

CONTRACT 12PSX0153

Between

THE STATE OF CONNECTICUT

Acting by its

DEPARTMENT OF ADMINISTRATIVE SERVICES

AND

NORESCO, LLC

FOR

ENERGY SAVINGS PERFORMANCE CONTRACTING SERVICES

January 10, 2013,

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This Contract (the “Contract”) is made by and between, NORESKO, LLC (the “Contractor” or “QESP”) with a principal place of business at One Research Drive, Suite 400C, Westborough, MA 01581, acting by David G. Mannherz, its Executive Vice President and the State of Connecticut, Department of Administrative Services (“DAS”), with a principal place of business at 165 Capitol Ave, Hartford, Connecticut 06106-1659, acting by Martin W. Anderson, its Deputy Commissioner, in accordance with Sections 4a-2 and 4a-51 of the Connecticut General Statutes.

The Contractor and the State agree as follows:

1. Definitions. Unless otherwise indicated, the following terms shall have the following corresponding definitions for this Contract and all exhibits, unless otherwise noted in the exhibits, in which case the definition in the exhibit controls:
 - (a) Acts: Those acts of commission and omission.
 - (b) Amend (in any part of speech, however conjugated): Any altering, by addition, deletion, modification or otherwise, of any part of this Contract, including extensions, or its exhibits or Final Exhibits.
 - (c) Claims: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
 - (d) Confidential Information: Any information about a client, including but not limited to first name and last name, or first initial and last name, in combination with any one or more of the following related to such client: (a) Social Security Number; (b) driver’s license number or State-issued identification card number; (c) date of birth; and (d) financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a client’s financial account. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as “confidential” or “restricted.” Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
 - (e) Confidential Information Breach: An instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.

- (f) Contractor Parties: A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- (g) Cost Effective: The savings resulting from the energy-savings measures outweigh the costs of the measures, including, but not limited to, any financing costs, provided the payback period for any financing provided pursuant to 2011 Conn. Pub. Acts 80, Section 23 ("Public Act 11-80") is less than the functional life of the proposed energy-savings measures and the payback period does not exceed fifteen years.
- (h) Day: All calendar days other than Saturdays, Sundays and days designated as national or State of Connecticut holidays upon which banks in Connecticut are closed.
- (i) Department: Any and all State Agencies and Municipalities who participate in the ESPCP.
- (j) Energy-Savings Measure (ESM): Any improvement to facilities or other energy-consuming systems designed to reduce energy or water consumption and operating costs and increase the operating efficiency of facilities or systems for their appointed functions. "Energy-savings measure" includes, but is not limited to, one or more of the following:
1. Replacement or modification of lighting and electrical components, fixtures or systems, including daylighting systems, improvements in street lighting efficiency or computer power management software;
 2. Class I renewable energy or solar thermal systems;
 3. Cogeneration systems that produce steam or forms of energy, such as heat or electricity, for use primarily within a building or complex of buildings;
 4. Automated or computerized energy control systems;
 5. Heating, ventilation or air conditioning system modifications or replacements;
 6. Indoor air quality improvements that conform to applicable building code requirements;
 7. Water-conserving fixtures, appliances and equipment or the substitution of non-water-using fixtures, appliances and equipment, or water-conserving landscape irrigation equipment; and
 8. Changes in operation and maintenance practices;
 9. Replacement or modification of windows or doors; and
 10. Installation or addition of insulation.
- (k) Energy-Savings Performance Contract (ESPC): A contract between the State Agency or Municipality and a qualified energy service provider for evaluation, recommendation and implementation of one or more energy-savings measures. An energy-savings performance contract shall be a guaranteed energy-savings performance contract, which shall include, but not be limited to, (A) the design and installation of equipment and, if applicable, operation and maintenance of any of the measures implemented; and (B) guaranteed annual savings that meet or exceed the total annual contract payments made by the State Agency or Municipality for such contract, including financing charges or capital costs to be incurred by or on behalf of the State Agency or Municipality over the life of the contract.

- (l) Equipment: Goods which the QESP is to install in accordance with and as set forth in Schedule R, Equipment to be Installed by QESP, to Exhibit A to this Contract, Energy-Savings Performance Project Statement of Work (“SOW”).
- (m) Final Exhibits: The Exhibits attached to this Contract as of its effective date in blank or template form and which the Department and Contractor subsequently negotiate, fill in, finalize, sign and date in order to implement a project under this Contract in accordance with the ESPCP.
- (n) Force Majeure: Events that materially affect the cost of the Work or the time schedule within which to Perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to, labor troubles unrelated to the Contractor, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Contractor, extraordinary weather conditions, disasters, riots, acts of God, insurrection or war.
- (o) Goods: All things which are movable, including, but not limited to, supplies, materials, equipment, hardware, software, specially manufactured things, a component incorporated into another thing and things that are attached to real property and that may be severed from the real property without material harm to the things, together and with any and all additions, modifications, attachments, replacements and parts.
- (p) Investment-Grade Energy Audit or (IGEA): A study by the QESP selected for a particular energy-savings performance contract project which includes detailed descriptions of the improvements recommended for the project, the costs of the improvements, and the utility and operations and maintenance cost savings projected to result from the recommended improvements.
- (q) Municipality: A town, consolidated town and city, consolidated town and borough, city or borough, including a local board of education.
- (r) Operation and Maintenance Cost Savings: A measurable decrease in operation and maintenance costs and future replacement expenditures that is a direct result of the implementation of one or more utility cost savings measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.
- (s) Perform (in any part of speech, however conjugated): All Acts and things of the Contractor and Contractor Parties necessary or appropriate to execute, fulfill or accomplish fully this Contract and the Final Exhibits according to their terms.
- (t) Qualified Energy Service Provider (QESP): A corporation approved by the Department of Administrative Services with a record of successful energy performance contract projects experienced in the design, implementation and installation of energy efficiency and facility improvement measures, the technical capabilities to ensure such measures generate energy and operational cost savings, and the ability to secure the financing necessary to support energy savings guarantees.
- (u) Records: All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries and correspondence, kept or stored in any form.

- (v) Services: The performance of labor or work, as specified in the applicable Final Exhibits.
- (w) Solicitation: The State request inviting proposals for Work resulting in this Contract. This Contract shall be governed by the statutes, regulations and procedures of the State of Connecticut, Department of Administrative Services.
- (x) Standardized Energy-Savings Performance Contract Process (ESPCP): Standard procedures for entering into an energy-savings performance contract and standard energy-savings performance contract documents established by the Department of Energy and Environmental Protection (DEEP).
- (y) State Agency: has the same meaning as provided in Conn. Gen. Stat. Sec. 1-79 and means any office, department, board, council, commission, institution, constituent unit of the state system of higher education, vocational-technical school or other agency in the executive, legislative or judicial branch of state government.
- (z) Termination: An end to the Contract or SOW, as applicable, prior to the end of their respective terms whether effected pursuant to a right which the Contract or SOW creates or for a breach.
- (aa) Title: all ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Work or Goods, as applicable.
- (bb) Utility Cost Savings: Any utility expenses eliminated or avoided on a long-term basis as a result of equipment installed or modified, or services performed by a qualified energy service provider; "utility cost savings" does not include merely shifting personnel costs or similar short-term cost savings.
- (cc) Work: Equipment or Services or both to be Performed in accordance with the Final Exhibits.

2. Term of Contract; Contract Extension.

- (a) Subject to the remainder of this provision, and unless Terminated in accordance with any other provision of this Contract, the Contract shall have a term of four years from its effective date, which is the date that the Connecticut Attorney General's Office approves it, which Termination is only for purposes of contracting for any new or additional work. From and after this or any other Termination date, a Department shall not issue any new or additional requests (taking the form of a purchase order, or an RFP seeking proposals for a Feasibility Analysis or any other document) to the Contractor seeking work beyond that already set forth in any applicable Final Exhibit. If the Contractor nevertheless receives such a request from a Department, the Contractor shall decline to comply with the request, since this Contract will have Terminated for purposes of any new or additional work. The Contract, however, shall continue in full force and effect, but only for the duration of the term, and for and to the extent of the work set forth, in the applicable Final Exhibits.
- (b) The parties may extend this Contract, prior to Termination one or more times for a combined total period of extensions that do not exceed the complete length of the original term, and only in accordance with the Contract Amendments Section in this Contract.

3. Rejected Items; Abandonment.

- (a) The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any Department premises or other destination, Equipment, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The Department may, by written notice and in accordance with the terms and conditions of the Contract, direct the Contractor to remove any or all such Equipment (the "Rejected Equipment") and any or all other supplies, materials, equipment or other tangible personal property (collectively, the "Contractor Property") from and out of Department premises and any other location which the Department manages, leases or controls. The Contractor shall remove the Rejected Equipment and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Equipment or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties that:
- (1) they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Equipment and Contractor Property and relinquished all Title to the Rejected Equipment and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Equipment and Contractor Property, (B) vesting Title to the Rejected Equipment and Contractor Property in the Department and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Equipment and Contractor Property;
 - (2) there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Equipment or Contractor Property;
 - (3) they vest authority, without any further act required on their part or the Department's part, in the Department to use or dispose of the Rejected Equipment and Contractor Property, in the Department's sole discretion, as if the Rejected Equipment and Contractor Property were the Department's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
 - (4) if the Department incurs any costs or expenses in connection with disposing of the Rejected Equipment and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Equipment and Contractor Property, auction and other activities, the Department shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the Department no later than thirty (30) days after the date of invoice; and
 - (5) they do remise, release and forever discharge the Department and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "Department and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the Department and Its Agents arising from the use or disposition of the Rejected Equipment and Contractor Property.
- (b) The Contractor shall secure from each Contractor Party, as appropriate, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this Section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the Department, such information as the Department may require to evidence, in the Department's sole determination, compliance with this Section.
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4. Compliance with ESPCP

The QESP shall comply with all applicable terms and conditions of the ESPCP. DEEP and DAS shall perform an annual review of the QESP and monitor its compliance with the ESPCP.

5. Cost-Effective Feasibility Analysis.

Department shall contact a number of QESPs forwarding to them a technical facility profile, which will detail information on the Department's buildings and energy and water use, and requesting each QESP to submit a letter of interest ("LOI") if the QESP is interested in receiving an RFP for a particular project. The Department shall provide to the QESPs a form of LOI, which indicates QESP's interest in submitting a Cost-Effective Feasibility Analysis ("Feasibility Analysis"). The requirements for the Feasibility Analysis are set forth in a certain request for proposals ("RFP"), attached as Exhibit B. Based upon the LOIs received, the Department will select at least three QESPs to receive the RFP and to have the opportunity for a brief walk-through of facilities on the potential Project Site(s). Not all QESPs will receive the RFP.

6. IGEA Process.

Pursuant to Public Act 11-80, the Feasibility Analysis, which the QESP will prepare as part of its proposal in response to the RFP, will serve as the selection document for purposes of selecting a QESP to conduct an IGEA and draft an IGEA Report. The QESP will conduct the IGEA and draft the IGEA Report and Project Development Proposal in accordance with Exhibit C.

7. Energy-Savings Performance Project Statement of Work.

The Department and QESP shall use the IGEA Report as the basis for negotiating the SOW, the form of which is attached as Exhibit A. Exhibit A shall become a Final Exhibit A once the parties negotiate, finalize, execute and date it.

8. Order and Delivery.

The Contract shall bind the Contractor to furnish and deliver the Work in accordance with all applicable Final Exhibits.

9. Contract Amendments. No amendment to or modification or other alteration of the Contract, including extensions, shall be valid or binding upon the parties unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General.

10. Assignments.

- (a) The Contractor shall not assign any of its rights or obligations under the Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this Assignments Section and declare the

Contractor in Material Breach. Any Termination by DAS for a Material Breach is without prejudice to DAS's or the Department's rights or possible Claims.

- (b) The Final Exhibit A may include provisions concerning assignments and purported assignments applicable to the Final Exhibit A, in whole or in part, but if, and only if, those provisions are limited to supplementing this Assignments Section and do not modify or abrogate anything in this Assignments Section. Those assignment provisions in the Final Exhibit A shall be consistent with this Assignments Section; if they are not, then this Assignments Section shall govern.

11. Termination.

- (a) Notwithstanding any provisions in this Contract, DAS, through a duly authorized employee, may Terminate the Contract whenever DAS makes a written determination that such Termination is in the best interests of the State. DAS shall notify the Contractor in writing of Termination pursuant to this Section, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance prior to such date.
- (b) Notwithstanding any provisions in this Contract, DAS, through a duly authorized employee, may Terminate the Contract for a Material Breach, but only after making a written determination that the Contractor is in Material Breach under the Material Breach Section of this Contract.
- (c) Notwithstanding any provisions in this Contract, DAS, through a duly authorized employee, may Terminate the Contract for a breach other than a Material Breach, but only after making a written determination that the Contractor is in breach of Contract and has failed to cure the breach in accordance with the Other Breaches Section of this Contract.
- (d) DAS shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to DAS for purposes of correspondence, or by hand delivery. Upon receiving the notice from DAS, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the appropriate Department all Records. The Records are deemed to be the property of the Department and the Contractor shall deliver them to the Department no later than thirty (30) days after the Termination of the Contract or fifteen (15) days after the Contractor receives a written request from DAS for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.
- (e) Upon receipt of a written notice of Termination from DAS, the Contractor shall cease operations as DAS directs in the notice, and take all actions that are necessary or appropriate, or that DAS may reasonably direct, for the protection, and preservation of the Equipment and any other property. Except for any work which DAS directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
- (f) Department shall, within forty-five (45) days of the effective date of Termination, and if appropriate in accordance with Exhibit D, Cost and Pricing, reimburse the Contractor for its Performance to the extent rendered and accepted by the Department and that is appropriate in accordance with the applicable Final Exhibits. However, the Contractor is not entitled to

receive and the Department is not obligated to tender to the Contractor any payments for anticipated or lost profits. Upon request by the Department, the Contractor shall assign to the Department, or any replacement contractor which the Department designates, all subcontracts, purchase orders and other commitments, deliver to the Department all Records and other information pertaining to its Performance, and remove from Department premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Department may request.

- (g) For breach or violation of any of the provisions in the Representations and Warranties Section, DAS may Terminate the Contract in accordance with its terms and revoke any consents to assignments given as if the assignments had never been requested or consented to, without liability to the Contractor or Contractor Parties or any third party.
- (h) Upon Termination of the Contract, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which survive Termination. All representations, warranties, agreements and rights of the parties under the Contract shall survive such Termination to the extent not otherwise limited in the Contract and without each one of them having to be specifically mentioned in the Contract.
- (i) Termination of the Contract pursuant to this Section shall not be deemed to be a breach of contract by DAS.

12. Events of Material Breach; Right to Cure. The occurrence of any one or more of the following events shall constitute a material breach ("Material Breach") of this Contract; this section shall apply to Contractor Parties, such that if a Contractor Party commits a Material Breach then the Contractor shall be responsible in all respects for that Material Breach and its consequences under this Contract as if the Contractor itself had committed the Material Breach:

- (a) The failure of Contractor or Department to comply, respectively, with any material covenant or condition of this Contract, which failure is not cured within fifteen (15) days after receipt of notice of such failure from the non-failing party; provided that if such failure is one that cannot be cured within fifteen (15) days with the exercise of reasonable diligence, such failure shall not be deemed to be a Material Breach if the failing party is diligently proceeding to cure such failure; provided further that such extended cure period shall not exceed an additional thirty (30) days beyond the fifteen (15) days without the prior written consent of the non-failing party, which consent shall not be unreasonably withheld.
- (b) The failure of Contractor to Perform materially, including, but not limited to, complying fully with all terms and conditions of the ESPCP and Performing in accordance with the applicable Final Exhibits, which failure is not cured within fifteen (15) days after receipt of notice of such failure from the Department; provided that if such failure is one that cannot be cured within fifteen (15) days with the exercise of reasonable diligence, such failure shall not be deemed to be a Material Breach if the Contractor is diligently proceeding to cure such failure; provided further that such extended cure period shall not exceed an additional thirty (30) days beyond the fifteen (15) days without the prior written consent of the Department, which consent shall not be unreasonably withheld.
- (c) The appointment of any receiver for the Contractor, or the execution of any other process or any action by a court of competent jurisdiction against the Contractor which is not vacated,

dismissed or set aside or for which the Contractor fails to take steps and diligently prosecute, toward the vacation, dismissal or set aside, within a period of thirty (30) days from such appointment or execution and which materially interferes with the Contractor's ability to Perform under this Contract.

- (d) A writ of attachment or execution is levied on any part of the Equipment, and is attributable to the Contractor, and is not vacated, dismissed or set aside, or for which the Contractor fails to take steps and diligently prosecute, toward the vacation, dismissal or set aside, within thirty (30) days from such levy.
- (e) The filing of any vendor's, mechanic's, laborer's, materialman's or other similar lien or encumbrance (collectively, "Liens") based upon furnishing of Work, which the QESP does not discharge within one hundred twenty (120) calendar days after it receives notice of the Liens.
- (f) Any representation or warranty of the Contractor or Department that is false or misleading (collectively, "Falsehood") in any material respect and which Falsehood is not cured within fifteen (15) days of receipt of notice of such Falsehood from the other party; provided that, if such Falsehood fails to be cured within fifteen (15) days with the exercise of reasonable diligence, such failure shall not be deemed to be a Material Breach if the party who made the representation or warranty is diligently proceeding to cure such Falsehood; provided further that such extended cure period shall not exceed an additional thirty (30) days beyond the fifteen (15) days without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- (g) The Contractor abandons Performance, or, in the reasonable judgment of the Department, fails to provide sufficient materials or qualified workers to adequately prosecute the work in accordance with the applicable Final Exhibits.
- (h) Any proceeding is instituted against the Contractor seeking to adjudicate it as bankrupt or insolvent, and the Contractor is not appointed debtor in possession by the court.
- (i) (1) the Contractor makes a general assignment for the benefit of creditors, (2) a receiver is appointed on account of the insolvency of the Contractor, or (3) the Contractor files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up or composition or reorganization of debts and, in the case of any proceeding in referred to in this subsection, such proceeding is not dismissed, or as to which the Contractor fails to take steps and diligently prosecute toward a dismissal, within sixty (60) days after such filing.
- (j) There is a material adverse change in the financial condition or operations or the business of the Contractor that substantially affects its ability to Perform in accordance with this Contract.
- (k) An assignment or purported assignment, in whole or in part, of the Contract or any Final Exhibit, including specifically Final Exhibit A, without the prior written approval of DAS or

the Department, as appropriate.

(l) Any other event or condition which Final Exhibit A identifies as a Material Breach.

13. Other Breaches; Right to Cure; Exercise of Remedies. This Section governs all breaches except Material Breaches. If either party breaches the Contract in any respect, the non-breaching party shall provide written notice of such breach to the breaching party and afford the breaching party an opportunity to cure the breach within ten (10) days from the date that the breaching party receives such notice. Any other time provided for in the notice shall trump such ten (10) days. Such right to cure period shall be extended if the non-breaching party is satisfied that the breaching party is making a good faith effort to cure but the nature of the breach is such that it cannot be cured within the right to cure period. If a breach remains uncured after the expiration of a right to cure period, including any allowed extensions, then the following remedies are available to the parties:

(a) if the QESP breaches, then the Department may exercise and any all remedies at law or equity, including the filing of any Claim;

(b) if a Municipality breaches, then the QESP may exercise and any all remedies at law or equity, including the filing of any Claim, subject, however, to the Municipality's governmental immunity privilege, as applicable; and

(c) if a State Agency breaches, then the sole and exclusive remedy for the QESP shall be in accordance with Chapter 53 of the Connecticut General Statutes, such that the QESP shall not initiate legal proceedings in any State or federal court in addition to, or in lieu of, said Chapter 53 proceedings.

14. Notice of Breach. Any notice of breach under either the Material Breach or Other Breaches provisions may include an effective Contract Termination date if the breach is not cured by the stated date and, unless otherwise modified by the non-breaching party in writing prior to the Termination date, no further action shall be required of any party to effect the Termination as of the stated date. If the notice does not set forth an effective Contract Termination date, then the non-breaching party may Terminate the Contract by giving the breaching party no less than twenty four (24) hours' prior written notice.

15. Withholding of Payment. This Section shall not be interpreted to be a limitation on or adversely affect the rights of the Department in "Events of Material Breach; Right to Cure" or the "Other Breaches; Right to Cure; Exercise of Remedies" Sections of this Contract. If QESP is in Material Breach or Other Breach of this Contract, then, the Department may withhold payment in whole or in part that is due or will become due under any of the Final Exhibits pending resolution of the Material Breach or Other Breach issue. However, the Department may do so only provided, that, the Department notifies the Contractor in writing prior to the date that the payment would have been due and provided further that withholding payment does not create a default or breach under the documents comprising Schedule I of Exhibit A.

16. Waivers.

(a) No waiver of any breach of the Contract shall be interpreted or deemed to be a waiver of any other or subsequent breach.

(b) A party's failure to insist on strict performance of any provision of the Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of

Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or breach.

17. Remedies. All remedies afforded in the Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in the Contract or at law or in equity.

18. Purchase Orders.

- (a) The Contract itself is not an authorization for the Contractor to begin Performance in any way. The Contractor may begin Performance only in accordance with the applicable Final Exhibits and only after it has received a duly issued purchase order against the Contract for Performance in accordance with the applicable Final Exhibits.
- (b) The Department shall issue a purchase order against the Contract, and only in accordance with an applicable Final Exhibit, directly to the Contractor and to no other party. The Contractor may not commence Performance unless the purchase order is issued directly to the Contractor and to no other party.
- (c) For a State Agency, purchase orders shall be in written or electronic form, bear the Contract number and comply with all other applicable State requirements, particularly the State Agency's requirements concerning procurement. Only those purchase orders issued in compliance with such requirements shall be deemed to be "duly issued."
- (d) A Contractor making delivery without a duly issued purchase order in accordance with this Section does so at the Contractor's own risk.
- (e) The Department may, in its sole discretion, deliver to the Contractor any or all duly issued purchase orders via electronic means only, such that the Department shall not have any additional obligation to deliver to the Contractor a "hard copy" of the purchase order or a copy bearing any hand-written signature or other "original" marking.

