



Christopher J. Gagliastro, MCPPO
Purchasing Agent

RFQ NO. CR-8558-W6
ISSUANCE DATE: 11/1/25

BUYER: Christopher J. Gagliastro, MCPPO

**AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER
REQUEST FOR PROPOSALS
NOTICE TO PROPOSERS**

RFQ TITLE: Energy Management Services (EMS) / DSR

REFER TO PAGE 7 FOR PROPOSAL SUBMISSION INFORMATION

General Conditions:

All proposals are subject to the terms, conditions and specifications herein set forth:

1. **Scope: Provide energy management services in accordance with MGL c. 25A, SS 11I and per the attached requirements and specifications of the Worcester Department of Sustainability & Resilience. Contract term may not exceed thirty (30) years (waiver for extended term received by City).**
2. A certified check or bid bond made payable to the "City Treasurer, City of Worcester" in the amount of N/A must accompany this proposal. This must be submitted under separate sealed cover marked "Proposal Security." In the case of default, the surety shall be forfeited to the City as liquidated damages.
3. All terms and conditions are applicable to this proposal except the following section(s) which are hereby deleted from this RFP: all apply
4. Performance and payment bonds bond in the amount of 100% will be required. Before entering a contract for EMS, the City requires the responsive offeror to file payment and performance bonds for construction and installation of Energy Conservation Measures and Energy Conservation Projects in an amount equal to 100% of the estimated contract value from a surety company in good standing and licensed to do business in the Commonwealth of Massachusetts. Bond forms shall be the City's form and format.

Any prospective proposer requesting a change in or interpretation of existing specifications or terms and conditions must do so within 5 days (Saturdays, Sundays, and Legal Holidays excluded) before scheduled proposal opening date. All requests are to be in writing to the Purchasing Division. No changes will be considered nor will any interpretation issued unless request is in our hands within 5 days (Saturdays, Sundays, and Legal Holidays excluded) before scheduled proposal submission date.

Any inquiries related to technical or contractual matters must be submitted in writing to:

**Christopher J. Gagliastro, MCPPO
Purchasing Director
City of Worcester, City Hall
455 Main Street, Room 201
Worcester, MA 01608
gagliastroc@worcesterma.gov**

5. Nothing herein is intended to exclude any responsible Proposer or in any way restrain competition. All responsible Proposers are encouraged to submit proposals. The City encourages participation by Minority and Women Owned Business Enterprises (M/WBE).
6. The following meanings are attached to the defined words when used in this RFP.
 - a) The word "City" means The City of Worcester, Massachusetts.
 - b) The word "Proposer" or "Respondent" means the person, firm or corporation submitting proposal on these specifications or any part thereof.
 - c) The word "Contractor" means the person, firm or corporation with whom the contract is made by carrying out the provisions of these specifications and the contract.
 - d) The words "Firm Price" shall mean a guarantee against price increase during the life of the contract.
7. All proposals and other documents relating to this RFQP are subject to the public records provisions of M.G.L.
8. All material submitted by vendors becomes the property of the City. The City is under no obligations to return any of the material submitted by a vendor in response to this RFQ.
9. Each vendor's proposal must remain in effect for at least 150 days from the deadline for its submission. The City will decide upon acceptance within 150 days of submission.
10. It is understood and agreed that it shall be a material breach of any contract resulting from this RFP for the Contractor to engage in any practice which shall violate any provision of Massachusetts General Laws, Chapter 151B, relative to discrimination in hiring, discharge, compensation, or terms, conditions or privileges of employment because of race, color, religious creed, national origin, sex, age or ancestry.

11. The City reserves the right to accept or reject any or all proposals submitted and waive informalities and technicalities.
12. The City will review and analyze each proposal and reserve the right to interview selected proposers. The City shall select the proposer, which in the City's opinion, has made the proposal best suited to the needs and goals of the City and its operations and deemed to be in compliance with the terms of this RFP.
13. The Contractor will be required to indemnify and save harmless the City of Worcester for all damages to life and property that may occur due to his or her negligence or that of his or her employees, subcontractors, etc. during the contract derived from this RFP.
14. The Contract Agreement will be drafted by the City's Law Department in compliance with the terms of the RFP and may incorporate the terms of this RFP and of the proposal selected.
15. The Proposer must certify that no official or employee of the City of Worcester, Massachusetts, is pecuniarily interested in this proposal or in the contract which the proposer offers to execute or in expected profits to arise therefrom, unless there has been compliance with the provisions of G.L.C. 43 section 27, and that this proposal is made in good faith without fraud or collusion or connection with any other person submitting a proposal.
16. Any proposal withdrawn after time and date specified, the proposer shall forfeit deposit on proposal as liquidated damages.
17. A vendor conference will be held as follows: n / a
18. The Contractor shall not assign, transfer, sublet, convey or otherwise dispose of any contract which results from this RFP, or its right, title or interest therein or its power to execute the same to any other person, firm, partnership, company or corporation without the previous consent in writing of the City. Should the Contractor attempt any of the above without the written consent of the City, the City reserves the right to declare the Contractor in default and terminate the contract for cause.
19. The Contractor shall obtain and maintain in force at all times during the term of the contract derived from this RFP, insurance coverage pertaining to Public Liability, Property Damage and Worker's Compensation in the following types and amounts:
 - A) PUBLIC LIABILITY INSURANCE - Contractor to supply the City of Worcester with certificates of insurance covering public liability in an amount not less than \$1,000,000.00 to any one person, and not less than \$ 1,000,000.00 on account of one accident.
 - B) PROPERTY DAMAGE INSURANCE - Contractor to supply the City with certificates of insurance covering property damage in an amount not less than \$1,000,000.00 for damages on account of any one accident, and not less than \$ 2,000,000.00 on account of all accidents.

C) COMPENSATION INSURANCE - The Contractor shall furnish the City with certificates showing that all its employees shall be connected with the management operations are protected under worker's compensation insurance policies.

Should additional insurance requirements / limits included herein exceed those noted above, the higher requirements / limits shall prevail.

20. The Contractor shall carry Public Liability Insurance with an insurance company satisfactory to the City so as to save the City harmless from any and all claims for damages arising out of bodily injury to or death of any person or persons, and for all claims for damages arising out of injury to or destruction of property caused by accident resulting from the use of implements, equipment or labor used in the performance of the contract or from any neglect, default or omission, or want of proper care, or misconduct on the part of the Contractor or for anyone in his or her employ during the execution of the contract derived from this RFP.
21. Prior to starting on the contract derived from this RFP, the Contractor shall deposit with the Purchasing Division, certificate from the insurer to the effect that the insurance policies required in the above paragraph have been issued to the Contractor. The certificates must be on a form satisfactory to the City.
22. All prices quoted must include inside delivery, and set-up in place F.O.B. destination to pre-designated City of Worcester departments.
23. No special charges will be allowed for rigging, packing, crating, freight, express, or carriage unless specifically stated and included in the vendor's proposal.
24. The award to the successful proposer may be cancelled in the event of vendor nonperformance as may be determined by the City.
25. The successful proposer shall comply with all applicable federal, state and local laws, ordinances, and regulations. The awarded contract shall be governed under the laws of the Commonwealth of Massachusetts.
26. Purchases made by the City are exempt from Federal and Massachusetts state taxes and proposal prices must exclude any such taxes. Tax exemption certificates will be furnished upon request.
27. When the contract is executed, a performance bond, in the full amount of the contract, is required. See paragraph 4. The bond will be of a surety company qualified to do business under the laws of the Commonwealth of Massachusetts. The cost of this bond is the vendor's responsibility. Bonds shall remain in force and effect through the performance of the contract.
28. Expenditures by the City and authorization to spend for particular purposes are made on fiscal year basis. The City's fiscal year is the twelve-month period ending June 30 of each year. The obligations of the City under any agreement to be reached are subject to the appropriation or authorization of the necessary funds. The City agrees to make reasonable efforts to obtain funding and all necessary authorization.
29. No amendment to the contract shall be effective unless it is in writing and signed by

authorized representatives of both parties and is accepted by the City of Worcester.

30. The vendor (and its insurers, if any) shall bear all risk of loss or damage to the equipment which occurs in transit to the user site. The risk of loss or damage to purchased equipment shall remain with the vendor until the purchase price has been paid and title has passed. The vendor shall also bear the risk of loss or damage to leased or rented equipment during the City of Worcester's possession and use thereof subject, however to such conditions and limitations as may be stated elsewhere in the contract.
31. The vendor shall not assign or in any way transfer any interest in the contract without the prior written consent of the City provided, however, that claims for money due or to become due to vendor from the City may be assigned to a bank, trust company, or other financial institution without such consent so long as notice of such assignment is furnished promptly to the City. Any such assignment shall be expressly made subject to all defenses, setoffs, or counterclaims which would have been available to the City against the vendor in the absence of such assignment.
32. None of the services to be provided by the vendor pursuant to the contract shall be subcontracted or delegated to any other organization, association, individual, corporation, partnership or other such entity without the prior written consent of the City. No subcontract or delegation shall relieve or discharge the vendor from any obligation or liability under the contract except as specifically set forth in the instrument of consent. Any subcontract to which the City has consented shall be attached to the original of the contract on file in the City of Worcester.
33. Neither party will be liable to the other or be deemed to be in breach of the contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight, embargoes, and unusually severe weather. If the vendor's failure to perform is caused by the default of the subcontractor, and if such default arises out of causes beyond the reasonable control of both the vendor and the subcontractor, and without the fault or negligence of either of them, the vendor shall not be liable for any excess costs for failure to perform, unless the equipment or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the vendor to meet the required delivery schedule. Dates or times of performance will be extended to the extent of delays excused in this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.
34. The vendor shall provide to the City of Worcester a warranty and a commitment which clearly states that all equipment and services proposed and supplied by the Vendor, and/or its subcontractors, performs as expected and promised by the Vendor.
35. The vendor represents that no person other than bona fide employees working solely for the vendor, have been employed or retained to solicit or secure this agreement upon an arrangement or understanding for a commission, percentage, brokerage fee, gift or any other consideration contingent upon the award or making of this contract. For breach or violation of the representation, the City shall have the right to annul the contract without liability, or in its discretion to deduct from the contract price or consideration, or otherwise

recover the full amount of such commission, percentage, brokerage fee or other consideration.

36. Any contract made by the City in which the Purchasing Agent or any employee of his/her department, the heads of using agencies or any other officer or employee of the City having a part in the placing of such contract is financially interested, directly or indirectly, shall be void.
37. The vendor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion or medical handicap. The vendor agrees to comply with all applicable Federal and State Statutes, rules and regulations prohibiting discrimination in employment including: Title VII of the Civil Rights Acts of 1964; The Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; Massachusetts General Laws Chapter 151B, Section 4 (1) and all relevant administrative orders and executive orders.

If a complaint or claim alleging violation by the vendor of such statutes, rules or regulations is presented to the Massachusetts Commission Against Discrimination (MCAD), the vendor agrees to cooperate with MCAD in the investigation and disposition of such complaint or claim.

In the event of vendor noncompliance with the provisions of this section, the City shall impose such sanctions as it deems appropriate, including but limited to:

- 1) Withholding of payments due vendor under the contract until vendor complies.
- 2) Termination or suspension of the contract.

SUBMISSION OF PROPOSALS

38. Proposals must be submitted in accordance with MGL c. 25A, SS 11I; .

A sealed package containing **the original, 6 copies, plus 1 PDF copy on USB drive** of the proposal **must** be labeled as follows:

Purchasing Agent, City of Worcester

Energy Management Services / DSR

**455 Main Street, Room 201
Worcester, MA 01608**

Re: RFQ No. CR-8558-W6

Proposals must be delivered no later than Wednesday, December 3, 2025 at 10:00 AM LOCAL TIME. *Late submissions will be rejected, regardless of circumstances.* The City is not responsible for submittals not properly marked.

The proposal submissions, evaluations and cost proposals will remain confidential until a formal and finalized contract has been executed.

RFQ EVALUATION

39. The City of Worcester Purchasing Agent will assign an evaluation team, hereafter referred to as the Selection Committee, to perform a full and complete evaluation of RFQ submittals. The Purchasing Agent will ultimately forward a formal recommendation of award to the City Manager who has final award authority.
40. RFQ evaluation responses will be evaluated by the Selection Committee based directly upon vendor's response to mandatory and comparative evaluation criteria. Vendors must meet or exceed the mandatory criteria requirements or be rejected as non-responsive.

Comparative criteria will be evaluated by use of four (4) rating categories as set forth below

- 1) HIGHLY ADVANTAGEOUS - Vendor's submittal meets all the stated requirements and offers significant performance above the stated requirements.
- 2) ADVANTAGEOUS - Vendor's submittal meets the stated requirements without risk or disadvantage.
- 3) NOT ADVANTAGEOUS - Vendor's submittal contains some risk or disadvantage but is not unacceptable.
- 4) UNACCEPTABLE - Vendor's submittal fails to meet the standards of the stated requirements.

After proposals have been assigned ratings on the basis of each evaluation criterion, a composite rating will be established by the Selection Committee. Submittals will then be ranked based upon finalized composite rating.

41. The Purchasing Agent will identify the most advantageous proposal based upon the rankings of the Selection Committee and an evaluation of the price proposals received. The Purchasing Agent will forward a recommendation for award to the City Manager based upon the most advantageous proposal received considering evaluation rankings and price proposals received.

GIVE FULL NAMES AND RESIDENCES OF ALL PERSONS INTERESTED IN THE FOREGOING PROPOSAL.

(NOTICE: Give first and last name in full; in case of corporations, give corporate name and names of President, Treasurer, and Manager; and in case of firms give names of the individual members)

Name	Address	Zip Code
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_____	_____	_____
_____	_____	_____
_____	_____	_____

KINDLY FURNISH THE FOLLOWING INFORMATION REGARDING BIDDER:

(1)	If an Individual or Proprietorship
Name of Owner:	_____
Business Address:	_____
Zip Code	_____ Telephone No. _____
Email	_____
Home Address	_____
Zip Code	_____ Telephone No. _____

(2)	If a Partnership, Full names and addresses of all partners	
<u>Name</u>	<u>Address</u>	<u>Zip Code</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
Business Address	_____ Zip Code	_____
	Tel. No.	_____

(3) If a Corporation

Full Legal Name: _____

State of Incorporation: _____ Qualified in Massachusetts? Yes _____ No _____

Principal Place of Business _____
Street P.O. Box

City/Town State Zip

Email: _____

Telephone No. _____

Place of Business in Massachusetts _____
Street P.O. Box

City/Town State Zip

Telephone No. _____

GIVE THE FOLLOWING INFORMATION REGARDING SURETY COMPANY

Full Legal Name of Surety Company _____

State of Incorporation _____ Admitted in Massachusetts? Yes _____ No _____

Principal Place of Business _____
Street P.O. Box

City/Town State Zip

Place of Business in Massachusetts _____
Street P.O. Box

City/Town State Zip

Telephone No. _____

DCAMM CERTIFICATION

DCAMM Certificate of Eligibility

The proposer shall provide a valid Massachusetts Division of Capital Asset Management (DCAMM) Certificate of Eligibility for the category of "Energy Management Systems" and shall attach the corresponding DCAMM Update Statement. Proposals without a valid Certificate and Update Statement at the time of submission may be deemed non-responsive in accordance with MGL.

NOTE:

The Office of the Attorney General, Washington, D.C. requires the following information on all bid proposals amounting to \$1,000.00 or more.

E.I. Number of bidder _____

This number is regularly used by companies when filing their "EMPLOYER'S FEDERAL TAX RETURN, U.S." Treasury Department Form 941.

AUTHORIZED SIGNATURE OF BIDDER _____

TITLE _____

DATE _____

"The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals."

(Please Print)

Name of Person Signing Bid

Signature of Person Signing Bid

Company

No award will be made without vendor certification of the above.

- **Proposers must sign and submit the above form with their proposal submission.**

CERTIFICATE OF AUTHORITY

At a duly authorized meeting of the Board of Directors of the _____
held on _____ Directors were present or waived notice,
(name of corporation) (date)

it was voted that _____ of this company be and hereby is
(officer and title)

authorized to execute contracts and bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution of any contract or bond of obligation in this company's name shall be valid and binding upon this company.

A TRUE COPY, ATTEST:

[Signed]

[Company Name and Address]

I hereby certify that I am the _____ of the _____
(Title) (Name of Corporation)

that _____ is the duly elected _____
(Name of Officer) (Title)

of said company, and the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

Signature: _____

Name/Title: _____

Date: _____

(Corporate Seal)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

On this ____ day of _____, 2025, before me the undersigned notary public, personally appeared _____, who proved to me through satisfactory evidence of identification, which was/were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me he/she signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

October 2025

Request For Qualifications
RFQ No. CR-8558-W6

Comprehensive Energy Management
Services

City of Worcester

(Awarding Authority)



Request for Qualifications (RFQ) - Energy Management Services Agreement

City of Worcester
Purchasing Division
455 Main Street, Room 201
Worcester, MA 01608

The City of Worcester is seeking qualified firms to submit proposals for an Energy Services Performance Agreement in accordance with the Massachusetts (MA) requirements. We invite your company to participate in this competitive bidding process by responding to this Request for Quotation (RFQ). This RFQ is issued in compliance with Massachusetts General Law Chapter 25A, Section 11I.

1. Purpose/Objective/Project Overview

The City of Worcester is soliciting a Request for Qualifications (RFQ) seeking qualified providers interested in implementing a comprehensive, performance-based, Energy Management Services Program with guaranteed energy savings at certain City of Worcester municipal and school buildings and facilities. The City of Worcester (City or Awarding Authority) intends to select, pursuant to G.L. c. 25A, Sec. 11I, and enter into an agreement with the most highly qualified provider. All respondents shall be certified by the Division of Capital Asset Management (DCAM) as eligible to provide Energy Management Services and not debarred from bidding under G.L. c. 149, Sec. 44C or any other applicable law. In addition to the other information requested herein, all responses shall be accompanied by (1) a copy of a certificate of eligibility issued by the Commissioner of DCAMM, and (2) by a DCAMM Update Statement. DCAMM Category of Work shall be: Energy Management Systems.

The primary objective of this project is to improve energy performance, enhance energy efficiency, electrify systems, and reduce greenhouse gas emissions across the city's facility portfolio in accordance with MA state laws and guidelines. The successful proposer will be responsible for delivering a comprehensive energy audit, identifying opportunities for energy savings and emissions reductions, and recommending the necessary upgrades, such as electrification of systems, improved insulation, and advanced energy technologies. The proposal must also consider the reduction of operational costs and long-term benefits to the building/facility, aligning with the city's broader climate and sustainability goals as noted in the Green Worcester Plan: [Sustainability & Resilience | City of Worcester, MA](#).

The City may cancel this RFQ, or may reject in whole or in part any and all responses if the City determines that cancellation or rejection is in its best interest.

Inquiries from proposers must be submitted as noted in the front-end section of this RFQ. The City will issue an addendum, which will address the written questions submitted by the deadline. Addenda will be posted to the proposal page and emailed to firms on the registered proposer list.

DEFINITIONS:

ASHRAE. The American Society of Heating, Refrigerating and Air Conditioning Engineers.

Business Day. A business day shall mean Monday through Friday, exclusive of state and federal legal holidays.

Contractor. The vendor selected by the Local Governmental Body to perform the energy management services solicited through an RFQ under 225 CMR 19.00 also known as an Energy Services Company (ESCO).

DCAMM. The Division of Capital Asset Management and Maintenance, established by M.G.L. c. 7, § 4A.

DOER. The Department of Energy Resources, established by M.G.L. c. 25A, §1.

Eligible. Able to meet all requirements for offerors or bidders set forth in section 11C or 11I and section 44D of chapter 149 and not barred from bidding under section 44C of said chapter 149 or any other applicable law, and who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.

Energy Conservation. A modification of, or change in, the operation of real or personal property in a manner likely to improve the efficiency of energy use, and shall include Energy Conservation Measures and any Energy Audits to identify and specify energy and cost savings.

Energy Conservation Measures. Measures involving modifications of maintenance and operating procedures of a building or facility and installations therein, which are designed to reduce energy consumption in such building or facility, or the installation or modification of an installation in a building or facility, which is primarily intended to reduce energy consumption.

Energy Conservation Projects. Projects to promote Energy Conservation, including but not limited to energy conserving modification to windows and doors; caulking and weather stripping; insulation, automatic energy control systems; hot water systems; equipment required to operate variable steam, hydraulic and ventilating systems; plant and distribution system modifications, including replacement of burners, furnaces or boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; on-site electrical generation equipment using new renewable generating sources as defined in section 11F; and cogeneration systems.

Energy Management Services (EMS). A program of services, including Energy Audits, Energy Conservation Measures, Energy Conservation Projects or a combination thereof, and building maintenance and financing services, primarily intended to reduce the cost of energy and water in operating buildings, which may be paid for, in whole or in part, by cost savings attributable to a reduction in energy and water consumption that result from such services. The EMS contract may extend for a term not to exceed twenty years. The allowable length of the contract may also reflect the useful life of the cost savings measures.

Energy Savings. A measured reduction in fuel and its costs, energy and its costs, water and its costs, or operating or maintenance costs resulting from the implementation of Energy Conservation Measures or Projects; provided, however, that any payback analysis to evaluate the energy savings of a geothermal energy system to provide heating, cooling or water heating over its expected lifespan shall include gas and electric consumption savings, maintenance savings and shall use an average escalation rate based on the most recent information for gas and electric rates compiled by the Energy Information Administration of the United States Department of Energy.

Established Baseline. A written description of previous fuel, energy, and water consumption data and operating and maintenance costs for the past three years, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed. The description shall be included in the RFQ.

Guarantee of Generation. The written guarantee of a Contractor warranting the particular electrical energy generation to be derived from the On-site Electrical Generation unit. Such written guarantee shall:

- (a) include a detailed description of the equipment to be installed; and
- (b) state the annual amount of electrical energy to be generated in kilowatt-hours per year.

Guarantee of Savings. The written guarantee of a Contractor, warranting the energy savings to be derived from a particular Energy Conservation Measure, Energy Conservation Project, Energy Management Services, or Energy Savings. Such written guarantee shall include a detailed description of the cost of the energy or water conservation or usage measures, all causally connected work, and ancillary improvements provided for in the contract. The guarantee shall state the annual savings expressed in applicable energy units or (if water savings) in gallons per year and be based on dollars saved by reference to established unit rates.

Guidelines. A set of clarifications, interpretations, and procedures, including forms and model documents, developed and issued by DOER to assist it in determining compliance with 225 CMR 10.00. Each Guideline shall be effective on its date of issuance or on such date as is specified therein, except as otherwise provided in 225 CMR 10.00.

Investment Grade Audit (IGA). An Energy Audit that includes a detailed evaluation of the Energy Conservation Project cost, including but not limited to the investment opportunities for Energy Conservation Measures, operations and maintenance. The IGA shall provide a return on investment that represents an optimized bundle of short-term payback Energy Conservation Measures combined with long-term payback Energy Conservation Measures to meet Local Governmental Body Energy Savings and financial goals.

Local Governmental Body. A city, town, district, regional school district or county, or an agency or authority thereof, including a housing authority, board, commission, department or instrumentality of a city, town district, regional school district or county, and any other agency

that is not a state agency or building authority; or a combination of two or more such cities, towns, districts, regional school districts or counties, or agencies or authorities thereof.

Minor informalities. Minor deviations, insignificant mistakes, and matters of form rather than substance of the proposal or contract document which may be waived or corrected without prejudice to other offerors, potential offerors, or the public agency.

On-site Energy Generation. The generation of renewable energy or the cogeneration of electricity and heating or cooling of a generation unit located on or adjacent to a building or structure owned by a Local Governmental Body that utilizes some or all of the energy so generated either directly or indirectly through net metering, as defined in M.G.L. c. 164, §138.

Renewable Generation. The electrical energy output of an RPS Class I Renewable Generation Unit or Solar Carve-Out Renewable Generation Unit as defined under 225 CMR 14.00: *Renewable Energy Portfolio Standard – Class I*.

Request for Qualifications (RFQ). A written document issued by a Local Governmental Body that invites qualified providers to submit responses outlining their qualifications, the desire to perform the EMS for the Local Governmental Body, and other information required by 225 CMR 19.00 and the Local Governmental Body.

Responsive Offeror. A person who has submitted a proposal, which conforms in all respects to the RFQ and who possesses the skill, ability, and integrity necessary to faithfully perform the work, based upon a determination of competent workmanship and financial soundness in accordance with M.G.L. c. 149, §44D.

Update Statement. A form developed by DCAMM, as defined in 810 CMR 4.01: *Definitions*, to be completed by a General Contractor and submitted with all proposals.

Person. Any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals.

Qualified provider. Responsible and eligible person able to meet all requirements set forth in section 11C or 11I, and not barred from bidding under section 44C of chapter 149 or any other applicable law and experienced in the design, implementation and installation of energy savings measures.

Responsible. Demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work required by a particular contract, based upon a determination of competent workmanship and financial soundness in accordance with section 11C or 11I and section 44D of chapter 149.

Responsive offeror. A person who has submitted a proposal which conforms in all respects to the requests for proposals.

2. General Information, Objectives and Priorities

- **Energy Savings:** Identify and implement strategies for reducing energy consumption and lowering utility costs.
- **Electrification:** Prioritize the conversion of fossil fuel-based systems to electric-based alternatives, supporting the transition to a cleaner energy system.
- **Greenhouse Gas (GHG) Emissions Reduction:** Propose measures that reduce or eliminate GHG emissions through energy-efficient technologies and renewable energy solutions.
- **Facility Profiles:** A complete list of City buildings and facilities (with street address, profile and description) to be evaluated pursuant to this Request is contained in Attachment 1.
- **Audit Agreement:** In accordance with G.L. c. 25A, Sec. 11I, the City and the selected most qualified provider (ESPC) will negotiate the scope of work for the Technical Energy Audit Agreement based on the attached draft Audit Agreement. The successful ESPC and the City will enter into the Audit Agreement, incorporating the negotiated Scope of Work, in the form attached hereto as Attachment X. The ESPC's Audit, which shall include, but not be limited to, submittal of the ESPC's written investment quality comprehensive energy audit (Report) for a comprehensive conservation program, a detailed proposed technical scope of work for construction/implementation of the ESPC's recommendations, and the ESPC's proposed Guaranteed Energy Savings proposal.
- **Energy Services Management Agreement:** Upon completion of the Audit and its review by the City, the Awarding Authority anticipates the parties will negotiate a Scope of Work for the implementation of all or a portion of the ESPC's recommended improvements. Upon agreement as to the Scope of Work, the parties will enter into an Energy Services Management Agreement (EMSA) based on the attached Agreement template (see Exhibit X). Only minimal modifications to the Agreement template will be considered. The EMSA will incorporate the negotiated Scope of Work, in the form attached hereto as Attachment X. The Energy Services Management Agreement shall also contain the Guaranteed Energy Savings Agreement requirements.
- **Savings Guarantee:** The Guaranteed Energy Savings Agreement requirements are defined as an Agreement for the evaluation, recommendation or implementation of one or more energy management services in which payments are based, in whole or in part, on any energy savings attributable to the Agreement. For the purposes of this RFQ, the Guaranteed Energy Savings Agreement shall be incorporated and made a part of the Energy Services Management Agreement, but shall survive the completion of implementation/construction.

The City expects that the savings provided by the ESPC will fully offset the City's project costs and result in additional energy savings, to be retained by the City. The ESPC shall provide the City with a written guarantee that either the amount of energy savings guaranteed will be achieved or the ESPC shall reimburse the City for the full shortfall amount. Methods for measurement and verification of guaranteed savings shall conform to the most recent standards established by the Federal Energy Management Program (FEMP) of the U.S. Department of Energy. The value of guaranteed savings may represent either all or part of annual payments at the discretion of the City. The Guaranteed Energy

Savings Agreement term shall not exceed 30 years. The guarantee shall be a first party direct guarantee from the ESPC to City of Worcester. No third-party guarantee shall be accepted. All savings in excess of the guaranteed savings shall be the sole property of City of Worcester.

- **Addenda:** The City may issue addenda to the RFQ.
- **Agreement Responsibility:** The selected ESPC shall assume total responsibility for the design and implementation of the Project. The ESPC will be the prime Contractor and the sole point of contact with regard to all Contractual services, including but not limited to design, supervision, construction, installation, security, service, maintenance, training and savings guarantee.
- **Required Insurance and Bonds:** The ESPC shall provide the City with 100% payment, performance and efficiency bonds for this Project from a surety company licensed to do business in the Commonwealth and whose name appears on United States Treasury Department Circular 570. Bonds shall be on the City's form / format. The successful ESPC shall procure and maintain in effect during the life of the agreement insurance as required in the form of the Audit Agreement and the EMS Agreement.
- **Taxes, Fees, Code Compliance, Licensing:** The ESPC shall be responsible for payment of any required permits, licenses, taxes or fees associated with the execution of the EMS Agreement. The ESPC shall be responsible for compliance with all applicable laws and regulations. If there are tax credits that City is not qualified for but the ESPC is, those savings will be passed on to the City.
- **References and Disclosure of Information:** The ESPC's submission of a response shall be deemed permission to the City to make inquiries concerning the ESPC to any persons or firms deemed appropriate by City of Worcester. The ESPC's submission of a response shall be deemed acknowledgement that it is familiar with the Massachusetts Public Records Law, G.L. c. 66, Sec. 10 and is bound thereby. Disclosure of any information provided by any ESPC in connection with this RFQ shall be in strict accordance with the laws and regulations regarding such disclosure pursuant to G.L. 66, §10.
- **Costs of Responses:** The City assumes no liability and will not reimburse any costs or expenses incurred by any Respondent (whether or not selected) in developing responses to this RFQ.
- **Use of and Information Relating to Proprietary Equipment, Controls or Services:** Unless no other manner of description suffices, and the City so approves in writing, no technical requirements and scope of work within the EMS Agreement shall require the use of a proprietary supply or service, or a procurement from a sole source. Any and all software, passcodes and other information or documents required for the operation, maintenance or upgrades of energy management systems and energy conservation measures or projects will be provided to the City at the time of installation at no additional charge.
- **Existing City Systems and Infrastructure:** The ESPC shall include recommendations and proposals in its Audit, to be incorporated in whole or in part, into the EMS Agreement, that seamlessly integrate with the City's existing systems and infrastructure. The ESPC shall apply the principals of value engineering to insure cost effective recommendations.

- **Existing Agreements and Warrantees:** During the Audit phase of the Project, the ESPC shall coordinate with the City and make itself familiar with the City's existing maintenance and operation agreements and existing warrantees affecting any recommended or proposed Project improvements. The ESPC shall modify its recommendations and proposals so as to take maximize favorable existing agreements, integrate with third party Agreements, and maintain existing warrantees.
- **CORI Clearance Requirements:** In accordance with G.L. c. 71, Sec. 38R, the City may request and obtain all available criminal offender record information (CORI) from the Criminal History Systems Board of any Contractor "who may have direct and unmonitored contact with children." As a condition of the award of any Agreement pursuant to this RFQ, and prior to commencement of any work, successful Respondent shall complete and sign a Request Form to obtain CORI if, in the determination of the City, some or all of the employees or Contractors of the ESPC "may have direct and unmonitored contact with children" during the performance of their work on school property.
- **Acceptance of the Audit:** The City may, at its sole discretion, eliminate any building and/or facility from the scope of the Audit prior to the execution of the Audit Agreement. As part of its consideration of the completed Audit Report and the recommendations/proposals of the successful ESPC, the City may elect to proceed with all or any portion of the improvements proposed or recommended by the ESPC. The City may also elect to proceed with certain improvements on a "phased" basis, if it determines that proceeding with all of the selected improvements simultaneously is not in the best interests of the City.
- **Inconsistent Standards:** If any requirement or standard set forth herein is inconsistent with any requirement or standard set forth elsewhere in this RFQ, or in any exhibit, attachment or appendix, or the Audit Agreement or EMS Agreement, or any scope of work or specification related thereto, the requirement or standard most favorable to the City shall prevail.

3. Requirements for All Responders

To be considered for this project, the following minimum criteria must be met:

- **Prevailing Wage:** The successful proposer and any subcontractors thereunder will be required to pay Massachusetts prevailing wage rates for all work performed in accordance with Massachusetts General Laws. An affirmative statement of compliance to this requirement must be included in the proposal. If there have been any prevailing wage related enforcement actions on any past projects, proposers must disclose that here.
- **Certificate of Eligibility:** All Responders must provide a current Certificate of Eligibility from the Commonwealth of Massachusetts Division of Capital Asset Management and Maintenance (DCAMM), along with an updated Statement of Qualifications. DCAMM Category is Energy Management Systems.
- **Investment Grade Audit Pricing:** Responders must provide a fixed cost for conducting an Investment Grade Audit (IGA) on a cost per square foot basis.
- **Proposer's most recent annual report or audited financial statement**

- **Certificate of Insurance**
- **Tax Compliance**
- **Signature Authorization Certificates** – see attached
- **Non-Collusion Statement** – see attached
- **Debarment Statement** - see attached
- **Three (3) years of Investment Grade Audit and Implementation Contracting Experience**
- **Three (3) years of experience providing Open Book Pricing**

4. Contractor Qualifications Data (Items listed below will be used in determining proposer qualifications)

- **References:** Provide a minimum of three (3) and no more than (7) references for performance contracting projects. Each reference shall describe the services and equipment provided, project cost, and benefits to the owner. Provide the owner's name, address, telephone number, and contact person for each reference. References for projects where the responding firm was not the prime contractor are not acceptable.
- **DCAMM Certificate of Eligibility and Update Statement (Energy Management Systems)**
- **Quality of Products Proposed:** Describe the quality of products to be considered to improve facilities, improve comfort and efficiency in the learning/working environment while reducing energy consumption and operating costs.
- **Methodology of Determining and Guaranteeing Energy Savings:** Describe in detail the Respondent's methodology to determine energy savings and explain how this approach will minimize risk and maximize return for City of Worcester over the course of up to 30 years. Include in the description, the Respondent's approach to verifying energy savings and addressing changes based on past experience and changes in use of municipal buildings and facilities over time.

Proposals submitted must include the following sections:

- **Project Overview (2 pages):** A concise description of the project, including objectives, deliverables, and expected outcomes. This should outline how the proposed solutions will meet energy savings, electrification goals, and GHG emissions reduction targets.
- **Technical Proposal (10-15 pages):** The technical proposal must include the following:
 - **Introduction:** A brief description of the firm and its experience in energy efficiency and electrification projects, particularly in Massachusetts.
 - **Potential Energy Conservation Measures (ECMs):** An overview of the proposed ECMs, including technologies or strategies aimed at improving energy efficiency and reducing GHG emissions.
 - **Equipment Procurement/Lead Time:** Information about the procurement process for necessary equipment and expected lead times for delivery and installation.

- **FEMP ECM Guidelines:** Ensure all proposed ECMs adhere to the Federal Energy Management Program (FEMP) guidelines, ensuring compliance with federal and state energy standards.
- **Overall Management Approach:** A description of the firm's management approach, including project timelines, resources, and risk management strategies.
- **Asbestos and Similar Impediments:** A discussion of how the firm will address potential issues such as asbestos or other environmental impediments during the audit and project implementation.
- **Experience with Public Facilities:** a description regarding proposer's experience and expertise with the various types and uses of buildings and facilities under consideration in this Project, including but not limited to the particular needs of public schools, public safety buildings, and historic buildings.
- **Terms and Conditions:** Proposals should also include a draft of recommended terms and conditions changes based on the attached Agreement template (which will be provided as part of the RFQ package).
- **Open Book Pricing:** The City intends to require open book pricing for this Project, including the requirement that the selected ESPC will fully disclose all costs, including all itemized costs of subcontractors and vendors. The ESCO shall state in its Response its experience and willingness to provide open-book pricing and describe its approach in providing open-book pricing. The selected ESCO shall maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. The selected ESCO shall provide access to records and preserve them for a period of six (6) 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. Cost markups will be clearly applied.

6. Evaluation Criteria:

Proposals will be evaluated based on the quality and technical feasibility of the proposed ECMs, experience of the firm, cost-effectiveness, and the other criteria stated herein.. The City will establish a Program Evaluation Committee consisting of city representatives to formally evaluate each Response. The evaluation process may include verification of references, confirmation of financial information and may include examination of other information as the Project Evaluation Team deems appropriate. The Responder's may be asked to clarify or provide additional information through the interview process. The Project Evaluation Team will conduct interviews as required by G.L. c. 25A, Sec. 11I, and such additional interviews as it may deem necessary to evaluate the Respondents. The Project Evaluation Team will make the final recommendation of an ESPC to the City Manager based upon its evaluation.

- Other Factors the City Shall Consider
 - Annual Report or Audited Financial Statement

- Tax Compliance, Non-Collusion, Debarment and Signature Authorization Certificates
 - Certificate of Insurance contract requirements
 - Owner Training: Provide detailed information on the training programs available to City maintenance personnel and staff, including course content, location, and schedule.
 - Evidence of Bond Capability: Respondent must provide evidence of bonding capability, satisfying contract requirements.
-

Attachments:

- Draft Agreement Template
-

IV. Evaluation Process

Responses will be evaluated using the following qualitative criteria categories:

Rating Definitions:

- **Highly Advantageous** – The response excels in the evaluation criterion and offers significant benefit or value to the City. The response significantly exceeds minimum requirements and demonstrates superior qualifications or methodology.
- **Advantageous** – The response meets the evaluation criterion in a competent manner and offers reasonable benefit or value. The response meets minimum requirements and demonstrates satisfactory qualifications or methodology.
- **Not Advantageous** – The response does not meet the evaluation criterion or presents concerns that outweigh potential benefits. The response is deficient in one or more key areas and may pose a risk to successful project execution.

Evaluation Criteria and Ratings:

Evaluation Criteria	Highly Advantageous	Advantageous	Not Advantageous
1. Experience and Qualifications of the Vendor (Value = 20%)	Demonstrated extensive experience (10+ years) in implementing energy performance contracts in Massachusetts public sector facilities, with strong references and completed projects of similar size and complexity.	Demonstrated moderate experience (5–10 years) in similar projects, with adequate references and project outcomes.	Limited experience (<5 years) or insufficient detail on comparable past projects or references.
2. Adequacy of Proposed Energy Conservation Measures (Value = 10%)	ECMs are comprehensive, innovative, and tailored to the City's building portfolio, maximizing GHG reduction and long-term cost savings.	ECMs are appropriate, adequately address City goals, and meet state and federal guidelines.	ECMs are generic, incomplete, or not clearly aligned with City goals.
3. Project Management Approach (Value = 15%)	Clearly defined, robust, and efficient approach to managing all phases (audit, design, implementation), with dedicated team and strong communication strategies.	Satisfactory approach with identifiable responsibilities and timelines.	Vague or inadequate project management approach; roles and timelines not well defined.

Evaluation Criteria	Highly Advantageous	Advantageous	Not Advantageous
4. Equipment Procurement and Lead Time (Value = 10%)	Clear plan for expediting procurement; identifies critical path items and demonstrates ability to meet or exceed project timelines.	Satisfactory plan with reasonable delivery expectations and coordination strategies.	Lack of detail, or unclear process for procurement and delivery.
5. Compliance with FEMP ECM Guidelines (Value = 5%)	All proposed ECMs fully comply with FEMP guidelines and include supporting documentation to ensure state and federal compliance.	ECMs generally follow FEMP guidelines with basic supporting references.	Non-compliant or insufficient explanation of adherence to FEMP guidelines.
6. Strategy for Dealing with Asbestos and Similar (Value =5%)	Provides detailed, proactive plan for identifying and mitigating hazardous materials with regulatory compliance and cost control.	Addresses potential impediments with a reasonable plan for mitigation.	Lacks sufficient detail or understanding of environmental compliance requirements.
7. Experience with Public Facilities (Value =10%)	Strong experience with Massachusetts public buildings (schools, safety facilities, historic buildings) demonstrating knowledge of public sector needs.	Moderate experience with public facilities with some direct relevance to this RFQ.	Limited or no relevant experience with public facilities.
8. Open Book Pricing Experience and Willingness (Value = 10%)	Extensive use of open book pricing in past projects, with detailed approach provided for transparency and accountability.	Demonstrates basic understanding and willingness to comply with open book pricing.	Unclear commitment or limited experience with open book pricing model.
9. Acceptance of Agreement Template (Value = 15%)	Accepts Agreement template with minimal or no changes and demonstrates understanding of legal requirements and contract structure.	Accepts most of the template with minor changes and acceptable rationale.	Proposes significant changes that deviate from the City's legal and procurement requirements.

Verbal Presentations:

The top three (3) firms will be invited to provide a verbal presentation to the Evaluation Committee. Final selection will be based on an aggregate of the qualitative ratings from both the written proposal and the presentation.

Interview/Verbal Presentation of Services

- **Highly Advantageous:** The proposer's presentation was conducted by the individuals who will perform the services and included thorough, highly detailed information regarding how the firm will complete the scope of services. The presentation included multiple, relatable examples and dialog from services performed for other similar municipalities.
- **Advantageous:** The proposer's presentation was conducted by some of the individuals who will perform the services and included adequate detailed information regarding how the firm will complete the scope of services. The presentation included one relatable example and dialog from services performed for other similar municipalities.
- **Not Advantageous:** The proposer's presentation was conducted by the firm's sales team and not the individuals who will perform the services. It includes some information regarding how the firm will complete the scope of services but was not clear as to the firm's ability to comply with the stated scope of services. The presentation included no examples and dialog from services performed for other similar municipalities.

