

Request for Proposal

PROJECT NO:	Mokena School District 159
PROJECT NAME:	Mokena SD 159 Guaranteed Energy Savings Project
ISSUE DATE:	1/14/2016
DUE DATE:	2/26/2016
DUE TIME:	3:00 pm
OPENING DATE:	2/29/2016
OPENING TIME:	9:00 am

Solicitation

Notice is hereby given that Mokena School District 159 (ENTITY) requests Proposals for the implementation of a Performance Contract. Mokena School District 159 is requesting Qualified Providers (RESPONDENT) to propose innovative solutions and Energy Conservation Measures through a guaranteed energy savings contract. These proposals shall include: (a) the implementation of a facility audit, data collection, and other related analyses preliminary to the undertaking of Energy Conservation Measures; (b) the evaluation and recommendation of Energy Conservation Measures; (c) the implementation of one or more Energy Conservation Measures; and (d) the implementation of project monitoring and data collection to verify post-installation energy consumption and energy related operating costs pursuant to 105 ILCS 5/19b-1 *et seq.* This Request for Proposal (RFP) is issued on the following date pursuant to Section 1.4 of Article I 19b which provides for a negotiated procurement.

The District's objectives in issuing this Request for Proposal (RFP) are to provide a competitive means in which to select a single Qualified Provider (guaranteed energy savings company) with whom to negotiate an Energy Savings Agreement. The District may elect to implement further improvement measures in future phases, pursuant to the negotiated contract. The Qualified Provider will be selected based solely on the proposal submitted. Modifications to the proposal including pricing for the purpose of selecting the Qualified Provider will not be accepted after the proposal due date. The School District reserves the right to change any component of the proposal after the Qualified Provider has been selected. The cost of preparing a response to this request, including site visits and engineering analysis will not be reimbursed by the School District.

Proposals will be received until 3:00 p.m. on Friday, February 26, 2016 at the Mokena SD 159 Administration Office. Proposals will be opened on Monday, February 29, 2016 at this same location. **Extensions will not be granted.** Proposals are to be sealed and five (5) copies are to be provided.

Written inquiries and/or questions regarding this proposal must be submitted in writing to Joe Sierra at sierraj@mokena159.org.

A **mandatory walk through** for all Qualified Providers has been scheduled for 10:00 a.m. on Monday, January 25, 2016 at the Mokena SD 159 Administration Office, 11244 Willowcrest Lane, Mokena, IL 60448. Any potential RESPONDENT to the RFP must be present.

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The District reserves the right to accept and/or reject any or all proposals or parts thereof. For questions, please contact Joe Sierra at sierraj@mokena159.org.

In accordance with the Illinois School Code Article 5/19B-5, we disclose that Performance Services participated in the preparation of these specifications.

In responding to this solicitation, the Respondent signifies to be fully informed as to the extent and character of the services required and the terms and conditions specified herein. The Provider represents that the services can be provided satisfactorily and in complete compliance with the specifications. Provider agrees that this RFP together with its response and subsequent acceptance by the School shall be incorporated by reference into the Performance Contract ultimately entered into between the School and Provider.

1.00 RESPONDENT INFORMATION

- 1.01 The ENTITY invites any Qualified Provider to respond to this solicitation. RESPONDENT must be responsible, regularly and practically engaged in providing the services requested, and possess ample resources for providing the services identified. In its proposal, the Qualified Provider shall provide information demonstrating its status as a Qualified Provider.

2.00 GENERAL CONDITIONS

The ENTITY does not discriminate on the basis of religion, sex, race, national origin, age, ancestry, creed, color, political affiliation, membership in the National Guard, state defense force or any reserve component of the United States military or state military forces, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional, or learning disability or handicap or other bases prohibited under state or federal law.

(This section lists conditions generally applicable for all solicitations for the ENTITY and can be superseded by specifications, special instruction or addendum.)

- 2.01 This solicitation is to assist the ENTITY in the selection of a qualified individual or organization (RESPONDENT) to provide services as described herein.
- 2.02 RESPONDENT shall submit their responses on the forms and in the manner specified and shall respond to each specification.
- 2.03 The ENTITY reserves the right to amend the contents of this solicitation. The intent of such amendments is directed toward finding the best solution available at the associated cost. If it becomes necessary to amend any part of this specification an addendum will be provided to all parties on the distribution list. Each addendum will be numbered (i.e. Addendum #). RESPONDENT's shall acknowledge receipt of said addendums in their response.
- 2.04 If additional data is necessary to provide clarification of provisions in this solicitation, a supplement will be provided to all parties on the distribution list. Each supplement will be

numbered (i.e. Supplement #). RESPONDENT's shall acknowledge receipt of said supplements in their response.

2.05 Responses should be prepared simply and economically, providing a straightforward and concise explanation of the RESPONDENT's capabilities that will satisfy the identified requirements.

2.06 RESPONDENT may include additional information and data that is believed to be helpful to the ENTITY in the evaluation of the services identified herein as an appendix to the response.

2.07 All costs for preparing and submitting responses, including the Report, is entirely the responsibility of the RESPONDENT and will not be chargeable in any manner to the ENTITY.

2.08 The ENTITY reserves the right to accept, negotiate changes to, or reject any or all responses or portions thereof and to accept any responses or portions thereof that may be the most advantageous, and reserves the right to waive technicalities to the fullest extent permitted by law.

2.09 Questions and Interpretations

a. Refer questions concerning this solicitation to the contact person identified on the cover page. Any request for clarification or interpretation of provisions of this solicitation must be received at least 3 business days prior to the Opening Date identified on the cover.

b. Responses to the questions may result in a supplement or addenda. All supplements and addenda so issued shall become part of the specifications.

c. RESPONDENT's shall carefully examine the contents of this solicitation and any subsequent addenda or supplements. Failure to do so shall not relieve RESPONDENT of the obligation to fulfill the terms of the project herein identified.

d. The ENTITY shall not be responsible for oral interpretations given by any ENTITY employee, representative or other individual; including the ENTITY's contact person. The issuance of a written addendum or supplement is the only official method whereby interpretations, clarifications or additional information can be given that would change the terms and conditions of this solicitation.

2.10 Quality Control

a. RESPONDENT shall note any deviations or exceptions from the specifications on the submitted response. If proposing an alternative other than specified, it must be clearly labeled as such.

b. RESPONDENT's shall specifically identify any requirement, term or condition, whether contained in the main body of the RFP or an Addendum, Exhibit or Supplement, with which the RESPONDENT'S takes exception in the "Exceptions" section of the RESPONDENT'S proposal. If the RESPONDENT does not specifically identify such

exception in this section of their proposal, it will be assumed that the RESPONDENT accepts and agrees to all of these requirements, terms and conditions. The RESPONDENT will be required to sign the RFP Exceptions Form identified as "Exhibit 1" without modifications, deletions or additions to the terms and conditions unless the REPSONDENT specifically identifies the terms or conditions with which they take exception. In the "Exceptions" proposal section, the RESPONDENT must explain why they are taking exception to each term or condition and offer revised language for each term or condition that is acceptable to the RESPONDENT. Exceptions to terms or conditions may result in in rejection or reconsideration of the entire Proposal. The RESPONDENT can choose to make a written request for a change in a requirement, term or condition to the Representative. The Representative may respond to this request by issuing an Addendum modifying a requirement, term or condition for all RESPONDENTS.