19. Indemnification.

- (a) The Contractor shall indemnify, defend and hold harmless the Department and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract and all applicable Final Exhibits, including the negligent Acts of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the Department in carrying out its obligations under this Section. The Contractor's obligations under this Section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the Performance.
- (b) The Contractor shall not be responsible for indemnifying or holding the Department harmless from any liability arising due to the negligence of the Department or any other person or entity acting under the direct control or supervision of the Department.
- (c) The Contractor shall reimburse the Department for any and all damages to the real or personal property of the Department caused by the Acts of the Contractor or any Contractor Parties. The Department shall give the Contractor reasonable notice of any such Claims.

- (d) The Contractor's duties under this Section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the Department is alleged or is found to have contributed to the Acts giving rise to the Claims.
- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the Department as an additional insured on the policy and shall provide a copy of the policy to the Department prior to the effective date of the Contract. The Contractor shall not begin Performance until the delivery of the policy to the Department. The Department shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Department is contributorily negligent.
- (f) This Section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.
20. Forum and Choice of Law. The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the Department, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.
21. Contractor Guaranties. Contractor shall:
- (a) Perform fully under the Contract;
 - (b) Guarantee the Work against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Department's option, replace them;
 - (c) Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the premises, Equipment, the Contractor's work or that of Contractor Parties;
 - (d) With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices; and
 - (e) Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law.
22. Implied Warranties. The implied warranty of fitness for a particular purpose and the warranty of merchantability are not disclaimed, excluded or modified for any of the Equipment.
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23. Equipment, Standards and Appurtenances. Any Equipment delivered must be standard new Equipment, latest model, except as otherwise specifically stated in the SOW.

Remanufactured, refurbished or reconditioned equipment may be accepted but only to the extent allowed under the SOW. Where the SOW does not specifically list or describe any part or nominal appurtenances of equipment for the Equipment, it shall be understood that the Contractor shall deliver such parts and appurtenances as are usually provided with the manufacturer's stock model.

24. Delivery.

(a) Delivery shall be made as ordered and in accordance with the provisions of the applicable Final Exhibits. Unless otherwise specified in the provisions of Final Exhibit A, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Equipment from the carrier and placement on the Department loading dock or receiving platform. The receiving personnel of the Department are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.

(b) In order for the time of delivery to be extended, the Department must first approve a request for extension from the time specified in the Contract, such extension applying only to the particular item or shipment.

(c) Equipment shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Department unless otherwise stated in QESP's proposal.

(d) All risk of loss and damage to the Equipment transfers to the Department upon Title vesting in the Department.

25. Equipment Inspection. The Department shall determine the manner and prescribe the inspection of all Equipment and the tests of all samples submitted to determine whether they comply with all of the specifications in the Contract. If any Equipment fail in any way to meet the specifications in the Contract, the Department may, in its sole discretion, either reject it and owe nothing or accept it and pay for it on an adjusted price basis, depending on the degree to which the Equipment meets the specifications. Any decision pertaining to any such failure or rejection shall be final and binding.

26. Setoff. In addition to all other remedies that DAS and the Department may have, the Department, in its sole discretion, may setoff (1) any costs or expenses that the Department incurs resulting from the Contractor's unexcused non-Performance under the Contract and under any other agreement or arrangement that the Contractor has with the Department, or with the State if the Department is a State Agency and (2) any other amounts that are due or may become due from the Department to the Contractor, against amounts otherwise due or that may become due to the Contractor under the Contract, or under any other agreement or arrangement that the Contractor has with the Department, or with the State if the Department is a State Agency. The Department's right of setoff shall not be deemed to be the Department's exclusive remedy for the Contractor's or Contractor Parties' breach of the Contract, all of which shall survive any setoffs by the Department.

27. Force Majeure. The Department and the Contractor shall not be excused from their obligation to Perform in accordance with the Contract except in the case of Force Majeure

events and as otherwise provided for in the Contract. In the case of any such exception, the nonperforming party shall give immediate written notice to the other, explaining the cause and probable duration of any such nonperformance.

28. Advertising. The Contractor shall not refer to any State Agency for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS's prior written approval.
29. Americans With Disabilities Act. The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990 ("ADA Act"), to the extent applicable, during the term of the Contract. DAS may Terminate the Contract if the Contractor fails to comply with the ADA Act.
30. Representations and Warranties. The Final Exhibit A may include additional representations and warranties that are in addition to, and do not modify or abrogate, the ones in this Representation and Warranties Section. The Contractor represents and warrants to DAS for itself and Contractor Parties, as appropriate, that:
- (a) if they are entities, they are duly and validly existing under the laws of their respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by the Contract. Further, as appropriate, they have taken all necessary action to authorize the execution, delivery and Performance and the Contract and have the power and authority to execute, deliver and Perform their obligations under the Contract;
 - (b) they will comply with all applicable State and Federal laws and municipal ordinances in satisfying their obligations to the Department under and pursuant to the Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics and (2) Title 4a concerning State purchasing, including, but not limited to 22a-194a concerning the use of polystyrene foam;
 - (c) the execution, delivery and Performance of the Contract will not violate, be in conflict with, result in a breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or (3) any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
 - (d) they are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into a contract with any governmental entity;
 - (e) as applicable, they have not, within the three years preceding the Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under the Contract, for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of Federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (f) they are not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
 - (g) they have not within the three years preceding the Contract had one or more contracts with any governmental entity terminated;

- (h) they have not employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure the Contract and that they have not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of the Contract or any assignments made in accordance with the terms of the Contract;
- (i) to the best of their knowledge, there are no Claims involving the Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract and any projects under the ESPCP;
- (j) they shall disclose, to the best of their knowledge, to DAS and the Department in writing any Claims involving them that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract and any projects under the ESPCP, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims, the ten (10) Days in the Disclosure of Contractor Parties Litigation Section of this Contract shall run consecutively with the ten (10) Days provided for in this representation and warranty;
- (k) their participation in the Solicitation process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- (l) the proposal in response to the Solicitation was not made in connection or concert with any other person, entity or proposer, including any affiliate (as the term "Affiliate" is defined in the Tangible Personal Property Section of this Contract) of the QESP, submitting a proposal for the same Work, and is in all respects fair and without collusion or fraud;
- (m) they are able to Perform under the Contract using their own resources;
- (n) the Contractor shall obtain in a written contract all of the representations and warranties in this Section from any Contractor Parties and to require that provision to be included in any contracts and purchase orders with Contractor Parties;
- (o) they have paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut;
- (p) they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- (q) they owe no unemployment compensation contributions;
- (r) they are not delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid all outstanding road taxes;
- (s) all of their vehicles have current registrations and, unless such vehicles are permanently removed from service, they shall not allow any such registrations to lapse;
- (t) each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms and conditions of the Contract and that all

appropriate parties shall also provide to DAS, no later than fifteen (15) days after receiving a request from DAS, such information as DAS may require to evidence, in DAS's sole determination, compliance with this Section;

- (u) except to the extent set forth in Final Exhibit A, all Title shall pass to the Department upon complete installation, testing and acceptance of the Work and payment by the Department;
- (v) if either party Terminates the Contract, for any reason, they shall relinquish to the Department all Title to the Equipment delivered, accepted and paid for (except to the extent any invoiced amount is disputed) by the Department;
- (w) with regard to third party products provided with the Equipment, they shall transfer all licenses which they are permitted to transfer in accordance with the applicable third party license;
- (x) they shall not copyright, register, distribute or claim any rights in or to the Equipment after the effective date of the Contract without Department's prior written consent;
- (y) they either own or have the authority to use all Title of and to the Equipment, and that such Title is not the subject of any encumbrances, liens or claims of ownership by any third party;
- (z) the Equipment does not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (aa) the Department's use of any Equipment shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- (bb) if they procure any Equipment, they shall sub-license such Equipment and that the Department shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Equipment;
- (cc) they shall assign or otherwise transfer to the Department, or afford the Department the full benefits of any manufacturer's warranty for the Equipment, to the extent that such warranties are assignable or otherwise transferable to the Department; and
- (dd) at all times during the term of the Contract and throughout QESPS's subsequent involvement in the ESPCP, including especially the term of the SOW, QESP shall always maintain employed staff who is licensed by the State of Connecticut as Professional Engineers in mechanical and electrical engineering.

31. Representations and Warranties Concerning Motor Vehicles. If in the course of Performance or in any other way related to the Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1(53) (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, represents and warrants for itself and the Contractor Parties, as appropriate, that:

- (a) It is the owner of record or lessee of record of each such motor vehicle used in the Performance of the Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or

commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.

- (b) Each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of the Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- (c) Each Contractor Party who uses or operates a motor vehicle at any time in the Performance of the Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- (d) Each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for motor vehicles having a gross vehicle weight rating of 18,000 pounds or more or motor vehicles otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations.
32. Disclosure of Contractor Parties Litigation. The Contractor shall require that all Contractor Parties, as appropriate, disclose to the Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under the Contract, no later than ten (10) Days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
33. Entirety of Contract. The Contract is the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, offers, counteroffers and understandings of the parties, whether written or oral. The Contract has been entered into after full investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied in the Contract.
34. Exhibits. All exhibits referred to in and attached to this Contract are incorporated into this Contract by such reference. Some of these exhibits attached to this Contract are blank forms or templates. In addition, the Final Exhibits are also deemed to be a part of this Contract as of the effective dates indicated in the Final Exhibits. Since DAS and the Contractor are the sole signatories to this Contract, only they, and not a Department, shall be a party to an Amendment to this Contract. Accordingly, since Department and Contractor will negotiate and complete the Final Exhibits sometime after the effective date of this Contract, notwithstanding this or any other provision in this Contract or the Final Exhibits, the content of the Final Exhibits shall be restricted to memorializing only that specific Performance which is necessary or appropriate in order to carry out the particular Work that Department and Contractor include in the Final Exhibits. Final Exhibits, which may include attachments as the parties deem to be necessary or appropriate, shall not include any term that Amends

any part of this Contract. Other than complying with the procedures set forth in the Contract Amendments Section of this Contract, any intentional Acts to Amend this Contract, or any unintentional Acts which may be interpreted as an Amendment (like engaging for any period in a course of conduct that differs from that which this Contract provides), shall be void *ab initio*.

35. Executive Orders. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Department or DAS shall provide a copy of these orders to the Contractor.

36. Non-discrimination. References in this section to "contract" shall mean this Contract and references to "contractor" shall mean the Contractor.

(a) For purposes of this Section, the following terms are defined as follows:

(1) "Commission" means the Commission on Human Rights and Opportunities;

(2) "Contract" and "contract" include any extension or modification of the Contract or contract;

(3) "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;

(4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.

(5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;

(6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;

(7) "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;

(8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;

(9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and

(10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved;

- (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission;
- (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment;
- (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and
- (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.
- (c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

(f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

(g)

(1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation;

(2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and

(4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

(h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

37. Tangible Personal Property.

(a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:

(1) For the term of the Contract and any projects as set forth in Final Exhibit A, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its

Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;

- (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
 - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
 - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
 - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this Section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.
- (c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.
38. Whistleblowing. This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

39. **Notice.** All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this Section collectively called “Notices”) shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

State of Connecticut, Department of Administrative Services
165 Capitol Ave, 5th Floor South
Hartford, CT 06106-1659
Attention: Paul Greco

If to the Contractor:

NORESCO, LLC
David G. Mannherz
One Research Drive, Suite 400C
Westborough MA 01581

40. **Insurance.** Before commencing Performance, the Contractor shall obtain and maintain at its own cost and expense for the duration of the Contract and any projects under the ESPCP, the following insurance as described in (a) through (h) below. Contractor shall assume any and all deductibles in the described insurance policies. The Contractor’s insurers shall have no right of recovery or subrogation against the State of Connecticut or a Department and the described Contractor’s insurance shall be primary coverage. Any failure to comply with the claim reporting provisions of the policy shall not affect coverage provided to the Department.

- (a) Commercial General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Coverage shall include, Premises and Operations, Independent Contractors, Products and Completed Operations, Contractual Liability and Broad Form Property Damage coverage. If a general aggregate is used, the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the occurrence limit.
- (b) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury. Coverage extends to owned, hired and non-owned automobiles. If the vendor/contractor does not own an automobile, but one is used in the execution of the contract, then only hired and non-owned coverage is required. If a vehicle is not used in the execution of the contract then automobile coverage is not required.
- (c) Workers’ Compensation and Employers Liability: Statutory coverage in compliance with the Compensation laws of the State of Connecticut. Coverage shall include Employer’s Liability with minimum limits of \$100,000 each accident, \$500,000 Disease – Policy limit, \$100,000 each employee.
- (d) Umbrella Liability: Excess/umbrella liability insurance may be included to meet minimum requirements. Umbrella coverage must indicate the existing underlying insurance coverage.
- (e) Claims Made: Not acceptable with the exception of Professional Liability when specified.

41. Headings. The headings given to the sections in the Contract are inserted only for convenience and are in no way to be construed as part of the Contract or as a limitation of the scope of the particular section to which the heading refers.
42. Number and Gender. Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.
43. Parties. To the extent that any Contractor Party is to participate or Perform in any way any projects under the ESPCP, any reference in the Solicitation, the Contract or any other document under the ESPCP to "Contractor" shall also be deemed to include "Contractor Parties" as if such reference had originally specifically included "Contractor Parties" since it is the parties' intent for the term "Contractor Parties" to be vested with the same respective rights and obligations as the term "Contractor."
44. Contractor Changes. The Contractor shall notify DAS and the Department in writing no later than ten (10) Days from the effective date of any change in:
- a) its certificate of incorporation or other organizational document;
 - b) more than a controlling interest in the ownership of the Contractor; or
 - c) the individual(s) in charge of the Performance (only the Department, not DAS).

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS or the Department, after receiving written notice by the Contractor of any such change, may require such agreements, releases and other instruments evidencing, to their satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of the Contract. The Contractor shall deliver such documents to DAS or the Department in accordance with the terms of DAS's or the Department's written request. DAS or the Department may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is being maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under the Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under the Contract until Performance is fully completed.

45. Further Assurances. The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those provided for in the Contract, in order to give full effect to the Contract and to carry out the intent of the Contract.
46. Audit and Inspection of Plants, Places of Business and Records.
- (a) The Department and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.

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- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the Department and its agents.
- (c) The Department shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the Department suspects fraud or other abuse, or in the event of an emergency, the Department is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the Contractor's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Contract, or (ii) the earlier termination of this Contract, as the same may be modified for any reason. The Department may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the Department and its agents in connection with an audit or inspection. Following any audit or inspection, the Department may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.
47. Background Checks. The State may require that the Contractor and Contractor Parties undergo criminal background checks as provided for in the State of Connecticut Department of Emergency Services and Public Protection Administration and Operations Manual or such other State document as governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the Department and its agents in connection with such background checks.
48. Continued Performance. The Contractor and Contractor Parties shall continue to Perform their obligations under the Contract while any dispute concerning the Contract is being resolved.
49. Working and Labor Synergies. The Contractor shall be responsible for maintaining a tranquil working relationship between and among the Contractor work force, the Contractor Parties and their work force, Department employees, and any other parties present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under the Contract.
50. Contractor Responsibility.
- (a) The Contractor shall be responsible for the entire Performance under the Contract regardless of whether the Contractor itself performs. The Contractor shall be the sole point of contact concerning the management of the Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of the Contract. Notwithstanding any provisions in the Contract, the
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Final Exhibits or any subcontract, nothing shall be interpreted as establishing privity of contract between the Department and any subcontractor.

- (b) The Contractor shall exercise all reasonable care to avoid damage to the Department's property or to property being made ready for the Department's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the Department.
51. Severability. If any term or provision of the Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of the Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of the Contract shall be valid and enforced to the fullest extent possible by law.
52. Confidentiality of Contractor Information. The Department will afford due regard to the Contractor's request for the protection of proprietary or confidential information which the Department receives. However, all materials associated with any Contractor submittal to a Department or the Contract are subject to the terms of the Connecticut Freedom of Information Act ("FOIA") and all corresponding rules, regulations and interpretations. In making such a request for protection, the Contractor may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the Contractor believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the Contractor that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. To the extent that any other provision or part of the Contract, especially including the Final Exhibits, and the Records, conflicts or is in any way inconsistent with this Section, this Section controls and shall apply and the conflicting provision or part shall not be given effect. If the Contractor indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, the Department will endeavor to keep said information confidential to the extent permitted by law. The Department, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The Contractor shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall a Department have any liability for the disclosure of any documents or information in its possession which the Department believes are required to be disclosed pursuant to the FOIA or other requirements of law.
53. Interpretation. The Contract contains numerous references to statutes and regulations. For all purposes, the content of those statutes and regulations shall govern over the content of the reference in the Contract to those statutes and regulations.
54. Cross-Default.
- (a) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under the Contract, then DAS may, in its sole discretion, without more and without any action whatsoever required of a Department, treat any such event as a breach, default or failure to Perform under any or all other agreements or arrangements ("Other Agreements") that the Contractor and Contractor Parties may have with the State of

Connecticut. Accordingly, DAS may then exercise at its sole option any and all of its rights or remedies provided for in the Contract or Other Agreements, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of Department, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Other Agreements.

- (b) If the Contractor or Contractor Parties breach, default or in any way fail to Perform satisfactorily under any or all Other Agreements, then DAS may, in its sole discretion, without more and without any other action whatsoever being required, treat any such event as a breach, default or failure to Perform under the Contract. Accordingly, DAS may then exercise at its sole option any and all of rights or remedies provided for in the Other Agreements or the Contract, either selectively or collectively and without such election being deemed to prejudice any rights or remedies of a Department or the State, as if the Contractor or Contractor Parties had suffered a breach, default or failure to Perform under the Contract.
55. Disclosure of Records. This Contract may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.
56. Summary of State Ethics Laws. Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.
57. Sovereign Immunity. The parties acknowledge and agree that nothing in the Solicitation or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the Department or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this Section conflicts with any other Section, this Section shall govern.
58. Time of the Essence. Time is of the essence with respect to all provisions of this Contract that specify a time for Performance; provided, however, that this provision shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Contract.
59. Prevailing Wages. Some or all of the Performance in the Final Exhibit A may be subject to prevailing wages. Accordingly, the following provision is included in this Contract in accordance with the requirements of Conn. Gen. Stat. Sec. 31-53(a):

The wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (i) of this section, shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such

public works project is being constructed. Any contractor who is not obligated by agreement to make payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day

Without modifying the foregoing, or affecting QESP's obligation to pay prevailing wages, if QESP is unable to secure the prevailing wage rates from the Connecticut Department of Labor, then the Department shall do and perform all that is necessary to do the same and forward the rates to the QESP.

60. Campaign Contribution Restriction. For all "State contracts," defined in Conn. Gen. Stat. §9-612(g)(1) as having a value in a calendar year of \$50,000 or more or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice, as set forth in "Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations," attached as Exhibit E."

61. Health Care Portability and Accountability Act.

- (a) If the Contactor or Contractor Parties is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Contractor or Contractor Parties must comply with all terms and conditions of this Section of the Contract. If the Contractor or Contractor Parties is not a Business Associate under HIPAA, this Section of the Contract does not apply to the Contractor or Contractor Parties for this Contract.
- (b) The Contractor or Contractor Parties is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
- (c) The Department is a "covered entity" as that term is defined in 45 C.F.R. § 160.103; and
- (d) The Contractor or Contractor Parties, on behalf of the Department, performs functions that involve the use or disclosure of "individually identifiable health information," as that term is defined in 45 C.F.R. § 160.103; and
- (e) The Contractor or Contractor Parties is a "business associate" of the Department, as that term is defined in 45 C.F.R. § 160.103; and
- (f) The Contractor or Contractor Parties and the Department agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the HITECH Act), (Pub. L. 111-5, sections 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E.
- (g) Definitions. For the purposes of this Section of the Contract:
 - (1) "Breach" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(1)).'

- (2) "Business Associate" shall mean the or Contractor or Contractor Parties.
- (3) "Covered Entity" shall mean the Department.
- (4) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
- (5) "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
- (6) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
- (7) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to information created or received by the Business Associate from or on behalf of the Covered Entity.
- (9) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
- (10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
- (12) "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
- (13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
- (14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
- (15) "Unsecured protected health information" shall have the same meaning as the term as defined in § 13402(h)(1)(A) of HITECH. Act. (42 U.S.C. §17932(h)(1)(A)).

(h) Obligations and Activities of Business Associates.

- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.
- (2) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Section of the Contract.
- (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability

of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.

- (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
- (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
- (6) Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of the Covered Entity, agrees to the same restrictions and conditions that apply through this Section of the Contract to Business Associate with respect to such information.
- (7) Business Associate agrees to provide access, at the request of the Covered Entity, and in the time and manner agreed to by the parties, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524.
- (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner agreed to by the parties.
- (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (11) Business Associate agrees to provide to Covered Entity, in a time and manner agreed to by the parties, information collected in accordance with clause h. (10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees that at the Covered Entity's direction to provide an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the

requirements of 45 C.F.R. sections 164.504(e), 164.308, 164.310, 164.312, and 164.316.

(14) In the event that an individual requests that the Business Associate (a) restrict disclosures of PHI; (b) provide an accounting of disclosures of the individual's PHI; or (c) provide a copy of the individual's PHI in an electronic health record, the Business Associate agrees to notify the covered entity, in writing, within two business days of the request.

(15) Business Associate agrees that it shall not directly or indirectly receive any remuneration in exchange for PHI of an individual without (1) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and (2) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act,(42 U.S.C. § 17935(d)(2)) and in any accompanying regulations

(16) Obligations in the Event of a Breach

(A) The Business Associate agrees that, following the discovery of a breach of unsecured protected health information, it shall notify the Covered Entity of such breach in accordance with the requirements of section 13402 of HITECH (42 U.S.C. § 17932(b) and the provisions of this section of the contract.

(B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to section 13402 (g) of HITECH (42 U.S.C. § 17932(g)). A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.