Attachment A-5 : Description of Facilities Energy Usage

Department	Facility	Fuel Type	Value	FY2023	FY2024	FY2025
SCHOOLS (WPS)	Belmont Street Community (Elementary) School	Gas (therms)	Use	26,121	25,629	31,174
SCHOOLS (WPS)	Belmont Street Community (Elementary) School	Electric (kWh)	Use	504,278	463,393	339,529
SCHOOLS (WPS)	Burncoat (Senior) High School	Gas (therms)	Use	112,997	93,544	101,766
SCHOOLS (WPS)	Burncoat (Senior) High School	Electric (kWh)	Use	759,072	771,552	569,322
SCHOOLS (WPS)	Burncoat Middle School	Gas (therms)	Use	68,712	74,712	96,848
SCHOOLS (WPS)	Burncoat Middle School	Electric (kWh)	Use	383,520	198,480	326,160
SCHOOLS (WPS)	Burncoat Street Elementary School	Gas (therms)	Use	23,071	22,836	28,338
SCHOOLS (WPS)	Burncoat Street Elementary School	Electric (kWh)	Use	92,320	90,240	75,520
SCHOOLS (WPS)	Canterbury Elementary School	Gas (therms)	Use	29,144	24,726	25,869
SCHOOLS (WPS)	Canterbury Elementary School	Electric (kWh)	Use	263,310	230,515	229,709
DPWP - Administration, Customer Service, Central Garage	Central Garage (29 Albany St) excl Vehicle Fuel	Gas (therms)	Use	43,460	41,131	39,830
DPWP - Administration, Customer Service, Central Garage	Central Garage (29 Albany St) excl Vehicle Fuel	Electric (kWh)	Use	181,360	184,160	188,720
SCHOOLS (WPS)	Chandler Community Elementary School	Gas (therms)	Use	10,176	5,780	10,293
SCHOOLS (WPS)	Chandler Community Elementary School	Electric (kWh)	Use	191,600	208,400	273,200
DPF-Managed Municipal Buildings	City Hall (455 Main St)	Gas (therms)	Use	28,821	33,102	31,055
DPF-Managed Municipal Buildings	City Hall (455 Main St)	Electric (kWh)	Use	697,200	652,320	651,600
SCHOOLS (WPS)	City View Elementary School (80 Prospect St)	Gas (therms)	Use	23,176	24,029	27,659
SCHOOLS (WPS)	City View Elementary School (80 Prospect St)	Electric (kWh)	Use	270,000	265,000	259,200
SCHOOLS (WPS)	Claremont/Woodland Academy (fka Accelerated Learning Laboratory or ALL)	Gas (therms)	Use	56,616	39,232	34,824
SCHOOLS (WPS)	Claremont/Woodland Academy (fka Accelerated Learning Laboratory or ALL)	Electric (kWh)	Use	1,089,600	1,020,000	1,044,000
SCHOOLS (WPS)	Clark St Community Elementary School	Gas (therms)	Use	28,161	35,111	26,326
SCHOOLS (WPS)	Clark St Community Elementary School	Electric (kWh)	Use	79,280	73,680	85,720
SCHOOLS (WPS)	Clark St Community Elementary School	Oil (gallons)	Use	-	-	807
DPWP - PARKS, Recreation, Cemetery Division	Clubhouse (1929 Officer Manny Way, aka 2 Green Hill Ave)	Electric (kWh)	Use	22,206	16,710	17,829
DPWP - Administration, Customer Service, Central G:	Customer Service Center (76 E Worcester St)	Electric (kWh)	Use	52960	51440	45840
DPWP - Administration, Customer Service, Central G:	Customer Service Center (76 E Worcester St)	Gas (therms)	Use	8976	5584	10137
DPWP - Administration, Customer Service, Central G:	Customer Service Center (76 E Worcester St)	Electric (kWh)	Use	52960	51440	45840
DPWP - Administration, Customer Service, Central G:	Customer Service Center (76 E Worcester St)	Gas (therms)	Use	8976	5584	10137
DPWP - PARKS, Recreation, Cemetery Division	Clubhouse (1929 Officer Manny Way, aka 2 Green Hill Ave)	Gas (therms)	Use	4,621	4,627	4,417
SCHOOLS (WPS)	Columbus Park Elementary School	Gas (therms)	Use	44,038	36,259	70,434
SCHOOLS (WPS)	Columbus Park Elementary School	Electric (kWh)	Use	147,240	166,640	165,160
DPWP - PARKS, Recreation, Cemetery Division	Crompton Park (Quinsigamond Ave / Canton St)	Oil (gallons)	Use	1,489	762	476
DPWP - PARKS, Recreation, Cemetery Division	Crompton Park (Quinsigamond Ave / Canton St)	Electric (kWh)	Use	69,080	72,840	66,640
DPF-Managed Municipal Buildings	DCU CENTER	Gas (therms)	Use	151,152	127,384	154,719
DPF-Managed Municipal Buildings	DCU CENTER	Electric (kWh)	Use	4,845,037	4,353,390	4,521,014
DPF-Managed Municipal Buildings	Department of Inspectional Services (DIS) (25 Meade St)	Gas (therms)	Use	15,135	10,405	15,069
DPF-Managed Municipal Buildings	Department of Inspectional Services (DIS) (25 Meade St)	Electric (kWh)	Use	313,440	235,600	243,200
SCHOOLS (WPS)	Doherty Memorial High School	Gas (therms)	Use	82,285	69,648	63
SCHOOLS (WPS)	Doherty Memorial High School	Electric (kWh)	Use	818,400	1,592,800	4,544,400
DPWP - Administration, Customer Service, Central Garage	DPW&P Administration Bldg (20 East Worcester St)	Gas (therms)	Use	19,457	22,418	23,896
DPWP - Administration, Customer Service, Central Garage	DPW&P Administration Bldg (20 East Worcester St)	Electric (kWh)	Use	279,000	336,000	324,600
DPWP - Administration, Customer Service, Central Garage	DPWP - Worcester Memorial Auditorium	Gas (therms)	Use	42,103	30,622	51,052
DPWP - Administration, Customer Service, Central Garage	DPWP - Worcester Memorial Auditorium	Electric (kWh)	Use	89,945	57,096	52,852
SCHOOLS (WPS)	Dr. John E. Durkin Administration Building	Electric (kWh)	Use	496364	510788	489445
SCHOOLS (WPS)	Dr. John E. Durkin Administration Building	Gas (therms)	Use	16335	15010	19000
SCHOOLS (WPS)	Elm Park Community Elementary School	Gas (therms)	Use	34,618	28,929	33,842
SCHOOLS (WPS)	Elm Park Community Elementary School	Electric (kWh)	Use	358,400	377,440	379,680
DPF-Managed Municipal Buildings	Emergency Management HQ (RECC; 911, 311)	Gas (therms)	Use	1,178	416	811
DPF-Managed Municipal Buildings	Emergency Management HQ (RECC; 911, 311)	Electric (kWh)	Use	529,400	700,800	574,600
FIRE (WFD)	Emergency Operations Center / Fire Dept Training Facility	Gas (therms)	Use	1,823	2,869	2,946
FIRE (WFD)	Emergency Operations Center / Fire Dept Training Facility	Electric (kWh)	Use	18,876	64,923	36,277
SCHOOLS (WPS)	Fanning Middle School / School Administration	Gas (therms)	Use	31,209	28,963	38,709
SCHOOLS (WPS)	Fanning Middle School / School Administration	Electric (kWh)	Use	150,100	152,500	142,097
DPWP - Water Operations	Filtration Plant	Electric (kWh)	Use	2,506,931	2,609,498	1,283,200
DPWP - Water Operations	Filtration Plant	Gas (therms)	Use	60,363	60,655	58,067
DPWP - Water Operations	Filtration Plant	Propane (gallons)	Use	475	218	265
FIRE (WFD)	Fire Department Headquarters and Grove St Fire Station	Propane (gallons)	Use	609		
FIRE (WFD)	Fire Department Headquarters and Grove St Fire Station	Gas (therms)	Use	7,949	8,469	7,776
FIRE (WFD)	Fire Department Headquarters and Grove St Fire Station	Electric (kWh)	Use	115,840	115,160	150,240
FIRE (WFD)	Fire Station - Burncoat Street	Gas (therms)	Use	1,427	1,564	1,122
FIRE (WFD)	Fire Station - Burncoat Street	Electric (kWh)	Use	18,422	20,070	32,577
FIRE (WFD)	Fire Station - Franklin Street	Gas (therms)	Use	5,959	5,929	7,657
FIRE (WFD)	Fire Station - Franklin Street	Electric (kWh)	Use	128,920	130,280	121,040
FIRE (WFD)	Fire Station - Greendale (West Boylston St)	Gas (therms)	Use	3,282	3,159	3,023
FIRE (WFD)	Fire Station - Greendale (West Boylston St)	Electric (kWh)	Use	8,480	8,400	31,760
FIRE (WFD)	Fire Station - McKeon Road	Gas (therms)	Use	5,744	6,693	6,393
FIRE (WFD)	Fire Station - McKeon Road	Electric (kWh)	Use	133,600	124,080	132,560
FIRE (WFD)	Fire Station - Park Avenue	Gas (therms)	Use	3,450	3,731	3,331
FIRE (WFD)	Fire Station - Park Avenue	Electric (kWh)	Use	47,880	48,760	55,320
FIRE (WFD)	Fire Station - South Division (Southbridge St)	Gas (therms)	Use	9463	8636	8988
FIRE (WFD)	Fire Station - South Division (Southbridge St)	Electric (kWh)	Use	97920	94640	94560
FIRE (WFD)	Fire Station - Southeast Station (Grafton St)	Gas (therms)	Use	2,028	2,325	2,802
FIRE (WFD)	Fire Station - Southeast Station (Grafton St)	Electric (kWh)	Use	35,664	37,282	38,301
FIRE (WFD)	Fire Station - Tatnuck Square (Pleasant Street)	Gas (therms)	Use	2,984	3,299	3,351

FIRE (WFD)	Fire Station - Tatnuck Square (Pleasant Street)	Electric (kWh)	Use	26,821	26,125	25,070
FIRE (WFD)	Fire Station - Webster Square	Gas (therms)	Use	15,467	16,691	15,672
FIRE (WFD)	Fire Station - Webster Square	Electric (kWh)	Use	167,680	169,960	166,200
SCHOOLS (WPS)	Flagg Street Elementary School	Gas (therms)	Use	26,040	24,809	45,132
SCHOOLS (WPS)	Flagg Street Elementary School	Electric (kWh)	Use	91,880	96,560	125,400
SCHOOLS (WPS)	Forest Grove Middle School	Gas (therms)	Use	52,679	44,600	59,574
SCHOOLS (WPS)	Forest Grove Middle School	Electric (kWh)	Use	817,381	658,207	757,094
DPF-Managed Municipal Buildings	Frances Perkins Library Branch (470 West Boylston St)	Gas (therms)	Use	2,147	2,798	3,124
DPF-Managed Municipal Buildings	Frances Perkins Library Branch (470 West Boylston St)	Electric (kWh)	Use	32,730	31,145	24,544
SCHOOLS (WPS)	Francis J McGrath Elementary School	Gas (therms)	Use	11,895	11,117	16,024
SCHOOLS (WPS)	Francis J McGrath Elementary School	Electric (kWh)	Use	263,600	173,200	194,400
SCHOOLS (WPS)	Gates Lane Elementary School	Gas (therms)	Use	30,306	28,357	37,074
SCHOOLS (WPS)	Gates Lane Elementary School	Electric (kWh)	Use	532,522	202,922	349,721
SCHOOLS (WPS)	Gerald Creamer Center (120 Granite Street)	Gas (therms)	Use	14,281	13,086	15,921
SCHOOLS (WPS)	Gerald Creamer Center (120 Granite Street)	Electric (kWh)	Use	59,137	60,999	56,315
SCHOOLS (WPS)	Goddard / Science Tech (includes a Goddard Library branch)	Gas (therms)	Use	63,477	58,013	67,852
SCHOOLS (WPS)	Goddard / Science Tech (includes a Goddard Library branch)	Electric (kWh)	Use	238,680	226,320	234,840
SCHOOLS (WPS)	Grafton Street Elementary School	Gas (therms)	Use	25,666	25,625	33,632
SCHOOLS (WPS)	Grafton Street Elementary School	Electric (kWh)	Use	116,352	129,988	120,971
DPWP - PARKS, Recreation, Cemetery Division	Green Hill Park (excl Golf Course)	Oil (gallons)	Use	508	1,172	567
DPWP - PARKS, Recreation, Cemetery Division	Green Hill Park (excl Golf Course)	Electric (kWh)	Use	112,200	124,760	124,600
DPWP - PARKS, Recreation, Cemetery Division	Green Hill Park (excl Golf Course)	Propane (gallons)	Use			194
SCHOOLS (WPS)	Greendale School (Head Start)	Gas (therms)	Use	21,034	22,542	24,907
SCHOOLS (WPS)	Greendale School (Head Start)	Electric (kWh)	Use	69,410	61,873	60,458
DPWP - PARKS, Recreation, Cemetery Division	Harrington Field (Harrington Way)	Electric (kWh)	Use	4,780	6,125	7,640
SCHOOLS (WPS)	Heard Street Elementary School	Electric (kWh)	Use	134538	111516	112232
SCHOOLS (WPS)	Heard Street Elementary School	Gas (therms)	Use	14780	13062	14462
DPWP - PARKS, Recreation, Cemetery Division	Hope Cemetery	Oil (gallons)	Use	1,112	1,424	511
DPWP - PARKS, Recreation, Cemetery Division	Hope Cemetery	Gas (therms)	Use	4,064	3,788	3,883
DPWP - PARKS, Recreation, Cemetery Division	Hope Cemetery	Electric (kWh)	Use	39,892	56,903	61,333
DPWP - PARKS, Recreation, Cemetery Division	Institute Park (Salisbury St)	Electric (kWh)	Use	5,103	11,831	5,097
SCHOOLS (WPS)	Jacob Hiatt Magnet Elementary School	Gas (therms)	Use	20,714	11,266	12,675
SCHOOLS (WPS)	Jacob Hiatt Magnet Elementary School	Electric (kWh)	Use	339,400	212,240	341,840
DPWP - PARKS, Recreation, Cemetery Division	Lake Park Caretaker's Building	Oil (gallons)	Use	779	269	237
DPWP - PARKS, Recreation, Cemetery Division	Lake Park Caretaker's Building	Electric (kWh)	Use	5,437	4,098	3,357
SCHOOLS (WPS)	Lake View Elementary School	Gas (therms)	Use	14,948	15,175	18,922
SCHOOLS (WPS)	Lake View Elementary School	Electric (kWh)	Use	61,753	54,450	50,799
SCHOOLS (WPS)	Lincoln Street Elementary School	Gas (therms)	Use	10,379	6,919	9,566
SCHOOLS (WPS)	Lincoln Street Elementary School	Electric (kWh)	Use	131,280	139,920	136,560
DPWP - WATER Operations Division	Lyndebrook Gate House (Reservoir St Leicester)	Electric (kWh)	Use	4,032	4,033	4,023
SCHOOLS (WPS)	May Street Elementary School	Gas (therms)	Use	21,458	28,146	28,212
SCHOOLS (WPS)	May Street Elementary School	Electric (kWh)	Use	68,040	59,360	64,920
SCHOOLS (WPS)	Midland Street Elementary School	Gas (therms)	Use	21,899	22,578	22,829
SCHOOLS (WPS)	Midland Street Elementary School	Electric (kWh)	Use	53,287	51,696	53,379
SCHOOLS (WPS)	Mill Swan School (A&B) (Head Start)	Gas (therms)	Use	1,218	1,098	987
SCHOOLS (WPS)	Mill Swan School (A&B) (Head Start)	Oil (gallons)	Use	8,986	18,622	9,000
SCHOOLS (WPS)	Mill Swan School (A&B) (Head Start)	Electric (kWh)	Use	135,200	135,280	144,480
SCHOOLS (WPS)	Millbury Street School (Head Start)	Gas (therms)	Use	11,201	20,931	22,014
SCHOOLS (WPS)	Millbury Street School (Head Start)	Electric (kWh)	Use	46,495	53,745	47,251
SCHOOLS (WPS)	Nelson Place Elementary School	Gas (therms)	Use	24,111	25,558	27,343
SCHOOLS (WPS)	Nelson Place Elementary School	Electric (kWh)	Use	782,302	746,654	673,465
SCHOOLS (WPS)	Norrbach Avenue Elementary School	Gas (therms)	Use	40,184	31,447	39,848
SCHOOLS (WPS)	Norrbach Avenue Elementary School	Electric (kWh)	Use	565,247	587,959	520,144
SCHOOLS (WPS)	Parent Info Center (768 Main Street)	Gas (therms)	Use	4,345	4,749	4,772
SCHOOLS (WPS)	Parent Info Center (768 Main Street)	Electric (kWh)	Use	36,280	30,862	73,514
POLICE (WPD)	Police Headquarters	Gas (therms)	Use	6,988	6,571	6,671
POLICE (WPD)	Police Headquarters	Electric (kWh)	Use	1,534,000	1,764,000	1,780,000
SCHOOLS (WPS)	Quinsigamond Elementary School	Gas (therms)	Use	24,503	25,844	25,021
SCHOOLS (WPS)	Quinsigamond Elementary School	Electric (kWh)	Use	628,636	573,666	558,835
SCHOOLS (WPS)	Rice Square Elementary School	Gas (therms)	Use	25,341	19,984	26,897
SCHOOLS (WPS)	Rice Square Elementary School	Electric (kWh)	Use	167,200	152,480	156,320
SCHOOLS (WPS)	Roosevelt Elementary School (includes Roosevelt Library Branch)	Gas (therms)	Use	38,910	33,543	35,267
SCHOOLS (WPS)	Roosevelt Elementary School (includes Roosevelt Library Branch)	Electric (kWh)	Use	622,173	559,981	546,176
DPWP - SEWER Operations Division	Sanitation Garage & Sign Shop (26 & 30 Albany St)	Gas (therms)	Use	12,415	345	-
DPF-Managed Municipal Buildings	Senior Center	Gas (therms)	Use	29,558	27,374	38,517
DPF-Managed Municipal Buildings	Senior Center	Electric (kWh)	Use	516,943	305,441	235,101
SCHOOLS (WPS)	South High School (new construction 2021)	Gas (therms)	Use	87,098	84,325	80,011
SCHOOLS (WPS)	South High School (new construction 2021)	Electric (kWh)	Use	2,208,347	1,835,493	1,934,192
SCHOOLS (WPS)	Sullivan Middle School	Gas (therms)	Use	58,417	53,821	58,278
SCHOOLS (WPS)	Taylor Building / Head Start Administrative Office	Electric (kWh)	Use	48474	46592	36168
SCHOOLS (WPS)	Taylor Building / Head Start Administrative Office	Gas (therms)	Use	3721	3775	4617
SCHOOLS (WPS)	Sullivan Middle School	Electric (kWh)	Use	1,179,173	980,476	771,753
SCHOOLS (WPS)	Tatnuck Magnet School (includes Tatnuck Magnet Library Branch)	Gas (therms)	Use	35,767	33,385	44,476
SCHOOLS (WPS)	Tatnuck Magnet School (includes Tatnuck Magnet Library Branch)	Electric (kWh)	Use	116,360	109,400	123,720
SCHOOLS (WPS)	Thorndyke Road Elementary School	Gas (therms)	Use	22,747	19,672	21,831
SCHOOLS (WPS)	Thorndyke Road Elementary School	Electric (kWh)	Use	51,400	133,040	78,600
SCHOOLS (WPS)	Union Hill Elementary School	Gas (therms)	Use	21,069	23,619	28,965
SCHOOLS (WPS)	Union Hill Elementary School	Electric (kWh)	Use	175,760	127,040	147,760
DPF-Managed Municipal Buildings	UNION STATION	Gas (therms)	Use	56,954	48,917	51,549
DPF-Managed Municipal Buildings	UNION STATION	Electric (kWh)	Use	1,303,829	1,148,127	1,285,569
SCHOOLS (WPS)	Vernon Hill Elementary School	Gas (therms)	Use	33,003	27,698	39,947
SCHOOLS (WPS)	Vernon Hill Elementary School	Electric (kWh)	Use	196,560	211,840	240,720

DPWP - WATER Operations Division	Water Operations Garage (16 East Worcester St)	Electric (kWh)	Use	17,187	18,060	21,928
DPWP - WATER Operations Division	Water Operations Office / Yard (18 East Worcester St)	Gas (therms)	Use	7,186	7,227	6,192
DPWP - WATER Operations Division	Water Operations Office / Yard (18 East Worcester St)	Electric (kWh)	Use	88,003	88,372	87,567
SCHOOLS (WPS)	Wawecus Road Elementary School	Gas (therms)	Use	8,830	13,342	13,345
SCHOOLS (WPS)	Wawecus Road Elementary School	Electric (kWh)	Use	68,120	74,880	76,720
SCHOOLS (WPS)	West Tatnuck Elementary School	Gas (therms)	Use	15,335	24,473	26,918
SCHOOLS (WPS)	West Tatnuck Elementary School	Electric (kWh)	Use	127,085	88,376	43,534
SCHOOLS (WPS)	Worcester Arts Magnet	Gas (therms)	Use	19,586	21,779	32,384
SCHOOLS (WPS)	Worcester Arts Magnet	Electric (kWh)	Use	127,560	130,080	146,520
SCHOOLS (WPS)	Worcester East Middle School	Gas (therms)	Use	73,957	92,137	95,454
SCHOOLS (WPS)	Worcester East Middle School	Electric (kWh)	Use	293,600	289,200	265,600
DPF-Managed Municipal Buildings	Worcester Public Library (90 Franklin St, formerly 3 Salem Square)	Gas (therms)	Use	37,868	37,201	38,560
DPF-Managed Municipal Buildings	Worcester Public Library (90 Franklin St, formerly 3 Salem Square)	Electric (kWh)	Use	1,143,000	1,148,000	1,157,382
SCHOOLS (WPS)	Worcester Technical High School	Gas (therms)	Use	155,042	156,191	147,717
SCHOOLS (WPS)	Worcester Technical High School	Electric (kWh)	Use	4,062,153	4,270,127	4,197,672

RFQ No.

Contract No.

INVESTMENT GRADE AUDIT AGREEMENT

This INVESTMENT GRADE AUDIT AGREEMENT (the “IGA Agreement”) made this ____ day of _____, 202__, by and between the City of Worcester, a municipal corporation duly established under the laws of the Commonwealth of Massachusetts, with an address of 455 Main Street, Worcester, Massachusetts, 01608, (“City”) and _____ (“ESCO”) a _____ corporation with its principal place of business at _____. City and ESCO may be referred to singly as “Party” and jointly as “Parties”.

W I T N E S S E T H

WHEREAS, City desires the provision of an Investment Grade Energy Audit (“IGA”) and related project development services (“IGA Services”) as set forth in the Scope of Work attached hereto as Attachment A, culminating in a deliverable IGA Report, to determine the feasibility of entering into an Energy Management Services Agreement (“EMSA”) in order to install and implement selected energy and water saving improvements at certain City Facilities;

WHEREAS, on _____, City, acting through its Department of Sustainability and Resilience and its Purchasing Department, issued a Request for Qualifications (“RFQ”) seeking qualified energy service companies (“ESCO”) to implement comprehensive, performance-based Energy Management Services pursuant to MGL c. 25A, §11I;

WHEREAS, ESCO submitted a proposal on _____ and participated in a subsequent interview on _____, (“ESCO Proposal”) to provide full scope of an IGA and Energy Management Services (“EMS”);

WHEREAS, ESCO represents that it has experience, as well as technical and management capabilities, to provide the investigation, design, engineering, packaging, procurement, installation, financing, commissioning, guarantee, measurement, maintenance and monitoring of energy conservation and water saving measures (“ECMs”) at facilities similar in size, function and system type to City's Facilities;

WHEREAS, City has selected ESCO to provide the IGA Services described herein; and

WHEREAS, if City determines, in its sole and final discretion, that any or all of the ECMs set forth in the IGA Report are feasible and that the amount of savings will be reasonably sufficient to cover all costs or a substantial amount of the costs as defined by City associated with an EMS project (“Project”), and if the City obtains financing in an amount sufficient and on terms and conditions satisfactory to the City, the Parties may enter into this IGA Agreement under which ESCO will design, procure, install, implement, administer, commission (collectively “Implement”) and maintain, and/or monitor such ECMs.

WHEREAS, City may, in its sole discretion and without liability, choose not to enter

into an EMSA; and

NOW THEREFORE, in consideration of the foregoing recitals and mutual covenants, agreements and provisions contained herein, the parties agree as follows:

1. IGA Documents

1.1 This IGA Agreement shall include the exhibits and attachments set forth in this Section 1.1, all of which are attached hereto and incorporated herein as an integral part of this IGA Agreement (hereinafter periodically and collectively referred to as "IGA Documents").

.1 This IGA Agreement and the following Exhibits and Attachments thereto include

(a) Exhibit A: IGA Scope of Services (including its Attachments)

- i) Attachment 1: List of Facilities
- ii) Attachment 2: Potential Energy Conservation Measures
- iii) Attachment 3: Fee Breakdown
- iv) Attachment 4: Schedule
- v) Attachment 5: Utility Data
- vi) Attachment 6: Equipment Schedules
- vii) Attachment 7: Building Management System Data

(b) Exhibit B: Certificates of Insurance, Authority and Tax

.2 City of Worcester's Request for Qualifications issued _____,
and all addenda, and

.3 RFQ Proposal Submittal by _____ dated _____,

.4 City of Worcester's Green Worcester Plan

1.2 The IGA Documents are to be read collectively and complementary to one another; any requirement under one shall be as binding as if required by all. If any requirement or standard is inconsistent with any requirement or standard set forth elsewhere in this IGA Agreement (including any exhibit, attachment or appendix) then the requirement or standard most favorable to the City shall prevail. In the event of any irreconcilable conflict between this IGA Agreement, the other IGA Documents and any applicable state law, the applicable statutory provisions shall prevail. Collectively, the IGA Documents set forth the entire legal relationship and requirements of the Parties and as such constitute the IGA Agreement, as the IGA Documents may be hereinafter referred. Notwithstanding any provision to the contrary, no terms or conditions, hyperlinked, or referenced documents found on ESCO's response to the RFQ, or either Parties' quotes, invoices, purchase orders, or similar "boilerplate" documents shall be deemed applicable to or incorporated by reference into this IGA Agreement.

1.3 In the event of any conflict that cannot be harmonized among the IGA Documents, they shall be construed according to the order of priority listed below.

- 1. IGA Agreement, as amended (with later amendments to take precedence)
- 2. Exhibits (including Attachments)

3. Worcester's Energy Services Request for Qualifications, issued _____, including addenda,
4. RFQ Proposal Submitted by ESCO dated _____
5. City of Worcester's Green Worcester Plan.

2. **Definitions**

Except as otherwise defined herein, the definitions set forth in 225 CMR 19.02 shall apply to this IGA Agreement. Additionally, the following terms shall have the meaning as set forth in G.L. c. 25A, sec. 3, (a) Minor Informalities, (b) Qualified Provider, and (c) Responsible (in the context of the selection of a proposer). The terms listed in this Section 2 shall have the meaning set forth. Other terms may be defined in the body of this IGA Agreement. All other terms shall have their usual and common meaning in light of the purpose of this IGA Agreement and the context of their use.

- 2.1 Annual Guaranteed Savings – the Measured & Verified Savings, the Stipulated Savings, and Operational Cost Avoidance that occur in any annual period of the Performance Guarantee Phase or Term. ESCO shall promptly make payment for any shortfall. The Annual Guaranteed Savings shall be as further described in Exhibit B, the Energy Guarantee of the applicable EMSA implementation.
- 2.2 Adjusted Energy Baseline. An energy baseline adjusted to compensate for factors that would have changed energy consumption in the absence of any energy conservation measures, such as increases or decreases in conditioned or illuminated space, changes in occupancy or building use, facility renovation, or extremes in weather. Adjustments shall be made following the most recent FEMP standards and subject to the City's approval.
- 2.3 Baseline – the baseline is a calculation or measure of each type of energy consumed (in terms of kWh, kW, therms, gallons or cords, as applicable) and, if the City so determines, operational expenditures in each of the Facilities, together constituting the usage and occupancy of the Facilities, systems, or equipment operations and characteristics, and environmental conditions that are included in the Premises prior to the installation of ECMs. In the City's discretion and upon its instruction, which shall be given by means of a Notice to Proceed applicable to any applicable EMSA implementation (by phase, as applicable), ESCO shall include calculation of operational expenditures, making operational savings applicable. The Baseline Period is the period of time coordinated with the Baseline to allow the comparison of a Guarantee Year against the Baseline. Notwithstanding any provision to the contrary, the definition shall be consistent with the applicable requirements of the most recent industry standards set forth by the Federal Energy Management Program (FEMP) and are subject to the City's discretion and approval.
- 2.4 Certificate of ECM Commissioning – regarding any EMSA, the documentation by which the ESCO warrants to the City that (1) the implementation of a particular ECM is complete, (2) is commissioned, (3) all required training, O&M Manuals, as-built documentation and manufacturer warranties and/or extended warranties are provided, and

(4) title and risk of loss has transferred to the City. Further, such Certificate may be issued only after the City has agreed that it is receiving full beneficial use of said ECM. Said Certificate and the City's agreement thereto shall not alter ESCO's obligations following its issuance, including but not limited to the warranty, measurement & verification, and maintenance, if applicable.

- 2.5 Commissioning – regarding any EMSA, the process for achieving, verifying, and documenting the performance of the energy and water conservation measures to meet the operational capabilities of the Project as designed, including, for example, documentation of checklists, systematic functional testing of equipment and systems, oversight of training for operations and maintenance staff, and follow-up on any warranty issues, and confirmation of compliance with FEMP standards.
- 2.6 Contracting Officer - the Chief Sustainability Officer, or a designee, for the performance of particular functions and responsibilities set forth under this IGA Agreement and any EMSA. Anything to the contrary notwithstanding, the City's contract compliance officer is and shall be the designee of the Contracting Officer for all notices, demands, sanctions and other communications relative to such officer's administration, monitoring and enforcement of the City's Minority/Women Enterprise Program and the Responsible Employer Ordinance. Each and every written communication from the contract compliance officer delivered directly to the ESCO's authorized representative (project manager on site) and shall be validly delivered notwithstanding any other contrary provision of this IGA Amendment or other IGA Documents.
- 2.7 Energy Conservation Measure (ECM) — measures involving modifications of Facility maintenance and/or operating procedures and installations therein, which are designed to reduce energy consumption in such Facility, or the installation and/or modification of an installation in a Facility which is primarily intended to reduce energy consumption. As further defined, installations shall mean the provision of equipment or systems, or modification of equipment or systems as described in Exhibit A, for the purpose of reducing utility (energy, water, etc.) consumption and demand and costs and/or non-utility (selected O&M, operational) costs. Unless otherwise requested by the City, each ECM shall contain any and all aspects of a particular system so that when an ECM is fully implemented, the particular system will be fully operational
- 2.8 Energy Savings –measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of energy conservation measures; provided, however, that any payback analysis to evaluate the energy savings of a geothermal energy system to provide heating, cooling or water heating over its expected lifespan shall include gas and electric consumption savings, maintenance savings and shall use an average escalation rate based on the most recent information for gas and electric rates compiled by the Energy Information Administration of the United States Department of Energy. As further defined, energy savings shall be determined by comparing the post implementation energy consumption and demand of the ECM to the adjusted/normalized baseline (both in terms of kWh, kW, therms, gallons or cords). The baseline adjustments shall be in accordance with data & projections, including but not limited to compliance

with the most recent (as of the date of this IGA Agreement) standard established by the Federal Energy Management Program of the United States Department of Energy (“FEMP”) and subject to approval by the City. Operational savings shall be defined as the actual costs avoided post-implementation of the ECM.

- 2.9 Escalation Factor – regarding any EMSA, is the stipulated annual increase of _____ percent to be applied to the Baseline Utility Rate. The Escalator reflects the anticipated increase in the cost of electricity, gas, propane and oil, as applicable and further set forth in the EMSA, Exhibit H, Schedule of Savings in the and is based on US Bureau of Labor derived CPI average for the past 20 years https://www.bls.gov/regions/new-england/data/consumerpriceindex_northeast_table.htm.
- 2.10 Facility – the City owned or operated buildings, structures, sites, energy and water consuming locations and equipment, and public ways where an ECM is or may be implemented, a list of which is attached hereto at Exhibit A, Attachment A-1.
- 2.11 Final Completion – regarding any EMSA, the date on which the City accepts ESCO’s written representation and warranty that the Work of the applicable implementation is complete and in full compliance with the requirements of the applicable implementation phase of the EMSA Documents including but not limited to compliance with all applicable laws and FEMP standards. ESCO’s one-year warranty for the applicable implementation shall commence on the Final Completion date.
- 2.12 Guaranteed Savings – in addition to that set forth in 225 CMR 19.02, ESCO guarantees to City that the identified Facilities will realize the total Energy Savings and Operational Cost Avoidance through the combined value of all ECMs over the Guarantee Term of the applicable implementation. The Guaranteed Savings shall also be referred to as the Energy Guarantee, which shall be further set forth in the ESMA, Exhibit B. In the event that the City elects multiple implementation phases, the Guaranteed Savings shall be determined and applied by implementation phase. The savings shall be determined on an annual basis for each year of the Term of the applicable implementation and such guarantee shall apply on an annual basis. Total Guarantee Year Savings shall be reconciled on an annual basis and shall not be cumulative. ESCO shall make payment to the City for any shortfall in realized or verified savings on an annual basis. The Guaranteed Savings shall not exceed the total installation, support services, and financing costs for the Work under the applicable implementation phase. The Energy Guarantee shall commence on the first day of the month following the City’s acceptance of all ECM’s relating to the applicable implementation phase. Notwithstanding any provision to the contrary, the definition shall be consistent with the applicable requirements of the most recent (as of the date of the EMSA) industry standards set forth by FEMP.
- 2.13 IGA Report – means the final version of the Investment Grade Audit Report, as accepted by the City. The IGA Report may be phased to reflect subgroups of Facilities and/or ECMs selected by the City to facilitate phasing of implementation under the EMSA.
- 2.14 Implementation(s) – regarding any EMSA, shall mean the Work commencing with the

Parties' execution of the EMSA through Final Completion. In the event the City decides to proceed with the Project in phases, there may be more than one Implementation.

- 2.15 Investment Grade Audit (IGA) – a determination of the energy consumption characteristics of the Facilities, individually and in the aggregate which: (a) identify the type, size and rate of energy consumption of such Facilities and the major energy using systems of such Facilities; (b) determine appropriate energy conservation measures, systems, services, maintenance and operating procedures; and (c) indicate the need, if any, for the acquisition and installation of energy conservation measures or alternative energy property. As further defined, the services furnished pursuant to this IGA Agreement shall be the thorough assessment of the Facilities to determine the technical and economic investment and operational improvement solutions which if implemented would result in sustainable energy and water savings over the useful life of the investment. The IGA will provide specific recommendations for energy and water savings, with detailed information regarding installed cost and guaranteed energy and water savings achievable on an annual basis. The scope of the IGA shall include, at minimum, the requirements set forth in the Audit Scope of Work, Exhibit A. ESCO shall submit to the City the proposed Final IGA for review and acceptance by the City.
- 2.16 Project – means all Work involved for the audit phase, implementation phase and guarantee phase, as well as any maintenance/service agreement. ESCO shall have single point responsibility and shall provide and guarantee a fully complete, turnkey result.
- 2.17 Substantial Completion Date – regarding any EMSA, the date on which the City confirms that the Work relating to a particular implementation phase has been substantially completed (as such term is further set forth in the General Conditions), in accordance with the EMSA Documents for that phase, and to the City's satisfaction as evidenced by the City's acceptance of the ESCO's written representation and warranty that the Work required is substantially complete. Notwithstanding any provision to the contrary and to the full extent allowed by law, use of a Facility shall not be determinative of substantial completion. Additionally, notwithstanding any provision to the contrary, City's acceptance of substantial completion shall not be constructively granted.
- 2.18 Total Guarantee Year Savings – regarding any EMSA, is defined as the summation of avoided Energy and Operational Costs realized by Facilities in each Guarantee Year as a result of the Retrofit and Support Services provided by ESCO. Any excess savings in any Guarantee Year shall accrue directly to the benefit of the City and shall not be used by ESCO in any future guarantee years (for example, to offset any shortfalls in savings). Notwithstanding any provision to the contrary, the definition shall be consistent with the applicable requirements of the most recent (as of the date of the EMSA) industry standards set forth by the FEMP.
- 2.19 Services – for this IGA Agreement only, the investigation, audit and determination of feasibility, and the preparation of the IGA Report and any and all related services to be provided by ESCO as set forth in Exhibit A and elsewhere in this IGA Agreement in order to fulfill its obligations in accordance with this IGA Agreement, and any and all

amendments hereto.

- 2.20 Work – regarding any EMSA, all work and services for the Project, including engineering, design and architectural, supervision and related services, and all construction (may also be referred to as implementation or installation), materials, supplies, labor, supervision, tools and equipment and the use thereof, commissioning, measurement and verification, evaluation and all related services and work to each to be provided by the ESCO as applicable to fulfill its obligations in accordance with this EMSA, and as may normally be incidental to such implementation and professional services necessary to implement the ECMs. All Work shall be in compliance with applicable laws and the most recent FEMP standards. For clarity, Work furnished through this EMSA shall not include any work, services, material, or equipment furnished under the IGA Agreement.

3. Term and Schedule.

ESCO's Services shall commence as set forth in the Notice to Proceed (NTP) from the City to ESCO and shall continue in accordance with the approved Schedule. The term of this IGA Agreement is two (2) years, which shall automatically extend so to be coterminous with the EMSA, if an EMSA is executed. Time is of the essence for this IGA Agreement.

4. ESCO'S IGA Services

4.1 Project Summary.

- 4.1.1 IGA Agreement. ESCO shall conduct an IGA compliant audit, satisfying the requirements of this IGA Agreement.

In light of the large scale of the potential Project to be performed by ESCO, the City may, in its sole discretion, phase the IGA to include one or more subgroup of ECMs and/or Facilities, intending to better align with the EMSA and the City's capacity and expectations. The IGA (or each IGA subgroup, as the City determines) shall be conducted by ESCO and result in an IGA Report for those Facilities and/or ECMs identified by the City for that IGA (or IGA subgroup, as applicable). Each completed IGA Report shall reflect ESCO's conclusions and recommendations and contain the information necessary for the City to fully analyze that IGA Report and to determine which, if any, of the proposed ECMs it wishes to implement. The Parties acknowledge that there may be more than one IGA Report where each IGA Report represents the applicable IGA subgroup. As set forth in Section 5 below, the cost for each IGA subgroup (IGA Fee) will be calculated (based on the applicable square footage and the cost per square feet) as a portion of the not to exceed Aggregated IGA Fee. The City may, at its option, notify ESCO if it wishes to proceed to implement all or any portion of the ECMs included in that IGA Report. Subject to successful negotiations and provision of sufficient funding by the City, the Parties may enter into the EMSA in the form attached to the RFQ. Said EMSA shall include, but not be limited to, an applicable implementation scope of services, installation schedule, payment schedule, M&V Plan,

fixed cost of the Work, and Guaranteed Savings.

- 4.1.2 EMSA. The EMSA shall include the EMSA Documents identified in Section 1.1 of the ESMA. In compliance with this EMSA, ESCO shall implement, guarantee, monitor, and maintain those ECMs selected by the City from the ECMs included in the IGA Report. In light of the large scale of the potential work, the City may, in its sole discretion, determine that the implementation will be conducted in subsets (may also be referred to as “phases”) where each will be formalized by written amendment.
- 4.1.3 Energy Guarantee. Guarantee period of the Project (which will include the M&V services and may be referred to as the “Measurement & Verification and Energy Guarantee Agreement or “MVEGA”) will commence following implementation, including but not limited to ESCO’s commissioning and the City’s acceptance. The period during which the MVEGA is in effect may be referred to as the “Guarantee Phase”. The Guaranteed Savings may be modified (by amendment or change order) to reflect the impact of added or removed ECMs over the course of the Project. During the Guarantee Term, the fully implemented ECMs will be monitored and tested pursuant to the specific M&V Plan. Methods for measurement and verification of Guaranteed Savings shall conform to the most recent (as of the date of the EMSA) standards established by the Federal Energy Management Program of the United States Department of Energy (FEMP). An amended M&V Plan and an Energy Guarantee shall be included with each phase modifying the EMSA. ESCO shall guarantee that the City will realize the Guaranteed Savings as a result of the implemented ECMs. The MVEGA, including terms and conditions applicable to such Guaranteed Savings, is set forth in Exhibit B, Energy Guarantee and Exhibit H, Schedule of Savings of the EMSA, set forth in the RFQ.

If the City chooses to phase the implementation, each such implementation may result in different specifications and completion dates. The contract terms and conditions, however, will be unchanged. ESCO will provide the City with an M&V Plan and an Energy Guarantee for each implementation.

4.2 **Performance Requirements**

- 4.2.1 ESCO shall perform the Services set forth in this IGA Agreement, including but not limited to Exhibit A, the Scope of Services. The List of Facilities is set forth at Attachment 1 of Exhibit A.

As set forth in Section 4.1 above, rather than authorize ESCO to conduct the Services on the full List of Facilities at one time, the City may, in its sole discretion, identify a subgroup from such List of Facilities, and then instruct ESCO to perform the Services as to the subgroup for an IGA Fee applicable to that subgroup (calculated based on the applicable square footage and the cost per square foot) and reflecting a portion of the Aggregated IGA Fee (set forth in Section 5.1.1). ESCO shall perform the Services of the full List of Facilities or such IGA subgroup as the City identifies and shall prepare and submit an applicable IGA Report (may be multiple IGA Reports, if the City elects more than one subgroup) as set forth in Section 4.3 below, and elsewhere in this IGA

Agreement.

Following the City's approval of the applicable IGA Report, the City may, but shall not be required to, implement all or any portion of the ECMs and/or Facilities within the applicable IGA Report.

The City may, in its sole discretion, (a) elect not to go forward with any implementation, (b) elect to implement all ECM's recommended in the applicable IGA Report, or (c) elect to implement some portion of the ECM's, including by Facility, recommended in the IGA Report.

The City may then identify another subgroup of ECMs and/or Facilities for another IGA, which shall be subject to an amendment to this IGA Agreement, and, as set forth in Section 5 below. Each such IGA subgroup shall be performed by ESCO for a firm fixed price, referenced as an IGA Fee. The procedure for that second subgroup, and any subsequent subgroup(s) shall follow the same process, until either (a) the City elects not to proceed with additional subgroups or (b) the ECM's available and recommended in the List of Facilities is exhausted. Each subgroup of Services shall contain its own scope, schedule and IGA Fee, be reduced to writing, and be executed as an amendment to this IGA Agreement. The contract terms and conditions will be unchanged.

- 4.2.2 It is the essence of this IGA Agreement that the implemented ECMs achieve the maximum conservation of energy and water practical within the pertinent regulatory, operational or physical constraints and are also fully operational and functional to achieve their intended purpose.
- 4.2.3 Before commencing the Services, ESCO shall submit a proposed schedule for acceptance of the Contracting Officer. ESCO shall complete the Services in accordance with the agreed schedule. All onsite Services shall be coordinated on a Facility by Facility basis with minimum disruption to the function of the Facility and its respective users. ESCO's Services in certain Facilities (e.g. school buildings) will be done primarily on second shifts, weekend and holidays. City will provide ESCO access to the Facilities at the times scheduled at no cost to ESCO.
- 4.2.4 The City anticipates that the Facilities will be occupied at all times relevant to this IGA Agreement. ESCO shall take all necessary precautions to ensure the public safety and convenience of the occupants during the Services. ESCO hereby acknowledges that continuous operation of services, including but not limited to heat, water, domestic hot water, electricity, gas, sanitary facilities, elevators, fire alarms or protections, and access to the Facilities, or common areas is essential to the operation of the City's properties and is a condition of this IGA Agreement. ESCO shall make every effort to avoid shutdowns. If ESCO needs to interrupt such service to any Facility, or any common area, or the reduce the functionality or reliability of any service (referred to as "Service Interruptions" in this section), ESCO shall submit a written request to the City, with as much notice as is possible, but in no event less than five (5) business days. The City shall not unreasonably deny ESCO's request. Service Interruptions shall be scheduled so as to avoid the need for

temporary services.

- 4.2.5 ESCO shall perform the Services in such a manner as not to damage any Facility and shall repair and restore any damage caused by ESCO at ESCO's sole expense and with materials similar or otherwise of quality and acceptable to the City.
- 4.2.6 ESCO shall supply to the City the telephone number of two assigned responsible persons who may be contacted during non-work hours for emergencies arising in connection with or affecting the Services.
- 4.2.7 ESCO and its employees, subcontractors and agents shall comply with the regulations, rules and policies applicable to each Facility including but not limited to abiding by the rules prohibiting smoking in or near any building, including basements.
- 4.2.8 ESCO shall cooperate with City's operating and maintenance personnel. If the City awards third party contracts for work related to or arising from ESCO's Services, ESCO shall reasonably cooperate with such other contractor(s) and/or consultant(s). Contracting Officer shall require other contractor(s) and /or consultant(s) to similarly cooperate with ESCO. ESCO shall not knowingly commit any act that will interfere with the performance of any other contractor and/or consultant.

Further, to the extent ESCO has access to information of such third party contractors that is marked as or may reasonably be understood to be confidential information, ESCO shall, except as otherwise required by law, use such confidential information only for the purposes related and necessary to ESCO's performance of this IGA Agreement and shall protect such confidential information in the same manner that it protects its own similar confidential information, but in no event using less than a reasonable standard of care.

- 4.2.9 ESCO shall be solely responsible for and shall properly handle, remove and dispose, including clean up and remediation of any release of any and all oil and hazardous materials brought onto any Facility by ESCO.
- 4.2.10 Upon the completion of the Services ESCO shall, at its own expense, remove all of its equipment, temporary ESCO's buildings and sheds, fencing, rubbish and waste material generated by the Services and shall leave the premises in a neat and proper condition.

4.3 IGA Report

- 4.3.1 ESCO shall compile the data and information from its IGA into an IGA Report for the applicable ECMs and Facilities. Without limiting the foregoing, the IGA Report shall contain sufficient detail to enable the City to collaborate with ESCO to optimize ECM selection based on the City's requirements and preferences, providing the City with meaningful and reliable information on which to base its decisions. Without limiting the generality of the foregoing, ESCO shall include in the IGA Report a description of any unusual maintenance requirements for equipment included in the recommendations, including but not limited to requirements for skills beyond that typically required for

maintaining similar equipment. ESCO shall present its proposed IGA Report to the City for the City's review and consideration. The City may request that ESCO make reasonable modifications to the proposed IGA Report, including but not limited to providing additional detail, modifying the proposed alterations and improvements, replacing equipment and materials and/or removal of certain ECMs and/or Facilities that the City opts not to pursue.

4.3.2 After updating and revising the IGA Report to reflect the City's modifications, ESCO shall finalize the IGA Report and submit it to the City for approval.

4.3.3 In its consideration of the IGA Report, the City may elect to proceed with all or any portion of the ECMs proposed and recommended by ESCO. The City may further elect to proceed with all or any portion of the Facilities identified for the applicable IGA. ESCO's delivery of an IGA Report meeting the requirements set forth in the IGA Documents shall entitle ESCO to payment of the applicable IGA Fee in accordance with Section 5.1.4 or 5.1.5, as applicable.

4.4 **Performance Standards.** ESCO's Services, and its Work incident to any implementation through an EMSA, shall conform to the following performance standards and criteria:

- (a) Fully comply with any and all applicable statutory, regulatory, code requirements in effect (or enacted) as of the execution of the applicable implementation;
- (b) Save energy and water in the amounts set forth in the Project Cost and Savings;
- (c) Satisfy the Standards of Comfort (Section 4.5);
- (d) Are fully integrated, operational and functioning equipment and systems with City's existing equipment and systems. ESCO shall not to cause damage, deterioration, interference or hindrance with, diminishment of, or reduction in, the functionality of any existing equipment or system or other property of the City;
- (e) The ECMs installed by ESCO shall not substantially increase the reasonable costs to operate and maintain City's existing equipment and;
- (f) All equipment, parts, materials and components shall be new, unused, undamaged, and of recent manufacture.

4.5 **Standards of Service and Comfort.** The following Facility performance requirements of service and comfort shall apply to any implementation of an EMSA:

Type of Service	Environmental Requirement
a) Heating	
b) 1) Occupied	70° F
2) Unoccupied	55° F
3) Storage	55° F

- c) Cooling
 - 1) Occupied 72-76° F
- d) Hot Water Heaters 140° F (Must meet 248 CMR, Board of State Examiners Plumbers and Gasfitters)
- e) Hot Water Distribution 110°F (Maximum)
- f) Ventilation Within Code at all times
- g) Lighting Within code at all times

4.6 Subcontractors

4.6.1 ESCO may subcontract part of the Services to qualified subcontractors (which term shall include consultants) to which the City has no objection.

4.6.2 ESCO shall be responsible to the City for any and all conduct, acts and omissions, whether intentional or unintentional, of ESCO's employees, subcontractors, consultants, invitees and their respective agents and employees and all other persons or entities performing portions of the Services. By appropriate written contract, ESCO shall require each subcontractor, to the extent of the Services to be performed by said subcontractor, to be bound to ESCO and to assume toward ESCO all the obligations and responsibilities which ESCO, by these IGA Documents, assumes toward the City.

4.7 Employment

4.7.1 ESCO shall employ competent workers. If notified by the Contracting Officer in writing that any person engaged upon the work is incompetent, unfaithful, disorderly or otherwise unsatisfactory, then such worker shall be discharged from the Project.

5. Payment

5.1 Payment regarding the IGA.

5.1.1 The City shall pay ESCO an amount not to exceed \$_____ (the "Aggregated IGA Fee") for all services performed pursuant to this IGA Agreement in accordance with the procedures set forth herein and subject to the provisions below. Subject to Section 5.1.4 and 5.1.5 below, the City shall pay ESCO for the applicable IGA Fee for the related Services performed. Said payment shall be made within forty-five (45) days after the City's receipt of a detailed invoice which shall be presented only (a) following ESCO's final completion and presentation of the applicable IGA Report, and in accordance with Section 4.2, above and (b) if the Parties fail to enter into the EMSA within ninety (90) days (or such longer period as the Parties may agree) of the City's acceptance of the IGA Report. The Aggregated IGA Fee (or the applicable IGA Fee(s) if the City opts to proceed in subgroups) shall be the inclusive cost for all

Services required for this IGA Agreement. The City's payment obligations are contingent upon an appropriation.

If the City elects to phase the Services, the IGA Fee shall be only the cost of the Services for the subgroup of ECMs and/or Facilities identified for that phase. For clarity, if the City decides to implement one or more ECMs proposed in the IGA (may be referred to as an IGA subgroup), then the payment of the applicable IGA Fee shall be included in the price of the EMSA implementing those ECMs/Facilities. The IGA Fee for each IGA subgroup will be calculated using the applicable square footage and the cost per square foot as a portion of the Aggregated IGA Fee. By a fully executed amendment to this IGA, the Parties may proceed with an IGA one or more additional subgroups of ECMs and/or Facilities, which shall each be subject to the applicable provisions herein and the applicable Scope of Services. For avoidance of doubt, each phased IGA Fee shall either be paid in accordance with Section 5.1.5, below, or included within the applicable implementation of the EMSA. A phased IGA Fee shall not be included in a different implementation.