2.11 Responses to Solicitation

- a. All Proposals shall be submitted to Mokena School District 159, Attn: Joe Sierra, no later than the date and time shown on the cover page. It is the responsibility of the respondent to ensure that Proposal arrive to the specified location by the deadline.
- b. Proposals will be opened and recorded on February 29, 2016 at 9:00 am. The opening and recording is not open to the public or bidders.
- c. An individual with authority to bind the RESPONDENT must sign the Proposal.
- d. RESPONDENT shall submit the following documents / information in their Proposal:
 - i. Proposal in the format and containing the information as specified within this RFP including all Exhibits, Supplement and Addenda. Five (5) copies of the Proposal shall be submitted. An electronic copy of the proposal shall be submitted on a flash drive delivered with the proposal.
 - ii. Acknowledgement of receipt of all Exhibits, Supplements and Addenda.
 - iii. Any and all exceptions to Requirements, Terms or Conditions shall be specifically identified in writing in the Exceptions section of the Proposal.

2.13 Anti-collusion Clause

- a. During the preparation and submission to this solicitation, RESPONDENT's are prohibited from directly or indirectly entering into any combination or arrangement with any person, firm or corporation, or entering into any agreement, or participate in any collusion, or otherwise take any action in the restraint of free competitive bidding in violation of the law.
- b. In responding to the solicitation, RESPONDENT certifies that their Proposal is not the result of, or affected by, any act of collusion with, or any act of, another person or persons, firm or corporation engaged in the same line of business or commerce.
- c. In responding to the solicitation, RESPONDENT certifies that no person acting for, or employed by, the ENTITY has an interest in, or is concerned with, this Proposal and that

no person or persons, firm or corporation other than the RESPONDENT, have an interest in this Proposal.

2.14 Proprietary Information

- a. RESPONDENT is advised that most records and documents in the possession of the ENTITY may be subject to access by the public. Trade secrets or proprietary information submitted in response to this solicitation will be protected by the ENTITY to the extent permitted by law; however, the ENTITY prefers that proprietary information not be included in the Proposal nor in any appendix to the Proposal.
- b. RESPONDENT must provide a statement that identifies any data or other material that is requested to be protected and the reasons why protection is necessary. Such trade secrets or proprietary information should be submitted in a separate, sealed, envelope clearly marked **PROPRIETARY**.
- c. A statement by RESPONDENT that the entire Proposal is proprietary and/or a statement that pricing/costs are to be protected cannot be honored and will result in the removal of the Proposal from further consideration. References may be made within the body of the Proposal to proprietary information; however all information contained within the body of the Proposal, not under separate cover and labeled proprietary, shall be deemed a public record.
- d. If a request is made for access to information that has been identified as Proprietary, the Representative will notify the affected RESPONDENT of the request and the RESPONDENT must either revoke this Proprietary status in writing to allow public access or pay all costs associated with defending the Proprietary nature of this information, including all of the ENTITY'S labor.

2.14 The ENTITY is a smoke free environment. RESPONDENT shall assure that their representatives will refrain from smoking while on ENTITY grounds.

2.15 The ENTITY is a drug free environment. RESPONDENT shall assure that their representatives will refrain from the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance while on ENTITY grounds.

2.16 The ENTITY is exempt from federal and state excise and sales taxes. All prices quoted shall reflect the tax-exempt status. Tax exemptions certificates, if required, will be provided upon request.

2.17 It is expressly understood that performance of this solicitation by the ENTITY shall be contingent upon availability of funding.

2.18 Acceptance of a preferred proposal does not constitute an order. Orders shall only be made following issuance of a purchaser order or a signed contract.

2.19 It is not the responsibility of ENTITY to notify unsuccessful RESPONDENTS, however it may choose to do so.

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- 2.20 All terms and conditions specified in response to this solicitation shall remain effective for a period of not less than 90 days following the Due Date shown on the cover page.

- 2.21 Indemnity: If the parties enter into to Performance Contract, the RESPONDENT hereby releases, indemnifies and holds harmless the ENTITY, its board, officers, employees, agents and officials from and against any and all liabilities, taxes, tax penalties, interest, losses, penalties, damages and expenses of every kind and nature and character, including costs and reasonable attorney fees, arising out of, or relating to, any and all claim, liens, damages to property or injuries to persons, obligation, actions, suits, settlements or causes of action of every kind, nature and character, in connection with or arising out of the negligent acts or omissions of the Qualified Provider or for any subcontractor or vendor related to the performance of the work.

3.00 SCOPE OF WORK

- 3.01 Base Bid Scope of Work - Provide individual pricing and savings for each improvement item listed below.

Mokena Elementary School (Complete in 2016)

MES-1 – Central Plant Upgrades

- Replace existing boiler plant with new, including new high efficiency condensing boilers, variable speed pumps, and hydronic specialties. New heating plant to be connected to new 2-pipe heating and cooling system.
- Heating system must be designed to allow district the capability to easily replace electric heating equipment in the future with new hot water heating equipment to be connected to the 2-pipe system.
- Install new chilled water plant, including new air-cooled chiller(s), pumps, and accessories. New chiller plant to be connected to new 2-pipe heating and cooling system.
- Chilled water system must be designed to allow district the capability to easily replace DX cooling equipment in the future with new chilled water cooling equipment to be connected to the 2-pipe system.
- Install new fully BACnet compliant digital controls on the new heating and cooling plant (refer to requirements under DIST-1).

MES-2 – Unit Ventilator Replacement – 1st Grade Wing

- Replace existing unit ventilators in the eleven (11) classrooms in the 1st grade wing (rooms C110-C120) with new 2-pipe unit ventilators connected to the new 2-pipe heating and cooling system. The new unit ventilators are to be vertical unit ventilators with ducted overhead distribution.
- Install a new fan-powered relief system to appropriately relieve the fresh air brought in by the new unit ventilators.
- Install new fully BACnet compliant digital controls on the new unit ventilators (refer to requirements under DIST-1).

MES-3 – Unit Ventilator Replacement – 3rd Grade Wing

- Replace existing unit ventilators in the eleven (11) classrooms in the 3rd grade wing (rooms C210-C220) with new 2-pipe unit ventilators connected to the new 2-pipe heating and cooling system. The new unit ventilators are to be vertical unit ventilators with ducted overhead distribution.
- Install a new fan-powered relief system to appropriately relieve the fresh air brought in by the new unit ventilators.
- Install new fully BACnet compliant digital controls on the new unit ventilators (refer to requirements under DIST-1).

MES-4 – Unit Ventilator Replacement – Northeast Section

- Replace existing unit ventilators in eight (8) classrooms in the northeast section (rooms N103-N106 and rooms N201-N204) with new 2-pipe unit ventilators connected to the new 2-pipe heating and cooling system. Demo existing RTUs and associated ductwork serving this section. The new unit ventilators are to be vertical unit ventilators with ducted overhead distribution.

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- Install a new fan-powered relief system to appropriately relieve the fresh air brought in by the new unit ventilators.
- Install new fully BACnet compliant digital controls on the new unit ventilators (refer to requirements under DIST-1).