(C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:

1. A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.
2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
3. The steps the Business Associate recommends that individuals take to protect themselves from potential harm resulting from the breach.
4. A detailed description of what the Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
5. Whether a law enforcement official has advised either verbally or in writing the Business Associate that he or she has determined that notification or notice to individuals or the posting required under section 13402 of the

HITECH Act would impede a criminal investigation or cause damage to national security and contact information for said official.

(D) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed by the Covered Entity of a breach by the Business Associate have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor or Contractor Parties.

(E) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.

(i) Permitted Uses and Disclosure by Business Associate.

(1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

(2) Specific Use and Disclosure Provisions.

(A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

(B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(j) Obligations of Covered Entity.

(1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

- (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(k) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.

(l) Term and Termination.

- (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with clause h. (10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
 - (2) Termination for Cause Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
 - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or
 - (C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
 - (3) Effect of Termination.
 - (A) Except as provided in (1)(2) above, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with clause h. (10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the
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Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.

(m) Miscellaneous Provisions.

- (1) **Regulatory References.** A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.
- (2) **Amendment.** The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- (3) **Survival.** The respective rights and obligations of Business Associate shall survive the termination of this Contract.
- (4) **Effect on Contract.** Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.
- (5) **Construction.** This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.
- (6) **Disclaimer.** Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the provisions of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.
- (7) **Indemnification.** The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

62. Protection of Confidential Information.

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to

possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.

- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
 - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
 - (3) A process for reviewing policies and security measures at least annually;
 - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
 - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.
- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
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(e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

63. **Governmental Enactments.** All references in this Contract to any statute, public act, regulation, code or executive order shall mean such statute, public act, regulation, code or executive order, respectively, as it has been amended, replaced or superseded at any time. Notwithstanding any language in this Contract that relates to such statute, public act, regulation, code or executive order, and notwithstanding a lack of a formal amendment to this Contract, this Contract shall always be read and interpreted as if it contained the most current and applicable wording and requirements of such statute, public act, regulation, code or executive order as if their most current language had been used in and requirements incorporated into this Contract at the time of its execution.

The parties are signing this Contract on the date below their respective signatures.

NORESCO, LLC

STATE OF CONNECTICUT
Department of Administrative Services

By: _____

By: _____

David G. Mannherz

Martin W. Anderson Ph.D.

Print Name

Print Name

Title: Executive Vice President

Title: CT DAS Deputy Commissioner

Date: _____

Date: _____

APPROVED AS TO FORM
State of Connecticut
Office of the Attorney General

By: _____

Title: _____

Date: _____

Exhibit A

Energy-Savings Performance Project Statement of Work

Energy-Savings Performance Project Statement of Work

ARTICLE 1. DEFINITIONS, ACCEPTANCE OF DOCUMENTS

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Schedule H	Final Project Cost & Project Cash Flow Analysis
Schedule I	Financing Agreement and Payment Schedule
Schedule J	Compensation to QESP for Annual Services
Schedule K	Rebates, Incentives and Grants
Schedule L-P	Left blank for optional schedules
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Schedule W-AA Left blank for optional schedules
Schedule BB QESP's Maintenance Responsibilities
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Schedules EE – II Left blank for optional schedules

Exhibit A1 Certificate of Acceptance of All Installed Equipment

Exhibit A2 Notice of Substantial Completion of ESM

ARTICLE 1. DEFINITIONS, ACCEPTANCE OF DOCUMENTS

Section 1.1 Definitions

Any capitalized terms not defined in this SOW shall have the same meaning as those terms have in the Contract.

Certificate of Acceptance of All Installed Equipment: A certificate signed by the Department, acknowledging acceptance of all installed equipment, to be attached as Exhibit A1.

Commencement Date: The date described in **Section 2.2 (Commencement Date)**.

Energy-Savings Measures (ESMs): Any improvement to facilities or other energy-consuming systems designed to reduce energy or water consumption and operating costs and increase the operating efficiency of facilities or systems for their appointed functions. For the purposes of this SOW, Energy-Savings Measures for this project are those listed in **Schedule A (Energy Cost Savings Guarantee)**.

Energy Cost Savings Guarantee: The guarantee that is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this SOW and in accordance with the Savings Calculation Formula as set forth in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements)**. Energy Cost Savings includes both the Operation and Maintenance Cost Savings and Utility Cost Savings, as defined in the Act.

Equipment: Goods which the QESP is to install in accordance with and as set forth in **Schedule R (Equipment to be Installed by QESP)**.

Energy Use Intensity (EUI): A unit of measurement that describes a building's energy use and represents the energy consumed by a building relative to its size.

Environmental Laws: any Federal, State or local statute, law, ordinance, code, rule, regulation, order, or decree regulating or relating to the protection of human health or the environment, or imposing liability or standards of conduct concerning any hazardous, toxic or waste, substance, element, compound, mixture or material, as now or at any time hereafter in effect including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sec. 9601 *et seq.*, the Superfund Amendments and Reauthorization Act, 42 U.S.C. Secs. 9601 *et seq.*, the Federal Oil Pollution Act of 1990, §§ 2701, *et seq.*, the Federal Toxic Substance Control Act, 15 U.S.C. §§ 6901 *et seq.*, the Federal Hazardous Material Transportation Act, 49 U.S.C. §§ 1801 *et seq.*, the Federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, the River and Harbors Act of 1899, 33 U.S.C. §§ 401 *et seq.*, and all rules and regulations of the Environmental Protection Agency, or any other state or federal department, board, or agency, or

any other agency or governmental board or entity having jurisdiction over environmental or health and safety matters, as such have been amended.

Goods: All things which are movable, including, but not limited to, supplies, materials, equipment, hardware, software, specially manufactured things, a component incorporated into another thing and things that are attached to real property and that may be severed from the real property without material harm to the things, together and with any and all additions, modifications, attachments, replacements and parts.

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

Material Change: Any change in or to the Project Site(s), whether structural, operational or otherwise in nature which reasonably could be expected, in the sole judgment of the Department, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)** and **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Report Requirements)** by at least % after adjustments for climatic variations. Those changes may include, but are not limited to, any one of the following:

- (i) manner of use of the Project Site(s) by the Department;
- (ii) hours of operation for the Project Site(s) or for any Equipment or energy using systems operating at the Project Site(s);
- (iii) permanent changes in the comfort and service parameters set forth in **Schedule U (Standards of Comfort)**;
- (iv) occupancy of the Project Site(s);
- (v) structure of the Project Site(s), including total square footage of the buildings;
- (vi) types and quantities of Equipment used at the Project Site(s)
- (vii) modification, renovation or construction at the Project Site(s);
- (viii) the Department's failure to provide maintenance of and repairs to the Equipment in accordance with **Schedule CC (Department's Maintenance Responsibilities)**;
- (ix) the replacement, addition or removal of energy and water consuming devices whether plug-in or fixed assets;
- (x) casualty or condemnation of the Project Site(s) or Equipment;
- (xi) changes in utility provider or utility rate classification or number of days in utility billing cycle;
- (xii) modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules; or
- (xiii) any other conditions other than weather affecting energy or water use or energy costs at the Project Site(s).

Project Site(s): The facilities of the Department in need of energy and water saving equipment and services designed to reduce consumption and associated costs, as identified in Schedule Q.

SOW: This Energy-Savings Performance Project Statement of Work and all Schedules and Exhibits attached.

SOW Sum: The dollar value sum of all materials, labor, auditing, design, engineering, project construction management fees, overhead, profit, contingency and subcontracted services related to the project, as set forth in **Schedule H, Final Project Cost and Project Cash Flow Analysis**.

Substantial Completion of ESM: The stage in the progress of the Work where the installation of an ESM is sufficiently complete in accordance with the SOW documents so that the Department can utilize and take beneficial use of the subject ESM for its intended use or purpose. Substantial Completion of ESM shall not be deemed to have occurred until the ESM has been commissioned, accepted, and the Department executes the Notice of Substantial Completion of ESM.

Work: The Equipment or Services or both to be Performed under the SOW.

Section 1.2. Acceptance of Investment-Grade Energy Audit Report and Other Documents

Prior to this SOW being negotiated and executed as a Final Exhibit, QESP shall have prepared and delivered to the Department the IGEA Report. Upon acceptance of the IGEA Report, the IGEA Report is made a part of the SOW in accordance with Section 123(f) of the Act. Acceptance of the IGEA Report shall be effected and evidenced by the Department signing the signature page in Exhibit C.

For purposes of Performance and synergy between or among documents, the provisions of this SOW and its schedules and exhibits shall take precedence and govern over those in the IGEA Report.

PAYMENTS AND SCHEDULES

ARTICLE 2. PURCHASE AND SALE; COMMENCEMENT DATE AND TERMS; INTERIM PERIOD

Section 2.1. Purchase and Sale

QESP shall provide the Equipment and Services as provided in **Schedule R (Equipment to be Installed by QESP)** and **Schedule J (Compensation to QESP for Annual Services)** in accordance with the terms and conditions set forth in **Schedule I (Financing Agreement and Payment Schedule)**.

The SOW Sum for the Work is a Guaranteed Maximum Price of \$ as set forth in **Schedule H (Final Project Cost & Project Cash Flow Analysis)**. Payment terms are described in **Schedule I (Financing Agreement and Payment Schedule)**.

QESP shall Perform the Work, or cause the Work to be Performed, and all related Services identified in **Schedule R (Equipment to be Installed by QESP)** and the Services detailed in **Schedule BB (QESP's Maintenance Responsibilities)** and **Schedule J (Compensation to QESP for Annual Services)**. QESP shall supervise and direct the Work and shall be responsible for all construction means, methods, techniques, sequences, and procedures and for

coordinating all portions of the Work under this SOW. QESP shall pay for all Equipment, Services and transportation necessary or appropriate for the timely and proper Performance of the Work in accordance with all applicable Schedules.

QESP shall be paid the SOW Sum in accordance with **Schedule I (Financing Agreement and Payment Schedule)**. Payments will be made on a progress basis in accordance with **Schedule I (Financing Agreement and Payment Schedule)**, for Work completed and authorized by Department during the Interim Period. Retainage of % will be withheld until the Commencement Date.

Section 2.2. Commencement Date

The Commencement Date shall be the first day of the month after the month in which the last unsatisfied condition of the following conditions shall have been satisfied: (1) QESP shall have installed and commenced operating all of the Equipment specified in **Schedule R (Equipment to be Installed by QESP)** and in accordance with the provisions of **ARTICLE 8 (Construction Schedule and Equipment Installation; Approval)**, **Schedule S (Construction and Installation Schedule)** and **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**; (2) QESP shall have delivered to Department a notice that it has installed all of the Equipment and that the Equipment is operating properly, all in accordance with this Section; and (3) Department has inspected and accepted said installation and operation as evidenced by executing and delivering to QESP the **Exhibit A1 Certificate of Acceptance of All Installed Equipment**.

Department shall have days after receiving the installation notification by the QESP to inspect the Equipment. If Department does not reject any of the Equipment, then they shall execute and forward the **Certificate of Acceptance of All Installed Equipment** to the QESP within seven (7) calendar days after concluding the inspection. Department may reject some or all of the Equipment if either the Equipment or its installation fails to meet reasonably accepted standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with the Contract or this SOW. Department shall not deliver to QESP the **Certificate of Acceptance of All Installed Equipment** and QESP shall not be paid in full, including retainage, until after any punch list is completed and QESP has satisfied any and all claims for labor and materials, including, but not limited to, providing Lien waiver certificates. The **Certificate of Acceptance of All Installed Equipment** will not be unreasonably withheld by the Department.

Compensation payments due to QESP for on-going Services and maintenance under this SOW as set forth in **Schedule J (Compensation to QESP for Annual Services)** shall begin no earlier than from the Commencement Date.

Section 2.3. Term of SOW; Interim Period

The term of this SOW, including all extensions, shall end on _____, which date shall not exceed 20 years measured beginning from the Commencement Date. The SOW shall be

effective and binding upon the parties upon its execution by the parties. All energy savings achieved during the Interim Period shall be fully credited to Department.

ARTICLE 3. ENERGY COST SAVINGS GUARANTEE; ANNUAL RECONCILIATION; PAYMENTS TO QESP

Section 3.1. Rebates and Incentives

As specified in Schedule K, QESP shall identify and describe dollar amounts for any eligible rebate and incentive funds from the CT Energy Efficiency Fund, CT Clean Energy Finance and Investment Authority, and other incentive and grant programs, to reduce overall project costs.

Section 3.2. Energy Cost Savings Guarantee

Subject to the adjustments provided for in **ARTICLE 15 (Material Changes)**, QESP guarantees that the annual level of Energy Cost Savings shall be in accordance with the measurement and verification of the Energy-Savings Measures as set forth in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements)**. The Energy Cost Savings Guarantee is set forth in annual increments for the term of the SOW as specified in **Schedule A (Energy Cost Savings Guarantee)** and QESP guarantees that it is sufficient to cover any and all annual payments required to be made by the Department as set forth in **Schedule J (Compensation to QESP for Annual Services)** and **Schedule I (Financing Agreement and Payment Schedule)**.

Section 3.3. Annual Review and Reimbursement/Reconciliation

QESP shall measure and calculate Energy Cost Savings as specified in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting)** and **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)** and shall prepare and deliver to Department an annual reconciliation report no later than forty-five (45) days following each (1) twelve-month anniversary of the Commencement Date, or (2) the date that QESP shall have received the last of the energy usage records and data referenced in Articles 3 and 5 of this SOW, whichever is later, for the entire term of this SOW, including the final report due on or before [REDACTED].

If the reconciliation reveals a shortfall in annual Energy Cost Savings in any one year during the guarantee period, QESP shall make payment to the Department in the amount of the shortfall no later than [REDACTED] days after the Department receives the reconciliation report. If the reconciliation reveals an excess in annual Energy Cost Savings, the excess savings shall remain with the Department, and shall not be used to cover potential Energy Cost Savings shortages in subsequent years or actual Energy Cost Savings shortages in previous years.

Section 3.4. QESP Compensation and Fees

QESP has structured the Energy Cost Savings Guarantee referred to in 3.1 above such that it will be at least equal to any and all annual payments, combined, required to be made by the Department in connection with **Schedule I (Financing Agreement and Payment Schedule)**

Schedule J (Compensation to QESP) and Schedule BB (QESP's Maintenance Responsibilities).

Section 3.5. Billing Information Procedure

Payments due to QESP under this Section 3 shall be calculated each year in the following manner:

- (i) By the [redacted] day after receipt, Department shall provide QESP with copies of all energy bills for the Project Site(s) which it shall have received for the preceding month;
- (ii) Upon receipt of the required information, QESP shall calculate the savings in accordance with the agreed-upon calculation formulae in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements)**.
- (iii) Based upon paragraphs (i) and (ii) above, QESP shall prepare and send to Department an annual invoice which shall set forth for each year the amounts of the Energy Cost Savings calculated in accordance with **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Report Requirements)** and for the services as provided for in **Schedule J (Compensation to QESP for Annual Services)**. The invoice will set forth the total annual payment due from Department.

Section 3.6. Effective Date of Payment Obligation

Notwithstanding the above provisions in Section 3, Department shall not be required to begin any payments to QESP under this SOW unless and until all Equipment installation is completed by QESP in accordance with the provisions of **Article 8 (Construction and Equipment Installation; Approval)** and **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**, and accepted by Department as evidenced by the signed Certificate of Acceptance as set forth in **Exhibit A1 (Certificate of Acceptance of All Installed Equipment)**, and unless and until said Equipment is fully and properly functioning.

Section 3.7. Pricing Transparency

The QESP shall fully disclose all costs of the Work purchased and subcontracted and a list of hourly rates and position descriptions for labor or services. Deviations from budgeted hours shall require prior written approval by the Department or shall not be paid. QESP will maintain cost accounting records on authorized Work performed under actual costs for labor and material, or other basis requiring accounting records. QESP will afford Department access to these records and preserve them for a period of three (3) years after final payment. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices. The pricing methodology and individual cost markups disclosed during preliminary SOW negotiations will be expected to be applied, providing the scope and size of the project remain the same as assumed when markups were disclosed.

ARTICLE 4. NON-APPROPRIATION OF FUNDS

In accordance with the Act, the work in the SOW and corresponding payments may extend beyond the Department's fiscal year in which the SOW became effective, but subject to appropriation of moneys for costs incurred in future fiscal years. In the event insufficient funds are appropriated and budgeted, or no Department or other funds are appropriated and budgeted, in any fiscal period for which payments are due QESP under this SOW, then the Department will, not less than [REDACTED] days after it is notified of the unavailability of appropriated and budgeted funds, in writing, notify the QESP of such occurrence. Based on such notice, this SOW shall terminate on the last day of the fiscal period for which appropriations were made without penalty or expense to the Department of any kind whatsoever, except as to the portions of payments for which funds shall have been appropriated and budgeted or are otherwise available.

DESIGN AND CONSTRUCTION PHASE

ARTICLE 5. ENERGY USAGE RECORDS AND DATA

Department has furnished and shall continue to furnish (or authorize its energy suppliers to furnish) during the term of this SOW to QESP or its designee, upon its request, all of its records and complete data concerning energy and water usage and related maintenance for the Project Site(s).

ARTICLE 6. LOCATION AND ACCESS

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

ARTICLE 7. PERMITS AND APPROVALS; COORDINATION

Section 7.1. Permits and Approvals

The QESP shall be responsible for developing all required documentation and obtaining all necessary permits and approvals for the Work and installation of the Equipment. The Equipment and the operation of the Equipment by QESP shall at all times comply with all federal, state and local code requirements. Furthermore, all Work shall comply with the Connecticut State

Building Code. The QESP shall be responsible for providing all drawings and documentation necessary to demonstrate compliance. The QESP shall coordinate all required inspections with the authority having jurisdiction.

QESP shall furnish copies of any permit or license which is required to perform the Work to the Department before the QESP commences the portion of the Work requiring such permit or license. In no event shall Department be responsible for payment of any permit or similar fees.

Section 7.2. Coordination During Installation

The Department and QESP shall coordinate the activities of QESP's Equipment installers with those of the Department, its employees, and agents. QESP shall cooperate with Department when performing Work to minimize conflicts and facilitate usage of Project Site(s). QESP shall not commit or permit any act which will interfere with the performance of business activities conducted by the Department or its employees without prior written approval of the Department.

In addition, QESP shall provide adequate building and fire code egress from the Project Site(s) while performing the Work and, if required, shall be responsible for preparing egress plans for Department and State Fire Marshal approval.

ARTICLE 8. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL

Section 8.1. Construction Schedule; Equipment Installation

Construction and Equipment installation shall proceed in accordance with the construction schedule approved by Department and attached as **Schedule S (Construction and Equipment Installation Schedule)**.

Section 8.2. Systems Startup and Equipment Commissioning

The QESP shall conduct thorough and systematic performance tests of each element and total system of the installed Equipment in accordance with the procedures specified in **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)** prior to delivering to the Department the installation notification indicating that the Equipment is ready for inspection by the Department. Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this SOW, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The QESP shall provide sufficient notice to the Department and any third-party technical support entity, as requested by DEEP or the Department, of the scheduled test(s). The Department shall have the right to be present, and to invite any third party to be present, at any or all such tests conducted by QESP and/or manufacturers of the Equipment. The QESP shall correct and/or adjust all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures as specified in **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**. Prior to Department executing the **Exhibit A1,**

Certificate of Acceptance of All Installed Equipment, QESP shall provide Department with documentary evidence that the Equipment installed is the Equipment specified in **Schedule R (Equipment to be Installed by QESP)**.

ARTICLE 9. EQUIPMENT WARRANTIES

QESP represents and warrants that all Equipment installed as part of this SOW shall be new, materially free from defects in materials or workmanship, installed properly in a good and workmanlike manner, and shall function properly for a period of one (1) year from the date of the Notice of Substantial Completion of ESM if operated and maintained in accordance with the procedures established for the Project Site(s).

After the warranty period, QESP shall have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims relating to the Equipment, except as provided in **Schedule BB (QESP's Maintenance Responsibilities)**.

QESP shall cause all available manufacturers' warranties relating to the Equipment to be issued in the name of and delivered to Department. No later than two (2) business days after the Department delivers the Notice of Substantial Completion of ESM to the QESP, the QESP shall deliver the warranties applicable to the subject Equipment to the Department, At the Department's request, the QESP shall act as the Department's agent and representative to pursue on the Department's behalf any available rights and remedies which the Department may have against the manufacturers under the warranties. QESP shall, during the warranty period, notify the Department whenever defects in Equipment parts or performance occur which may give rise to such rights and remedies. During this period, if the QESP fails to notify the Department of Equipment defects or any warranty issues, QESP shall bear the full cost and expenses of any risk of damage or damage to the Equipment and its performance, including damage to property and Equipment of the Department or the Project Site(s).

The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction.

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

ARTICLE 10. STANDARDS OF COMFORT

QESP will maintain and operate the Equipment in a manner which will provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality and levels as described in **Schedule U (Standards of Comfort)**. During the term of this SOW, QESP and Department will maintain, respectively according to **Schedule BB (QESP's Maintenance Responsibilities)** and **Schedule CC (Department's Maintenance Responsibilities)**, and operate the Equipment in a manner that will provide the standards of comfort and levels of operation as described in **Schedule U (Standards of Comfort)**.

ARTICLE 11: ENVIRONMENTAL REQUIREMENTS

Section 11.1. Excluded Material and Activities

Department recognizes that in connection with the installation and/or service or maintenance of Equipment at a Project Site(s), QESP may encounter (i) asbestos or materials containing asbestos, (ii) fungus (any type of form of fungi, including mold or mildew, and myotoxins, spores, scents or by-products produced or released by fungi), (iii) incomplete or damaged work or systems or code violations that may be discovered during or prior to the Work of this SOW, or (iv) pollutants, hazardous wastes, hazardous materials or other contaminants regulated by the Environmental Laws (collectively “Hazardous Materials”). If QESP discovers Hazardous Materials, QESP shall immediately cease Work, remove all QESP personnel and Contractor Parties from the Project Site(s), and notify the Department. QESP shall undertake no further Work on the Project Site(s), except as authorized by the Department in writing, as the Department will perform or arrange for the performance of any remediation of Hazardous Materials. Notwithstanding any other provision in this SOW, any such event of discovery or remediation by the Department shall not constitute a Material Breach or Other Breach by the Department. If Department notifies QESP to cease Work pursuant to this Section, then the time for completion of Work will be automatically extended by the amount of time of the Work stoppage. The parties shall negotiate in good faith any increased costs associated with the Work stoppage and shall modify all appropriate exhibits and schedules accordingly.