5.1.2 The applicable IGA Fee for the applicable Services is based upon an estimate of the actual square footage of the conditioned area by building (as set forth in Attachment 1 to Exhibit A) of 5,986,509 square feet at a cost of \$ ____ per square foot. If the actual square footage of conditioned area of the aggregated buildings is greater or lesser than 5,986,509 square feet then ESCO shall promptly notify the City in writing of the discrepancy, state the correct square footage and request either an amendment to this IGA Agreement to modify the Aggregated IGA Fee, or that the City remove some Facilities from inclusion in Attachment 1, or some combination thereof, agreed upon by the Parties; provided however that only those buildings in which ESCO has not yet begun to audit are subject to removal from inclusion in Attachment 1. To the extent that certain buildings are removed from this scope, the Aggregated IGA Fee shall be adjusted accordingly by reducing the price by \$.06 per square foot for the conditioned area square footage of the building(s) removed. The term "conditioned area" shall mean that portion of the building that is heated and shall include mechanical spaces, water and wastewater facilities, storage areas within buildings, and free standing storage or maintenance buildings that have electric services even if they are not heated.

5.1.3 The Parties agree that all city owned "non-building" audit evaluations and analysis, including but not limited to public ways, parks, playing fields, vacant land or sites, renewable, wind, geo, bio, solar, water systems, energy/water storage, are included as part of this IGA Agreement at no additional cost (ie, no effect on the Aggregated IGA Fee or any IGA Fee).

5.1.4 **Notwithstanding** any contrary interpretation of Section 5.1.1, above, if the City accepts the IGA Report, as set forth in Section 4.2, above, and enters into an EMSA for any or all of the ECMs recommended in the IGA Report, City shall not be required to make any direct payment for this IGA Agreement as otherwise set forth in Section 5.1.1, but acknowledges that ESCO will incorporate the applicable IGA Fee into ESCO's costs for the applicable implementation of the EMSA.

5.1.5 If the City accepts the IGA Report, as set forth in Section 4.2 above, but the Parties fail to enter into an EMSA implementation within ninety (90) days thereafter, ESCO will

submit an invoice for the applicable IGA Fee to the City and the City will pay as set forth in Section 5.1.1. For clarity, if the City phases the Services, this provision shall not apply between audits or implementations, but shall apply, for example, if ESCO performs IGA Services for a particular subgroup of ECMs and/or Facilities but the Parties do not execute an implementation for any of that particular subgroup.

5.1.6 If ESCO determines at any time during this IGA Agreement that sufficient savings cannot be attained to pay for an implementation of ECMs that meet City's requirements as set forth in this IGA Agreement within the Term allowed, then ESCO shall terminate this IGA Agreement by written notice to the City. If this IGA Agreement is terminated under this section, the City shall have no obligation to pay the applicable IGA Fee, in whole or in part.

5.1.7 The City shall not be liable for any services, expenses or costs incurred by ESCO in connection with the drafting or negotiation of this IGA Agreement, any EMSA, or any amendments to either, or for any aspect of the RFQ process.

5.1.8 ESCO's acceptance of payment of a particular invoice shall be and shall operate as a release to the City of all claims with regard to payment for Services covered by the invoice. However, payment by the City shall in no way constitute the City's acceptance of the Services.

5.1.9 The City is exempt from the assessment of Massachusetts sales and use taxes. The City shall provide ESCO its tax exemption number to use for the purchases of new equipment/systems for the City's benefit to complete the Services. To the extent that materials and supplies are used or incorporated in the performance of this IGA Agreement, ESCO is considered an exempt purchaser under the Massachusetts Sales Act, Chapter 14 of the Acts of 1966. ESCO shall be responsible for paying all other taxes and tariffs of any sort related to the Services.

6. Information Furnished by City.

6.1 As further set forth in Exhibit A, if applicable, the City shall, so far as the Services under this IGA Agreement may require, furnish ESCO with relevant information it may have concerning the Project. Notwithstanding any provision to the contrary, the City does not warrant or guarantee the accuracy or completeness of any such information.

6.2 The City shall appoint a person to serve as liaison between the City and ESCO. In addition to serving as City liaison, this person shall be responsible for scheduling all meetings between ESCO and City representatives and arranging for access to relevant Facilities. This person, however, shall have no authority to extend the contract term, modify the terms of the IGA Agreement or to bind the City to make payments in excess of the (any) IGA Fee or the Aggregated IGA Fee.

7. Professional Responsibility.

7.1 ESCO shall perform all services required by this IGA Agreement in accordance with high professional standards of care and practice customarily expected of nationally recognized design,

engineering, and construction professionals performing comparable work, including in magnitude and complexity, and governing the Services of ESCO as described in this IGA Agreement. ESCO shall be responsible for the professional and technical accuracy and the coordination of all plans, designs, engineering, architecture, reports, analysis, data, memoranda, drawings, scopes of services, specifications, estimates, and any and all other documents and writings as instruments furnished under this IGA Agreement. ESCO shall furnish appropriate, qualified, competent and professional Services for each of the aspects and tasks so that detailed checking or reviewing by the City is not necessary. Notwithstanding any provision to the contrary, the City's review, approval, acceptance of, or payment for any of the Services furnished shall not be construed to operate as a waiver of any rights under this IGA Agreement or any cause of action arising out of the performance of this IGA Agreement.

7.2. ESCO represents that it is fully familiar with the laws of the Commonwealth of Massachusetts governing the Services relating to this Project. ESCO shall perform any and all services it renders to the City pursuant to this IGA Agreement in strict compliance with the relevant provisions of applicable law. Without limiting the generality of other provisions set forth in this IGA Agreement, if any aspect of ESCO's performance (including but not limited to its subcontractors, consultants, agents and the respective employees of each) fails to comply with applicable law, ESCO shall make all necessary corrections at no cost whatsoever to the City.

7.3. Any amounts due to the City under this Section 7 shall be paid by ESCO either directly upon invoice from the City or by deduction from any amount otherwise payable by the City to ESCO under this EMSA, whichever method of payment is directed by the City.

8. Termination.

8.1 The following termination provisions shall apply:

8.1.1 Termination for Cause. If either Party fails to fulfill in a timely and proper manner its obligations under this IGA Agreement for any cause, or if either Party violates any of the terms, covenants and conditions of this IGA Agreement, then the offended Party shall provide the offending Party written notice and thirty (30) days to remedy or cure the default. If the offending Party fails to remedy the failure during the thirty (30) days, then the offended Party then shall have the right to terminate this IGA Agreement by giving written notice to the offending Party of such termination and specifying the effective date thereof, said written notice to be given at least ten (10) calendar days before the effective date of such termination. In such event, all records, documents, assets, property and equipment, of any nature whatsoever, or wheresoever situated, prepared, or purchased by ESCO with federal, state or city funds under this IGA Agreement shall, at the option of the City, become City property. Notwithstanding the above, ESCO shall not be relieved of liability to the City for damages sustained by the City. The City may withhold any payments to ESCO for the purpose of set-off until such time as the exact amount of damages to the City from ESCO is determined. Further, ESCO may terminate this IGA Agreement as described in Section 5.1.6.

8.1.2 Public Threat. Notwithstanding any provision to the contrary, if ESCO'S alleged failure

or breach causes or exacerbates a threat to public safety, an obstacle or impediment to the continued use of any Facility, or risk of injury to person(s) or damage to property, then ESCO shall immediately cure the failure or breach. The City may, in its sole discretion, take such action as it deems necessary and appropriate to protect persons or property from injury or damage, including but not limited to suspension of the IGA Agreement. ESCO shall promptly reimburse the City for any and all damages, costs and expenses arising from its failure.

8.1.3 Insolvency. Notwithstanding any provision to the contrary and to the full extent allowed by law, if ESCO is adjudged as bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver of its property is appointed, or if the services to be performed under the IGA Agreement is abandoned, or if the IGA Agreement or any part thereof is assigned without the previous written consent of the City, then the City may notify ESCO in writing to discontinue all Services, or any part thereof; and thereupon ESCO shall discontinue such Services or such part thereof as the City designates, remove its equipment, tools, supplies and materials as the Contracting Officer directs, and the City may thereupon, by contract or otherwise as it may determine, complete the Services, or such part thereof, and ESCO shall pay the cost of completing such Services.

8.1.4 Termination for Convenience. Upon ninety (90) days written notice to ESCO, or sooner if reasonable under the circumstances, the City may, without cause and without prejudice to any other right or remedy, at any time elect to terminate any part of the Services, or terminate the IGA Agreement in whole or in part, as the City may deem appropriate for its convenience.

8.1.5 Termination Expenses. In the event of any termination of this IGA Agreement, ESCO shall be paid for Services satisfactorily performed up to and including the termination date subject to the submission of a detailed invoice. No other termination expenses shall be allowed.

8.1.6 City's Right to Deduct. Damages, costs and expenses incurred by the City may, in the City's discretion, be deducted by the City out of moneys then due or to become due to ESCO under this IGA Agreement, or any part hereof. In such accounting the City shall not be obligated to obtain the lowest figures for the services of completing the contract or any part thereof, or for ensuring its proper completion, and all sums actually paid by the City shall be charged to ESCO. If the expense incurred by the City is greater than the sum which would have been payable under the IGA Agreement if the same had been completed by ESCO, then ESCO shall pay the amount of the excess to the City upon completion of the Services and without further demand being made therefore.

9. Force Majeure

9.1. Neither Party shall be liable to the other or deemed to be in breach under this IGA Agreement for any failure to perform, including, without limitation, a delay in rendering performance due to causes beyond its reasonable control such as an order, injunction, judgment, or determination of any Court of the United States or the Commonwealth of Massachusetts, an Act of God, war, civil disobedience, extraordinary weather conditions, third party labor disputes, or shortages, or extraordinary fluctuation in electric power, heat, light, or air conditioning. Dates or time of performance shall be extended automatically to the extent of such delays, provided

that the Party whose performance is affected promptly notifies the other, in writing, of the existence and nature of such delay.

9.1.2. It is agreed, however, that since the performance dates of this IGA Agreement are important, continued failure to perform for periods aggregating sixty (60) days or more, even for causes beyond the control of ESCO, shall be deemed to render performance impossible and the City shall thereafter have the right to terminate this IGA Agreement without liability or damages. In the event of such termination, however, the City shall pay ESCO only for Services performed prior to termination.

10. Insurance. ESCO shall obtain and maintain insurance coverage for itself, its officers, employees and its contractors, subcontractors, suppliers, consultants, agents and invitees, and their respective officers and employees (collectively for this Section, "Contractors"). Said insurance shall commence no later than the effective date of this IGA Agreement. Said coverage shall not be less than the following:

10.1 ESCO shall obtain and maintain professional liability/errors & omissions insurance covering negligent acts, errors and omissions for itself and its Contractors sufficient to cover any and all claims, damages, liabilities, costs and expenses (including attorney's fees) arising out of or in connection with ESCO's fulfillment of any of its obligations under this IGA Agreement. The amount of this coverage shall not be less than Five Million (\$5,000,000) dollars per occurrence and shall remain in full force and effect for a period of not less than six (6) years after the termination of the final phase of this IGA Agreement. If coverage is claims made, ESCO shall provide an extended reporting period policy for not less than six (6) years to ensure continuous coverage or maintain the same coverage for not less than six (6) years after termination of this IGA Agreement.

10.2 ESCO shall maintain broad form Commercial General Liability (including products/completed operations and contractual liability) insurance written on an "occurrence" basis. Said coverage shall include sudden & accidental pollution coverage. There shall be no deductible or retention, which shall be clearly evidenced on the certificate of insurance. Such insurance will name the City of Worcester as an additional insured and as a Loss Payee as its interests may appear.

10.2.1 Unless greater insurance coverage is required elsewhere in the IGA Documents, ESCO shall furnish the following coverage which shall not be less than the minimum amounts set forth below:

- Commercial General Liability (CGL) with Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury (including death) and personal & advertising injury, with limits no less than \$10,000,000 per occurrence and \$20,000,000 annual aggregate. ISO Form or an equivalent CG 2033 (Ongoing) and CG 2037 (Completed Operations) forms shall also be included.

10.3 Automobile Liability/Comprehensive Auto Liability \$2,000,000 per occurrence (all

owned, scheduled, hired, and non-owned autos). Said coverage shall include bodily injury (including death) and property damage. There shall be no deductible or retention, which shall be clearly evidenced on the certificate of insurance. Coverage shall be on an occurrence basis.

10.4 Excess/Umbrella Liability coverage shall be on an occurrence basis. There shall be no deductible or retention. Excess/Umbrella liability insurance shall apply in excess of primary employer's liability, general liability and automobile liability, shall be no less than Ten Million Dollars (\$10,000,000) per occurrence. Said coverage shall include sudden & accidental pollution coverage.

10.5 Coverage for Workers Compensation shall be obtained and maintained in accordance with the Worker's Compensation Act of the Commonwealth of Massachusetts (G.L. c. 149 § 34A and G.L. c. 152) or as follows, whichever is greater:

Workers Compensation Coverage A	Statutory Minimum
Employer's Liability Coverage B	\$2,000,000 each accident
	\$2,000,000 disease per employee
	\$2,000,000 disease policy

10.6 ESCO shall maintain cyber liability insurance, including, e.g., tech E&O, network security, data privacy, and cyber liability (which includes internet liability, computer security and privacy, liability first and third party liability) in the amount of no less than \$5,000,000 per claim with a \$10,000,000 aggregate. Such coverage shall remain in effect for at least six (6) years after termination of the EMSA and include worldwide coverage for network security/data protection liability, including coverage for financial loss resulting or arising from:

- acts, errors, or omissions, in rendering technology/professional services and/or in connection with the Services provided under the EMSA;
- violation or infringement of any right of privacy, including breach of security and breach of security/privacy laws, rules or regulations globally, now or hereinafter constituted or amended;
- data theft, damage, unauthorized disclosure, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information in whatever form, transmission of a computer virus or other type of malicious code;
- participation in a denial of service attack on third party computer systems; and
- loss or denial of service.

Such coverage must include technology/professional liability, breach of contract, privacy and security liability, privacy regulatory defense and payment of civil fines, payment of credit card provider penalties, and breach response costs (including without limitation, notification costs, forensics, credit protection services, call center services, identity theft protection services, and crisis management/public relations services) and may not include cyber terrorism exclusion.

If coverage is claims-made, ESCO shall provide an extended reporting period policy for six (6) years to ensure continuous coverage or maintain same coverage for six (6) years after

termination of this EMSA.

10.7 The City of Worcester shall be named as an additional insured on all coverage and certificates, with regards to all claims, injuries or damages associated with this EMSA, except for workers compensation.

10.8 With regards to any Professional, Tech E&O and Cyber Liability policy secured the policy(s) will be endorsed where as the “insured vs insured” exclusion will be amended so as not to apply to claims in which the City is the plaintiff and ESCO is the defendant.

10.9 ESCO shall carry any other types of insurance as may be required elsewhere in the EMSA Documents. All insurance policies required in the EMSA Documents shall be provided by companies with a rating of no less than “A-, XII” by A.M. Best or equivalent rating agency.

10.10 Prior to execution of the IGA Agreement, ESCO shall provide the City certificates (in Acord Form) from the insurers evidencing that the insurance policies as required herein have been issued to ESCO in a form satisfactory to the City. ESCO shall promptly provide the City with additional information (including a copy of the policy(ies)) regarding said coverage upon request. ESCO shall further provide a current certificate(s) upon the City’s request.

10.11 No reduction or cancellation of any insurance whether by the insurer or by the insured shall be effective unless written notice thereof is given to the City at least thirty (30) days prior to the intended effective date thereof, which date has been expressed in a notice to the Certificate Holder, Purchasing Director, City Hall, 4th floor, 455 Main Street, Worcester, MA, 01608. Prior to the effective date of any such cancellation the ESCO shall obtain and maintain new insurance to cover the policies so cancelled.

10.12 ESCO shall require its insurer to waive subrogation on claims under all policies required that arise out of or relate to this IGA Agreement. ESCO is solely responsible for payment of deductible or retention amounts relating to its insurance coverage. ESCO’s insurance, except workers compensation/employers liability coverage, shall be primary and non-contributory to any coverage by the City. ESCO’s required insurance coverage set forth above shall not be construed as a limitation or waiver of any potential liability or satisfaction of ESCO’s indemnification obligation

10.13 The City reserves the right to self fund/self insure and shall not be required to obtain insurance coverage.

11. Warranty. ESCO warrants to the City that the Services performed under this IGA Agreement shall comply with the requirements set forth herein, shall be free of material defects, and shall not infringe on the intellectual property of any third party. Further, it is expressly understood that this Section 14 shall not absolve ESCO from any liability to the City arising from ESCO’s failure to comply with the terms of the IGA Agreement.

12. **Notices**

All notices required by the IGA Documents to be given by one Party to the other shall be effective only when sent in writing, by means overnight delivery by a nationally recognized carrier or mailed by U.S. certified mail, return receipt requested, postage prepaid, and addressed as follows:

TO:	with a copy to:
Chief Sustainability Officer	City Manager
Department of Sustainability & Resilience	Executive Office of City Manager
Worcester City Hall	Worcester City Hall
455 Main Street	455 Main Street
Worcester, Massachusetts 01608	Worcester, Massachusetts 01608

TO: *[TBD - ESCO recipient]*

Either Party shall notify the other in the event of any change in their respective recipients and/or addresses.

13. Amendments to the IGA Agreement. This IGA Agreement may be amended only by a written document executed by the Parties, acting through their duly authorized representatives. For clarity, neither the City nor its employees, officials or agents, shall be bound by “click through” agreements. This IGA Agreement shall not be controlled, modified or otherwise amended by any provisions purporting to be inserted via a hyperlink.

14. Availability of Funds. The obligation of the City to comply with the provision of this IGA Agreement is subject to the availability of an appropriation for this purpose.

15. No Third Party Beneficiaries. This IGA Agreement is by and between the Parties that have executed it. This IGA Agreement is intended for their mutual benefit alone and is not intended to confer any express or implied benefit on any other person. To the fullest extent allowed by law and notwithstanding any provision to the contrary, this IGA Agreement shall not confer third party beneficiary status on any person or other entity.

16. Indemnification.

16.1 ESCO shall indemnify and save harmless the City of Worcester and all of its officials, agents and employees from and against all suits, actions, claims or liability of every name, nature, and description arising out of or in consequence of the acts or omissions of ESCO, its contractors, consultants, agents, or their respective employees, or officers in the performance of the Services covered by this IGA Agreement and/or ESCO’s failure to comply with the terms and conditions hereof, and shall at its own cost and expense defend any and all such suits and actions.

16.2 Without limiting the generality of the foregoing, ESCO further covenants to hold and save the City, its officials, employees and agents, harmless from and against all and every demand or demands, of any nature or kind for alleged infringement or on account of the use of any patent or other proprietary interest furnished by ESCO under this IGA Agreement. City will give ESCO reasonable notice in writing of any such suit and permit ESCO, through counsel of its choice, to answer the charge of infringement and defend such suit. If such a suit has occurred or may occur, ESCO may, at its election and expense, obtain for the City the right to continue using the applicable software, equipment and/or materials, or to replace, correct or modify the same so that it is not infringing.

16.3 The indemnification required hereunder shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any person, described in this IGA Agreement. The indemnifications required hereunder shall not be limited by reason of the specification of any particular insurance coverage under this IGA Agreement. ESCO's obligations under this provision shall not terminate with the expiration or termination of this IGA Agreement, but shall survive it. Notwithstanding any provision to the contrary, the City shall not be required to indemnify, hold harmless, or defend ESCO.

17. **Limitation of Liability.** In the event of termination or suspension, ESCO shall have no right to recover indirect, consequential, incidental, lost opportunity or lost profit damages.

18. **Successors and Assigns**

18.1 The City and ESCO each binds itself, its partners, successors, legal representatives and assigns of such other Party in respect to all covenants of this IGA Agreement.

18.2 ESCO shall not sublet, assign or transfer any part of its Services or obligations under this IGA Agreement without the prior approval of and written consent of the City. The written consent shall not in any way relieve ESCO from its responsibility for the professional and technical accuracy and the coordination of all data, designs, specifications, estimates and other Services or materials furnished.

19. **Independent Contractor.** ESCO is an independent contractor and not an employee of the City. ESCO shall secure all personnel required to perform the services of this IGA Agreement. Such personnel shall not be employees of, or have an employment contract with, the City.

20. **Non-Discrimination Statement**

20.1 To the full extent allowed by law, in all hiring or employment made possible by or resulting from this IGA Agreement, ESCO (1) shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, national origin, gender identity, expression, or sexual orientation, and (2) shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, gender identity, expression, or

sexual orientation.

20.2 To the full extent allowed by law, no person in the United States shall, on the ground of race, color, religion, sex, age, disability, national origin, gender identity, expression, or sexual orientation be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from the contract. ESCO and each employer shall comply with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964.

21. CORI Clearance Requirements. No person shall be eligible to receive a contract if that person has been convicted of any felony offense involving the distribution of controlled substances as such terms are defined under G.L. c. 94C and, for contracts to be performed for on-site services to the Worcester Public Schools, if that person or any person to be employed by that person in the performance of such on-site services has been convicted of a "sex offense" or a "sex offense involving a child" or a "sexually violent offense" or would meet the definition of "sexually violent predator" as those terms are defined in G.L. c. 6, § 178C, and who must register with the sex offender registry board. In accordance with G.L. c. 71, § 38R, the City may request and obtain all available criminal offender information ("CORI") from the Criminal History Systems Board of any contractor who may have direct and unmonitored contact with children. ESCO shall require all individuals, whether employees, agents, contractors or others working on behalf of ESCO, who are involved in the provision of the Services to complete and sign a request form to obtain CORI if, in the determination of the City, some or all of the employees, contractors, agents or others working on behalf of ESCO may have direct and unmonitored contact with children during the performance the Services.

22. Ownership of and Access to Documents and Records

22.1 Right to Inspect. City shall have access to inspect the Services and, on reasonable notice, may inspect ESCO's books, records, contracts, audits, accountings and other compilations of data that are in final form or are reasonably concluded and which pertain to this IGA Agreement (may be referred to collectively for this Section as "Records"), or as the Parties may otherwise agree. Records shall be kept based on Generally Accepted Accounting Principles and calculations kept on file in legible form. Records shall be saved or archived for a period of not less than six (6) years after final completion and shall be kept or made available within Massachusetts. This provision shall not entitle the City to inspect Records that are protected by attorney/client privilege.

22.2 Ownership of Documents. Plans, designs, reports, analysis, data, memoranda, drawings, scopes of services, estimates, specifications and any and all other documents and writings provided by ESCO to the City pursuant to the terms and conditions of this IGA Agreement are the property of the City, whether the Services for which they are made is executed or not, and are not to be used by ESCO on other work except by agreement with the City. Examples shall include but not be limited to the IGA Report, schematic and design drawings, as built drawings, O&M manuals, and manufacturer's warranties.

22.3 City Data. As between ESCO and the City, the City owns and shall retain ownership of its City Data (including any documents, information, as well as any extract or aggregation thereof, in whatever nature or form (collectively, "City Data"). For clarity, said City Data shall include but not be limited to any data that is licensed or made available to the City through a third party, including but not limited to personal and private information. By this IGA Agreement, City does not convey any right, title or interest in City Data (including but not limited to any rights owned by or licensed from any third party). Notwithstanding any provision to the contrary, ESCO is prohibited from retaining or using any City Data for any reason other than its performance under this IGA Agreement, even if said City Data is aggregated, de-identified, pseudonymized or anonymized. Without limiting the scope of Section 34 below, the requirements of this provision shall survive the termination of this IGA Agreement.

22.4 Records - Confidentiality. The City reserves the right of access to the non-confidential records of ESCO and its contractors and consultants, in accordance with provisions of the federal and state laws and regulations. Those records classified confidential shall be provided with the informed written consent of the individual involved.

22.5 Generally Acceptable Accounting Principles. ESCO shall maintain its records relating to this IGA Agreement in compliance with generally acceptable accounting principles.

23. Compliance with Applicable Law. ESCO shall comply with all applicable federal, Massachusetts, and local laws relating to the Services provided for herein. Without limiting the foregoing, ESCO shall comply with the requirements of G.L. c. 25A, sec. 11I, as applies to its Services under this IGA Agreement. In no event does the City waive any of the applicable immunity, limitation of liability, or other protections granted it by federal or Massachusetts law, including but not limited to G.L. c. 258.

24. Conflict of Interest

24.1 ESCO hereby acknowledges and represents that to the best of ESCO's knowledge it has not violated the laws of the G.L. c. 268A as amended, pertaining to conflicts of interest with regard to this Project.

24.2 ESCO warrants that it has complied with all provisions of law regarding the award of this IGA Agreement and that neither it, nor its employees, agents, officers, directors or trustees have offered or attempted to offer, and shall not during the course of this IGA Agreement offer anything of any value to any employee of the City in connection with this IGA Agreement.

24.3 ESCO further warrants that to the best of its knowledge no employee of the City, including unpaid members of City boards and commissions, serves as an officer, director, trustee or employee of ESCO, and that no employee of the City has or will have a direct or indirect financial interest in this IGA Agreement.

24.4 Violation of this Section shall be a material breach of this IGA Agreement and shall be grounds for immediate termination of this IGA Agreement by the City without regard to any

enforcement activities undertaken or completed by any enforcement agency. Termination of this IGA Agreement pursuant to this Section shall not waive any claims for damages the City may have against ESCO.

25. Adherence to Applicable Law.

25.1 In the performance of this IGA Agreement, ESCO shall comply with all applicable federal, state and local laws, rules, ordinances, regulations and orders.

25.2 The Parties acknowledge that the City intends to apply for federal grant money, the receipt of which may necessitate additional requirements not contemplated by this IGA Agreement.

26. Governing Law.

26.1 The laws of the Commonwealth of Massachusetts shall govern the validity, interpretation, construction and performance of this IGA Agreement.

26.2 ESCO hereby agrees to the personal jurisdiction of any federal or state court located in Worcester County, Massachusetts and waives any objection based on forum non conveniens with respect to any action arising out of or relating to this IGA Agreement.

26.3 In the performance of ESCO's Services hereunder, ESCO, *when apt*, shall review the Project construction plans with the Center for Living and Working and the City Manager's Accessibility Advisory Commission to ensure that the Project design meets or exceeds accessibility requirements. The city department in charge of the administration of ESCO's services shall be responsible for coordinating the aforementioned reviews.

27. Certifications Required by Law. ESCO, by executing this IGA Agreement, certifies the following:

- 27.1 it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this IGA Agreement;
- 27.2 that no person, corporation, or other entity, other than a bona fide full time employee of ESCO has been retained or hired by ESCO to solicit for or in any way assist ESCO in obtaining this IGA Agreement upon an agreement or understanding that such person, corporation, or other entity be paid a fee or other consideration contingent upon the award of this IGA Agreement to ESCO; and
- 27.3 that ESCO, represents, warrants and certifies that to the best of its knowledge that it and its consultants and subcontractors have complied with all laws of the Commonwealth of Massachusetts relating to taxes and all Ordinances and Orders of the City of Worcester relating to taxes, fees and charges, or is lawfully contesting the validity of the same. ESCO further represents, warrants and certifies that it will remain in such compliance during the term of this IGA Agreement, including any amendments or extensions hereto. Likewise, ESCO shall by the terms of its subcontract agreements require that its

subcontractors and consultants also remain in such compliance during the term of their subcontract agreement. Breach of any of these provisions by ESCO shall be deemed a material breach which shall entitle the City to terminate this contract pursuant to Section 8.1.1 above and take any other action authorized by law to collect any amounts due the City.

28. ESCO's Certifications, Covenants

28.1 Certificate of Authorization. If ESCO is a corporation, each person executing this IGA Agreement on behalf of ESCO hereby covenants, represents and warrants that ESCO is a duly incorporated or duly qualified (if foreign) corporation and is authorized to do business in the Commonwealth of Massachusetts (a copy of evidence thereof to be supplied to the City upon request); and that each person executing this IGA Agreement on behalf of ESCO is an officer of ESCO and that such individual is duly authorized to execute, acknowledge and deliver this IGA Agreement to the City, a copy of a corporate resolution to this effect is attached hereto.

28.2 Tax Compliance Certification. Pursuant to G.L. c. 62C, § 49A(b), each person signing this IGA Agreement on behalf of ESCO hereby certifies, under the penalties of perjury, that to the best of his/her knowledge and belief, ESCO has complied with any and all applicable state tax laws.

28.3 Certificate of Non-collusion. The undersigned certifies under penalties of perjury that this IGA Agreement has been made in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity of group of individuals.

28.4 Foreign Corporation. ESCO, if a foreign corporation, hereby certifies that it is in compliance with G.L. c. 181 § 4 and that the name and address of the resident agent is attached hereto.

28.5 Debarment. ESCO represents and warrants that neither it, nor any subcontractor (including subconsultants and other agents) of ESCO, is presently debarred, proposed for debarment, suspended, or declared ineligible for contract awards by any federal agency in accordance with applicable law. In addition, ESCO certifies that neither it nor its subcontractor(s) have been subject to debarment from public contracting in the Commonwealth of Massachusetts under the provisions of G.L. c. 29, Section 29F, or any other applicable state, federal or local debarment provisions, or any rule or regulations promulgated thereunder. ESCO shall immediately notify the City if any of its subcontractors become debarred or suspended, and shall take the necessary steps required by the City to terminate its contractual obligations with its subcontractor for Services to be performed related to the Project under this IGA Agreement.

29. Data Protection. Unless greater protections are required elsewhere in this IGA Agreement, for all protected and/or private personal data received or submitted by ESCO as a result of this IGA Agreement, ESCO shall implement and maintain reasonable administrative, physical and technical safeguards to ensure the security (e.g., unauthorized access, use

disclosure, alternative, loss or destruction) of such data under its control. Such safeguards shall include cyber security measures and physical security protections not less than that required by applicable law and current industry standards, as well as policies and procedures implementing and monitoring such measures. Any protected and private personal data required to be submitted by ESCO shall be transferred via encryption or similar secure means.

30. Rights Reserved. The City reserves the right to change policy expounded herein due to policy changes dictated by federal, state or municipal agencies. ESCO shall comply with any and all federal, state and local regulations, rules or laws that control, as may be issued from time to time.

31. Severability. If any provision(s) of this IGA Agreement shall be ruled invalid by any court of competent jurisdiction or administrative agency and the determination of invalidity of such provision(s) has a materially adverse effect on a Party, then the Parties shall: promptly meet and negotiate a substitute provision(s) for such invalid portion and the remaining provisions which shall, to the greatest extent legally permissible, effect the intent of the Parties therein. Except as set forth above, the invalidity of such provision(s) shall not affect any of the remaining provisions hereof, and this IGA Agreement shall be construed and enforced as if such invalid portion did not exist.

32. Headings. The section headings in this IGA Agreement are for convenience and reference only and in no way define or limit the scope or content of this IGA Agreement or in any way affect its provisions.

33. No Waiver. No failure or delay on the part of either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

34. Survival. In addition to those provisions set forth expressly, provisions that by their nature survive expiration or termination of this IGA Agreement shall survive such expiration or termination.

35. Entire Agreement. This IGA Agreement contains the entire understanding of the Parties and supersedes all prior agreements, representations, proposals and undertakings of the Parties.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have caused this IGA Agreement to be executed as a sealed instrument by their duly authorized representatives the day and year first above written.

RECOMMENDED:

By its _____

John W. Odell
Chief Sustainability Officer

[name and title]

I certify that funds are available
in Account No.

CITY OF WORCESTER

Budget Analyst

Eric D. Batista
City Manager

Approved as to form

Assistant City Solicitor

Attachment A-1: Description of Facilities

Ref #	Department	Building	Street Address	Zip Code	Building SF estimated conditioned areas
50	DPW Sewer	Level Meter	0 Channel		100
48	DPW Sewer	Drain Pump Station	0 Lincoln Sq	1608	1,200
45	DPW Reservoir	Reservoir Pump Station	0 Old Colony Rd	1609	44
83	DPW Water	Water Pump Station and Emergency Pump	0 Princeton St	Holden	450
51	DPW Sewer	Level Meter	0 Southbridge St	1610	100
44	DPW Reservoir	Reservoir Pump Station	0 Stonehouse Hill Road	Holden	300
43	DPW Reservoir	Reservoir Pump Station	0 Whitmey St	Holden	1,800
144	School	Union Hill Elementary	1 Chapin St	1604	43,216
9	DPW Auditorium	Worcester Memorial Auditorium	1 Highland Street	1605	110,688
142	School	Technical High School	1 Officer Manny Familia Way	1605	400,000
75	DPW Sewer	Sewer Pump Station	1 Sears Island Dr	1606	300
1	DPF	DCU Center	1 Worcester Center Blvd	1608	245,748
79	DPW Sewer	Sewer Pump Station (privately run)	10 Gold St	1608	198
na5	DPF	Polar Park	100 Madison Street	1608	204,787
136	School	Roosevelt Elementary	1006 Grafton St	1602	120,656
38	DPW Reservoir	Lyndebrook Meter Station	101 Reservoir Rd	1611	1,350
49	DPW Sewer	Ballard Pipe Yard	1065 Millbury St	1610	340
76	DPW Sewer	Sewer Pump Station	1065 Millbury St	1605	300
93	Fire	Pleasant Street Fire	1067 Pleasant St	1609	6,580
74	DPW Sewer	Sewer Pump Station	1070 Millbury St	1610	100
140	School	Tatnuck Magnet	1083 Pleasant St	1602	42,384
73	DPW Sewer	Sewer Pump Station	11 Proctor St	1606	650
102	School	Chandler Elementary	114 Chandler St	1609	40,916
112	School	Flagg Street Elementary	115 Flagg St	1602	47,400
13	DPW Hope Cemetery	Hope Cemetery	119 Webster St	1603	13,101
141	School	Teacher Center/University Park	12 Freeland St	1603	15,942
117	School	Gerald Creamer Center (formerly Granite)	120 Granite St	1604	26,509

116	School	Gates Lane Elementary	1238 Main St	1603	96,000
18	DPW Parks	Elm Park Caretakers Blvd	125 Elm St and 121 Russel	1609	1,500
84	DPF	Worcester Senior Center	128 Providence St	1604	94,070
101	School	Canterbury Elementary	129 Canterbury St	1603	51,638
120	School	Greendale HeadStart	130 Leeds St	1606	24,600
125	School	Lake View Elementary	133 Coburn Ave	1604	27,918
98	School	Burncoat Middle	135 Burncoat St	1606	147,296
72	DPW Sewer	Sewer Pump Station	1365 Grafton St	1604	300
134	School	Quinsigamond Elementary	14 Blackstone River Rd	1607	118,198
118	School	Goddard School of Sci & Tech	14 Richards St	1603	119,972
139	School	Sullivan Middle School	140 Apricot St	1602	180,000
22	DPW Parks	Institute Park (O'Connell)	140 Salisbury St	1609	2,000
121	School	Hartwell Learning Center (formerly New Ludlow)	1407A Main St	1603	19,232
87	Fire	Fire Department HQ	141 Grove St	1605	20,812
86	Fire	Emergency Operations Center	141A Grove St	1605	20,812
105	School	Claremont/Woodland Academy	15 Claremont St	1610	135,989
111	School	First Step at Harlow	15 Harlow St	1605	27,813
71	DPW Sewer	Sewer Pump Station	15 Suntaug Rd	1604	300
78	DPW Sewer	Sewer Pump Station (Kettle Brook)	1511 Main St	1608	300
82	DPW Water	Water Engineering Bldg	16 East Worcester St	1602	22,479
26	DPW Parks	Mulcahy Field	160 Dorchester	1604	2,000
35	DPW Reservoir	Chester Water Tank	169 Chester St	1605	1,920
138	School	South High	170 Apricot St	1602	254,144
97	School	Belmont Community	170 Belmont St	1605	92,988
99	School	Burncoat Senior High	179 Burncoat St	1606	144,388
81	DPW Water	Water Admin Building	18 East Worcester St	1602	37,491
128	School	Midland Elementary	18 Midland St	1602	24,623
19	DPW Parks	Green Hill Barnyard Zoo	180 Green Hill Pkwy	1605	6,000
20	DPW Parks	Green Hill Greenhouse/Forestry Bldg	182 Green Hill Pkwy	1605	4,800
85	Fire	Burncoat Fire Station	19 Burncoat St	1606	2,715
16	DPW Parks	Clubhouse	1929 Officer Manny Familia Way	1605	4,800

70	DPW Sewer	Sewer Pump Station	2 Botany Bay Rd	1602	300
4	DPF	Emergency Management HQ (RECC)	2 Coppage Drive	1603	12,296
69	DPW Sewer	Sewer Pump Station	2 Hemlock St	1602	300
5	DPF	Union Station	2 Washington Square	1604	148,000
77	DPW Sewer	Sewer Pump Station	20 Arletta Ave (manhole)	1602	300
8	DPW Admin	DPW Administration Bldg	20 East Worcester St	1602	37,491
109	School	Durkin Admin	20 Irving St	1608	79,025
146	School	Wawecus Road Elementary	20 Wawecus Rd	1605	23,854
123	School	Heard Street	200 Heard St	1603	23,800
145	School	Vernon Hill Elementary	211 Providence St	1607	83,060
37	DPW Reservoir	Holden Meter Station	216 Olean St at Dawson	1604	800
80	DPW Street	Street Dept Salt Shed	22 Albany St	1604	19,992
68	DPW Sewer	Sewer Pump Station	224 Webster St	1603	300
110	School	Elm Park Elementary	23 North Ashland St	1609	74,696
67	DPW Sewer	Sewer Pump Station	236 James St	1603	300
137	School	School Admin/Fanning	24 Chatham St	1609	51,702
3	DPF	Health & Code/Inspectional Services	25 Meade St	1610	27,756
47	DPW Sanitation	Sanitation Garage/Sign Shop	26 & 30 Albany St	1604	60,336
127	School	May Street Elementary	265 May St	1602	35,912
88	Fire	Franklin Street Fire Station	266 Franklin St	1608	15,022
42	DPW Reservoir	Reservoir Pump Station	271 Olean St	1604	7,600
46	DPW Reservoir	Reservoir Street Chlorinator	28 Reservoir Rd		300
106	School	Clark Street Elementary	280 Clark St	1606	38,250
25	DPW Parks	Lake Park Field House	281 Lake at Hamilton St	1604	1,000
10	DPW Central Garage	Central Garage	29 Albany St	1604	60,336
66	DPW Sewer	Sewer Pump Station	29 Albany St 215 Shrewsbury St	1604	180
65	DPW Sewer	Sewer Pump Station	29 Pineland Ave	6104	136
108	School	Doherty High	299 Highland St	1602	424,600
64	DPW Sewer	Sewer Pump Station	2A Livermore St	1606	200
143	School	Thorndyke Road Elementary	30 Thorndyke Rd	1605	36,504
33	DPW Reservoir	Beaver Brook Pump Station	300 Chandler St	1609	600

24	DPW Parks	Lake Park Caretakers Bldg	300 Lake	1604	1,730
147	School	West Tatnuck Elementary	300 Mower St	1602	37,164
113	School	Foley Stadium & Field House	305 Chandler St	1602	16,012
119	School	Grafton Elementary	311 Grafton St	1604	41,065
148	School	Worcester Arts Magnet	315 St. Nicholas ave	1606	56,657
62	DPW Sewer	Sewer Pump Station	318 Southwest Cutoff	1607	928
31	DPW Reservoir	Apricot Booster Pump Station	32 Apricot St	1602	1,000
61	DPW Sewer	Sewer Pump Station	331 Bridle Path	1604	300
129	School	Mill Swan Head Start	337 Mill St	1602	33,756
59	DPW Sewer	Sewer Pump Station	345 Greenwood St	1607	300
131	School	Nelson Place Elementary	35 Nelson Pl	1605	56,300
130	School	Millbury St Head Start	389 Millbury St	1610	19,312
63	DPW Sewer	Sewer Pump Station	39 Whitla Dr	1604	288
95	Fire	Webster St Fire	40 Webster St	1603	14,454
149	School	Worcester East Middle	420 Grafton St	1604	155,392
92	Fire	Park Ave Fire Station	424 Park Ave	1602	4,400
94	Fire	W Boylston Fire Station	438 West Boylston St	1606	6,840
132	School	Norrback Ave Elementary	44 Malden St	1606	113,500
36	DPW Reservoir	Fox Meadow Pump Station	45 Foxmeadow Dr	1602	300
11	DPW City Messenger	City Hall	455 Main St	1608	73,100
39	DPW Reservoir	Quinsigamond Way Reservoir Pump	455 N. Lake Ave	1605	1,600
2	DPF	Frances Perkins Library	470 West Boylston St	1605	3,250
115	School	Francis McGrath Elementary	493 Grove St	1605	35,845
114	School	Forest Grove Middle	495 Grove St	1602	142,443
17	DPW Parks	Crompton Park	50 Canton Street	1610	18,000
150	Water Dept	Holden Reservoir (Garage)	50-55 Moy Ranch Road	Holden	9,572
151	Water Dept	Holden Reservoir (House)	50-55 Moy Ranch Road	Holden	225
103	School	Worcester Dual Magnet School	525 Chandler St	1603	102,000
100	School	Burncoat Street Prep School	526 Burncoat St	1606	28,255
27	DPW Parks	Rockwood Field	540 Chandler St	1609	648
126	School	Lincoln Street Elementary	549 Lincoln St	1605	25,766

34	DPW Reservoir	Chester St Pumping Station	56 Chester St	1605	1,920
28	DPW Parks	S. Worcester Neighborhood Center and Harry Sherry Field	57 Camp St	1603	100
41	DPW Reservoir	Reservoir Pump Station	6 Tory Fort Ln	1602	2,080
58	DPW Sewer	Sewer Pump Station	62 Crowningshield Rd	1604	300
30	DPW Parks	University Park	62 Gates Lane	1603	4,480
60	DPW Sewer	Sewer Pump Station	642 Cambridge St	1603	300
57	DPW Sewer	Sewer Pump Station	66 Brookhaven Rd	1606	300
na4	DPF	69 Sever Street	69 Sever Street	1609	1,500
23	DPW Parks	Kendrick Field	7 Brooks St	1606	400
56	DPW Sewer	Sewer Pump Station	7 Oak Beach Terrace	1604	300
55	DPW Sewer	Sewer Pump Station	70 Dunkirk Ave	1604	300
91	Fire	McKeon Rd Fire Station	70 McKeon Rd	1607	12,750
52	DPW Sewer	Overflow Treatment	70 Quinsigamond Ave	6108	30,696
12	DPW Filtration	Filtration Plant	71 Stonehouse Hill Rd	Holden	30,000
21	DPW Parks	Harrington Field (Jack Barry LL)	720 Franklin St and 290 Harrington Way	1608	900
89	Fire	Grafton Fire Station	745 Grafton St	1604	4,223
107	School	Columbus Park Elementary	75 Lovell St	1603	56,774
7	DPW Admin	Department of Transportation Administration Building	76 East Worcester St	1602	29,067
135	School	Rice Square Elementary	76 Massasoit Rd	1604	36,000
133	School	Parent Info Center	768 Main St	1609	50,684
32	DPW Reservoir	Apricot Meter Station	77 Apricot St	1602	300
122	School	Head Start Administration Building	770 Main St	1610	9,960
124	School	Jacob Hiatt Magnet Elementary	772 Main St	1610	27,134
54	DPW Sewer	Sewer Pump Station	78 Holden St	1605	300
90	Fire	Hermon Street Fire Station	80 Hermon St	1608	12,448
15	DPW Parks	Beaver Brook Park Ted Williams Little League	80 Mayfield St	1602	1,984
104	School	City View Elementary	80 Prospect St	1608	70,000
53	DPW Sewer	Sewer Pump Station	85 Lake Ave	1604	3,151
29	DPW Parks	Shore Park	85 Shore Dr	6105	2,000
14	DPW Parks	Beaver Brook Park Electrical Bldg	9 Mann St	1602	300
6	DPF	Worcester Public Library - Main Branch	90 Franklin Street	1602	124,656

96	Police	Police HQ	9-11 Lincoln Square	1605	124,656
40	DPW Reservoir	Reservoir Pump Station	99 Kendall Road	Holden	4,800
			Total Square Footage		5,922,370
			Total Square Footage Excluding Building not Included in ESPC Audit		5,665,958

EXHIBIT A
IGA Scope of Services

DRAFT

Exhibit A, Attachment 2: Potential Energy Conservation Measures

DRAFT

Exhibit A, Attachment 3: Fee Breakdown

DRAFT

Exhibit A, Attachment 4: Schedule

DRAFT

Exhibit A, Attachment 5: Utility Data

DRAFT

Exhibit A, Attachment 6: Equipment Schedules

DRAFT

Exhibit A, Attachment 7: Building Management System Data

DRAFT

Exhibit B
Certificates of Insurance, Authority and Tax

DRAFT

CERTIFICATE OF AUTHORITY

At a duly authorized meeting of the Board of Directors of the _____ held on _____ Directors were present or waived notice,
(name of corporation) (date)
it was voted that _____ of this company be and hereby is
(officer and title)
authorized to execute contracts and bonds in the name and behalf of said company, and affix its
Corporate Seal thereto, and such execution of any contract or bond of obligation in this company's
name shall be valid and binding upon this company.

A TRUE COPY, ATTEST:

Corporate name

Place of Business:

I hereby certify that I am the _____ of the _____
(Title) (Name of Corporation)
that _____ is the duly elected _____
(Name of Officer) (Title)
of said company, and the above vote has not been amended or rescinded and remains in full force and
effect as of the date of this contract.

Signature: _____

Name/Title: _____

Date: _____

(Corporate Seal)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

, 2009

On this _____ day of _____, 202__, before me the undersigned notary public,
personally appeared _____, who proved to me through satisfactory
evidence of identification, which was/were _____, to be the person
whose name is signed on the preceding or attached document, and acknowledged to me he/she signed
it voluntarily for its stated purpose.

Notary Public

My commission expires:

TAX CERTIFICATION

DATE: _____

Pursuant to Mass. G.L. c. 62C, Section 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature: _____

Print below signature line name and title
of Individual or Corporate Officer (as applicable)

Company Name

Address: _____

Tel No. _____

SOCIAL SECURITY NUMBER
OR
FEDERAL IDENTIFICATION NUMBER

City of Worcester's Green Worcester Plan

GENERAL CONDITIONS

ARTICLE 1. GENERAL PROVISIONS

1.1 EXECUTION, CORRELATION AND INTENT

1.1.1 The City and ESCO shall sign the EMSA (which may also be referred to in these General Conditions as the "Contract") in duplicate. These General Conditions are incorporated into the EMSA and made a part thereof and shall apply to any implementation.