MES-5 – Unit Ventilator Replacement – North section in 2nd grade wing

- Replace existing unit ventilators in eight (8) classrooms and Resource Center in the north section of the 2nd grade wing (rooms N205-N212 and LRC) with new 2-pipe unit ventilators connected to the new 2-pipe heating and cooling system. The new unit ventilators are to be vertical unit ventilators with ducted overhead distribution.
- Install a new fan-powered relief system to appropriately relieve the fresh air brought in by the new unit ventilators.
- Install new fully BACnet compliant digital controls on the new unit ventilators (refer to requirements under DIST-1).

MES-6 – Air Handling Unit Upgrades

- Install equipment as necessary to provide cooling to the south and central gymnasiums.
- Retrofit ASU-1 (learning center), ASU-2 (cafeteria), and ASU-3 (central gymnasium) as follows:
 - Replace all supply fan and exhaust/return fan motors with new inverter-duty motors and replace associated starters with new variable frequency drives.
 - Replace electric heating coils with new 2-pipe coils connected to the new 2-pipe heating and cooling system.
 - Replace existing controls with new fully BACnet compliant digital controls (refer to requirements under DIST-1).

Mokena Junior High School (Complete in 2016)

MJHS-1 – Air Handling Unit Upgrades

- Install equipment as necessary to provide cooling to the east and west gymnasiums.
- On any new or retrofitted equipment, install new fully BACnet compliant digital controls (refer to requirements under DIST-1).

MJHS-2 – Digital Controls Installation

- Replace all existing pneumatic controls in the building (excluding the gym AHUs, which are covered in MJHS-1) with new fully BACnet compliant digital controls (refer to requirements under DIST-1).

District-wide Improvements (Complete in 2016)

DIST-1 – Building Automation System Upgrade

- Install a Tridium-based non-proprietary, vendor neutral global network and associated controllers that will allow the district to have an open, vendor neutral system capable of accommodating 3rd party fully BACnet compliant controllers.
- Integrate existing digital controllers to remain (and any newly installed controllers) at MES and MJHS into the new vendor neutral system. For existing digital controllers which are on

an existing network but cannot be integrated, replace with new fully BACnet compliant digital controls.

- All new digital controllers shall be true native BACnet MS/TP or IP and be fully programmable. No application specific controllers are allowed.
- Provide complete physical point to point checkout of all new field devices installed.
- Provide web-browser and smartphone/tablet accessibility for the new controls system.
- Provide full copies of software to be left on site and given to the owner.

3.02 Alternate Scope of Work

- a. The RESPONDENT may provide any additional work that the RESPONDENT would like to offer for consideration to be implemented as part of this project. RESPONDENTS are encouraged to provide additional solutions that provide energy savings, replace aged equipment, and/or improve the learning environment.

3.03 Other Requirements

- a. It is the ENTITY'S expectation that there be no "change orders" to properly install the work described above and that the RESPONDENT cover all cost associated with this work in the Base Bid price, including unforeseen condition, errors and omissions. The RESPONDENT must specifically identify any potential work required to properly install the proposed work for which the RESPONDENT is unwilling to take responsibility.
- b. Identify all rebates that can be obtained from performing this work along with the cost to obtain the rebates.
- c. ENTITY desires that work be completed over the summer of 2016.

4.00 PROPOSAL FORMAT

4.01 Proposal Format

Proposals must be submitted in the format outlined in this section. For each proposal a minimum criteria checklist will be used in reviewing the proposal to determine if it is complete prior to actual evaluation. The ENTITY reserves the right to eliminate from further consideration any proposal deemed to be substantially or materially unresponsive or incomplete to the requests for information contained herein.

A. Table of Contents

Responses shall include a table of contents properly indicating the section and page numbers of the requested information.

B. Executive Summary

Responses shall include a concise abstract stating the respondent's overview of the project.

C. Company Profile

This section should include the following information on the RESPONDENT.

1. Company name
2. Address
3. Telephone number
4. Fax number
5. Contact person(s) for this project
6. Email address
7. Lead Personnel
 - a. List the Lead Personnel employed by the RESPONDENT involved in this project.
 - b. List key team members - designers and contractors that will be part of your design and installation team. Identify the work that will be designed in-house and work designed by a design partner.
8. References

- a. Each RESPONDENT must have completed (with at least one year of reported guaranteed savings results) a minimum of five (5) guaranteed energy savings projects with schools to be considered for this project. Provide the following reference information for at least five (5) completed projects with similar solutions and scope as those proposed for this project.
 - Project name
 - Owner contact
 - Description of work
 - Installed cost
 - Guaranteed annual savings
 - Actual annual project savings
 - Completion date

9. Energy Savings Results

- a. Provide a spreadsheet listing each job where the RESPONDENT has at least one year of reported guaranteed savings. Provide school name, project cost, date guarantee started, guaranteed annual savings, most recent actual savings.
- b. Provide a list of all Energy Star label K-12 schools that have resulted from energy efficiency gained from performance contracts with the ENTITY.
- c. List any projects that did not meet their annual energy guarantee and provide an explanation for the shortfall.

10. Litigation and Arbitration

- a. List any projects with schools with which the RESPONDENT has entered into litigation or arbitration with a school during the past 7 years. Provide a brief summary detailing the litigation/arbitration. Omission of any past litigation or arbitration will result in disqualification.

11. Financial Viability

- a. Successful RESPONDENT will be required to show evidence of financial viability prior to issuance of a contract.

D. Technical Approach

Section D should contain information about the RESPONDENT'S technical approach to meet the ENTITY'S energy efficiency, operating cost reduction and comfort objectives.

1. Needs & Solutions: Include a section explaining facility needs and solutions the RESPONDENT recommends for all proposed improvements.
2. Documentation: For any work where the RESPONDENT will be providing pricing, provide the following documentation for the scope of work being proposed.

- a. Provide at a minimum Design Development level drawings including detailed, architectural or engineering drawings for each improvement item.
- b. Provide a detailed equipment list for all equipment proposed. Provide a separate list per building in a table format providing manufacturer, type, model, size, and quantity. See “Table Example A” below for the format required.

Table Example A				
<i>Material and Equipment List</i>				
School Building				
Manufacturer	Equipment Type	Model Number	Size	Quantity
ABB	Variable Frequency Drives	ACH550	10 H.P. each	2
Trane	Air Handling Unit	T5000	5000 CFM	1
Boiler	High Efficiency Condensing Boiler	Hydrotherm	2 MBTU	2
Taco	Hot Water Pumps	FI4009C	10 H.P. each	2

- c. Failure to provide the required documentation above will result in the proposal being non-compliant.
3. Energy Savings Calculations: Provide complete energy savings calculations for any energy conservation measure included in the RESPONDENTS proposal. Additionally, provide the actual Energy Guarantee for this project in the Appendix of your proposal that includes the energy and operational savings calculations for the Base Bid project along with all associated terms and conditions.
 4. Installation Approach: Describe how the RESPONDENT intends to implement the installation phase of the project in terms of approach, priorities, philosophies, timelines, project schedule and commissioning. Included a detailed project schedule in this section of the proposal.
 5. Training: Explain the RESPONDENT’s plan for providing training and support services to the ENTITY.