QESP shall be responsible in all respects for any Hazardous Materials and any other materials regulated by the Environmental Laws, including, without limitation, those listed in this section that it may bring to the Project Site(s). This responsibility includes, but is not limited to, storage, handling, use, transportation, treatment, disposal, discharge, leakage, detection, removal, containment, remediation and all costs and expenses associated with such.

Section 11.2. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps

QESP shall enter into an agreement with a waste transporter that is permitted by DEEP to transport PCB ballasts. The agreement between QESP and the transporter shall require that the transporter (1) transport and dispose of the PCB Ballasts in accordance with all applicable Environmental Laws, (2) provide an informational packet, packing receptacles and instructions, labels and shipping materials, (3) provide transportation, and incineration or disposal services for PCB ballasts, (4) remove all capacitors and asphalt potting compound materials from Department’s PCB ballasts, (5) incinerate or dispose of them at a federally-approved facility, (6) provide to Department a Certificate of destruction issued by the federally-approved disposal facility and (7) comply with all applicable Environmental Laws.

QESP shall enter into an agreement with an authorized lamp recycling company, pursuant to which the recycling company shall provide all necessary or appropriate goods and services, including but not limited to, approved containers, materials required to label, transportation and recycling, for all manner of handling of mercury lamps and their removal from the Project Site(s), all in accordance with the Environmental Laws. The QESP shall verify and ensure that the lamp recycling company Performs the work or Work only pursuant to and during the term of

a validly existing agreement with the QESP. The agreement shall require the recycling company to provide a copy of the required manifest or other shipping documents to QESP and to forward a copy to the Department. The QESP shall verify and ensure that the lamp recycling company maintains current, throughout the term of that agreement, all appropriate permits from all applicable jurisdictions to Perform any such work or Work.

To the extent required by the Environmental Laws, the Department shall sign manifests for all PCB ballasts and manifests or other shipping documents for mercury lamps removed from the Project Site(s).

ARTICLE 12. TRAINING BY QESP

The QESP shall conduct the training program described in **Schedule V (QESP's Training Responsibilities)**. The Department shall not commence the inspection of the Equipment in preparation for executing the Certificate of Acceptance of All Installed Equipment until QESP completes the training specified in **Schedule V (QESP's Training Responsibilities)**. The QESP shall provide ongoing training whenever needed or appropriate with respect to updated or altered Equipment, including upgraded software. QESP shall provide the training at no charge to the Department and this training shall have no effect on the prior Certificate of Acceptance of All Installed Equipment.

POST-CONSTRUCTION PHASE

ARTICLE 13. EQUIPMENT SERVICE

Section 13.1. Actions by QESP

QESP shall provide all service, repairs, and adjustments to the Equipment installed under terms of this SOW pursuant to **Schedule BB (QESP's Maintenance Responsibilities)**. Department shall have no responsibility for any costs or expenses for Equipment service, repairs, and adjustments, except as set forth in **Schedule J (Compensation to QESP for Annual Services)**, provided, however, that when the need for maintenance or repairs principally arises due to damage caused by the Department or any employee or other agent of Department, and QESP can demonstrate a causal connection between the damage and the Department actions, QESP may charge Department for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

Section 13.2. Malfunctions and Emergencies

Department shall use its best efforts to notify the QESP or its designated sub-contractors within 24 hours after the Department's actual knowledge and occurrence of: (i) any malfunction, alteration or modification in the operation of the Equipment or any preexisting energy related equipment that has a material impact upon the Energy Cost Savings Guarantee or (ii) any interruption or alteration to the energy supply to the Project Site(s).

Where Department exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration, it shall be deemed to be not at fault in failing to correctly identify such conditions as having a material impact upon the Energy Cost Savings Guarantee. Department shall notify QESP within twenty-four (24) hours upon its having actual knowledge of any such condition affecting the Equipment. QESP shall respond or cause its designee(s) to respond within [REDACTED] hours and shall proceed immediately with corrective measures. Any telephonic notice of such conditions by Department shall be followed within three business days by written notice to QESP from Department. If Department unreasonably delays in so notifying QESP of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, QESP may charge Department for its loss, due to the delay, associated with the Energy Cost Savings Guarantee under this SOW for the particular time period, provided that QESP is able to show the direct causal connection between the delay and the loss.

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

Section 13.3. Actions by Department

Department shall not move, remove, modify, alter, or change in any way any part of or all of the Equipment without the prior written approval of QESP except as set forth in **Schedule CC (Department's Maintenance Responsibilities)**. Notwithstanding the foregoing, Department may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify QESP before taking any such actions. In the event of such an emergency, Department shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency action provided in advance by QESP. Department agrees to maintain the Project Site(s) in good repair and to protect and preserve all portions which may in any way affect the operation or maintenance of the Equipment.

ARTICLE 14. MODIFICATION, UPGRADE OR ALTERATION OF THE EQUIPMENT

Section 14.1. Modification or Other Handling of Equipment

During the term of this SOW, Department shall not move, remove, modify, alter, or change in any way any part of or all of the Equipment without the prior written approval of QESP except as set forth in **Schedule CC (Department's Maintenance Responsibilities)**.

Section 14.2. Upgrade or Alteration of Equipment

QESP shall at all times have the right, subject to Department's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other ESMs in the Project Site(s), provided that: (i) the QESP complies with the standards of comfort and services set forth in **Schedule U (Standards of Comfort)**; (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the QESP to achieve the Energy Cost Savings Guarantee at the Project Site(s) and; (iii) any cost incurred

relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the QESP.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental schedule(s) to be provided to the Department for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall, unless otherwise agreed, be new Equipment and have equal or better potential to reduce energy consumption at the Project Site(s) than the Equipment being replaced. The QESP shall have the right to update any and all software to be used in connection with the Equipment in accordance with the provisions of **Section 17.1 (Ownership of Certain Proprietary Rights)** and **Schedule BB (QESP's Maintenance Responsibilities)**. All replacements of and alterations or additions to the Equipment shall become part the Equipment described in **Schedule R (Equipment to be Installed by QESP)** and shall be covered by the provisions and terms of **Article 8 (Construction Schedule and Equipment Installation; Approval)**.

ARTICLE 15. MATERIAL CHANGES

Section 15.1. Reported Material Changes; Notice by Department

The Department shall use its best efforts to deliver to the QESP a written notice describing all proposed Material Changes in the Project Site(s) or in the operations of the Project Site(s) at least days before any proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the QESP of Material Changes which result from a bona fide emergency or other situation which precludes advance notification shall be deemed to be sufficient notice under this section if given by the Department within hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Department to have occurred.

Section 15.2. Other Adjustments

Both parties have a vested interest in meeting the Energy Cost Savings Guarantee of the SOW. As such, at the request of the Department the QESP shall cooperate as necessary or appropriate to investigate, identify and correct any changes that prevent the Energy Cost Savings Guarantee from being realized. As a result of such investigation, QESP and Department shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Report Requirements)** and **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)**.

ARTICLE 16. PERFORMANCE BY QESP

Section 16.1. Corrective Action; Accuracy of the Services

QESP shall perform all Work in such a manner so as not to damage the structural integrity of the Project Site(s) or their operating systems and so as to conform to the standards set forth in

Schedule U (Standards of Comfort) and the construction schedule specified in **Schedule S (Construction and Installation Schedule)**. QESP shall repair and restore to its original condition any area which it damages or otherwise disturbs in the course of performing Work under this SOW. The Department reserves the right to review the Work performed by QESP as the Work progresses and to direct QESP to take certain corrective action if, in the opinion of the Department, the structural integrity of the Project Site(s) or its operating system is or will be damaged. All costs associated with such corrective action to damage caused by QESP's performance of the Work shall be borne by QESP.

QESP shall remain responsible for the professional and technical accuracy of all services performed, whether by the QESP or its subcontractors or others on its behalf, throughout the term of this SOW.

Section 16.2. Annual Reporting Requirements; Annual ENERGY STAR Rating

At the end of each year, as defined in **Schedule A (Energy Cost Savings Guarantee)**, during the guarantee period and no later than ninety (90) days thereafter, the QESP shall complete and submit the data required in **Schedule C (C.4 Annual M&V Reporting Requirements)**.

ADMINISTRATION

ARTICLE 17. OWNERSHIP OF CERTAIN PROPRIETARY RIGHTS; EXISTING EQUIPMENT

Section 17.1. Ownership of Certain Proprietary Property Rights

Department shall not, by virtue of this SOW, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. The QESP shall either grant to the Department or cause the Department to be granted, as applicable, a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Department to continue to operate, maintain, and repair the Equipment in a manner that will yield Energy Cost Savings Guarantee for the specified SOW term. QESP shall not be liable for providing new versions of software or other enhancements if or unless such new versions or enhancements are necessary to achieve the Energy Cost Savings Guarantee.

Section 17.2. Ownership and Removal of Existing Goods

The Department holds all Title to the Goods located at the Project Site(s) at the time of execution of this SOW. The Department shall retain Title to the Goods even if the Goods are replaced or their operation made unnecessary by Work pursuant to this SOW. If applicable, QESP shall advise the Department in writing of all Goods to be replaced at the Project Site(s) and the Department shall, within [REDACTED] days, designate in writing to the QESP which Goods the Department agrees are to be replaced and which the QESP shall remove to a location which the

Department selects. The Department shall be responsible for and designate the storage site for any Goods that shall remain on the Project Site(s).

ARTICLE 18. MATERIAL BREACH

Section 18.1. Events of Material Breach by Department

Any failure by Department to pay QESP any sum due and owing for more than [redacted] days after written notification by QESP that Department is delinquent in making payment, shall constitute a Material Breach, provided that QESP is not itself in default in its performance under the terms of this SOW.

Section 18.2. Events of Material Breach by QESP

Each of the following events or conditions shall constitute a Material Breach of the Contract by QESP:

- (i) the standards of comfort and service set forth in **Schedule U (Standards of Comfort)** are not met due to failure of QESP to properly design, install, maintain, repair or adjust the Equipment, except that such failure, if corrected or cured within [redacted] days after written notice by Department to QESP demanding that such failure be cured, shall be deemed to be cured for purposes of this SOW;
- (ii) failure to furnish and install the Equipment and make it ready for use within the time specified by this SOW as set forth in **Schedule R (Equipment to be Installed by QESP)** and **Schedule S (Construction and Installation Schedule)**; and
- (iii) failure by the QESP to pay any amount due the Department as set forth in **Schedule A (Energy Cost Savings Guarantee)**.

ARTICLE 19. ASSIGNMENT

The QESP acknowledges that the Department is induced to enter into this SOW by, among other things, the professional qualifications of the QESP. Accordingly, no part of this SOW or any rights or obligations which it may create may be assigned in whole or in part to any other person or entity, without the prior written approval of the Department. If QESP makes an unapproved assignment, then the Department, at its sole option, may unilaterally deem that purported assignment to be, and it shall be, void and unenforceable *ab initio* without regard to Department's acts or course of conduct after becoming aware of the QESP's purported assignment, and declare the QESP to be in Material Breach.

Section 19.1. Assignment by QESP

If Department consents to an assignment, the consent shall be on the express condition precedent that the assignee agree to be bound to all of the terms and conditions of the Contract and this SOW. Accordingly, the assignment shall provide that upon the assignment and assumption, the

assignee shall be (a) vested with the rights and privileges previously belonging to the QESP; (b) bound by all of the duties and obligations of the QESP; and (c) responsible for any and all Claims arising out of the Contract and SOW as if the assignee had executed and delivered the Contract and had been the QESP from the effective date of the Contract. Further, the assignment shall also include a provision prohibiting the assignee from further assigning, or sub-subcontracting, any of its obligations without the prior written consent of the QESP, which the QESP shall not grant without the prior written approval of the Department.

Section 19.2. Assignment by Department

Department may transfer or assign all or part of the Project Site(s) to another party. Upon and after such a transfer or assignment all obligations and liabilities of the Department shall terminate and such obligations and liabilities shall be the responsibility of the transferee or assignee to the extent of the Project Site(s) being transferred or assigned, except such as may have arisen from a breach by Department of any terms, covenants or conditions of the Contract during the period that the Department was the owner of and in possession of the Project Site(s).

ARTICLE 20. ADDITIONAL REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Section 20.1. Department Warranty

Department represents and warrants that:

- (i) it has provided or shall provide timely to QESP, all records relating to energy usage and energy-related maintenance of Project Site(s) requested by QESP; and
- (ii) it has not entered into any other agreement or SOWs with other persons or entities concerning ESMs or the provision of energy management or Equipment maintenance services for the Project Site(s). Department shall provide QESP with copies of any successor or additional leases of energy efficiency equipment or contracts for management or servicing of preexisting equipment at Project Site(s), which may be executed from time to time within days after their execution.

Section 20.2. QESP Warranty

QESP represents and warrants that:

- (i) it shall ensure that any subcontractors that it uses shall be qualified subcontractors who are licensed and bonded in the State of Connecticut to perform the Work subcontracted to them under this SOW;
- (ii) the Equipment will meet or exceed the provisions set forth in **Section 8.2 (Systems Start Up and Equipment Commissioning)** and in **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**; and

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

ARTICLE 21. MICELLANEOUS DOCUMENTATION PROVISIONS

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

The QESP shall not begin any Performance until the QESP shall have delivered to the Department such performance and labor and material bonds as the Department may require.

Section 21.2 Department's Responsibilities

(a) Department's Maintenance Responsibilities

Department agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth in **Schedule CC (Department's Maintenance Responsibilities)** after Department delivers to the QESP a Notice of Substantial Completion of ESM.

(b) Inspection of Project Site(s)

QESP shall have the right once a month, with prior notice, to inspect Project Site(s) to determine if Department is complying, and shall have complied with its obligations as set forth in this **Section**. For the purpose of determining Department's compliance, the checklist set forth in **Schedule DD (Facility Maintenance Checklist)**, shall be used to measure and record determination of Department's said compliance. Department shall make the Project Site(s) available to QESP for and during each monthly inspection, and shall have the right to witness each inspection alongside QESP and QESP's recordation on the checklist. Department may complete its own checklist at the same time. QESP shall not interfere with the Department's operations during any monthly inspection.

Section 21.3. Liens and Waiver of Liens

- (i) If any part of the Work shall become subject to any vendor's, mechanic's, laborer's, materialman's or other lien or encumbrance (collectively, "Liens") based upon the delivery of the Work, the QESP shall cause any or all of the Liens to be discharged of record at its sole cost and expense prior to the Commencement Date or, if not of record at that time, then within one hundred twenty (120) calendar days after it receives notice of the Liens.
- (ii) Lien waiver certificates, in a form and substance satisfactory to the Department, shall be submitted by the QESP with all payment requests certifying that the Work is free and

clear of all Liens and any other encumbrance for any part of the Work completed. QESP shall also provide Lien waivers at the time of the Commencement Date in a form and substance satisfactory to the Department that, upon completion and acceptance of the Work, the Work is free and clear of all Liens. If any person or entity refuses to furnish a release or waiver, the QESP shall, at the request of the Department, furnish a bond satisfactory to the Department to indemnify the Department against any potential Lien. If a Lien remains unsatisfied after payments are made, then the QESP shall refund to the Department all moneys that they may be compelled to pay in discharging the Lien, including all costs and reasonable attorney's fees, no later than thirty (30) days after receiving a written refund request from the Department. The Department may withhold amounts due to the QESP as it deems to be necessary or appropriate to protect the Department against any losses arising out of the outstanding Liens or claims of former Lien holders and to reimburse the Department for any costs and expenses incurred in the satisfaction and discharge of the Liens and, in required, the procuring of similar Work.

- (iii) Notwithstanding the provisions of this Liens and Waiver of Liens Section, a Municipality may execute and deliver financing documents and instruments in connection with a Municipality's SOW that allow the filing of Liens for purposes of securing the interests of the financing institution involved in that Municipal transaction. If so, then this Section shall be read and interpreted to allow the filing of Liens in accordance with the provisions of the financing-related documents and instruments, but only as applicable to and for purposes of the Municipality's SOW.

ARTICLE 22. TERMINATION

- (i) Notwithstanding any provisions in this SOW, the Department, through a duly authorized employee, may Terminate the SOW whenever the Department makes a written determination that such Termination is in the best interests of the Department. The Department shall notify the Contractor in writing of Termination pursuant to this Article, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance prior to such date.
- (ii) Notwithstanding any provisions in this SOW, the Department, through a duly authorized employee, may Terminate the SOW for a Material Breach, but only after making a written determination that the Contractor is in Material Breach under the Material Breach Article of this SOW.
- (iii) The Department shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Department for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Department, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the appropriate Department all Records. The Records are deemed to be the property of the Department and the Contractor shall deliver them to the Department no later than thirty (30) days after the Termination of the SOW or fifteen (15) days after the Contractor receives a written request from the Department for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.

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- (iv) Upon receipt of a written notice of Termination from the Department, the Contractor shall cease operations as the Department directs in the notice, and take all actions that are necessary or appropriate, or that the Department may reasonably direct, for the protection, and preservation of the Equipment and any other property. Except for any work which the Department directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
 - (v) The Department shall, within forty-five (45) days of the effective date of Termination, and if appropriate in accordance with Exhibit D, Cost and Pricing, reimburse the Contractor for its Performance to the extent rendered and accepted by the Department and that is appropriate in accordance with the applicable Final Exhibits. However, the Contractor is not entitled to receive and the Department is not obligated to tender to the Contractor any payments for anticipated or lost profits or for any anticipated Performance. Upon request by the Department, the Contractor shall assign to the Department, or any replacement contractor which the Department designates, all subcontracts, purchase orders and other commitments, deliver to the Department all Records and other information pertaining to its Performance, and remove from Department premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Department may request.
 - (vi) Upon Termination of the SOW, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which may survive Termination. All representations, warranties, agreements and rights of the parties under the SOW shall survive such Termination to the extent not otherwise limited in the Contract or SOW and without each one of them having to be specifically mentioned in the Contract or SOW.
 - (vii) Termination of the SOW pursuant to this Article shall not be deemed to be a breach of contract by the Department.

ARTICLE 23. COMPLETE SOW

This SOW, when executed, together with all Schedules attached or to be attached, as provided for by this SOW shall constitute the entire SOW between both parties and this SOW may not be amended, modified, or terminated except in writing and signed by the parties.

The parties are signing this SOW Final Exhibit A, which is and shall remain subject to the Contract, on the date below their respective signatures.

[QESP NAME]

[DEPARTMENT NAME]

By: _____

By: _____

Print Name

Print Name

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A, Attachment 1

Energy-Savings Performance Project SOW Schedules

Schedule A	Energy Cost Savings Guarantee
Schedule B	Baseline Energy Consumption; Methodology to Adjust Baseline
Schedule C	Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements
Schedule D-G	Left blank for optional schedules
Schedule H	Final Project Cost & Project Cash Flow Analysis
Schedule I	Financing Agreement and Payment Schedule
Schedule J	Compensation to QESP for Annual Services
Schedule K	Rebates, Incentives and Grants
Schedule L-P	Left blank for optional schedules
Schedule Q	Description of Project Site(s); Pre-Existing Equipment Inventory
Schedule R	Equipment to be Installed by QESP
Schedule S	Construction and Installation Schedule
Schedule T	Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
Schedule U	Standards of Comfort
Schedule V	QESP's Training Responsibilities
Schedule W-AA	Left blank for optional schedules
Schedule BB	QESP's Maintenance Responsibilities
Schedule CC	Department's Maintenance Responsibilities
Schedule DD	Facility Maintenance Checklist
Schedules EE – II	Left blank for optional schedules

SCHEDULE A
ENERGY COST SAVINGS GUARANTEE

This Schedule A sets forth all provisions and conditions of the QESP's Energy and Cost Savings Guarantee (the "Guarantee"), including defining the year for purposes of the "Annual Performance Requirements" subsection of the "Performance by QESP" Section of the SOW. The Guarantee shall be defined in units of energy to be saved for the term of the SOW and specify energy and cost savings guarantees on an annual basis for each Energy-Savings Measure.

SCHEDULE B
BASELINE ENERGY CONSUMPTION; METHODOLOGY TO ADJUST BASELINE

This Schedule B describes the baseline from which the ESMs will be measured and the methodology for adjusting that baseline.

B.1. BASELINE ENERGY CONSUMPTION

B.1.1 QESP shall establish the baseline for measuring and calculating Operation and Maintenance Cost Savings and Utility Cost Savings in accordance with these items:

- (1) the following variables, including but not limited to weather, operating hours, set point changes, etc.:
- (2) each variable identified in B.1.1(1) quantified such as measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc., as follows:
- (3) Key system performance factors characterizing the baseline conditions are the following (including factors such as comfort conditions, lighting intensities, temperature set points, etc.):
- (4) The requirements for Department's witnessing of measurements are the following:
- (5) Details of the baseline data collected are the following:
 - a) parameters monitored;
 - b) details of Equipment monitored (location, type, model, quantity, etc.);
 - c) sampling plan (including details of usage groups and sample sizes);
 - d) duration, frequency, interval, and seasonal or other requirements of measurements;
 - e) personnel, dates, and times of measurements;
 - f) proof of Department's witnessing of measurements (if required);
 - g) monitoring equipment used;
 - h) installation requirements for monitoring equipment (test plug for temperature sensors, straight pipe for flow measurement etc.);
 - i) certification of calibration/calibration procedures followed;

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- j) expected accuracy of measurements/monitoring equipment;
 - k) quality control procedures used;
 - l) form of data (XLS, CSV, etc.);
 - m) results of measurements; and
 - n) completed data collection forms, if used.
- (6) The details of baseline data analysis performed are the following, which include analysis using results of measurements, weather normalized regressions, weather data used and source of data:

B.2 METHODOLOGY TO ADJUST BASELINE

QESP shall use the following methodologies to adjust the baseline to account for the prevailing conditions (such as weather, billing days, occupancy, etc.) during the term of the SOW:

The methodologies used to adjust the baseline shall be based on nationally accepted engineering practices relative to the particular ESM.