1.1.2 By executing the EMSA, ESCO represents, inter alia, that it is professionally and fully qualified to provide all Work required under the EMSA and has visited the site, familiarized itself with the local conditions under which the Work is to be performed and the requirements of the EMSA Documents.

1.1.3 The intent of the EMSA Documents is to include all items necessary for the proper execution and completion of the Work. The EMSA Documents are complementary, and what is required by any one shall be as binding as if required by all. Words and abbreviations, which have well-known technical or trade meanings are used in the EMSA Documents in accordance with such, recognized meanings. All work mentioned or indicated in EMSA shall be performed by ESCO unless it is specifically indicated that such work is to be done by others. The Work set forth in Exhibit A is intended to consist of turnkey installations and said Work shall include all that is necessary to make the installations fully operable unless specifically excluded.

1.1.4 Where no higher quality or standards for materials or workmanship are established for Work, such Work is to be of good quality and free from defects in materials or workmanship.

1.1.5 All manufactured articles, materials, and equipment shall be installed in accordance with the manufacturer's written directions, instructions or recommendations unless otherwise indicated in the EMSA Documents.

1.2 ADMINISTRATION OF THE CONTRACT

1.2.1 ESCO shall retain engineers, architects, designers and/or other similar professionals to provide any and all architectural, engineering, design and similar professional services where such professional services are appropriate or required for the Work. Any and all engineers and architects shall be licensed in the Commonwealth of Massachusetts in accordance with applicable regulations.

1.3 INFORMATION AND SERVICES REQUIRED OF THE CITY

1.3.1 City shall furnish existing surveys, if any, describing the physical characteristics, legal limitations and utility locations for the site of the Work, and a legal description of the site(s), if such information is relevant and not otherwise the responsibility of ESCO, and is readily in the possession of the City.

1.3.2 Except as otherwise provided in the EMSA, the City shall secure and pay for necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing Facilities.

1.3.3 The City shall furnish information or services under the City's control with reasonable promptness after receipt from ESCO of a written request for such information or services.

1.3.4 The City shall forward instructions to ESCO through its Contracting Officer.

ARTICLE 2. SUPERVISION AND CONSTRUCTION PROCEDURES

2.1 Where the Work refers to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used in the Work, such mention is intended only to indicate that the operations of ESCO shall be as to produce at least the quality of work implied by the operations described, but the actual determination of whether or not the described operations may be safely and suitably employed on the Work shall be the responsibility of ESCO, who shall notify the Contracting Officer in writing of the actual means, methods, techniques, sequences or procedures which will be employed on the Work, if these differ materially from those in the Specifications/Scope of Work.

2.2 ESCO warrants to the City good and clear title to all equipment and materials furnished to the City pursuant to this EMSA, free and clear of liens and encumbrances. ESCO further warrants to the City that all materials and equipment furnished under this Contract will be new, unused, undamaged, and of recent manufacture, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

2.3 ESCO shall not make any substitutions or deviations without prior approval from the Contracting Officer. In requesting approval of the deviations or substitutions, ESCO shall provide, upon request, evidence leading to a reasonable certainty that the proposed substitution or deviation will perform as intended by the Specifications/Scope of Work.

2.4 Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by ESCO, notwithstanding approval or acceptance of such substitution by the City, unless such substitution was made at the written request or direction of the City.

2.5 The right of possession of the premises and the improvements made thereon by ESCO shall remain at all times in the City. ESCO's right of entry and use thereof arises solely from the permission granted by the City under the Contract Documents. ESCO shall confine its apparatus; the storage of materials and the operations of its workers to limits indicated by law, ordinances, the Contract Documents and permits and/or reasonable directions by the Contracting Officer which are consistent with the Contract Documents and shall not unreasonably encumber the premises or operational use of the premises with its materials.

2.6 Administrative Procedures: Coordinate scheduling and timing of required administrative procedures with other construction activities to avoid conflicts and assure orderly progress of the Work. Such administrative activities include, but are not limited to, the following:

- .1 Preparation of schedules;
- .2 Installation and removal of temporary facilities;
- .3 Delivery and processing of submittals;
- .4 Progress meetings; and
- .5 Project closeout activities.

2.7 ESCO shall clean-up work areas and perform routine maintenance on installed equipment until ECM acceptance.

ARTICLE 3. LABOR AND MATERIALS

3.1 Unless otherwise provided in the Contract Documents, ESCO shall provide and 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, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The word 'provide' shall mean furnish and install complete, including connections, unless otherwise specified.

3.2 ESCO shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to it.

ARTICLE 4. TAXES

4.1 This project, being constructed for a political subdivision of the Commonwealth of Massachusetts, is exempt from certain taxes. In addition to that set forth in the Contract, it is therefore required that ESCO and all Subcontractors purchasing taxable goods covered by the governing tax codes make known to suppliers the tax-exempt status of the institution in order that such taxes will not appear in the EMSA Fee. The City will provide the necessary evidence and certificates of its tax exemption upon request of those concerned. The most applicable taxes concerned are:

Federal Excise Taxes as applied to articles, which are taxable under Chapter 12 of the Internal Revenue Code of 1954, as amended.

Commonwealth of Massachusetts Sales Tax.

Tax Exempt Number: 046-001-418.

ARTICLE 5. PROJECT MANAGEMENT

5.1 ESCO shall employ a competent Project Manager and provide project administration as set forth herein. Additionally, as required by the Specifications/Scope of Work for any implementation, ESCO shall employ general superintendent(s) and necessary assistants who shall be in attendance at the Project site full time daily on each and every day when Work will be performed and whenever required by applicable law. The Project Manager shall represent ESCO and all communications given to the Project Manager shall be as binding as if given to ESCO. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case. In the event ESCO decides to substitute the Project Manager with another ESCO employee, ESCO shall provide advance written notice of the substitution to the City. The City reserves the right to instruct ESCO to make reasonable personnel changes in accordance with section 4.20 of the EMSA.

5.2 ESCO's Project Manager and, as applicable, a general superintendent(s) shall attend regularly scheduled job meetings with the Contracting Officer and such other persons as the Contracting Officer may from time to time wish to have present and/or assign as authorized representatives. In the unusual event that ESCO's Project Manager can not attend a meeting personally, ESCO shall send an authorized representative to attend on ESCO's behalf. An authorized representative of any Subcontractor or Sub-subcontractor shall attend such meetings if the representative's presence is requested by the Contracting Officer provided that the Contracting Officer provides reasonable advance notice to allow the Subcontractor or Sub-subcontractor to arrange attendance.

5.3 ESCO shall maintain and distribute to the City daily progress reports, and schedule and record meeting minutes. Notwithstanding this provision, the Parties may reduce the frequency of the submittal of such reports for any particular implementation by the terms of the respective Specification/Scope of Work.

5.4 Anticipated meetings shall include twice weekly progress and coordination meetings and such additional meetings as may be reasonably requested by either Party from time to time.

5.5 ESCO shall coordinate and supervise the Work performed by Subcontractors so that the Work is carried out without conflict between trades and so that no trade at any time causes delay to the general progress of the Work. ESCO and all Subcontractors shall at all times afford each trade, any separate Contractor, or the City, every reasonable opportunity for the installation of work and the storage of materials.

ARTICLE 6. SUBMITTALS AND SAMPLES

6.1 Samples are physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

6.2 ESCO shall coordinate with City as to administrative and procedural requirements for submittals as reasonably required for performance of the Work, including, as applicable, but not limited to

- .1 Exhibit G: Installation Schedule as updated with one and two week look aheads as needed, showing the:
 - a. Delivery and installation schedule for major equipment;
 - b. Utility tie-ins and shutdowns;
 - c. Commissioning, Start up and Testing Schedule;
 - d. Owner's Training;
- .2 Daily Progress Reports;
- .3 Shop drawings as applicable;
- .4 Certified Payroll Records;
- .5 Permits in accordance with Article 15 of these General Conditions;
- .6 List of Personnel and 24/7 Emergency Telephone Numbers;
- .7 Schedule of Operations; and
8. Commissioning Plan.

6.3 ESCO shall submit, with reasonable promptness and in such sequence as to cause no delay in the Work all Samples and Submittals required by the Specification/Scope of Work.

6.4 Contracting Officer shall provide written approval of the sample or provide specific reasons for withholding such approval within 5 business days of receipt. ESCO shall not be relieved of responsibility for any deviation from the requirements of the Specifications/Scope of Work by the Contracting Officer's approvals unless ESCO has specifically informed the Contracting Officer in writing of such deviation at the time of submission and the Contracting Officer has given written approval to the specific deviation. ESCO shall not be relieved from responsibility for errors or omissions in the Samples by the Contracting Officer's approval thereof.

6.5 No portion of the Work requiring submission of a Sample shall be commenced until the sample has been approved by the Contracting Officer.

ARTICLE 7. TRAINING OF CITY'S PERSONNEL

7.1 Prior to the City's acceptance of any ECM, ESCO shall schedule and fully provide training and instruction to the City's designated operating and maintenance personnel in the operation, adjustment and maintenance of products, equipment and systems. ESCO shall include in its Specifications/Scope of Work for each implementation details regarding the training which ESCO shall provide to City's

designated operating and maintenance personnel in the operation, adjustment, routine and extraordinary maintenance of products, equipment and systems.

7.2 As part of the training ESCO shall review contents of O&M Manual with personnel in detail to explain all aspects of operation and maintenance, including hands on demonstrations whenever practicable.

7.3 City at its option and expense may video tape the training. ESCO shall coordinate training with Contracting Officer and Contracting Officer shall coordinate with City personnel.

ARTICLE 8. ECM ACCEPTANCE

8.1 ESCO shall adhere to the schedule set forth in the applicable implementation.

8.2 With the ESCO's Certificate of ECM Commissioning notifying the City that a particular ECM is completed, as set forth in Section 4.17 of the EMSA, ESCO shall prepare and submit, as set forth in this Article and otherwise reasonably requested, one (1) hard copy and a searchable electronic copy of the Project Closeout Documents as applicable to such ECM for the City's review.

8.2.1 Close Out Documents submitted by ESCO shall include the following as applicable, and such additional documents as may be required by the EMSA as well as any particular implementation:

- (a) Operations and Maintenance Manuals
 - .1 Manufacturer's operation and maintenance requirements
 - .2 Equipment Submittals and Product Data
 - .3 As built drawings
 - .4 Design drawings
 - .5 Manufacturer's warranties
 - .6 Commissioning and start-up report and documentation
- (b) Applicable entries in the Application for Payment shall accurately reflect ECM final completion and reduction of retainage
- (c) A copy of the Payment Bond
- (d) A copy of Exhibit J Service EMSA, if any
- (e) Copies of Permits

8.2.2 If the City requests reasonable modifications to the Project Closeout Documents, the City shall return the copies with comments within five (5) business days of receipt. ESCO shall update and submit one (1) hard copy and a searchable electronic copy of the corrected documents within five (5) business days thereafter.

8.2.3 Prior to ECM Acceptance ESCO shall:

- (a) Deliver spare parts, extra stock, and similar items as described in Exhibit A;

- (b) Discontinue and remove temporary facilities from the site, along with mockups, construction tools, and similar elements; and
- (c) Complete final cleanup requirements, including touch-up painting and otherwise repair and restore marred and exposed finishes.

ARTICLE 9. CUTTING AND PATCHING WORK

9.1 ESCO shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts (new and existing) fit together properly and reasonably match surrounding conditions.

ARTICLE 10. CLEANING UP

10.1 ESCO at all times shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work as to any ECM, it shall remove all its waste materials and rubbish from and about the Project as well as all its tools, construction equipment, machinery and surplus materials. Immediately prior to the Contracting Officer's inspection for pursuant to Section 4.21 of the EMSA, ESCO shall clean the work area and return the work area effected by the work to a condition as it was prior to the start of work.

10.2 If ESCO fails to clean up at the completion of the Work or fails to maintain a clean site, free of accumulation of waste, rubbish and materials during implementation of the Work, the City may do so after twenty-four hour written notification and the actual cost there of shall be charged to the ESCO.

ARTICLE 11. CITY'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

11.1 The City may perform work related to the Project, but not included in ESCO's Scope of Work, with its own forces or other contractors. If ESCO claims that delay is involved because of such action by the City, it shall make such claim as provided elsewhere in the Contract Documents.

11.2 The City will provide for the coordination of the work of its own forces and of each separate contractor with the Work of the ESCO, who shall cooperate therewith as provided in these Contract Documents.

11.3 ESCO shall afford the City and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate its Work with theirs as required by the Contract Documents.

11.4 If any part of ESCO's Work depends for proper execution or results upon the work of the City or any separate contractor, ESCO shall, prior to proceeding with the

Work, promptly report to the Contracting Officer any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results.

11.5 Should the ESCO wrongfully cause damage to the work or property of any separate contractor, the ESCO shall upon due notice promptly attempt to settle with such other contractor by EMSA, or otherwise to resolve the dispute. If such separate contractor sues the City on account of any damage alleged to have been caused by the ESCO, the City shall notify the ESCO. CITY shall include a reciprocal provision in all of its contracts with separate contractors to require such contractors to take responsibility for damages they cause to ESCO's work or property.

ARTICLE 12. CONSENT OR WAIVER

12.1 No consent or waiver, express or implied, by either party to, or of, any breach of any covenant, condition or duty of the other Party shall be construed as a consent to or waiver of any other breach of the same or any other covenant, condition or duty.

ARTICLE 13. RIGHTS AND REMEDIES

13.1 The duties and obligations imposed by the EMSA Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

ARTICLE 14. TESTS, PROGRESS AND FINAL INSPECTIONS

14.1 ESCO shall give the Contracting Officer timely notice of its readiness so the Contracting Officer may observe any and all inspections, tests or approvals required by the ESMA Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over any portion of the Work. Unless otherwise specified in the Specifications/Scope of Work, ESCO shall schedule and bear all costs of such inspections, tests or approvals.

14.2 ESCO shall obtain and deliver promptly to the Contracting Officer any permits, licenses, or certifications, including any certificates of final inspection, of any part of its Work which may be required by law. Receipt of such permits or certificates by the Contracting Officer shall be a condition precedent to acceptance pursuant to Section 4.17 of the EMSA and Final Completion of any implementation.

14.3 If prior to acceptance or during the applicable one year warranty period, the Contracting Officer reasonably determines that any Work requires special inspection or testing which is not included in the Specifications/Scope of Work, it will instruct ESCO to order such special inspection or testing from a qualified independent third party. If such special inspection or testing reveals a material failure of the Work to comply with the requirements of the EMSA Documents, ESCO shall bear all costs of the inspection or testing and shall rectify the defect or failure at ESCO's expense, otherwise the City shall bear such costs, and an appropriate Change Order shall be issued. This provision applies

only to special inspections or tests using technology which was considered standard in the industry at the time the particular implementation was signed by the Parties.

ARTICLE 15. PROGRESS AND COMPLETION

15.1 Each implementation shall include an Installation Schedule, establishing the schedule for the implementation of all Work covered. Any modification of the schedule will be reviewed by the Contracting Officer for acceptance or returned to ESCO for revision and re-submittal.

ARTICLE 16. SCHEDULE OF VALUES AND APPLICATION FOR PAYMENT

16.1 The Exhibit C Payment Schedule for each implementation, if any, shall include a Schedule of Values setting forth the fee breakdown applicable for all Work covered by that implementation.

16.2 ESCO shall submit three (3) draft copies of the Application for Payment for the City's review seven (7) business days in advance of ESCO submittal of its Application for Payment, as set forth in the EMSA.

16.3 ESCO shall deliver payment applications to the Contracting Officer on or before the 30th day of each month for the Work completed during the prior month. Upon receipt of the payment application City shall promptly review said application and, if found satisfactory, shall pay ESCO the payment application amount minus 10% retainage within thirty (30) days of invoice receipt. In the event City disputes the payment application the City may, within seven (7) business days of receipt, return the incorrect payment application to ESCO for correction, whereupon the date of receipt shall be the date of receipt of the corrected payment application

16.4 The Contracting Officer's approval shall not, however, be construed as a waiver of any rights the City may have including but not limited to correcting any errors as the Contracting Officer may request.

16.5 No Application for Payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the City, shall constitute an acceptance of any Work not in accordance with the ESMA Documents.

16.6 Unless otherwise provided in the EMSA Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the site and, if approved in advance by the City, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the site shall be conditioned upon submission by ESCO of data substantiating ESCO's right to payment as the City may require.

16.7 ESCO shall promptly pay each Subcontractor upon receipt of payment from the City in accordance with the terms of the subcontract agreement, unless otherwise required by law. ESCO shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in similar manner.

16.8 The Contracting Officer may decline to approve payment in whole or in part, to the extent the Contracting Officer reasonably believes that the Work covered by the application for payment has not been completed or the payment is not otherwise owed. If the Contracting Officer does not approve payment in the amount of the Application, the Contracting Officer will notify ESCO of the reasons for such rejection. If ESCO and the Contracting Officer cannot agree on a revised amount, the Contracting Officer shall approve a Certificate for Payment for the undisputed amount.

16.9 When ESCO believes that the deficiencies noted in the Contracting Officer's rejection of payment application have been remedied, ESCO shall submit another application for payment for the disputed amount.

ARTICLE 17. FINAL COMPLETION OF IMPLEMENTATION AND FINAL PAYMENT

17.1 When ESCO believes that all of the Work is fully completed, then ESCO will submit a Certificate of Final Completion to the City. If City agrees that the Work as performed is completed, the City will accept that Work by signing the Certificate of Final Completion and returning it to the ESCO within forty-five (45) days after receipt of the Certificate of Final Completion. If the City determines that the Work is not complete, it shall notify ESCO within forty-five (45) days of receiving the Certificate of Final Completion of the discrepancy or deficiency in the Work that renders such Work incomplete. If the City has not responded to ESCO within such forty-five (45) days of receiving the Certificate of Final Completion, then ESCO shall so notify the City of the expired time and allow it not less than an additional fifteen (15) calendar days to respond. If the City fails to respond within said additional period, then the City will be deemed to have agreed to, signed and returned the Certificate of Final Completion. If City notifies ESCO of a discrepancy or deficiency in the Work, ESCO shall correct the Work to conform to the requirements of the EMSA and resubmit the Certificate of Final Completion to the City.

17.2 As a precondition to ESCO's submitting notice that the Work is ready for final inspection and acceptance, ESCO shall have performed all the Project Closeout requirements, including but not limited to Commissioning Procedures applicable to Final Completion, as set forth in the Specifications/Scope of Work and elsewhere in the ESMA Documents.

17.3 At the Final Completion of the implementation, ESCO shall provide all previously submitted individual ECM Closeout Documents as a single, combined

submittal that is specific to each individual Facility. The format and contents shall be consistent with the ESMA Documents and with industry standard.

17.4 Unless otherwise required by applicable law, neither the final payment nor the retainage shall become due until the ESCO submits to the Contracting Officer (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the City or its property might in any way be responsible, have been paid or otherwise satisfied, (2) lien waivers from ESCO's subcontractors, (3) a representation that the Work has been completed consistent with the Exhibit A, (4) submission of a current Certificate of Insurance evidencing continuing coverage as required by the EMSA, and (5) if reasonably required by the City, other data establishing payment or satisfaction of all such obligations, arising out of the Contract.

ARTICLE 18. SAFETY PRECAUTIONS AND PROGRAMS

18.1 ESCO shall comply with all applicable federal, state and municipal laws and regulations that regulate the health and safety of its workers while providing the Work, and shall further take such measures as required by those laws and regulations to prevent injury and accidents to other persons on, about or adjacent to the site of the Work.

18.2 ESCO shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to: (1) all employees on the Work and all other persons who may be affected thereby; (2) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of ESCO or any of its Subcontractors or Sub-subcontractors; and (3) other neighboring property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

ARTICLE 19. EMERGENCIES

19.1 In any emergency affecting the safety of persons or property, ESCO shall act, at its discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by ESCO on account of emergency work shall be determined as provided as otherwise set forth in the EMSA Documents.

ARTICLE 20. UNCOVERING AND CORRECTION OF WORK

20.1 ESCO shall as part of the each progress meetings keep the Contracting Officer notified about the progress of the Work allowing the Contracting Officer a reasonable opportunity to inspect the Work prior to it being covered. The weekly progress meetings shall specifically review what Work may be covered that week. If ESCO covers the Work contrary to the request of the Contracting Officer to inspect then the Work at issue must, if required in writing by the Contracting Officer, be uncovered for observation and the covering shall be replaced at ESCO's expense.

20.2 ESCO shall promptly correct all Work rejected by the Contracting Officer as defective or as failing to conform to the EMSA Documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. ESCO shall bear all costs of correcting such rejected Work.

ARTICLE 21. LIMITATION OF ACTION

21.1 No time period set forth in the EMSA Documents is meant or shall be interpreted to limit the statute of limitations for bringing an action against ESCO.

END GENERAL CONDITIONS

Bid No. RFQ No.

Contract No.

ENERGY MANAGEMENT SERVICES AGREEMENT

This ENERGY MANAGEMENT SERVICES AGREEMENT (the “EMSA” or “Agreement”) made this ____ day of _____, 202__, by and between the City of Worcester, a municipal corporation duly established under the laws of the Commonwealth of Massachusetts, with an address of 455 Main Street, Worcester, Massachusetts, 01608, (“City”) and _____ (“ESCO”) a _____ corporation with its principal place of business at _____. The City and ESCO may jointly be referred to as “Parties” and singly as “Party”.

W I T N E S S E T H

WHEREAS, the City, acting through its Department of Sustainability and Resilience and its Department of Administration and Finance, Purchasing Division, desires to obtain energy management services pursuant to G.L. c. 25A, sec. 11I, to implement certain energy and water savings at certain City owned Facilities (defined below);

WHEREAS, ESCO represents that it conducted an Investment Grade Audit in compliance with the IGA Agreement and with applicable law;

WHEREAS, as stated in the IGA Report, ESCO represents that it has determined that certain energy and water savings measures at certain Facilities are economically and technically feasible and that said savings are sufficient to cover all costs, or a substantial portion, as the City has defined;

WHEREAS, ESCO represents that it has the experience, capacity and technical and energy management capabilities to the implementation, including but not limited to the design, engineering, furnishing, procuring, installing, commissioning, measuring, verifying, guaranteeing, maintenance, and monitoring of energy and water saving measures, of the City's Facilities;

WHEREAS, relying on ESCO’s representations, the City accepted the IGA Report dated _____, and has determined that it wishes to enter into this EMSA with ESCO to implement the particular energy and water saving measures set forth in Exhibit A of this EMSA;

NOW THEREFORE, in consideration of the foregoing recitals and mutual covenants, agreements and provisions contained herein, the Parties agree as follows:

1. EMSA DOCUMENTS

1.1 The implementation(s) pursuant to this EMSA shall be in accordance with the following documents, all of which are attached hereto and incorporated herein as an integral part of this EMSA (hereinafter periodically and collectively referred to as "the EMSA Documents").

- .1 EMSA
- .2 General Conditions
- .3 Supplementary General Conditions
- .4 Exhibit A: Specifications
 - .4.1 Attachment A-1: Description of the Facilities
 - .4.2 Attachment A-2: Drawings
 - .4.3 Attachment A-3: Calculations for Allowable Costs
 - .4.4 Attachment A-4: Commissioning/Testing Requirements
- .5 Exhibit B: Energy Guarantee
 - .5.1 Attachment B-1: Measurement and Verification Plan
 - .5.1.1 *Rider B-1-A*: ECMs by Option A or B
 - .5.1.2 *Rider B-1-B*: M&V Detailed Matrix
 - .5.1.3 *Rider B-1-C*: M&V Options Protocol
 - .5.1.4 *Rider B-1-D*: Sampling Protocol
 - .5.1.5 *Rider B-1-E*: Historical List of Modifications
 - .5.1.6 *Rider B-1-F*: Annual Savings Report
 - .5.2 Attachment B-2: Schedule of Savings
 - .5.2.1 *Rider B-2-A*: Calculations
 - .5.3 Attachment 3: Interactive Spreadsheet
 - .5.4 Attachment 4: Baseline Data and Projections
 - Table B-4-1 - Summary of Baseline Adjustments
 - Table B-4-2 - Utility Rate Schedules
 - .5.4.1 *Rider B-4-A*: Baseline Energy Tab (a portion from Interactive Spreadsheet)
 - .5.4.2 *Rider B-4-B*: Standard of Comfort
 - .5.5 Attachment 5: Quarterly and Annual Report Requirements
 - .5.6 Attachment 6: Quarterly M&V Fee Breakdown
 - .5.7 Attachment 7: Operational Parameters
 - .5.8 Attachment 8: City Responsibilities
 - .5.9 Attachment 9: MVEGA Bonds and Certificates
- .6 Exhibit C: Payment Schedule
 - .6.1 Attachment C-1: Schedule of Contract Values
- .7 Exhibit D: Bonds, Wage Rates, and Certificates
 - .7.1 Attachment D-1: Payment and Performance Bonds
 - .7.2 Attachment D-2: Prevailing Wage Rates
 - D 2-1 - Massachusetts Prevailing Wage Rates
 - D 2-2 - Davis-Bacon Wage Rates
 - D 2-3 – Buy American Certification
 - .7.3 Attachment D-3: Certificates of Insurance
 - .7.4 Attachment D-4: Certificate of Authority
 - .7.5 Attachment D-5: Tax Certificate
 - .7.6 Attachment D-6: Forms of Certificates
 - Application for Payment
 - Change Order
 - Certificate of ECM Commissioning
 - Certificate of Substantial Completion

Certificate of Final Completion

- .8 Exhibit E: Equipment and Material Warranties
- .9 Exhibit F: O&M Manual
- .10 Exhibit G: Installation Schedule
- .11 Exhibit H: Schedule of Savings
 - H.11.1: Attachment I-1: Calculations
- .12 Exhibit J: Maintenance and Service Agreement
 - Attachment J-1: Scope of Services
 - Attachment J-2: MSA Fee Breakdown

In the event of any conflict among the EMSA Documents, the EMSA Documents shall be construed according to the following order of priority:

- 1. ESMA
- 2. General Conditions
- 3. Supplementary Conditions, if any
- 4. Scope of Work
- 5. Drawings

1.2 The EMSA Documents are to be read collectively and complementary to one another; any requirement under one shall be as binding as if required by all. If any requirement or standard including definitions set forth herein is inconsistent with any requirement or standard set forth elsewhere in this EMSA or in any exhibit, attachment or appendix then the requirement or standard most favorable to the City shall prevail. In the event of any irreconcilable conflict between this EMSA, the other EMSA Documents and any applicable Massachusetts law, the applicable statutory provisions shall prevail. The EMSA Documents set forth the entire legal relationship and requirements of the Parties, as well as the technical requirements of the Project, and as such constitute this EMSA. Notwithstanding any provision to the contrary, no terms or conditions, hyperlinked, or referenced documents found on ESCO's response to the RFQ, or either Parties' quotes, invoices, purchase orders, or similar "boilerplate" documents shall be deemed applicable to or incorporated by reference into this ESMA.

1.3 The IGA Report shall be incorporated into the EMSA Documents and made a part hereof upon its completion and acceptance by the City. The IGA Report will establish the framework on which the implementation is based. To the full extent allowed by law, the City may, in its sole discretion, phase the implementation, including phasing engineering and design work applicable to each phase. ESCO acknowledges that the City will likely not elect to implement all ECMs recommended by ESCO.

2. **DEFINITIONS**

Except as otherwise defined herein, the definitions set forth in 225 CMR 19.02 shall apply to this EMSA. Additionally, the following terms shall have the meaning as set forth in G.L. c. 25A, sec. 3, (a) Minor Informalities, (b) Qualified Provider, and (c) Responsible (in the context of the selection of a proposer). The terms listed in this Section 2 shall have the meaning set forth. Other terms may be defined in the body of the EMSA. All other terms shall have their

usual and common meaning in light of the purpose of this EMSA and the context of their use.

- 2.1 Annual Guaranteed Savings – the measured & verified savings, the Stipulated Savings and Operational Cost Avoidance that occur in any annual period of the Performance Guarantee Phase or Term. ESCO shall promptly make payment for any shortfall. The Annual Guaranteed Savings shall be as further described in Exhibit B, the Energy Guarantee of the applicable implementation.
- 2.2 Adjusted Energy Baseline. An energy baseline adjusted to compensate for factors that would have changed energy consumption in the absence of any energy conservation measures, such as increases or decreases in conditioned or illuminated space, changes in occupancy or building use, Facility renovation, or extremes in weather. Adjustments shall be made following the most recent FEMP standards and subject to the City's approval.
- 2.3 Baseline – the baseline is a calculation or measure of each type of energy consumed (in terms of kWh, kW, therms, gallons or cords, as applicable) and, if the City so determines, operational expenditures in each of the Facilities, together constituting the usage and occupancy of the Facilities, systems, or equipment operations and characteristics, and environmental conditions that are included in the premises prior to the installation of ECMs. In the City's discretion and upon its instruction, which shall be given by means of a Notice to Proceed applicable to the EMSA implementation (by phase, as applicable), ESCO shall include calculation of operational expenditures, making operational savings applicable. The Baseline Period is the period of time coordinated with the Baseline to allow the comparison of a Guarantee Year against the Baseline. Notwithstanding any provision to the contrary, the definition shall be consistent with the applicable requirements of the most recent industry standards set forth by the FEMP as of the date of this EMSA and are subject to the City's discretion and approval.
- 2.4 Certificate of ECM Commissioning – the documentation by which the ESCO warrants to the City that (1) the implementation of a particular ECM is complete, (2) is commissioned, (3) all required training, O&M Manuals, as-built documentation and manufacturer warranties and/or extended warranties are provided, and (4) title and risk of loss has transferred to the City. Further, such Certificate may be issued only after the City has agreed that it is receiving full beneficial use of said ECM. Said Certificate and the City's agreement thereto shall not alter ESCO's obligations following its issuance, including but not limited to the warranty, measurement & verification, and maintenance, if applicable.
- 2.5 Commissioning. the process for achieving, verifying, and documenting the performance of the energy and water conservation measures to meet the operational capabilities of the Project as designed, including, for example, documentation of checklists, systematic functional testing of equipment and systems, oversight of training for operations and maintenance staff, and follow-up on any warranty issues and confirmation of compliance with FEMP standards.
- 2.6 Contracting Officer - the City official identified herein, or a designee, for the

performance of particular functions and responsibilities set forth under this EMSA. Anything to the contrary notwithstanding, the City's contract compliance officer is and shall be the designee of the Contracting Officer for all notices, demands, sanctions and other communications relative to such officer's administration, monitoring and enforcement of the City's Minority/Women Enterprise Program and the Responsible Employer Ordinance. Each and every written communication from the contract compliance officer delivered directly to the ESCO's authorized representative (project manager on site) shall be validly delivered notwithstanding any other contrary provision of this EMSA or other EMSA Documents.

- 2.7 Energy Conservation Measure (ECM) — measures involving modifications of Facility maintenance and/or operating procedures and installations therein, which are designed to reduce energy consumption in such Facility, or the installation and/or modification of an installation in a Facility which is primarily intended to reduce energy consumption. As further defined, installations shall mean the provision of equipment or systems, or modification of equipment or systems as described in Exhibit A, for the purpose of reducing utility (energy, water, etc.) consumption and demand and costs and/or non-utility (selected O&M, operational) costs. Unless otherwise requested by the City, each ECM shall contain any and all aspects of a particular system so that when an ECM is fully implemented, the particular system will be fully operational
- 2.8 Energy Savings – measured reduction in fuel, energy, operating or maintenance costs resulting from the implementation of energy conservation measures; provided, however, that any payback analysis to evaluate the energy savings of a geothermal energy system to provide heating, cooling or water heating over its expected lifespan shall include gas and electric consumption savings, maintenance savings and shall use an average escalation rate based on the most recent information for gas and electric rates compiled by the Energy Information Administration of the United States Department of Energy. As further defined, energy savings shall be determined by comparing the post implementation energy consumption and demand of the ECM to the adjusted/normalized baseline (both in terms of kWh, kW, therms, gallons or cords). The baseline adjustments shall be in accordance with data & projections, including but not limited to compliance with the most recent (as of the date of this EMSA) standard established by FEMP and subject to approval by the City. Operational savings shall be defined as the actual costs avoided post-implementation of the ECM.
- 2.9 Escalation Factor – is the stipulated annual increase of ____ percent to be applied to the Baseline Utility Rate. The Escalator reflects the anticipated increase in the cost of electricity, gas, propane and oil, as applicable and further set forth in Exhibit H, Schedule of Savings and is based on US Bureau of Labor derived CPI average for the past 20 years https://www.bls.gov/regions/new-england/data/consumerpriceindex_northeast_table.htm.
- 2.10 Facility – the City owned or operated buildings, structures, sites, energy and water consuming locations and equipment, and public ways where an ECM is or may be implemented, a list of which is attached hereto at Exhibit A, Attachment A-1.

- 2.11 Final Completion Date -- the date on which the City accepts the ESCO's written representation and warranty that the Work is complete and in full compliance with the requirements of the EMSA Documents applicable to the implementation phase, including compliance with all applicable codes and FEMP standards. ESCO's one-year warranty begins on the Final Completion date.
- 2.12 Guaranteed Savings – in addition to that set forth in 225 CMR 19.02, ESCO guarantees to City that the identified Facilities will realize the total Energy Savings and Operational Cost Avoidance through the combined value of all ECMs over the Guarantee Term of the applicable implementation. The Guaranteed Savings shall also be referred to as the Energy Guarantee, which shall be further set forth in Exhibit B. In the event that the City elects multiple implementation phases, the Guaranteed Savings shall be determined and applied by implementation phase. The savings shall be determined on an annual basis for each year of the Term of the applicable implementation and such guarantee shall apply on an annual basis. Total Guarantee Year Savings shall be reconciled on an annual basis and shall not be cumulative. ESCO shall make payment to the City for any shortfall in realized or verified savings on an annual basis. The Guaranteed Savings shall not exceed the total installation, support services, and financing costs for the Work under the applicable implementation phase. The Energy Guarantee shall commence on the first day of the month following the City's acceptance of all ECM's relating to the applicable implementation phase. Notwithstanding any provision to the contrary, the definition shall be consistent with the applicable requirements of the most recent (as of the date of this EMSA) industry standards set forth by FEMP.
- 2.13 Implementation(s) – regarding any EMSA, shall mean the Work commencing with the Parties' execution of the EMSA through Final Completion. In the event the City decides to proceed with the Project in phases, there may be more than one Implementation.
- 2.14 Investment Grade Audit (IGA) – shall mean that set forth in the IGA Agreement.
- 2.15 Project – means all Work involved for the audit phase, implementation phase and guarantee phase, as well as any Maintenance/Service Agreement. ESCO shall have single point responsibility and shall provide and guarantee a fully complete, turnkey result.
- 2.16 Substantial Completion Date – The date on which the City confirms that the Work relating to a particular implementation phase has been substantially completed (as such term is further set forth in the General Conditions), in accordance with the EMSA Documents for that implementation phase, and to the City's satisfaction as evidenced by the City's acceptance of the ESCO's written representation and warranty that the Work required is substantially complete. Notwithstanding any provision to the contrary and to the full extent allowed by law, use of a Facility shall not be determinative of substantial completion. Payment of applicable retainage is pursuant to Sections 4.17 and 5.7, below. Additionally, notwithstanding any provision to the contrary, the City's acceptance of substantial completion shall not be constructively granted.
- 2.17 Total Guarantee Year Savings - is defined as the summation of avoided Energy and

Operational Costs realized by Facilities in each Guarantee Year as a result of the Retrofit and Support Services provided by ESCO. Any excess savings in any Guarantee Year shall accrue directly to the benefit of the City and shall not be used by ESCO in any future guarantee years (for example, to offset any shortfalls in savings). Notwithstanding any provision to the contrary, the definition shall be consistent with the applicable requirements of the most recent (as of the date of this EMSA) industry standards set forth by the FEMP.

- 2.18 Work - all work and services for the Project, including engineering, design and architectural, supervision and related services, and all construction (may also be referred to as implementation or installation), materials, supplies, labor, supervision, tools and equipment and the use thereof, commissioning, measurement and verification, evaluation and all related services and work to each to be provided by the ESCO as applicable to fulfill its obligations in accordance with this EMSA, and as may normally be incidental to such implementation and professional services necessary to implement the ECMs.

3. EMSA TERM.

ESCO shall commence Work within ten (10) calendar days of the City's Notice to Proceed (NTP) and in a manner that is consistent with the Installation Schedule, Exhibit G. This EMSA shall not exceed a term of _____ (30) years, or such shorter time as required by law or determined by the City. Time is of the essence for this EMSA.

4. ESCO'S IMPLEMENTATION PERFORMANCE

4.1 Project Summary.

4.1.1 IGA Agreement. This Project shall commence with the IGA Agreement during which the ESCO shall perform the IGA in compliance with the Audit Scope of Work and the applicable terms and conditions therein, producing and submitting to the City a completed report. Upon the City's acceptance, said report may be referred to as the "IGA Report". Following its receipt and review of the IGA Report, the City may notify the ESCO that it wishes to negotiate to implement all or any portion of the recommended ECMs in the IGA. If such negotiations are successful, the Parties will enter into this EMSA to furnish implementation of the agreed ECMs and the ESCO shall perform the Work set forth in the EMSA, including any amendments or change orders thereto. As further set forth in the IGA Agreement, the City may elect to phase the IGA by identified subgroup, potentially resulting in more than one IGA Report.

4.1.2 EMSA. The EMSA shall include the EMSA Documents identified in Section 1.1 above. In compliance with this EMSA, ESCO shall implement, guarantee, monitor, and maintain those ECMs selected by the City from the ECMs included in the applicable IGA Report. In light of the large scale of the potential work, the City may, in its sole discretion, determine that the implementation will be conducted in subsets (may also be referred to as "phases") that will be formalized by written amendment.

4.1.3 Energy Guarantee. The energy guarantee (which will include the M&V services and may

be referred to as the “Measurement & Verification and Energy Guarantee Agreement or “MVEGA”) will commence following the applicable implementation, including but not limited to ESCO’s commissioning and the City’s acceptance. The first year of the Energy Guarantee shall run concurrently with the one year warranty period (or longer, as may be applicable). The period during which the MVEGA is in effect may be referred to as the “Guarantee Phase”. The Guaranteed Savings may be modified (by amendment or change order) to reflect the impact of added or removed ECMs over the course of the Project. During the Guarantee Term, the fully implemented ECMs will be monitored and tested pursuant to the specific M&V Plan. Methods for measurement and verification of Guaranteed Savings shall conform to the most recent (as of the date of this EMSA) standards established by the FEMP of the United States Department of Energy. An M&V Plan and an Energy Guarantee shall be included with each EMSA phase (as applicable). ESCO shall guarantee that the City will realize the Guaranteed Savings as a result of the implemented ECMs. The MVEGA, including terms and conditions applicable to such Guaranteed Savings, is set forth in Exhibit B, Energy Guarantee and Exhibit H, Schedule of Savings.

4.2 Performance and Supervision

4.2.1 ESCO shall perform the Work in accordance with the applicable terms and conditions in the EMSA Documents, including but not limited to the Scope of Work, Exhibit A and other Exhibits, Attachments and Riders as set forth herein. ESCO further shall perform such Work in accordance with the attached Exhibit G, the Installation Schedule. ESCO shall obtain and maintain all the construction permits, notices, supplies, materials and equipment, perform all the labor, services, coordination, scheduling and supervision, necessary and proper to undertake and complete the Work.

Before commencing the Work, ESCO shall submit submittals and samples required by this EMSA, including but not limited to those set forth in Exhibit A and in Section 6 of the General Conditions, for acceptance by the Contracting Officer. The Schedule of Operations shall show the methods and order of operations that the ESCO proposes to use. The acceptance of the Schedule of Operations by the Contracting Officer shall not relieve ESCO from any responsibility for means, methods or order of operations.

It is the essence of this EMSA that the implemented ECMs achieve the maximum conservation of energy and water practical within the pertinent regulatory, operational or physical constraints and are also fully operational and functional to achieve their intended purpose.

4.2.2 ESCO shall supervise and direct the Work, using its best skill and attention. It shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. ESCO shall give its personal attention constantly to the faithful execution of the Work and shall keep the same under its personal control. ESCO shall not make any modifications to any Facility or any system without the City’s prior written approval in the form of a duly executed amendment to this EMSA. For clarity, Exhibit A may only be changed by a duly executed amendment to this EMSA. ESCO shall not assign the Work or any part thereof without the previous written consent of the City, and as to subcontracts, in compliance with Section 4.19. ESCO shall neither legally nor equitably assign any of the monies payable under this EMSA

nor any claim thereto unless by and with the written consent of the Contracting Officer and the City Treasurer.

4.2.3 The Parties shall respond to all proposed revisions and related requests on a timely basis to facilitate the expeditious design, implementation and monitoring of such conservation measures.

4.2.4 ESCO shall provide the City with a full and meaningful opportunity to inspect the Work, as further set forth in the General Conditions. The City shall have the right to inspect the construction site, including but not limited to assessing the condition and operation of material and equipment installed. ESCO shall maintain complete inspection records and make them available to the City. All Work is subject to inspection and testing at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the EMSA.

4.3 Utility Rebates. As timely as possible, ESCO shall notify the City, in writing of available utility and other third-party rebates/incentives identified by ESCO and, if requested by the City, shall assist the City in its application or shall apply for said utility or third-party rebates/incentives on behalf of the City. ESCO does not guarantee the dollar amount of incentive or rebate. ESCO shall provide the City with copies of utility incentive offer letters within ten (10) days of receipt and with utility incentive and rebate applications. All utility or third-party rebates shall be for the benefit of and payable to the City. Further, the City shall own, and may assign or sell, in its sole discretion, all right, title, and interest to any incentives as a result, and shall receive the benefit of all associated or related revenues (including, if favorable to the City, of waste and hazardous material disposal). Said incentives will not be included within any calculation of savings or otherwise reduce the ESCO's responsibility for achieving the Guaranteed Savings. City will provide reasonable support to ESCO for its pursuit of said incentives.

4.4 Legal Compliance. ESCO shall comply with all applicable federal, Massachusetts (including but not limited to G.L. c. 25A, sec. 11I), and local laws and regulations relating to the Work. In no event does the City waive any of the applicable immunity, limitation of liability, or other protections granted it by federal or Massachusetts law, including but not limited to G.L. c. 258.

4.4.1 Without limiting the generality of the foregoing, it shall be a material breach of this EMSA if ESCO fails at any time to adhere to the provision of §1A(e)(9) of chapter nine of the Revised Ordinances of the City by limiting its on-site noise producing construction and related work to the hours specified by said Ordinance. ESCO and its employees, subcontractors and agents shall comply with local laws and orders regarding activities on any City property, including but not limited to that prohibiting use of tobacco, marijuana, and alcohol.

4.4.2 Without limiting the generality of the foregoing, ESCO represents that it is familiar with and shall ensure that its subcontractor(s) satisfy(ies) the requirements of relevant utilities, including, for example, Massachusetts Electric Company (dba NGrid). ESCO may be required to obtain and maintain additional insurance and/or bonds incident to any license or other agreement between City and NGrid, or any permit or approval from NGrid related to the Work. Any required actual additional cost (without markup) may be added to the EMSA Fee by changed

order.

4.5 Design/Engineering Development

4.5.1 ECM Selection. In its sole discretion, the City may elect to proceed with all or any portion of the ECMs proposed or recommended by the ESCO by the IGA Report. ESCO shall furnish the Work that is approved by the City for implementation and made a part of Exhibit A, which shall include, but not be limited to all related specifications, drawings, and plans.

The City may, in its sole discretion, elect to proceed with certain ECMs and/or Facilities on a phased basis if it determines that proceeding with all of the selected improvements simultaneously is not in the best interests of the City. In such an event, the Parties will negotiate one or more amendments to this EMSA, including price, scope and schedule, and the ESCO will perform the applicable Work to implement each ECMs. Said amendment(s) may also require that ESCO provide certain maintenance and monitoring & verification services to support the Energy Guarantee. Notwithstanding any provision to the contrary, nothing in this EMSA (or the IGA Agreement) shall be construed to obligate the City to phase the EMSA implementation, to enter into any amendment(s), or to proceed with any particular number or value of ECMs. The Parties anticipate that any amendment to phase this EMSA will incorporate the terms and conditions of this EMSA and other relevant EMSA Documents.

4.5.2 Design. In accordance with the Installation Schedule and the procedures set forth in this Section 4, ESCO shall furnish all professional services, including but not limited to engineering, architectural, and design services, for all ECMs and/or Facilities selected by the City from the relevant IGA Report for implementation. This Work shall finalize the Design furnished in the relevant IGA Report in preparation for implementation. Such professional services shall include preparation of the specifications, design drawings, plans, submittals, and other documents and supporting material (collectively for this Section 4, “Design”) applicable to the implementation of the selected ECMs and/or Facilities. Said Design shall include all architectural, structural, mechanical and electrical systems, materials and such other elements that may be applicable. **All mechanical, electrical, and structural design drawings shall be stamped by a Massachusetts registered professional engineer for each corresponding trade if applicable.**

4.5.3 Design NTP. Upon receipt of a notice to proceed from the City for the preparation of the Design, ESCO shall proceed as follows:

(a) ESCO shall provide the relevant Design documents at 75% complete for City’s approval. With confirmed receipt, City shall have sixty (60) days from the City’s receipt to review and approve, conditionally approve, or reject the 75% Design and to provide comments that ESCO shall address in the 100% Design. Any 75% Design about which City does not either approve, conditionally approve, or reject within said time period, including specific reasons for such rejection, shall be deemed accepted by City.

(b) Upon City’s approval of the 75% Design, ESCO shall promptly proceed to complete its Design so that it is one hundred (100%) percent (“100% Design”). Without limiting those documents that are required elsewhere in this EMSA, the 100% Design shall include detailed

specifications, engineering and design drawings and plans, payment schedule, including the schedule of values, and the installation schedule, product specifications and maintenance requirements, warranties, and such other documents as the City may reasonably require, all for the City's consideration. It shall also include Design modifications to appropriately address the City's questions, concerns, and requested changes. ESCO shall separate the cost by ECM (and by Facility, if the City requests) in its Cost Breakdown, so that each separate amount may be added to achieve the total the EMSA Fee for the Work. Upon completion, ESCO shall submit said 100% Design to City for its approval. With confirmed receipt, City shall have thirty (30) days from the City's receipt to review, and approve, conditionally approve, or reject the 100% Design. In addressing the reasons for conditional acceptance or rejection, ESCO shall expeditiously, and in any event not more than fifteen (15) calendar days, provide City revised Designs. With confirmed receipt, City shall have fifteen (15) calendar days to review and reject or approve the revised 100% Design. Any such revised 100% Design about which City does not respond in writing within said time period with either its approval or rejection, including specific reasons for such rejection, ESCO shall so notify the City of the expired time and allow it not less than an additional ten (10) calendar days to cure. If the City fails to cure within said additional period, the 100% Design shall be deemed approved by City.