6. Performance Assurance: Described in detail the performance assurance processes that the RESPONDENT intends to utilize to insure the building operates at peak performance both at the completion of the installation phase and throughout the contract term.

E. Financial Aspects

Section E should contain the financial components of the proposed work as identified below.

1. Pricing:
 - a. Describe in detail the process that the RESPONDENT used or intends to utilize to obtain the best prices for the ENTITY both initially and if additional work is requested by the ENTITY after Contract award. Explain why this is the best approach.
 - b. Include the firm **total** cost (including all design, construction and management costs) and guaranteed energy savings amount for all proposed improvements for each facility. The RESPONDENT must provide the cost, savings and simple payback for each improvement being proposed as shown in the format below. Proposals not including the cost and savings breakdown as shown below will be rejected.

IMPROVEMENT DESCRIPTION	COST	Utility Rebate	OPERATIONAL SAVINGS	ENERGY SAVINGS	SIMPLE PAYBACK
BASE SCOPE					
A. Elem School					
1. Boiler Replacement	\$2,100	\$100	\$20	\$180	10.0
B. Intermediate School					
1. AHU Upgrades	\$1,400	\$50	\$20	\$130	9.0
ALTERNATE BIDS					
A. Elem School					
1. Misc Improvement	\$2,000	\$0	\$20	\$180	10.0

- c. A requirement of this project will be complete open book pricing for all future work. One component of the open book pricing will include the ENTITY’s staff involvement in the bid opening of all contractor, and supplier bids including those equipment suppliers that may compete with the RESPONDENT. In addition the open book pricing shall explicitly show any and all components of the cost of work associated with any improvements.

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2. Energy Savings: The term for this contract is 10 years. For the purpose of ensuring that all measures are operating efficiently, project performance shall be measured, verified, reported and evaluated using Option C from the M&V Guidelines: Measurement and Verification for Federal Energy Projects Version 3.0 for gas savings and Option A for all other proposed savings. This process will be utilized and reported for ten (10) years. Provide your proposed cost per year for the 10 year monitoring period in the Financial Aspects / Pricing section of the proposal.
3. Project Funding: Project funding will be developed by the ENTITY after selection of the RESPONDENT.

5.00 PROPOSAL SELECTION

5.00 Proposal Selection Criteria

- a. **Minimum Criteria:** The ENTITY reserves the right, in its sole discretion, to reject any proposal that does NOT meet the minimum criteria described in this RFP, to give consideration to failure to follow the RFP format or to waive any informality, irregularity or defect. The minimum criteria are identified on the RFP Compliance Verification Form, which is attached and labeled Exhibit 2. The RFP Compliance Verification Form must be completed and signed by the RESPONDENT.
- All proposals shall be deemed final, conclusive and irrevocable. Once opened, no proposal shall be subject to correction or amendment for any error or miscalculation. Qualified Providers must satisfy themselves, upon examination of these requirements, as to the intent of these requirements. After the submission of the proposal, no complaint or claim that there was any misunderstanding in regard to the proposal will be entertained from any party. The ENTITY may further refine and negotiate the scope of work with the successful Qualified Provider and adjust the total project cost.
- b. **Proposal Review:** Each Proposal that the ENTITY accepts for review, will be initially evaluated on the criteria shown below.

A. **Ability to Successfully Implement Project**

1. Reputation of the RESPONDENT for successfully implementing energy savings projects and providing proven energy savings with scopes of work similar to those being considered for this project.
2. Background of the team members responsible for implementing the proposed Performance Contract. This includes in-house engineers, project managers, technicians, and design or contractor team members responsible for the designing, managing, programming and commissioning of the project.
3. Past performance with K-12 schools is a critical component in the selection process of this project. Each RESPONDENT must have completed a minimum of five (5) performance contracts (with at least one year of reported guaranteed savings results) with K-12 schools to be considered for this project. References will not be considered for projects performed by the RESPONDENT'S employees while working with an employer different than the RESPONDENT.

B. **Scope and Associated Cost of Work**

1. Amount of work being offered in terms of cost of work, quantity of work and value to ENTITY of work being proposed for the Base Bid scope of work.
2. Quality of the equipment and materials being proposed for the Base Bid scope of work.

C. Technical Approach

1. Design of the proposed solutions.
2. Depth, breadth and detail of the engineering.
3. Effectiveness of the proposed solutions related to energy savings, operational / maintenance improvement and learning environments.

Preference will be given to proposals that include a detailed and sound technical approach to meeting the ENTITY'S objectives.

D. Other Financial Consideration

1. Pricing structure and process to be utilized to price any work negotiated after contractor selection.
2. Energy savings approach and past performance related to delivering energy efficiency at a high enough level to obtain Energy Star certification for their past K-12 school customers.

E. Performance Guarantees

1. Amount of true and verifiable guaranteed energy savings.
2. Accuracy of the energy savings calculations included in the Proposal.
3. Value of the energy savings guarantee (Guarantee) provided with the Proposal in terms of how accurately will the energy savings be measured based on the terms of the Guarantee and how likely is it that the ENTITY will receive a payment from the RESPONDENT if a true shortfall occurs.
4. Any additional guarantees for system performance after implementation of the improvements.

F. Quality, Completeness and Compliance of the RFP Response

1. Quality of the proposal in terms of depth, breadth, detail and format of information provided.
2. Completeness of the proposal in relationship to the requirements of the Performance Contracting RFP.
3. Compliance to the RFP requirements

RFP Exceptions Form

The RESPONDENT must identify any exceptions they want to make to the RFP requirements on this "RFP Exception Form". Exception may result in a rejection of the Proposal, reduction in evaluation or neither, depending on the ENTITY'S understanding of how harmful the exceptions will be to the ENTITY on this project. The ENTITY shall be the sole judge of the impact of any exceptions and shall not debate their determination with a RESPONDENT.

List all exception below including three components. First, state the language that is being excepted. Second, provide language the RESPONDENT would propose replace the excepted language. Lastly, provide an explanation for why the RESPONDENT is taking exception to the RFP language and how the proposed language will not be harmful to the ENTITY.

ENTITY TAKES NO EXCEPTIONS:

I, _____, an authorized representative of the RESPONDENT, take no exceptions to the RFP requirements and hereby verify that we will comply with all terms, conditions and requirements contained within the RFP.

Name of Authorize Representative

Date

Title

ENTITY TAKES EXCEPTIONS:

- 1. Page:
 - a. Excepted language:
 - b. Proposed language:
 - c. Explanation for excepted language:

- 2. Page:
 - a. Excepted language:
 - b. Proposed language:
 - c. Explanation for excepted language:

- 3. Page:
 - a. Excepted language:
 - b. Proposed language:
 - c. Explanation for excepted language:

- 4. Page:
 - a. Excepted language:
 - b. Proposed language:

c. Explanation for excepted language:

I, _____, an authorized representative of the RESPONDENT, understand that taking the exceptions identified above to the RFP requirements may cause our Proposal to be rejected or consideration to be reduced. I understand that the ENTITY will be the sole judge of the impact of the exceptions listed above and understand that the ENTITY shall not contest their determination.

