



PURCHASING DEPARTMENT
1772 County Services Parkway
Marietta, Georgia 30008-4012
(770) 528-8400/FAX (770) 528-1154

Mark Kohntopp
INTERIM DIRECTOR

ADDENDUM No. 3

**Sealed Bid # 11-5553
Request for Proposal
Energy Retrofit Contracting Services**

DATE: December 21, 2010

Page 1 of 2

The following addendum hereby amends and/or modifies the Proposal Documents and specifications as originally issued for this project. All proposers are subject to the provisions of this Addendum.

Proposers shall acknowledge receipt of this addendum.
Include this original form inside your proposal package.

This Addendum consists of:

- Question submitted in writing up to date
- Attachment E – Sample Contract

All bids must be received before 12:00 (noon) by the Bid Opening date. Bids shall be delivered to Cobb County Purchasing Department, 1772 County Services Parkway, Marietta, GA 30008.

Electronic / faxed bid response will not be considered.

I acknowledge that I have received Addendum No. 3

**Sealed Bid # 11-5553
Request for Proposal
Energy Retrofit Contracting Services**

Company Name

Signature

Date Sent to Purchasing

Please Print Name

Please sign, date, and return this form ONLY to:
Cobb County Purchasing Department
Fax #: 770-528-1154
E-Mail: purchasing@cobbcounty.org

**Cobb County SEALED BID 11-5553
Energy Retrofit Contract Services**

ADDENDUM #3 – DATED December 21, 2010

BIDDERS ACKNOWLEDGE RECEIPT OF ADDENDA BY INSERTING THEIR NUMBER AND DATE ON THE BID FORM. FAILURE TO DO SO MAY SUBJECT BIDDER TO DISQUALIFICATION. ADDENDA FORM PART OF THE CONTRACT DOCUMENTS.

IN THE EVENT OF A CONFLICT BETWEEN THESE ADDENDUM ITEMS AND THOSE IN THE OTHER PARTS OF THE CONTRACT DOCUMENTS, THESE ADDENDUM ITEMS SHALL TAKE PRECEDENCE AND GOVERN.

Item # 1: Questions from Plan Holders:

Q: We are looking at the Cobb County RFP for Energy Retrofit Contracting Services (11-5553). In the RFP there is reference to an "Attachment E" (Sample Energy Retrofit Contract). Can you guide me to where I may find the Sample Energy Retrofit Contract - Attachment E?

A: A Sample Energy Retrofit Contract is included with this addendum. See Item #2 below.

Q: Are there any plans and specifications (both indoor and outdoor) for all of the facilities/areas listed in the RFP?

A: No plans or specifications will be provided with the RFP documents.

Q: Cobb County has moved up the response date for this sealed bid to 12/28 from 12/30. Both of these dates pose a challenge for any company that responds to this RFP given the holidays. Would you please consider extending the due date to January 7th? We feel it is in Cobb's best interest to allow respondent's the time to produce a quality response.

A: The apparent moving up of the date to Dec. 28th was an inadvertent error corrected in Addendum #2. The due for receipt of bids is 12:00 Noon, Thursday, Dec. 30, 2010. Deadlines regarding our grant funding prevent extension of the due date.

Item #2: Update to Bid Documents – Sample Contract with Specifications

Insert the attached sample contract, including all exhibits, as Attachment E to the original RFP. As noted in the pre-bid meeting and Addendum 1, the sample contract is structured to accomplish the following:

Provide a basic agreement on general terms and conditions for a “design-build” partnership between the County and selected contractor(s);

Provide a “Guaranteed Maximum” contract value against which specific work orders for both audits and project implementation will be developed and issued;

Establish specifications unique to the planned work and the savings guarantees required. In this regard, Exhibits G and H to the sample contract address specifications and requirements unique to this project.

Bidders are advised the sample contract included here is a draft only, and is subject to change by Cobb County and to negotiation with the bidder or bidders offered a contract. Bidders are encouraged to review both the sample contract and section III B of Addendum #1 to this RFP to ensure understanding of Owner intent from the anticipated Owner-Contractor partnership.

**END OF ADDENDUM #3
Sample Contract Attached**



AGREEMENT

Date: MM/DD/YYYY

Agreement between Owner and Energy Services Contractor

Agreement for Energy Retrofit Project

AGREEMENT made as of the XX day of XXXXX in the year 20XX.

BETWEEN the Owner: Cobb County
Cobb County, Georgia
C/o Cobb County Property Management Department
57 Waddell
Marietta, Georgia 30060

and the Energy Services Contractor:

NAME
STREET
CITY, STATE ZIP

For the following Project: Energy Retrofit Projects at Various Facilities
Cobb County, Georgia

The Owner and the Energy Services Contractor agree as set forth below.

Terms and Conditions

1.0 GENERAL REQUIREMENTS

1.1 BASIC DEFINITIONS

1.1.1 The Contract Documents consist of the Owner's Request for Proposal dated December 30, 2010, aka SEALED BID # 11-5553, including Specifications and Bid Addenda referenced below, Energy Services Contractor's Bid Proposal received December 30, 2010, this Agreement between Owner and Energy Services Contractor for an Energy Retrofit Project ("Agreement"), the Documents to be approved by the Owner in accordance with Subparagraph 2.2.2 of this Agreement, Work Orders issued to authorized work under this Agreement, and Modifications issued after execution of this Agreement. Work Orders will be issued under this Agreement by the Owner to the Energy Services Contractor authorizing specific Work to be performed in the Request for Proposal and this Agreement. A Modification is a Change Order or a written amendment to a Work Order or this Agreement signed by both parties. The foregoing and following documents form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein.

- Bid Addendums
- Immigration Reform and Control Act Contractor/Subcontractor Affidavits
- Special Terms and Conditions of the American Recovery and Reinvestment Act Of 2009 (ARRA) and the Energy Efficiency and Conservation Block Grant (EECBG)
- Conflict of Interest Affidavit
- Non-Collusion Affidavit
- Project Development Requirements
- Project Implementation Requirements
- Contractor Pricing

1.1.2 The Project, as identified above, is the total technical audit, design, construction and post construction services for which the Energy Services Contractor is responsible under this Agreement, including all professional services and all labor, materials, and equipment used or incorporated in performance of the project.

1.1.3 The Work comprises the completed project proposal, design, construction and post construction services under the Project and includes labor and supervision, materials, equipment, machinery, apparatus, tools, services, transportation and all other facilities, licenses, permits, taxes, fees, charges, excises, services and incidentals of any description whatsoever necessary to perform and completely finish in a workmanlike manner and to the complete satisfaction and approval of the Owner, free from all liens or claims of laborers, material men, suppliers, or subcontractors and in conformity in all respects with all applicable federal, state, county or municipal laws, ordinances, rules or regulations, all work and things contemplated by the Request for Proposal, Work Orders, and the Contract Documents which are required of the Energy Services Contractor.

1.2 EXECUTION, CORRELATION, AND INTENT

1.2.1 This Agreement shall be signed in not less than duplicate by the Owner and Energy Services Contractor.

1.2.2 It is the intent of the Owner and Energy Services Contractor that the Contract Documents include all items necessary for proper execution and completion of the Work. The Contract Documents must be taken as complementary, and any item of Work called for in any Contract Document shall be as binding as if called for by all. The Energy Services Contractor understands that the Work shall be complete in every detail reasonably inferable from the Contract Documents as being necessary to produce the intended results notwithstanding the fact that every item involved is not particularly mentioned or shown. Words not otherwise specifically defined herein, which have a well-known technical or trade meaning, are used herein in accordance with such recognized or well-known meaning. If there is any conflict in the contract documents, the priority shall be as follows in descending order: Modifications to the Agreement, the Agreement, any Special Conditions, the Terms and General Conditions, the Specifications, the Drawings, the Energy Services Contractor's Bid Proposal, and the Design Baseline Bid Documents

1.2.3 By executing this Agreement, the Energy Services Contractor represents that it is an independent contractor and that it has:

- .1 read and studied the Contract Documents and understands the same;
- .2 familiarized himself with the local conditions under which the Work is to be performed; and
- .3 correlated his observations with the requirements of the Contract Documents.
- .4 Acknowledged that the Request for Proposal Documents are incomplete in defining the total scope of work, do not accurately define existing conditions whether exposed or hidden, and do not reflect all code requirements, agreements, conditions, ordinances, rules or regulations, which might affect this Project.

1.2.4 The Energy Services Contractor shall designate in the Agreement a representative who shall have full authority to execute any and all instruments requiring the signature of the Energy Services Contractor, and to otherwise act on behalf of the Energy Services Contractor with respect to all matters arising out of the Contract Documents. The Energy Services Contractor's designated representative will be authorized to execute all bonds, agreements, certificates, affidavits, applications and any and all instruments of any other nature whatsoever which may be required for the proper performance of the Work contemplated by the Contract Documents.

1.2.5 The Energy Services Contractor represents that any reference by the Contract Documents to Cobb County as supplying utilities, permits, licenses, approvals, procedures or items of any nature whatsoever are included with the Energy Services Contractor's cost and shall not be construed to mean that the cost of such items will be paid by Cobb County.

1.3 OWNERSHIP AND USE OF DOCUMENTS

1.3.1 All documents, including drawings, written information, estimates, specifications and other documents and data are and remain the property of the Owner. The Energy Services Contractor agrees that the Owner may reuse any and all drawings, written information, estimates, specifications

and other documents and data described herein in the Owner's sole discretion without first obtaining permission of the Energy Services Contractor and without payment of any monies to the Energy Services Contractor therefore. However, any reuse of the documents by the Owner on a different site, without a new contract agreement, shall be at the Owner's risk and the Energy Services Contractor's Engineer and Consultants shall have no liability where such documents are reused. The Owner shall offer the Energy Services Contractor's Engineer the opportunity to negotiate a fee for such services but shall not be bound to accept the negotiated fee. Following such negotiations, should Owner determine Energy Services Contractor's Engineer's services/fee would not be in the Owner's best interest, Energy Services Contractor's Engineer and Consultants name and seal shall be removed and the construction documents redone according to licensing regulations prior to their reuse.

1.3.2 Submission or distribution of documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Energy Services Contractor's or the Engineer's common law copyrights or other reserved rights. The Owner shall own neither the documents nor the copyrights.

2.0 ENERGY SERVICES CONTRACTOR RESPONSIBILITIES

2.1 SERVICES AND RESPONSIBILITIES

2.1.1 Design services shall be performed by qualified engineers and other professionals selected and paid by the Energy Services Contractor. The professional obligations of such persons shall be undertaken and performed in the interest of the Energy Services Contractor. Construction services shall be performed by qualified construction contractors and suppliers, selected and paid by the Energy Services Contractor and acting in the interest of the Energy Services Contractor. Nothing contained in this Agreement shall create any professional obligation or contractual relationship between such persons and the Owner.

2.1.2 Intentionally Omitted

2.2 BASIC SERVICES

2.2.1 The Energy Services Contractor's Basic Services are as described below and in Section 14.

2.2.2 Based on the Design Baseline Bid Documents and the Energy Services Contractor's Bid Proposal, the Energy Services Contractor shall submit Construction Documents for review and approval by the Owner. Construction Documents shall include technical drawings, schedules, diagrams, and specifications, setting forth in detail the requirements for construction of the Work and shall:

- .1 develops the intent of the Design Baseline Bid Documents in detail;
- .2 provide information necessary for the use of those in the building trades; and
- .3 includes documents required for all regulatory agency approvals.

The Energy Services Contractor hereby warrants that the Construction Documents prepared by the Energy Services Contractor and its Engineer will be adequate and sufficient to accomplish the purposes of the Construction Project, and agrees that any review or approval of said documents by the Owner or otherwise shall not act to diminish or alter the Energy Services Contractor's responsibilities under this Agreement.

2.2.3 The Energy Services Contractor shall act as Owner's Agent in filing documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project, and shall be solely responsible for any violation by the Energy Services Contractor, his employees or agents, of any Federal, State, City or Departmental laws, ordinances, or regulations. Energy Services Contractor shall maintain compliance with all environmental related policies, procedures and applicable permits, regulations, codes and Americans with Disabilities Act requirements.

2.2.4 Unless otherwise provided in the Contract documents, the Energy Services Contractor shall provide or cause to be provided and shall pay for all design services, labor, testing services, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, permits and required inspections, utility connection, assessment fees, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

2.2.5 The Energy Services Contractor shall be responsible for and shall coordinate all construction means, methods, techniques, sequences, and procedures.

2.2.6 The Energy Services Contractor shall keep the Owner informed of the progress and quality of the Work. The Energy Services Contractor shall provide the Owner, on a weekly basis, copies of the Superintendent's daily reports.

2.2.7 If requested in writing by the Owner, the Energy Services Contractor, with reasonable promptness and in accordance with the time limits agreed upon, shall interpret the requirements of the Contract Documents. Claims, disputes, and other matters in question relating to performance there under by both Owner and Energy Services Contractor shall be interpreted by the Owner. Such interpretations and decisions shall be in writing, shall not be presumed to be correct, and shall be given such weight, as the court shall determine.

2.2.8 The Energy Services Contractor shall correct Work which does not conform to the Construction Documents at no additional cost to Owner.

2.2.9 The Energy Services Contractor warrants to the Owner that materials and equipment incorporated in the Work will be new unless otherwise specified, and that the Work will be of good quality, free from faults and defects, and in conformance with the Contract Documents. Work not conforming to these requirements shall be corrected in accordance with Section 9 of this Agreement.

2.2.10 The Energy Services Contractor shall pay all sales, consumer, use, and similar taxes and shall secure and pay for building permit and all other permits and governmental fees, licenses and

inspections necessary for the proper execution and completion of the Work.

2.2.11 The Energy Services Contractor shall give notices and comply with laws, ordinances, rules, regulations, and lawful orders of public authorities relating to the Project.

2.2.12 The Energy Services Contractor shall pay all royalties and license fees. The Energy Services Contractor shall defend suits or claims for infringement of patent rights and shall save the Owner and its Agents harmless from loss on account thereof, except that the Owner shall be responsible for such loss when a particular design, process or product of a particular manufacturer is required by the Owner. However, if the Energy Services Contractor has reason to believe the use of a required design, process, or product is an infringement of a patent; the Energy Services Contractor shall be responsible for such loss unless such information is promptly given to the Owner.