Without limiting the generality of the foregoing, ESCO's Project Schedule shall show the order of operations that ESCO proposes to use and shall establish the schedule for commencement and completion of the Work, including but not limited to each ECM and Facility, as well as commissioning and training. It shall further show the location used for equipment and unincorporated materials. The acceptance of the Project Schedule by the Contracting Officer shall not be construed as relieving ESCO from any responsibility pursuant to this EMSA.

(c) Upon the City's written approval, each 100% Design shall automatically be incorporated and made a part of this EMSA (once City approves, 100% Design may be referred to as "Final Design"). ESCO shall proceed with the Work, in accordance with the Final Design.

4.5.4 City May Remove Any ECM. Notwithstanding any provision to the contrary, City is not obligated to proceed with any ECM or Facility, or issue any Design notice to proceed. City may remove any ECM/Facility or portion thereof from this EMSA at any time in its sole discretion.

(a) For any ECM/Facility removed prior to City's issuance of a notice to proceed with the Design services, City's removal of that ECM/Facility (or portion thereof) shall be without cost, liability or damages of any kind or nature. In the event of such a removal, the EMSA Fee shall be reduced by amendment in an amount corresponding to that set forth in the Cost Breakdown and corresponding modifications to the EMSA Documents.

(b) If City removes an ECM/Facility (or portion thereof) from this EMSA after issuing a notice to proceed for Design Work, City shall pay ESCO only for the reasonable cost of the Work satisfactorily performed for that ECM prior to the City's notice of its removal. In such an instance, the EMSA Fee shall be reduced by amendment in an amount based on that set forth in the Cost Breakdown, prorated to reflect the Work actually performed, and the

corresponding modifications to the EMSA Documents. City shall be liable for no other cost, liability or damages of any kind or nature for such removal.

4.5.5 Competitive Pricing. ESCO represents to City that it has conducted or will, prior to selection of any subcontractor or supplier, conduct a competitive process, including an open book pricing review, in order to obtain competitive pricing for the Work, and that ESCO has submitted to the City the costs, per ECM (and per Facility if the City requests). Unless otherwise agreed by City, the term “competitive pricing” shall mean that a minimum of three written proposals were obtained by ESCO from qualified subcontractors or suppliers, as applicable. ESCO’s submittal of its competitive process shall include a detailed breakdown (via excel or similar) able to be manipulated by City. Without limiting the requirements for such detailed breakdown, the detail and flexibility shall be sufficient to allow City (and its consultants) to efficiently conduct a comprehensive “de-scoping” process. Additionally, ESCO shall provide additional detail upon request:

- (a) ESCO’s submittal to City shall include but not be limited to a detailed breakdown of each of the costs comprising the quoted subcontract costs, labor, equipment, products, materials and supply costs, and ESCO’s costs (including e.g., fees and markup); and
- (b) If ESCO intends to provide a portion or all of the construction using its own forces, it shall describe in detail the process by which it will assure competitive construction costs. Such detail shall include, but not be limited to, hourly wages and all of the direct expenses associated with each ESCO employee (which, for clarity, shall not include ESCO’s contractors, subcontractors, consultants, agents or their respective officers or employees). None of ESCO’s burden (overhead, markup, etc.) expenses shall be included.

For the purposes of clarifying ESCO’s markup, the following categories will apply; design & specifications, cost of risk, construction management fees, hazardous waste administration, training, other Project costs (bonds, permits, commissioning, warranties), M&V, general requirements, and profit.

4.5.6 Notice to Proceed. ESCO shall commence Work within **ten (10) days** of the City sending ESCO a Notice to Proceed. ESCO shall complete Work as set forth in the Installation Schedule. Extension of dates to commence or complete Work is at the sole discretion of the Owner.

4.5.7 Performance Standards. In addition to and without limiting or waiving ESCO’s responsibilities and obligations otherwise set forth in this EMSA, the Final Design shall conform to the following performance standards and criteria:

- (a) Fully comply with any and all applicable statutory, regulatory, code requirements in effect (or enacted) as of the EMSA, as amended, for each applicable phase;
- (b) Save energy and water in the amounts set forth in the Project Cost and Savings (Attachment D);
- (c) Satisfy the Standards of Comfort (Section 4.5.8);
- (d) Are fully integrated, operational and functioning equipment and systems with City’s existing equipment and systems. ESCO shall not cause damage to, deterioration of,

interference with or hindrance with, diminishment of, or reduction in, the functionality of any existing equipment or system or other property of the City;

- (e) The ECMs installed by ESCO shall not substantially increase the reasonable costs to operate and maintain City's existing equipment and;
- (f) All equipment, parts, materials and components shall be new, unused, undamaged, and of recent manufacture.

4.5.8 Standards of Service and Comfort. The following Facility performance requirements of service and comfort shall apply to this EMSA:

Type of Service	Environmental Requirement
a) Heating	
b) 1) Occupied	70° F
2) Unoccupied	55° F
3) Storage	55° F
c) Cooling	
1) Occupied	72-76° F
d) Hot Water Heaters	140° F (Must meet 248 CMR, Board of State Examiners Plumbers and Gasfitters)
e) Hot Water Distribution	110°F (Maximum)
f) Ventilation	Within Code at all times
g) Lighting	Within code at all times

4.5.9 ESCO shall be responsible for determining that all materials furnished for the Work meet all requirements of the EMSA Documents. The Contracting Officer may require ESCO to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the Contracting Officer, would lead to a reasonable certainty that any material used, or proposed to be used, in the Work meets the requirements of the EMSA Documents. All such data shall be furnished at ESCO's expense.

4.6 Change in Law. ESCO represents that the EMSA Fee is calculated based on laws in existence (either in effect or enacted with a pending effective date) as of the date the EMSA (or any amendment reflecting phased work) is executed. Any material changes in or to applicable laws directly affecting the cost of the Work that occurs after execution of the EMSA (or amendment reflecting phased work) and prior to Final Completion shall be the responsibility (or benefit) of City and shall entitle ESCO (or the City, in the event of a reduction in cost) to an equitable adjustment in the price and schedule. Notwithstanding the above, the requirements regarding prevailing wage rates applicable to this EMSA are as set forth in Section 4.20 (last

paragraph).

4.7 Existing City Systems. ESCO shall perform the Work in such a manner as not to harm the structural integrity or operating systems of any Facility and shall immediately repair and restore any damage caused by the Work at ESCO's expense. ESCO shall repair and restore such damage with materials of the same or similar quality and reasonably acceptable to the City.

4.8 City to Occupy Facilities During Implementation. The Parties anticipate and expect that the Facilities will be occupied during this EMSA, including but not limited to during implementation(s). ESCO shall not create or allow to continue any condition deemed to endanger health or safety. If such a condition exists, the City shall have the right to exercise any and all remedies available to it, as set forth in this EMSA, and/or as available to it by law and/or equity. ESCO shall complete the Work in accordance with the schedule set forth in Exhibit G. ESCO shall use sufficient personnel and adequate equipment to efficiently complete the Work. All Work shall be coordinated on a Facility by Facility basis with minimum disruption to the function of the Facility and its respective users. ESCO's Work in certain Facilities (e.g., school buildings) will be done primarily on second shifts, weekends and holidays. City will provide ESCO reasonable access to the Facilities during the times Work is planned at no cost to ESCO.

ESCO hereby acknowledges that continuous operation of services, including but not limited to heat, water, domestic hot water, electricity, gas, sanitary facilities, elevators, fire alarms or protections, and access to the Facilities, and to common areas is essential to the City's fulfillment of its operations and functions and is a condition of this EMSA. ESCO shall make every effort to avoid shutdowns other than set forth in Exhibit G. If ESCO needs to interrupt any service to any Facility, any common area, or to the reduce the functionality or reliability of any service (referred to as "Service Interruptions" in this Section) for any period of time other than as scheduled in the Exhibit G in order to address an unforeseeable circumstance and perform the Work, ESCO shall submit a written request to the City, with as much notice as is possible, but in no event less than five (5) business days. The City shall not unreasonably deny ESCO's request. For any Service Interruption, whether scheduled in Exhibit G or otherwise, the ESCO shall provide timely notification to the City and the City will provide technical support regarding any shut down and restart of any affected systems, except for systems being installed by the ESCO. Any and all shutdowns shall be scheduled so as to avoid the need for temporary services. In addition to the procedure set forth above, with respect to fire alarm or other fire protections, ESCO shall notify the Worcester Fire Department of any shutdown of service and when such service is restored, and shall further comply with any applicable permits, licenses or other approvals required. The City shall communicate with occupants on plans to shut down services or access and temporary measures.

4.9 ESCO to Cooperate with City Personnel. ESCO shall cooperate with City's operating and maintenance personnel, shall train said personnel in operation and maintenance of any equipment installed as part of the Work, and shall coordinate the Work on a planned and programmed basis. ESCO shall deliver a preventive maintenance schedule and procedures for any equipment installed as part of the Work. ESCO shall include in its designs, reports, and other deliverables detailed descriptions of any maintenance requirements for equipment included in the Work which require specialized skills, authorization, or certifications beyond that commonly required

to maintain similar equipment.

ESCO shall assign and provide contact information for a primary and at least one secondary liaison who shall serve as the project manager and primary contact for this Project. Said assigned individuals shall be available to the City throughout the Project and shall be knowledgeable and experienced in the areas relevant to the Work. ESCO shall further supply to the City the mobile phone number of no fewer than two assigned responsible persons who may be contacted during non-work hours for emergencies arising in connection with or affecting the Work.

4.10 Keep Site Secure, Safe and Clean. During the term of this EMSA, ESCO is responsible for the security of partially completed and completed Work and for stored materials and equipment until Final Completion. Only materials and equipment intended and necessary for immediate use shall be brought into the Facilities. Equipment and unused materials shall be removed from each Facility by the end of each workday. ESCO shall, at its own expense, keep all work areas clean and free of debris and shall secure the site in a safe condition at the end of each workday. ESCO shall perform its Work in a manner that protects against injury (including death), and against damage to City and third party property (including, e.g., injury and/or damage to passersby, invitees, residents and other members of the public as well as nearby property).

If the use of explosives is necessary for the execution of the Work, ESCO shall take the utmost care not to endanger life and property. Whenever directed, the number and size of the charges shall be reduced. All explosives shall be stored in a secure manner. All such storage places shall be marked clearly "DANGEROUS-EXPLOSIVES", and shall be in the care of competent security personnel at all times. The method of storage and handling explosives and highly inflammable materials shall conform to all the state laws and regulations, as well as any and all local requirements. Without limiting the generality of the above, flammables and combustibles shall be stored only in accordance with Fire Prevention Regulations (527 CMR 1.00-50.00).

The requirements of this Section shall be read harmoniously with the Close Out provisions of Section 4.21 and the General Conditions.

4.11 City's Third Party Contractors. In its sole discretion, the City may enter into contracts for additional work that is outside the scope of EMSA. ESCO shall reasonably cooperate with other contractors and carefully fit its own work to that of other contracts as may be directed by the Contracting Officer. Contracting Officer shall require other contractors to similarly cooperate with ESCO. The ESCO shall not interfere with the performance of work by any other contractor.

Further, to the extent ESCO has access to information of such third party contractors that is marked as or may reasonably be understood to be confidential information, ESCO shall, except as otherwise required by law, use such confidential information only for the purposes related and necessary to ESCO's performance of this EMSA and shall protect such confidential information in the same manner that it protects its own similar confidential information, but in no event using less than a reasonable standard of care.

4.12 City Provided Utilities. Except to the extent otherwise set forth in this EMSA and to the extent City services are available at the relevant location, the City shall provide water, heat, and other utilities used by ESCO during performance of the Work. ESCO shall install and pay for any facilities or modifications not already in existence and that are necessary to access such water, heat, and utilities during the Work. The City shall provide, if available without cost to the City, a mutually satisfactory location or locations for the storage and operation of materials and equipment and the performance of the Work, including a location for staging and mobilization.

4.13 Material and Equipment Installed. City shall make the final determination as to whether any material or equipment installed meets the requirements set forth in the SOW, including but not limited to the Final Design. No substitution of any material or equipment specified shall be made without the written consent of the City in the form of a duly executed amendment to this EMSA, and any such substitution shall be at least equal in quality, finish, durability, serviceability and performance for the purpose intended. ESCO shall install and, when applicable, operate and maintain, or, if specified in the SOW, train City personnel to operate and maintain equipment in a manner that will satisfy the standards of service, and will meet any and all requirements of any and all applicable warranties, standards of comfort (Section 4.5.8), and equipment manufacturers' literature, specifications and instructions. ESCO shall prepare and furnish at least three O&M Manuals that include product data and, which are subject to acceptance by City for all equipment installations at each property.

4.14 Concealed Conditions. To the extent required by law, if ESCO finds conditions during the Work that (a) are concealed physical conditions that were not discoverable by ESCO by its reasonable investigation, including but not limited to any investigation incident to the IGA Agreement, design, or subsequent investigation(s), (b) are conditions that differ materially from those indicated on information provided by the City or any third party, (c) are unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in similar construction activities, and (d) cause an increase in the ESCO's cost of, or time required for, performance of any part of the Work, then such conditions may be deemed "Concealed Physical Conditions". ESCO shall notify City of Concealed Physical Conditions promptly, prior to significantly disturbing the same, and in no event later than five (5) business days after first observing said conditions. If all such requirements are satisfied, ESCO shall submit a written estimate of the material and labor cost increase and time delay. If the City concurs that the conditions are satisfied and approves the cost estimate and/or time delay, City and ESCO shall make an equitable adjustment in the Contract Fee or Time for Performance and Final Completion, or both. Pursuant to Section 4.16, ESCO shall not be entitled to damages for delay or hindrance. In no event shall weather conditions be deemed a Concealed Physical Condition.

4.15 Additional Work. A change order is a written order signed by City and ESCO authorizing a change in the Work, an adjustment in the price, an adjustment to the Energy Guarantee and/or a change to the Installation Schedule, Exhibit G. Upon execution of a change order, ESCO shall perform the Work as defined in said change order. Payment, if applicable, for such additional Work to be made in accordance with this EMSA. The price for amendments and change orders shall be determined in accordance with the pricing methodologies set forth in this EMSA,

including but not limited to the applicable provisions in Exhibit A, Attachment A-3, Calculations for Allowable Costs.

4.16 Delay/Hindrance Damages. If the ESCO is hindered or delayed in the execution of the Work due to City's actions or failure to perform its obligations under this EMSA or to cooperate with the ESCO in the timely completion of the Work and damages are incurred without the ESCO's fault, control or negligence, then the time fixed for completion shall be extended for an equitable period by reason of any of the foregoing causes, as certified by the Contracting Officer. No such extension shall be made unless a claim therefore is presented in writing to the Contracting Officer within three (3) business days of the occurrence of such obstruction or delay. Said extension of time shall be the ESCO's sole remedy. ESCO shall have no claim against the City for damages of any kind on account of such hindrance or delay.

4.17 ECM Acceptance/Commissioning. Implementation of an ECM shall include:

- (a) ESCO shall have satisfactorily and fully completed any and all Work, including that set forth in the Scope of Work, Exhibit A;
- (b) ESCO shall have completed the Commissioning in accordance with the Commissioning Plan;
- (c) ESCO shall have trained City personnel to operate and maintain equipment and materials in a manner that will provide standards of service to meet requirements of this EMSA and fully comply with the applicable equipment manufacturers' warranty;
- (d) ESCO shall have represented in writing to the City that the City has beneficial use of the ECM;
- (e) ESCO shall have submitted to the City any and all special and extended warranties;
- (f) ESCO shall have prepared and furnished at least one (1) hard copy operations and maintenance manual ("O&M Manual") and a searchable electronic version of the same. Said O&M Manual shall include product and equipment data for all installations;
- (g) ESCO shall have submitted to the City other documentation related to the applicable implementation phase, including but not limited to, M&V, operation, maintenance and useful life of the ECM as the City may request;
- (h) ESCO shall have completed all close out requirements, including those set forth in the General Conditions.

ESCO shall notify the City that it has achieved full implementation of an ECM by completing the form of a Certificate of ECM Commissioning and submitting it to the City. Upon receipt and after conducting an inspection of the relevant ECM and determining that the applicable requirements have been satisfied and the Work is otherwise in accordance with this EMSA, the City will accept the ECM or provide ESCO with a detailed punchlist within ten business (10) days of receipt of such Certificate. ESCO shall immediately commence and diligently complete all punchlist items upon receipt from the City, after which ESCO shall restart the procedure set forth in this Section.

The City's acceptance of any ECM shall not constitute Final Completion of the Project, any implementation, or any portion thereof. Said acceptance shall not mark the commencement of the Guarantee Term.

Risk of loss of the applicable ECM, other than loss caused by the ESCO, shall transfer to the City when City has accepted such ECM pursuant to this Section. Upon the City's acceptance, (a) title to the accepted ECM transfers to the City, (b) the one (1) year warranty shall commence as to that ECM, and (c) the City shall release the applicable retainage in accordance with this EMSA, including but not limited to Section 5.7. Such acceptance shall not modify or limit the ESCO's obligation to comply with this EMSA, including but not limited to the SOW and shall not constitute substantial completion of the applicable implementation nor shall it mark the commencement of any Guarantee term.

4.18 Environmental Liability. The term "hazardous material" shall mean any and all substances regulated under RCRA, CERCLA, G.L. c. 21E or by any other applicable federal, Massachusetts or local laws or regulations. The term "oil" shall mean any petroleum or petroleum products. The City shall endeavor to disclose information available to it regarding oil and hazardous material conditions but does not warrant or guarantee the accuracy or completeness of such information.

Except as expressly set forth in this EMSA, ESCO shall not be responsible for remediation of any pre-existing oil or hazardous material condition in the Work areas. However, ESCO shall be solely responsible for and shall properly handle, remove and dispose, including clean up and remediation of any release of any and all oil and hazardous materials brought onto any Facility by the ESCO. Further, ESCO shall be liable for any release, as defined under applicable law, related to a pre-existing condition if such release is caused by ESCO's negligence and the City has provided advance notice of either the presence of a pre-existing condition or that its presence is reasonably suspected. ESCO shall also be liable for any release, as defined under applicable law, of any undisclosed oil or hazardous material(s) condition if such release is incident to the gross negligence or willful misconduct of the ESCO.

ESCO shall immediately notify and fully cooperate with the City if it discovers or reasonably suspects the presence of oil or hazardous material. ESCO shall immediately cease Work at the particular location. The presence of such oil or hazardous materials on any Work site and/or the City's remediation response thereto shall not be deemed a default or breach by the City. As set forth elsewhere in this EMSA, including but not limited to Section 4.16, if ESCO's work is stopped and ESCO is without fault, control or negligence, then the time for completion of the Work will be equitably extended by the amount of time of the Work stoppage, except that the ESCO shall make all reasonable efforts to relocate its forces to other ECMs and maintain the Installation Schedule.

ESCO shall be responsible for proper disposal of construction demolition debris and shall appropriately and fully document its compliance. Without limiting the foregoing, ESCO shall be responsible for proper disposal of all ballast's containing or suspected of containing PCBs and fluorescent lamps containing mercury in compliance with applicable law. Demolition debris may

only be disposed of at a fully licensed and qualified sanitary landfill or DEP/EPA licensed recycling facility. The landfill or recycling facility must be permitted to receive the applicable type of waste. ESCO shall further promptly remove all of its equipment, temporary ESCO's buildings and sheds, fencing once the same is no longer needed,

If friable asbestos is encountered and must be disturbed during the course of this EMSA, ESCO shall notify the City immediately. All work in the affected area shall cease until the Parties agree upon a remediation plan. Said activities shall not affect the savings allocation, but an equitable extension of the completion date may be granted. ESCO shall take notice of all available asbestos studies and other information provided by the City.

If ESCO's Work involves the survey, investigation and/or removal of existing hazardous materials, the drafting of specifications, or other EMSA Documents in connection with the removal of hazardous materials, those services shall be performed by a subcontractor licensed and insured for relevant hazardous materials removal/abatement. Said subcontractor shall be engaged by the ESCO or its subcontractor under a written agreement. Further, ESCO shall require that such subcontractor carry a liability insurance policy(ies) not less than the insurance ESCO typically requires for such work and in no event less than that required of ESCO in Section 12, including but not limited to naming the City as an additional insured.

The indemnification provision, Section 19, shall apply to the fullest extent permitted by law, to any and all obligations, actions, claims or liability of every name, nature, and description arising out of or relating to the ESCO's duties and obligations pursuant to this Section, which shall survive the termination of this EMSA.

Notwithstanding any provision to the contrary, the City may, in its sole discretion, remove one or more ECM's and/or Facilities from this EMSA at any time if the presence of oil or hazardous materials is reasonably suspected or discovered, and the EMSA Fee, the Scope of Work and/or the Energy Guarantee shall be equitably adjusted as a result.

4.19 Subcontractors. ESCO may subcontract part of the Work to qualified subcontractors (which term for this Section shall include consultants and vendors) to which the City has no objection, provided ESCO has complied with all other applicable sections of the EMSA Documents (e.g., Section 4.5.5). Prior to execution of any implementation, ESCO shall provide City with a list of subcontractors ESCO intends to use. Within seven (7) business days of receipt of the list of subcontractors, City shall advise ESCO in writing of any objections or concerns City has regarding the subcontractors selected by ESCO.

ESCO shall be responsible for any and all conduct, acts and omissions, whether intentional or unintentional, of its employees, subcontractors, consultants, invitees and their respective agents and employees and all other persons or entities performing portions of the Work, whether directly or indirectly employed or engaged in connection with the execution of this Project. ESCO is solely responsible to make timely payment(s) to any and all of its employees, subcontractors, consultants, and agents and, as set forth in Section 19 below, it shall indemnify the City. By appropriate written contract, ESCO shall require each subcontractor, to the extent of the Work to be performed by said subcontractor, to be bound to ESCO and to

assume toward ESCO all the obligations and responsibilities which ESCO, by these EMSA Documents, assumes toward the City. Each subcontract shall preserve and protect the rights of the City under the EMSA Documents with respect to the Work to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights.

To the full extent allowed by law, ESCO shall include in its subcontract agreements a requirement that its subcontractors provide partial lien waivers as a condition of payment. Without limiting the generality of Section 19, ESCO shall indemnify and defend any claims against City for payment for work performed by ESCO, its subcontractors and lower tier subcontractors, materialmen and suppliers under this EMSA

4.20 Employment. ESCO shall employ qualified, competent workers. If notified by the Contracting Officer in writing that any person engaged upon the work is incompetent, unfaithful, disorderly or otherwise unsatisfactory, then ESCO shall discharge such worker from the Project.

ESCO shall comply with the provisions of G.L. c. 149, Sec. 179A. To the extent allowed by law, in the employment of persons including mechanics, teamsters, chauffeurs and laborers, under this EMSA, ESCO shall ask its subcontractors, insofar as practicable, to endeavor to give preference as follows:

- First: To citizens of the Commonwealth who are residents of the City of Worcester and who have served in the Armed Forces of the United States in time of war and have been honorably discharged therefrom or released from active duty therein, and who are qualified to perform the work to which the employment relates.
- Second: To citizens of the Commonwealth who are residents of the City of Worcester and are qualified to perform the work to which the employment relates.
- Third: To citizens of the Commonwealth who have served in the Armed Forces of the United States in time of war and have been honorably discharged therefrom or released from active duty therein and who are qualified to perform the work to which the employment relates.
- Fourth: To citizens of the Commonwealth generally.
- Fifth: To citizens of the United States.

The foregoing provisions shall not apply to those persons employed in a supervisory capacity. To the extent allowed by law, ESCO will ask its subcontractors, insofar as practicable, to endeavor to give preference to Worcester truckers in hauling materials.

No laborer, worker, mechanic, foreman, or inspector working within the Commonwealth of Massachusetts in the employ of the ESCO, subcontractors, or other persons doing or contracting to do the whole or part of the work contemplated by this EMSA, shall be required or permitted to work more than eight (8) hours in any one (1) calendar day; or more than forty-eight (48) hours in one (1) week, or more than six (6) days in any one (1) week in full compliance with provisions of G.L. c. 149, Sec. 34, except in cases of emergency.

Every employee performing Work covered by the EMSA shall lodge, board and trade where and with whom that employee elects and neither the ESCO nor its agents or employees

shall directly or indirectly require as a condition of employment therein that an employee shall lodge, board or trade at a particular place or with a particular person.

ESCO shall provide and maintain in a neat and sanitary condition such accommodations for the use of its employees as may be necessary to comply with the requirements of the Massachusetts Department of Public Health, local health officials and of other appropriate authorities. The maintenance of all sanitary facilities shall be subject to the laws of the Commonwealth and to the requirements of the Department of Health & Human Services for the City of Worcester. City shall provide ESCO a designated area and utilities hook-ups where ESCO can set up construction trailers and a port-a-potty to be used during the implementation phase.

ESCO shall, before commencing the Work, provide by insurance for the payment of compensation and the furnishing of other benefits under Chapter 152 of the General Laws to all persons employed under the EMSA, and it shall continue such insurance in force and effect during the full term hereof. The City may require ESCO to furnish the City with certificates of insurance as sufficient proof of compliance with the foregoing. Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of the EMSA and shall entitle the City to terminate the EMSA without in any way being liable for damages therefore.

ESCO and its subcontractors shall keep a true and accurate register of all employees covered by G.L. c. 149, sec. 27, including but not limited to mechanics, apprentices, teamsters, chauffeurs and laborers, employed upon the Work contemplated by this EMSA, showing the name, address and occupational classification of each such employee, the hours worked by and the wages paid to each such employee, and shall furnish the Massachusetts Department of Labor Standards, upon its request, a true statement thereof.

Minimum wage rates under the provisions of G.L. c. 149, §26 - §27H, have been determined by the Massachusetts Department of Labor Standards, and ESCO shall pay the applicable rates, as required by law, during the term of the EMSA. The applicable schedule of minimum wage rates, as so determined, is incorporated in the EMSA Documents. ESCO shall not have any claim for extra payment from the City if the actual wages paid to employees on the EMSA exceeds the rates listed on the Schedule. Changes in the prevailing wage rates applicable to this EMSA shall not be considered a change in or to applicable laws affecting the costs of the Work. ESCO shall cause a copy of the Schedule to be kept in a conspicuous place at the Project site pursuant to G.L. c. 149, § 27. If reserve police officers are employed by ESCO, they shall be paid the prevailing wage rate of regular police officers, pursuant to G.L. c. 149, § 34B.

4.21 EMSA Close Out Requirements.

4.21.1 Prior to any final payment for the applicable implementation, and in compliance with the General Conditions, ESCO shall:

- (a) Perform commissioning as set forth in Exhibit A. Without limiting its requirements, said commissioning plan shall include, but not be limited to, the commissioning of any and all equipment furnished by this EMSA and an assessment of the condition of the equipment and

materials installed as part of the Work;

- (b) Conduct a thorough and systematic performance test of each element and total system of the installed equipment detailed in Exhibit A in accordance with the commissioning procedures;
- (c) Conduct the training program described in Exhibit A;
- (d) Prepare a close out report that includes, but is not limited to, O&M Manual (fully searchable electronic and three hardcopies) covering the remaining life of equipment installed, if any changes in technology or procedures affecting the equipment may extend the useful life of the equipment or increase the conservation efficiency, and an overview of new technology or additional conservation measures for the City's consideration;
- (e) Furnish (i) Equipment Submittals and Product Data, (ii) As built drawings, (iii) Final Design drawings, (iv) Manufacturer's warranties, and (v) Commissioning and start-up report and documentation;
- (g) Provide City copies of any and all permits issued for the applicable implementation;
- (h) Provide City current insurance certificates evidencing continuation of coverage required by the EMSA;
- (i) Deliver to City spare parts, extra stock, and similar items;
- (j) Transfer of title to City for equipment and materials;
- (k) Discontinue and remove temporary facilities from the site;
- (l) Remove all of its equipment, temporary ESCO's buildings and sheds, fencing, rubbish and waste material generated by the Work in and about the area that has been worked, and it shall leave the premises and the Work performed all in a neat and proper condition;
- (m) In addition to completing the punch list, complete final cleanup requirements, including touch-up painting and otherwise repair and restore marred and exposed finishes;
- (n) Provide the City fully updated and accurate as-builts for the Work; and
- (o) Furnish such other information and perform such additional closeout tasks as are set forth elsewhere in the ESMA Documents.

ESCO and the Contracting Officer shall perform a walk-through survey of the Facilities covered by the applicable implementation. ESCO shall prepare an assessment of the condition of the equipment and materials installed as part of the Work.

4.21.2 Without limiting other remedies available to the City, City may withhold payment from any Application for Payment to the extent reasonably necessary to protect the City from loss because of:

- (a) defective Work not remedied;
- (b) third party claims filed or reasonable evidence indicating probable filing of such claims;
- (c) failure of ESCO to make payments properly to subcontractors or for labor, materials or equipment;
- (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the EMSA Fee;
- (e) damage to City;
- (f) reasonable evidence that the Work will not be completed within the Project Schedule;
- (g) Persistent failure to carry out the Work in accordance with the EMSA Documents; or

- (h) failure of ESCO or any of its subcontractors, e.g., mechanical trades or electrical trades, to maintain record drawings. ESCO shall check record drawings not less than monthly to ensure such drawings are “up-to-date” and accurate.

City may withhold payment on an Application for Payment where grounds for such withholding (e.g., claim, error, and/or damages) occurred during a prior payment period(s), even if payment for such prior period(s) was made. When the grounds for withholding are removed, payment shall be made for amounts withheld because of them.

4.22 Final Completion. Within sixty (60) days after the Certificate of Substantial Completion is issued, ESCO shall complete all Punch List items and repair, replace or complete all other incomplete and/or unsatisfactory Work, and complete all close out requirements, as set forth at Section 4.21, so that the Project is fully complete. At least thirty (30) days in advance of the scheduled date of Final Completion, ESCO shall meet with the City to assess the progress and remaining work to complete the Scope of Work (“SOW”). If ESCO is unable to complete the SOW within the schedule time remaining then ESCO shall, at the City’s request and without cost to the City, accelerate the Work.

5. Payment

5.1 EMSA Fee. As payment in full for the Work herein, the City shall pay ESCO an amount not to exceed of _____ (\$ _____) (EMSA Fee) in accordance with the procedures set forth herein. Said EMSA Fee shall be payment in full for furnishing all the Work. For clarity and as further set forth in Section 5.5 below, the EMSA Fee includes the IGA Fee and cost of the EMSA warranty, but does not include ECM Measurement and Verification Services furnished over the term of the Energy Guarantee (may be referred to as “MVEGA”) or Maintenance Services which may be provided after Final Completion.

5.2 Schedule of Contract Values. The Schedule of Contract Values shall allocate the EMSA Fee among the various portions of the Work on a per ECM (and by Facility, if requested by the City) basis and be supported by sufficient data to substantiate its accuracy. Prior to commencing implementation, ESCO shall submit its proposed Schedule of Contract Values using the form attached at Attachment C-1, for consideration and approval by the City. Payments for stored materials and pre-purchased equipment must be accompanied by written pre-authorization from the City and in a form acceptable to the City.

5.3 Progress Payments. Using the Application for Payment form attached at Attachment D-6, ESCO shall submit its invoice on a progress basis (not more frequently than monthly) all Work rendered by it and received by the City during the applicable payment period.

5.3.1 Each Application for Payment shall be based on the Schedule of Contract Values, shall evidence in complete detail the propriety of the charges and shall constitute ESCO’s representation:

- (a) that the Work has progressed as indicated, showing also the progress and applicable dollar amounts in accordance with the Schedule of Contract Values;
- (b) that the quality of the Work covered by the Application for Payment is in

accordance with Exhibit A, including but not limited to the Final Design, the General Conditions, and otherwise as required by this EMSA; and

(c) that ESCO is entitled to payment of the amount requested.

5.3.2 On each Application for Payment, ESCO shall deduct 10% retainage (or the maximum amount allowed by law, whichever is less) from the amount otherwise owed, and said Retainage shall be reflected on the Application for Payment. Retainage shall be held by the City as additional security for the faithful performance of all the Work required under this Agreement and shall be subject to Section 5.7, below.

5.3.3 ESCO shall prepare each Application for Payment and submit it with the City with all applicable back up, including the calculations for the applicable monthly Application for Payment as follows:

- (a) Calculate the per ECM installation service charge (cost of labor, materials and equipment) for the current billing monthly period as the percentage of Work completed of the total ECM project cost allocated to that portion of the installation services in the Schedule of Contract Values, less Retainage of ten percent (10%); and
- (b) Add that portion of the ECM project cost for pre-approved materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, if any, less Retainage of ten percent (10%); and
- (c) Deduct any utility or third-party rebates, withheld, or nullified earnings and any other adjustments to determine the amount owed for the current Application for Payment; and
- (d) ESCO shall provide additional detail and/or back up regarding any Application for Payment that the City reasonably determines lacks in sufficient detail.

5.3.4 The City shall review and approve, approve with conditions, or reject each Application for Payment within fifteen (15) business days. In no event shall an Application for Payment be constructively approved. The City shall pay all amounts due within thirty (30) days of receipt of such properly completed Application for Payment, minus ten (10%) percent Retainage. City shall not be subject to charges for interest or late payments. ESCO's acceptance of payment of a particular invoice shall be and shall operate as a release favoring the City of all claims with regard to payment for Work covered by the invoice. The City's payment obligations are contingent upon an appropriation.

5.3.5 At Final Completion of the Work, the City shall pay the unpaid, undisputed balance of the EMSA Fee within forty five (45) days after all ESCO's implementation requirements, as set forth in this EMSA, are fully satisfied, including but not limited to: (1) the Work has been fully performed, (2) all close out requirements are fully satisfied, (3) an Application for Final Payment has been presented by ESCO and approved by the City and (4) the Certificate of Final Completion has been submitted by ESCO and approved by the City.

5.4 City Payment is not Waiver. The City's payment of any Application for Payment or of any retained percentage shall not (a) constitute the City's acceptance of the Work, (b) modify or limit the obligation of ESCO to, at its own cost and expense, repair, correct, renew, or replace any defects or imperfections in the Work, or any other damages due or attributable thereto, (c)

prejudice or limit the rights of the City to hold the ESCO liable for breach of contract, negligence or other wrongdoing, or (d) prejudice or limit the City's rights to avail itself of the remedies set forth herein, or any other remedy available to it at law or equity.

5.5 IGA Fee Included in EMSA Fee. As set forth in the Investment Grade Audit Agreement ("IGA Agreement"), if the City accepts the IGA Report and has executed this EMSA for the implementation of any or all of the ECMs recommended in the IGA, City shall not be required to make any payment pursuant to the IGA Agreement. Instead, ESCO shall include the IGA Fee as a part of the EMSA Fee. Notwithstanding any provision to the contrary, ESCO's right to recover costs relating to the IGA Agreement shall be limited to the IGA Fee set forth in the IGA Agreement. Notwithstanding any provision to the contrary, City shall not be liable for any costs whatsoever incurred by ESMA in connection with the drafting or negotiation of this EMSA, or any amendments thereto, or for any aspect of the RFQ process. Additionally, the IGA Fee may be included within EMSA Fee only if the City elects to go forward with all or any portion of the IGA Report and in such an event, the City is not required to pay such IGA Fee as part of the IGA Agreement. ESCO shall not be entitled to recover any other amount relating to the IGA Agreement by this EMSA.

5.6 Tax Exempt. As further set forth in the General Conditions, the City is exempt from certain taxes. Unless otherwise provided by applicable law, ESCO shall not include excise or sales tax in its estimates, pricing, or Applications for Payment. The City will provide its tax exempt number upon ESCO's request.

5.7 Retainage. After providing ESCO prior written notice and thirty (30) days to remedy or cure any defects or failures of ESCO, the City may use retainage for any correction or completion of any portion of the Work, or to pay any other amounts incurred by the City as a result of the ESCO's failure to fully complete the Work in accordance with the terms and conditions of this EMSA, including the EMSA Documents. If the retainage is insufficient to pay the full costs of any Work requiring correction, or completion or other damages incurred by the City, as set forth above, the ESCO shall immediately pay the remaining amount. The provisions set forth herein shall not limit any other remedies of the City. Except as otherwise set forth herein, following the City's issuance of the Certificate of Final Acceptance, the City shall pay remaining retainage held within forty-five (45) days.

5.8 Back Charges. The City may recover against ESCO for work performed by the City (including that performed by a third party retained by the City) and other costs incurred by the City as a result of ESCO's default, error, omission and/or failure to perform all or any part of the Work. The City shall give ESCO written notice and a reasonable time to remedy the reported problem. If ESCO fails to take action to make sure corrections within seventy-two (72) hours (or, in the case of an emergency, less time as the City may require) after receiving written notice (or, in the case of an emergency, oral notice shall be acceptable) or ESCO fails to effect a remedy in the time allotted, then, the City may, but shall not be required to, perform such actions or work related to the reported problem, including but not limited to corrective and/or mitigating action.

5.8.1 Without limitation, the City's recoverable expenses against ESCO may include:

- (a) Reasonable labor costs including all payroll additives consistent with the prevailing

- wages requirement;
- (b) Net delivered material costs;
- (c) Lower-tier supplier costs directly relating to performing the corrective action;
- (d) Equipment and tool rentals;
- (e) Alternative temporary equipment; and,
- (f) A factor of fifteen percent (15%) applied to the total of items (a) through (e) for the City's overhead, supervision, and administrative costs.

5.8.2 The City's right to back charge is in addition to any and all other rights and remedies provided in this EMSA or by applicable law. The performance of back charge work by the City shall not relieve the ESCO of any of its responsibilities under this EMSA.

6. Information Furnished by City.

6.1 As further set forth in Exhibit A and to the extent applicable, the City shall, so far as the Work under this EMSA may require, furnish ESCO with relevant information it may have concerning the Project. Notwithstanding any provision to the contrary, the City does not warrant or guarantee the accuracy or completeness of any such information.

6.2 The City shall appoint a person to serve as liaison between the City and ESCO. In addition to serving as City liaison, this person shall be responsible for scheduling all meetings between ESCO and City representatives and arranging for access to relevant Facilities. This person, however, shall have no authority to extend the contract term, modify the terms or conditions of the EMSA, or to bind the City to make payments in excess of the (any) EMSA Fee or the appropriation (whichever is less).

7. Professional Responsibility.

7.1 ESCO shall perform all Work required by this EMSA in accordance with high professional standards of care and practice customarily expected of nationally recognized design, engineering, and construction professionals performing comparable work, including in magnitude and complexity, and governing the Work of ESCO as described in this EMSA. ESCO shall be responsible for the professional and technical accuracy and the coordination of all plans, designs, engineering, architecture, reports, analysis, data, memoranda, drawings, scope of work, specifications, estimates, and any and all other documents and writings as instruments furnished under this EMSA. ESCO shall furnish appropriate, qualified, competent and professional Work for each of the aspects and tasks so that detailed checking or reviewing by the City is not necessary. Notwithstanding any provision to the contrary, the City's review, approval, acceptance of, or payment for any of the Work furnished shall not be construed to operate as a waiver of any rights under this EMSA or any cause of action arising out of the performance of this EMSA.

7.2. ESCO represents that it is fully familiar with the laws of the Commonwealth of Massachusetts governing the Work relating to this Project. ESCO shall perform any and all services it renders to the City pursuant to this EMSA in strict compliance with the relevant provisions of applicable law. Without limiting the generality of other provisions set forth in this EMSA, if any aspect of ESCO's performance (including but not limited to its subcontractors,

consultants, agents and the respective employees of each) fails to comply with applicable law, ESCO shall make all necessary corrections at no cost whatsoever to the City.

7.3. Any amounts due to the City under this Section 7 shall be paid by ESCO either directly upon invoice from the City or by deduction from any amount otherwise payable by the City to ESCO under this EMSA, whichever method of payment is directed by the City.

8. Dispute Resolution.

8.1 Disputes regarding changes in and interpretations of the terms or scope of this EMSA and denials of or failure to act upon claims for payment for extra work or materials shall be resolved according to the following procedures:

- (a) All claims by ESCO shall be made in writing and submitted to the City for a written decision;
- (b) ESCO shall not delay, suspend, or curtail performance under this EMSA because of any dispute subject to this Section;
- (c) Within sixty (60) days of submission of the dispute to the City, the City shall issue a written decision stating the reasons thereof. If the City or its designee is unable to issue a decision within 60 days, City shall notify ESCO in writing of the reasons and of the date by which the decision shall issue;
- (d) If the process set forth in subsections (a)-(c) above fails to resolve the dispute, the Parties may, by agreement, initiate nonbinding mediation, to commence within 60 days (or such later time as the Parties may agree) of the City's decision as set forth in subsection (c). Alternatively, either Party may seek such remedies available to it in any Massachusetts court of competent jurisdiction; and
- (e) Failure by City to issue a decision pursuant to (c) above within one hundred and twenty-days (or within the additional period specified in such written notice) shall give either Party the right to pursue any legal remedies available to it without further delay.

9. Suspension

9.1 City's Right to Suspend. In addition to other remedies it may have, the City shall have the authority to suspend the Work in whole or in part for such period as it deems necessary due to failure of ESCO to perform any provision of this EMSA. Subject to the City right to suspend set forth in Section 10.3, if the City believes that ESCO has failed to perform any provision of this EMSA City shall give ESCO written notice specifically identifying such failure. In the event ESCO does not remedy its failure to perform within fifteen (15) days following receipt of such notice (or such further period, not to exceed forty five (45) days, if the failure to perform cannot reasonably be fully remedied with said fifteen (15) days and if the ESCO works expeditiously and diligently to so cure) then City may, by written order to ESCO, suspend the Work. Notwithstanding the notice period set forth above and as further set forth in Section 10.3 below, in the case of an emergency (e.g., if ESCO'S alleged failure or breach causes or exacerbates a threat to public safety, an obstacle or impediment to the continued use of any Facility, a failure to obtain and maintain insurance as required by this EMSA, or risk of damage to property), the City may reasonably reduce the notice period and/or the time within which ESCO shall remedy its

failure to perform. Upon receipt of such written order, ESCO shall immediately suspend the Work or such part thereof in accordance with the order. No Work shall be suspended without the written permission of the Contracting Officer. The Work shall be resumed when conditions so warrant or deficiencies have been corrected as ordered or approved in writing by the Contracting Officer. No allowance or claim of any kind will be made for suspension of Work by order of the Contracting Officer pursuant to this Section.

9.2 ESCO Right to Suspend. In addition to other remedies it may have, if the City fails to pay ESCO in accordance with this EMSA, ESCO shall have the right to suspend Work if payment is not received within thirty (30) days after written notice of the overdue payment. However, if the City disputes, in good faith, the payment request set forth in any Application for Payment, it shall notify ESCO of said dispute as soon as possible, provide ESCO with a detailed written explanation of its concerns. If, after receiving the City's explanation, ESCO disagrees with the City, it shall provide a detailed written response setting forth its reasons and any supporting documentation. Both Parties shall attempt to resolve the dispute. The Parties shall record resolved disputes in writing and make appropriate payments or reimbursements. Notwithstanding any provision to the contrary, the City shall not be required to pay ESCO any amount that the City disputes and for which it has provided ESCO a detailed explanation pursuant to this section.

10. Termination.

10.1 ESCO Termination. ESCO may terminate this EMSA upon sixty (60) days written notice to the City if the City fails to perform any material term or condition of its obligations under this EMSA. Said notice shall specify the alleged failure or breach. No such failure or breach, however, shall be deemed to exist if the City cures within said sixty (60) days. If the alleged failure or breach cannot be reasonably cured within sixty (60) days, and the City commences to cure within such period, and further provided that such efforts are prosecuted to completion with reasonable diligence, the City shall have an additional thirty (30) days to cure alleged failure or breach. If the City remains in default beyond the applicable cure period, ESCO shall have the right to terminate this EMSA, except said termination shall not affect ESCO'S obligations regarding any Energy Guaranty or warranty already in effect (e.g., through an earlier implementation). Notwithstanding any provision to the contrary, in the event of termination, ESCO shall have no right to recover indirect, consequential, incidental, lost opportunity or lost profit damages.

10.2 City Termination. The City may terminate this EMSA, in whole or in part, upon sixty (60) days written notice to ESCO if ESCO fails to perform any material term or condition of its obligations under this EMSA. Said notice shall specify the alleged failure or breach. No such failure or breach, however, shall be deemed to exist if ESCO cures within said sixty (60) days. If the alleged failure or breach cannot reasonably be cured within sixty (60) days, and ESCO commences to cure within such period, and further provided that such efforts are prosecuted to completion with reasonable diligence, ESCO shall have an additional thirty (30) days to cure any alleged failure or breach. If ESCO remains in default beyond the applicable cure period, City shall have the right to terminate this EMSA, in whole or in part.

10.3 Public Safety Threat. Notwithstanding any provision to the contrary, however, if ESCO'S alleged failure or breach causes or exacerbates a threat to public safety, an obstacle or impediment

to the continued use of any Facility, a failure to obtain and maintain insurance as required by this EMSA, or risk of damage to property, then ESCO shall immediately cure its failure or breach. The City may, in its sole discretion, take such action as it reasonably deems necessary and appropriate to protect persons or property from injury or damage, and/or maintain City operations, including but not limited to suspension of all or any portion of the EMSA. ESCO shall promptly reimburse the City for any and all damages, costs and expenses to the extent they are caused by ESCO's breach, and/or negligent actions or omissions.

10.4 Termination for Convenience. Upon ninety (90) days written notice to ESCO, or sooner if reasonable under the circumstances, the City may, without cause and without prejudice to any other right or remedy, at any time elect to terminate any part of the Work, or terminate the EMSA in whole or in part, as the City may deem appropriate for its convenience. In the event of any termination for the convenience of the City, ESCO shall be paid for Work performed to the effective date of the termination, but shall not include any and all anticipated administrative costs and anticipated profit on uncompleted Work. ESCO shall not be entitled to any other termination expenses.

