the State may incur for any errors in such representation. *

<p style="text-align: center;">CONTRACTOR</p> <p style="text-align: center;">Name of Contractor</p> <p>By: <u>Name of Authorized Individual</u></p> <p>Title: <u>Official Title of Authorized Individual</u></p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO</p> <p style="text-align: center;">John W. Hickenlooper, GOVERNOR COLORADO ENERGY OFFICE Kathleen Staks, Executive Director</p> <p>By: _____</p> <p>Signature</p> <p>Date: _____</p>
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EXHIBIT 1 (IGA Exhibit B)

Cost and Pricing Elements

1. Costs, Maximum Percentages, and Fees

Cost, maximum percentages, and fees shall not exceed the maximums established in the CEO Cost Estimate Guide, Cost Estimate Summary tab, as attached. The cost and pricing for performing the Investment Grade Audit and Project Proposal and any Energy Performance Contract for pre-defined categories shall be per the attached spreadsheet. Markups on fees are not allowable under the CEPCP.

Facility owners may choose to accept audit costs, percentages, and fees proposed by Contractor for individual projects without further negotiation, provided they do not exceed the maximums established on the CEO Cost Estimate spreadsheet, attached, or directly negotiate with Contractor for reductions as dictated by individual facility or project requirements. Contractor may also propose lower audit costs, percentages, and fees depending upon individual project considerations or their own internal business approach.

2. Open Book Pricing

Open book pricing is full disclosure by the Contractor to the facility owner of all costs and markups for materials, labor, and services received during the project development, implementation, and performance period phases. Open book pricing will be required such that the Contractor will fully disclose all costs, including all costs of subcontractors and vendors. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices to ensure the Contractor's prices are reasonable and acceptable and that markups are being properly applied.

EXHIBIT 2

ANNUAL RENEWAL OPTION LETTER

**ESCO BASE CONTRACT FOR
AS-NEEDED ENERGY PERFORMANCE CONTRACTING SERVICES**

State Fiscal Year: YY-YY Option Letter No.

SUBJECT: Option to Renew As-Needed Base Contract

In accordance with Section 3 of the original Base Contract Number _____ with the effective date _____ between the Colorado Energy Office (CEO), and _____ for as-needed energy performance contracting services, CEO hereby exercises its option for an additional term of one year, beginning Insert Start Date and ending Insert End Date.

Performance of any Investment Grade Audit and Energy Performance Contract signed after **July 1, YEAR** shall be governed by the terms and conditions of the As-Needed ESCO Base contract referenced above.

Attached and incorporated herein is one copy of firm’s submitted renewal information and **Exhibit 1** of this document, Cost and Pricing Elements of this document for fiscal year.

Firm will continue to be listed as eligible for selection for as-needed energy performance contracting services through CEO.

The effective date of this Option Letter is upon approval of the CEO Executive Director.

APPROVALS:

Kathleen Staks
Colorado Energy Office
Executive Director

Date

EXHIBIT 3

PROJECT METRICS REPORT FOR THE CEO

A Project Metrics Report shall be submitted to CEO as data is initially available and updated when contracts are signed, when amendments are signed, at the acceptance of the EPC work, during the measurement and verification work, and at the end of each reporting period if information is requested by CEO. Submission of this report is a minimum requirement for contract renewal. Submission will be completed electronically as per CEO instructions. This information is critical to CEO's ability to monitor projects, communicate results to the state legislature, and to calculate CO2 reductions state-wide that result from program successes.

The Project Metrics Report shall include, but is not limited to, the following:

- a. Project name
- b. Facility Owner contact, including: name, title, email address, and phone number
- c. ESCO contact, including: name, title, email address, and phone number
- d. Project status (In initial discussions, IGA signed/started, EPC signed/design started, EPC-in construction, EPC-M&V phase, project closed)
- e. Total square footage
- f. Number of buildings included
- g. IGA cost
- h. Date IGA agreement signed (Electronic copies submitted to CEO)
- i. Date IGA Project Proposal completed
- j. Date EPC signed (Electronic copies submitted to CEO)
- k. List of energy conservation measures
- l. Length of financing term or length of time needed to payback EPC if self-funded.
- m. Amounts and descriptions of all funding and financing sources, including: grants, utility incentives, financing, bond, and capital contributions. (Note: the sum of all funding and financing sources must equal the total cost of the project.)
- n. Baseline energy use and cost data, including: electrical energy use as kWh and kW, electrical energy cost as \$/kWh and \$/kW, fuel type, fuel use and cost, water use and cost, and operation and maintenance costs
- o. Projected energy use and cost data post-EPC, including: electrical energy usage as kWh and kW, electrical energy cost as \$/kWh and \$/kW, fuel type, fuel use and cost, water use and cost, operation and maintenance costs, and lifetime cost savings.
- p. Construction cost (initial and revised as necessary)
- q. Date construction completed
- r. Total project cost (initial and revised as necessary)

- s. Projected and actual energy savings as kW, kWh and therms per energy conservation measure.

Other information may be identified and required by the CEO in order to meet the requirements of State agencies, Executive Orders, legislation, and other initiatives.