SCHEDULE C
SAVINGS MEASUREMENT AND VERIFICATION PLAN; POST-RETROFIT M&V PLAN; ANNUAL M&V REPORTING REQUIREMENTS

This Schedule C describes the information that the QESP shall provide for each of the following phases of M&V planning: Savings M&V Plan, Post-Installation M&V Plan, and Annual M&V Reporting Requirements. The methodology used shall conform to the latest version of the *International Performance Monitoring and Verification Protocol (IPMVP)* as the basis of the savings calculation and verification methodology.

Components of the M&V Plans

C.1 Savings M&V Plan

C.1.1 Executive Summary

- Savings M&V Plan Overview (narrative)
- Risk, Responsibility, and Performance Matrix (table)
- M&V Plan and Savings Calculation Methods Overview (narrative)
- Proposed Annual Energy Cost Savings Guarantee Overview (table)
- Site Use and Savings Overview (table)
- Energy Star's Portfolio Manager and Cash Flow Opportunity Calculator (tables and narrative)
- Schedule of Verification Reporting Activities (table)

C.1.2 Details for Each ESM

- ESM-Specific M&V Plan and Savings Calculation Methods (narrative)
- M&V Plan Summary (table)
- Proposed Annual Savings for each ESM (table)

C.2 Post-Installation M&V Plan

C.2.1 Executive Summary

- Post-Installation M&V Overview (narrative)
- Proposed Annual Energy Cost Savings Guarantee Overview (table)
- Expected Savings Overview for First Performance Year (table)
- Cost Savings for First Performance Year (table)
- Energy Star's Portfolio Manager and Cash Flow Opportunity Calculator (tables and narrative)

C.2.2 Details for Each ESM

- ESM-Specific Post-Installation M&V Overview (narrative)
- Impact to Energy and Cost Savings from Changes Between Final Proposal and As-Built Conditions for each ESM (table)
- Expected Year 1 Savings for each ESM (table)

C.3 Annual M&V Reporting Requirements

C.3.1 Executive Summary

-
- Annual M&V Overview (narrative)
 - Annual Report Summary (table)
 - Proposed Annual Energy Cost Savings Guarantee Overview (table)
 - Verified Savings for Performance Year #X (table)
 - Verified Savings for Post-Acceptance Performance Period to Date (table)
 - Energy Star's Portfolio Manager and Cash Flow Opportunity Calculator (tables and narrative)

C.3.2 Details for Each ESM

- ESM-Specific Annual M&V Overview (narrative)
- Verified Annual Savings for each ESM for Performance Year #X (table)

C.1 SAVINGS MEASUREMENT AND VERIFICATION PLAN.

Based on the preliminary M&V planning Work done during the IGEA, QESP shall develop a comprehensive Savings M&V Plan in accordance with the items in this Section C.1. The information shall include charts and graphs, presented in a manner that is easily and readily understandable to Department employees with limited energy expertise. The data provided must clearly show how the savings compare to utility bills for all fuel types. In addition, the M&V Plan must show an analysis and justification for any Operation and Maintenance Cost Savings.

For all tables, include all applicable fuels/commodities for the project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc., for each ESM.

C.1 Savings M&V Plan Components

C.1.1 Executive Summary

- Savings M&V Plan Overview (narrative)
- Risk, Responsibility, and Performance Matrix (table)
- M&V Plan and Savings Calculation Methods Overview (narrative)
- Proposed Annual Energy Cost Savings Guarantee Overview (table)
- Site Use and Savings Overview (table)
- Energy Star's Portfolio Manager and Cash Flow Opportunity Calculator (tables and narrative)
- Schedule of Verification Reporting Activities (table)

C.1.2 Details for Each ESM

- ESM-Specific M&V Plan and Savings Calculation Methods (narrative)
- M&V Plan Summary (table)
- Proposed Annual Savings for each ESM (table)

C.1.1 EXECUTIVE SUMMARY

QESP shall provide a Savings M&V Plan overview that summarizes all components outlined above and includes the following:

- describes the measurement, monitoring and calculation procedures used to verify and compute the energy savings of each ESM;

- identifies the methods that will be used to compare the amount of energy that would have been used without the project (referred to as the “baseline”) with the amount of energy that is actually used after installation of Equipment;
- describes all methods of measuring savings including engineering calculations, metering, Equipment run times, pre- and post- installation measurements, etc. each ESM;
- clarifies the methodology for converting energy savings into energy cost savings;
- specifies the utility rates to be used for the baseline and describes how calculations will be affected by changes in utility rates;
- identifies procedures for addressing clearly predictable annual variations (e.g., weather, billing days, occupancy, etc.) in the savings formulas;
- defines routine adjustments that will be made during the term of the SOW;
- identifies the conceptual approach that will be used to address non-routine adjustments (e.g., changes in production shifts, facility closures, adding new wings or loads); and
- identifies how permanent changes, such as square footage, will be handled.

QESP shall utilize the matrix below to specify its approach to key variables related to M&V.

CLARIFICATION OF KEY M&V VARIABLES	QESP's PROPOSED APPROACH
1. Financial	
a. Interest Rates: The timing of the SOW signing may impact the available interest rate and project cost. Describe all of the particulars concerning the interest rate and specify time period for which the proposed interest rate is valid.	
b. Construction Costs: The QESP is responsible for determining construction costs and defining a budget for cost-effective ESMs, which may change during project development. Clarify design standards and the design approval process (including changes) and how costs will be reviewed.	
c. M&V Verification: The Department shall determine the degree of verification required for the M&V program and energy savings determinations prior to QESP's submission of final proposal. Clarify how energy savings will be verified (e.g., Equipment performance, operational factors, energy use) and the impact on M&V costs.	
d. Operation and Maintenance Cost Savings: The project may include savings from <i>recurring costs</i> (based on actual spending reductions) and/or <i>one-time future replacement expenditures</i> (e.g., capital expenditures that were appropriated for future replacement of Equipment but will no longer be necessary). Clarify sources of operation and maintenance cost savings and how they will be verified.	
e. Delays: Clarify schedule and how the cost of delays will be addressed.	
f. Major Changes in Facility: Clarify Department's and QESP's responsibilities in the event of a premature facility closure, loss of funding, or other major change in facility use and the impact on M&V.	
2. Operational	
a. Operating Hours: Clarify whether operating hours are to be measured or stipulated and what the impact will be if they change. If the operating hours are stipulated, the baseline should be carefully documented and agreed to by both parties.	

b. Load: Clarify whether Equipment loads are to be measured or stipulated and what the impact will be if they change. If the Equipment loads are stipulated, the baseline should be carefully documented and agreed to by both parties.	
c. Weather: Clearly specify how weather fluctuations will be addressed in M&V.	
d. User Participation: Clarify what degree of user participation (e.g., control settings) is needed to generate savings and utilize monitoring and training to mitigate risk. If performance is stipulated, document and review assumptions carefully and consider M&V to confirm the capacity to save (e.g., confirm that the controls are functioning properly).	
3. Performance	
a. Equipment Performance: Clarify the QESP's and Department's responsibilities for initial and long-term performance of Equipment, how it will be verified, and what will be done if performance does not meet expectations.	
b. Operations: Clarify which party will perform Equipment operations, the implications of Equipment control, how changes in operating procedures will be handled, and how proper operations will be assured.	
c. Preventive Maintenance: Clarify who is responsible for performing long-term preventive maintenance to maintain operational performance throughout the term of the SOW. Clarify how long-term preventive maintenance will be assured, especially if the party responsible for long-term performance is not responsible for maintenance (e.g., QESP provides maintenance checklist and reporting frequency). Clarify what will be done if inadequate preventive maintenance impacts performance.	
d. Equipment Repair and Replacement: Clarify who is responsible for performing replacement of failed components or Equipment replacement throughout the term of the SOW. Specifically address potential impacts on performance due to Equipment failure. Specify expected Equipment life and warranties for all installed Equipment. Discuss replacement responsibility when Equipment life is shorter than the term of the SOW.	

M&V Plan and Savings Calculation Methods Overview

Using the tables below and any graphs and charts, QESP shall provide a narrative description that summarizes how savings will be calculated.

Proposed Annual Energy Cost Savings Guarantee Overview Table

ESM	Total energy savings (MMBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MMBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MMBtu/yr)**	Total energy and water cost savings, Year 1 (\$/yr)	Other energy-related O&M cost savings, Year 1 (\$/yr)	Total cost savings, Year 1 (\$/yr)
Total savings									
First Year Guaranteed Energy Cost Savings: \$									

Notes
 *Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
 MMBtu=10⁶ Btu.
 **If energy is reported in units other than MMBtu, provide a conversion factor to MMBtu for link to cost schedules (e.g., 0.003413 MMBtu/kWh).

Site Energy Use and Savings Overview Table

	Total energy savings (MMBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MMBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MMBtu/yr)**
Total proposed project savings						
Baseline usage for entire site**						
% Total site usage saved						
<hr/>						
Project square footage (KSF)						
Total site square footage (KSF)						
% Total site area affected						
<hr/>						
<p>Notes MMBtu=10⁶ Btu *Annual electric demand savings (kW/yr) is the sum of the monthly demand savings. **If energy is reported in units other than MMBtu, provide a conversion factor to MMBtu for link to cost schedules (e.g., 0.003413 MMBtu/kWh). KSF = 10³ square feet.</p>						

Energy Star’s Portfolio Manager and Cash Flow Opportunity Calculator

QESP shall assist Department in establishing an Environmental Protection Agency (EPA) Energy Star Portfolio Manager account for each building in the Project Site and share (in read only format) such account with the State of Connecticut Master Account, as specified by DEEP. QESP shall create a table that shows a pre-retrofit energy performance rating using the Energy Star Portfolio Manager, the weather normalized energy intensity in kBtu/SF, and an estimated post-retrofit energy performance rating for each building included in the SOW. If the building type is not eligible for rating in Portfolio Manager, provide the normalized source Energy Use Intensity (EUI).

QESP in consultations with the Department shall provide a completed Energy Star Cash Flow Opportunity Calculator (CFO Calculator) spreadsheet for the total project (including all facilities to be improved), with variables inserted that represent the most likely options available to the Department. The CFO Calculator will be provided in both hard copy and electronic format, to enable the Department to run its own analyses on financing options in the agreed format.

C.1.2 DETAILS FOR EACH ENERGY-SAVINGS MEASURE (ESM)

ESM-Specific M&V Plan and Savings Calculation Methods

The QESP shall identify all of the details for M&V and savings calculations for each ESM. To that end, QESP shall develop a plan that includes the following information for each ESM.

M&V Overview

- Summary of the scope of Work, location, and how Energy and Cost Savings are generated. Description of the source of all savings including energy, water, operation and maintenance, and other (if applicable).
- Specifics regarding the M&V guideline and option used from the International Performance Measurement and Verification Protocol (IPMVP).
- An overview of M&V activities for ESM which explains the intent of M&V Plan, including what is being verified.
- An overview of savings calculations methods for ESM including a general description of analysis methods used for Energy and Cost Savings calculations.

Proposed Energy and Water Savings Calculations and Methodology

- A detailed description of analysis methodology used which describes any data manipulation or analysis that was conducted prior to applying savings calculations.
- A detailed description of any energy models used and discussion of how modeling analysis was used in calculating energy and water saving, including: a complete list of all of the inputs used for the model, a document with a table for each major occupancy and all of the inputs for each occupancy, and a complete list of all variables input and assumptions made by the software or the individual using the model. All assumptions and sources of data, including all stipulated values used in calculations.
- All equations and technical details of the calculations made.
- Details of any savings or baseline adjustments that may be required.
- Details of utility rates used to calculate cost savings. Provide post-acceptance performance period utility rate adjustment factors.
- Details regarding proposed savings for this ESM for post-acceptance performance period. This shall include the table below entitled “Proposed Annual Savings for Each ESM.”

Operations and Maintenance Cost Savings

- Any and all justification for Operations and Maintenance Cost Savings. Descriptions shall include how savings are generated and detail cost savings calculations.
- Details of post-acceptance performance period
- Other cost savings adjustment factors.

Details of other savings (if applicable)

- All explanations and justification for other cost savings. Specifics regarding how savings are generated. Detail cost savings calculations.
- Details of post-acceptance performance period other cost savings adjustment factors.

Post-Installation M&V Activities

- Describe the intent of post-installation verification activities, including what will be verified.
- Describe variables affecting post-installation energy or water use. Include variables such as weather, operating hours, set point changes, etc. Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.

- Define key system performance factors characterizing the post-installation conditions such as lighting intensities, temperature set points, etc.
- Define requirements for Department witnessing of measurements..
- Provide details of post-installation data to be collected, including: parameters to be monitored; details of Equipment to be monitored (location, type, model, quantity, etc.); sampling plan, including details of usage groups and sample sizes; duration, frequency, interval, and seasonal or other requirements of measurements; monitoring Equipment to be used; installation requirements for monitoring Equipment; calibration requirements and procedures; expected accuracy of measurements/monitoring Equipment; quality control procedures to be used; form of data to be collected (XLS, CSV, etc.); sample data collection forms (optional).
- Detail data analysis to be performed.

Post-Acceptance Performance Period Verification Activities

- Describe variables affecting post-acceptance performance period energy or water use. Include variables such as weather, operating hours, set point changes, etc. Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.
- Define key system performance factors characterizing the post-acceptance performance period conditions. Include factors such as comfort conditions, lighting intensities, temperature set points, etc.
- Describe the intent of post-acceptance performance period verification activities and specify what will be verified.
- Provide detailed schedule of post-acceptance performance period verification activities and inspections.
- Define requirements for Department witnessing of measurements..
- Provide details of post-acceptance performance period data to be collected, including: parameters to be monitored; details of Equipment to be monitored (location, type, model, quantity, etc.); sampling plan, including details of usage groups and sample sizes; duration, frequency, interval, and seasonal or other requirements of measurements; monitoring Equipment to be used; installation requirements for monitoring Equipment; calibration requirements and procedures; expected accuracy of measurements/monitoring Equipment; quality control procedures to be used; form of data to be collected (XLS, CSV, etc.); sample data collection forms (optional).
- Detail data analysis to be performed.
- Define operation and maintenance and repair reporting requirements.
- Detail verification activities and reporting responsibilities of Department and QESP on operations and maintenance items.
- Define reporting schedule.

M&V Plan Summary Table

ESM Number*	ESM Description	M&V Option Used**	Summary of M&V Plan

*Assign a number to identify each ESM.

**M&V options include A, B, C, and D of the International Performance Measurement and Verification Protocol (IPMVP).

Proposed Annual Energy and Cost Savings for Each ESM Table

ESM Number***: ESM Description													
	Total energy use (MMBtu/yr)	Electric energy use (kWh/yr)	Electric energy cost, Year 1 (\$/yr)	Electric demand* (kW/yr)	Electric demand cost, Year 1 (\$/yr)	Natural gas use (MMBtu/yr)**	Natural gas cost, Year 1 (\$/yr)	Water use (gallons/yr)	Water cost, Year 1 (\$/yr)	Other energy use (MMBtu/yr)**	Other energy cost, Year 1 (\$/yr)	Other energy-related O&M costs, Year 1 (\$/yr)	Total costs, Year 1 (\$/yr)
Baseline use													
Post-installation use													
Savings													
Notes													
*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.													
MMBtu = 10 ⁶ Btu.													
**If energy is reported in units other than MMBtu, provide a conversion factor to MMBtu for link to cost schedules (e.g., 0.003413 MMBtu/kWh).													
***Assign a number to identify each ESM.													

C.2 POST-INSTALLATION M&V PLAN

QESP shall develop a comprehensive Post-Installation M&V Plan that updates the Savings M&V Plan and includes detailed measurements, monitoring, and inspections as well as the information outlined below. The information must be presented in a manner that is easily and readily understandable to Department employees with minimal energy expertise and it must clearly show how the savings compare to utility bills for all fuel types. Charts and graphs should be added to assist in communicating this M&V data.

For all tables, include all applicable fuels/commodities for the project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc., for each ESM.

C.2 Post-Installation M&V Plan Components

C.2.1 Executive Summary

- Post-Installation M&V Overview (narrative)
- Proposed Annual Energy Cost Savings Overview (table)
- Expected Savings Overview for First Performance Year (table)
- Guaranteed Energy Cost Savings for First Performance Year (table)
- Energy Star’s Portfolio Manager and Cash Flow Opportunity Calculator (tables and narrative)

C.2.2 Details for Each ESM

-
- ESM-Specific Post-Installation M&V Overview (narrative)
 - Impact to Energy and Cost Savings from Changes Between Final Proposal and As-Built Conditions for each ESM (table)
 - Expected Year 1 Savings for each ESM (table)

C.2.1 EXECUTIVE SUMMARY

Post-Installation M&V Overview

QESP shall deliver a post-installation M&V report to Department on or before _____ that includes the information in this section C.2.1. Department shall have thirty (30) days from the date that it receives the report to review and respond to the report.

Post-Acceptance Performance Period Dates Covered: _____ to _____

Project Background

- Dates of relevant SOW modifications
- Post-acceptance performance period dates covered
- Project acceptance date (actual or expected)

Brief Project and ESM Descriptions

- An overview of what was done and how savings are generated
- QESP shall clearly note any changes in project scope between the final proposal (including any relevant SOW modifications) and as-built conditions

Proposed and expected energy and cost savings for Year 1 of the post-acceptance performance period

- Proposed annual savings overview
- QESP shall compare expected savings for first performance year to first year guaranteed Energy Cost Savings. State whether Energy Cost Savings Guarantee is expected to be fulfilled for first year.

Energy, Water, and O&M Rate Data

- Detail utility rates used to calculate energy and cost savings for this period.
- Provide post-acceptance performance period rate adjustment factors for energy, water, and O&M cost savings, if used.
- Report actual utility rates at site for same period (optional).

Savings Adjustments

- Provide summary of any energy and cost savings adjustments required between final proposal (including any relevant SOW modifications) and as-built conditions.
- Describe the impact in changes between the final proposal (including any relevant SOW modifications) and as-built conditions based on post-installation M&V results.

Construction Period Savings

- Provide a summary of construction period savings, if applicable.
- Provide overview of how construction period savings are calculated.

Status of Rebates - Include if applicable.

- Provide a summary of the source of any third-party rebates or incentives provided on this project.
- Provide status of any third-party rebates or incentives.

Expected savings are predicted for the first year based on post-installation M&V activities. Verified savings for first year of post-acceptance performance period will be documented in annual report. The proposed savings for each ESM are included in the SOW.

Proposed Annual Energy Cost Savings Overview Table

ESM	Total energy savings (MMBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MMBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MMBtu/yr)**	Total energy and water cost savings, Year 1 (\$/yr)	Other energy-related O&M cost savings, Year 1 (\$/yr)	Total cost savings, Year 1 (\$/yr)
Total savings									

Notes
 MMBtu=10⁶ Btu.
 *Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
 **If energy is reported in units other than MMBtu, provide a conversion factor to MMBtu for link to cost schedules (e.g., 0.003413 MMBtu/kWh).

Expected Energy and Cost Savings Overview for 1st Performance Year Table

ESM	Total energy savings (MMBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MMBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MMBtu/yr)**	Total energy and water cost savings, Year 1 (\$/yr)	Other energy-related O&M cost savings, Year 1 (\$/yr)	Total cost savings, Year 1 (\$/yr)
Total savings									

Notes
 MMBtu=10⁶ Btu.
 *Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
 **If energy is reported in units other than MMBtu, provide a conversion factor to MMBtu for link to cost schedules (e.g., 0.003413 MMBtu/kWh).

Guaranteed Energy Cost Savings for First Performance Year

First Year Guaranteed Energy Cost Savings:	\$
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Energy Star’s Portfolio Manager and Cash Flow Opportunity Calculator

QESP shall create a table that shows an updated energy performance rating using the Energy Star Portfolio Manager and the weather normalized energy intensity in kBtu/SF for each building in the Project Site. QESP shall include the table in this section of the final, executed SOW. If the building type is not eligible for rating in Portfolio Manager, QESP shall provide the updated normalized source Energy Use Intensity (EUI).

QESP shall include the completed Energy Star Cash Flow Opportunity Calculator (CFO Calculator) spreadsheet for the total project (including all facilities to be improved) and provide narrative to address the potential costs of project delays that have occurred or are likely to occur.

C.2.2 DETAILS FOR EACH ESM

ESM-Specific Post-Installation M&V Overview

QESP shall develop a report that includes the following information for each ESM.

Overview of ESM, M&V Plan, and Savings Calculation for ESM

- Summarize the scope of Work, location, and how energy and cost savings are generated.
- Describe source of all savings including energy, water, O&M, and other (if applicable).
- Provide an overview of M&V activities for ESM. Explain the intent of M&V plan, including what is being verified.
- Provide an overview of Savings Calculation Methods for ESM. Provide a general description of analysis methods used for savings calculations.

Installation Verification

- Detail any changes between final proposal (including any relevant SOW modifications) and as-built conditions.
- Provide details of energy and cost savings impact from changes between final proposal (including any relevant SOW modifications) and as-built conditions based on post-installation M&V results. Include impact to energy and cost savings from changes between final proposal and as-built conditions for each ESM.
- Describe construction period savings (if applicable). Include date ESM was in effect, and reference acceptance documentation.
- Detail savings calculations for construction period savings.

Post-Installation M&V Activities Conducted - Detail measurements, monitoring, and inspections conducted in accordance with M&V plan (include all that apply for each one):

- Measurement equipment used.
- Equipment calibration documentation.
- Dates/times of data collection or inspections, names of personnel, and documentation of Department witnessing of the post-installation M&V activities.
- Details to confirm adherence to sampling plan.
- Include all post-installation measured values. Include periods of monitoring and durations and frequency of measurements. (Use appendix and electronic format as necessary). Include description of data format (headings, units, etc.).
- Describe how performance criteria have been met.
- Detail any performance deficiencies that need to be addressed by QESP or Department.