10.5 Unauthorized Assignment. Notwithstanding any provision to the contrary and to the full extent allowed by law, if ESCO is adjudged as bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver of its property is appointed, or if the Work to be done under the EMSA is abandoned, or if the EMSA or any part of is assigned without the previous written consent of the City, then the City may notify the ESCO in writing to discontinue all Work, or any part thereof; and thereupon ESCO shall discontinue such Work or such part thereof as the City designates, remove its equipment, tools, supplies and materials as the Contracting Officer directs, and the City may thereupon, by contract or otherwise as it may determine, complete the Work, or such part thereof, and ESCO shall pay the cost of completing such Work.

10.6 City's Right to Deduct. Damages, costs and expenses incurred by the City may, in the City's discretion, be deducted by the City out of money then due or to become due to ESCO under this EMSA, or any part hereof. The City may also use funds held as retainage (Section 5.7) or may back-charge (Section 5.8). In such accounting the City shall not be obligated to obtain the lowest figures for the work of completing the contract or any part thereof, or for ensuring its proper completion, and all sums actually paid by the City shall be charged to ESCO. If the expense incurred by the City is greater than the sum which would have been payable under the EMSA if the same had been completed by ESCO, then ESCO shall pay the amount of the excess to the City upon completion of the Work and without further demand being made therefore.

11. Force Majeure.

11.1. Neither Party shall be liable to the other or deemed to be in breach under this EMSA for any failure to perform, including without limitation, a delay in rendering performance, due to causes beyond its reasonable control such as a judicial order, injunction, judgment, or determination of any Court of the United States or the Commonwealth of Massachusetts, an Act of God, war, civil disobedience, extraordinary weather conditions, third party labor disputes, or shortages, or extraordinary fluctuation in electric power, heat, light, or air conditioning. Dates or time of performance shall be extended automatically to the extent of such delays, provided that the Party

whose performance is affected promptly notifies the other, in writing, of the existence and nature of such delay.

11.2. It is agreed, however, that since the performance dates of this EMSA are important, continued failure to perform for periods aggregating sixty (60) days or more, even for causes beyond the control of ESCO, shall be deemed to render performance impossible and the City shall thereafter have the right to terminate this EMSA without liability or damages. In the event of such termination the City shall pay ESCO only for Work satisfactorily performed prior to termination.

12. Insurance. ESCO shall obtain and maintain insurance coverage for itself, its officers, employees and its contractors, subcontractors, suppliers, consultants, agents and invitees, and their respective officers and employees (collectively for this Section, "Contractors"). Said insurance shall commence no later than the effective date of this EMSA. Said coverage shall not be less than the following:

12.1 ESCO shall obtain and maintain professional liability/errors & omissions insurance covering negligent acts, errors and omissions for itself and its Contractors sufficient to cover any and all claims, damages, liabilities, costs, and expenses (including attorney's fees) arising out of or in connection with ESCO fulfillment of any of its obligations under this EMSA. The amount of this coverage shall not be less than ten million (\$10,000,000) dollars per occurrence and shall remain in full force and effect for not less than six (6) years after the termination of the final phase of this ESMA. If coverage is claims made, ESCO shall provide an extended reporting period policy for not less than six (6) years to ensure continuous coverage or maintain the same coverage for not less than six (6) years after the termination of the final phase of this ESMA.

If the Work includes the provision of software and/or hardware (e.g., a software system or software access or hardware), ESCO shall obtain and maintain tech E&O, network security, data privacy, and cyber liability (which includes but not limited to internet liability, computer security, privacy liability, including 1st and 3rd party liability) coverage of not less than \$10,000,000 per occurrence. If coverage is claims-made, ESCO shall provide an extended reporting period policy for not less than six (6) years to ensure continuous coverage or maintain same coverage for not less than six (6) years after termination of the final phase of this ESMA.

12.2 ESCO shall obtain and maintain broad form Commercial General Liability (including products/completed operations and contractual liability) insurance written on an "occurrence" basis. There shall be no deductible or retention, which shall be clearly evidenced on the certificate of insurance. Such insurance will name the City of Worcester as an additional insured and as a Loss Payee as its interests may appear.

12.2.1 Unless greater insurance coverage is required elsewhere in the EMSA Documents, ESCO shall furnish the following coverage, which shall not be less than the minimum amounts set forth below:

- Commercial General Liability (CGL) with Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury, with limits no less

than \$10,000,000 per occurrence and \$20,000,000 annual aggregate. ISO Form or an equivalent CG 2033 (Ongoing) and CG 2037 (Completed Operations) forms shall also be included.

- Upon completion of Work, ESCO shall provide an installation floater in the full amount of the EMSA Fee satisfying the requirements set forth above. The policy or policies shall specifically state that they are for the benefit and payable to the City, ESCO, and all persons furnishing labor or labor and materials for the Work, as their interests may appear. Further, ESCO shall provide All-Risk Property Insurance against loss or damage by fire and against loss or damage by special perils. There shall be no deductible or retention, which shall be clearly evidenced on the certificate of insurance.

12.3 Automobile Liability/Comprehensive Auto Liability \$2,000,000 per occurrence (all owned, scheduled, hired, and non-owned autos). Said coverage shall include bodily injury (including death) and property damage. There shall be no deductible or retention, which shall be clearly evidenced on the certificate of insurance. Coverage shall be on an occurrence basis.

12.4 Excess/Umbrella Liability coverage shall be on an occurrence basis. There shall be no deductible or retention. Excess/Umbrella liability insurance shall apply in excess of primary employer's liability, general liability and automobile liability, shall be no less than Ten Million Dollars (\$10,000,000) per occurrence.

12.5 Coverage for Workers Compensation shall be obtained and maintained in accordance with the Worker's Compensation Act of the Commonwealth of Massachusetts (e.g., G.L. c. 149 § 34A and G.L. c. 152) or as follows, whichever is greater:

Workers Compensation Coverage A	Statutory Minimum
Employer's Liability Coverage B	\$2,000,000 each accident
	\$2,000,000 disease per employee
	\$2,000,000 disease policy

12.6 ESCO shall maintain Cyber Liability Insurance (or equivalent) in an amount not less than \$5,000,000 per claim with a \$5,000,000 aggregate. Such coverage shall remain in effect for not less than five (5) years after termination of final phase of the EMSA and include worldwide coverage for network security/data protection liability, including coverage for financial loss resulting or arising from:

- Acts, errors, or omissions in rendering technology/professional services and/or in connection with the services provided under this EMSA:
- Violation or infringement of any right of privacy, including breach of security and breach of security/privacy laws, rules or regulations globally, now or hereinafter constituted or amended;
- Data theft, damage, unauthorized disclosure, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information in whatever form, transmission of a computer virus or other type of malicious code; and participation in a denial of service attack on third party computer systems; and

- Loss or denial of service.

Such coverage must include technology/professional liability, breach of contract, privacy and security liability, privacy regulatory defense and payment of civil fines, payment of credit card provider penalties, and breach response costs (including without limitation, notification costs, forensics, credit protection services, call center services, identity theft protection services, and crisis management/public relations services) and may not include cyber terrorism exclusion.

12.7 ESCO shall carry sufficient liability insurance so as to save the City harmless from any and all claims for damages arising out of bodily injury to, or death of, any person or persons and for all claims for damages arising out of injury to, or destruction of, property arising out of or in consequence of the acts or omissions, negligence, or willful misconduct on the part of ESCO and/or its Contractors in the performance of the Work.

12.8 The City of Worcester shall be named as an additional insured on all coverage and certificates, with regards to all claims, injuries or damages associated with this EMSA, except for workers compensation.

12.9 With regards to any Professional, Tech E&O and Cyber Liability policy secured the policy(s) will be endorsed where as the “insured vs insured” exclusion will be amended so as not to apply to claims in which the City is the plaintiff and ESCO is the defendant.

12.10 ESCO shall carry any other types of insurance as may be required elsewhere in the EMSA Documents. All insurance policies required in the EMSA Documents shall be provided by companies with a rating of no less than “A-, XII” by A.M. Best or equivalent rating agency.

12.11 Prior to execution of the EMSA, ESCO shall provide the City certificates (in Acord Form) from the insurers evidencing that the insurance policies as required herein have been issued to ESCO in a form satisfactory to the City. ESCO shall promptly provide the City with additional information (including a copy of the policy(ies)) regarding said coverage upon request. ESCO shall further provide a current certificate(s) upon the City’s request.

12.12 No reduction or cancellation of any insurance whether by the insurer or by the insured shall be effective unless written notice thereof is given to the City at least thirty (30) days prior to the intended effective date thereof, which date has been expressed in a notice to the Certificate Holder, Purchasing Director, City Hall, 4th floor, 455 Main Street, Worcester, MA, 01608. Prior to the effective date of any such cancellation the ESCO shall obtain and maintain new insurance to cover the policies so cancelled.

12.13 ESCO shall require its insurer to waive subrogation on claims under its Commercial General Liability and Automobile Liability policies that arise out of or relate to this EMSA. ESCO is solely responsible for payment of deductible or retention amounts relating to its insurance coverage. ESCO’s insurance shall be primary and non-contributory to any coverage by the City. ESCO’s required insurance coverage set forth above shall not be construed as a limitation or waiver of any potential liability or satisfaction of ESCO’s indemnification obligation

12.14 The City reserves the right to self funded/self insured and shall not be required to obtain insurance coverage.

13. Bonds

13.1 Prior to the execution of this EMSA, ESCO shall obtain and deposit with the City a Performance Bond and a Payment Bond, each in an amount equal to the full value of the EMSA Fee. Said Bonds shall each be in the form as provided in this EMSA, with sureties satisfactory to the Contracting Officer to (a) guarantee the faithful performance by ESCO of all its obligations under this EMSA, and (b) constitute the security for the payment by ESCO and its subcontractors for all labor performed or furnished and for all materials used or employed in connection with this EMSA. The City reserves the right to require that ESCO obtain an efficiency bond for all or any portion of the duration of the Energy Guarantee.

14. Warranty

14.1 ESCO warrants to the City that all materials and equipment furnished under this EMSA will be undamaged, unused, new and of recent manufacture unless otherwise specified, and that all Work shall be of good quality, free from faults and defects, in conformance with the EMSA Documents, and shall not infringe on the intellectual property of any third party. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Further, it is expressly understood that this Section 14 shall not absolve ESCO from any liability to the City arising from ESCO's failure to comply with the terms of this EMSA.

14.2 ESCO warrants any and all Work (including without limitation, all equipment and materials) for a period of one (1) year (unless a longer period is identified in this EMSA or in the particular warranty) shall (a) perform in substantial compliance with its intended purpose, (b) be free of material defects, and (c) not infringe upon the intellectual property rights of any third party. ESCO further warrants such Work is protected by appropriate written third party warranties against defects in workmanship and materials covering all parts, equipment and performance to be free from defects or flaws for not less than one (1) year, to commence upon the City's acceptance of each Certificate of ECM Commissioning, as set forth in Section 4.17. It is expressly understood, however, that this warranty provision shall not relieve ESCO from liability to the City for negligence, breach or limit the City's rights pursuant to any legal or equitable remedy. ESCO's warranties may expressly exclude a remedy for damage to the extent caused by the City's abuse, improper operation, unapproved modifications or improper repairs not authorized or performed by ESCO.

14.3 If, at any time within said warranty period, any part of the Work shall, in the opinion of the Contracting Officer, require repair due to defective work or materials furnished by ESCO, the City shall notify ESCO in writing to make the required repairs. If ESCO fails to start such repairs within five (5) business days (or such lesser period as is identified in the EMSA Documents or in the particular warranty) of the date such notice is sent and to complete the same to the satisfaction of the Contracting Officer and with reasonable dispatch, then the City may make such repairs by another contractor. The City shall charge the expense thereof to ESCO and may use any money still

retained to pay for the same, and if such sum is insufficient, ESCO shall be obligated to pay the balance thereof.

14.4 ESCO shall assign to the City all warranties and extended warranties of all equipment and materials used in the Work upon the earlier of ESCO's completion as set forth in Section 14.2 or termination of all or any portion of this EMSA. ESCO shall further transfer to the City statutory or implied warranties from its subcontractors or suppliers. Exhibit E lists equipment and material warranties, however, failure to include any equipment or materials having a warranty neither excludes said equipment or materials from the provisions of this Section nor ESCO's responsibilities hereunder.

14.5 ESCO warrants that, for any equipment or materials used in the Work within a warranty period provided by ESCO that is in excess of one (1) year, ESCO shall correct all defects including replacement or repair to the full extent of the terms of the warranty and provided further that the City may correct said defect in accordance with this Section 14. If the City exercises such right, the ESCO shall promptly reimburse the City for its full costs and expense.

14.6 Notwithstanding said allowance of five (5) business days to commence repair (as set forth in this Section 14), ESCO shall immediately address conditions deemed by the City to endanger health or safety, or constitute a fire hazard, including but not limited to violations of the State Sanitary Code (105 CMR 410.000) or the Fire Prevention Regulations (527 CMR 1.00-50.00), in full cooperation with the City, to assure that immediate precautions are taken to avoid risk to persons or property, to prevent deterioration or exacerbation of the condition, to alert occupants to any dangers or hazards, and to take appropriate steps for final correction, all within no more than twenty four (24) hours from notice, whether oral or written. If the notice is oral, the City shall provide confirming notice in writing within three (3) business days of said oral notice. Further, if such conditions are deemed by the City to interfere with the City's use of any of its Facilities, then the ESCO shall immediately take appropriate action to remedy such interference and shall diligently and promptly pursue such action thereby repairing and/or restoring said Facility so that it is available for normal City use.

15. Independent Audit.

15.1 If the City elects, in its sole discretion and at its own expense, to retain an energy performance consultant or other qualified consultant of its choosing to complete and submit to the Parties an audit of the calculations of Energy Savings made pursuant to this EMSA, ESCO shall cooperate fully with the City and such consultant at no additional cost to the City. For at least part of such an analysis, such audit must use and incorporate the same methods, procedures, and assumptions as contained in this EMSA and used by ESCO to perform the calculations undergoing an audit pursuant to this Section. Any payments between the Parties necessary to resolve any irregularities identified in the audit shall be made within forty-five (45) days after submission of the audit results to the Parties. If, after forty-five (45) days, the Parties are unable to agree upon the adjustment, either Party may submit the matter to a court of competent jurisdiction, pursuant to Section 29.

16. Notices

16.1 All notices required by the EMSA Documents to be given by one Party to the other shall be effective only when sent in writing, by means overnight delivery by a nationally recognized carrier or mailed by U.S. certified mail, return receipt requested, postage prepaid, and addressed as follows:

TO:	with a copy to:
Chief Sustainability Officer	City Manager
Department of Sustainability & Resilience	Executive Office of City Manager
Worcester City Hall	Worcester City Hall
455 Main Street	455 Main Street
Worcester, Massachusetts 01608	Worcester, Massachusetts 01608

TO: *[TBD - ESCO recipient]*

16.2 Either Party shall notify the other in the event of any change in their respective recipients and/or addresses.

17. Amendments to the EMSA

17.1 This EMSA may be amended only by a written document executed by the Parties, acting through their duly authorized representatives. For clarity, neither the City nor its employees, officials or agents, shall be bound by “click through” agreements. This EMSA shall not be controlled, modified or otherwise amended by any provisions purporting to be inserted via a hyperlink.

18. No Third Party Beneficiaries

18.1 This EMSA is by and between the Parties that have executed it. The EMSA is intended for their mutual benefit alone and is not intended to confer any express or implied benefit on any other person. To the fullest extent allowed by law and notwithstanding any provision to the contrary, this EMSA shall not confer third party beneficiary status on any person or other entity.

19. Indemnification.

19.1 (a) ESCO shall indemnify and save harmless the City of Worcester and all of its officers, agents and employees from and against all suits, actions, claims or liability of every name, nature, and description arising out of or in consequence of the acts or omissions of ESCO, its contractors, consultants, agents, or their respective employees, or officers in the performance of the Work covered by the EMSA and/or ESCO’s failure to comply with the terms and conditions hereof, and shall at its own cost and expense defend any and all such suits and actions.

(b) Without limiting the generality of the foregoing, ESCO shall bear all losses resulting from the use or storage of explosives and highly inflammable materials, and shall save the City

harmless from all claims for bodily injuries or death to any person and from all claims for property damage or destruction arising out of the use or storage of explosives and highly inflammable materials.

(c) Without limiting the generality of the foregoing, ESCO further covenants to hold and save the City, its officers, employees and agents, harmless from and against all and every demand or demands, of any nature or kind for alleged infringement or on account of the use of any patent or other proprietary interest furnished by ESCO under this EMSA. The City will give ESCO reasonable notice in writing of any such suit and permit ESCO, through counsel of its choice, to answer the charge of infringement and defend such suit. If such a suit has occurred or may occur, ESCO may, at its election and expense, obtain for the City the right to continue using the applicable software, equipment and/or materials, or to replace, correct or modify the same so that it is not infringing.

19.3 The indemnification required hereunder shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any person, described in this EMSA. The indemnification required hereunder shall not be limited by reason of the specification of any particular insurance coverage under this EMSA. ESCO's obligations under this provision shall not terminate with the expiration or termination of this EMSA but shall survive it.

19.4 Notwithstanding any provision to the contrary, the City shall not be required to indemnify, hold harmless or defend ESCO.

20. Limitation of Liability

20.1 In the event of termination or suspension, ESCO shall have no right to recover indirect, consequential, incidental, lost opportunity or lost profit damages.

21. Casualty, Condemnation, Damage.

21.1 If any fire, flood, other casualty, or condemnation renders a portion of any Facility in which Work is or is schedule to take place unsuitable for habitation or destroys a substantial part of the area within which the Work is to be performed or which the Work affects, the City may terminate as to that Facility, or any portion thereof, without liability to ESCO for such termination, or the Parties may terminate or modify this EMSA by mutual agreement. City shall pay ESCO for all Work completed to the date of termination.

22. Successors and Assigns

22.1 The City and ESCO each binds itself, its partners, successors, legal representatives and assigns of such other Party in respect to all covenants of this EMSA.

22.2 ESCO shall not assign, convey, or transfer any part of its Work or obligations under this EMSA without the prior approval of and written consent of the City. The written consent shall not in any way relieve ESCO from its responsibility for the professional and technical accuracy

and the coordination of all the Work.

23. Independent Contractor

23.1 ESCO is an independent contractor and not an employee of the City. ESCO shall secure all personnel required to perform the Work of this EMSA. Such personnel shall not be employees of, or have an employment contract with, the City.

24. Non-Discrimination Statement

24.1 To the full extent allowed by law, in all hiring or employment made possible by or resulting from this EMSA, ESCO (1) shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, national origin, gender identity, expression, or sexual orientation, and (2) shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, gender identity, expression, or sexual orientation.

24.2 To the full extent allowed by law, no person in the United States shall, on the ground of race, color, religion, sex, age, disability, national origin, gender identity, expression, or sexual orientation be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from the contract. ESCO and each employer shall comply with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964.

25. CORI Clearance Requirements

25.1 No person shall be eligible to receive a contract if that person has been convicted of any felony offense involving the distribution of controlled substances as such terms are defined under G.L. c. 94C and, for contracts to be performed for on-site services to the Worcester Public Schools, if that person or any person to be employed by that person in the performance of such on-site services has been convicted of a "sex offense" or a "sex offense involving a child" or a "sexually violent offense" or would meet the definition of "sexually violent predator" as those terms are defined in G.L. c. 6, § 178C, and who must register with the sex offender registry board. In accordance with G.L. c. 71, § 38R, the City may request and obtain all available criminal offender information ("CORI") from the Criminal History Systems Board of any contractor who may have direct and unmonitored contact with children. ESCO shall require all individuals, whether employees, agents, contractors or others working on behalf of ESCO who are involved in the provision of the Work to complete and sign a request form to obtain CORI if, in the determination of the City, some or all of the employees, contractors, agents or others working on behalf of ESCO may have direct and unmonitored contact with children during the performance the Work.

26. Ownership of and Access to Documents and Records

26.1 Right to Inspect. City shall have access to inspect the Work and, on reasonable notice,

may inspect ESCO's books, records, contracts, audits, accountings and other compilations of data that are in final form or are reasonably concluded and which pertain to this EMSA (may be referred to collectively "Records"), or as the Parties may otherwise agree. Records shall be kept based on Generally Accepted Accounting Principles and calculations kept on file in legible form. Records shall be saved or archived for a period of not less than six (6) years after Final Completion of the Work and shall be kept or made available within Massachusetts. This provision shall not entitle the City to inspect Records that are protected by attorney/client privilege.

26.2 Ownership of Documents. Plans, designs, reports, analysis, data, memoranda, drawings, scopes of work, estimates, specifications and any and all other documents and writings provided by ESCO to the City pursuant to the terms and conditions of this EMSA, including but not limited to Exhibit A, are the property of the City, whether the Work for which they are made is executed or not, and shall not be used by ESCO on other work except with permission from the City. Examples shall include but not be limited to the IGA, schematic and design drawings, as built drawings, O&M manuals, and manufacturer's warranties.

26.3 City Data. As between ESCO and the City, the City owns and shall retain ownership of its City Data (including any documents, information, as well as any extract or aggregation thereof, in whatever nature or form (collectively, "City Data"). For clarity, said City Data shall include but not be limited to any data that is licensed or made available to the City through a third party, including but not limited to personal and private information. By this EMSA, City does not convey any right, title or interest in City Data (including but not limited to any rights owned by or licensed from any third party). Notwithstanding any provision to the contrary, ESCO is prohibited from retaining or using any City Data for any reason other than its performance under this EMSA, even if said City Data is aggregated, de-identified, pseudonymized or anonymized. Without limiting the scope of Section 38 below, the requirements of this provision shall survive the termination of this EMSA.

26.4 Records - Confidentiality. The City reserves the right of access to the non-confidential records of ESCO and its contractors and consultants, in accordance with provisions of the federal and state laws and regulations. Those records classified confidential shall be provided with the informed written consent of the individual involved.

26.4 Generally Acceptable Accounting Principles. ESCO shall maintain its records relating to this EMSA in compliance with generally acceptable accounting principles.

27. Conflict of Interest

27.1 ESCO hereby acknowledges and represents that to the best of ESCO's knowledge it has not violated the laws of the G.L. c. 268A, pertaining to conflicts of interest with regard to this Project.

27.2 ESCO warrants that it has complied with all provisions of law regarding the award of this EMSA and that neither it, nor its employees, agents, officers, directors or trustees have offered or attempted to offer, and shall not during the course of this EMSA offer anything of any value to

any employee of the City in connection with this EMSA.

27.3 ESCO further warrants that to the best of its knowledge no employee of the City, including unpaid members of City boards and commissions, serves as an officer, director, trustee or employee of ESCO, and that no employee of the City has or will have a direct or indirect financial interest in this EMSA.

27.4 Violation of this Section shall be a material breach of this EMSA and shall be grounds for immediate termination of this EMSA by the City without regard to any enforcement activities undertaken or completed by any enforcement agency. Termination of this EMSA pursuant to this Section shall not waive any claims for damages the City may have against ESCO.

28. Adherence to Applicable Law.

28.1 In the performance of this EMSA, ESCO shall comply with all applicable federal, state and local laws, rules, ordinances, regulations and orders.

28.2 In the performance of ESCO's services hereunder, ESCO, whenever apt, shall review the Project construction plans with the Center for Living and Working and the City Manager's Accessibility Advisory Commission to ensure that the Project design meets or exceeds accessibility requirements. The city department in charge of the administration of ESCO's services shall be responsible for coordinating the aforementioned reviews.

28.3 The Parties acknowledge that the City intends to apply for federal grant money, the receipt of which may necessitate additional requirements not contemplated by this EMSA.

29. Governing Law.

29.1 The laws of the Commonwealth of Massachusetts shall govern the validity, interpretation, construction, and performance of this EMSA.

29.2 ESCO hereby agrees to the personal jurisdiction of any federal or state court located in Worcester County, Massachusetts, and waives any objection based on forum non conveniens with respect to any action arising out of or relating to this EMSA.

30. Certifications Required by Law. ESCO, by executing this document, certifies the following:

30.1 it has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this EMSA;

30.2 that no consultant to or contractor for the ESCO has given, offered, or agreed to give any gift, contribution, or offer of employment to the ESCO, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the ESCO;

30.3 that no person, corporation, or other entity, other than a bona fide full time employee of the ESCO has been retained or hired by the ESCO to solicit for or in any way assist the ESCO in obtaining this EMSA upon an agreement or understanding that such person, corporation, or other entity be paid a fee or other consideration contingent upon the award of this EMSA to the ESCO; and

30.4 that the ESCO represents, warrants, and certifies that to the best of its knowledge it and its consultants and subcontractors have complied with all laws of the Commonwealth of Massachusetts relating to taxes and all Ordinances and Orders of the City of Worcester relating to taxes, fees and charges, or is lawfully contesting the validity of the same. The ESCO further represents, warrants, and certifies that it will remain in such compliance during the term of this EMSA, including any amendments or extensions hereto. Likewise, ESCO shall by the terms of its subcontract agreements require that its subcontractors and consultants also remain in such compliance during the term of their subcontract agreement. Breach of any of these provisions by ESCO shall be deemed a material breach which shall entitle the City to terminate this EMSA pursuant to Section 10.2 above and take any other action authorized by law or equity.

31. ESCO's Certifications, Covenants

31.1 Certificate of Authorization. If ESCO is a corporation, each person executing this EMSA on behalf of ESCO hereby covenants, represents and warrants that ESCO is a duly incorporated or duly qualified (if foreign) corporation and is authorized to do business in the Commonwealth of Massachusetts (a copy of evidence thereof to be supplied to the City upon request); and that each person executing this EMSA on behalf of ESCO is an officer of ESCO and that such individual is duly authorized to execute, acknowledge and deliver this EMSA to the City, a copy of a corporate resolution to this effect is attached hereto.

31.2 Tax Compliance Certification. Pursuant to G.L. c. 62C, § 49A(b), each person signing this EMSA on behalf of ESCO hereby certifies, under the penalties of perjury, that to the best of his/her knowledge and belief, ESCO has complied with any and all applicable state tax laws.

31.3 Certificate of Non-collusion. The undersigned certifies under penalties of perjury that this EMSA has been made in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity of group of individuals.

31.4 Foreign Corporation. ESCO, if a foreign corporation, hereby certifies that it is in compliance with G.L. c. 181, § 4, and that the name and address of the resident agent is attached hereto.

32. Data Protection.

32.1 Unless greater protections are required elsewhere in this EMSA, for all protected and/or private personal data received or submitted by ESCO as a result of this EMSA, ESCO shall implement and maintain reasonable administrative, physical and technical safeguards to ensure

the security (e.g., unauthorized access, use disclosure, alternative, loss or destruction) of such data under its control. Such safeguards shall include cyber security measures and physical security protections not less than that required by applicable law and current industry standards, as well as policies and procedures implementing and monitoring such measures. Any protected and private personal data required to be submitted by ESCO shall be transferred via encryption or similar secure means.

33. Rights Reserved.

33.1. The City reserves the right to change policy expounded herein due to policy changes dictated by federal, state or municipal agencies. ESCO shall comply with any and all federal, state and local regulations, rules or laws that control, as may be issued from time to time.

34. Severability.

34.1. If any provision(s) of this EMSA shall be ruled invalid by any court of competent jurisdiction or administrative agency and the determination of invalidity of such provision(s) has a materially adverse effect on a Party, then the Parties shall: promptly meet and negotiate a substitute provision(s) for such invalid portion and the remaining provisions which shall, to the greatest extent legally permissible, effect the intent of the Parties therein. Except as set forth above, the invalidity of such provision(s) shall not affect any of the remaining provisions hereof, and this EMSA shall be construed and enforced as if such invalid portion did not exist.

35. Headings.

35.1. The section headings in this EMSA are for convenience and reference only and in no way define or limit the scope or content of this EMSA or in any way affect its provisions.

36. Entire Agreement.

36.1. This EMSA contains the entire understanding of the Parties and supersedes all prior agreements, representations, proposals and undertakings of the Parties.

37. No Waiver.

37.1 No failure or delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

38. Survival.

38.1 In addition to those provisions set forth expressly, provisions that by their nature survive expiration or termination of this Agreement shall survive such expiration or termination.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound, have caused this EMSA to be executed as a sealed instrument by their duly authorized representatives the day and year first written above.

RECOMMENDED:
Department of Sustainability & Resilience

[ESCO]

John W. Odell
Chief Sustainability Officer

[name and title]

I certify that funds are available
in Account No.

CITY OF WORCESTER

Budget Analyst

Eric D. Batista
City Manager

Approved as to form

Assistant City Solicitor

CERTIFICATE OF AUTHORITY

At a duly authorized meeting of the Board of Directors of the _____ held on _____ Directors were present or waived notice,
(name of corporation) (date)
it was voted that _____ of this company be and hereby is authorized to
(officer and title)
execute contracts and bonds in the name and behalf of said company, and affix its Corporate Seal thereto,
and such execution of any contract or bond of obligation in this company's name shall be valid and binding
upon this company.

A TRUE COPY, ATTEST:

[Signed]

[Company Name and Address]

I hereby certify that I am the _____ of the _____
(Title) (Name of Corporation)
that _____ is the duly elected _____
(Name of Officer) (Title)

of said company, and the above vote has not been amended or rescinded and remains in full force and effect
as of the date of this contract.

Signature: _____

Name/Title: _____

Date: _____

(Corporate Seal)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

On this ____ day of _____, 202__, before me the undersigned notary public, personally
appeared _____, who proved to me through satisfactory evidence of identification,
which was/were _____, to be the person whose name is signed on the preceding
or attached document, and acknowledged to me he/she signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

TAX CERTIFICATION

DATE: _____

Pursuant to Mass. G.L. c. 62C, Section 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature: _____

Print below signature line name and title of Individual
or Corporate Officer (as applicable)

Company Name

Address: _____

Tel No. _____

SOCIAL SECURITY NUMBER

OR

FEDERAL IDENTIFICATION NUMBER

EXHIBIT A: Implementation Specifications

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EXHIBIT A: Implementation Specifications
Attachment A-2
Drawings

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Exhibit A: ECM – Calculations for Allowable Costs
Attachment A-3
Cost Breakout

EXHIBIT A: Implementation Scope of Work

ATTACHMENT A-4

Commissioning/Testing Requirements

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EXHIBIT B
M&V and ENERGY GUARANTEE AGREEMENT

This Measurement & Verification and Energy Guarantee Agreement (MVEGA), made this ____ day of _____, 20__ by and between the City of Worcester, a Massachusetts municipal corporation, with an address of 455 Main Street, Worcester, Massachusetts, 01608, (“City”) and _____ (“ESCO”) a _____ corporation with its principal place of business at _____.

WITNESSETH

WHEREAS, the City and ESCO entered into the Investment Grade Audit Agreement dated _____ (“IGA Agreement”) and the Energy Management Services Agreement dated _____ (“EMSA”), in compliance with G.L. c. 25A, Sec. 11I, to determine feasible energy and water savings projects, and implement all or a portion at certain City owned Facilities; and

WHEREAS, integral to the EMSA is this MVEGA by which ESCO guarantees that the City will realize certain energy savings (further defined below as “Guaranteed Savings” and set forth in the Schedule of Savings, Attachment B-2) each year for a period of _____ (____) years, as a result of certain ECMs installed by ESCO;

WHEREAS, to measure and verify the energy savings actually realized and objectively compare it to the Guaranteed Savings, ESCO shall perform measurement and verification services, as set forth in Attachment B-1 for the full term of this MVEGA;

WHEREAS, ESCO represents to the City that it possesses the expertise, experience and capacity to perform the services required herein and further agrees to perform such services in accordance with the terms and conditions set forth herein; and

NOW THEREFORE, in consideration of the foregoing recitals and mutual covenants, agreements and provisions contained herein, the parties agree as follows:

ARTICLE 1.0 – DEFINITIONS

- 1.1 The terms defined in this Article shall apply to this MVEGA. If any capitalized term defined in this Article 1.0 conflicts with any term defined in the EMSA, including but not limited to Amendments, Attachments and other Exhibits other than this MVEGA, the definition set forth in this Article 1.0 shall control for the purposes of this MVEGA.

Actual Cost	Means the utility (electric, gas, propane and oil) cost for Actual Use. This is determined using the Baseline Utility Rate plus Escalator as presented in Attachment B-4. The Actual Cost may be represented without Modifications or with Modifications.
Actual Cost Savings	Means the total of the cost savings for M&V after Modification. Actual Cost Savings is the result of monetizing the Actual Use Savings using the Baseline Utility Rate plus Escalator. The Actual Cost Savings is compared to the Guarantee to determine whether the Guarantee is satisfied.

Actual Use	Means the amount of energy (electric, gas, propane and oil) used, reflected in units appropriate for each utility (e.g., kWhs, gallons, therms), subject to Modification, as set forth in Section 3.5. Actual Use exists before Modification and after Modification
Actual Use Savings	Means the delta between the Actual Use (reflected as, i.e., kWhs, gallons, therms) subtracted from the Baseline Use, subject to Modification, as set forth in Section 3.5.
EMSA	Means the Energy Management Services Agreement dated _____, 20__
Baseline	The baseline is a calculation or measure of each type of energy consumed (in terms of kWh, kW, therms, gallons or cords, as applicable) and, if the City so determines, operational expenditures in each of the Facilities, together constituting the usage and occupancy of the Facilities, systems, or equipment operations and characteristics, and environmental conditions that are included in the Premises prior to the installation of ECMs. In the City's discretion and upon its instruction, which shall be given by means of a Notice to Proceed applicable to the EMSA implementation (by phase, as applicable), ESCO shall include calculation of operational expenditures, making operational savings applicable. The <u>Baseline Period</u> is the period of time coordinated with the Baseline to allow the comparison of a Guarantee Year against the Baseline. Notwithstanding any provision to the contrary, the definition shall be consistent with the applicable requirements of the most recent industry standards set forth by the Federal Energy Management Program as of the date of this EMSA and are subject to the City's discretion and approval.
Baseline Period	Baseline Period is calendar year 20__ through calendar year 20__.
Baseline Utility Rate	The unit cost of utility derived from the calendar year 20__ Use and calendar year 20__ Cost as set forth in the definition of Baseline. The Baseline Utility Rate is increased by the Escalator each year to represent the Baseline Utility Rate for the current year and is used in the determination of performance against the Guaranteed Savings. The Baseline Utility Rate is shown in Table 1 of Attachment B-4. The Baseline Utility Rate for each Facility is calculated as a calendar year annual average. A new Baseline Utility Rate is calculated each year by multiplying the last Baseline Utility Rate by the Escalator plus one (1). For each Facility and each utility, the Baseline Utility Rate each year is set forth in Attachment B-4 Table 1. The respective Baseline Utility Rate will be applied to each year during the Term, as set forth in Attachment B-4 Table 2, regardless of the actual date. Year 1 of the Term will use the year 0 Baseline Utility Rate.
Category(ies)	Means the two groups into which the Facilities are divided as set forth in Rider B-1-A. The two categories shall individually be referred to as "City Facilities" and "School Facilities" and generally may be referred to as "Categories".
Commencement Date	Means the first day of the first month following the Final Completion Date.

Current Utility Rate	The Current Utility Rate provided by the City to ESCO within 30 days after the end of each Guarantee Year. The Current Utility Rate will be provided as one (1) value for each utility used in each Facility, by dividing the total costs (as shown on the utility bills) by the total use (as shown on the utility bills) for the period concurrent with the Guarantee Year. ESCO will use the Current Utility Rate to calculate and represent the Realized Cost Savings.
Energy Conservation Measure (ECM)	Means the same as set forth in the EMSA, Section 2.7 and further may mean particular ECMs by groups, subdivisions or individually, as reflected in the Interactive Spreadsheet.
Escalator	Means the stipulated annual increase of _____ percent to be applied to the Baseline Utility Rate. The Escalator reflects the anticipated increase in the cost of electricity, gas, propane and oil, as applicable and further set forth in Exhibit H, Schedule of Savings and is based on US Bureau of Labor derived CPI average for the past 20 years https://www.bls.gov/regions/new-england/data/consumerpriceindex_northeast_table.htm
Existing Equipment / Systems	Means the equipment and systems existing during the performance of the IGA and/or a prior project but not installed for this Project. The point of transition between New Equipment/Systems and Existing Equipment/Systems shall be reflected by ESCO in as-built plans provided to the City during the Implementation Phase.
Facility(ies)	Means the City owned or operated buildings, structures, sites, energy and water consuming locations and equipment, and public ways where an ECM is or may be implemented, a list of which is attached hereto at EMSA, Exhibit A, Attachment A-1.
FEMP	Means the Federal Energy Management Program of the U.S. Department of Energy and its Measurement and Verification Guidelines for Federal Energy Projects (version _____).
Final Completion Date	Means the date on which the City accepts the ESCO's written representation and warranty that the Work is complete and in full compliance with the requirements of the EMSA Documents applicable to implementation phase, including compliance with all applicable codes and FEMP standards. The ESCO's one-year warranty begins on the Final Completion date.
Final IGA Report	Means the final version applicable Investment Grade Audit Report dated _____ as accepted by the City.
Future Equipment/Systems	Means the equipment and systems installed by the City after the completion of the implementation, but not installed by ESCO.
Guarantee Year	Means the 12 month period following the "Commencement Date" and each of the successive twelve (12) month periods continuing for the Term. May also be referenced as "Year".
Total Guarantee Year Savings	Means the summation of avoided Energy and Operational Costs realized by Facilities in each Guarantee Year as a result of the Retrofit and Support Services provided by ESCO. Any excess savings in any Guarantee Year shall accrue directly to the benefit of the City and shall not be used by ESCO in any future Guarantee Year(s) (for example, to offset any shortfalls in savings). Notwithstanding any provision to the contrary, the definition shall be consistent with the applicable requirements of the most recent (as of the date of this

	EMSA) industry standards set forth by the Federal Energy Management Program.
Implementation Amendment	Means this implementation amending the ESMA by which ESCO agrees to install specific ECMs and comply with a written scope of work within an agreed upon construction schedule.
Interactive Spreadsheet	Means the excel spreadsheet titled “Interactive Spreadsheet” dated _____ appended to the Final IGA Report provided by ESCO to the City and which is Attachment B-3, incorporated herein by reference.
Measurement and Verification or M&V	Means the services performed by ESCO pursuant to the M&V Plan, attached as Attachment B-1.
Measurement and Verification Phase	The Measurement and Verification (M&V) Phase shall be the same as the “Term” herein. The M&V Phase consists of Guarantee Years following the “Commencement Date”.
Modification	Means the permissible changes, if any, to Actual Use for a particular Guarantee Year, as set forth in Sections 3.5, below. Modifications may not be presumed or aggregated year to year.
MVEGA	Means this Measurement & Verification and Energy Guarantee Agreement, Exhibit B to the EMSA, including its Attachments and Riders.
M&V Option A	Means the method of measuring and verifying the energy used for the ECMs, as set forth in Rider B-1-C, row A. (M&V Options Protocol).
M&V Option A Cost Savings	Means the product of the quantity applicable M&V Option A Actual Use Savings (if any) plus Modifications multiplied by the applicable utility rate.
M&V Option B	Means the method of measuring and verifying the energy used for the ECMs, as set forth in Rider B-1-C, row B. (M&V Options Protocol).
M&V Option B Cost Savings	Means the product of the applicable M&V Option B Actual Use Savings (if any) multiplied by the applicable utility rate.
MVEGA Documents	<p>Means the following documents, including any and all exhibits, attachments and riders, between ESCO and the City. M&V and Energy Guarantee Agreement (may be referred to as “MVEGA”)</p> <ul style="list-style-type: none"> • <u>Attachment B-1</u>: Entitled “Measurement and Verification Plan” (may be referred to as “M&V Plan”) <ul style="list-style-type: none"> ○ <i>Rider B-1-A</i>: Entitled “ECMs by Option A or B” ○ <i>Rider B-1-B</i>: Entitled “M&V Detailed Matrix” ○ <i>Rider B-1-C</i>: Entitled “M&V Options Protocol” ○ <i>Rider B-1-D</i>: Entitled “Sampling Protocol” ○ <i>Rider B-1-E</i>: Entitled “Historical List of Modifications” ○ <i>Rider B-1-F</i>: Entitled “Annual Savings Report” • <u>Attachment B-2</u>: Entitled “Schedule of Savings” <ul style="list-style-type: none"> ○ <i>Rider B-2-A</i>: Entitled “Calculations” • <u>Attachment B-3</u>: Entitled “Interactive Spreadsheet” (will be attached to executed MVEGA as CD) • <u>Attachment B-4</u>: Entitled “Baseline Data and Projections” • Table B-4-1 - Summary of Baseline Adjustments

	<ul style="list-style-type: none"> • Table B-4-2 - Utility Rate Schedules <ul style="list-style-type: none"> ○ <i>Rider B-4-A</i>: Entitled “Baseline Energy Tab” (a portion of the Interactive Spreadsheet) ○ <i>Rider B-4-B</i>: Entitled “Standards of Comfort” • <u>Attachment B-5</u>: Entitled “Quarterly and Annual Report Requirements” • <u>Attachment B-6</u>: Entitled “Quarterly M&V Fee Breakdown” • <u>Attachment B-7</u>: Entitled “Operational Parameters” • <u>Attachment B-8</u>: Entitled “City Responsibilities” • <u>Attachment B-9</u>: Entitled “MVEGA Bonds and Certificates”
New Equipment / Systems	Means the equipment and systems furnished and installed by ESCO as set forth in Exhibit A and Attachments A-1, A-2 and Exhibit E of the applicable implementation. The point of transition between New Equipment/Systems and Existing Equipment/Systems shall be reflected by ESCO in as-built plans provided to the City during the applicable implementation phase.
Realized Cost Savings	<p>ESCO shall use the Current Utility Rate, multiplied by the Actual Use Savings plus Modifications, to provide a representation of the cost savings the City would see in the utility bills due to the ECMs installed.</p> <p>The Realized Cost savings is for informational purposes only and is not compared to the financial Guarantee to determine satisfaction of the Guarantee</p>
Term	Means _____ () years following the Commencement Date, unless earlier terminated in accordance with this MVEGA. The “Term” shall be the same as the “Measurement and Verification Phase”.
Variance	Means the difference between the Guaranteed Savings and the Actual Cost Savings. If the Actual Cost Savings is less than the Guaranteed Savings, the result shall be characterized as a shortfall.
Utility Rates	<p><i>Baseline Utility Rate</i>, as defined above, is used to calculate the Guaranteed Savings, Actual Cost Savings and the Variance.</p> <p><i>Current Utility Rate</i>, as defined above, is used to represent the Realized Cost Savings.</p>

1.2 In the event of a conflict between MVEGA Documents which cannot be reasonably harmonized, the documents shall be interpreted in the following order of priority as to the meaning of this MVEGA:

1. M&V and Energy Guarantee Agreement (MVEGA) (Exhibit B)
2. Maintenance & Services Agreement
3. Applicable EMSA Implementation Amendment
4. EMSA.

ARTICLE 2.0 – MEASUREMENT AND VERIFICATION

2.1 ESCO shall provide Measurement and Verification (“M&V”) services (“M&V Services”) in accordance with the Attachment B-1 (“M&V Plan”), and other Attachments and Riders all

attached hereto and incorporated herein by this reference. Subject to the availability of funds, M&V Services shall continue for the full term of the MVEGA, commencing on the Commencement Date and expiring at the end of the Term on the anniversary of the Commencement Date, unless earlier terminated in accordance with the terms and conditions set forth herein.

- 2.2 The City shall pay ESCO for the M&V Services in an amount as set forth in Attachment B-6, Quarterly M&V Fee Breakdown, attached hereto and incorporated herein, (“M&V Fee”) in accordance with the procedures set forth herein. The City shall pay ESCO for services performed only on the basis of written quarterly invoices reflecting the applicable dates of service. The City shall make payments within forty-five (45) days after receipt of such invoice. ESCO shall have no reimbursable expenses by this MVEGA. *Inter alia*, the City’s payment to ESCO shall constitute payment in full for furnishing all materials, supplies, labor, services, supervision, tools and equipment and the use thereof as well as all overhead (including but not limited to supervision, training, insurance, license fees, permit fees), and profit, if any, as set forth in this MVEGA. ESCO shall include the M&V Fee, broken down by ECM, set forth on an annual basis as a component of the Interactive Spreadsheet. The Parties may equitably increase or decrease the M&V Fee by written amendment if the M&V Services are increased or decreased.
- 2.2.1. Notwithstanding any provision to the contrary, ESCO shall have no right to recover costs, fees, or other amounts through this MVEGA for services performed pursuant to the EMSA, any implementation or other amendment, or any other Exhibit or Attachment. The M&V Fee for this MVEGA shall be solely for M&V Services performed pursuant to this MVEGA.
- 2.2.2 ESCO's acceptance of payment of a particular invoice shall be and shall operate as a release to the City of all claims with regard to payment for services covered by the invoice.
- 2.2.3 The City’s payment of any invoice shall in no way constitute the City’s acceptance of the M&V Services nor any other aspect of this MVEGA, nor shall it prejudice or affect ESCO’s obligation, at its own expense, to repair, correct, renew, or replace any defects or imperfections in its services or obligations herein or pay for damages due or attributable to such defects, nor shall any such payment prejudice or affect the rights of the City to hold ESCO liable for breach of contract, to avail itself of the remedies set forth herein, or any other remedy available to it at law or equity.
- 2.3 The City shall, so far as the M&V Services may require, furnish ESCO with relevant information it may have concerning the M&V Services. Notwithstanding any provision to the contrary, the City does not warrant or guarantee the accuracy or completeness of any such information but the Parties shall work cooperatively to verify information as necessary.
- 2.4 City agrees to provide reasonable access to all Facilities as necessary to allow ESCO to perform the M&V Services.

ARTICLE 3 ENERGY AND COST SAVINGS GUARANTEE

Section 3.1 Guaranteed Savings:

- 3.1.1 For good and valuable consideration, to comply with the requirements of G.L. c. 25A, Sec. 11I, and in order to partially induce the City to enter into this implementation, ESCO hereby guarantees to the City that the City will realize Actual Cost Savings equal to or greater than the applicable year’s Guaranteed Savings, as set forth in Attachment B-2 (Schedule of Savings), as a result of the ECM’s implemented pursuant to the applicable implementation. The Guarantee will commence on the Commencement Date.
- 3.1.2 If the applicable Actual Cost Savings is less than the Guaranteed Savings for the same Guarantee

Year, as calculated in accordance with this MVEGA, ESCO shall pay the shortfall to the City, as set forth below.