Name of Authorize Representative

Date

Title

RFP Compliance Verification Form

Each RESPONDENT must acknowledge that they understand the following RFP requirements are the Minimum Requirements to be considered. Any proposals not including these Minimum Requirements may be rejected.

MINIMUM REQUIREMENTS:

1. RESPONDENT certifies that they have read the General Conditions and agrees to fully comply with the terms specified therein. Any exception that the REPSONDENT wishes to take the General Conditions shall be specifically listed on the attached RFP Exceptions form, Exhibit 1.
2. RESPONDENT has included a Base Bid offering including the Base Bid scope of work identified with the cost, energy savings and operational savings of each ECM. Omission of any component of the Base Bid scope of work or not providing the individual cost and savings per ECM will result in the Proposal being rejected.
3. RESPONDENT certifies that they have completed a minimum of five (5) K-12 school performance contracts of similar size and scope as proposed here and have included a complete list of the RESPONDENTS most recent K-12 school performance contracts not to exceed a total of 100 references.
4. RESPONDENT shall identify any energy savings shortfalls with K-12 schools over the past seven years with an explanation for why the shortfalls occurred and how the shortfalls were remedied.
5. RESPONDENT shall include an explanation of all past arbitration or litigation with K-12 schools over the past seven years. Omission of any of these events will result in rejection of the Proposal.
6. RESPONDENT shall include detailed drawings and an equipment list identifying all equipment being proposed on the Proposal. Equipment descriptions shall include manufacturer name, equipment type and size.
7. RESPONDENT shall include a completed Guarantee as an attachment to the Proposal including all calculations, energy and operational savings guaranteed amounts, terms, conditions and the cost to provide the services included in the Guarantee over the Guarantee term. Omission of any of a completed Guarantee including these details will result in rejection of the Proposal.

I acknowledge and verify that the Minimum Requirements above have been met in the RFP response.

Date: _____ Signed: _____

Title: _____

VENDOR INFORMATION & CERTIFICATION

COMPANY _____

Representative _____

E-mail address _____

Address _____

Local Phone _____

Toll Free Phone _____

Payment Address _____

Date of Quotation _____

Quotation reference number, if required _____

I have read the specifications and I understand the content and my firm's obligations with regard to providing the specified services and products. I hereby submit the attached proposal. The prices being submitted shall be binding on our firm until 90 days from the date proposals are due, or until I am notified that I am not a successful vendor, whichever comes first. If my firm is awarded a contract as a result of the quoted prices, or subsequently negotiated prices, I guarantee that the prices shall be the maximum amount that my firm may charge for the products identified.

I certify that I have the authority to sign this proposal and bind my firm to the prices specified and the obligations associated with the award of all or any part of the items so specified.

I acknowledge receipt of _____ supplements.

I acknowledge receipt of _____ addendum.

Date: _____ Signed: _____

Title: _____

INSTALLATION CONTRACT

Contract No.: _____

This INSTALLATION CONTRACT (the "Contract") is made as of the _____ day of _____ 20__, by and between _____ ("Contractor") and _____ ("Owner"), concerning the following:

Owner:

**Qualified Provider/
Contractor:**

Project: _____

Scope of Work: Contractor proposes to provide energy conservation measures ("ECMs") for Owner at the Project, as described in the Proposal to Owner dated _____, and attached hereto as **Exhibit A** (the "Proposal"), and as further described in the Improvement List, dated _____, and attached hereto as **Exhibit B** (the "Improvement List").

Contractor shall cause the ECMs to be installed in accordance with the Proposal and Improvement List. Contractor has guaranteed the savings due to the installation of the ECMs as set forth in the Proposal and the Performance Guarantee, attached hereto as **Exhibit C** (the "Guarantee").

Contract Price: _____ Dollars (\$_____)

Terms of Payment: Monthly progress based payments, pursuant to the terms of Paragraph 4 below.

Exhibits:
"A": Proposal
"B": Improvement List
"C": Performance Guarantee

Contractor and Owner agree to the terms above and as set forth below in the following Terms and Conditions and in the Exhibits attached hereto, all of which are a material part of this Contract. The Contract, with its attachments and exhibits, is the full agreement between Contractor and the Owner as of the date it is signed. All previous conversations, correspondence, agreements, or representations not included in the Contract are not part of the Contract between Contractor and the Owner. This Contract shall become effective on the date first above written notwithstanding different dates of execution hereof.

OWNER:

QUALIFIED PROVIDER/CONTRACTOR:

By: _____
Signature

By: _____
Signature

Printed Name and Title

Printed Name and Title

TERMS AND CONDITIONS

1. **SCOPE OF WORK.** Contractor shall provide Owner with the work and the services set forth in the Scope of Work above ("Work"), except to the extent specifically indicated in the Contract Documents to be the responsibility of others. Contractor shall supervise and direct the Work and shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work. Contractor shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for the proper execution and completion of the Work and Services, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Owner and Contractor will mutually agree upon any required field utilities or other work, equipment or services to be provided by the Owner. In resolving conflicts, errors, discrepancies and disputes concerning the Scope of Work to be performed by Contractor, Contractor's Improvement List and Contractor's plan, plan notes and scope documents generated therefrom, shall be given precedence over all other documents.
2. **CONTRACT DOCUMENTS.** The Contract Documents are comprised of the following: (1) this Contract; (2) All written modifications, addenda, amendments, scope modifications or additions to this Contract; (3) Proposal; (4) Performance Guarantee; and the (5) Improvement List.
3. **MUTUAL OBLIGATIONS.** Owner and Contractor commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to realize the benefits afforded under the Contract Documents. Owner shall, throughout the performance of the Work, cooperate with Contractor and perform its responsibilities, obligations and services in a timely manner to facilitate Contractor's timely and efficient performance of the Work and so as not to delay or interfere with Contractor's performance of its obligations under this Contract.
4. **CONTRACT PRICE AND PAYMENT.** The total price for Contractor's Work under this Contract shall be as set forth above, subject to adjustments as set forth herein (the "Contract Price"). All payments made by Owner to Contractor shall be made via wire transfer. Within ten (10) days of execution of the Contract, Owner shall pay to Contractor five percent (5%) of the Contract Price as a mobilization fee and one hundred percent (100%) of the engineering for the Project, as specified in the Proposal. Thereafter, the balance of the Contract Price shall be paid to Contractor in monthly progress payments on or before the ____ of each month for the value of work completed plus the amount of materials and equipment suitably stored, either on site or off-site the previous month, less the aggregate of previous payments to Contractor. Sales of materials are payable in cash on delivery of the goods. There shall be no retainage withheld from payments made under this Contract. Final payment, constituting the entire unpaid balance for the Work, shall be due 30 days after the Work described in this Contract is substantially complete, except for 150% of the value of any agreed upon punch list items remaining at that time. "Substantial Completion" is defined as the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Any amounts withheld for punch list shall be due 30 days after the punch list items are completed. Any performance guarantee, as set forth in the Performance Guarantee, shall not commence or become effective until such final payment is received by Contractor. No back charges or claim of

Owner for services shall be valid except by the agreement in writing by Contractor before work is executed. In the event that the Owner fails to make any monthly progress payment or is otherwise overdue in making such payment, and upon fourteen (14) days written notice to the Owner, Contractor shall be entitled to stop work without prejudice to any other remedy it may have, and Owner shall be responsible to Contractor for any increased costs in demobilization and remobilization in stopping and re-commencing the Work. In the event of such work stoppage and start up, Contractor and Owner agree to cooperate in adjusting any schedule requirements so as to endeavor to minimize the impact on the Owner's operations of its facility. All sums not paid when due shall bear interest at the rate of 1½% per month from due date until paid or the maximum legal rate permitted by law whichever is less; and Contractor is entitled to recover all costs of collection, including Contractor's attorney fees, from the Owner.