- Note impact of performance deficiencies or enhancements on generation of savings.

Expected Savings Calculations and Methodology

- Provide detailed description of analysis methodology used. Describe any data manipulation or analysis that was conducted prior to applying savings calculations.
- Detail all assumptions and sources of data, including all stipulated values used in calculations.
- Include equations and technical details of all calculations made.
- Details of any baseline or savings adjustments made.
- Detail energy and water rates used to calculate cost savings. Provide post-acceptance performance period energy and water rate adjustment factors, if used. Report actual energy and water rates at site for same period (optional).
- Detail expected savings for this energy conservation measure for first year. Include Expected Year 1 Savings for ESM.

Details of O&M Savings (if applicable)

- Describe source of savings.
- Describe verification activities.
- Provide post-acceptance performance period O&M cost savings adjustment factors, if applicable.

Details of other savings (if applicable)

- Describe source of savings.
- Describe verification activities.
- Provide post-acceptance performance period adjustment factors, if applicable.

Expected savings are prediction for first year based on post-installation M&V activities. Verified savings for first year of post-acceptance performance period will be documented in the annual report. The proposed savings for each ESM are included in the SOW.

Impact to Energy and Cost Savings from Changes between Final Proposal and As-built Conditions for Each ESM Table

	Total energy savings (MMBtu/yr)	Electric energy savings (kWh/yr)	Electric energy cost savings, Year 1 (\$/yr)	Electric demand savings* (kW/yr)	Electric demand cost savings, Year 1 (\$/yr)	Natural gas savings (MMBtu/yr)**	Natural gas cost savings, Year 1 (\$/yr)	Water savings (gallons/yr)	Water cost savings, Year 1 (\$/yr)	Other energy savings (MMBtu/yr)**	Other energy cost savings, Year 1 (\$/yr)	Other energy - related O&M cost savings, Year 1 (\$/yr)	Total cost savings, Year 1 (\$/yr)
Proposed													
Expected													
Variance													

Notes
 MMBtu = 10⁶ Btu.
 *Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
 **If energy is reported in units other than MMBtu, provide a conversion factor to MMBtu for link to cost schedules (e.g., 0.003413 MMBtu/kWh).

Expected Year 1 Energy and Cost Savings for each ESM Table

	Total energy use (MMBtu/yr)	Electric energy use (kWh/yr)	Electric energy cost (\$/yr)	Electric demand* (kW/yr)	Electric demand cost (\$/yr)	Natural gas use (MMBtu/yr)**	Natural gas cost (\$/yr)	Water use (gallons/yr)	Water cost (\$/yr)	Other energy use (MMBtu/yr)**	Other energy cost (\$/yr)	Other energy - related O&M costs (\$/yr)	Total costs (\$/yr)
Baseline use													
Post-installation use													
Savings													

Notes
 MMBtu = 10⁶ Btu.
 *Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.
 **If energy is reported in units other than MMBtu, provide a conversion factor to MMBtu for link to cost schedules (e.g., 0.003413 MMBtu/kWh).

C.3 ANNUAL M&V REPORTING REQUIREMENTS

QESP shall develop a comprehensive Annual M&V Report that summarizes the Energy Cost Savings (in dollars and MMBtus) for the annual reporting period. QESP shall deliver this report to Department on or before _____ that includes the information in this section C.3. Department shall have thirty (30) days from the date that it receives the report to review and respond to the report. QESP shall provide the information outlined below and include charts and graphs. The information shall be presented in a manner that is easily and readily understandable to Department employees with minimal energy expertise and it shall clearly identify how the savings compare to utility bills for all fuel types. The data for all tables, shall include all applicable fuels/commodities for the project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc., for each ESM.

C.3 Annual M&V Reporting Requirements Components

C.3.1 Executive Summary

- Annual M&V Overview (narrative)
- Annual Report Summary (table)
- Proposed Annual Energy Cost Savings Overview (table)
- Verified Savings for Performance Year #X (table)
- Verified Savings for Post-Acceptance Performance Period to Date (table)
- Energy Star’s Portfolio Manager and Cash Flow Opportunity Calculator (tables and narrative)

C.3.2 Details for Each ESM

- ESM-Specific Annual M&V Overview (narrative)
- Verified Annual Savings for each ESM for Performance Year #X (table)

C.3.1 EXECUTIVE SUMMARY

Annual M&V Overview

QESP shall deliver a report that includes the following information:

Post-Acceptance Performance Period Dates Covered: _____ to _____
SOW year #: _____

Project Background - Provide an overview of project background, including:

- Date of SOW Execution and primary parties to the SOW
- Dates of relevant SOW modifications
- Post-acceptance performance period dates covered
- Project acceptance date (actual or expected)

Brief Project and ESM Descriptions - Provide an overview including what was done and how savings are generated.

Summary of proposed and verified energy and cost savings

- Compare verified savings for Performance Year # to Energy Cost Savings Guarantee for Year #. State whether Energy Cost Savings Guarantee is fulfilled for year. If not, provide detailed explanation.
- Define post-acceptance performance period.
- Include Proposed Annual Savings Overview.

Savings Adjustments - Provide summary of any energy and/or cost savings adjustments required.

Performance and O&M Issues

- Note impact of operating deficiencies or enhancements on generation of savings.
- Note impact of maintenance deficiencies on generation of savings.
- Detail any deficiencies needed to be addressed by QESP or Department.

Energy, Water, and O&M Rate Data

- Detail energy and water rates used to calculate cost savings for this period.
- Provide post-acceptance performance period rate adjustment factors for energy, water and O&M, if used.
- Report actual energy and water rates at site for same period (optional).

Verified Savings To Date - Include narrative to summarize the table showing verified savings to date.

Annual Report Summary Table

Department Name/Department Contact (Include Email and Phone Number)	
Facility Name/Facility Contact (Include Email and Phone Number)	
QESP Name/QESP Contact (Include Email and Phone Number)	
Total Square Footage of Project Site/SOW Start Date/SOW	

QESP shall create a table that shows annual updates for the energy performance rating using the Energy Star Portfolio Manager and the weather normalized energy intensity in kBtu/SF for each building in the Project Site. If the building type is not eligible for rating in Portfolio Manager, provide the updated normalized source Energy Use Intensity (EUI).

Include the completed Energy Star Cash Flow Opportunity Calculator (CFO Calculator) spreadsheet for the total project (including all facilities to be improved) and provide narrative to address the potential costs of project delays that have occurred during the past year or are likely to occur.

C.3.2 DETAILS FOR EACH ESM

ESM-Specific Annual M&V Overview

QESP shall deliver a report with the following information for each ESM:

Overview of ESM, M&V Plan, and Savings Calculation for ESM

- Summarize the scope of Work, location, and how Energy and Cost Savings are generated. Describe source of all savings including energy, water, O&M, and other (if applicable).
- Provide an overview of M&V activities for each ESM. Explain the intent of M&V plan, including what is being verified.
- Provide an overview of savings calculation methods for ESM. Provide a general description of analysis methods used for savings calculations.

M&V Activities Conducted This Period - Detail measurements, monitoring and inspections conducted this reporting period in accordance with M&V plan (include all that apply for each one):

- Measurement Equipment used.
- Equipment calibration documentation.
- Dates/times of data collection or inspections, names of personnel, and documentation of Department witnessing of _____.
- Details to confirm adherence to sampling plan.
- Include all measured values for this period. Include periods of monitoring and durations and frequency of measurements. (Use appendix and electronic format as necessary). Include description of data format (headings, units, etc.).
- Describe how performance criteria have been met.
- Detail any performance deficiencies that need to be addressed by QESP or Department.
- Note impact of performance deficiencies or enhancements on generation of savings.

Verified Savings Calculations and Methodology

- Provide detailed description of analysis methodology used. Describe any data manipulation or analysis that was conducted prior to applying savings calculations.
- Detail all assumptions and sources of data, including all stipulated values used in calculations.
- Include equations and technical details of all calculations made. (Use appendix and electronic format as necessary.) Include description of data format (headings, units, etc.).
- Details of any baseline or savings adjustments made.

- Detail energy and water rates used to calculate cost savings. Provide post-acceptance performance period energy and water rate adjustment factors, if used. Report actual energy and water rates at Project Site for same period (optional).
- Detail verified savings for this energy conservation measure for performance year.

Details of O&M Savings (if applicable)

- Describe source of savings.
- Describe verification activities.
- Provide post-acceptance performance period O&M cost savings adjustment factors, if applicable.

Details of other savings (if applicable)

- Describe source of savings.
- Describe verification activities.
- Provide post-acceptance performance period adjustment factors, if applicable.

O&M Activities

- **Operating requirements**
 - Identify who is responsible for Equipment operations. If appropriate, detail how responsibilities are shared.
 - Detail any deficiencies needed to be addressed by QESP or Department.
 - Note impact of operating deficiencies or enhancements on generation of savings.
- **Preventive Maintenance requirements** - Identify who is responsible for performing maintenance. If appropriate, detail how responsibilities are shared.
- **Verification of scheduled maintenance items completed by QESP or Department**
 - Detail any deficiencies needed to be addressed by QESP or Department.
 - Note impact of maintenance deficiencies on generation of savings.
- **Repair and replacement requirements**
 - Identify who is responsible for performing maintenance. If appropriate, detail how responsibilities are shared.
 - Summary of activities conducted this period by QESP or Department.
 - Detail any deficiencies needed to be addressed by QESP or Department.
 - Note impact of maintenance deficiencies on generation of savings.

Verified Annual Energy Cost Savings for each ESM for Performance Year #X Table

	Total energy use (MMBtu/yr)	Electric energy use (kWh/yr)	Electric energy cost, Year # (\$/yr)	Electric demand* (kW/yr)	Electric demand cost, Year # (\$/yr)	Natural gas (MMBtu/yr)**	Natural gas cost, Year # (\$/yr)	Water use (gallons/yr)	Water cost, Year # (\$/yr)	Other energy use (MMBtu/yr)	Other energy cost, Year # (\$/yr)	Other energy-related O&M costs, Year # (\$/yr)	Total costs, Year # (\$/yr)
Baseline use													
Performance Year # use													
Savings													
<u>Notes</u> MMBtu = 10 ⁶ Btu. *Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.													

**If energy is reported in units other than MMBtu, provide a conversion factor to MMBtu for link to cost schedules (e.g., 0.003413 MMBtu/kWh).

SCHEDULE D. Left blank for optional schedule related to Energy Cost Savings Guarantee

SCHEDULE E. Left blank for optional schedule related to Energy Cost Savings Guarantee

SCHEDULE F. Left blank for optional schedule related to Energy Cost Savings Guarantee

SCHEDULE G. Left blank for optional schedule related to Energy Cost Savings Guarantee

SCHEDULE H
FINAL PROJECT COST & PROJECT CASH FLOW ANALYSIS

QESP shall employ the costs, markups, margins, and fees set forth in Final Exhibit D in order to complete this Schedule H. This Schedule H sets forth the spreadsheet created by the QESP detailing the expected financial performance of the project throughout the entire term of the SOW. The spreadsheet shall clearly identify all financial components of the project including interest rates, current fuel prices, any escalation rates, Energy Cost Savings Guarantee figures, QESP compensation figures, cash-flow projections, and projected net present value of any cumulative positive cash flow benefits to the Department. Savings projections shall be delineated by fuel type. QESP shall also identify ongoing QESP annual service fees over the term of the SOW. QESP shall identify for each project the project cost breakdowns, including both hard costs (e.g., labor, subcontracted work, cost of materials and Equipment) and miscellaneous costs (e.g., permit fees, bonds, taxes, insurance, mark-ups, overhead, and profit).

SCHEDULE I
FINANCING AGREEMENT AND PAYMENT SCHEDULE

Attached to the Contract as this Schedule I are the project financing agreement, an amortization and payment schedule and the progress payment disbursement schedule that will be used to pay the QESP during the Interim Period (construction and installation) for the agreed-upon percentages of Work completed.

SCHEDULE J
COMPENSATION TO QESP FOR ANNUAL SERVICES

This Schedule J is the spreadsheet that the Department creates showing the amount and frequency of payments that are to be made to the QESP for maintenance, monitoring, and other services negotiated as part of the SOW. The spreadsheet shall contain information on how the compensation is calculated (e.g., a percentage of savings above and beyond the guarantee, flat fee, etc.) and identify an annual inflation index, if used, to escalate fees over the term of the SOW. If applicable to the financial agreement, the spreadsheet shall also identify an hourly fee structure that will be used to cover QESP costs for any services provided beyond the scope agreed to at the time of the execution of the SOW.

**SCHEDULE K
REBATES, INCENTIVES AND GRANTS**

This Schedule K identifies and describes dollar amounts for any rebates, incentives, or grants related to the Work, including any incentives available through the Connecticut Energy Efficiency Fund and the Connecticut Clean Energy Finance Investment Authority.

SCHEDULE L. Left blank for optional schedule related to Payments and Schedule

SCHEDULE M. Left blank for optional schedule related to Payments and Schedule

SCHEDULE N. Left blank for optional schedule related to Payments and Schedule

SCHEDULE O. Left blank for optional schedule related to Payments and Schedule

SCHEDULE P. Left blank for optional schedule related to Payments and Schedule

SCHEDULE Q
DESCRIPTION OF PROJECT SITE(S); PRE-EXISTING EQUIPMENT INVENTORY

This Schedule Q is a description of the condition of the Project Site(s) at the time of execution of the SOW, including facility square footage, building construction, use, occupancy, hours of operation, Goods located at the Project Site(s), and any other conditions that are important to accurately establishing the baseline of energy use. Photographs may also be included to accurately capture the Project Site and any existing Goods or relevant conditions of the Project Site.

**SCHEDULE R
EQUIPMENT TO BE INSTALLED BY QESP**

This Schedule R is a detailed list of the Equipment to be installed, including manufacturer, quantity, location, and warranties, and sets forth any modifications that will be made to existing Goods, if applicable.

SCHEDULE S
CONSTRUCTION AND INSTALLATION SCHEDULE

This Schedule is a table showing the dates and milestones for project construction and Equipment installation.

SCHEDULE T

SYSTEMS START-UP AND COMMISSIONING OF EQUIPMENT; OPERATING PARAMETERS OF INSTALLED EQUIPMENT

This Schedule T describes the thorough and systematic performance tests that the QESP shall perform of each element and total system of the installed Equipment pursuant to the SOW. QESP shall provide systems commissioning services that meet the requirements detailed in this Schedule T.

All commissioning services for the project shall be provided in accordance with the requirements of ASHRAE (American Society of Heating, Refrigerating and Air-Conditioning Engineers) Guideline 0-2005.

COMMISSIONING PROCESS

The project's commissioning plan and specific commissioning requirements that the QESP will develop shall include at least the following:

- Qualifications and affiliation of the Commissioning Agent (CxA), including project staff licensed by the State of Connecticut as Professional Engineers in mechanical or electrical engineering and project staff certified in building commissioning by the Building Commissioning Association or the Association of Energy Engineers;
- Roles and responsibilities of CxA, including directing the commissioning team in the completion of the commissioning requirements, overseeing or performing the commissioning tests, and verifying the adequacy of the commissioning results;
- Roles and responsibilities of QESP, Department, and Department's commissioning representative, including witnessing of commissioning activities;
- Process that will be followed to document the design intent or Department's project requirements for each ESM or system, including:
 - Operational parameters, such as temperature setback capabilities or operator interface features,
 - Requirements for design details or ancillary items, such as sensors, valves, access, electrical, existing Goods demolition, etc., and
 - Performance requirements, such as Equipment efficiencies, or ton-hours of chilled water to be delivered;
- Requirements for Department reviews or submittal approvals;
- Schedule for developing and approving a commissioning plan, including expected content such as:
 - Pre-functional inspections,
 - Functional testing procedures, and
 - Required use of manufacturers' start-up procedures;
- Requirements for the documentation of the Department's attendance at the various tests and the Department's approval that the tests followed the specified procedures and meet or exceed the expected results;
- Plan for seasonal testing and conditional acceptance, if needed;

-
- Contents and timing of periodic project reports, Final Commissioning Report, and Systems Manual;
 - Requirements for CxA oversight of O&M training; and
 - Plan for warranty walk-through or other follow-up procedures.

PROJECT DESIGN

QESP shall be responsible for successful performance of commissioning activities by the CxA during the design phase, including:

- Meeting with Department to review project design and approve Equipment submittals;
- Documenting the design intent for each ESM or system;
- Developing a draft commissioning plan, including the specifics of all pre-functional inspections and functional performance tests;
- Developing commissioning specifications for project (if needed);
- Facilitating review and acceptance of commissioning documents by Department and QESP;
- Issuing Final Commissioning Plan and specifications.

CONSTRUCTION

QESP shall be responsible for successful performance of commissioning activities by the CxA during the construction phase, including:

- Observation of construction by CxA and State Department's commissioning representative;
- Pre-construction and periodic commissioning meetings with the project team;
- Submission of commissioning progress reports;
- Completion and certification of pre-functional inspections by the QESP prior to Equipment start-up and functional testing;
- Completion of manufacturer's start-up procedures by the QESP or manufacturer's representative.

PROJECT ACCEPTANCE

QESP shall be responsible for successful performance of commissioning activities by the CxA during the project acceptance phase, including those listed below. Project acceptance shall occur upon execution by the Department of the **Certificate of Acceptance of All Installed Equipment**.

- Development of pre-functional test checklists and verification of completion forms for all Equipment to be commissioned;
- Execution of the functional performance tests and documentation of the procedures;
- Documentation in a deficiency log of any items that did not pass;
- Correction and retesting of noncompliant items in the presence of the CxA to confirm that the items have been fixed, noting the date and corrective action taken in the deficiency log;
- Preparation of the Final Commissioning Report or a Systems Manual including, at minimum, the following:
 - Commissioning summary report, including how the Department's project requirements or design intent prescribed for each system were met,

-
- QESP certified pre-functional checklists,
 - Completed manufacturers start-up sheets,
 - Results of functional testing and verification of system,
 - Detailed operating procedures / sequences of operations,
 - Closed out deficiency log, and
 - Overview of training provided to O&M staff.

If applicable, QESP shall provide a more comprehensive Systems Manual, as requested by Department to meet LEED certification requirements.

PHASE 5 – POST-ACCEPTANCE PHASE

QESP shall be responsible for successful performance of commissioning activities by the CxA during the post-acceptance phase, including:

- Scheduling and verification of deferred functional testing, as necessary, based on seasonal conditions required to evaluate certain systems. When functional testing has been deferred, acceptance of the project is conditional upon the success of the scheduled tests; and
- Scheduling and performance of a warranty walk-through to identify any problems with Equipment during warranty periods.

SCHEDULE U STANDARDS OF COMFORT

This Schedule U sets forth the acceptable standards of comfort that the QESP shall maintain for heating, cooling, lighting levels, hot water temperatures, humidity levels, and/or any special conditions for occupied and unoccupied areas in each building in the Project Site(s). The agreed upon standards shall be detailed in a format similar to the table below and include the types of information delineated below for each building. QESP shall insert rows, to specify lighting levels, hot water temperature levels, humidity levels, and other conditions, as required.

Standards of Comfort Table

	Building	(include street address)
	Room label	(in the absence of room numbers, provide a labeled floor plan that corresponds with the standards of comfort list)
	Room description	(describe the fundamental use of the space at the time of the study)
	# of occupants	(the range of people in the space when it is to be considered occupied)
Times when space is occupied	Acceptable heating season temperature range	(generally a 3 to 4 degree range)
	Location measured	(where in the space is the measurement taken, including height from the floor)
	Acceptable heating season relative humidity	(where in the space is the measurement taken, including height from the floor)
	Acceptable cooling season temperature range	(generally a 3 to 4 degree range)
	Location measured	(where in the space is the measurement taken, including height from the floor)
	Acceptable cooling season relative humidity	(where in the space is the measurement taken, including height from the floor)
	Specific times that comfort standards shall be maintained	(define hours that the space conditions are required, e.g., 6:30 a.m. until 6:00 p.m. daily Mon - Friday)
	Other (e.g., lighting levels)	
	Other	
	Planned abnormal facility use	(should include holidays, maintenance uses, planned shutdowns or facility off times, summer vacations for some educational facilities, etc)
Times when space is unoccupied	Acceptable heating season temperature range	(generally a 3 to 4 degree range but setback from occupied setting)
	Location measured	(where in the space is the measurement taken, including height from the floor)
	Acceptable heating season relative humidity	(where in the space is the measurement taken, including height from the floor)
	Acceptable cooling season temperature range	(generally a 3 to 4 degree range but setback from occupied setting)
	Location measured	(where in the space is the measurement taken, including height from the floor)
	Acceptable cooling season relative humidity	(where in the space is the measurement taken, including height from the floor)
	Time from and until comfort standards shall be maintained	(describe the times with unoccupied settings are acceptable)
	Other	

SCHEDULE V
QESP'S TRAINING RESPONSIBILITIES

This Schedule V sets forth the training program for Project Site(s) personnel, including the duration and frequency of the specified training, any provisions for ongoing training, commitments to train newly hired Project Site(s) personnel, and training with respect to possible future Equipment or software upgrades. QESP shall identify any fees for additional training that may be requested by the Department beyond the training required by this SOW.

SCHEDULE W. Left blank for optional schedule related to Design and Construction Phase

SCHEDULE X. Left blank for optional schedule related to Design and Construction Phase

SCHEDULE Y. Left blank for optional schedule related to Design and Construction Phase

SCHEDULE Z. Left blank for optional schedule related to Design and Construction Phase

SCHEDULE AA. Left blank for optional schedule related to Design and Construction Phase

SCHEDULE BB
QESP'S MAINTENANCE RESPONSIBILITIES

This Schedule BB sets forth QESP's operations and maintenance responsibilities, including but not limited to:

1. Description of QESP's operations and maintenance responsibilities.
2. Performance period for QESP's operating and maintenance responsibilities.
3. Period of time for QESP maintenance responsibilities during and after warranty period.
4. Annual payment amounts for QESP maintenance responsibilities.