- 3.1.3 If the applicable Actual Cost Savings is greater than the Guaranteed Savings, the excess amount shall benefit the City and may not be applied by ESCO to remedy any shortfall in the past or future or to otherwise satisfy any Guaranteed Savings obligations. Rebates and other incentives will also accrue to benefit the City and may not be applied to ESCO's Guaranteed Savings obligations.
- 3.1.4 The two Categories, the "City Facilities" and the "School Facilities", reflect certain record keeping of the City. Each Category shall be comprised of the particular Facilities assigned to it, as set forth in Rider B-1-A (ECMs by Option A or B). For the City's convenience, ESCO's Schedule of Savings (Attachment B-2) shall be divided by such Categories and ESCO shall report Actual Cost Savings divided by such Categories in the Quarterly and Annual Reports. The Guarantee Savings is based on the cumulated or aggregated total of both Categories, as set forth in Attachment B-2.
- 3.1.5 All energy cost savings, whether Actual Use or otherwise, whether arising from ECMs, the operation of Existing Equipment/Systems, Future Equipment/Systems, or otherwise, realized by the City prior to the Commencement Date shall be fully credited to the City and shall not be applied to ESCO's Guaranteed Savings obligations.
- 3.1.6 All Actual Cost Savings resulting from the actions of the City beyond that required by the MVEGA shall be fully credited to the City and shall not be applied by ESCO as Actual Cost Savings or be otherwise applicable to ESCO's satisfaction of its Guarantee Savings obligations. The City will provide data to support Modification computations and ESCO shall provide the data analysis and validation, both in a manner consistent with Section 3.5.
- 3.1.7 All Actual Cost Savings resulting from the operation of Future Equipment/Systems throughout the Term shall be fully credited to the City and shall not be applied by ESCO as Actual Cost Savings or otherwise applicable to ESCO's satisfaction of its Guarantee Savings obligations. The City will provide data, data analysis and computations to support Modification and ESCO shall provide validation, both in a manner consistent with Section 3.5.
- 3.1.8 ESCO warrants to City that equipment and materials provided by ESCO meet or exceed the catalog ratings as of the date of the applicable implementation and that these ratings were and shall be accurately used in the calculation of the Guaranteed Savings.
- 3.1.9 ESCO warrants to the City that representations made regarding the Baseline in the applicable implementation and used in ESCO's calculations Attachment B-1 (M&V Plan), Attachment B-2 (Schedule of Savings), Rider B-2-A (Calculations), and in Attachment B-4 (Baseline Data), are accurate and complete to the extent possible by the data from the relevant utilities provided to ESCO by the City.
- 3.1.10 ESCO shall have the responsibility of establishing the accuracy of its Guaranteed Savings determination, including but not limited to its compliance with all requirements applicable to this MVEGA.

Section 3.2 Calculation of Actual Cost Savings:

3.2.1 The City shall:

- (a) Submit to ESCO within fourteen (14) business days following the end of each month, utility meter readings reflecting energy use and related documentation regarding solar production

- (kilowatt hours, gallons, therms, etc.) and gas use by the Facility(ies) during the prior billing period. Without limiting the City's obligation, such submission shall be in electronic form and may be forwarded directly or indirectly from the utility provider(s). If the applicable utility invoice is received by the City less frequently than monthly (e.g., quarterly, annually), it shall be submitted to ESCO within fourteen (14) business days of the end of the month in which it was received. Further, to the extent available to the City, City agrees to make MassEnergyInsight (MEI) data available to ESCO in the form of a spreadsheet.
- (b) Allow ESCO reasonable access to the Facility(ies) and escort if necessary, upon three (3) business days written notice, which will not be unreasonably withheld, for the purpose of observing and documenting site and equipment conditions.
 - (c) Provide ESCO, upon ten (10) business days written request, with copies of available maintenance records, drawings and other data related to ESCO's compliance with this MVEGA. ESCO shall provide the City, upon ten (10) business days written request, with copies of any and all available records and data arising from such a review, in accordance with Section 3.3 and Section 5.12.
 - (d) Prior to the Commencement Date, identify City's single point of contact for City's obligations under this MVEGA. Said person shall be fully qualified to oversee and coordinate City's obligations for all Categories and shall be fully familiar with this MVEGA and the EMSA. Said person shall further be authorized by City to address concerns and respond to requests for additional information, but shall have no authority to change the price, schedule, work/services, or any term or condition set forth herein. In addition, said person shall be authorized to receive ESCO's requests for Facility(ies) and records access and be responsible for completing the arrangements needed to gain access within the time allowance stated in Section 3.2.1(b).

3.2.2 ESCO shall:

- (a) Analyze the utility invoices from the City, adjust for applicable Modifications, if any, and determine whether the applicable Year's Guaranteed Savings has been achieved. In making this determination, ESCO shall fully comply with the requirements of the MVEGA.
- (b) Provide its determination, with all supporting data, in the form of a spreadsheet, in native electronic format, capable of being changed by the City, by ECM for Option A/B (individually and across types of similar ECMs), and by Category. Such spreadsheet will be provided with the Annual Reports. Such spreadsheet shall include the exact formulas provided in Exhibit B Attachment B-2, Rider B-2-A-____ through Rider B-2-A-____, a tab with a legend for each formula defining each variable or control, and shall provide the same granularity and detail included in Exhibit B Attachment B-2 Rider B-2-A-____ through Rider B-2-A-____. Where Modifications apply, ESCO shall provide as much granularity and detail as necessary to support the modification per City review and acceptance.
- (c) ESCO shall use without proration the applicable cost from Attachment B-4 so that the time periods for the applicable Quarterly and Annual Reports conform to the applicable Year.
- (d) Prior to the Commencement Date, identify to the City an individual about whom the City has no reasonable objection, and who shall serve as ESCO's single point of contact for ESCO's obligations under this MVEGA. Said person shall be fully qualified to oversee and coordinate ESCO's obligations and shall be fully familiar with this MVEGA and the EMSA. Said person shall further be authorized by ESCO to address concerns and respond to requests for additional information.
- (e) Provide to the City its determination as to whether the Guaranteed Savings has been realized, as detailed herein, in the Annual Reports set forth in Section 3.3 and Attachment B-5 and Rider B-1-F. ESCO's determination shall be transparent and detailed, so as to allow the City to review the data, analysis, presumptions and ESCO's determination.

- (f) Provide to the City its representation of the Actual Cost Savings by multiplying the Actual Use Savings, after modification, by the Baseline Utility Rate plus Escalator.
 - (g) Provide to City its representation of the Realized Cost Saving by multiplying the Actual Use Savings by the Current Utility Rate.
- 3.2.3 In order to determine whether the Guaranteed Savings is achieved in each Year, ESCO shall apply the following calculations and otherwise comply with the terms and conditions set forth in this MVEGA.
- 3.2.3.1 Generally, the Baseline Use and Actual Use are reflected in energy units (e.g. kWhs, gallons, therms). The Baseline Use and Actual Use may only be Modified as set forth in Section 3.5. M&V Option A/B Cost Savings may be equal to, greater than or less than the Guaranteed Savings.
- 3.2.3.2 The Baseline Cost equals the previous year's Baseline Utility Rate multiplied by (Escalator plus one (1)) multiplied by the Baseline Use.
- 3.2.3.3 All ECMs shall be measured and verified as Option A or Option B, using the methods established in the M&V Agreement.
- (a) As to those ECMs that are measured and verified by the methods known as "Option A" or "Option B" (may be referred to as "M&V Option A/B ECMs") and acknowledging that they may be Modified under Section 3.5, ESCO shall determine Actual Use Savings of those M&V Option A/B ECMs as follows:
 - Actual Use Savings (of the M&V Option A/B ECMs) equals Baseline Use (of the M&V Option A/B ECMs) minus Actual Use except:
 - In some Option A cases the insertion of observed or measured values into the engineered savings calculations is used to directly determine Actual Use Savings; in these cases Actual Use Savings equals Baseline Use minus Actual Use
 - In cases of production ECMs, such as Solar PV or Solar Thermal, Actual Use Savings is equal to the value of measured production after Modifications.
 - M&V Option A/B Cost Savings equals Actual Use Savings (of the M&V Option A/B ECMs) multiplied by the Baseline Utility Rate multiplied by (the Escalator plus one (1)) as established in Attachment B-4 Table 1 for each Term year number regardless of actual calendar year.
 - (b) Once ESCO has completed the calculations for ECMs under Option A and Option B, it next shall determine the Variance as follows:
 - Variance equals the (M&V Option A/B Cost Savings) minus Guaranteed Savings.
- 3.2.4 ESCO shall determine the Actual Cost Savings for the applicable Year, and compare the Actual Cost Savings to the applicable Year's Guaranteed Savings, as set forth in Attachment B-2 (Schedule of Savings) and Rider B-1-F (Annual Savings Report), to determine, in accordance with this Article 3, whether ESCO has satisfied its Guaranteed Savings obligations. ESCO shall not carryover any excess savings of any kind or nature to a future Year. Such excess savings shall solely benefit the City.
- 3.2.5 No changes of any kind or nature, including but not limited to normalizing, adjustment, alteration or modification to the Guaranteed Savings amount, whether to the Baseline, Actual Cost, or otherwise, shall be permitted except as a Modification in accordance with Section 3.5 and application of the Escalator in accordance with Section 3.2.3.3.

- 3.2.6 Methods for measurement and verification of Guaranteed Savings shall conform to the standards established by FEMP.

Section 3.3 Notice of Quarterly and Annual Calculation / Notice of Shortfall

- 3.3.1 Quarterly Report: Beginning with the MVEGA Commencement Date, and each quarter thereafter during the Term, no later than forty-five (45) days after the receipt of the last utility bill for the end of each quarter, ESCO shall submit (electronically) to the City a Quarterly Report ("Quarterly Report") satisfying all the applicable requirements set forth in this Section and in Attachment B-5.
- 3.3.2 Annual Report: At the end of each Year (and in lieu of the fourth Quarterly Report), ESCO shall submit the Annual Report (electronically) to City ("Annual Report"), within forty-five (45) days after the receipt of the last utility bill and the City provided data to support any and all Modifications and Baseline Adjustments for that Year. The Annual Report shall satisfy all the applicable requirements of this Section and Attachment B-5. The Annual Report shall contain ESCO's determination as to whether the Guaranteed Savings, set forth in Attachment B-2, Schedule of Savings, has been achieved or whether there is a shortfall for the applicable Year. ESCO shall detail the Variance, and its calculation of the Actual Use Savings in conformance with the requirements of Sections 3.1 and 3.2. If the information submitted under Section 3.2.1(a) is delayed, ESCO shall be given commensurate additional time to submit the Annual Report, which shall be ESCO's sole remedy.
- 3.3.3 City will reasonably assist ESCO in generating the applicable Quarterly or Annual report by providing ESCO with information as set forth in Section 3.2.1. Data and calculations used by ESCO in the preparation of its Quarterly or Annual Reports shall be made available to City, along with such explanations and clarifications as City may reasonably request.
- 3.3.4 At the end of each Year, the City will have forty-five (45) days from the date it receives ESCO's Annual Report, to review the Annual Report and provide written notice to ESCO of non-acceptance of ESCO's determination of the Guarantee Savings and the amount of any shortfall for that Year. Upon the City's request, ESCO shall promptly provide the City with additional documents reasonably related to its determination and the City's objection. If the City remains dissatisfied, it shall submit to ESCO the reasons for its objection within forty-five (45) days following the City's receipt of the additional documents requested. Upon ESCO's receipt of the reasons for the City's objections, the Parties shall make good faith and diligent efforts to resolve all issues. If the Parties are unable to reach agreement within ninety (90) days of ESCO's receipt of the City's reasons for its objections, either party may pursue its remedies as set forth in Section 5.11 or in a court of competent jurisdiction.

Section 3.4 Payment of Shortfall to the City

- 3.4.1 For any Guarantee Year where a shortfall exists, ESCO shall, within ninety (90) days after ESCO's submittal of its Annual Report for that Guarantee Year, pay the City the amount of any shortfall (the difference between the Actual Cost Savings and the Guaranteed Savings) by check made payable to the City of Worcester, in US funds, immediately available. In no event may ESCO withhold payment of the shortfall amount it calculates is owed pending resolution of a dispute with the City, whether pursuant to Section 3.3.4 or otherwise. In no event shall the City's acceptance or deposit of any payment constitute waiver of the City's right to dispute ESCO's determination of the shortfall and to demand payment of the appropriate shortfall under this MVEGA.
- 3.4.2 If, during any Year, the Actual Cost Savings realized by the City are greater than the Guaranteed

Savings, such excess shall be retained by City. ESCO shall make its Guaranteed Savings calculation based on the applicable Year and shall not offset or carry over any excess against future (or past) shortfall.

- 3.4.3 If there is a shortfall of more than 10% of the Guaranteed Savings in any Year for any utility (oil, gas, electric), ESCO shall provide, at no cost to the City, qualified engineering support and analysis to determine the cause of such shortfall, including detailed backup documentation and recommendations to reduce or eliminate it.
- 3.4.4 Retroactive Adjustments:
- 3.4.4.1 If, at any time within one (1) year after the City receives submission of an Annual Report, ESCO or City learns of any condition existing during said Year that should have been taken into account by ESCO in the calculations performed, ESCO shall recalculate and shall submit to City a revised Annual Report for City's review, restating the Actual Cost Savings achieved by City for said Year and indicating the amount of ESCO's overpayment or underpayment, as the case may be. Upon agreement of an adjustment to payment, ESCO shall immediately pay City any amount due City from ESCO or invoice City for any amount due ESCO from City. If the Parties are unable to reach agreement within ninety (90) days of the notification of such condition, either Party may pursue its remedies as set forth in Section 5.11 or in a court of competent jurisdiction.
- 3.4.4.2 If, at any time within one (1) year from the applicable Year, either Party determines the Guaranteed Savings determination should be changed because of third party billing inconsistencies (e.g., utility estimates), new information, data discrepancies, it shall notify the other Party. Applying agreed upon calculations or metering device data provided to both Parties, the Parties shall endeavor to appropriately adjust the Guaranteed Savings determination. Upon agreement for an adjustment, ESCO shall immediately pay City any amount due City from ESCO or invoice City for any amount due ESCO from City. If the Parties are unable to reach agreement within ninety (90) days of the notification of such condition, either party may pursue its remedies as set forth in Section 5.11 or in a court of competent jurisdiction.
- 3.4.4.3 The provisions of this Section 3.4.4 shall not alter or be deemed a precondition to the pursuit of any legal remedy otherwise available to either Party but are instead intended to allow the Parties to efficiently address inadvertent errors or oversights.

Section 3.5 Modification of Actual Use for Particular Guarantee Year

For any Year, ESCO shall make Modifications to Actual Use or the Baseline, in accordance with this Section 3.5, as part of its determination as to whether the City has realized the applicable Year's Guaranteed Savings, as set forth in Attachment B-2. Modifications may be made only:

- (1) if there is a Material Change,
- (2) if there is a Material Adjustment, or
- (3) for a Baseline Adjustment.

In the Annual Report, ESCO shall state whether the Guaranteed Savings has been achieved, in accordance with Section 3.3. An agreement to Modify, or the lack of Modification shall, in no event, constitute a waiver or release or otherwise limit the City's right to seek legal remedy, at law or equity, for any damages it may suffer.

- 3.5.1 Material Changes: Material Changes shall mean one or more changes to a Facility or Facilities (a) by the City, or (b) by ESCO, that, in the aggregate, are anticipated to increase or decrease the Actual Use Savings by more than one percent (1%) in an applicable Year, determined in conformance with Attachment B-2 (Schedule of Savings) and Attachment B-1 (M&V Plan).

Material Changes, including deviations from the requirements of Attachment B-1, B-7, and B-8, Riders B-1-B and B-4-B, and the O&M Manual may include, but shall not be limited to the following types of changes:

- (1) manner of use of the Facilities by City;
- (2) hours of operation of any equipment/systems or Facilities;
- (3) occupancy of the Facilities;
- (4) structure of the Facilities;
- (5) Existing Equipment/Systems and, subject to the provision below, Future Equipment/Systems, used in the Facilities;
- (6) maintenance of ECMs within a Facility other than that required by the O&M Manual (as located in Exhibit A of the Implementation Amendment);
- (7) improper operation of the interconnection between the inverters and the electrical distribution system;
- (8) change to the Facility requiring the operation of the solar PV array(s) or PV thermal collectors to be interrupted or discontinued; and
- (9) other conditions affecting energy use in the Facilities.

Notwithstanding any provision to the contrary, Material Changes may, in the City's discretion include changes in Actual Use to any Existing Equipment/Systems or Future Equipment/Systems. If the City determines that such Actual Use will be included, then ESCO shall provide M&V Services for such Existing Equipment/Systems and/or Future Equipment/Systems, subject to an equitable change of the M&V Fee, if applicable.

3.5.1.1 Notification of Material Changes: Not less than thirty (30) days after any Material Change occurs, the City shall provide written notice to ESCO of said Material Changes in the Facility(ies), including a description and additional information regarding the anticipated effect on energy use. ESCO shall reasonably assist in the identification of any Material Change by informing the City in writing of any Material Change about which it becomes aware.

3.5.1.2 Modifications to Actual Use in the event of a Material Change: The Modification to Actual Use shall be calculated as follows: if Actual Use (determined on a monthly basis) increases or decreases as a result of a Material Change, the amount of any increase shall be subtracted from the Actual Use, or any decrease shall be added to Actual Use, as applicable, prior to the calculation of energy savings (in order to determine whether the Guaranteed Savings is realized) in accordance with the requirements of Attachment B-2 (Schedule of Savings) and Attachment B-1 (M&V Plan) and Rider B-1-B (M&V Matrix). Such Modifications shall be documented on an ongoing basis by ESCO in the applicable Quarterly and Annual Report, including backup information and data. If, within ninety (90) days of ESCO's proposal, or the City's request that ESCO make such a Modification, to Modify the applicable Actual Use, the Parties are unable to agree on the Material Change or its application to the determination as to whether the Guaranteed Savings amount has been satisfied then either Party may pursue its remedies as set forth in Section 5.11 or in a court of competent jurisdiction.

3.5.2 Material Adjustments: Material Adjustment shall mean a change by a third party or force majeure, except for that set forth in Section 3.5.3, to a Facility or Facilities that is anticipated to increase or decrease Actual Use Savings by more than one percent (1%) of the Guaranteed Savings in the applicable Year, determined in conformance with Attachment B-2 (Schedule of Savings) and Attachment B-1 (M&V Plan). Material Adjustments may include, but shall not be limited to the following types of adjustments:

- (1) natural disaster causing damage to Facility(ies);
- (2) vandalism causing damage to Facility(ies); or
- (3) governmental mandated change or alteration.

- 3.5.2.1 Notification of Material Adjustments: Not less than thirty (30) days after any Material Adjustment occurs, the City shall provide written notice to ESCO of said Material Adjustment in the Facility(ies), including a description and additional information regarding the anticipated effect on energy use. ESCO shall reasonably assist in the identification of any Material Adjustment by informing the City in writing of any Material Adjustment about which it becomes aware.
- 3.5.2.2 Modifications to Actual Use in the event of a Material Adjustment: The Modification to Actual Use shall be calculated as follows: if Actual Use (determined on a monthly basis) increases or decreases as a result of a Material Adjustment, the amount of any increase shall be subtracted from the Actual Use, or any decrease shall be added to Actual Use, as applicable, prior to the calculation of energy savings (in order to determine whether the Guaranteed Savings is realized) in accordance with the requirements of Attachment B-2 (Schedule of Savings) and Attachment B-1 (M&V Plan) and Rider B-1-B (M&V Matrix). Such Modifications shall be documented on an ongoing basis by ESCO in the applicable Quarterly and Annual Report, including backup information and data. If, within ninety (90) days of ESCO's proposal (or the City's request that ESCO make such a Modification) to Modify the applicable Actual Use, the Parties are unable to agree on the Material Adjustment or its application to the determination as to whether the Guaranteed Savings amount has been satisfied then either Party may pursue its remedies as set forth in Section 5.11 or in a court of competent jurisdiction.
- 3.5.3 Baseline Adjustments: Baseline Adjustments mean those adjustments made each Guarantee Year to the Baseline. Baseline shall only be adjusted for the following:
- (1) Worcester weather noted in degree days or monthly mean temperature. Weather degree day or monthly mean temperature adjustments shall mean the monthly normalizing to account for the variation of heating and cooling days used to determine whether ESCO has satisfied the applicable Year's Guaranteed Savings. ESCO shall use Worcester data from the Worcester Airport Weather Station.
 - (2) Worcester solar irradiance in average kWh/meter²/month as modeled in the engineering calculations or W/meter²/month as measured by the solar irradiance meter located closest to the array in question and reported via the City's third party monitoring company. Solar irradiance adjustments shall mean the monthly normalizing to account for the variation solar irradiance used to determine whether ESCO has satisfied the applicable Year's Guaranteed Savings. ESCO shall use data from the solar irradiance meter located closest to each solar array in question
 - (3) The Escalator shall be applied at the beginning of each Guarantee Year, as predetermined in Table 1 of Exhibit B Attachment B-4
- 3.5.3.1 Modification for a Baseline Adjustment shall be calculated as follows: for a Baseline Adjustment, ESCO shall use an auditable calculation and apply the Escalator as set forth in Section 1.1 (definition for "Escalator"). Such Modifications shall be documented on an ongoing basis by ESCO in the applicable Quarterly and Annual Report, including backup information and data. If, within ninety (90) days of ESCO's proposal (or the City's request that ESCO make such a Modification) to make a Modification, the Parties are unable to agree on a Baseline Adjustment or its application to the determination as to whether the Guaranteed Savings amount has been realized by the City, then either Party may pursue its remedies as set forth in Section 5.11 or in a court of competent jurisdiction.
- 3.5.4 If the City enters into an agreement for an additional energy source or a change in an existing energy source or supplier, ESCO may propose a Modification in accordance with Section 3.5.1.
- 3.5.5 **Threshold Clarification for Modifications.** The one percent (1%) threshold referenced in

Sections 3.5.1 and 3.5.2 applies to each individual utility of each Facility in all Categories. If an increase or decrease in Actual Use exceeds the 1% threshold, then the Modification shall be made for the entire increase or decrease, not just the amount exceeding the threshold (e.g., an increase in Actual Use of 3% shall result in a Modification of 3%). The 1% or lower increase or decrease in Actual Use shall have no effect on determination of the Variance or on any shortfall payment due by ESCO to the City.

- 3.5.6 Applying the information provided by the City and as may be otherwise available to ESCO from other sources, (for example, its M&V Services and any Maintenance Agreement) ESCO shall perform the calculations to Modify, in accordance with Section 3.5, and provide prompt notification to the City.
- 3.5.7 If City eliminates (e.g. by Modification) one or more Facilities, including one or more solar installations noted in Exhibit A – Attachment A-1 from inclusion in this MVEGA, ESCO shall reduce the M&V Fee commensurate with the reduction in M&V Services, such reduction to commence on the first day of the quarter following the Modification.
- 3.6 **Improved Equipment /Systems Installed By ESCO.** This Section is applicable when ESCO desires to implement ECMs, at its own expense, to increase Actual Use Savings. In such an event, ESCO may, during the Term, subject to City's prior written approval, improve, upgrade or replace (hereinafter, collectively may be referred to as "Improve") the New Equipment/Systems, revise any procedures for the operation of the New Equipment/Systems or implement other energy or water saving actions in the Facilities, provided that:
 - 3.6.1 ESCO complies with the standards and requirements set forth in the applicable implementation and in the sections of Scope of Work applicable to the relevant ECM(s), including but not limited to the Standards of Comfort, Rider B-4-B. The City shall make the final determination as to whether any material or equipment to be installed is as required in the Implementation Scope of Work, Exhibit A. No substitution of any equipment specified in said Exhibit A shall be made without the written consent of the City, and any such substitution shall, in the opinion of the City's Contracting Officer (Section 3.2.1), be at least equal in quality, finish, durability, serviceability and performance for the purpose intended. Unless expressly permitted by the City in writing, all upgraded and replacement equipment and materials shall be new, "state of the art", unused and undamaged. No rebuilt, refurbished or "seconds" shall be acceptable.
 - 3.6.2 Such changes, additions to, or replacement of the New Equipment/Systems, and any operational changes, or new procedures are necessary to achieve the Guaranteed Savings at the Facility.
 - 3.6.3 Such changes, additions to, or replacement of the New Equipment/Systems, and any operational changes or new procedures shall not (1) reduce the Guarantee, (2) increase the cost of operations, maintenance or the M&V Fee, (3) reduce the quality, utility or useful life of any New, Future or Existing Equipment/Systems associated with the Facilities.
 - 3.6.4 Such changes, additions to, or replacement of the New Equipment/Systems and operation changes or new procedures do not adversely affect any related warranty(ies).
 - 3.6.5 Any cost incurred arising from or relating to such changes, additions or replacement of the New Equipment/Systems, or operational changes or new procedures, including but not limited to consequential costs, shall be the sole responsibility of ESCO. All changes, additions or replacements of the New Equipment/Systems, revisions to operating or other procedures shall be described in detail and shall be provided to City for its consideration and approval before implementation. ESCO shall update any and all software to be used in connection with the New Equipment/Systems.

- 3.6.6 All replacements of and alterations or additions to the New Equipment/Systems shall become part of the New Equipment/Systems and shall be covered by the terms and conditions of this MVEGA, including but not limited to insurance, indemnification and warranty provisions.

ARTICLE 4 BREACH / TERMINATION

- 4.1 Consideration. The Parties acknowledge and agree that the Guaranteed Savings as set forth in Article 3 and Attachment B-2 is partial consideration and inducement to the City to exercise its option to enter into this implementation and is further required by G.L. c. 25A, Sec. 11I.
- 4.2 Guarantee Savings Remedy. If the City does not realize the applicable Guarantee Savings for each respective Year, the City's sole remedy for such failure shall be the timely payment of the full shortfall from ESCO, as set forth in Article 3. ESCO's payment for the shortfall shall not, however, limit the City's remedies or otherwise preclude the City from enforcing any and all other rights it may have pursuant to this MVEGA.
- 4.3 City Enforcement. In accordance with Section 4.4, the City may enforce, suspend, or terminate this MVEGA, or exercise any other rights available at law or equity, including but not limited to specific performance and injunctive relief. Damages shall be limited only as expressly set forth in Section 4.7 below.
- 4.4. **Termination of MVEGA.**
- 4.4.1 ESCO shall have no right to terminate this MVEGA, whether for cause or otherwise, except (a) for the City's failure to pay the M&V Fee, as expressly set forth herein, or (b) by agreement of the Parties. For any other default or breach by the City, the provisions regarding Modification set forth in Section 3.5 shall be ESCO's sole remedy.
- 4.4.1.1 If the City fails to timely pay the M&V Fee, as set forth in Article 2, then ESCO shall provide the City written notice of not less than sixty (60) days (calculated from receipt of such notice), in which to remedy or cure the default. Said notice shall specify the amount due and the invoices remaining unpaid. If the City fails to make payment during the sixty (60) days, then ESCO may suspend this MVEGA by giving written notice to the City of such suspension and specifying the effective date thereof, said written notice to be given not less than ten (10) calendar days before the effective date of such suspension. Suspension of this MVEGA, however, shall be limited to this MVEGA, and shall have no effect on any implementation or other exhibit, agreement or other obligation between the Parties. Further, ESCO shall not be relieved of liability to the City for other damages sustained by the City to the extent such damages are caused by ESCO's breach or negligence.

Notwithstanding the above, if the City disputes, in good faith, the payment of any invoice, it shall notify ESCO of said dispute as soon as possible, provide ESCO with a detailed written explanation of its concerns and both Parties shall attempt to resolve the dispute. If, after receiving the City's explanation, ESCO disagrees with the City, it shall provide a detailed written response setting forth its reasons and any supporting documentation. The Parties shall record resolved disputes in writing and make appropriate payments or reimbursements. Until the resolution of any dispute, the City shall not be required to pay ESCO any amount that the City disputes, and for which it has provided ESCO a detailed explanation pursuant to this paragraph, prior to resolution of such dispute.

- 4.4.1.2 A suspension imposed by ESCO pursuant to Section 4.4.1.1 above shall continue until the earlier of one of the following events:
- (a) payment of the outstanding M&V Fee;

- (b) the passage of twelve (12) months from the effective date of the suspension, during which time the suspension has been in place continuously, or such longer period if either party commences legal action within said twelve (12) months, in order that such legal action may be fully adjudicated (including the time allowed for any remedy); or
- (c) as the Parties may in writing agree.

If the reason for suspension imposed by ESCO continues for a period of twelve (12) months (or such longer time as may be allowed by (b) or (c) above) without resolution (e.g., payment, commencement of legal action or agreement by the Parties), then ESCO may terminate this MVEGA upon thirty (30) days written notice to the City.

If the reason for suspension imposed by ESCO is resolved within a period of twelve (12) months (or such longer time as may be allowed by (b) or (c) above), then the MVEGA shall automatically recommence on the first day of the month following the end of the suspension, or such other date as a court may order or the parties agree, and shall then continue for the remainder of the Term (which shall not be extended by reason of the period of suspension unless an extension is agreed by the Parties). For the limited purposes of recommencing after a suspension pursuant to this Section, notwithstanding Section 4.7, resolution may include:

- (a) re-start up costs that will be incurred by either Party directly related to recommencement; and
- (b) a Modification(s) to account for data that was not collected and to determine the Actual Use Savings applicable to the recommencement date.

4.4.2 Notwithstanding any provision to the contrary, the City may terminate this MVEGA for its convenience at any time by giving not less than thirty (30) days notice in writing to ESCO. In the event of such termination, ESCO shall nevertheless comply with the requirements of Article 3, including submitting a final Quarterly or Annual Report for the applicable Year prior to the termination (as may be applicable), but shall not be required to pay the City the shortfall, if any, for that portion of the Year following to the termination date.

4.4.3 If ESCO fails to fulfill in a timely and proper manner its obligation to

- (a) make payment to the City for any shortfall of the Guaranteed Savings amount, as set forth in Article 3, under this MVEGA, or
- (b) satisfy any other of the terms, covenants and conditions of this MVEGA,

then the City shall provide ESCO written notice of not less than sixty (60) days (calculated from receipt of such notice), in which to remedy or cure the default. Said notice shall specify the alleged failure or breach. If ESCO fails to remedy the violation during the sixty (60) days, then the City may suspend or terminate this MVEGA by giving written notice to ESCO of such suspension or termination and specifying the effective date thereof, said written notice to be given at least ten (10) calendar days before the effective date of such suspension or termination, as applicable. Suspension or termination of this MVEGA, however, shall be limited to this MVEGA, and shall have no effect on any implementation, or other exhibit, agreement or other obligation between the Parties. Further, the City shall not be relieved of liability to ESCO for other damages sustained by ESCO to the extent such damages are caused by the City's breach or negligence.

In addition to its right to suspend or terminate, the City may enforce this MVEGA exercising any and all rights it may have available at law or equity, including but not limited to the right of specific performance and injunctive relief.

4.4.3.1 A suspension imposed by the City pursuant to Section 4.4.3 above shall continue until the earlier of one of the following events:

- (a) payment or other remedy or cure of the outstanding violation(s) by ESCO so that ESCO is in compliance with this MVEGA;
- (b) the passage of twelve (12) months from the effective date of the suspension, during which time the suspension has been in place continuously, or such longer period if either party commences legal action within said twelve (12) months, in order that such legal action may be fully adjudicated (including the time allowed for any remedy);
- (c) the City may unilaterally lift the suspension; or
- (d) as the Parties may in writing agree.

If the reason for suspension imposed by the City continues for a period of twelve (12) months (or such longer time as may be allowed by (b) or (c) above) without resolution (e.g., payment of the outstanding amount, cure or remedy of all violation(s), commencement of legal action or agreement by the Parties), then the City may terminate this MVEGA upon thirty (30) days written notice to the City.

If the reason for suspension imposed by the City (e.g., payment of outstanding amount cure or remedy of all violation(s), legal resolution or agreement of the parties) is resolved within a period of twelve (12) months (or such longer time as may be allowed by (b) or (d)), then the MVEGA shall automatically recommence on the first day of the month following the end of the suspension, or such other date as a court may order or the parties agree, and shall then continue for the remainder of the Term (which shall not be extended by reason of the period of suspension unless an extension is agreed to by the Parties). For the limited purposes of recommencing after a suspension pursuant to this Section, notwithstanding Section 4.7, resolution may include:

- (a) re-start up costs that will be incurred by either Party directly related to recommencement; and
- (b) a Modification(s) to account for data that was not collected and to determine the Actual Use Savings applicable to the recommencement date.

- 4.4.4 The twelve (12) month suspension period as identified above shall not reduce the applicable statute of limitations.
- 4.4.5 Notwithstanding any provision to the contrary, however, if ESCO's alleged failure or breach causes or exacerbates a threat to public safety, an obstacle or impediment to the continued use of any Facility, or risk of damage to property, then ESCO shall immediately cure the failure or breach. The City may, in its sole discretion, take such action as it deems necessary and appropriate to protect persons or property from injury or damage, including but not limited to curing the failure or breach at ESCO's cost and/or suspension of this MVEGA. ESCO shall promptly reimburse the City for any and all damages, costs and expenses to the extent they are caused by ESCO's negligent actions or omissions.
- 4.5 No Termination Expenses. In the event of a suspension or termination of this MVEGA, ESCO shall be paid for all services properly performed pursuant to this MVEGA up to and including the termination or suspension date subject to the submission of a detailed invoice. No other termination or suspension expenses shall be allowed (except only as set forth in Sections 4.4.1.2 and 4.4.3.1, to the extent applicable).
- 4.6 Insolvency. Notwithstanding any provision to the contrary and to the full extent allowed by law, if ESCO shall be adjudged as bankrupt, or if it shall make a general assignment for the benefit of its creditors, or if a receiver of its property shall be appointed, or if the services to be performed under the MVEGA are abandoned, or if the MVEGA or any part thereof shall be assigned without the previous written consent of the City, or if the MVEGA or any claim hereunder shall be assigned by ESCO otherwise than as herein specified, such action(s) shall be deemed a default of this MVEGA.

4.7 Limitation of Liability

4.7.1 In the event of termination or suspension, ESCO shall have no right to recover indirect, consequential, incidental, lost opportunity or lost profit damages.

4.8 Equitable Extension. If ESCO is hindered or delayed due to City's actions or failure to perform its obligations under this MVEGA and damages are incurred without ESCO's fault, control or negligence, then the time fixed for completion shall be extended for an equitable period by reason of any of the foregoing causes. Said extension of time shall be ESCO's sole remedy. ESCO shall have no claim against the City for damages of any kind on account of such hindrance or delay. This provision shall not prevent ESCO from exercising its rights for a Modification under Section 3.5.

4.9 Force Majeure. Neither party shall be liable to the other or deemed to be in breach under this MVEGA for any failure to perform, including, without limitation, a delay in rendering performance due to causes beyond its reasonable control such as an order, injunction, judgment, or determination of any Court of the United States or the Commonwealth of Massachusetts, an Act of God, war, civil disobedience, extraordinary weather conditions, third party labor disputes or shortages, or extraordinary fluctuation in electric power, heat, light, or air conditioning. Dates or time of performance shall be extended automatically to the extent of such delays, provided that the party whose performance is affected promptly notifies the other, in writing, of the existence and nature of such delay.

4.10 Independence. After the Commencement Date, this MVEGA may be enforced independently from the EMSA, the applicable implementation and any other Exhibit thereto. Nothing in this MVEGA shall preclude the City from seeking any and all remedies it may have, at law or equity, against ESCO for any breach of the EMSA, the applicable implementation or any other Exhibit thereto.

4.11 Survival. This MVEGA shall survive the completion of any applicable implementation, and further shall not expire or terminate at the completion of any other agreement, whether for cause, convenience, or due to the passage of time. This MVEGA shall only terminate at the end of the Term or as otherwise set forth in this Article 4. Further, in addition to those provisions set forth expressly, provisions that by their nature survive expiration or termination of this MVEGA shall survive such expiration or termination

ARTICLE 5 MISCELLANEOUS

5.1 ESCO Employees, Contractors. ESCO shall be responsible for all the acts and omissions of ESCO's employees, subcontractors, consultants, invitees, and agents and all of the persons or entities directly or indirectly employed by it in connection with the execution of this MVEGA.

5.2 No Third Party Beneficiary. This MVEGA is by and between the parties that have executed it. The MVEGA is intended for their mutual benefit alone and is not intended to confer any express or implied benefits on any other person. To the fullest extent allowed by law and notwithstanding any provision to the contrary, this MVEGA shall not confer third party beneficiary status on any person or other entity.

5.3 Timely Payment. ESCO is solely responsible to make timely payment(s) to any and all of its employees, subcontractors, consultants, and agents and, without limiting the generality of Section 5.4 below, it shall indemnify the City for any and all claims, of any kind or nature, brought as a result of its failure to do so.

5.4 Indemnification. ESCO shall indemnify and save harmless the City of Worcester and all of its

officials, agents and employees from and against all suits, actions, claims or liability of every name, nature, and description arising out of or in consequence of the acts or omissions of ESCO, its contractors, consultants, agents, and their respective employees and officers in the performance of the work and services covered by this MVEGA and/or ESCO's failure to comply with the terms and conditions hereof, and shall at its own cost and expense defend any and all such suits and actions.

Without limiting the generality of the foregoing, ESCO further covenants to hold and save the City, its officials, employees and agents, harmless from and against all and every demand or demands, of any nature or kind for alleged infringement, on account of the use of any patent, or other proprietary interest furnished by ESCO under this MVEGA. City will give ESCO reasonable notice in writing of any such suit and permit ESCO, through counsel of its choice, to answer the charge of infringement and defend such suit. If such a suit has occurred or may occur, ESCO may, at its election and expense, obtain for City the right to continue using the applicable software, equipment and/or materials, or to replace, correct or modify such equipment and/or materials so that it is not infringing.

ESCO's obligations under this provision shall not terminate with the expiration or termination of this MVEGA but shall survive it. The indemnifications required hereunder shall not be limited by reason of the specification of any particular insurance coverage under this MVEGA or EMSA. Notwithstanding any provisions to the contrary contained in any section of this MVEGA, ESCO is not required hereunder to indemnify or defend or hold harmless the City, its officers, agents, or employees or any contractor or subcontractor retained by the City from or against any suits, actions, claims or liability due to the negligence of the City or any third party.

- 5.5 Amendments. This MVEGA may be amended only in a written document executed by the parties of record, acting through their duly authorized representatives. For clarity, neither the City nor its employees, officials or agents, shall be bound by "click through" agreements. This MVEGA shall not be controlled, modified or amended by any provisions purporting to be inserted via a hyperlink.
- 5.6 No Waiver. No failure or delay on the part of either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 5.7 Choice of Law. The laws of the Commonwealth of Massachusetts shall govern the validity, interpretation, construction and performance of this MVEGA. ESCO hereby agrees to venue in any federal or state court located in Worcester County, Massachusetts and waives any objection based on forum non conveniens with respect to any action arising out of or relating to this MVEGA.
- 5.8 Bonds.
- 5.8.1 Prior to the Commencement Date, ESCO shall annually obtain and present to the City an Efficiency Bond in an amount equal to the full value of the Guaranteed Savings for that Guarantee Year. Said Bond shall each be in a form as provided herein, with sureties satisfactory to the City to (a) guarantee the faithful performance by ESCO of all its obligations under this MVEGA, and (b) constitute the security for the payment by ESCO of the Guaranteed Savings amount, as required by this MVEGA. The City may, upon thirty (30) days written notice prior to start of any Guarantee Year elect to suspend this requirement for that Guarantee Year and if the City so elects, ESCO shall reduce the M&V Fee accordingly.

- 5.8.2 Prior to the Commencement Date and prior to each subsequent year thereafter, ESCO shall obtain and present to the City a Performance Bond, and a Payment Bond (unless ESCO certifies in writing that it will only use its own employees for all Services required herein) in an amount equal to the full annual value of the M&V services. Said Bond shall be in a form as provided herein, with sureties satisfactory to the City (with no less than a "A" A.M. Best rating) to guarantee the faithful performance by ESCO of all its obligations hereunder, and constitute the security for the payment by ESCO and its subcontractors for all labor performed or furnished and for all materials used or employed in connection with this MVEGA. The City may, upon thirty (30) days written notice prior to start of any Guarantee Year elect to suspend this requirement for that Guarantee Year and if the City so elects, ESCO shall reduce the M&V Fee accordingly.
- 5.9 Insurance. ESCO shall obtain and maintain insurance coverage for itself, its officers, employees and its contractors, subcontractors, suppliers, consultants, agents and invitees, and their respective officers and employees (collectively for this Section, "Contractors"). Said insurance shall commence no later than the effective date of this MVEGA. Said coverage shall not be less than the following:
- 5.9.1 ESCO shall obtain and maintain professional liability/errors & omissions insurance covering negligent acts, errors and omissions for itself and its Contractors sufficient to cover any and all claims, damages, liabilities, costs and expenses (including attorney's fees) arising out of or in connection with ESCO's fulfillment of any of its obligations under this MVEGA. The amount of this coverage shall not be less than Five Million (\$5,000,000) dollars per occurrence and shall remain in full force and effect for a period of not less than six (6) years after the termination of the final phase of this MVEGA. If coverage is claims made, ESCO shall provide an extended reporting period policy for not less than six (6) years to ensure continuous coverage or maintain the same coverage for not less than six (6) years after termination of this MVEGA.
- 5.9.2 ESCO shall maintain broad form Commercial General Liability (including products/completed operations and contractual liability) insurance written on an "occurrence" basis. Said coverage shall include sudden & accidental pollution coverage. There shall be no deductible or retention, which shall be clearly evidenced on the certificate of insurance. Such insurance will name the City of Worcester as an additional insured and as a Loss Payee as its interests may appear.
- 5.9.3 Unless greater insurance coverage is required elsewhere in the MVEGA, ESCO shall furnish the following coverage which shall not be less than the minimum amounts set forth below:
- Commercial General Liability (CGL) with Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury (including death) and personal & advertising injury, with limits no less than \$10,000,000 per occurrence and \$20,000,000 annual aggregate. ISO Form or an equivalent CG 2033 (Ongoing) and CG 2037 (Completed Operations) forms shall also be included.
- 5.9.4 Automobile Liability/Comprehensive Auto Liability \$2,000,000 per occurrence (all owned, scheduled, hired, and non-owned autos). Said coverage shall include bodily injury (including death) and property damage. There shall be no deductible or retention, which shall be clearly evidenced on the certificate of insurance. Coverage shall be on an occurrence basis.
- 5.9.5 Excess/Umbrella Liability coverage shall be on an occurrence basis. There shall be no deductible or retention. Excess/Umbrella liability insurance shall apply in excess of primary employer's liability, general liability and automobile liability, shall be no less than Ten Million Dollars (\$10,000,000) per occurrence. Said coverage shall include sudden & accidental pollution coverage.

5.9.6 Coverage for Workers Compensation shall be obtained and maintained in accordance with the Worker's Compensation Act of the Commonwealth of Massachusetts (G.L. c. 149 § 34A and G.L. c. 152) or as follows, whichever is greater:

Workers Compensation Coverage A	Statutory Minimum
Employer's Liability Coverage B	\$2,000,000 each accident
	\$2,000,000 disease per employee
	\$2,000,000 disease policy

5.9.7 ESCO shall maintain cyber liability insurance (including, e.g., tech E&O, network security, data privacy, and cyber liability (which includes internet liability, computer security and privacy, liability first and third party liability) in the amount of no less than \$5,000,000 per claim with a \$10,000,000 aggregate. Such coverage shall remain in effect for at least six (6) years after termination of this MVEGA and include worldwide coverage for network security/data protection liability, including coverage for financial loss resulting or arising from:

- acts, errors, or omissions, in rendering technology/professional services and/or in connection with the Services provided under this MVEGA;
- violation or infringement of any right of privacy, including breach of security and breach of security/privacy laws, rules or regulations globally, now or hereinafter constituted or amended;
- data theft, damage, unauthorized disclosure, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information or confidential corporate information in whatever form, transmission of a computer virus or other type of malicious code;
- participation in a denial of service attack on third party computer systems; and
- loss or denial of service.

Such coverage must include technology/professional liability, breach of contract, privacy and security liability, privacy regulatory defense and payment of civil fines, payment of credit card provider penalties, and breach response costs (including without limitation, notification costs, forensics, credit protection services, call center services, identity theft protection services, and crisis management/public relations services) and may not include cyber terrorism exclusion.

If coverage is claims-made, ESCO shall provide an extended reporting period policy for six (6) years to ensure continuous coverage or maintain same coverage for six (6) years after termination of this MVEGA.

5.9.8 The City of Worcester shall be named as an additional insured on all coverage and certificates, with regard to all claims, injuries or damages associated with this EMSA, except for workers compensation.

5.9.9 With regards to any Professional, Tech E&O and Cyber Liability policy secured the policy(s) will be endorsed where as the "insured vs insured" exclusion will be amended so as not to apply to claims in which the City is the plaintiff and ESCO is the defendant.

5.9.10 ESCO shall carry any other types of insurance as may be required elsewhere in this MVEGA. All insurance policies required in this MVEGA shall be provided by companies with a rating of no less than "A-, XII" by A.M. Best or equivalent rating agency.

5.9.11 Prior to execution of this MVEGA, ESCO shall provide the City certificates (in Acord Form) from the insurers evidencing that the insurance policies as required herein have been issued to ESCO in a form satisfactory to the City. ESCO shall promptly provide the City with additional

information (including a copy of the policy(ies)) regarding said coverage upon request. ESCO shall further provide a current certificate(s) upon the City's request.