2.2.13 The Energy Services Contractor shall be responsible to the Owner for acts and omissions of the Energy Services Contractor's employees and parties in privity of contract with the Energy Services Contractor, to perform a portion of the Work, including their agents and employees.

2.2.14 The Energy Services Contractor shall keep the premises free from accumulation of waste materials or rubbish caused by the Energy Services Contractor's, and it's subcontractor's operations. At the completion of the Work, the Energy Services Contractor shall remove from and about the Project the Energy Services Contractor's tools, construction equipment, machinery, surplus materials, waste materials, and rubbish.

2.2.15 The Energy Services Contractor shall prepare Change Orders for the Owner's approval and execution in accordance with this Agreement and shall have authority to make minor changes in the design and construction consistent with the intent of this Agreement not involving an adjustment in the contract sum or an extension of the contract time. The Energy Services Contractor shall promptly inform the Owner, in writing, of minor changes in the design and construction.

2.2.16 The Energy Services Contractor shall notify the Owner when the Work is substantially completed by issuing a Certificate of Substantial Completion for the Owner's approval and if approved by the Owner's, shall establish the Date of Substantial Completion, shall state the responsibility of each party for security, maintenance, heat, utilities, damage to the Work and insurance, shall include a list of items to be completed or corrected and shall fix the time within which the Energy Services Contractor shall complete items listed therein. Owner shall produce a list of items to be completed or corrected upon establishment of Date of Substantial Completion.

2.2.17 The Energy Services Contractor shall maintain in good order at the site one record copy of the drawings, specifications, product data, samples, shop drawings, Change Orders and other Modifications, marked currently to record changes made during construction. These documents and materials shall be delivered to the Owner upon completion of the design and construction and prior to final payment.

2.2.18 The Energy Services Contractor shall be responsible for the preservation of all public and private property, monuments, utility lines, etc., along and adjacent to the Work. The Energy Services Contractor shall use every precaution necessary to prevent damage or injury thereto. The Energy

Services Contractor shall exercise suitable precaution necessary to prevent damage to pipes, conduits and other underground structures; and shall carefully protect from disturbance or damage all land monuments and property marks until an authorized representative of the Owner has witnessed or otherwise referenced their location, and shall not remove them until directed. When or where any direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the Work, or in consequence of the non-execution thereof on the part of the Energy Services Contractor, his employees or agents, such property shall be restored by the Energy Services Contractor, at the Energy Services Contractor's expense. The Energy Services Contractor will restore same to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring same, or Energy Services Contractor shall make good such damage or injury in an otherwise acceptable manner.

2.2.19 The Energy Services Contractor shall furnish and pay for structural, mechanical, chemical, special inspections or other laboratory and on-site tests, inspections and reports as required by law or the Contract Documents.

2.2.20 The Energy Services Contractor shall furnish services by land surveyors, geotechnical engineers and other consultants for any additional subsoil, air, and water conditions, when such services are deemed necessary by the Energy Services Contractor to carry out properly the design services under this Agreement.

3.0 OWNER RESPONSIBILITIES

3.1 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine documents submitted by the Energy Services Contractor and shall promptly render decisions pertain thereto to avoid delay in the orderly progress of the Work.

3.2 At the Owner's option, the Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and Energy Services Contractor agree in writing at any time after the execution of this Agreement.

3.3 The Owner shall cooperate with the Energy Services Contractor in securing building and other permits, licenses, and inspections.

3.4 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the Design or Construction Documents, the Owner shall give prompt written notice thereof to the Energy Services Contractor.

3.5 The Owner shall furnish required information and services and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the design and construction.

3.6 The Owner shall, at the request of the Energy Services Contractor and upon execution of this Agreement, provide a certified or notarized statement of funds available for the Project and their source.

3.7 The Owner shall communicate with sub-contractors only through the Energy Services Contractor.

4.0 CONSTRUCTION TIME

4.1 The Energy Services Contractor shall provide services as expeditiously as is consistent with reasonable skill and care and the orderly progress of design and construction, and in accordance with the Schedule (as defined below), as may be amended by mutual agreement of the parties from time to time.

4.2 Time limits for each phase of the Work shall be stated in Work Orders and will be of the essence of this Agreement. The Work to be performed under this Agreement shall commence upon execution of a valid Work Order unless otherwise agreed and, subject to authorized Modifications, Substantial Completion shall be achieved as indicated in Section 14.

4.3 The Date of Substantial Completion of the Work or of a designated portion thereof is the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy and utilize the Work for its intended use.

4.4 The Energy Services Contractor shall prepare a design and construction schedule of Work consistent with Paragraph 4.2 above and present it to Owner for written approval prior to commencing the Work ("Schedule"). This schedule shall indicate the dates for the start and completion of the various stages of the Work, including the dates when information and approvals are required from the Owner, The Schedule shall be revised as required by the conditions of the Work.

4.5 If the Energy Services Contractor is delayed in the progress of the Project by acts or neglect of the Owner, Owner's employees, separate contractors employed by the Owner, or changes ordered in the Work not caused by the fault of the Energy Services Contractor, the contract time shall be reasonably extended by Change Order.

4.6 If, at any time during the course of the Work, the progress of the Work, in the Owner's judgment, raises a doubt as to the ability of the Energy Services Contractor to meet the Contract Time, the Energy Services Contractor shall confer and cooperate with the Owner in establishing a schedule for the Work which will assure its completion within the contract Time at no additional cost to the Owner.

4.7 Completion time will not be extended for normal bad weather. No change in contract sum will authorized because of adjustment of contract time due to weather.

4.8 It is further agreed that time is of the essence of each and every portion of this Agreement and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Agreement an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Agreement. Extensions of time will be considered when the delay in completion of the work is due:

.1 To any preference, priority, or allocation order duly issued by the Government or Owner;

.2 To unforeseeable cause beyond the control and without the fault of negligence of the Contractor, restricted to, acts of God, or of the public enemy, acts of the Owner, fires, floods, epidemics, quarantine restriction, and extremely severe weather in excess of normal weather losses allowed in Paragraph 4.7. Production line schedule delays of the product manufacturers shall not be considered grounds for a time extension.

4.9 The Energy Services Contractor shall within five (5) days from the beginning of such delay, unless the Owner shall grant a further period of time prior to the final settlement of the Agreement, notify the Owner, in writing, the causes of the delay for each delay caused by reasons other than weather. The Owner shall, where possible, ascertain the facts and extent of the delay or delays for claims, other than those caused by weather, filed by the Energy Services Contractor between the 20th of the month to the 20th day of the previous month. If the Owner agrees with a time extension, the Energy Services Contractor shall issue the monthly Pay Application accompanied by a Change Order. In cases where a claim is filed, except those that are of a continuing nature and extend beyond the normal monthly report period stated herein, the Owner shall ascertain the facts and render his decision within thirty (30) days of the receipt of the final data relating to the claim. If the Energy Services Contractor fails to file claims within the time period specified herein for delays, it shall be considered prima facie evidence that no basis for a claim exists.

4.10 The Energy Services Contractor acknowledges and understands that if Substantial Completion of the project is delayed beyond the Date of Substantial Completion (as defined in Section 14 hereof), the Owner will suffer, sustain and incur substantial commercial and economic loss, damage and detriment, including, without limitation, loss of income, profits and operating revenues from the Project and extended interest costs, the precise magnitude and extent of all of which may be difficult to ascertain. Accordingly, it is the intent and desire of the parties (and an inducement to the Owner to enter into this Agreement with the Energy Services Contractor) to agree in advance upon the amount of compensation which the Owner will be entitled to receive from the Energy Services Contractor if Substantial Completion of the Project is not achieved on or before the Date of Substantial Completion. For each calendar day that Substantial Completion of the Project is delayed beyond the Date of Substantial Completion (as the same may be extended for excusable delays allowed hereunder), the Energy Services Contractor shall pay to Owner a fixed sum per day for each facility so delayed until Substantial Completion is achieved, said sum to be established in each Project Work Order issued under this Agreement. Said sum shall constitute liquidated damages and not a penalty and is deemed reasonable by the parties in light of the circumstances and the anticipated actual loss, damage or detriment which the Owner will suffer, sustain and incur if completion of the Project is delayed. The Owner shall be entitled to retain, receive and recover such liquidated damages from the Energy Services Contractor solely on the basis of the Energy Services Contractor's failure to achieve the Agreed Completion Date, without the necessity of proving or establishing any underlying cause or actual amount of loss or damage sustained, it being the intent and purpose of the parties to preclude the necessity of any such proof by negotiating and agreeing in advance upon the amount of such liquidated damages as herein provided. Such liquidated damages may be withheld by the Owner from the balance due to the Energy Services Contractor under this Agreement as and when such damages accrue and payments become due to the Energy Services Contractor hereunder or, if such liquidated the Energy Services Contractor for breach of this

Agreement, including, without limitation, Owner's right to terminate this Agreement.

5.0 PAYMENTS

5.1 PROGRESS PAYMENTS

5.1.1 The Energy Services Contractor shall deliver to the Owner itemized Applications for Payment in such detail as indicated in Section 14.

5.1.2 Within thirty days of the Owner's receipt of a properly submitted and correct Application for Payment and approval by the Owner, the Owner shall make payment to the Energy Services Contractor.

5.1.3 The Application for Payment shall constitute a representation by the Energy Services Contractor to the Owner that, to the best of the Energy Services Contractor's knowledge, information, and belief the design and construction have progressed to the point indicated. The quality of the Work covered by the application is in accordance with the Contract Documents; and the Energy Services Contractor is entitled to payment in the amount requested.

5.1.4 The Energy Services Contractor shall pay each contractor, upon receipt of payment from the Owner, out of the amount paid to the Energy Services Contractor on account of such contractor's work, the amount to which said contractor is entitled in accordance with the terms of the Energy Services Contractor's contract with such contractor. The Energy Services Contractor shall, by appropriate agreement with each contractor, require each contractor to make payments to subcontractors in similar manner.

5.1.5 The Owner shall have no obligation to pay or to be responsible in any way for payment to a contractor of the Energy Services Contractor except as may otherwise be required by law.

5.1.6 No progress payment or partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of Work not in accordance with the Contract Documents.

5.1.7 The Energy Services Contractor warrants that:

(1) Title to Work, materials and equipment covered by an Application for Payment will pass to the Owner either by incorporation in construction or upon receipt of payment by the Energy Services Contractor, whichever occurs first;

(2) Work, materials and equipment covered by previous Applications for Payment are free and clear of liens, claims, security interests or encumbrances, hereinafter referred to as "liens"; and

(3) No Work, materials or equipment covered by an Application for Payment will have been acquired by the Energy Services Contractor, or any other person performing work at the site or furnishing materials or equipment for the Project, subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by the Energy Services Contractor or such other person.

5.1.8 The Energy Services Contractor will receive the payments made by the Owner and the Energy Services Contractor will hold such payments as a trust fund to be applied first to the payment of laborers, suppliers, subcontractors, and others responsible for the Work for which such payments are made, including sufficient funds so that all taxes and insurance applicable thereto are also paid. The Energy Services Contractor shall first apply all progress payments as trustee to satisfy all obligations the Energy Services Contractor has incurred due to the Work, and shall comply with all laws applicable thereto.

5.1.9 The Energy Services Contractor shall, as often as requested by the Owner, furnish such information, evidence and substantiation as the Owner may require with respect to the extent and value of current progress and the nature and extent of all obligations incurred by the Energy Services Contractor in connection with the Work and all payments made by the Energy Services Contractor on account thereof. The Energy Services Contractor shall also furnish, as required by the Owner in its sole discretion, such partial or final lien waivers or releases as the Owner deems necessary to ensure that the Energy Services Contractor has paid all persons furnishing any labor, material, or services in furtherance of any Work furnished hereunder. If required by the Owner, the furnishing of such lien waivers and releases shall be a condition precedent to any payment hereunder. Nothing herein shall constitute any requirement that the Owner exercise its discretionary option to require such releases and waivers. Moreover, no prior failure of the Owner to require such releases and waivers shall limit the Owner's right to require them subsequently.

5.1.10 The Owner reserves the right to withhold, as an additional reserve and without limiting its other rights and remedies, an amount sufficient: (a) to defend, satisfy and discharge any asserted claim that the Energy Services Contractor (or anyone providing any of the Work hereunder) has failed to make payment for labor, services, materials, equipment, taxes, or other items or obligations furnished or incurred in connection with the Work or has caused damage to the Work or to any other work on the Project; (b) to complete the Work if it appears that funds remaining in the Contract, including retainage and exclusive of back charges, are insufficient to complete the Work; (c) to reimburse the Owner for any back charges incurred as a result of any act or omission by the Energy Services Contractor hereunder; (d) to protect the Owner from the possible consequences of any other breach or default by the Energy Services Contractor hereunder; or (e) to secure the Owner with respect to any breach or default by the Energy Services Contractor or its affiliates, parent company and subsidiaries under any other agreement. Payment hereunder shall not be evidence of the proper performance or progress of the Work and no payment shall be construed to be acceptance of defective, faulty, or improper work or materials.

Without limiting the provisions of the previous paragraph, the Owner may retain from each progress payment made prior to the time of Substantial Completion ten percent (10%) of the amount otherwise due after deduction of any amounts as provided in the preceding sentence, and in no event to exceed any applicable statutory requirements. If the Owner elects to use this retainage provision:

- .1 at the time the work is fifty percent complete, the Owner shall withhold no additional retainage and shall pay the Energy Services Contractor the full amount of what is on account of progress payments;

- .2 the Owner may, in its sole discretion, reduce the amount to be retained at any time;
- .3 the Owner may release retainage on that portion of the work a Subcontractor has completed, in whole or in part, and which Work the Owner has accepted;
- .4 in lieu of retainage, the Energy Services Contractor may furnish a retention bond, acceptable to the Owner, to be held by the Owner.