**SCHEDULE CC
DEPARTMENT'S MAINTENANCE RESPONSIBILITIES**

This Schedule CC sets forth the Department's operations and maintenance responsibilities, which are limited to particulars relative to the following: routine maintenance and operations for Goods located at the Project Site(s) and maintenance and operations for Equipment. QESP shall provide to the Department the operations and maintenance manuals that outline operations and maintenance duties for all Equipment.

**SCHEDULE DD
FACILITY MAINTENANCE CHECKLIST**

This Schedule DD is a checklist which the Department shall maintain to record and track its compliance with operations and maintenance responsibilities of the Project Site(s) personnel. The checklist shall be available for inspection by the QESP upon request.

SCHEDULE EE. Left blank for optional schedule related to Post-Construction Phase

SCHEDULE FF. Left blank for optional schedule related to Post-Construction Phase

SCHEDULE GG. Left blank for optional schedule related to Post-Construction Phase

SCHEDULE HH. Left blank for optional schedule related to Post-Construction Phase

SCHEDULE II. Left blank for optional schedule related to Post-Construction Phase

SCHEDULE JJ. Left blank for optional schedule related to Administration

SCHEDULE KK. Left blank for optional schedule related to Administration

SCHEDULE LL. Left blank for optional schedule related to Administration

SCHEDULE MM. Left blank for optional schedule related to Administration

SCHEDULE NN. Left blank for optional schedule related to Administration

SCHEDULE OO. Left blank for optional schedule related to Administration

Exhibit B

**Request for Proposals Issued to Selected Qualified Energy Service Providers
(QESPs) for a Cost-Effective Feasibility Analysis**

Request for Proposals Issued to Selected Qualified Energy Service Providers (QESPs) for a Cost-Effective Feasibility Analysis

Background

You have been selected to receive this request for proposals (“RFP”) for a Cost-Effective Feasibility Analysis (“Feasibility Analysis”) because you are a Qualified Energy Service Provider (“QESP”) under Contract 12PSX0153 for Energy-Savings Performance Contract Services (the “Contract”) with the State of Connecticut, and because you have returned a Letter of Interest (“LOI”) relating to the subject project. 2011 Conn. Pub. Act 80, Section 123 (the “Act”) requires that the Feasibility Analysis, which you will prepare as part of your proposal in response to this RFP, will serve as the selection document for purposes of selecting a QESP to perform an Investment-Grade Energy Audit (the “IGEA”). The Act also lists other factors to be considered when evaluating the Feasibility Analysis. Those factors are discussed below. Any capitalized terms used in this RFP without being defined shall have the definition set forth in the Contract.

QESPs who receive this RFP will have an opportunity for a brief walk-through of buildings on the potential Project Site(s). A Department will review the responses to this RFP that it receives from QESPs, including the Cost-Effective Feasibility Analysis and any additional information submitted. The evaluation of responses may include an interview. The Department will invite the preferred QESP to perform the IGEA. If that QESP is unable or unwilling to conduct the IGEA, then the Department will approach the other QESPs in descending order of preference, based on the evaluation criteria, until a QESP agrees to conduct the IGEA. Alternatively, the Department may decide, at its sole option, to start the process again or cancel the project.

QESP Response to this RFP

The primary factor for selecting a QESP to perform the IGEA is the Feasibility Analysis. The relevant factors which will be considered are the following and they are listed in order of relative importance:

1. Feasibility Analysis
2. Comprehensiveness of the cost savings measures
3. Experience and quality of technical approach
4. The QESP’s financial stability
5. The QESP’s contract terms for the proposed project
6. Approach to Project Management and Coordination
7. Project Personnel and Staffing
8. Comprehensiveness of the proposal
9. Overall benefits to the Department

Proposal Submittals

1. Policies

-
- 1.1 All submittals shall become the property of the Department and will not be returned.
 - 1.2 No specific work is associated with a QESP responding to this RFP.
 - 1.3 Department will afford due regard to any QESP request for the protection of proprietary or confidential information which the Department receives. However, all materials associated with any submittal are subject to the terms of the Connecticut Freedom of Information Act (“FOIA”) and all corresponding rules, regulations and interpretations. In making such a request for protection, the QESP may not merely state generally that the materials are proprietary or confidential in nature and not, therefore, subject to release to third parties. Those particular sentences, paragraphs, pages or sections that the QESP believes are exempt from disclosure under the FOIA must be specifically identified as such. Convincing explanation and rationale sufficient to justify each exemption consistent with the FOIA must accompany the request. The rationale and explanation must be stated in terms of the prospective harm to the competitive position of the QESP that would result if the identified material were to be released and the reasons why the materials are legally exempt from release pursuant to the FOIA. If the QESP indicates that certain documentation is submitted in confidence, by specifically and clearly marking said documentation as CONFIDENTIAL, the Department will endeavor to keep said information confidential to the extent permitted by law. The Department, however, has no obligation to initiate, prosecute or defend any legal proceeding or to seek a protective order or other similar relief to prevent disclosure of any information that is sought pursuant to a FOIA request. The QESP shall have the burden of establishing the availability of any FOIA exemption in any proceeding where it is an issue. In no event shall the Department have any liability for the disclosure of any documents or information in its possession which the Department believes are required to be disclosed pursuant to the FOIA or other requirements of law.

2. Submittal Instructions

- 2.1 Proposals are due no later than 4:00 P.M. on [REDACTED]. Proposals submitted late in any amount of time will not be evaluated.
- 2.2 The Department may reject any or all proposals on the basis of being unresponsive to this RFP.
- 2.3 The Department shall not be responsible for any costs or expenses incurred by QESPs in the preparation of submittals and proposals or for costs or expenses related to any element of the selection or negotiation process.
- 2.4 Questions and requests for clarification on this RFP must be submitted in writing to [NAME], [TITLE], at [E-MAIL ADDRESS] no later than ten (10) business days prior to the due date of the proposals. No verbal inquiries will be addressed. Communication with other Department employees or officials or any others associated with this process and public facilities with regard to this RFP is prohibited.

3. Submittal Schedule

The following schedule has been established for this RFP. This schedule is subject to change. Should such a schedule change occur all QESPs will receive notices via email. QESPs are encouraged to check their e-mails frequently and to communicate with the Department regularly since the Department will not adjust the process to accommodate a QESP who claims that they did not receive an e-mail for whatever reason.

	SUBMITTAL SCHEDULE TASK	DATE/TIME
1.	RFP Published	ADD
2.	Pre-Proposal Conference	ADD
3.	Written Inquiries	ADD
4.	Responses to Inquiries	ADD
5.	Proposal Submission	ADD
6.	Proposal Review Period	ADD
7.	Interviews	ADD

The QESP shall include the following in the Response to this RFP:

1. Cost-Effective Feasibility Analysis

Based on a facility walk-through and the Technical Facility Profile provided by the Department, QESP shall prepare a Cost-Effective Feasibility Analysis report no longer than 10 pages that addresses the following:

- a. The “contract” terms for the proposed project - Identify the likely term of the SOW (number of years), total cost, and payback period for the project, provided the payback period for any financing is less than the functional life of the proposed Energy-Savings Measures (ESMs) and the payback period does not exceed fifteen years. These terms will be based on the best available information, but are not intended to constitute a guarantee by the QESP.
- b. Comprehensiveness of the cost savings measures – List as part of this item the types of ESMs that would be considered and their estimated energy savings. Briefly describe how the potential ESMs interact to provide a holistic approach that results in maximum cost-effective energy savings.
- c. Financial stability of the QESP – Provide any updates to Section 5.3.2 “Financial Soundness and Stability of the Company” of the Solicitation.
- d. Experience and quality of technical approach – Provide an overview of staff capabilities and experience working in Connecticut.
- e. Overall benefits to the Department.

2. Management Approach

a. Project Management and Coordination

Show the organization chart (by name as available) for implementing and managing the proposed project, including the responsibilities of each individual shown and the lines of authority within the overall organization. Identify portions of the effort, if any, that are proposed to be subcontracted and provide the same information for subcontractor organization and personnel.

b. Appropriate Market Sector Experience/Expertise

Provide information that emphasizes QESP's experience and expertise in the types of buildings related to this project.

c. Project Personnel and Staffing

- i. Complete the table below to list each individual who will have primary responsibility for key tasks and phases of the proposed project. Provide resumes in a clearly marked appendix.

Name	Title	Staff or Subcontractor	Potential Role	Academic/Professional Qualifications; Level of Expertise; Experience	Project List with Project type, Cost, Role	Base Location

Potential role in the project: technical analysis, engineering design, construction management, construction, training, post-construction measurement and verification, support, and other services; note supervisory responsibilities, if any.

Level of expertise: specific qualifications related to role and responsibilities for the project; past relevant experience; years in industry or other brief description

Base Location: Permanent office in Connecticut; On assignment from other state; Out-of-state support.

Project List: List projects, with project type and project cost, that the person was associated with during the last five years.

- ii. Complete an additional table to include any added expertise and capability of staff available through other branch offices, subcontracts, etc., that can provide back-up strengths.

Name	Title	Staff or Subcontractor	Potential Role	Academic/Professional Qualifications; Level of Expertise; Experience	Project List with Project type, Cost, Role	Base Location

3. Cost and Pricing

Provide the maximum IGEA costs, markups, and fees as provided in the Final Exhibit D to the Contract signed by your company and the DAS. These maximums will be applied to the IGEA the QESP will perform.

The Department may choose to accept the IGEA costs, markups, margins and fees to which the QESP is bound according to its Contract with DAS for individual projects. Alternatively, the Department may directly negotiate with QESP for reductions as dictated by individual facility or project requirements. QESP may also propose lower IGEA costs, markups, and fees depending upon individual project considerations or their own internal business approach.

Exhibit C

Investment-Grade Energy Audit and Project Development Proposal

Investment-Grade Energy Audit and Project Development Proposal

Introduction

This exhibit sets forth the interactive approach that QESPs will use when working with a Department to conduct an Investment-Grade Energy Audit (IGEA) and shall be the form that QESPs will use to issue a corresponding IGEA Report and subsequent Project Development Proposal. If the QESP identifies a Project Development Proposal that meets the Department's needs, the requirements of the ESPCP and the Act, then the parties will begin negotiations for an Energy Savings Performance Project Statement of Work ("SOW"). However, nothing in this Exhibit should be construed as an obligation on any of the parties to execute the SOW, the terms and provisions of which are set forth in Exhibit A.

The Department shall provide such reasonable assistance as the QESP may need to complete the IGEA in accordance with this Exhibit. Department agrees to work diligently to provide full and accurate information. QESP shall work diligently to assess the validity of information provided and to confirm or correct the information as needed. This will be an interactive process throughout the time that the QESP is working to complete the IGEA, such that the parties will each have a reasonable amount of time to review issues as they arise and respond to the other.

The QESP shall deliver to the Department the IGEA Report within __ calendar days from the date that the last party signs this Final Exhibit.

QESP Responsibilities

QESP shall use an interactive approach in working with Department, following the steps outlined below.

1) Follow Process

- a) Preliminary Assessment of Needs and Opportunities
 1. Meet with Department to establish interests, plans, problems, etc. related to facilities and operation of facilities.
 2. Collect data and background information on buildings, equipment and facilities operation.
 3. Perform a preliminary walk-through of facilities and interview staff and occupants to identify potential ESMs.
 4. Meet with Department to present preliminary findings and establish agreement on ESMs to analyze.

- b) Preliminary Analysis of ESMs
 1. Establish baseline energy and water consumption and reconcile with end-use consumption estimates.
 2. Conduct a preliminary analysis of potential ESMs.
 3. Meet with Department to present preliminary findings and establish agreement on ESMs requiring further analysis.

-
- c) Further Analysis and IGEA Report
 - 1. Further analyze ESMs.
 - 2. Perform IGEA, ensuring that QESP's project team includes staff who are licensed by the State of Connecticut as Professional Engineers. Develop a preliminary IGEA Report.
 - 3. Meet with Department to present results.
 - 4. Prepare final IGEA Report that incorporates the input from Department and DEEP.

 - d) Project Development Proposal
 - 1. Based on the interactive process with the Department and the IGEA Report, develop a Project Development Proposal for an Energy Savings Performance Project.
 - 2. Meet with Department to present results and negotiate final terms.

 - e) Coordination with third-party technical support provider(s) throughout the process
 - 1. The Department and/or DEEP may engage third-party technical support for part or all of the processes listed in this section in accordance with the Act and relevant competitive procurement procedures.
 - 2. Prior to QESP's commencement of the IGEA, the Department may request that the costs for third-party technical support be incorporated into the total project costs to be covered by project financing. However, some or all technical support costs may be eligible for incentives through the Connecticut Energy Efficiency Fund and/or DEEP.
 - 3. At the request of the Department or DEEP, the QESP shall include in document reviews, meetings and other events or tasks, any individual or company engaged to provide technical support to the Department.
 - 4. The input from the technical support provider shall result in review reports stating that, in the professional opinion of the reviewer, the concepts and principles, assumptions and methodologies proposed and presented are consistent with sound engineering practices and optimize cost-effective savings and deep energy retrofits or enumerate specific concerns and the justification for said concerns. The Department shall be responsible for coordinating feedback from the technical support provider to the QESP.

2) Adhere to ESPCP Guidelines and Requirements

- a) The Project Development Proposal shall specify the term of the SOW, which shall not exceed 20 years from the Commencement Date.
- b) Annual Energy Cost Savings Guarantee (the Annual Guarantee): The Annual Guarantee consists of the Operation and Maintenance Cost Savings and the Utility Cost Savings, as defined in the Act. The Annual Guarantee shall be based on cost savings attributable to all ESMs and must equal or exceed all project costs each year during the SOW term. QESP shall develop Annual Guarantees that are

specific to each ESM for each year of the term of the SOW. The Annual Guarantee may differ for different years for any given ESM.

c) Excess Savings: As required by the Act, annual cost savings beyond the Annual Guarantee will be retained by the Department and will not be allocated to shortfalls in other years.

d) Allowable cost and savings factors approved for consideration in developing the Annual Guarantee: Department will provide QESP with sufficient guidance to develop savings projections.

1. Annual project costs include QESP fees, maintenance services, monitoring services, and all other services (such as third-party technical support), including, but not limited to the following:

- Itemized costs of design
- Engineering
- Equipment
- Materials
- Installation
- Maintenance
- Repairs
- Debt service

QESP shall incorporate all potentially eligible rebate and incentive funds from the CT Energy Efficiency Fund, CT Clean Energy Finance and Investment Authority, and other incentive and grant programs, to reduce overall project costs.

2. Annual project savings include, but are not limited to the following:

- Operation and Maintenance Costs (energy and water), including future replacement expenditures
- Material/commodity savings, including scheduled replacement of parts (only for years that these cost savings are applicable)
- Outside labor cost savings, including maintenance contracts
- In-house labor costs
- Deferred maintenance cost
- Offset of future capital costs

Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented.

3. Additional factors that impact cost savings, which may be incorporated:

- Escalation rates that apply to each payment source. These are rates to be used in cash flow projections for project development purposes. As requested, the QESP will provide projections without utility rate escalations and projections with utility rate escalations using federal government guidelines.
- Interest rates (for municipal tax-exempt leases and loans, bonds).
- Department cash outlay (at Department's sole discretion).

-
4. The maximum audit costs, markups, and fees as provided in the Final Exhibit D Cost and Pricing will be used in the IGEA and subsequent SOW.

3) Collect data and background information

- a) QESP shall collect the following data from the Department concerning facility operation and energy use for the most recent three years immediately preceding the effective date of this Final Exhibit:
- Building square footage
 - Construction date of buildings and major additions including building envelope
 - Utility company invoices
 - Occupancy and usage information
 - Description of all energy-consuming or energy-saving equipment used on the premises, as available
 - Description of energy management procedures utilized on the premises
 - Description of any energy-related improvements made or currently being implemented
 - Description of any changes in the structure of the facility or energy-using or water-using equipment
 - Description of future plans regarding building modifications or equipment modifications and replacements
 - Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels)
 - Original construction submittals and factory data (specifications, pump curves, etc.), as available
 - Operating engineer logs, maintenance work orders, etc., as available
 - Records of maintenance expenditures on energy-using equipment, including service contracts
 - Prior energy audits or studies, if any
- b) Department agrees to work diligently to furnish QESP, upon request, accurate and complete data and information as available. Where information is not available from Department, QESP will make a diligent effort to collect such information through the facility inspection, staff interviews, and utility companies.
- c) QESP shall work diligently to assess validity of information provided and to confirm or correct the information as needed.

4) Identify potential ESMs

- a) Interview the facility manager, maintenance staff, subcontractors and occupants of each building regarding:
- Facility operation, including energy management procedures
 - Equipment maintenance problems

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- Comfort problems and requirements
 - Equipment reliability
 - Projected equipment needs
 - Occupancy and use schedules for the facility and specific equipment
 - Facility improvements – past, planned and desired
- b) Survey major energy-using equipment, including:
- Lighting (indoor and outdoor)
 - Heating and heat distribution systems
 - Cooling systems and related equipment
 - Automatic temperature control systems and equipment
 - Air distribution systems and equipment, outdoor ventilation systems and equipment
 - Exhaust systems and equipment
 - Hot water systems
 - Electric motors
 - Transmission and drive systems
 - Special systems (kitchen/dining equipment, etc.)
 - Renewable energy systems
 - Other energy using systems
 - Water consuming systems (restroom fixtures, water fountains, irrigation systems, etc.)
- c) Perform "late-night" surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules, as the Department may direct.
- d) Develop a preliminary list of potential ESMs. Consider the following for each system that will be replaced or impacted by potential ESMs:
- Passive measures (such as daylighting) to reduce load
 - Comfort and maintenance problems
 - Energy use, loads, proper sizing, efficiencies and hours of operation
 - Current operating condition
 - Remaining useful life
 - Feasibility of system replacement
 - Hazardous materials and other environmental concerns
 - Department's future plans for equipment replacement or building renovations
 - Facility operation and maintenance procedures that could be affected
 - Synergies between and among systems
 - Capability to monitor energy performance and verify savings
- e) Department will allow QESP reasonable access to facility staff to ensure understanding of existing systems and opportunities.

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- f) QESP shall work diligently to assess validity of information provided and to confirm or correct the information as needed.

5) Establish baseline energy and water consumption and reconcile with end use consumption estimates

- a) Establish baseline energy and water consumption by examining utility bills for the three years immediately preceding the effective date of this Final Exhibit:
- Present baseline consumption in terms of energy units (kWh, kW, ccf, Therms, gallons, or other units used in bills), in terms of dollars, and in terms of dollars per square foot.
 - Describe the process used to determine the baseline (averaging, selecting most representative contiguous 12 months, etc.).
 - Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the baseline representation.
 - Account for periods of time when equipment was broken or malfunctioning in calculating the baseline.
- b) Estimate loading, usage and/or hours of operation for all major energy and water use of total facility consumption including, but not limited to: lighting, heating, cooling, motors (fans and pumps), plug loads, and other major energy and water using equipment. Where loading or usage are highly uncertain (including variable loads such as cooling), QESP will use its best judgment, spot measurements or short-term monitoring. QESP shall not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.
- c) Reconcile annual end-use estimated consumption with the annual baseline consumption. This reconciliation will place realistic limits on potential savings.
- d) Based on this analysis, QESP shall define a baseline for each ESM.

6) Develop preliminary analysis of potential ESMs

This list of potential ESMs shall be compiled and submitted to the Department within ____ calendar days of the date of execution of the SOW.

- a) Determine the technical potential for the lowest possible energy consumption of the Project Site(s). List all potential ESM opportunities, whether cost effective or not, including but not limited to:
- Replacement or modification of lighting and electrical components, fixtures or systems including daylighting systems, improvements in street lighting efficiency or computer power management software
 - Class I renewable energy or solar thermal systems
 - Cogeneration systems that produce steam or forms of energy, such as heat or electricity, for use primarily within a building or complex of buildings
 - Automated or computerized energy control systems
 - Heating, ventilation or air conditioning system modifications or replacements
 - Indoor air quality improvements that conform to applicable building code requirements

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- Water-conserving fixtures, appliances and equipment or the substitution of non-water-using fixtures, appliances and equipment, or water-conserving landscape irrigation equipment;
 - Changes in operation and maintenance practices
 - Replacement or modification of windows or doors
 - Installation or addition of insulation
- b) Consider technologies in a comprehensive approach and address the synergies and interaction between and among potential technologies including, but not limited to:
- Lighting systems
 - Heating/ventilating/air conditioning equipment and distribution systems
 - Controls systems
 - Building envelope
 - Motors
 - Kitchen equipment
 - Pools
 - Renewable energy systems
 - Other special equipment
 - Irrigation systems
 - Energy and water saving devices
- c) Identify potential ESMs which appear likely to be cost effective and therefore warrant detailed analysis.
- d) For each ESM, prepare a preliminary estimate of Operation and Maintenance Cost Savings and Utility Cost Savings, including description of analysis methodology, supporting calculations and assumptions used to estimate savings.
- 7) Meet with Department to present preliminary findings**
- a) After preliminary analysis completed in section 6, meet with Department to describe how the projected project economics meet the conditions set forth in this Final Exhibit.
- b) Discuss assessment of energy use, savings potential, project opportunities, and potential for developing the SOW.
- c) Develop a list of recommended ESMs for further analysis. The Department shall have the option to reject calculations of savings, potential savings allowed, or project recommendations.
- 8) Analyze savings and costs for each ESM**
- a) Follow the methodology of the American Society of Heating, Refrigerating and Air-Conditioning Engineers or other nationally-recognized authority for the engineering principle(s) identified for each ESM.
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- b) Utilize assumptions, projections and baselines which best represent the true value of future Operation and Maintenance Cost Savings. Include accurate marginal costs for each unit of savings at the time the IGEA is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility, and calculations which account for the interactive effects of the recommended ESMs. Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use. In estimating project costs, adhere to the the maximum audit costs, markups, and fees as provided in Final Exhibit D Cost and Pricing.
 - c) Develop a preliminary measurement and verification plan for each ESM.
 - d) Follow additional guidelines for analysis and IGEA Report format given in Section 9.
 - e) Include cost to provide services and complete applications for Energy Star Label, US Green Building Council's Leadership in Energy and Environmental Design certification for Existing Buildings (LEED-EB), and other certifications as requested by Department. Also, for K-12 schools, include cost to provide services and complete application for EPA's Tools for Schools and other programs related to indoor air quality, as requested by Department.