5. **ACCESS TO JOB-SITE.** Owner and Contractor shall mutually agree upon the access to the jobsite necessary to perform the Work, as well as any preparation of work areas so as to be acceptable for Contractor's Work under this Contract. Contractor and Owner will cooperate with each other to coordinate such access and preparation of the work areas. Contractor will not be called upon to start work until the mutually agreed upon access to the jobsite is provided and until sufficient areas are ready to ensure continued work until job completion. The performance of Contractor's Work is contingent upon such agreed access to the job site and to the areas whereby Contractor is to perform its work.
6. **SCHEDULE.** After execution of this Contract, Contractor shall be given a reasonable time in which to commence and complete the performance of the Work under this Contract ("Contract Time"). Contractor shall not be liable or responsible for any loss, damage, costs, delay, default, or injury that is caused by acts, omissions, conditions, events or circumstances beyond its control or due to no fault of Contractor or those for whom the Contractor is responsible, or due to any act, omission or neglect of the Owner or anyone under the Owner's control, including but not limited to: delays, hindrances or interferences caused by Owner, architect and/or engineers, or other contractors, subcontractors, suppliers or third parties; Concealed or Unknown Subsurface Conditions, Hazardous Conditions, changes ordered in the Work, armed conflict or economic dislocation resulting therefrom; embargos, shortages of labor, equipment or materials, production facilities or transportation; labor difficulties or disputes, civil disorders of any kind; action of civil or military authorities; vendor priorities and allocations, fires, floods, accidents, unusual or unanticipated weather conditions or precipitation and acts of God. IN NO EVENT SHALL Contractor BE LIABLE FOR BUSINESS INTERRUPTION LOSSES OR CONSEQUENTIAL OR SPECULATIVE DAMAGES.
7. **WARRANTY.** Contractor warrants that materials and equipment furnished by Contractor will be of good quality and new; that the Work will be free from defects, and to the extent consistent with the standard of reasonable care and skill ordinarily used and exercised by contractors such as Contractor in performing work for projects of the same type, kind, nature, complexity and size as the Project covered by this Contract, and as otherwise not inherent in the quality required or permitted; and that the Work will conform to the requirements of this Contract. Contractor warrants that the Work shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from the date of Substantial Completion ("Warranty Period"). THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. During the Warranty Period, upon fourteen days (14) written notice from the Owner, Contractor shall, at its option, repair or replace the defective Work. Contractor's warranty obligations shall lapse after the running of the Warranty Period. These warranties do not extend to any Work that has been repaired by others, abused, altered, misused, or that has not been properly and reasonably maintained. Contractor shall not be responsible for damage to its work caused by others. Any repair work necessitated by such damage caused by others will be considered as an order for extra work. Contractor will not be responsible for special, incidental, or consequential damages.

Nothing in the warranties provided herein are intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section. Upon expiration of the Warranty Period, Contractor will assign the rights to any manufacturer's warranty and all other rights against manufacturers of materials and equipment and Owner accepts such assignment for all materials and equipment incorporated into the Work. The Owner agrees that after expiration of the Warranty Period, its sole remedy for defects or failure of materials or equipment is directly against such manufacturers and waives all rights against Contractor for

any defects or failures of such materials or equipment following Substantial Completion. Contractor will provide the Owner with all manufacturers' warranties upon expiration of the Warranty Period. However, Contractor's failure to do so does not waive or modify this provision.

8. **CONCEALED OR UNKNOWN CONDITIONS.** Should concealed or unknown subsurface conditions be encountered in an existing structure during the performance of Contractor's Work that are of an unusual nature, differing materially from those ordinarily encountered and not generally recognized as inherent in work of the character provided for in this Contract, the Contract Price shall be equitably adjusted upon claim by the Contractor for any increased costs.
9. **OWNER SCOPE MODIFICATIONS.** Contractor agrees not to seek any change orders for additional costs incurred in performing the Work pursuant to the Scope of Work set forth above. However, in the event that the Owner modifies the Scope of Work and directs Contractor to perform any additional or extra work outside the Scope of Work as set forth above, the Contract Price and Contract Time shall be adjusted accordingly. Contractor shall not be obligated to perform scope modifications, including additional or extra work, unless Contractor shall receive a written directive, signed by an authorized representative of Owner; provided, that work performed without the written directive of Owner, but made necessary by an emergency involving an immediate threat to the safety of persons or property, or the non-performance of which would impair the efficiency, scheduling or coordination of the work of Owner, Contractor or Contractor's subcontractors, shall nevertheless serve as a basis for revising the Contract Price or Contract Time in accordance with this paragraph. The amount to be paid by Owner to Contractor for any scope modifications, including additional or extra work, or the amount to be allowed by Contractor, shall be determined as provided under the terms of the Contract, except, notwithstanding any provisions to the contrary in the Contract or elsewhere in the Contract Documents, Contractor shall be entitled to an allowance of ___ percent (___%) for overhead and an allowance of ___ percent (___%) for profit, in addition to its actual costs for materials and labor on all scope modifications, including additional or extra work.
10. **MATERIALS.** All materials shall be furnished in accordance with the respective industry tolerance of color variation, thickness, size, finish, texture and performance standards.
11. **TAXES, PERMITS, AND FEES.** Contractor shall be responsible for obtaining all permits and related permit fees associated with the Work. Contractor shall pay sales, consumer, use, and other similar taxes and shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution. The Owner shall be responsible for securing any necessary approvals, easements, assessments, or zoning changes and shall be responsible for real estate and personal property taxes where applicable.
12. **OWNER PROJECT CRITERIA.** In the event that Owner furnishes any criteria or design requirements, such as conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements for the Project which may describe the Owner's program requirements and objectives for the Project, including but not limited to the character, scope, use, space, price, time and scheduling requirements, relationships, forms, size and appearance of the Project, site and expandability requirements, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts, submittal requirements and other requirements governing Contractor's Work (defined herein collectively as "Owner Project Criteria"), then Contractor shall have the right to rely on the information contained in the Owner's Project Criteria in performance of the Work, including the preparation of any drawings, plans and specifications.
13. **OWNER SERVICES AND INFORMATION.** Owner shall provide, at its own cost and expense, for Contractor's information and use the following, all of which Contractor is entitled to rely upon in performing the Work: (1) Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines; (2) Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site; (3) Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper construction of the Project and enable Contractor to perform the Work; (4) A legal description of the site;

(5) To the extent available, as-built and record drawings of any existing structures at the Site; 6) To the extent available, environmental studies, reports and impact statements describing the structural and mechanical systems, chemical, air and water pollution and environmental conditions, including Hazardous Conditions, in existence at the Site; and (7) any other mutually agreed upon services and information.