5.1.11 The Owner shall make a progress payment to the Energy Services Contractor equal to the value of the completed Work and Stored Work as of the corresponding Monthly Billing Date, to the extent approved by the Owner, and after deducting (a) all previous payments, (b) current retainage (to a maximum of 10 percent of each progress payment; provided, however, that, when 50 percent of the contract value including change orders and other additions to the Contract value provided for by the Contract Documents is due and the manner of completion of the contract Work and its progress are satisfactory to the Owner, the Owner shall withhold no more retainage. If after discontinuing the retention, the Owner determines that the Work is unsatisfactory or has fallen behind schedule, retention may be resumed at the previous level.), and (c) all charges or back charges for services, materials, equipment, or other items furnished or otherwise chargeable to the Energy Services Contractor.

5.2 FINAL PAYMENT

5.2.1 At substantial completion of the Work and as the Owner determines the Work to be reasonably satisfactory, the Owner shall within 30 days after the last of the following to occur: (a) delivery of a final application for payment, (b) furnishing of evidence satisfactory to the Owner that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes, or other items performed, furnished or incurred in connection with the Work, (c) delivery of all guaranties, warranties, bonds, instruction manuals, performance charts, diagrams, as-built drawings and similar items required of the Energy Services Contractor or the Energy Services Contractor's suppliers or subcontractors, and (d) delivery of a general release, in a form satisfactory the Owner, executed by the Energy Services Contractor running to and in favor of the Owner, and such other parties as the Owner may require, pay the retainage to the Energy Services Contractor. If at that time there are any remaining incomplete minor items, an amount equal to 200 percent of the value of each item as determined by the Owner shall be withheld until such item or items are completed to the Owner's satisfaction.

5.2.2 Neither final payment nor amounts retained, if any, shall become due until the Energy Services Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Project for which the Owner or Owner's property might be liable have been paid or otherwise satisfied, (2) consent of surety, if any, to final payment, (3) a certificate that insurance required by the Contract Documents is in force following completion of the Work, and (4) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens arising out of the Agreement, to the extent and in such form as may be designated by the Owner. If a contractor

refuses to furnish a release or waiver required by the Owner, the Energy Services Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Energy Services Contractor shall reimburse the Owner for moneys the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

5.2.3 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

- .1 unsettled liens;
- .2 faulty or defective Work appearing after Substantial Completion;
- .3 failure of the Work to comply with requirements of the Contract Documents; or
- .4 terms of special warranties required by the Contract Documents.

5.2.4 Acceptance of final payment shall constitute a waiver of all claims by the Energy Services Contractor except those previously made in writing and identified by the Energy Services Contractor as unsettled at the time of final Application for Payment.

6.0 PROTECTION OF WORK, PEOPLE, AND PROPERTY

6.1 The Energy Services Contractor shall be responsible for initiating, maintaining, and providing supervision of safety precautions and programs in connection with the Work.

6.2 The Energy Services Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- (1) Employees on the Work and other persons who may be affected thereby;
- (2) The Work and materials and equipment to be incorporated therein; and
- (3) Other property at or adjacent to the site.

6.3 The Energy Services Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and orders of public authorities bearing on the safety of persons and property and their protection from damage, injury, or loss.

6.4 The Energy Services Contractor shall be liable for damage or loss to property at the site caused in whole or in part by the Energy Services Contractor, a contractor of the Energy Services Contractor or anyone directly or indirectly employed by either of them, or by anyone for whose acts they may be liable, except damage or loss attributable to the acts or omissions of the Owner, the Owner's separate contractors or anyone directly or indirectly employed by them or by anyone for whose acts they may be liable and not attributable to the fault or negligence of the Energy Services

Contractor.

7.0 ENERGY SERVICES CONTRACTOR'S INSURANCE AND BONDS

7.1 ENERGY SERVICES CONTRACTOR'S LIABILITY INSURANCE

7.1.1 The Energy Services Contractor shall purchase and for the duration of the Agreement maintain in a company or companies authorized to do business in the State of Georgia, having a rating with A. M. Best & Co. of A-VII or better and acceptable to Owner, such insurance as will protect the Energy Services Contractor from claims set forth below which may arise out of or result from operations under the Contract by the Energy Services Contractor or by a contractor of the Energy Services Contractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable:

- .1 claims under workers' or workmen's compensation, disability benefit and other similar employee benefit laws and acts which are applicable to the Work to be performed;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Energy Services Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of persons other than the Energy Services Contractor's employees;
- .4 claims for damages covered by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Energy Services Contractor or (2) by another person;
- .5 claims for damages, other than to the Work at the site, because of injury to or destruction of tangible property, including loss of use;
- .6 claims for damages for bodily injury or death of a person or property damage arising out of ownership, maintenance, or use of a motor vehicle;
- .7 claims for damages because of professional errors and omissions; and
- .8 claims for contractually assumed liability under this agreement.

7.1.2 The insurance required by the above Subparagraph 7.1.1 shall be written for not less than limits of liability specified as follows or required by law, whichever are greater:

- .1 Worker's Compensation
 - (a) State: Statutory
 - (b) Applicable Federal: Statutory
 - (c) Employer's Liability: \$1,000,000.00

.2 Comprehensive General Liabilities (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Broad Form Property Damage and Elevator Liability):

Bodily Injury: \$1,000,000.00 Each Occurrence
\$1,000,000.00 Annual Aggregate
Property Damage: \$1,000,000.00 Each Occurrence
\$1,000,000.00 Annual Aggregate

Products and Completed Operations to be maintained for one year after final payment.
Property Damage Liability Insurance including XCU coverage.

- .3 Contractual Liabilities:
 - Bodily Injury: \$ 1,000,000.00 Each Occurrence
\$ 1,000,000.00 Annual Aggregate
 - Property Damage: \$ 1,000,000.00 Each Occurrence
\$ 1,000,000.00 Annual Aggregate

- .4 Personal Injury: \$ 1,000,000.00 Each Occurrence
\$ 1,000,000.00 Annual Aggregate

.5 Comprehensive Automobile Liability: including owner, non-owned, hired, leased or rented vehicles.

Bodily Injury: \$1,000,000.00 Each Person
\$1,000,000.00 Each Occurrence
Property Damage: \$100,000.00 Each Occurrence
\$1,000,000.00 Annual Aggregate

.6 Professional Errors and Omissions: to cover damages resulting from errors or omissions of the engineers and/or architects on the Energy Services Contractor's project team.

\$1,000,000.00 Each Occurrence
\$1,000,000.00 Annual Aggregate

- .7 Umbrella Policy: \$5,000,000 limit for a combined single limit

All such policies of insurance shall remain in force through the one (1) year warranty period of final completion and payment of the Work.

7.1.3 The Energy Services Contractor's liability insurance shall include contractual liability insurance applicable to the Energy Services Contractor's obligations under Paragraph 11.7.

7.1.4 Prior to or upon execution of Contract Documents, Energy Services Contractor shall submit to the Owner a certificate of insurance, and if requested, copies of policies, acceptable to the Owner. These Certificates, as well as insurance policies required by this Paragraph, shall contain a provision that coverage will not be canceled, modified or allowed to expire until at least thirty days' prior written notice has been given to the Owner. If any of the insurance coverages under this Agreement are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted along with the application for final payment. The form of the certificate shall be AIA Document G705.

7.1.5 The Energy Services Contractor shall include all contractors and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each contractor and subcontractor. All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein with the exception of professional liability insurance stated in Paragraph 7.1.7

7.1.6 The Energy Services Contractor's Engineers, Testing Consultants and any other party engaged by the Energy Services Contractor to provide services shall carry professional liability insurance in the amount of \$1,000,000.00 single limit per occurrence. Certificates shall be provided including a description of services covered by the insured party on the Project.

7.1.7 Any deductibles or self-insured retentions must be declared to and approved by the Owner. At the option of the Owner either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Owner, its officers, officials and employees; or, the Energy Services Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

7.2 PROPERTY INSURANCE

7.2.1 The Energy Services Contractor shall purchase and maintain in a company lawfully authorized to do business in the State of Georgia property insurance in the amount of the contract sum as well as subsequent modifications. Such property insurance shall be maintained unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required to be covered whichever is earlier. This insurance shall include interest of the Owner, the Energy Services Contractor, Subcontractors, and Subs-Subcontractors in the Work.

7.2.2 The type of policy shall be a Builder's Risk in the amount of the contract sum as well as subsequent modifications and shall be on an all-risk policy form. Owner shall be listed as a Loss Payee under this insurance. The Energy Services Contractor shall secure all-risk type of

builder's risk insurance covering work performed under the Contract, and materials, equipment, expedited deliveries or other items to be incorporated therein, while the same are located at the construction site, stored off-site, or at the place of manufacture. The policy shall cover not less than losses due to fire, flood, explosion, hail, lightning, weather, vandalism, malicious mischief, wind, collapse, riot, aircraft, smoke or other cataclysmic events, until the date of final acceptance of the work.

The making of progress payments to the Energy Services Contractor shall not be construed as relieving the Energy Services Contractor or his subcontractors or the insurance company or companies providing the coverage described herein of responsibility for loss or direct physical loss, damage or destruction occurring prior to final acceptance.

7.2.3 The form of policy for this coverage shall be Completed Value.

7.2.4 If the Owner is damaged by the failure of the Energy Services Contractor to maintain such insurance, then the Energy Services Contractor shall bear all costs properly attributable thereto.

7.3 OTHER INSURANCE PROVISIONS

7.3.1 The policies are to contain, or be endorsed to contain, the following provisions:

7.3.1.1 General Liability and Automobile Coverage

The Owner, its officers, officials, employees, and volunteers are to be covered as additional named insureds as respects liability arising out of activities performed by or on behalf of the Energy Services Contractor; products and completed operations of the Energy Services Contractor; premises owned, occupied or used by the Energy Services Contractor; or automobiles owned, leased, hired or borrowed by the Energy Services Contractor.

7.3.1.2 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner, its officers, officials, employees, or volunteers.

7.3.1.3 The Energy Services Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

7.3.1.4 Workers' Compensation and Employers' Liability Coverage

The insurer shall agree to waive all rights of subrogation against the Owner, its officers, officials, employees, and volunteers for losses arising from work performed by the Energy Services Contractor for the Owner.

7.4 LOSS OF USE INSURANCE

7.4.1 The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Energy Services Contractor, the Energy Services Contractor's contractors, and their agents and employees, for loss of use of the Owner's property,

including consequential losses due to fire or other hazards, however caused, to the extent covered by insurance under this Paragraph 7.4.

7.5 PERFORMANCE BOND AND PAYMENT BOND

7.5.1 Prior to the execution of the Agreement, the Energy Services Contractor shall:

.1 Furnish a contract performance bond and a payment bond executed by a surety company. This company must be listed in the latest issue of U.S. Treasury Circular 570, registered, and duly authorized to do business in the State of Georgia. The bond must be signed (or countersigned) by a local agent, each in an amount that is at least equal to one-hundred percent (100%) of the Contract Price, as security for the faithful performance of this contract and as security for the payment of all persons performing labor and furnishing material in connection with the Contract. The surety shall be acceptable to the Owner and the bonds shall be executed on the County's bond forms attached hereto as **Exhibits "B" and "C"**. In case of default on the part of the Energy Services Contractor, all expenses incident to ascertaining and collecting losses under the bond, including both engineering and legal services, shall lie against the bond.

.2 Bonding of Subcontractors: include in the Base Bid, Performance and Labor and Material Payment Bonds, each in 100% of the sub-contract sum, for each subcontractor having a contract exceeding One Hundred Thousand Dollars (\$100,000.00). Should Owner elect not to require bonds for particular Subcontractors, bond costs shall revert back to the Owner. The Energy Services Contractor and Subcontractor shall require the Attorney-In-Fact who executes the bonds on behalf of sureties to attach a certified, current copy of his Power of Attorney.

.3 Provide the Owner a one-year guarantee covering workmanship and materials of the project, or as provided for in the Specifications. The contract performance bond shall remain in force for 90 days from date of project acceptance by the Owner. The cost of this bond shall be paid by the Energy Services Contractor.

8.0 CHANGES IN THE WORK

8.1 CHANGE ORDERS

8.1.1 A Change Order is a written order signed by the Owner and Energy Services Contractor, and issued after execution of this Agreement, authorizing a change in the Work or adjustment in the contract sum or contract time. The contract sum and contract time will only change by Change Order.

8.1.2 The Owner, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement consisting of additions, deletions, or other revisions, and the contract sum and contract time shall be adjusted accordingly. Such changes in the Work shall be authorized by Change Order, and shall be performed under applicable conditions of the Contract Documents.

8.1.3 The Owner may, within reason, request the Energy Services Contractor to submit a proposal for a change in the Work and then elect not to proceed with the change. This shall result in no additional cost to the Owner.

8.1.4 Cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- .1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
- .2 by unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 by the method provided below.

8.1.5 If none of the methods set forth in Paragraph 8.1.4 in clauses .1, .2 or .3 is agreed upon. The Owner may elect to issue the Change Order to the Energy Services Contractor directing such work to be performed by the Energy Services Contractor, and any adjustments to Price or time shall be subject to ultimate determination in accordance with this Agreement; and the Energy Services Contractor shall, nonetheless, proceed immediately with the changed Work. The Energy Services Contractor shall keep a detailed account of the direct savings and direct cost due to the changed Work separately from its other accounting records and shall make such records available to the Owner at the Owner's request. Failure to keep adequate and separate cost records of the changed Work, and to furnish same to the Owner upon its request, shall constitute an acceptance on the Energy Services Contractor's part of the Owner's determination of the direct savings and direct cost of such changed Work. In no event shall the Energy Services Contractor proceed with changed Work without a Change Order issued pursuant to this Paragraph 8.1.5. The Owner shall not be liable for any additional costs incurred or delays encountered in the performance of such changed Work without such a written Change Order. In case of the methods set forth in Paragraph 8.1.4 clauses .3 and .4, the Energy Services Contractor shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Contract Documents, cost shall be limited to the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance. As well as fringe benefits required by agreement or custom; workers' or workman's compensation insurance; bond premiums; rental value of equipment and machinery; and fees paid to engineers and other professionals. Pending final determination of cost to the Owner, payments on account shall be made on the Application for Payment. The amount of credit to be allowed by the Energy Services Contractor to the Owner for deletion or change which results in a net decrease in the contract sum will be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

8.1.6 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order that application of agreed unit prices to quantities proposed will cause substantial inequity to the Owner, applicable unit prices shall be equitably adjusted.