9) **Prepare preliminary IGEA Report**

The IGEA Report will be the basis for negotiating the SOW between the Department and the QESP. The preliminary IGEA Report shall be completed within calendar days of the date of execution of this Final Exhibit. The preliminary IGEA Report shall include:

- a) Overview
 - Contact information
 - Summary of existing or baseline annual energy and water use (by fuel type) and costs
 - Summary table of recommended ESMs, including the following for each ESM: description of ESM, total design and construction cost, annual maintenance costs, the first year estimated Operation and Maintenance Cost Savings (in dollars and energy units), simple payback, and equipment service life
 - Calculation of total Operation and Maintenance Cost Savings expected if all recommended ESMs are implemented and total percentage savings based on entire Project Site(s) operation and maintenance costs
 - Description of the existing mechanical and electrical systems in each building of the Project Site(s).
 - Discussion of ESMs considered but not investigated in detail
 - Conclusions and recommendations
- b) Baseline energy use
 - Description and itemization of current billing rates, including schedules and riders
 - Summary of all utility bills for all fuel types and water

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- Identification and definition of baseline consumption and description of how established
 - Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc) with baseline. Include discussion of any unusual findings.
- d) Full description of each ESM, including:
- Written description of
 1. Existing conditions
 2. Description of equipment to be installed and how it will function
 3. Discussion of facility operations and maintenance procedures that will be affected by installation/implementation.
 4. The plan for installing or implementing the recommendation.
 5. Energy Cost Savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment.
 6. Baseline energy use and cost
 7. Post-installation energy use and cost
 8. Energy Cost Savings estimates including analysis methodology, supporting calculations and assumptions used.
 9. Energy Cost Savings estimates must be limited to savings allowed by the Department as described above.
 10. Annual Energy Cost Savings estimates. The cost savings for all ESMs must be estimated for each year during the SOW period. Energy Cost Savings must be able to be achieved each year (cannot report average annual savings over the term of the SOW).
 11. Percent cost-avoidance projected
 12. Description and calculations for any proposed rate changes
 13. Explanation of how Energy Cost Savings interactions between retrofit options are accounted for in calculations.
 14. If computer simulation is used, include a short description and state key input data. If requested by Department, access will be provided to the program and all assumptions and inputs used, and/or printouts shall be provided of all input files and important output files and included in the IGEA with documentation that explains how the final Energy Cost Savings figures are derived from the simulation program output printouts
 15. If manual calculations are employed, formulas, state assumptions and key data.
 16. Conclusions, observations, caveats
- e) Project cost estimate
- Scope of the construction work, suitable for estimating costs
 - All anticipated costs associated with installation and implementation
 - Specifications for major mechanical components and detailed lighting and water fixture counts
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- Engineering/design costs
 - QESP/vendor estimates for labor, materials and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities.
 - Permit costs
 - Construction management fees
 - Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.)
 - Do not exceed the markups and fees as provided in Final Exhibit D Cost and Pricing.
 - Conclusions, observations, caveats
 - Other cost categories as defined under “markups” in Cost and Pricing (Final Exhibit D).
- f) Other
- Estimate of average useful service life of equipment
 - Preliminary commissioning plan that follows the requirements outlined in SOW Schedules (Exhibit A, Attachment 1).
 - Preliminary measurement and verification (M&V) plan, following the International Performance Measurement and Verification Protocol (IPMVP), explaining how savings from each ESM is to be measured and verified (stipulated by SOW, utility bill analysis, end-use measurement and calculation, etc.). The preliminary M&V plan shall follow the format and requirements provided in Savings Measurement and Verification Plan (Exhibit A, Schedule C).
 - Discussion of impacts that facility would incur after SOW ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc.
 - Compatibility with existing systems. Include the name of the existing controls system and any requirements for the seamless interface with new components.
 - Complete appendices that document the data used to prepare the analyses. Describe how data were collected.

10) Energy Star Ratings and Cash Flow Opportunity Calculator

Develop a EPA Energy Star Cash Flow Opportunity Calculator spreadsheet for the total project (including all facilities to be improved), with variables inserted that represent the most likely financing options available to the Department. This will enable the QESP and the Department to have an agreed-upon format for discussing project financing options and the potential costs of project delays.

11) Meet with Department

Meet with Department to present and review the preliminary IGEA Report, including recommendations, savings calculations and impact of the ESMs on the operations of the facility. Describe how the projected project economics meet the input that the Department has provided during the interactive development of the IGEA. Discuss the

willingness and capability of Department to make capital contributions to the project to improve the economics of the overall project.

12) Revise IGEA Report as directed by Department

The final IGEA Report shall include fixed prices, identification of all ESMs and Energy Cost Savings, final Energy Cost Savings Guarantee, and all of the information necessary to develop the Project Development Proposal.

13) Prepare an Energy-Savings Performance Project Development Proposal

In anticipation of QESP and Department entering into a SOW to design, install, and monitor the ESMs proposed in the IGEA Report, QESP shall develop a project development proposal that proposes terms for possible incorporation into the a SOW. These terms shall include, but are not limited to the following:

- a) The total amount that QESP asks the Department to pay for the SOW project and QESP's services. The price must be at or below the maximum markups, margins and fees for services as provided in Final Exhibit D Cost and Pricing. Costs may include but are not limited to: engineering, designing, procuring and installing ESMs; performance/payment bond costs; construction management fees; commissioning costs; maintenance fees; measurement and verification fees; training fees; legal and other professional services; and overhead and profit.
- b) A list of services and costs related to each ESM.
- c) As requested, incorporate potential financing options with the best available rates and terms for the SOW.
- c) Expected term of the SOW.
- g) Description of how the project will be financed including available interest rates and financing terms, based on interest rates likely available to Department or rates provided by the Department.
- h) Explanation of how the savings will be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors. Monitoring and verification methods must be consistent with the latest version of the *International Performance Monitoring and Verification Protocol* and follow the template and requirements of the Savings Measurement and Verification Plan (Exhibit A, Schedule C).
- i) Analysis of annual cash flow for Department during the term of the SOW.

14) Delivery and Acceptance of Investment-Grade Energy Audit Report and Project Development Proposal

The following shall appear at the end of the final IGEA Report as a signature page. The QESP shall sign at least two original copies first and then forward the two signed original copies of the IGEA Report to the Department for acceptance. If the Department accepts the IGEA Report, the Department shall sign the two originals where indicated and then forward one original to the QESP.

The dated signatures of the QESP and the Department below shall have the stated effects applicable to the corresponding party:

The QESP affirms, represents and warrants, by its signature and date below, that this IGEA Report and the Project Development Proposal, concerning [REDACTED] project, follows the IGEA template of Exhibit C of the Contract and complies fully with Exhibit C.

[QESP NAME]

By: _____

Print or Type Name

Title: _____

Date: _____

Furthermore, the QESP affirms, represents and warrants, through signature below of employed staff who is licensed by the State of Connecticut as a Professional Engineer, that this IGEA Report and the Project Development Proposal, concerning [REDACTED] project, complies with the International Energy Conservation Code portion of the Connecticut State Building Code.

By: _____

Print or Type Name

CT PE License Number:

Title: _____

Date: _____

[DEPARTMENT NAME] accepts the Investment-Grade Energy Audit Report and Project Development Proposal presented by [INSERT NAME OF QESP], dated _____, concerning _____ project.

Department Name

By _____

Name:

Title:
Date:

QESP Compensation

QESP shall be compensated as follows:

- 1. Basis and Maximum Amount.** Department shall pay QESP a sum not to exceed \$ [redacted] based on a maximum of [redacted] gross square feet at cost of \$ [redacted] per square foot of audited square-footage, as specified in Cost and Pricing Final Exhibit D. Department shall pay only for square-footage actually audited.
- 2. Payment for IGEA.** If a Department decides not to execute the SOW within [redacted] calendar days after the issuance of the Notice of Acceptance of the IGEA Report and Project Development Proposal and the scope of the project described in the IGEA is not materially different from the Feasibility Analysis, then the Department shall pay the QESP the costs of the IGEA. In all other instances, the costs of the IGEA shall be deemed to be part of the costs of the SOW and be paid through the project financing mechanism.
- 3. Project With Insufficient Savings.** Department shall have no payment obligations for the development of the IGEA and Project Development Proposal performed in accordance with this Final Exhibit if QESP's final IGEA Report and Project Development Proposal does not contain a package of ESMs which, if implemented, will provide the Department with cash savings sufficient to fund Department's payments of all costs and fees associated with the SOW, including 1) the fee associated with the IGEA , 2) all monthly payments required under the project financing agreement, 3) any annual fees for monitoring and maintenance incurred by the QESP. Should the QESP determine at any time during the IGEA that savings cannot be attained to meet these terms, the IGEA will be terminated by written notice by the QESP to Department. In this event this Final Exhibit shall be cancelled and Department shall have no obligation to pay, in whole or in part, the amount specified in Section 1.

The parties are signing this Final Exhibit Investment-Grade Energy Audit and Project Development Proposal on the date below their respective signatures.

[QESP NAME]

[DEPARTMENT NAME]

By: _____

By: _____

Print Name

Print Name

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit D

Noresco Cost and Pricing

QESPs shall commit to adhere to the costs, markups, margins, and fees identified in this Exhibit D throughout all project phases when participating in the ESPCP. The Department may choose to accept the QESP's costs, markups, margins and fees proposed for the Energy-Savings Performance Project Statement of Work for individual projects without further negotiation, provided they do not exceed the maximums established in the completed tables below. Alternatively, the Department may directly negotiate with QESP for reductions as dictated by individual facility or project requirements. QESP may also propose lower IGEA costs, markups, and fees depending upon individual project considerations or their own internal business approach.

1 Cost Markups

Markups represent a percentage added to the base cost for the project (excluding the cost of the IGEA).

Construction Costs	Will this task be completed by QESP or subcontractor?	Maximum Markup above actual costs (if any)
*Subcontractor costs (Subcontractor costs to QESP)	Subcontractor	0%
Other direct purchases of Equipment, materials, supplies (Supplier costs to QESP; do not include subcontractor supplies purchased as they should be included above)	QESP	0%
Design (indicate whether this will be completed by the QESP or subcontracted)	Both	7%
Project management (indicate whether this will be completed by the QESP or subcontracted)	QESP	10%
Commissioning (indicate whether this will be completed by the QESP or subcontracted)	QESP	4%
Training (indicate whether this will be completed by the QESP or subcontracted)	QESP	1%
Construction measurement and verification (indicate whether this will be completed by the QESP or subcontracted)	QESP	2%
Permits (markup allowed only if permits are acquired by QESP)	Both	1%
Performance bond	QESP	1%
Other – Construction Interest, Travel, Site Conditions		8%

*The Maximum Markups are applied to the total of the subcontractor material and labor costs and the purchased equipment costs. See the attached Chart 1 for a breakdown by ECM technology category.

2 Project Margins

Margins below represent the percentage of the total price and are to be applied to any project within the ESPC.

Project Margin	Maximum % Margin
Overhead percent	14%
Profit percent	8%

3 Audit Fee

Below is the maximum fee to perform the Investment-Grade Energy Audit and Project Development Proposal, on a cost per square foot basis. The fee shall incorporate the proposer's responsibility to adhere to and complete the full scope of work as presented in the Investment-Grade Energy Audit and Project Development Statement of Work (Exhibit C).

	Proposed Maximum Cost per Square Foot
Investment-Grade Energy Audit and Project Proposal *	\$0.80/SF

* See attached Chart 2 for further breakdown by market segment.

4 Other Fees for Annual Costs

The table below describes how the annual cost is determined, how the fee is charged to the project, and when it is applied. Markups on fees are not allowable under the ESPCP.

Annual Cost Category	How Price is Determined	Years Applied (One-time, Annual, etc.)
Warranty	Pass-through cost from equipment manufacturer	One-time, typically included in financing
Post-Installation Measurement & Verification	Negotiation with Customer based on desired level of M&V to be provided by QESP	Annual
Maintenance	Negotiation with Customer based on desired level of maintenance to be provided by QESP	Annual

5 Contingency (To cover changes in work scope / change orders) Included in initial costing of project.

Pricing for Energy-Savings Performance Project Proposal

The base construction costs are presented in terms of markups in Section 1 for the purpose of cost and pricing for IGEA development, whereas they are represented as margins in the table below for the purpose of cost and pricing for the Energy-Savings Performance Project development.

Chart 1. Cost Mark-Ups Table - Detailed Breakdown by Technology

NORESCO's Typical Mark-Ups above the Subcontractor Material & Labor Costs and the Purchased Equipment Costs for Similar Projects	Lighting and Controls	Major Mechanical / HVAC Systems	Chilled Water Systems	EMS / DDC	Building Envelope & Window Upgrades	Air Distribution / Exhaust Systems	Pool Improvements	Well Water Systems	DHW Conservation	Motors / Drives	Kitchen Equipment	On-Site Generation & Renewables	Vending, PC Controllers, Fire & Safety
Subcontractors' Matl & Labor	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Direct Purchase of Eqpt, Mtls.	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Design	1.0%	6.0%	6.0%	6.0%	3.0%	5.0%	1.0%	2.0%	3.0%	4.0%	3.0%	4.0%	1.0%
Project Management	6.0%	9.0%	9.0%	9.0%	6.5%	5.5%	4.5%	4.5%	4.5%	6.0%	4.5%	7.0%	4.5%
Commissioning	1.0%	2.0%	2.0%	4.0%	1.0%	2.0%	1.0%	1.0%	1.0%	2.0%	2.0%	3.0%	1.0%
Training	0.2%	0.5%	0.5%	1.0%	0.2%	0.5%	0.5%	0.2%	0.2%	0.3%	0.5%	0.8%	0.2%
M&V During Construction	2.0%	2.0%	1.0%	0.5%	0.5%	1.0%	0.5%	1.0%	2.0%	1.0%	1.0%	2.0%	0.5%
Permits (acquired by NORESCO)	0.4%	0.4%	0.4%	0.4%	0.4%	0.4%	0.4%	0.4%	0.4%	0.4%	0.4%	0.4%	0.4%
Performance Bond	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%
Other - Travel, Warranty, Construction Interest	5.4%	7.7%	7.7%	7.7%	5.5%	5.4%	5.4%	5.4%	5.4%	5.4%	5.4%	7.4%	5.4%
Totals	16.9%	28.5%	27.5%	29.5%	18.0%	20.7%	14.2%	15.4%	17.4%	20.0%	17.7%	25.5%	13.9%

Chart 2. Audit Fee - Typical Fee to perform IGEA

Detail by Market Segment

Market Segment	Proposed Maximum Cost per Square Foot for Investment Grade Energy Audit
K-12 Schools	\$0.30
Office Buildings	\$0.30
Higher Education	\$0.40
Prisons	\$0.60
Mental Health / Hospitals	\$0.80



Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations

This notice is provided under the authority of Connecticut General Statutes §9-612(G)(2), as amended by P.A. 10-1, and is for the purpose of informing state contractors and prospective state contractors of the following law (italicized words are defined on the reverse side of this page).

CAMPAIGN CONTRIBUTION AND SOLICITATION LIMITATIONS

No *state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor*, with regard to a *state contract or state contract solicitation* with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee (which includes town committees).

In addition, no holder or principal of a holder of a valid prequalification certificate, shall make a contribution to (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of State senator or State representative, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

On and after January 1, 2011, no state contractor, prospective state contractor, principal of a state contractor or principal of a prospective state contractor, with regard to a state contract or state contract solicitation with or from a state agency in the executive branch or a quasi-public agency or a holder, or principal of a holder of a valid prequalification certificate, shall **knowingly solicit** contributions from the state contractor's or prospective state contractor's employees or from a *subcontractor or principals of the subcontractor* on behalf of (i) an exploratory committee or candidate committee established by a candidate for nomination or election to the office of Governor, Lieutenant Governor, Attorney General, State Comptroller, Secretary of the State or State Treasurer, (ii) a political committee authorized to make contributions or expenditures to or for the benefit of such candidates, or (iii) a party committee.

DUTY TO INFORM

State contractors and prospective state contractors are required to inform their principals of the above prohibitions, as applicable, and the possible penalties and other consequences of any violation thereof.

PENALTIES FOR VIOLATIONS

Contributions of solicitations of contributions made in violation of the above prohibitions may result in the following civil and criminal penalties:

Civil Penalties – Up to \$2,000 or twice the amount of the prohibited contribution, whichever is greater, against a principal or a contractor. Any state contractor or prospective state contractor which fails to make reasonable efforts to comply with the provisions requiring notice to its principals of these prohibitions and possible consequences of their violations may also be subject to civil penalties of up to \$2,000 or twice the amount of the prohibited contributions made by their principals.

Criminal penalties – Any knowing and willful violation of the prohibition is a Class D felony, which may subject the violator to imprisonment of not more than 5 years, or not more than \$5,000 in fines, or both.

CONTRACT CONSEQUENCES

In the case of a state contractor, contributions made or solicited in violation of the above prohibitions may result in the contract being voided.

In the case of a prospective state contractor, contributions made or solicited in violation of the above prohibitions shall result in the contract described in the state contract solicitation not being awarded to the prospective state contractor, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

The State shall not award any other state contract to anyone found in violation of the above prohibitions for a period of one year after the election for which such contribution is made or solicited, unless the State Elections Enforcement Commission determines that mitigating circumstances exist concerning such violation.

Additional information may be found on the website of the State Elections Enforcement Commission, www.ct.gov/seec. Click on the link to "Lobbyist/Contractor Limitations."



DEFINITIONS

“State contractor” means a person, business entity or nonprofit organization that enters into a state contract. Such person, business entity or nonprofit organization shall be deemed to be a state contractor until December thirty-first of the year in which such contract terminates. “State contractor” does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

“Prospective state contractor” means a person, business entity or nonprofit organization that (i) submits a response to a state contract solicitation by the state, a state agency or a quasi-public agency, or a proposal in response to a request for proposals by the state, a state agency or a quasi-public agency, until the contract has been entered into, or (ii) holds a valid prequalification certificate issued by the Commissioner of Administrative Services under section 4a-100.

“Prospective state contractor” does not include a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

“Principal of a state contractor or prospective state contractor” means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a state contractor or prospective state contractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a state contractor or prospective state contractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a state contractor or prospective state contractor, which is not a business entity, or if a state contractor or prospective state contractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any state contractor or prospective state contractor who has *managerial or discretionary responsibilities with respect to a state contract*, (v) the spouse or a *dependent child* who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the state contractor or prospective state contractor.

“State contract” means an agreement or contract with the state or any state agency or any quasi-public agency, let through a procurement process or otherwise, having a value of fifty thousand dollars or more, or a combination or series of such agreements or contracts having a value of one hundred thousand dollars or more in a calendar year, for (i) the rendition of services, (ii) the furnishing of any goods, material, supplies, equipment or any items of any kind, (iii) the construction, alteration or repair of any public building or public work, (iv) the acquisition, sale or lease of any land or building, (v) a licensing arrangement, or (vi) a grant, loan or loan guarantee. “State contract” does not include any agreement or contract with the state, any state agency or any quasi-public agency that is exclusively federally funded, an education loan, a loan to an individual for other than commercial purposes or any agreement or contract between the state or any state agency and the United States Department of the Navy or the United States Department of Defense.

“State contract solicitation” means a request by a state agency or quasi-public agency, in whatever form issued, including, but not limited to, an invitation to bid, request for proposals, request for information or request for quotes, inviting bids, quotes or other types of submittals, through a competitive procurement process or another process authorized by law waiving competitive procurement.

“Managerial or discretionary responsibilities with respect to a state contract” means having direct, extensive and substantive responsibilities with respect to the negotiation of the state contract and not peripheral, clerical or ministerial responsibilities.

“Dependent child” means a child residing in an individual's household who may legally be claimed as a dependent on the federal income tax of such individual.

“Solicit” means (A) requesting that a contribution be made, (B) participating in any fund-raising activities for a candidate committee, exploratory committee, political committee or party committee, including, but not limited to, forwarding tickets to potential contributors, receiving contributions for transmission to any such committee or bundling contributions, (C) serving as chairperson, treasurer or deputy treasurer of any such committee, or (D) establishing a political committee for the sole purpose of soliciting or receiving contributions for any committee. Solicit does not include: (i) making a contribution that is otherwise permitted by Chapter 155 of the Connecticut General Statutes; (ii) informing any person of a position taken by a candidate for public office or a public official, (iii) notifying the person of any activities of, or contact information for, any candidate for public office; or (iv) serving as a member in any party committee or as an officer of such committee that is not otherwise prohibited in this section.

“Subcontractor” means any person, business entity or nonprofit organization that contracts to perform part or all of the obligations of a state contractor's state contract. Such person, business entity or nonprofit organization shall be deemed to be a subcontractor until December thirty first of the year in which the subcontract terminates. “Subcontractor” does not include (i) a municipality or any other political subdivision of the state, including any entities or associations duly created by the municipality or political subdivision exclusively amongst themselves to further any purpose authorized by statute or charter, or (ii) an employee in the executive or legislative branch of state government or a quasi-public agency, whether in the classified or unclassified service and full or part-time, and only in such person's capacity as a state or quasi-public agency employee.

“Principal of a subcontractor” means (i) any individual who is a member of the board of directors of, or has an ownership interest of five per cent or more in, a subcontractor, which is a business entity, except for an individual who is a member of the board of directors of a nonprofit organization, (ii) an individual who is employed by a subcontractor, which is a business entity, as president, treasurer or executive vice president, (iii) an individual who is the chief executive officer of a subcontractor, which is not a business entity, or if a subcontractor has no such officer, then the officer who duly possesses comparable powers and duties, (iv) an officer or an employee of any subcontractor who has managerial or discretionary responsibilities with respect to a subcontract with a state contractor, (v) the spouse or a dependent child who is eighteen years of age or older of an individual described in this subparagraph, or (vi) a political committee established or controlled by an individual described in this subparagraph or the business entity or nonprofit organization that is the subcontractor.