14. **OWNER REPRESENTATIONS.** Owner represents, warrants and agrees that (i) it has obtained any consents, approvals, permissions and easements necessary for the work, excluding state and local permits and design releases being furnished by Contractor pursuant to Paragraph 11, and has furnished all bonds or financial security called for by governmental authorities; (ii) job and site conditions are such that the work is ready to be started in normal course; (iii) there are no concealed or unknown subsurface conditions in the existing structure and there are no unusual soil or subsurface conditions at the site and the area where the work is to be installed consists of undisturbed virgin soil; (iv) if the work is dependent upon or is to be undertaken in conjunction with other work, such other work shall be performed so as to permit Contractor to perform the work without unusual or extraordinary effort or cost and in a normal uninterrupted single shift operation; (v) it is the owner of the site; and, (vi) all tap in, connection and other types of fees and charges have been fully paid.
15. **FINANCIAL ASSURANCES.** If requested by Contractor, Owner shall furnish reasonable evidence satisfactory to Contractor, prior to signing this Contract, or any time thereafter, that sufficient funds are available and committed for the entire cost of the Project, including payment in full of the Contract Price. If Contractor elects to proceed with work without having received such evidence, it may stop work upon ten days notice if such evidence has not been furnished within five days after such request.
16. **LIQUIDATED DAMAGES.** Owner shall make no demand for liquidated damages for delays or actual damages for delays in any sum in excess of such amount as may be specifically named in this Contract and no liquidated damages may be assessed against Contractor for delays or causes attributed to other Contractors or arising outside the scope of this Contract.
17. **CLEANUP.** Contractor shall keep the premises and the surrounding area free from accumulation of waste materials or rubbish caused by the Work and, upon completion of the Work, Contractor shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials. Contractor agrees at all times to keep the job site clean of debris arising out of its own operations, and Owner shall in no event back charge Contractor for the Owner's cleanup costs without Contractor's written consent.
18. **SAFETY.** Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to safety of persons or property. Contractor's responsibility for safety under this Section is not intended in any way to relive any of Contractor's subcontractors, suppliers or second or third tier subcontractors and suppliers of their own legal obligations and responsibility for complying with any applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to safety of persons or property, and for taking all necessary measures to implement and monitor reasonable safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.
19. **HAZARDOUS MATERIALS.** Unless specifically noted in the Contract, Contractor is not responsible for any Hazardous Conditions, Materials or Substances encountered on site. Unless specifically noted in the Contract, Contractor's obligations expressly exclude any Work of any nature associated or connected with the identification, abatement, cleanup, control, removal, or disposal of Hazardous Conditions, Materials or Substances, including but not limited to asbestos in or on the premises. Upon encountering any Hazardous Conditions, Materials or Substances, Contractor will stop work until the Owner takes the necessary measures necessary to ensure that the Hazardous Conditions, Materials or Substances have been remediated or rendered harmless. Such measures and remediation are the responsibility of the Owner, not Contractor.
20. **CONTRACTOR INSURANCE.** Prior to commencing the Work, Contractor shall provide a certificate of insurance to the Owner showing its insurance coverage, and Contractor shall maintain such insurance in full force and effect at all times until the Work has been completed, in the following minimum amounts:

COVERAGES

LIMITS OF LIABILITY

Commercial General Liability

> General Aggregate	\$ 2,000,000
> Product & Completed Operations Aggregate	\$ 2,000,000
> Personal & Advertising Injury	\$ 1,000,000
> Each Occurrence	\$ 1,000,000
> Automobile Liability- Each Occurrence	\$ 1,000,000
> Workers Compensation	\$500,000/\$500,000/\$500,000
> Umbrella Policy in addition to individual coverage	\$10,000,000.

The Owner and its consultants shall be additional insureds on the Contractor's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory as to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or policy limits not more than the amounts required under this Contract.

The insurance carriers shall have no right of subrogation against Owner and its consultants and their respective officers, directors, consultants, agents, and employees, and Contractor shall obtain from each of its subcontractors a waiver of subrogation on all insurance coverages required, including Commercial General Liability, Workers Compensation, Employers Liability and Automobile Liability, in favor of the parties identified herein with respect to losses arising out of or in connection with the Work on the Project.

21. **OWNER'S INSURANCE.** The Owner shall assume full responsibility for any risk of loss to the Work. The Owner shall also procure and maintain property insurance upon the entire Project and premises, including Builder's Risk coverage, in an amount equal to the total value of the entire Project and premises, including the Work, on all real and personal property, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance shall insure against the risks and perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, airborne property, debris removal and other perils or causes of loss, including physical loss or damage to the Work and any materials or equipment in transit, at the Project Site or at another off-site storage location. The Owner shall also purchase and maintain such mechanical breakdown insurance including startup and testing, as may be required or necessary, which shall include the interests of the Owner, Contractor and Contractor's subcontractors.

Each insurance policy shall name Owner as an insured and Contractor or its Assignee(s), including subcontractors and sub-subcontractors, as an additional insured and loss payee, as appropriate, and shall contain a clause requiring the insurer to give Contractor or its Assignee at least thirty (30) days prior written notice of any alteration in the terms of such policy or the cancellation thereof. The proceeds of any such policies shall be payable to Owner and Contractor or its Assignee(s), as their interests may appear. Upon acceptance of the Project, and any energy conservation measures ("ECM's"), and upon each insurance renewal date, Owner shall deliver to Provider a certificate evidencing such insurance upon request of Contractor. In the event of any loss, damage, injury or accident involving the Work, Owner shall promptly provide Provider with written notice thereof and make available to Provider all information and documentation relating thereto.

22. **MUTUAL WAIVER OF SUBROGATION.** The Owner and Contractor mutually waive all rights against each other and subcontractors and sub-subcontractors of Contractor, for damages covered by insurance provided under Paragraph Nos. 20 and 21 and herein, except such rights as they may have to the proceeds of such insurance held by the Owner and Contractor as trustees. Contractor shall require similar waivers from its subcontractors.
23. **BONDS.** Prior to commencement of the Work, Contractor shall execute and deliver to Owner a 100% Performance Bond and 100% Payment Bond in an amount equal to the full Contract Price at the time this Contract is executed. The bond will be written with a company licensed to transact business in the State where the work is located and has a minimum A.M. Best Rating of A VII.

Contractor shall also execute and deliver to Owner an Energy Savings Performance Bond not less than 30 days of closing final acceptance of the Project and Contractor’s Work and upon payment in full of the entire Contract Price. The Energy Savings Performance Bond shall assure the faithful performance of the annual Guaranteed Savings Amount, (“GSA”) as provided in the Performance Guarantee Agreement (the “Guarantee”). The Energy Savings Performance Bond shall only be required to cover a two year portion of the GSA; provided, however, Contractor shall be responsible to have an Energy Savings Performance Bond in place throughout the Guarantee, subject to the terms and conditions of the Guarantee.

Contractor shall place sufficient monies into an interest bearing escrow account for the purpose of paying the premiums for the Energy Savings Performance Bond through the last year of the Guarantee. Escrow account funds shall only be used for the purpose of paying said premiums while the Guarantee is in effect. If the escrow becomes depleted of funds prior to the last Energy Savings Performance Bond being executed, Contractor shall provide additional funding to the escrow account as required. After the Guarantee has been fully satisfied, any funds remaining in the escrow account shall revert to Contractor.