8.1.7 In Paragraph 8.1.5 the allowance for overhead and profit combined, included in the total cost to the Owner, shall be based on the following schedule:

.1 For additive Change Orders, the Energy Services Contractor's fee for overhead and profit combined will be increased by the Contractor's fee for overhead and profit established for the specific fee category for the Work Order affected, applied to the approved direct cost of the additional work performed or subcontracted.

.2 All Sub-Subcontractor's are considered to have been established solely for the convenience of the Energy Services Contractor and its immediate Subcontractors. To this effect, the allowable Subcontractor overhead and profit amount shall not be derived by compounding the established percentages upon themselves through their Sub-Subcontractors.

.3 For deductive Change Orders, the Energy Services Contractor's fee for overhead and profit will remain unchanged.

.4 For Changes in the Work involving both additive and deductive amounts, the effective cost shall be the net total from the summation of all costs associated with the change. If this cost results in a net add, then subparagraph .1 above shall apply; if the cost is a net deduct, then subparagraph .3 above shall apply. The Energy Services Contractor shall not submit groups of partial Proposals relative to a singular item of Change. Requests for Time Extensions relative to the Change shall be identified in the Proposal.

.5 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a Change involving over One Hundred Dollars (\$100.00) be approved without such itemization.

.6 The Energy Services Contractor shall sequentially number each of his cost change proposals and further identify each proposal as to cause for change.

8.2 CONCEALED CONDITIONS

8.2.1 The Energy Services Contractor acknowledges, by acceptance of any Work Order issued under this Agreement, that the Energy Services Contractor has included in the compensation all concealed or unknown conditions that affect the performance of the Work and vary from those indicated by the Contract Documents, whether encountered below ground or in an existing structure other than the Work, which conditions are occasionally found to exist or which are generally recognized as possible in work of the character provided for in this Agreement.

8.3 REGULATORY CHANGES

8.3.1 The Energy Services Contractor acknowledges, by acceptance of any Work Order issued under this Agreement, that the Energy Services Contractor has included in the compensation all

changes in the Work necessitated by the enactment or revision of codes, laws, or regulations subsequent to signing of the Contract and including those codes, laws, or regulations which are anticipated to be enacted prior to completion of the Work. Contractor shall not be compensated for changes required by inspection officials through completion of the Work for compliance with requirements, which were in force at time of Contract signing or anticipated to be enacted prior to completion whether or not such requirements were noted at time of permit issuance.

9.0 DEFECTIVE WORK

9.1 The Energy Services Contractor shall promptly correct Work rejected by the Owner or known by the Energy Services Contractor to be defective or failing to conform to the Construction Documents. Whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Energy Services Contractor shall specifically warrant all work performed under this Agreement for one year immediately following Substantial Completion. The Energy Services Contractor shall correct Work under this Agreement found to be defective or nonconforming within that one-year period, or within such longer period provided by any applicable special warranty in the Contract Documents.

9.2 Nothing contained in this Section 9 shall be construed to establish a period of limitation with respect to other obligations of the Energy Services Contractor under this Agreement. Paragraph 9.1 relates only to the Energy Services Contractor's warranty, and specific obligation of the Energy Services Contractor to correct the Work. It has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Energy Services Contractor's obligations other than correction of the Work.

9.3 If the Energy Services Contractor fails to correct defective Work as required or, if the Energy Services Contractor persistently fails to carry out Work in accordance with the Contract Documents. Then the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Energy Services Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for benefit of the Energy Services Contractor or other persons or entities.

9.4 If the Energy Services Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within forty-eight (48) hours after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may give a second written notice to the Energy Services Contractor and, seven (7) days following receipt by the Energy Services Contractor of that second written notice and without prejudice to other remedies the Owner may have, the Owner may correct such deficiencies by whatever means the Owner deems expedient. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Energy Services Contractor costs of correcting such deficiencies. If the payments then or thereafter due the Energy Services Contractor are not sufficient to cover the amount of the deduction, the Energy Services Contractor shall pay the difference to the Owner.

10.0 DISPUTES

10.1 All claims, disputes or other matters in question between the Owner and the Energy Services Contractor arising out of or relating to this Agreement or the breach thereof shall be resolved by litigation (and mandated mediation). All action shall be commenced exclusively in a court of competent jurisdiction located in Cobb County, Georgia, it being specifically understood that the Owner and the Energy Services Contractor expressly consent to the jurisdiction and venue of any such court.

10.2 The Energy Services Contractor shall continue to proceed with the performance of its obligations under the Agreement and shall maintain the progress of such services during any litigation arising out of this Agreement unless the Owner and the Energy Services Contractor shall mutually agree otherwise in writing.

11.0 MISCELLANEOUS REQUIREMENTS

11.1 This Agreement shall be governed and construed in accordance with the laws and court decisions of the State of Georgia.

11.2 The table of contents and the headings of Sections and paragraphs are for convenience only and shall not modify rights and obligations created by this Agreement.

11.3 In case a provision of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected.

11.4 SUBCONTRACTS

11.4.1 Work not performed by the Energy Services Contractor with its own forces shall be performed by Subcontractors. The Energy Services Contractor, as soon as practicable after execution of this Agreement, shall furnish to the Owner in writing the names of the persons or entities the Energy Services Contractor will engage as subcontractors for the Project. The Energy Services Contractor shall not retain any subcontractor to whom the Owner has as a reasonable and timely objection. The Energy Services Contractor shall be responsible to the management of the Subcontractors in the performance of the Work.

11.4.2 Nothing contained in the Energy Services Contractor Contract Documents shall create a professional obligation or contractual relationship between the Owner and any third party.

11.4.3 Contingent Assignment of Subcontract. If this Agreement is terminated, each subcontract agreement shall be assigned by the Energy Services Contractor to the Owner, subject to the prior rights of any surety, provided that:

- .1 this Agreement is terminated by the Owner pursuant to Section 12.1,
- .2 the Owner accepts such assignment, after termination by notifying the Subcontractor

and Energy Services Contractor in writing, and assumes all rights and obligations of the Energy Services Contractor pursuant to each subcontract agreement.

If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive days, following termination, if appropriate, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

11.4.4 Binding of Subcontractors and Material Suppliers. The Energy Services Contractor agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its Sub-subcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractors and Material Suppliers portions of the Work. Specifically included in this condition is compliance with all terms and conditions of Exhibit D: Special Terms and Conditions of the ARRA and EECBG. Notwithstanding this condition, Contractor shall be responsible for ensuring all work and materials used in performance of this project meet all conditions as required in Exhibit D.

11.5 WORK BY OWNER OR OWNER'S CONTRACTORS

11.5.1 The Owner reserves the right to perform work related to, but not part of, the Project and to award separate contracts in connection with other work at the site. If the Energy Services Contractor claims that delay or additional cost is involved because of such action by the Owner, the Energy Services Contractor shall make such claims as provided in Paragraph 11.6.

11.5.2 The Energy Services Contractor shall afford the Owner's separate contractors reasonable opportunity for introduction and storage of their materials and equipment on the Project site for execution of their work. The Energy Services Contractor shall incorporate and coordinate the Energy Services Contractor's Work with work of the Owner's separate contractors as required by the Contract Documents.

11.5.3 Costs caused by defective or ill-timed work shall be borne by the party responsible.

11.5.4 The Owner shall cause Owner's separate contractors to include the Energy Services Contractor, its officers, employees and agents as additional insureds under its policies of insurance or shall furnish separate certificates and endorsements for the construction of this Project.

11.6 CLAIMS FOR DAMAGES

11.6.1 Should either party to this Agreement suffer injury or damage to person or property because of an act of omission of the other party, the other party's employees or agents, or another for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time after such injury or damage is or should have been first observed.

11.7 INDEMNIFICATION

11.7.1 To the fullest extent permitted by law, the Energy Services Contractor shall indemnify and hold harmless the Owner and the Owner's consultants and separate contractors, any of their

subcontractors, sub-subcontractors, agents and employees from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees and other legal expenses, as well as interest arising out of or resulting from performance of the Work. These indemnification obligations shall be limited to claims, damages, losses or expenses (1) that are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, and (2) to the extent such claims, damages, losses or expenses are caused in whole or in part by negligent acts or omissions of the Energy Services Contractor, the Energy Services Contractor's contractors, anyone directly or indirectly employed by either or anyone for whose acts either may be liable, regardless of whether or not they are caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to the party or person described in this Paragraph 11.7.

11.7.2 In claims against the Owner or its consultants and its contractors, any of their subcontractors, sub-subcontractors, agents or employees by an employee of the Energy Services Contractor, its contractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 11.7 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Energy Services Contractor, or a Energy Services Contractor's contractor, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

11.8 SUCCESSORS AND ASSIGNS

11.8.1 This Agreement shall be binding on successors, assigns, and legal representatives of and persons in privity of contract with the Owner or Energy Services Contractor. Neither party shall assign, sublet, or transfer an interest in this Agreement without the written consent of the other.

11.8.2 This Paragraph 11.8 shall survive completion or termination of this Agreement.

11.9 REPLACEMENT OF ENERGY SERVICES CONTRACTOR ENGINEER

11.9.1 In case of termination of the Energy Services Contractor's Engineer, the Energy Services Contractor shall provide the services of another lawfully licensed person or entity against whom the Owner makes no reasonable objection and whom shall be in compliance with all requirements of this agreement.

11.10 EXTENT OF AGREEMENT

11.10.1 This Agreement represents the entire agreement between the Owner and Energy Services Contractor and supersedes prior negotiations, representations, or agreements. This Agreement may be amended only by written instrument signed by both Owner and Energy Services Contractor.

11.11 JOINT DRAFTING. The parties to this Agreement expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

11.12 WAIVER. The failure of either party to insist, in one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

12.0 TERMINATION

12.1 TERMINATION BY THE OWNER

12.1.1 This Agreement may be terminated by the Owner upon seven (7) days' written notice to the Energy Services Contractor in the event that the Project is abandoned by the Owner. If such termination occurs, the Owner shall pay the Energy Services Contractor for Work completed and for proven loss sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit, but specifically excluding any other special or consequential damages and punitive damages.

12.1.2 If the Energy Services Contractor defaults or persistently fails or neglects to carry out the Work in accordance with the Contract Documents or fails to perform the provisions of this Agreement, the Owner may give written notice that the Owner intends to terminate this Agreement. If the Energy Services Contractor fails to correct the defaults, failure or neglect within seven (7) days after being given notice, the Owner may without prejudice to any other remedy make good such deficiencies and may deduct the cost thereof from the payment due the Energy Services Contractor or, at the Owner's option, may terminate the employment of the Energy Services Contractor and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Energy Services Contractor and finish the Work by whatever method the Owner may deem expedient. If the unpaid balance of the contract sum exceeds the expense of finishing the Work, the excess shall be paid to the Energy Services Contractor, but if the expense exceeds the unpaid balance, the Energy Services Contractor shall pay the difference to the Owner, and Owner may pursue any other available remedies, at law or in equity, for such default by Energy Services Contractor .

12.1.3 In addition to Paragraph 12.1.2, the following events will be deemed a default by the Energy Services Contractor hereunder:

.1 the entry of a decree or order, either voluntarily or involuntarily, for relief by a court or entity having jurisdiction over the Energy Services Contractor in any action involving bankruptcy, insolvency or other similar law, or the appointment of a receiver, liquidator, assignee, custodian, trustee, or sequestrator (or similar official) of or for the Energy Services Contractor, or the ordering of the winding up or liquidation of the Energy Services Contractor's affairs;

.2 The Energy Services Contractor, in the judgment of the Owner, refuses or fails to supply a sufficient number of skilled workmen and supervisory personnel or suitable materials or equipment for performance of the Work;

.3 The Energy Services Contractor fails to follow the instructions of the Owner directed towards requiring results in conformity to the Agreement;

.4 The Energy Services Contractor disregards any law, ordinance, rule, regulation or order of any public authority having jurisdiction.

12.2 TERMINATION BY THE ENERGY SERVICES CONTRACTOR

12.2.1 If the Owner fails to make payment when due, the Energy Services Contractor may give written notice of the Energy Services Contractor's intention to terminate this Agreement. If the Energy Services Contractor fails to receive payment within thirty (30) days after receipt of such notice by the Owner, the Energy Services Contractor may give a second written notice and, seven (7) days after receipt of such second written notice by the Owner, if Owner has not cured its default, Energy Services Contractor may terminate this Agreement and recover from the Owner payment for Work executed and for proven losses sustained upon materials, equipment, tools, and construction equipment and machinery, including reasonable profit and money damages, but specifically excluding any other special or consequential damages and punitive damages.

12.2.2 The Energy Services Contractor shall have no right to consequential or punitive damages by reason of the Owner's failure to make payment or any acts of the Owner under this Agreement, and the Energy Services Contractor hereby waives any and all rights to consequential or punitive damages.

13.0 BASIS OF COMPENSATION

13.0.1 The Owner shall compensate the Energy Services Contractor in accordance with Section 5, Payments, and the other provisions of this Agreement as described below.

13.1 COMPENSATION

13.1.1 FOR BASIC SERVICES, as described in Paragraphs 2.2.2 through 2.2.17, and for any other services included in Section 14 as part of Basic Services, Basic Compensation shall be as follows:

13.1.2 BASIC COMPENSATION is determined as follows:

The Energy Services Contractor shall prepare proposals for performance of project development and project implementation to present to the Owner for review and approval. Each proposal shall clearly specify work to be performed, and shall include a fixed, "Not to Exceed" cost estimate. Actual costs for each work order shall not exceed the lesser of the Not to Exceed cost in the work order, or actual costs including allowed Energy Services Contractor fees and markups incorporated in this Agreement or agreed to in the specific work order.