- 5.9.12 No reduction or cancellation of any insurance whether by the insurer or by the insured shall be effective unless written notice thereof is given to the City at least thirty (30) days prior to the intended effective date thereof, which date has been expressed in a notice to the Certificate Holder, Purchasing Director, City Hall, 4th floor, 455 Main Street, Worcester, MA, 01608. Prior to the effective date of any such cancellation the ESCO shall obtain and maintain new insurance to cover the policies so cancelled.
- 5.9.13 ESCO shall require its insurer to waive subrogation on claims under all policies required that arise out of or relate to this MVEGA. ESCO is solely responsible for payment of deductible or retention amounts relating to its insurance coverage. ESCO's insurance, except workers compensation/employers liability coverage, shall be primary and non-contributory to any coverage by the City. ESCO's required insurance coverage set forth above shall not be construed as a limitation or waiver of any potential liability or satisfaction of ESCO's indemnification obligation
- 5.9.13 The City reserves the right to self fund/self insure and shall not be required to obtain insurance coverage.
- 5.10 Compliance with Law. ESCO shall comply with all the laws, municipal, state and federal, applicable to this MVEGA.
- 5.11 Dispute Resolution. If the Parties are unable to reach agreement regarding matters set forth in Sections 3.3.4, 3.4. or 3.5, and the amount in controversy is Twenty Five Thousand Dollars (\$25,000) or less, either party may initiate non-binding mediation to assist the parties in resolving the matter. Such mediation shall take place in Worcester County, Massachusetts before a mediator approved by both parties and with the cost of the mediator to be divided equally, unless resolution of the dispute is made in favor of one party (a clear winner and clear loser), in which case the losing party shall pay the cost of the mediator. If the parties are unable to agree on a mediator, the mediator will be selected in accordance with the rules of the American Arbitration Association applicable to mediation. If the amount in controversy exceeds Twenty Five Thousand (\$25,000) Dollars or the parties are unable to resolve the dispute through mediation, either party may seek such further remedy(ies) as otherwise set forth in this MVEGA.
- 5.12 City Access. City shall have access to inspect areas in which ESCO is performing services and/or work at any Facility and, on reasonable notice, may inspect ESCO's books, records, contracts, audits, accountings and other compilations of data that are in final form or are reasonably concluded and which pertain to this MVEGA (may be referred to collectively "Records"), or as the parties may otherwise agree. Records shall be kept based on Generally Accepted Accounting Principles and calculations kept on file in legible form. Records shall be saved or archived for a period of six (6) years and shall be kept or made available within Massachusetts. This provision shall not entitle the City to inspect Records that are protected by attorney/client privilege.
- 5.13 Records - Confidentiality. The City reserves the right of access to the non-confidential records of ESCO and its contractors and consultants, in accordance with provisions of applicable federal and state laws and regulations. Those records classified confidential shall be provided with the informed written consent of the individual involved.
- 5.14 Generally Acceptable Accounting Principles. ESCO shall maintain its records relating to this MVEGA in compliance with generally acceptable accounting principles.
- 5.15 Ownership of Documents. Plans, designs, reports, analysis, data, memoranda, drawings, scopes of

work, estimates, calculations, specifications and any and all other documents, data, and writings provided by ESCO to the City pursuant to the terms and conditions of this MVEGA are the property of the City, whether the services for which they are made is executed or not, and are not to be used by ESCO on other work except by agreement with the City and are not to be used by ESCO on other work except by agreement with the City. Examples shall include but not be limited to the Quarterly and Annual Reports.

- 5.16 Notice. All notices required by this MVEGA to be given by one party to the other shall be effective only when sent in writing, by means of overnight delivery by a nationally recognized carrier, or mailed by U.S. certified mail, return receipt requested, postage prepaid, and addressed as follows:

(a) if to ESCO at

[TBD – ESCO recipient]

(b) if to the City, at

City Manager
City of Worcester
455 Main Street
Worcester, MA 01608

and

Chief Sustainability Officer
Department of Sustainability & Resilience
455 Main Street
Worcester, MA 01608

Either party shall notify the other of any change in their respective addresses.

- 5.17 First Party Guarantee. This MVEGA shall be a first party direct guarantee from ESCO to City. No third-party guarantee shall be accepted. ESCO shall not assign, convey, or transfer any interest in this MVEGA without the prior written consent of the City thereto.

- 5.18 CORI Clearance Requirements

No Person, including but not limited to corporations, partnerships, limited partnerships or limited liability corporations, shall be eligible to receive a contract if that person has been convicted of any felony offense involving the distribution of controlled substances as that term is defined under Chapter 94C of the General Laws and, for contracts to be performed for on-site services to the Worcester Public Schools, if that person or any person to be employed by that person in the performance of such on-site services has been convicted of a "sex offense" or a "sex offense involving a child" or a "sexually violent offense" or would meet the definition of "sexually violent predator" as those terms are defined in Section 178C of the General Laws and who must register with the sex offender registry board.

In accordance with G.L. c. 71, § 38R, the City may request and obtain all available criminal offender information ("CORI") from the Criminal History Systems Board of any employee or contractor who may have direct and unmonitored contact with children. ESCO shall require all individuals, whether employees, agents, contractors or others working on behalf of ESCO, who are involved in the provision of the services or work to complete and sign a Request Form to obtain CORI if, in the determination of the City, some or all of the employees, contractors, agents or others working on behalf of ESCO may have direct and unmonitored contact with children during the performance the services or work.

To the extent applicable and allowed by law, ESCO shall comply with the requirements of the City's Revised Ordinances of 2008, Part 1, Chapter 2, Section 37.

5.19 Conflict of Interest

5.19.1 ESCO hereby acknowledges and represents that to the best of ESCO's knowledge this MVEGA does not violate the laws of the Commonwealth of Massachusetts, Chapter 268A as amended, pertaining to conflicts of interest.

5.19.2 ESCO warrants that it has complied with all provisions of law regarding the award of this MVEGA and that it, or its employees, agents, officers, directors or trustees have not offered or attempted to offer, and shall not during the course of this MVEGA offer, anything of any value to any employee of the City in connection with this MVEGA.

5.19.3 ESCO further warrants that to the best of its knowledge no employee of the City, including unpaid members of City boards and commissions, serves as an officer, director, trustee or employee of ESCO, and that no employees of the City have or will have a direct or indirect financial interest in this MVEGA.

5.19.4 Violation of this section shall be a material breach of this MVEGA and shall be grounds for immediate termination of this IGA Agreement by the City without regard to any enforcement activities undertaken or completed by any enforcement agency. Termination of this MVEGA pursuant to this section shall not waive any claims for damages the City may have against ESCO.

5.20 Adherence to Applicable Grant Requirements.

The Parties acknowledge that the City may apply for a grant relevant to this MVEGA, the receipt of which may necessitate additional requirements not included in this MVEGA. ESCO shall reasonably provide the City documentation regarding its services and the expenditure of funds relating to this MVEGA as needed in order that the City may satisfy its reporting requirements pursuant to such grant. Parties acknowledge that the reasonable cost of additional requirements, if any, will be subject to a change order(s).

5.21 Certifications Required by Law. ESCO, by executing this MVEGA, certifies the following:

5.21.1 it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this MVEGA;

5.21.2 that no consultant to or contractor for ESCO has given, offered or agreed to give any gift, contribution or offer of employment to ESCO, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by ESCO;

5.21.3 that no person, corporation or other entity, other than a bona fide full time employee of ESCO, has been retained or hired by ESCO to solicit for or in any way assist ESCO in obtaining this MVEGA upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this MVEGA to ESCO; and

5.21.4 that ESCO, represents, warrants and certifies that to the best of its knowledge it and its consultants and subcontractors have complied with all laws of the Commonwealth of Massachusetts relating to taxes and all Ordinances and Orders of the City of Worcester relating to taxes, fees and charges, or is lawfully contesting the validity of the same. ESCO further represents, warrants and certifies that it will remain in such compliance during the Term of this MVEGA, including any amendments or extensions hereto. Likewise ESCO shall by the terms of its consultant and/or subcontract agreements require that its subcontractors and consultants also remain in such compliance during the term of their subcontract agreement. Breach of any of

these provisions by ESCO shall be deemed a material breach which shall entitle the City to remedies pursuant to Article 3 above and take any other action authorized by law to collect any amounts due the City.

- 5.22 Headings. The section headings and subheadings contained in this MVEGA are included for convenience only and in no way define or limit the scope of content of this MVEGA or in any way affect its provisions.
- 5.23 Exhibits. All Exhibits, Attachments and Riders referred to in this MVEGA are by such references fully incorporated herein.
- 5.24 Tax Compliance Certification. Pursuant to G.L. c. 62C, § 49A(b), each person signing this MVEGA on behalf of ESCO hereby certifies, under the penalties of perjury, that to the best of his/her knowledge and belief, ESCO has complied with any and all applicable state tax laws.
- 5.25 Certificate of Non-collusion. ESCO certifies under penalties of perjury that this MVEGA has been made in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity of group of individuals.
- 5.26 Certificate of Authorization. If ESCO is a corporation, each person executing this MVEGA on behalf of ESCO hereby covenants, represents and warrants that ESCO is a duly incorporated or duly qualified (if foreign) corporation and is authorized to do business in the Commonwealth of Massachusetts (a copy of evidence thereof to be supplied to the City upon request); and that each person executing this MVEGA on behalf of ESCO has been delegated such authority by an officer, and that he or she is duly authorized to execute, acknowledge and deliver this MVEGA to the City, a copy of a corporate resolution to this effect is attached hereto.
- 5.27 Foreign Corporation. ESCO, if a foreign corporation, hereby certifies that it is in compliance with G.L. c. 181 § 4 and that the name and address of the resident agent is attached hereto.
- 5.28 Severability. If any provision(s) of this MVEGA shall be ruled invalid by any court of competent jurisdiction or administrative agency and the determination of invalidity of such provision(s) has a materially adverse effect on a Party, then the Parties shall: promptly meet and negotiate a substitute provision(s) for such invalid portion and the remaining provisions which shall, to the greatest extent legally permissible, effect the intent of the Parties therein. Except as set forth above, the invalidity of such provision(s) shall not affect any of the remaining provisions hereof, and this MVEGA shall be construed and enforced as if such invalid portion did not exist.
- 5.29 Entire Agreement. This MVEGA contains the entire understanding of the parties and supersedes all prior agreements, representations, proposals and undertakings of the parties.
- 5.30 Standard of Professional Care.
- 5.30.1 ESCO shall perform all services required by this MVEGA in accordance with high professional standards of care and practice customarily expected of a nationally recognized design, engineering, and construction professionals performing comparable work, including in magnitude and complexity, and governing the work of ESCO as described in this MVEGA. ESCO shall be responsible for the professional and technical accuracy and the coordination of all documents and writings as instruments furnished under this MVEGA. ESCO shall furnish appropriate, qualified, competent and professional services for each of the aspects and tasks so that detailed checking or reviewing by the City is not necessary. Any and all errors and omissions shall be timely corrected. Notwithstanding any provision to the contrary, the City's review, approval, acceptance of, or payment for any of the services furnished shall not be construed to operate as a waiver of

any rights under this MVEGA or any cause of action arising out of the performance of this MVEGA.

- 5.30.2 ESCO acknowledges that it is fully familiar with the laws of the Commonwealth of Massachusetts governing the work relating to this Project. ESCO shall perform any and all services it renders to the City pursuant to this MVEGA in strict compliance with the relevant provisions of applicable law. Without limiting the generality of other provisions set forth in this MVEGA or the EMSA, if any aspect of ESCO's performance (including but not limited to its subcontractors, consultants, agents and the respective employees of each) fails to comply with applicable law, ESCO shall make all necessary corrections at no cost whatsoever to the City.
- 5.30.3 Any amounts due to the City by ESCO under this Section 5.29 shall be paid by ESCO either directly upon invoice from the City or by deduction from any amount otherwise payable by the City to ESCO under this MVEGA, whichever method of payment is directed by the City.
- 5.31 Debarment. ESCO represents and warrants that neither it nor any subcontractor or consultant retained by it for this MVEGA is presently debarred, proposed for debarment, suspended, or declared ineligible for contract awards by any federal agency in accordance with laws. In addition, ESCO certifies that neither it nor its subcontractors or consultants have been subject to debarment from public contracting in Massachusetts under the provisions of any applicable federal, state, or local debarment law, including but not limited to G.L. c. 29 Section 29F. ESCO shall immediately notify the City if any subconsultant or consultant becomes debarred or suspended, and shall take the necessary steps required by the City to terminate its contractual obligations with its subconsultant/consultant for work to be performed under this EMSA.
- 5.32 Successors and Assigns. The City and ESCO each binds itself, its partners, successors, legal representatives and assigns of such other party in respect to all covenants of this MVEGA. ESCO shall not assign, convey, or transfer any part of its services or obligations under this MVEGA without the prior approval of and written consent of the City. The written consent shall not in any way relieve ESCO from its responsibility for the professional and technical accuracy and the coordination of all data, designs, specifications, estimates and other services or materials furnished.
- 5.33 Independent Contractor. ESCO is an independent contractor and not an employee of the City. ESCO shall secure all personnel required to perform the services of this EMSA. Such personnel shall not be employees of, or have an employment contract with, the City.
- 5.34 Availability of Funds. The obligation of the City to comply with the provision of this MVEGA is subject to the availability of an appropriation for this purpose.
- 5.35 Non-Discrimination Statement
- 5.35.1 To the full extent allowed by law, in all hiring or employment made possible by or resulting from this MVEGA, ESCO (1) shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, national origin, gender identity, expression, or sexual orientation, and (2) shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, gender identity, expression, or sexual orientation.
- 5.35.2 To the full extent allowed by law, no person in the United States shall, on the ground of race, color, religion, sex, age, disability, national origin, gender identity, expression, or sexual orientation be excluded from participation in, be denied the benefits of, or be subject to

discrimination under any program or activity made possible by or resulting from the contract. ESCO and each employer shall comply with all requirements imposed by or pursuant to Title VI of the Civil Rights Act of 1964.

- 5.36 Data Protection. Unless greater protections are required elsewhere in this IGA Agreement, for all protected and/or private personal data received or submitted by ESCO as a result of this IGA Agreement, ESCO shall implement and maintain reasonable administrative, physical and technical safeguards to ensure the security (e.g., unauthorized access, use disclosure, alternative, loss or destruction) of such data under its control. Such safeguards shall include cyber security measures and physical security protections not less than that required by applicable law and current industry standards, as well as policies and procedures implementing and monitoring such measures. Any protected and private personal data required to be submitted by ESCO shall be transferred via encryption or similar secure means.
- 5.37 City Data. As between ESCO and the City, the City owns and shall retain ownership of its City Data (including any documents, information, as well as any extract or aggregation thereof, in whatever nature or form (collectively, “City Data”). For clarity, said City Data shall include but not be limited to any data that is licensed or made available to the City through a third party, including but not limited to personal and private information. By this MVEGA, City does not convey any right, title or interest in City Data (including but not limited to any rights owned by or licensed from any third party). Notwithstanding any provision to the contrary, ESCO is prohibited from retaining or using any City Data for any reason other than its performance under this MVEGA, even if said City Data is aggregated, de-identified, pseudonymized or anonymized. Without limiting the scope of Section 4.11 below, the requirements of this provision shall survive the termination of this MVEGA.

[remainder of page intentionally blank/signature page to follow]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound, have caused this MVEGA to be executed as a sealed instrument by their duly authorized representatives the day and year first above written.

RECOMMENDED:
Department of Sustainability & Resilience

[ESCO]
By its

John W. Odell,
Chief Sustainability Officer

Approval as to form

CITY OF WORCESTER

Karen A. Meyer
Assistant City Solicitor

Eric D. Batista
City Manager

I certify that funds are available in Account No. _____

Budget Analyst
Department of Administration & Finance

EXHIBIT B: M & V and Energy Guarantee Agreement (MVEGA)

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 1

Measurement and Verification Plan

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 1 - RIDER 1-A

EMCs by Option A or B

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 1 - RIDER 1-B

M&V Detailed Matrix

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 1 - RIDER 1-C

M&V Options Protocol

In accordance with the Measurement & Verification and Energy Guarantee Agreement (MVEGA), ESCO shall measure the Primary Measured Parameters as further set forth below, and verify Actual Cost Savings for each Facility using a method of measuring and verifying Actual Cost Savings of each Facility for the Project, referred to as Option A or Option B, as applicable.

ESCO shall collect field measurements during Installation.

The table below provides additional details.

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 1 - RIDER 1-D

Sampling Protocol

ESCO shall use the following method to select the sample sizes and locations for each Options A ECM unless otherwise noted in Rider 1B.

Homogenous Groups	<ul style="list-style-type: none">• Default homogenous group is defined by the technology-category, regardless of application or use-category. That is, for example, a 10hp motor defines a single homogenous group regardless if it is used for a fan or a pump and regardless of the number of hours it is expected to run.
Population Size	<ul style="list-style-type: none">• To be determined over the whole Project (rather than Facility by Facility). For example, if the homogenous group is post-retrofit Fixture-Type-ABC (2x4 lamp fixtures with 2 T-8 lamps and a single 2 lamp ballast), then the quantity of the population for Fixture-Type-ABC will determined to be that <u>single</u> quantity that exists over the whole City of Worcester Implementation Amendment, not quantities per Facility.
Sample Size	<ul style="list-style-type: none">• Default quantity equivalent to 80% Confidence, 20% Precision, 0.5 Cv unless adapted and agreed-to as presented in Rider 1B: M&V Detail Matrix• 0% over-sampling• If coefficient of variation between samples is more than 0.5, remove the high and/or low variables and remeasure two more samples• Minimum quantity of measurements and minimum sample size is three (3) as applicable for populations over three (3)• Population of less than 4 will not be sampled where the savings from that specific Homogenous Group contributes less than \$3,000 per year to Actual Cost Savings.
Measurement Points (redistribution)	<ul style="list-style-type: none">• Although the sample size is based on a single quantity, such quantity is to be separated and redistributed for measurement across the affected facility/utility meter stock• Default redistribution includes:<ul style="list-style-type: none">○ Samples will be selected from the facilities/utility meters that have the largest post-retrofit quantity for that homogenous group○ Samples will be collected from a minimum of 11 Facilities or the number of facilities the ECM is scoped in to ensure that the results are representative of the performance across the homogenous group. Samples will be randomized from Year to Year, ongoing measurements is applicable. The number of Facilities over which the redistribution will occur may be reduced below the minimum if the reduced Facility stock is adequate in providing 80% of the accumulative savings of that homogenous group

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 1 - RIDER 1-E

Historical List of Modifications¹

ESCO shall maintain a list of Modifications, using the form set forth below, and submit it to the City as part of the Quarterly and Annual Report.

Sample Entry

Start	Stop	Description ²	Facility Affected	Meter(s)	ECM	Modification Description ³	Actual Use Savings Results ⁴				
							Electric (kWh)	Electric ⁵ (kW)	Natural Gas (Therms)	Oil (Gallons)	Propane (Gallons)
3/22/2013	4/16/2013	Sample: Custodian broke PV panel causing array to be shut down	North High School	Solar Production Meter ⁶	G0-1, Solar PV	100 kWh AC per 2.3 kWh/m ² /daysolar x 26 days	34,350 kWh added	30 kW	n/a	n/a	n/a
7/18/2014	2/10/2015	Sample: Custodian replaced lamps with inefficient units	City Hall	Nat Grid Electric Meter # xyz123 Nat Grid Gas Meter #abc978	AO01, Indoor Lighting	1kWh per day	207 kWh added	No kW on blended rate	2.64 therms subtracted	n/a	n/a

Notes:

1. Content to be amended based on Final Completion Date.
2. Description of the Modification by Material Change or Material Adjustment.
3. Description of the Modification and Summary of Calculation, including the reference to the separate Engineering Calculation Package, if applicable.
4. Results from the Engineering Calculations for the Modifications set forth here.
5. Demand results may not be applicable where blended rates are used.

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 1 - RIDER 1-F

Annual Savings Report

Sample Entry

Bld g. #	Facility	Elec. BL ² Use (kWh)	Electric BL Peak (kW)	Natural Gas BL Use (Therm s)	Oil BL (Gal s)	Water BL Use (CC F)	BL Cost	Guaranteed Savings	Electric Actual Use (kWh)	Electric Actual Peak (kW)	Natural Gas Actual Use (Therm s)	Oil Actual (Gallon s)	Water Actual Use (CC F)	Actual Cost	Mod ID#	Modifications (refer to Rider 1-F for details)	Actual Cost Savings	Achieved Savings with modification impact	Variance
005	Burncoat Senior HS	970,800		118,041		7,578	\$xxx	\$xxxxx	T.B.D.	T.B.D.	T.B.D.	T.B.D.	T.B.D.	T.B.D.	#1	Mod 1 (PV panel broken)	T.B.D.	T.B.D.	T.B.D.
007	Worcester Senior Center	459,572		47,844			\$xxx	\$xxxxx	T.B.D.	T.B.D.	T.B.D.	T.B.D.	T.B.D.	T.B.D.	#2	Mod 2 (eg)	T.B.D.	T.B.D.	T.B.D.
011	Union Station	1,028,800		50,780		18,226	\$xxx	\$xxxxx	T.B.D.	T.B.D.	T.B.D.	T.B.D.	T.B.D.	T.B.D.	#3	Mod 3 (eg)	T.B.D.	T.B.D.	T.B.D.
↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓
↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓
↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓

Notes:

1. GY 2_ = Guarantee Year ending in the year 20XX
2. BL = Baseline for GY 20XX

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 2 *Schedule of Savings*

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 2 - RIDER 2-A ***Engineered Savings Calculations***

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 3

Interactive Spreadsheet

The Interactive Spreadsheet is attached by CD to this MVEGA and incorporated herein.

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 4

Baseline Data and Projections

This Attachment contains the following Tables:

Table 1 Summary of Baseline Adjustments

Table 2 Utility Rate Schedules

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 4 – Rider 4-A

Baseline Energy Tab

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

RIDER 4-B

Standards of Comfort

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 4 Table B-4-1 Summary of Baseline Adjustments

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 4 Table B-4-2

Utility Rate Schedules

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 5

Quarterly and Annual Report Requirements

In addition to the requirements set forth in Section 3.3 of the MVEGA, ESCO shall submit the three (3) Quarterly and one (1) Annual Report per Guarantee Year, electronically, satisfying the following requirements.

1. Each page shall include a title with ESCO contract number, project name, date of report, and reporting period. Reports shall be provided in a form acceptable to City.
2. ESCO shall perform the M&V Services, , within ninety (90) days after Commencement Date or its receipt of information to be provided by the City, as set forth in Section 3.2.1 of this MVEGA, whichever is later. ESCO shall provide its review and analysis of the Option A ECMs to include all calculations in the first Quarterly Report of the first (1st) year of the Term. In each subsequent Quarterly Report, ESCO shall include the data and information, cumulatively, from the prior Quarterly Reports so the City is able to clearly monitor the progression of Actual Savings and verify ESCO's satisfaction of the Guarantees Savings over the course of the Term. Subsequent quarterly and annual reports will include the revelations from site inspections and any changes to the calculations based on acceptable modifications, as defined in Section 3.5 of the MVEGA.
3. All Quarterly and Annual Reports shall contain an Executive Summary of the relevant Quarter or Year.
4. The Quarterly Reports shall include estimates, trends, ongoing Modifications, M&V data, site observations, calculations, assumptions, and similar information appropriate to assist the City in monitoring ongoing Actual Use and Actual Use Savings. Quarterly reports shall focus on system inspections and analysis of spot checks of performance and similar. Option A Quarterly Report tasking has been funded in a manner that City can redirect ESCO to area of most concern each year in lieu of visiting 100% of the facilities.
5. The Annual Report shall include ESCO's determination as to whether the Guaranteed Savings amounts have been achieved. Said determination shall be made by applying the calculations set forth in Article 3 and this Attachment 5 and shall state the Variance. In addition to other requirements, Annual Report shall evidence in detail the Actual Use, Actual Use Savings (as compared to the Baseline, subject to applicable Modifications, if any,) Actual Cost and the Actual Cost Savings for each Facility (and by utility type) as compared with the Baseline, subject to applicable Modifications for the applicable Year. Such information shall be provided annually and broken down annually for Option A divided by 12 calendar months. The Annual Report shall also apply the calculations set forth in Rider 2-A (Calculations). Without limiting the scope of the foregoing, the Annual Report shall include (a) an explanation and analysis of ESCO's determinations as to whether the Actual Cost Savings is equal or greater than the Guaranteed Savings, and (b) back up documentation (including for example, M&V and utility data, calculations, assumptions, specific Modifications and a detailed explanation of their application), and information evidencing the Actual Use, Actual Use Savings, Actual Cost and Actual Cost Savings to date. Supplemental to the calculations supporting the Guarantee, ESCO shall also include a section showing the Realized Cost Savings, as defined in the MVEGA section 1.

ESCO shall provide description and representation stating whether the ECMs installed are

performing and functioning as each is required under the Agreement, to the extent permissible by visual observation. Further, ESCO shall request from the City a description and representation as to whether the Existing Equipment/Systems to which the installed ECMs are connected is/are also performing and functioning properly.

ESCO shall further provide a determination of the annual Emission Reductions, calculating the conversion (applying EPA Protocol) from Actual Use Savings to ECO2 (may also be referred to as “CO2e”).

6. For each Quarterly and Annual Report, the ESCO shall include:

A. Report on any warranty, maintenance, and service activities performed during that year, including but not limited to those performed pursuant to Exhibit H (Equipment/Material Warranties), herein. Such report shall be limited to the data provided by the City to the ESCO, except as performed by the ESCO under warranty.

B. Reasonably identify any and all anomalies and other notable conditions at any Facility; the City shall reasonably assist in the identification of notable conditions.

C. Exclusion: Utility bill data will not be collected nor processed by the ESCO in Implementation-Amendment-6 (IA6). ESCO shall not determine Actual Use and Actual Cost data or break down energy units and energy costs from Utility Bill data.

D. Reserved

E. ESCO shall detail usage (kWhs or BTUs) by month of renewable onsite generation and applicable generation numbers reported (e.g. solar PV and solar Thermal).

F. Provide detailed description of any and all Modification(s) applied during the Guarantee Year and anticipated during each quarter (Rider 1-E).

G. Respond to any unanswered particular questions raised by the City during the applicable Quarter.

H. Describe any deficiencies, including but not limited to maintenance, addressed or to be addressed, by either Party and its impact, if any, on the generation on savings.

I. Describe the impact of any deficiencies or enhancements, upgrades or improvements, addressed or to be addressed by ESCO or City, on Actual Cost, Actual Cost Savings Actual Use and Actual Use Savings.

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 6

Quarterly M&V Fee Breakdown

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 7

Operational Parameters

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 8 City Responsibilities

The City shall comply with the following requirements during the Term of the MVEGA.

1. The City shall maintain the New Equipment/Systems subject to this MVEGA in accordance with the requirements of the Operation and Maintenance Manual from the Implementation Amendment (O&M Manual) provided by ESCO and agreed to by City. To the extent of the Services required by ESCO in any Maintenance and Service Agreement between the Parties, this responsibility shall shift to ESCO.
2. The City shall timely replace and/or repair New Equipment/Systems as necessary to satisfy the standards set forth in the O&M Manual, unless such equipment is warranted by ESCO or the manufacturer, in which case such replacement and repair shall be the obligation of ESCO or the manufacturer. Such repaired or replaced equipment shall have an equal or greater efficiency value than that implemented by ESCO. Further, the City shall maintain and keep in reasonable repair the Existing Equipment/Systems so that said Existing Equipment/Systems do not materially (as set forth in Section 3.5.6) adversely affect the Actual Use of the New Equipment/Systems.
3. City shall maintain sufficient records and make the same available to ESCO to document the dates and nature of maintenance and repairs/replacement performed.
4. City shall take reasonable measures to ensure the New Equipment/Systems are operating in compliance with the O&M Manual. The City shall operate the New Equipment/Systems and the connected Existing Equipment/Systems in compliance with Operational Parameters, Attachment 7, and in conformance with the Standards of Comfort, Rider 4-B, or if the City so determines, in a manner that reduces Actual Use. In the event of conflict, the Standards of Comfort shall control over the requirements of Attachment 7. Notwithstanding the above, in the event of an emergency, the City may deviate from said Standard of Comfort, Rider 4-B and the Attachment 7 as it determines appropriate and shall notify ESCO within thirty (30) days of such an event. Notwithstanding the above any deviation from Attachment 7 will result in a Modification.
5. City shall allow ESCO to perform remote diagnostics and monitoring on all New, Existing and Future Equipment/Systems subject to this MVEGA through a remote TCP/IP access. Said access shall be installed by the City at its cost. ESCO access through City's firewall(s) shall be limited to the controllers and front-end computer(s) by two (2) Measurement and Verification Specialists including but not limited to a dedicated static IP address, installation and on-going maintenance and subscription and licensing fees for access hardware and software and two (2) station licenses dedicated to the remote users. ESCO shall be responsible for security and confidentiality related to its access, including but not limited to limiting access solely to the user authorized by this Section and the secure storage of data.
6. To the extent practicable, the City will authorize ESCO's access to the City's utility accounts and the release of data to the ESCO representative. ESCO shall be responsible for security and confidentiality related to its access, including but not limited to limiting access solely to user authorized by this Section and the secure storage of data. Notwithstanding the above, the City is responsible for providing any utility data, that might be required or desired, to the ESCO.
7. City will reasonably assist in the identification of all notable conditions.
8. If the City fails to comply with the above responsibilities and as a result, ESCO determines a Modification is appropriate, its remedy shall be to pursue a Modification under Section 3.5.
9. During the Term, ESCO assumes no responsibility for the City's obtaining energy rebates and/or

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 8 ***City Responsibilities***

refunds between the City and any utility company.

10. City shall make such reports as legally required of it relating to this MVEGA to the U.S. Department of Energy, the Massachusetts Department of Energy Resources and any other governmental agency.

EXHIBIT B: M&V and Energy Guarantee Agreement (MVEGA)

ATTACHMENT 9

MVEGA Bonds and Certificates

ATTACHMENT C-1 SCHEDULE OF VALUES

This document shall not be a replacement or substitute for the Application and Certification for Payment, F-6.

SUMMARY**SCHEDULE OF VALUES****CUSTOMER:****CITY OF WORCESTER****455 MAIN STREET****WORCESTER, MA 01608****CONTRACTOR:****PROJECT:****CONTRACT #:****PROJECT #:**

The present status of the account for this Contract is as follows:

ORIGINAL CONTRACT SUM \$ _____

NET CHANGE BY CHANGE ORDERS \$ _____

CONTRACT SUM TO DATE \$ _____

TOTAL COMPLETED & STORED TO DATE \$ _____

TOTAL RETAINAGE WITHHELD TO DATE \$ _____

Retainage Rate = _____

TOTAL EARNED LESS RETAINAGE \$ _____

LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ _____

CURRENT PAYMENT DUE. \$ _____

BALANCE TO FINISH (Including Retainage). \$ _____

CHANGE ORDER SUMMARY	AMOUNT
Total changed approved in previous months by customer	_____
Total approved this month	_____
TOTAL CHANGES	_____

ECM BREAKOUT SCHEDULE OF VALUES

This document shall not be a replacement or substitute for the Application and Certification for Payment, F-6.

[illegible]

CHANGE ORDER SUMMARY SCHEDULE OF VALUES

ATTACHMENT C-1 SCHEDULE OF VALUES

This document shall not be a replacement or substitute for the Application and Certification for Payment, F-6.

NO

[illegible]

EXHIBIT C: Payment Schedule

1. The following payment schedule has been established for the Work:

1.1 The Contract Price for this Implementation Amendment is: \$_____).

1.2 Payments to the ESCO shall be made by the City in accordance with the terms of the Agreement and the General Conditions and in accordance with the Schedule of Values attached hereto as Attachment C-1. ESCO shall update the Schedule of Values on a monthly basis and include it with the Attachment F-6 Application and Certification for Payment for submission to the City.

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EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-1

Payment and Performance Bonds

PAYMENT BOND

KNOW ALL BY THESE PRESENTS, that [ESCO], a [state of incorporation] corporation duly established by law and having a usual place of business at [address], as PRINCIPAL, and [surety], a corporation organized under the laws of the state of [state of incorporation], and duly authorized and admitted, under the provisions of Chapter 175 of the Massachusetts General Laws, as amended, to transact the business of a fidelity and surety company in Massachusetts, as SURETY, are held and firmly bound unto the City of Worcester, a municipal corporation within the Commonwealth of Massachusetts, in the sum of [price] lawful money of the United States of America, to be paid to the City of Worcester, its successors and assigns, to the payment of which, well and truly to be made, the PRINCIPAL and the SURETY bind themselves, their respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said PRINCIPAL has entered into an Agreement of even date herewith with the City of Worcester, said Agreement being for the [Project name and location] at in the City of Worcester, Massachusetts;

NOW THEREFORE, the condition of this obligation is such that if the PRINCIPAL shall pay for all labor performed or furnished and for all materials used or employed or any appliance and equipment used or employed or rented or hired out in the execution of said Agreement and in any and all duly authorized modifications, alterations, extensions of time, changes or additions to said Agreement that may hereafter be made, notice to the SURETY of such modifications, alterations, extensions of time, changes or additions being hereby waived, the foregoing to include any other purposes or items set out in, and to be subject to, the provisions of Massachusetts General Laws, Chapter 149, Section 29 and Chapter 30, Section 39A, as amended, then this obligation shall become null and void; otherwise it shall remain in full force and virtue.

IN TESTIMONY WHEREOF, the PRINCIPAL has hereunto caused its name and seal to be affixed, and the SURETY has caused its corporate seal to be hereunto affixed by a duly authorized officer thereof and this instrument to be executed and delivered in its name and behalf by its attorney-in-fact, duly authorized by its by-laws and votes, powers of attorney, and letters of appointment and authorization, certificated copies of which documents are annexed to this bond and may be introduced in evidence as if a part hereof.

(PRINCIPAL) [ESCO] (SEAL)

[authorized signatory]

(SURETY) [surety]

(SEAL)

Attorney-in-Fact

PERFORMANCE BOND

KNOW ALL BY THESE PRESENTS, that [ESCO], a [state of incorporation] corporation duly established by law and having a usual place of business at [address] as PRINCIPAL, and [surety], a corporation organized under the laws of the state of Illinois, and duly authorized and admitted, under the provisions of Chapter 175 of the Massachusetts General Laws, as amended, to transact the business of a fidelity and surety company in Massachusetts, as SURETY, are held and firmly bound unto the City of Worcester, a municipal corporation within said Commonwealth of Massachusetts, in the sum of [price] lawful money of the United States of America, to be paid to said City of Worcester, its successors and assigns, to the payment of which, well and truly to be made, the PRINCIPAL and the SURETY bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said PRINCIPAL has entered into an Agreement of even date herewith with the City of Worcester, said Agreement being for the [Project name and location] in the City of Worcester, Massachusetts;

NOW THEREFORE, the condition of this obligation is such that if the said PRINCIPAL shall well and faithfully perform all the terms and conditions of said Agreement on its part to be kept and performed as therein stipulated, including guarantee and maintenance provisions therein, and shall pay for all materials furnished and for all labor performed in the execution of said Agreement, and shall indemnify and save harmless the said City of Worcester as therein stipulated, then this obligation shall be of no effect; otherwise it shall remain in full force and virtue.

And the said SURETY, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said Agreement, or to the work to be performed thereunder, or to the specifications accompanying the same, shall in any way effect its obligation on this bond; and it does hereby waive notice of any change, extension of time, alterations or additions to the terms of said Agreement, or to the work, or to the specifications.

In the event that the Agreement is abandoned by the Contractor, or is terminated by the City of Worcester, under the provisions thereof, said SURETY hereby further agrees that it shall, if requested in writing by the City of Worcester, take such action as is necessary to complete said Agreement.

IN TESTIMONY WHEREOF, the PRINCIPAL has hereunto caused its name and seal to be affixed, and the SURETY has caused its corporate seal to be hereunto affixed by a duly authorized officer thereof and this instrument to be executed and delivered in its name and behalf by its attorney-in-fact, duly authorized by its by-laws and votes, powers of attorney, and letters of appointment and authorization, certificated copies of which documents are annexed to this bond and may be introduced in evidence as if a part hereof.

(PRINCIPAL) [ESCOI] (SEAL)

[authorized signatory]

(SURETY) [surety]

(SEAL)

Attorney-in-Fact

EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-2 ***Prevailing Wage Rates***

EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-2-1

Massachusetts Prevailing Wage Rates

EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-2-2 ***Davis Bacon Wage Rates***

EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-2-3 Buy American Certification

EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-3
Certificates of Insurance

EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-4 Certificate of Authority

CERTIFICATE OF AUTHORITY

At a duly authorized meeting of the Board of Directors of the _____ held
(name of corporation)
on _____ Directors were present or waived notice it was voted that _____
(date) (officer and title)
of this company be and hereby is authorized to execute contracts and bonds in the name and behalf of said
company, and affix its Corporate Seal thereto, and such execution of any contract or bond of obligation in
this company's name shall be valid and binding upon this company.

A TRUE COPY, ATTEST:

[Signed]

[Company Name and Address]

I hereby certify that I am the _____ of the _____
(Title) (Name of Corporation)
that _____ is the duly elected _____
(Name of Officer) (Title)
of said company, and the above vote has not been amended or rescinded and remains in full force and
effect as of the date of this contract.

Signature: _____

Name/Title: _____

Date: _____
(Corporate Seal)

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

On this ____ day of _____, 2025, before me the undersigned notary public, personally appeared
_____, who proved to me through satisfactory evidence of identification, which
was/were _____, to be the person whose name is signed on the preceding or
attached document, and acknowledged to me he/she signed it voluntarily for its stated purpose.

Notary Public
My commission expires:

EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-4 Certificate of Authority

CERTIFICATE OF AUTHORITY

At a duly authorized meeting of the Members of the _____ held
(name of LLC)
on _____ at which all Members were present or waived notice it was voted that
(date)
_____ of this company be and hereby is authorized to execute
(officer and title)
contracts and bonds in the name and behalf of said company, and affix its Seal thereto, and such execution
of any contract or bond of obligation in this company's name shall be valid and binding upon this company.

A TRUE COPY, ATTEST:

[Signed]

[Company Name and Address]

I hereby certify that I am the _____ of the _____
(Title) (Name of LLC)
that _____ is the duly elected _____
(Name of Member) (Title)
of said company, and the above vote has not been amended or rescinded and remains in full force and effect
as of the date of this contract.

Signature: _____

Name/Title: _____

Date: _____

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS.

On this ____ day of _____, 2025, before me the undersigned notary public, personally appeared
_____, who proved to me through satisfactory evidence of identification, which
was/were _____, to be the person whose name is signed on the preceding or
attached document, and acknowledged to me he/she signed it voluntarily for its stated purpose.

Notary Public
My commission expires:

EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-5

Tax Certificate

TAX CERTIFICATION

DATE: _____

Pursuant to Mass. G.L. c. 62C, Section 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature: _____

Print below signature line name and title
of Individual or Corporate Officer (as applicable)

Company Name

Address: _____

Tel No. _____

SOCIAL SECURITY NUMBER
OR
FEDERAL IDENTIFICATION NUMBER

EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-6 ***Forms of Certificates***

EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-6 - FORMS AND CERTIFICATES

Application for Payment

ESCO LETTER HEAD

APPLICATION AND CERTIFICATION FOR PAYMENT COVER SHEET

PROJECT: _____ APPLICATION NO: _____

For Period: _____
Ending: _____

AMOUNT CERTIFIED: \$ _____

Authorized COST RECORD

Original Authorization \$ _____
Amendment(s) Authorized \$ _____
Through Amendment No _____

Total Authorization to Date \$ _____

The undersigned, on behalf of Honeywell International, Inc. (ESCO) certifies that to the best of the ESCO's knowledge, information and belief, the Work covered by this Application for Payment has been completed in accordance with the Implementation Amendment Contract Documents; and the current Payment shown herein is now due.

The ESCO further certifies that the entire amount of all previous Payments received for labor performed and materials furnished have been promptly paid to all Subcontractors whose work was certified for payment on previous applications, less, where applicable, only an amount specified in any court proceeding barring such payment and/or an amount claimed due from the subcontractor by the ESCO. No other amounts have been deducted or retained from such payments by the ESCO.

ESCO: _____ STATE OF: _____

Signed by: _____ COUNTY OF: _____

Date: _____ Subscribed and sworn to before me on this
_____ Day of _____ 20__.

Notary public: _____

My Commission Expires: _____

APPROVED FOR PAYMENT:

Signed: _____
By: Chief Clerk of Works, City of Worcester

Date: _____

Signed: _____
By: _____

Date: _____

Signed: _____
By: _____

Date: _____

Signed: _____
By: _____

Date: _____

EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-6 - FORMS AND CERTIFICATES

Change Order

CHANGE ORDER

C.O. NUMBER:

000

CITY OF WORCESTER, MASSACHUSETTS

C.O. DATE:

FOR THE PROJECT:

TO THE ESPC:

The Contract is changed as follows:

SUMMARY OF THE CONTRACT PRICE

Original Contract Sum	\$ _____
Net Change by Previously Authorized Change Order(s)	\$ _____
Contract Sum Prior to this Change Order	\$ _____
Contract Sum shall be Increased/Decreased by this Change Order # ___ in the Amount of	\$ _____ ++
New Contract Sum including this Change Order	\$ _____

SUMMARY OF TIME FOR PERFORMANCE

Date of Substantial Completion Prior to this Change Order	_____
Contract Time shall be Changed by this Change Order	_____ DAYS
Date of Substantial Completion as of the Date of the Change Order is	_____

SUMMARY OF THE MVEGA

(to be completed only if Change Order changes the Guaranteed Savings)

Original Guaranteed Savings	\$ _____
Net Change by Previously Authorized Change Orders	\$ _____
Guaranteed Savings Prior to this Change Order	\$ _____
Guaranteed Savings shall be Increased/Decreased by this Change Order in the Amount of	\$ _____
New Guaranteed Savings including this Change Order	\$ _____

Pursuant to Agreement between the **City of Worcester** (“City”) and **XXX** (“ESPC” or “Contractor”) the Parties hereby agree to change the Work as set forth herein.

CHANGE ORDER ITEMS:

1. Line item spreadsheet accounting of proposed changes, amounts and time
2. Change Order narrative for each proposed change
3. Guaranteed Savings spreadsheet accounting

DEDUCT/ADD	\$ 0.00
DEDUCT/ADD	0 DAYS

TOTAL OF ALL ITEMS	DEDUCT/ADD	\$ 0.00
	DEDUCT/ADD	0 DAYS

EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-6 - FORMS AND CERTIFICATES

Certificate of ECM Commissioning



CERTIFICATE OF ECM COMMISSIONING

DATE OF ISSUANCE: _____

PROJECT

Worcester, MA

OWNER

City of Worcester

**CONTRACTING
OFFICER**

ESCO

CONTRACT DATE _____

COMMISSIONING OF [fully identify the ECM]

The ESCO hereby certifies and warrants to the City that the implementation of [fully identify the ECM], is complete, has been commissioned in accordance with the Commissioning Plan and with Section 4.3.6.15 of the Agreement, and as otherwise set forth in the Implementation Amendment Contract Documents, that all required training, operations and maintenance manuals, as built documentation and manufacturer warranties and/or special and/or extended warranties have been provided to the City, and that the ESCO has completed all Close Out requirements, if any, required for that ECM. ESCO further certifies and represents to the City that the City is receiving full beneficial use for the ECM and that risk of loss has transferred to the City.

Name: _____

Title: _____

Date: _____

The City, by its Senior Energy Services Manager, either

Does not recommend the City accept this Certificate of ECM Commissioning, finding that certain punchlist items must first be fully completed and/or the ECM has not otherwise been fully implemented

City of Worcester, Senior Energy Services Manager

Date: _____

Recommends the City accept this Certificate of ECM Commissioning, and upon its execution the one (1) year Warranty shall commence as to this ECM, and the retainage held by the City as to this ECM shall be released after approval of a corresponding application for payment in accordance with Section 4.3.6.15 and 5.2 of the Agreement.

City of Worcester, Senior Energy Services Manager:

Date: _____

EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-6 - FORMS AND CERTIFICATES

Certificate of ECM Commissioning

Certificate of ECM Commissioning hereby issued

Owner:

Title:

Date:

EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-6 - FORMS AND CERTIFICATES

Certificate of ECM Commissioning

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EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-6 – FORMS AND CERTIFICATES

Certificate of Substantial Completion



CERTIFICATE OF SUBSTANTIAL COMPLETION

DATE OF ISSUANCE: _____

PROJECT

Worcester, MA

OWNER City of Worcester

CONTRACTING OFFICER

ESCO

CONTRACT DATE _____

ESCO REPRESENTATION OF SUBSTANTIAL COMPLETION

ESCO hereby represents and warrants to the City that the Work required by the Implementation Amendment Contract Documents is substantially complete.

Name:

Title:

Date:

DEFINITION OF DATE OF SUBSTANTIAL COMPLETION

The Date of Substantial Completion is the date on which the Work required by the Agreement is sufficiently complete, in accordance with the Implementation Amendment Contract Documents, including but not limited to Section 3.17, so the Owner can occupy and utilize the Work for the use for which it is intended.

Execution of Certificate of Substantial Completion - Recommended:

City of Worcester, Chief Clerk of Works:

Date:

ITEMS TO BE COMPLETED OR CORRECTED (PUNCH LIST)

A list of items to be completed or corrected is attached (Punch List dated _____). The failure to include any items on such list does not alter the responsibility of the ESCO to complete all Work in accordance with the Implementation Amendment Contract Documents. The ESCO shall complete or correct the Work within thirty (30) days from the Date of Substantial Completion.

The Date of Substantial Completion is established as 12:00 Noon on _____.

Owner:

Title:

Date:

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EXHIBIT D: Implementation Bonds, Wage Rates & Certificates

ATTACHMENT D-6 - FORMS AND CERTIFICATES

Certificate of Final Completion



CERTIFICATE OF FINAL COMPLETION

DATE OF ISSUANCE: _____

PROJECT

Worcester, MA

OWNER

City of Worcester

CONTRACTING OFFICER

ESCO

Honeywell International, Inc.

CONTRACT DATE _____

ESCO REPRESENTATION OF FINAL COMPLETION

ESCO hereby represents and warrants to the City that the Work required by the Implementation Amendment Contract Documents is complete and in full compliance with the Implementation Amendment Contract Documents.

Name: _____

Title: _____

Date: _____

Execution of Certificate of Final Completion - Recommended:

City of Worcester, Chief Clerk of Works: _____

Date: _____

Approved for ESCO's submittal of application for final payment. The Date of Final Completion is established as 12:00 Noon on _____.

Owner: _____

Title: _____

Date: _____

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EXHIBIT E: Equipment/Material Warranties

EXHIBIT F: O&M Manual

EXHIBIT G: Installation Schedule

EXHIBIT H: Schedule of Savings

Attachment H-1

Calculations

EXHIBIT I: M&V Plan

EXHIBIT J: Maintenance Service Agreement

EXHIBIT J: Maintenance and Service Agreement

ATTACHMENT J-1

Scope of Services

EXHIBIT J: Maintenance and Service Agreement

ATTACHMENT J-2 ***MSA Fee Breakdown***