Contractor shall not share security in the performance guarantee with anyone other than the Owner.

- 24. **OWNER’S REPRESENTATIVE.** The Owner designates the following individual as its Owner’s Representative, who has authority to sign, execute and issue all documents or documentation on behalf of the Owner, and otherwise bind the Owner with respect to all matters requiring Owner’s decision or approval:

Name: _____
 Title: _____
 Address: _____
 Phone: _____
 Fax: _____
 Email: _____

Owner’s Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Contractor to fulfill its obligations under this Contract. Owner’s Representative shall also provide Contractor with prompt notice if it observes any failure on the part of Contractor to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work.

- 25. **CONTRACTOR’S REPRESENTATIVE.** Contractor designates the following individual as its Contractor’s Representative, who has authority to sign, execute and issue all documents or documentation on behalf of Contractor, and otherwise bind the Contractor with respect to all matters requiring Contractor’s decision or approval:

Name: _____
 Title: _____
 Address: _____
 Phone: _____
 Fax: _____
 Email: _____

- 26. **DISPUTE RESOLUTION.** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Contractor and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. Contractor and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Contractor’s Representative and Owner’s Representative. If a dispute or disagreement cannot be resolved through Contractor’s Representative and Owner’s Representative, senior executives of Contractor and the Owner, upon the request of either party, shall

meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. If after the meeting between senior executives, the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. If mediation is unsuccessful, any and all disputes under this Contract shall be decided by confidential arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. Such arbitration shall be conducted in Indianapolis, Indiana and governed by Indiana law.

27. **INDEMNIFICATION.** Contractor, to the fullest extent permitted by law, shall indemnify and hold harmless Owner, its officers, directors, employees and agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Contractor or its subcontractors or suppliers, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable. Any such indemnification obligation of Contractor shall be excused or discharged to the extent that the claim, damage, loss and expense, or event giving rise to the demand for indemnification, defense and hold harmless is caused in whole or in part by the acts or omissions of the Owner or any party sought to be indemnified. Likewise, the Owner, to the fullest extent permitted by law, shall indemnify and hold harmless Contractor and any of Contractor's officers, directors, employees, or agents from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Owner, Owner's separate contractors, or anyone for whose acts any of them may be liable. The Owner shall waive any rights of subrogation with regard to any damage to all real and personal property until all of the Work has been completed and accepted by the Owner.

28. **EVENTS OF DEFAULT.**

(a) By Owner. The term Event of Default, as used in this Contract with respect to Owner, means the occurrence of any one of more of the following events: (i) Owner fails to make any payment as it becomes due in accordance with the terms of this Contract, and any such failure continues for five (5) days after the due date thereof; (ii) Owner fails to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure is not cured within ten (10) days after written notice thereof by Contractor; (iii) the discovery by Contractor that any statement, representation or warranty made by Owner, legal, financial or otherwise, in this Contract or in any document ever delivered by Owner pursuant hereto or in connection herewith is false, misleading or erroneous in any material respect; or (iv) Owner becomes insolvent, is unable to pay its debts as they become due, makes an assignment for the benefit of creditors, applies or consents to the appointment of a receiver, trustee, conservator or liquidator of Owner or of all or a substantial part of its assets, or fails to provide the financial assurances required by Paragraph No. 15.

(b) By Contractor. The term Event of Default, as used in this Contract with respect to Contractor, means the occurrence of any one or more of the following events: (i) Contractor's failure to perform its obligations in the manner and within the time prescribed by the terms of the Proposal subject to the provisions of Paragraph No. 6; (ii) failure to pay, within 30 days of notice that payment is due, the amount required by the terms of the Guarantee; or (iii) failure to repair or replace defective equipment, material or workmanship within the Warranty Period within 60 days after receipt of notice from the Owner.

29. **REMEDIES.** Upon the occurrence of an Event of Default, either party may, at its option, exercise any right, remedy, or privilege which may be available to it under applicable law, including the right to (i) proceed by appropriate action to enforce the terms of this Contract, (ii) recover damage for the breach of this Contract, and (iii) rescind this Contract as to any or all of the ECM's. In addition, the parties shall remain liable for all covenants and indemnities under this Contract, and for all attorney fees and other costs and expenses, including court costs,

incurred with respect to the enforcement of any of the remedies listed above or any other remedy available to either party to this Contract.

30. **MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES.** The Owner and Contractor mutually waive any and all claims against each other for any and all consequential and/or speculative damages or losses and incidental costs and expenses arising out of or relating to the Contract and whether arising in contract, warranty, tort (including negligence), strict liability or otherwise. This mutual waiver includes:
- (a) damages incurred by the Owner for rental expenses, for losses of use, business interruption, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
 - (b) damages incurred by Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.
31. **OWNER'S REMEDIES.** The Owner's remedies with respect to equipment found to be defective in material or workmanship, or the installation thereof, shall be limited exclusively to the right of repair or replacement of such defective equipment. IN NO EVENT SHALL Contractor BE LIABLE FOR CLAIMS (INCLUDING BUT NOT LIMITED TO CLAIMS BASED UPON CONTRACT, STATUTE, TORT (NEGLIGENT OR INTENTIONAL), STRICT LIABILITY OR EXPRESS OR IMPLIED WARRANTY) FOR ANY OTHER DAMAGES, WHETHER DIRECT, IMMEDIATE, FORESEEABLE, CONSEQUENTIAL, OR SPECIAL OR FOR ANY EXPENSES INCURRED BY REASON OF THE USE OR MISUSE OF EQUIPMENT, OR FAILURE OF SUCH EQUIPMENT, REGARDLESS OF THE CONFORMIITY WITH THE TERMS AND CONDITIONS THIS CONTRACT.
32. **ENFORCEMENT OF CONTRACT.** In the event that either party is required to enforce any of the terms and conditions of this Contract, or is entitled to recover from either party any damages or moneys, then such prevailing party shall be entitled to recover its attorney fees incurred for all investigation, negotiation, litigation, arbitration and other such services commonly performed by attorneys, and all court costs, fees paid to experts, arbitration fees and similar expenses.
33. **MODIFICATIONS.** Additions, deletions, and modifications to the Contract may be made upon the mutual written agreement of the parties. Such additions may include proposals from Contractor for additional Work.
34. **NOTICES.** All notices or communications related to this Contract shall be in writing and shall be deemed served if and when sent by email, facsimile, U.S. mail or hand delivery to the representative listed in Paragraph Nos. 24 and 25 above..
35. **WAIVER.** No action or failure to act by the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.
36. **SEVERABILITY.** Every provision of the Contract is intended to be severable such that, if any term or provision hereof is illegal or invalid for any reason whatsoever, such provision shall be severed from the Contract and shall not affect the validity of the remainder of the Subcontract.
37. **CONTROLLING LAW.** This Contract, and all matters arising out of or relating to it, shall be governed by and construed in accordance with the law of the State of Indiana. Venue and forum for any action or proceeding shall be Indianapolis, Indiana.

END OF DOCUMENT