13.1.3 Owner Allowance. ~~Owner reserves the right to modify the scope of the Basic Services under this Agreement and to correspondingly increase the fees payable hereunder in an amount not to exceed 25% of the Basic Compensation set forth in Section 13.1.2 above.~~

13.1.4 **Guaranteed Maximum Price.** In no event shall the total compensation under this Agreement exceed the amount of \$x,xxx,xxx (“Guaranteed Maximum Price”)

The Energy Services Contractor will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with this Agreement.

14.0 OTHER PROVISIONS

14.1 The Basic Services to be performed shall be commenced upon issuance by Owner of a Work Order, and, subject to authorized adjustments and to delays not caused by the Energy Services Contractor, Substantial Completion shall be achieved in the time allotted for the Work Order.

14.2 The Energy Services Contractor shall submit an Application for Payment on the Twenty-Fifth (25th) day of each month. The Energy Services Contractor will provide with the Payment Application a line item breakdown of all previous costs to date plus the amount being applied for.

14.3 The Energy Services Contractor's Bid Proposal includes:

Contractor Pricing for Markups and Fees, incorporated in this Agreement as Exhibit I.

14.4 The Special Terms and Conditions of the American Recovery and Reinvestment Act Of 2009 (ARRA) and the Energy Efficiency and Conservation Block Grant (EECBG), attached hereto as Exhibit “D”, are made part of this Agreement. Energy Services Contractor shall at all times during this Agreement comply fully with those requirements.

14.5 The Energy Services Contractor will provide the following key individuals for the entire duration of the Project. Key individuals cannot be replaced without written approval of the Owner. The Owner may request that a key individual be replaced by another individual meeting the Owner's approval.

- .1 Energy Services Contractor Principal (NAME)
- .2 Energy Services Contractor Project Manager: (NAME).
- .3 Energy Services Contractor Superintendent: (NAME).
- .4 Subcontractor Project Manager (NAME)
- .5 Subcontractor Superintendent: (NAME)

14.6 Intentionally Omitted.

14.7 **IMMIGRATION COMPLIANCE.** The Owner and Energy Services Contractor agree that compliance with the requirements of O.C.G.A. §13-10-91 and Rule 300-10-1-02 of the Rules of the Georgia Department of Labor are conditions of this Agreement for the physical performance of

services.

The Energy Services Contractor represents that it employs:

- _____ 500 or more employees;
- _____ 100 or more employees; or
- _____ fewer than 100 employees

(Energy Services Contractor must initial appropriate category).

The Energy Services Contractor further agrees that its compliance with the requirements of O.C.G.A. §13-10-91 and DOL Rule 300-10-1-.02 is attested to on the executed Contractor Affidavit and Agreement attached hereto as **EXHIBIT “A”**.

The Energy Services Contractor further agrees;

- 14.7.1 That the contractor (and any subcontractors, regardless of tier) fully comply with the requirements for completing and submitting the “Immigration Compliance Certification” and that such certification be received by the County prior to the commencement of any work under the contract or subcontract;
- 14.7.2 That the contractor (or any subcontractor, regardless of tier) notify the County within five (5) business days of entering into a contract or other agreement for hire with any subcontractor(s), regardless of tier;
- 14.7.3 That the contractor be responsible for obtaining and providing to the County the “Subcontractor Affidavit & Agreement” and “Immigration Compliance Certification” attached to and required under these “Procedures & Requirements” from each subcontractor, regardless of tier, employed or retained for work under the contract prior to the commencement of any work under the contract or any subcontract;
- 14.7.4 That Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);
- 14.7.5 That any contractor and/or subcontractor retaining any other subcontractor to perform services under the contract provide legal notice to any subcontractor of the requirements of Cobb County for immigration compliance and further provide notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);

- 14.7.6 That failure to comply with any of the requirements and procedures of the County (i.e., failure to timely supply required affidavits or compliance certification documents; failure to utilize federal work authorization procedures; failure to permit or facilitate audits or reviews of records by County or State officials upon request; and/or failure to continue to meet any of the statutory or County obligations during the life of the contract) shall constitute a material breach of the agreement and shall entitle the County to dismiss any general contractor or to require the dismissal of any subcontractor or sub/subcontractor (irrespective of tier) for failing to fully comply with these requirements;
- 14.7.7 That upon notice of a material breach of these provisions, the contractor (or subcontractor, regardless of tier) shall be entitled to cure the breach within ten (10) days and provide evidence of such cure. Should the breach not be cured, the County shall be entitled to all available remedies, including termination of the contract, the requirement that a subcontractor be dismissed from performing work under the contract, and any and all damages permissible by law.
- 14.7.8 Immigration Compliance Certification: Prior to commencing work under any contract for the physical performance of services, the contractor shall complete the “IMMIGRATION COMPLIANCE CERTIFICATION” form attached to these “Procedures & Requirements” and submit the same to the County.
- 14.7.9 Prior to allowing any other subcontractor to perform work under the contract, the contractor shall obtain a completed “IMMIGRATION COMPLIANCE CERTIFICATION” from each subcontractor (regardless of tier) and submit the same to the County.

14.8 COMPLIANCE WITH O.C.G.A. § 36-60-13. Owner and Energy Services Contractor agree that this Agreement is subject to the terms of O.C.G.A. § 36-60-13. In accordance with such provision, this Agreement is for a term of one year and shall terminate absolutely and without further obligation on the part of Owner at the close (December 31) of the calendar year in which it was executed and at the close (December 31) of each succeeding calendar year for which it may be renewed, unless earlier terminated as provided in this Agreement, or renewed as provided herein. This Agreement will automatically renew at 12:01 January 1 of the following calendar year unless the Owner notifies the Energy Services Contractor in writing at least thirty (30) days prior to termination that the Agreement will not be renewed. Further, this Agreement will terminate immediately and absolutely at such time as appropriated or otherwise unobligated funds are no longer available to satisfy the obligation of the Owner. This Agreement does not create a debt of the Owner for the payment of any sum beyond the calendar year of execution or in the event of renewal, beyond the calendar year of such renewal.

14.9 CONFLICT OF INTEREST AFFIDAVIT. Energy Services Contractor agrees, and shall execute an affidavit in the form as attached hereto as Exhibit “E” attesting that, to the best of its knowledge no circumstances exist that will cause a conflict of interest in performing services for Owner, that no employee of Owner, nor any public agency official or employee affected by this Agreement has any pecuniary interest in the business of this firm, associates or consultants of this

firm, or the firm's parent firm, subsidiary, or other legal entity of which this firm is a part, and that no person associated with or employed by this firm has any interest that would conflict in any way, manner or degree with the performance of services for Owner.

14.10 NON-COLLUSION AFFIDAVIT. Owner and Energy Services Contractor acknowledge that the Georgia statute concerning public works construction contracting requires that any person who procures such work by bidding or proposal shall make an oath in writing that he/she has not prevented or attempted to prevent competition in such bidding [OCGA § 36-91-21(d),(e)]. In compliance with O.C.G.A. § 36-91-21(d),(e) Energy Services Contractor shall make the oath and complete an affidavit in the form as attached hereto as Exhibit "F". If such oath is false, this agreement shall be void, and all sums paid by the Owner on the Agreement may be recovered by appropriate action.

This Agreement entered into as of the day and year first written above.

OWNER
Cobb County
100 Cherokee Street
Marietta, Georgia 30060

ENERGY SERVICES CONTRACTOR
NAME
ADDRESS
CITY, STATE ZIP
CONTRACTOR #_____

By: _____

By _____

Attest: _____
County Clerk

Attest: _____

Title: Corporate Secretary

Approved as to Form:

County Attorney

**Compliance with Georgia Security and Immigration Compliance Act
PROCEDURES & REQUIREMENTS**
(Effective 10-28-2010 - Supersedes All Previous Versions)

BACKGROUND

Pursuant to the “Georgia Security and Immigration Compliance Act,” Cobb County cannot enter into a contract for the physical performance of services unless the contractor registers and participates in the federal work authorization program to verify information of all newly hired employees or subcontractors. Neither may any contractor or subcontractor enter a contract with the county in connection with the physical performance of services unless the contractor and/or subcontractor registers and participates in the federal work authorization program to verify information of all new employees. O.C.G.A. § 13-10-91.

Before any bid for the physical performance of services is considered, the bid must include a signed, notarized affidavit from the contractor attesting to the following: (1) the affiant has registered with and is authorized to use the federal work authorization program; (2) the user ID number and date of authorization for the affiant; and (3) the affiant is using and will continue to use the federal work authorization program throughout the contract period. O.C.G.A. § 13-10-91 (b) (1). Affidavits shall be maintained for five years from the date of receipt. O.C.G.A. § 13-10-91 (b) (1).

Upon contracting with a new subcontractor, a contractor or subcontractor shall, as a condition of the contract or subcontract, provide Cobb County with notice of the identity of any and all subsequent subcontractors hired or contracted by that contractor or subcontractor within five (5) business days of entering into a contract or agreement for hire with any subcontractor. Such notice shall include an affidavit including the subcontractor’s name, address, user ID number, and date of authorization to use the federal work authorization program. O.C.G.A. § 13-10-91 (b) (3).

Based upon the County’s experience and desire for full compliance, no work may be commenced by any subsequent subcontractor prior to notice being received by the County that the subcontractor (regardless of tier) is in compliance with the law and the attached Procedures & Requirements, including the preparation and submission of the Contractor (or Subcontractor) Affidavit & Agreement AND the Immigration Compliance Certificate PRIOR to the commencement of any work.

DEFINITIONS

Affidavit – a written statement made or taken under oath before an officer of the court or a notary public or other person who duly has been authorized so to act.

Affiant – the person who makes and subscribes to a statement made under oath (affidavit).

Physical Performance of Services – the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to public real property, including the construction, reconstruction, or maintenance of all or part of a public road; or any other performance of labor for a public employer under a contract or other bidding process.

PROCEDURES & REQUIREMENTS

1. Bid Documents: Bid documents should contain information regarding the contract language and contractual requirements described below.
2. Responsive Bid Documents: Responsive bid documents **MUST INCLUDE** a signed, notarized affidavit from the contractor in the form attached as EXHIBIT A (CONTRACTOR AFFIDAVIT & AGREEMENT). **If the affidavit is not submitted at the time of the bid, the applicant will be disqualified.**

THIS AFFIDAVIT MUST BE SIGNED, NOTARIZED AND SUBMITTED WITH ANY BID REQUIRING THE PERFORMANCE OF PHYSICAL SERVICES.
IF THE AFFIDAVIT IS NOT SUBMITTED AT THE TIME OF THE BID, THE BID WILL BE DETERMINED TO BE NON-RESPONSIVE AND WILL BE DISQUALIFIED.

3. Contract Language & Contractual Requirements: Affirmative language shall be contained in agreements for the performance of services to cover all statutory and County requirements; such language shall require:
 - (a) That affidavits in the form attached to these “Procedures & Requirements” be executed from a contractor (and any subcontractors, regardless of tier) and notarized, showing compliance with the requirements of O.C.G.A. § 13-10-91 and that such be made part of the contract and/or subcontracts;
 - (b) That the contractor (and any subcontractors, regardless of tier) fully comply with the requirements for completing and submitting the “Immigration Compliance Certification” and that such certification be received by the County prior to the commencement of any work under the contract or subcontract;
 - (c) That the contractor (or any subcontractor, regardless of tier) notify the County within five (5) business days of entering into a contract or other agreement for hire with any subcontractor(s), regardless of tier;
 - (d) That the contractor be responsible for obtaining and providing to the County the “Subcontractor Affidavit & Agreement” and “Immigration Compliance Certification” attached to and required under these “Procedures & Requirements” from each subcontractor, regardless of tier, employed or retained for work under the contract prior to the commencement of any work under the contract or any subcontract;
 - (e) That Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);
 - (f) That any contractor and/or subcontractor retaining any other subcontractor to perform services under the contract provide legal notice to any subcontractor of the requirements of Cobb County for immigration compliance and further provide notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);

- (g) That failure to comply with any of the requirements and procedures of the County (i.e., failure to timely supply required affidavits or compliance certification documents; failure to utilize federal work authorization procedures; failure to permit or facilitate audits or reviews of records by County or State officials upon request; and/or failure to continue to meet any of the statutory or County obligations during the life of the contract) shall constitute a material breach of the agreement and shall entitle the County to dismiss any general contractor or to require the dismissal of any subcontractor or sub/subcontractor (irrespective of tier) for failing to fully comply with these requirements;
- (h) That upon notice of a material breach of these provisions, the contractor (or subcontractor, regardless of tier) shall be entitled to cure the breach within ten (10) days and provide evidence of such cure. Should the breach not be cured, the County shall be entitled to all available remedies, including termination of the contract, the requirement that a subcontractor be dismissed from performing work under the contract, and any and all damages permissible by law.
4. Immigration Compliance Certification: Prior to commencing work under any contract for the physical performance of services, the contractor shall complete the "IMMIGRATION COMPLIANCE CERTIFICATION" form attached to these "Procedures & Requirements" and submit the same to the County.

Prior to allowing any other subcontractor to perform work under the contract, the contractor shall obtain a completed "IMMIGRATION COMPLIANCE CERTIFICATION" from each subcontractor (regardless of tier) and submit the same to the County.

FORM ATTACHMENTS:

1. CONTRACTOR AFFIDAVIT & AGREEMENT (EXHIBIT A);
2. SUBCONTRACTOR AFFIDAVIT & AGREEMENT (EXHIBIT A-1);
3. IMMIGRATION COMPLIANCE CERTIFICATION (EXHIBIT A-2).

CONTRACTOR AFFIDAVIT & AGREEMENT
(EXHIBIT A)

This affidavit must be signed, notarized and submitted with any bid requiring the performance of physical services. If the affidavit is not submitted at the time of the bid, the bid will be determined non-responsive and will be disqualified.

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is contracting with Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program (an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned contractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the contractor or subcontractor will:

- (1) Notify the County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
- (2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit (EXHIBIT A-1) prior to the commencement of any work under the contract/agreement;
- (3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (EXHIBIT A-2) prior to the commencement of any work under the contract/agreement;
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
- (5) Maintain records of such compliance and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
- (6) Maintain such records for a period of five (5) years.

EEV (E-Verify) Program User ID Number

EEV Program Date of Authorization

BY: Authorized Officer or Agent
[Contractor Name]

Contractor Business Name

Printed Name

Date

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE ____ DAY OF _____, 201__

Notary Public Commission Expires: _____

**SUBCONTRACTOR AFFIDAVIT & AGREEMENT
(EXHIBIT A-1)**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program (an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned contractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the undersigned subcontractor will:

- (1) Notify the County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
- (2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on this Subcontractor Affidavit form (EXHIBIT A-1) prior to the commencement of any work under the contract/agreement;
- (3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (EXHIBIT A-2) prior to the commencement of any work under the contract/agreement;
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
- (5) Maintain records of such compliance and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
- (6) Maintain such records for a period of five (5) years.

EEV (E-Verify) Program User ID Number

EEV Program Date of Authorization

BY: Authorized Officer or Agent
[Subcontractor Name]

Subcontractor Business Name

Printed Name

Date

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE ____ DAY OF _____, 201__

Notary Public Commission Expires: _____

IMMIGRATION COMPLIANCE CERTIFICATION
(Required to be completed by Contractors and all Subcontractors)
(EXHIBIT A-2)

I certify to the Cobb County Board of Commissioners that the following employees will be assigned to:

<i>(Project Name/Description)</i>		

I further certify to Cobb County, Georgia the following:

- The E-Verify program was used to verify the employment eligibility of each of the above-listed employees hired after the effective date of our contract to use the program;
- We have not received a Final Nonconfirmation response from E-Verify for any of the employees listed.
- If we receive a Final Nonconfirmation response from E-Verify for any of the employees listed above, we will immediately terminate that employee’s involvement with the project.
- I have confirmed that we have an I-9 on file for every employee listed above and that to the best of my knowledge all the I-9’s are accurate.
- To the best of my knowledge and belief, all of the employees on the above list are legally authorized to work in the United States.
- If any other employee is assigned to this Cobb County project, a certification will be provided for said employee prior to the employee commencing work on the project.

To the best of my knowledge and belief, the above certification is true, accurate and complete.

Sworn to by:

Employer Name & Address:

Signature of Officer

Employer Name & Address

Printed Name/Title

Employer Name & Address

Date

Employer Name & Address

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE ____ DAY OF _____, 201_

Notary Public
Commission Expires: _____

EXHIBIT B

COBB COUNTY BOARD OF COMMISSIONERS
c/o COBB COUNTY PROPERTY MANAGEMENT
57 WADDELL STREET, MARIETTA, GA 30060-1964

PAYMENT BOND

Bond Number: _____

KNOW ALL MEN BY THESE PRESENTS, that we, _____ as Principal,
hereinafter called "**Contractor**", and _____, a corporation
duly organized under the laws of the State of _____ listed in the latest issue of U.S. Treasury
Circular 570, and registered in State of Georgia, as Surety, hereinafter called "**Surety**", are held and firmly bound
unto Cobb County, Georgia, hereinafter called "**Owner**", in the sum of

(in words),
(\$ _____) (in figures), for the payment of which sum, well and truly to be made, the **Contractor** and
Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by
these presents.

WHEREAS, the **Contractor** has entered into a written contract commencing _____,
20_____ with the **Owner** for performance of _____
in accordance with drawings and/or specifications prepared by or for Cobb County which contract is by reference
made a part of this bond by reference as if fully set forth herein, and is hereinafter referred to as the **Contract**.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if **Contractor** shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- A. A claimant is defined as an entity having a direct contract with the **Contractor** or with a Subcontractor of the **Contractor** for labor, material, or both, used or reasonably required for use in the performance of the Contract, "labor and material" being construed to include but not limited to that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
- B. The **Contractor** and **Surety** hereby jointly and severally agree with the **Owner** that every claimant as herein defined who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be due claimant, and have execution thereon. The **Owner** shall not be liable for the payment of any judgment costs or expenses of any such suit.
- C. No suit or action shall be commenced hereunder by any claimant,
 - 1. Unless claimant, other than one having a direct contract with the **Contractor**, shall have given written notice to any two of the following: the **Contractor**, the **Owner**, or the **Surety** above-named, within ninety (90) days after such claimant did or performed the last of the work of labor, or furnished the last of the materials for which said claim is made, stating with substantial specifics and accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the **Contractor**, **Owner** and/or **Surety**, at the addresses provided in the Contract or in this bond, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.
 - 2. After one (1) year from the completion of Contract and the acceptance by **Owner** of the work thereunder, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - 3. Other than in a state court of competent jurisdiction in and or the county or of the state in which the project, or any part thereof, is situated.
- D. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by **Surety** of mechanics' liens which may be filed on record against said improvement, whether or not claim for the amount of such presented under and against this bond.

E. PROVIDED FURTHER, that the said **Surety**, for value received hereby, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument is executed in three (3) counterparts, each one of which shall be deemed an original, this _ day of _____, 20 ____.

Attest:

By: _____

Principal/Contractor (SEAL)

Signature

Typed Name

Title

Attest:

By: _____

Surety (SEAL)

Signature of Attorney-in-Fact

Typed Name of Attorney-in-Fact

(Attach Certified & Dated Power of Attorney)
DO NOT DATE FIRST PAGE OF PAYMENT BOND. BOND DOCUMENT WILL BE DATED BY BOC.
(Bond must not be dated prior to date of Agreement)

EXHIBIT C

COBB COUNTY BOARD OF COMMISSIONERS
c/o COBB COUNTY PROPERTY MANAGEMENT
57 WADDELL STREET, MARIETTA, GA 30060-1964

PERFORMANCE BOND

Bond Number: _____

KNOW ALL MEN BY THESE PRESENTS, that we, _____ as Principal,
hereinafter called "**Contractor**", and _____, a
corporation duly organized under the laws of the State of _____ listed in the latest issue of U.S.
Treasury Circular 570, and registered in State of Georgia, as Surety, hereinafter called "**Surety**", are held
and firmly bound unto Cobb County, Georgia, hereinafter called "**Owner**", in the sum of

(in words),
(\$ _____) (in figures), for the payment of which sum, well and truly to be made, the
Contractor and **Surety** bind themselves, their heirs, executors, administrators, successors and assigns,
jointly and severally, firmly by these presents.

WHEREAS, the **Contractor** has entered into a written contract commencing _____,
20_____ with the **Owner** for performance of _____
in accordance with drawings and/or specifications prepared by or for Cobb County which contract is by
reference made a part of this bond by reference as if fully set forth herein, and is hereinafter referred to as
the **Contract**.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if **Contractor** shall promptly and faithfully perform said **Contract**, then this obligation shall be null and void; otherwise shall remain in full force and effect.

PROVIDED, FURTHER, that it **Surety**, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

Whenever **Contractor** shall be, and declared by **Owner** to be in default under the Contract, the **Owner** having performed **Owner's** obligations thereunder, the **Surety** may promptly remedy the default, or shall promptly:

1. Complete the **Contract** in accordance with its terms and conditions; or,
2. Obtain a bid or bids for completing the **Contract** in accordance with its terms, and conditions, and upon determination by **Surety** of the lowest responsible bidder, or, if the **Owner** elects, upon determination by the **Owner** and the **Surety** jointly of the lowest responsible bidder, arrange for a contract between such bidder and **Owner**, and make available as work progresses (even though there should be default or a succession of defaults) under the contract or contracts of completion arranged under this paragraph sufficient funds to pay the cost of completion less the balance of the **Contract** price; but not exceeding, including other costs and damages for which the **Surety** may be liable hereunder, the amount set forth in the first paragraph hereof.

The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by **Owner** to **Contractor** under the **Contract** and any amendments thereto, less the amount paid by **Owner** to **Contractor**.

Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which final payment under the **Contract** falls due. Notwithstanding the above, in the event of failure by the Contractor to perform its obligations under said contract, the Owner may provide written notice of Contractor's default to Surety at its address _____ and Surety shall cause to be paid within ten (10) days of receipt of Owner's notice such amount certified by Owner to be owing from Contractor pursuant to the Contract.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the **Owner** named herein or the heirs, executors, administrators or successors of the **Owner**.

The **Surety** may only cancel this bond by first providing thirty (30) days written notice to **Owner** and Contractor. Such cancellation shall not discharge the **Surety** from liability already accrued under this bond prior to the expiration of the thirty (30) day period.

IN WITNESS WHEREOF, this instrument is executed in three (3) counterparts, each one of which shall be deemed an original, this ____ day of _____, 20 ____.

Attest:

By: _____

Principal/Contractor (SEAL)

Signature

Typed Name

Title

Attest:

By: _____

Surety (SEAL)

Signature of Attorney-in-Fact

Typed Name of Attorney-in-Fact

(Attach Certified & Dated Power of Attorney)
DO NOT DATE FIRST PAGE OF PERFORMANCE BOND. BOND DOCUMENT WILL BE
DATED BY BOC.
(Bond must not be dated prior to date of Agreement)

EXHIBIT D

SPECIAL TERMS AND CONDITIONS OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) AND THE ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT (EECBG)

PART 1 GENERAL

This Section includes covers the Federal, State, and local provisions and requirements of the American Recovery and Reinvestment Act of 2009 (ARRA) and the Energy Efficiency and Block Grant (EECBG) program that constitute the funding sources for this project.

PART 2 SPECIAL TERMS AND CONDITIONS FOR ARRA and EECBG FUNDED PROJECTS

The following Special Terms and Conditions (ST&C-Bid) are incorporated in this bid and all resulting contracts and work orders. Submittal of a bid constitutes agreement by the Bidder to become familiar with and to comply with all terms and conditions in this section as well as elsewhere in bid and contract documents.

I. Compliance with ARRA and EECBG Funding and Contracting Requirements – General

A. Compliance Requirement by Bidders

This project is funded through an Energy Efficiency and Conservation Block Grant (EECBG) (Grant) provide under the American Recovery and Reinvestment Act of 2009 (ARRA), and is administered by the U.S. Department of Energy (DOE). Collectively, the terms and conditions of the EECBG and ARRA constitute the terms and conditions of the Grant.

1. Bidder Acknowledgement of Compliance

By submitting a bid, the Bidder hereby represents and warrants to and for the benefit of Cobb County and the United States Government that the Bidder agrees to:

- Familiarize themselves with, and comply with, all terms and conditions for ARRA and EECBG funded projects;
- Certify such compliance and provide documentation thereof upon request;
- Pass through these requirements to all subcontractors and, where applicable, to suppliers;
- Provide full and timely assistance upon request to Cobb County and other legal state and federal agencies and their designees as may be requested to demonstrate or confirm compliance with all bid and contract requirements and conditions.

2. Compliance Documents

The following documents specifying terms and conditions required for compliance with ARRA and EECBG are incorporated by reference:

- The American Recovery and Reinvestment Act of 2009

- 10 CFR 600 - all sections applicable to local governments. In particular, pay special attention to conditions in Subpart C – Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
- National Policy Assurances (version current at time of bid publication)
- The “Special Terms and Conditions to Cobb County EECBG Grant DE-EE0000803/000” (Grant ST&C), a copy of which is available online at <http://purchasing.cobbcountyga.gov/>

Bidders are directed to pay particular attention to the following sections of documents referenced above:

- 10 CFR 600-236, Purchasing, with special attention to paragraph (i)
- Grant ST&C paragraph 25 – compliance with Buy American requirements of ARRA
- Grant ST&C paragraph 27 and 29 – compliance with Davis-Bacon requirements of ARRA
- Grant ST&C paragraph 22 – special provisions for ARRA funded work

B. Bidder Acknowledgement Regarding Compliance Failure

In addition to all other remedies available to the Owner in the Bid and Contract documents, Bidder acknowledges that failure to comply with all terms and conditions in the ARRA and EECBG may constitute justification for withholding payment for services and materials up to and including the full value of any project funds withheld by the government of the United States.

C. Flowdown Requirement

Bidders must include all terms and conditions of this bid and all associated contracts in all subcontracts or awards resulting from this Bid as required by the referenced

D. Jobs Creation Reporting

Bidder agrees to provide information as requested by Owner to fulfill Owner’s responsibility to report jobs created with Grant funds.

E. Compliance with NEPA and Cobb County Waste Stream Management Plan

Cobb County has submitted a Waste Stream Management Plan to DOE as a condition of the EECBG. A copy of this plan is posted at <http://purchasing.cobbcountyga.gov/>. In addition to any other requirements contained or referenced in documents listed in section III-A herein, Bidder, by submitting a bid, indicates their familiarity with Cobb County’s Waste Stream Management Plan and agrees to adhere to the processes and procedures therein, and to provide documentation acceptable to the Owner of compliance.

II. Guidance and Emphasis Regarding ARRA and EECBG Funding and Contracting Requirements

Section I to these bid Special Terms and Conditions incorporates by reference the compliance requirements for this Bid and all subsequent contracts as required by the ARRA and EECBG grant conditions. The following discussion of selected compliance requirements is provided for emphasis, or for clarification or guidance on selected requirements. Should there be any conflict between these clarifications and the requirements of the source documents, the requirements of the source documents shall be applicable.

A. Access and Maintenance of Records

Bidder agrees that the terms Owner, County, or similar, as used in respect with requests made for records or documents necessary to ensure compliance with the ARRA and EECBG, shall include representatives of DOE, the US Inspector General, the US Comptroller General, their designees, or any other federal or state agencies and officials lawfully charged with ensuring compliance with the terms of this grant. Bidder agrees to respond to all such requests fully and in a timely manner so as not to delay Owner's obligations for this grant.

Included in this obligation is compliance with the following grant conditions:

1. Information in Support of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation upon request by Owner.

2. Access to Records

With respect to funds made available as a result of this Bid, any representative of the Owner as defined herein is authorized:

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subgrant, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

3. Maintenance of Records

All records required for compliance with the expenditure of funds made available by the American Recovery and Reinvestment Act of 2009 shall be maintained and available for access as required for a minimum of three (3) years from date of final payment for work under this Contract and all other pending matters are closed, or longer should any of the applicable documents referenced in section III A above so require.

B. Contractor Registrations and Certification of Eligibility

Bidders acknowledge by submitting a bid that:

1. Registration in the Central Contractor Registration (CCR) and acceptance by the DOE of their status is a requirement for any contract award. Bidders must submit a current DUNS number with their bid, as well as either: (a) a current CCR registration number, or (b) in the absence of a CCR number, a certification that they will register in CCR in a timely manner upon Owner notification of intent to award, and that award may be withheld for failure to register or should they be rejected for work by any federal agency with authority to deny eligibility.

2. Neither the Contractor (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded DOE contracts or participate in DOE programs pursuant to 24 CFR Part 24; and

No part of this bid shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded DOE contracts or participate in DOE programs pursuant to 24 CFR Part 24.

C. Buy American – ARRA Section 1605

All goods and services to be provided through this Bid are being funded with monies made available by ARRA and such law contains provisions commonly known as “Buy American Requirements” that requires all of the iron, steel, and manufactured goods used in the project be produced in the United States unless a waiver of the requirements is approved by the Department of Energy.

It is the responsibility of the Bidder to ensure the following: (a) full reviewed and understanding of the Buy American Requirements, (b) that all of the iron, steel, and manufactured goods used in the project will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements, (c) that should Bidder anticipate and propose any non-compliant iron, steel, and manufactured goods, Bidder must note specific exceptions in their bid and provide reference to an existing DOE waiver if any, or justification as required in ARRA Section 1605 to apply for a waiver, and (d) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or, if applicable, assistance in submitting a Bidder requested waiver from this requirement as may be requested by Cobb County or other legal state or federal agency.

Bidders shall complete and submit the Owner provided Contractor and Supplier Certification Document(s) for themselves, and shall obtain and submit the same from any subcontractors and suppliers, in a timely manner upon request by the Owner. **(See Attachment A to this section).**

Notwithstanding the waiver provisions allowed in the ARRA, a Bidder request for exceptions to Buy American Requirements shall be sufficient for Cobb County, at its sole discretion, to reject a bid as non-responsive.

D. Davis-Bacon Act and Contract Work Hours and Safety Standards Act

Compliance with the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Act, all as stipulated in the Compliance Documents in section III-A herein, apply to this project.

Under the provisions of the Act, contractors or their subcontractors are to pay workers employed directly upon the site of the work no less than the locally prevailing wages and fringe benefits paid on projects of a similar character as determined by the U.S. Dept. of Labor Wage Determination applicable on the bid issuance date for the construction type and work location. **For this project, the most current General Decision for determination number GA255, is applicable.**

By submitting a bid, the Bidder hereby represents and warrants to and for the benefit of Cobb County and the United States Government that (a) the contractor has reviewed and understands the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, and the Copeland Act as they apply hereto, (b) has reviewed the applicable Wage Determination referenced herein, and (c) will fully conform with the applicable Wage Determination and all requirements applicable to this bid and resulting contract(s).

E. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the ARRA specify protections, actions and remedies regarding treatment of any employee of state or local governments or their contractors or subcontractors for disclosing, including a disclosure made in the ordinary course of an employee's duties, information that the employee believes is evidence of gross management of an agency contract or grant relating to covered funds, a gross waste of covered funds, a substantial and specific danger to public health or safety related to the implementation or use of covered funds, an abuse of authority related to the implementation or use of covered funds, or violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

All parties to this agreement shall be responsible for compliance with all requirements and conditions of Section 1553 of the ARRA.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.)

G. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

H. National Policy Assurances

National Policy Assurances in effect on date of award as published at http://management.energy.gov/business_doe/1374.htm are incorporated in these Special Terms and Conditions by reference.

I. Small and Minority Business Enterprises

The Bidder agrees to ensure that small and minority firms, women's business enterprises, and labor surplus firms (DBE firms) have the maximum opportunity to participate in the performance of contracts and subcontracts whenever possible per paragraph (e) of 10 CFR 600-236. In this regard, all contractors shall take necessary and reasonable steps in accordance with 10 CFR 600-236 to ensure these firms have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin or sex.

Bidder agrees to provide documentation of all DBE firms, including itself, participating in this contract. Bidder further agrees, upon request of the Owner, to provide a list of any DBE firms that were contacted for participation in this contract.

END OF SECTION

Manufacturer’s Buy American Certification Compliance Statement

The Manufacturer (or designated manufacturer’s representative) shall include this statement with all submittals for this project.

By this submittal, the Manufacturer hereby represents and warrants that all iron, steel, or manufactured goods represented in this submittal will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements of Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA), unless a waiver of the requirements is approved, and the Manufacturer will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support reporting requirements or a waiver of the Buy American Requirements, as may be requested by the Owner.

Project Name: _____

Signed: _____

By: _____

Print Name

Title:__

Company: _____

Date: _____

Contractor Buy American Certification Compliance Statement

The Contractor shall execute and submit this statement prior to contract award for this project.

I understand this project is funded in whole or in part using funds provided through the American Recovery and Reinvestment Act of 2009 (ARRA), and that performance on this project requires full compliance with the conditions of this Act.

I hereby represent and warrant that all iron, steel, or manufactured goods used in this project will be and/or have been produced in the United States in a manner that complies with the Buy American Requirements of Section 1605 of the American Recovery and Reinvestment Act of 2009 (ARRA), unless a waiver of the requirements is approved, and I will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support reporting requirements or a waiver of the Buy American Requirements, as may be requested by the Owner.

I agree to require the Manufacturer of all products used on this project submit a Manufacturer's Buy American Certification with all product submittals unless a waiver of the requirements is approved.

I shall maintain records at the job site or, if no contractor office is maintained at the job site, at the project office of the supervisor overseeing this project, documenting of compliance with these requirements, to provide copies of such documents available to the Owner upon request, and to provide complete documentation to the Owner at the conclusion of the project.

Project Name: _____

Signed: _____

By: _____

Print Name

Title: __

Company: _____

Date: _____

EXHIBIT E
CONFLICT OF INTEREST AFFIDAVIT

As a duly authorized representative of the firm _____ I, _____
_____ with the title _____ certify that to the best of my knowledge no
circumstances exist that will cause a conflict of interest in performing services for Cobb
County Government, that no employee of Cobb County, nor any public agency official or
employee affected by this Request for Proposals has any pecuniary interest in the business of
this firm, associates or consultants of this firm, or the firm's parent firm, subsidiary, or other
legal entity of which this firm is a part, and that no person associated with or employed by this
firm has any interest that would conflict in any way, manner or degree with the performance of
services for Cobb County Government.

Date: _____

Company Name: _____

Authorized Representative Name: _____

Title: _____

Signature: _____

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE ____ DAY OF _____, 2010.

Notary Public

My Commission Expires:

EXHIBIT F
NON-COLLUSION AFFIDAVIT

As a duly authorized representative of the firm involved in the bidding for or procuring the contract for the construction of the _____ for Cobb County, Georgia, _____ with the title _____ certify that I did not prevent or attempt to prevent competition in such proposals by any means whatsoever. Nor did I prevent or endeavor to prevent anyone from making a proposal therefore by any means whatsoever, or induce another to withdraw a proposal for the work.

Date: _____

Company Name:

Authorized Representative Name: _____

Title: _____

Signature: _____

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE ____ DAY OF _____, 2010_

Notary Public

My Commission Expires:

EXHIBIT G
PROJECT DEVELOPMENT SPECIFICATIONS

Project development consists of the Energy Services Contractor (Contractor) performing preliminary project assessments to identify projects with potential for cost effective energy efficiency projects, Contractor development of **Technical Energy Audits and Project Proposals** for potential projects to quantify project costs, establish savings guarantees, project constraints, etc., and to develop a final project scope and project work order to include specifications, schedules and work methods.

I. Project Development

A. Project Proposal Development

Cobb County (Owner) will issue to contractor Proposal Development Work Orders (Development Work Order, or DWO) authorizing Contractor to develop and deliver Preliminary Project Assessments, Technical Audits, and final Project Proposals in accordance with Section III – Project Performance Requirements, and Section IV - Project Proposal Development Guidelines. Contractor agrees to complete Preliminary Project Assessments and Technical Energy Audits and tender to Owner a final audit report and Project Proposal within 45 days calendar days, or as otherwise agreed, from issuance of the Owner’s DWO.

Owner agrees to assist the Contractor in performing the **proposal development** in accordance with the guidelines and requirements described below. Owner agrees to work diligently to provide full and accurate information. Contractor agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed. The parties contemplate that this will be an iterative process and that Owner will have a reasonable amount of time to review and determine acceptance before issuing a Project Work Order (PWO) to proceed with implementation of the approved project.

Contractor agrees to offer an **Energy Project Proposal** with a package of cost effective energy savings measures according to the project requirements specified.

B. Project Implementation

The Parties shall negotiate Project Work Orders based on the Technical Audit and Project Proposals approved by the Owner. Such PWOs will authorize the Contractor to provide all services and materials to provide for installation and implementation of approved energy efficiency project proposals, including post-implementation services such as maintenance and monitoring services if approved. However, nothing in this Contract should be construed as an obligation on any of the Parties to execute such a work order. The term for performance of individual implementation projects shall be specified in the authorizing Project Work Order.

C. Compensation to Contractor

Contractor shall be compensated as follows:

- 1. Project With Insufficient Savings.** The Contractor acknowledges that the Owner shall have no payment obligations under this Contract in the event of the following:
 - a. For performance of initial project assessments;
 - b. For performance of **Technical Energy Audits and development of Project Proposals where the final Project Proposal** does not identify a package of energy and water saving measures which, if implemented: (a) meet the terms of Section III – Project

- Performance Requirements, and Section IV - Project Proposal Development Guidelines; (b) will provide the Owner with cash savings sufficient meet or exceed all projected savings identified in the preliminary project assessment, and (c) will fund the Owner's payments of all costs and fees associated with implementation of the project, including 1) initial implementation costs, 2) any fee associated with the Technical Energy Audit, and 3) any annual fees for monitoring and maintenance that are to be paid by the Owner.
- c. Should the Contractor determine at any time during the Technical Energy Audit that savings cannot be attained to meet these terms, the Technical Energy Audit will be terminated by written notice by the Contractor to Owner. In this event the Development Work Order shall be cancelled or amended to delete non-conforming projects or portions thereof, and the Owner shall have no obligation to pay, in whole or in part, the amount specified in the Development Work Order for development of non-conforming projects that do not proceed to implementation.
2. **Preliminary Project Assessment.** Contractor and County agree that the initial step to developing a final Project Proposal is development of the Preliminary Project Assessment are identified in Section 4.A. herein, and that further, should Contractor not present, or Owner not accept, a Preliminary Project Assessment meeting these guidelines and requirements, Contractor shall have no obligation to proceed with further development of rejected findings, and is not entitled to any payment under this contract.
3. **Basis and Maximum Amount.** Except as provided for in **Subsections C.1)c), C.2), or C.4)** of this section, within 120 days after Owner's acceptance of the final **Technical Energy Audit and Project Proposal**, Owner shall pay to Contractor a sum not to exceed the cost stated in the authorizing DOW as negotiated between the parties.
4. **Payment through Project Implementation.** Owner shall have no payment obligations under this contract for the Technical Audit and Project Proposal provided that Contractor and Owner execute a Project Work Order for project implementation within 120 days of Owner's acceptance of the final **Technical Energy Audit and Project Proposal**.

II. Audit Development and Project Proposal Process - Summary

Development and acceptance of the Preliminary Project Assessment, Technical Audit and Project Proposal will be an interactive approach between the Contractor and Owner, following these general steps. Section IV details process guidelines to be utilized in the development of project development.

1. Preliminary Assessment of Needs and Opportunities
 - a) Meet with Owner to establish interests, plans, problems, etc. related to facilities and operation of facilities.
 - b) Collect data and background information on buildings, equipment and facilities operation
 - c) Perform a preliminary walk-through of facilities and interview staff and occupants to identify potential measures
 - d) Meet with Owner to present preliminary findings and establish agreement on measures to analyze
 - e) Establish base year consumption and end-use consumption estimates
 - f) Conduct a preliminary analysis of potential measures
 - g) Meet with Owner to present preliminary findings and establish agreement on measures for development of Technical Audits and Project Proposals

All work required up to and including delivery of the preliminary project assessment shall constitute the Preliminary Project Assessment referenced in in this document.

2. Technical Audit
 - a) Further analyze measures
 - b) Develop a draft Technical Energy Audit Report
 - c) Meet with Owner to present results
 - d) Prepare final Technical Energy Audit Report
3. Project Proposal
 - a) Develop energy project proposal
 - b) Meet with Owner to present results and negotiate final terms
4. Project Approval
 - a) Execute Project Work Order authorizing Contractor to begin work
 - b) Construct and implement measures and begin post-construction services

III. Project Performance Requirements

All projects must meet the following performance requirements. Any projects developed which fail to materially meet these requirements may be subject to rejection at the discretion of the Owner. Rejection of a project failing to meet proposal requirements herein shall be sufficient to deny compensation to the Contractor in accordance with Section I.C.a).

1. Allowable Payback Terms. All measures presented shall produce a simple payback of the initial investment *from energy savings only* within a period not to exceed 80% of the average or anticipated useful life of the equipment whichever is less (investment term). For the purpose of determining payback, only energy savings and the initial construction investment, defined as the value of the Project Work Order, shall be used. Owner reserves the right to adjust the specified payback term, but is under no obligation to do so.
2. Annual Guaranteed Energy and Cost Savings. An annual savings guarantee is required for the entire investment term, however Owner has the option to terminate the guarantee at any time. The guarantee shall be based on cost savings directly attributable to all measures implemented in the project or otherwise allowed at the sole discretion of the Owner, and must equal or exceed the required rate of return each year during the guarantee period, plus any additional costs in addition to the initial investment for Contractor fees, maintenance services, monitoring services, and other services or expenses.
3. Excess Savings. Annual cost savings beyond the guaranteed minimum savings will be retained by Owner, and will not be allocated to shortfalls in other years.
4. Annual Savings Estimates: The annual savings estimates for all measures must be estimated for each year during the investment term.
5. Allowable cost and savings factors approved for consideration.: Owner will provide Contractor with sufficient guidance to develop savings estimates.
 - a) Savings and cost sources to be incorporated:
 - 1) The first cost(s) as agreed to in the accepted project proposal, plus all required future costs for post-construction services contracted for at the time of project acceptance., such costs to be calculated when payment is anticipated.
 - 2) Savings from energy and water utility billing reductions are to be included. Current utility rates shall be used for the initial year of savings. Annual utility cost escalation rates shall be allowed and shall be negotiated between the parties. Federal guidelines shall be used should the parties be unable to agree otherwise on escalation rates.

- b) The following cost and savings sources may also be considered and negotiated. The final decision for inclusion of these additional savings sources will be at the sole discretion of the Owner.
 - 1) Material/commodity savings, including scheduled replacement of parts (only for years that these cost savings are applicable)
 - 2) Outside labor cost savings, including maintenance contracts
 - 3) In-house labor costs
 - 4) Deferred maintenance cost
 - 5) Offset of future capital cost
 - 6) Outside incentive funds (utility incentives, grants, etc.)
 - 7) Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented.
- c) The markup costs as presented in the Contractor's response to the Owner's RFP are presented in Exhibit I: Contractor's Pricing. These rates will be used in the Technical Energy Audits and subsequent Project Proposals and Project Work Orders unless negotiated downward and specifically noted in a specific Project Proposal and Project Work Order.

IV. Project Proposal Development Guidelines

A. Preliminary Project Assessment Development

1. Data Collection

Contractor and Owner shall work cooperatively to obtain information concerning facility operation and energy use as described below. Owner and Contractor may modify the requirements or data specified in any or all the steps specified below prior to issuance of the Development Work Order.

- a. Building square footage.
- b. Construction data of buildings and major additions including building envelope
- c. Utility company invoices
- d. Occupancy and usage information
- e. Description of all energy-consuming or energy-saving equipment used on the premises, as available.
- f. Description of energy management procedures utilized on the premises
- g. Description of any energy-related improvements made or currently being implemented
- h. Description of any changes in the structure of the facility or energy-using or water-using equipment
- i. Description of future plans regarding building modifications or equipment modifications and replacements
- j. Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels)
- k. Original construction submittals and factory data (specifications, pump curves, etc.), as available
- l. Operating engineer logs, maintenance work orders, etc., as available
- m. Records of maintenance expenditures on energy-using equipment, including service contracts
- n. Prior energy audits or studies, if any

Owner agrees to work diligently to furnish Contractor, upon request, accurate and complete data and information as available. Where information is not available from Owner, Contractor will

make a diligent effort to collect such information through the facility inspection, staff interviews, and utility companies.

Contractor agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

2. Site Inspections and Development of Potential Projects

Contractor shall conduct some or all the following steps as required to prepare the preliminary analysis of potential retrofit measures.

- a. Interview the facility manager, maintenance staff, subcontractors and occupants of each building regarding:
 - a) Facility operation, including energy management procedures
 - b) Equipment maintenance problems
 - c) Comfort problems and requirements
 - d) Equipment reliability
 - e) Projected equipment needs
 - f) Occupancy and use schedules for the facility and specific equipment.
 - g) 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 "after hours" surveys outside of normal business hours or on weekends as necessary to confirm building system and occupancy schedules, if deemed necessary.
- d. Develop a preliminary list of potential energy and water saving measures. Consider the following for each system:
 - 1) Comfort and maintenance problems
 - 2) Energy use, loads, proper sizing, efficiencies and hours of operation
 - 3) Current operating condition
 - 4) Remaining useful life
 - 5) Feasibility of system replacement
 - 6) Hazardous materials and other environmental concerns
 - 7) Owner's future plans for equipment replacement or building renovations
 - 8) Facility operation and maintenance procedures that could be affected
 - 9) Capability to monitor energy performance and verify savings

Owner will allow Contractor reasonable access to facility staff to ensure understanding of existing systems and opportunities.

Contractor agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

3. Develop a preliminary analysis of potential energy and water saving measures.

This list shall be compiled and submitted to Owner within 21 days calendar days, or as otherwise agreed, from issuance of the Owner's Development Work Order.

- a. Develop a preliminary list of potential energy and water saving measures. Consider the following for each system:
 - 1) Comfort and maintenance problems
 - 2) Energy use, loads, proper sizing, efficiencies and hours of operation
 - 3) Current operating condition
 - 4) Owner's standards of comfort and operating conditions
 - 5) Remaining useful life
 - 6) Feasibility of system replacement
 - 7) Hazardous materials and other environmental concerns
 - 8) Owner's future plans for equipment replacement or building renovations
 - 9) Facility operation and maintenance procedures that could be affected
 - 10) Capability to monitor energy performance and verify savings
- b. Identify measures which appear likely to be cost effective and therefore warrant detailed analysis
- c. List all potential opportunities, whether cost-effective or not. Consider technologies, operational strategies and professional services in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, , building envelope, motors, kitchen equipment, renewable energy systems, other special equipment, irrigation systems, water saving devices and non-equipment solutions such as retro-commissioning or operator training.
- d. For each measure, prepare a preliminary estimate of energy or water cost savings including description of analysis methodology, supporting calculations and assumptions used to estimate savings.

4. Meet with Owner to present preliminary findings prior to thorough analysis. Describe how the projected project economics meet the Owner's terms for completing the Technical Energy Audit and Project Proposal. Discuss assessment of energy use, project costs and savings potential, and project constructability and schedule issues. Develop a list of recommended measures for further analysis. The Owner shall have the option to all or portions of findings and recommendations and shall have sole authority to recommend or deny continuation into the Technical Audit and Project Proposal of recommended projects.

B. Technical Audit Development and Project Proposal Process Guidelines

Following agreement on findings of the Preliminary Project Assessment and agreement by the Owner to proceed, the Contractor shall develop the Technical Audit and Project Proposal in accordance with the following guidelines, which are subject to amendment by consent of both Parties:

1. Establish base year consumption and reconcile with end use consumption estimates.

Contractor and Owner shall work cooperatively to obtain information concerning facility operation and energy use as follows:

- 1) Establish base year consumption by examining utility bills for the past three years for electricity, gas, steam, water, etc. Present base year 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 base year (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 base year representation. Contractor will account for periods of time when equipment was broken or malfunctioning in calculating the base year.
- 2) Estimate loading, usage and/or hours of operation for all major end uses 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), Contractor will use its best judgment, spot measurements or short-term monitoring. Contractor should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.
 - 3) Reconcile annual end-use estimated consumption with the annual base year consumption. This reconciliation will place reasonable “real-world” limits on potential savings.
 - 4) Propose adjustments to the baseline for energy and water saving measures that will be implemented in the future.
- 2. Analyze savings and costs for each energy and water saving measure.**
- 1) Follow the methodology of ASHRAE or other nationally-recognized authority following the engineering principle(s) identified for each retrofit option.
 - 2) Utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings. Include accurate marginal costs for each unit of savings at the time the audit is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility, calculations which account for the interactive effects of the recommended measures.
 - 3) Identify all operational or service requirements required for the installed equipment and systems, including any maintenance or other requirements to protect the Owner’s warranties. Include a projection of these costs, offset by any savings, in the findings.
 - 4) Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use.
 - 5) Develop a preliminary measurement and verification plan for each measure.
 - 6) Follow additional guidelines for analysis and report preparation given below.
 - 7) Ensure all requirements of Exhibit H – Project Implementation Requirements that will have affect Owner’s initial or operational costs are identified and included in costs.
- 3. Develop Cost Estimates for implementation of each energy and water saving measure.**
- a. Prepare cost estimates in accordance with these guidelines, accounting for the open book pricing and competitive procurement requirements of Exhibit H – Project Implementation Requirements, as well as general terms and conditions of the Contract.
 - b. Use markups and fees stated in Exhibit I: Contractor’s Pricing in all cost estimates. Markups and fees higher than those in Exhibit I are prohibited. Contractor may offer lower fees or markups than those in Exhibit I.
 - c. Ensure all costs are included and are recognized at the time they will due and payable, including any on-going or post construction costs if applicable.
- 4. Prepare a draft Technical Energy Audit Report.**
- The report provides an engineering and economic basis for negotiating an energy savings project between the Owner and the Contractor. The report shall be completed within **75** calendar days of the date of issuance of a Development Audit Work Order. The report shall include:
- a. Overview

- a) Contact information
 - b) Summary table of recommended energy and water saving measures, with itemization for each measure of total design and construction cost, annual maintenance costs, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life
 - c) Summary of annual energy and water use by fuel type and costs of existing or base year condition
 - d) Calculation of cost savings expected if all recommended measures are implemented, and total percentage savings of total facility energy cost.
 - e) Description of the existing facility, mechanical and electrical systems
 - f) Summary description of measures, including estimated costs and savings for each as detailed above
 - g) Discussion of measures considered but not investigated in detail
 - h) Conclusions and recommendations
- b. Base year energy use
- a) Description and itemization of current billing rates, including schedules and riders.
 - b) Summary of all utility bills for all fuel types and water
 - c) Identification and definition of base year consumption and description of how established
 - d) Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc) with with base year (include discussion of any unusual findings)
- c. Full description of each energy and water saving measure including:
- a) Written description
 - (1) Existing conditions
 - (2) Description of equipment to be installed and how it will function
 - (3) Include discussion of facility operations and maintenance procedures that will be affected by installation/implementation.
 - (4) Present the plan for installing or implementing the recommendation.
 - b) Savings calculations
 - (1) Base year energy use and cost
 - (2) Post-retrofit energy use and cost
 - (3) Savings estimates including analysis methodology, supporting calculations and assumptions used.
 - (4) Annual savings estimates. The cost savings for all energy saving measures must be estimated for each year during the contract period. Savings must be able to be achieved each year (cannot report average annual savings over the term of the contract).
 - (5) Savings estimates must be limited to savings allowed by the Owner as described above.
 - (6) Percent cost-avoidance projected
 - (7) Description and calculations for any proposed rate changes
 - (8) Explanation of how savings interactions between retrofit options is accounted for in calculations.
 - (9) Operation and maintenance 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.
 - (10) If computer simulation is used, include a short description and state key input data. If requested by Owner, 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 Technical Energy Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts
- (11) If manual calculations are employed, formulas, assumptions and key data shall be stated.
 - (12) Conclusions, observations, caveats
- c) Cost estimate -- detailed scope of the construction work needed, suitable for cost estimating. Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts.
- (1) Engineering/design costs
 - (2) Contractor/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.
 - (3) Permit costs
 - (4) Construction management fees
 - (5) Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.)
 - (6) Correction or compliance with any Excluded Materials or Activities as described in the Exhibit H – Project Implementation Requirements.
 - (7) Note that all markups and fees stated in this Contract shall be used in the cost estimates, unless otherwise documented and justified due to change in scope or size of project or other unforeseen circumstances.
 - (8) Conclusions, observations, caveats
 - (9) Other cost categories as defined above under “markups” in Section 3b above.
- 4) Other
- (1) Estimate of average useful service life of equipment
 - (2) Preliminary commissioning plan
 - (3) Measurement and verification plan, following the International Performance Measurement and Verification Protocol (IPMVP), explaining how savings from each measure is to be measured and verified (stipulated by Contract, utility bill analysis, end-use measurement and calculation, etc.).
 - (4) Discussion of impacts that facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc., and identify who is responsible for maintenance.
 - (5) Compatibility with existing systems.
 - (6) Complete appendices that document the data used to prepare the analyses. Describe how data were collected.

5. Meet with Owner

Review the recommendations, savings calculations and impact of the measures on the operations of the facility. Describe how the projected project economics meet the Owner’s terms for completing the Technical Energy Audit and Performance Contract Proposal. Discuss the willingness and capability of Owner to make capital contributions to the project to improve the economics of the overall project.

6. Revise Audit as directed by Owner.

- 7. Prepare a Final Project Proposal and Project Work Order Agreement** Contractor shall prepare a proposal for terms to be incorporated in an Project Work Order to include:
- a. Project Cost is the total amount Owner will pay for the project and Contractor's services. Costs must be consistent with maximum markups and fees established above. Costs may include but are not limited to: engineering, designing, packaging, procuring, installing (from Technical Energy Audit Report results); performance/payment bond costs; construction management fees; commissioning costs; maintenance fees; monitoring fees; training fees; legal services; overhead and profit; other markups.
 - b. Include a List of Services that will be provided as related to each cost.
 - c. Expected term of the Savings Guarantee.
 - d. 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 International Performance Monitoring and Verification Protocol 2000.
 - e. Analysis of annual cash flow for Owner during the contract term.

8. Prepare the Project Work Order Agreement

Contractor shall prepare a formal Project Work Order (PWO) for execution by both parties. The PWO shall incorporate directly or by reference the terms and conditions of the RFP and this Agreement, including all exhibits and attachments, and shall include the following at a minimum:

- a. The final and accepted Project Proposal
- b. Guaranteed Maximum Project Cost
- c. Project implementation schedule
- d. Energy and Water Cost Savings Guarantee, including cash flow analysis
- e. Savings Measurement and Verification Plan; Methodology to Adjust Baseline
- f. Schedule of Values
- g. Description of Project Site(s)
- h. Equipment to be Installed by ESCO
- i. Performance Bond
- j. Labor and Material Payment Bond
- k. Equipment and Contractor's Warranties

The following shall be incorporated if applicable:

- l. Description and values for compensation to ESCO for Annual Services
- m. Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment
- n. Standards of Comfort
- o. ESCO's Maintenance Responsibilities
- p. Owner's Maintenance Responsibilities
- q. Training Responsibilities and Schedule
- r. Hazardous Materials list
- s. Facility Maintenance Checklist
- t. Annual Reporting Requirements
- u. Other conditions or documents agreed to by both parties in development of the Final Project Proposal

EXHIBIT H

PROJECT IMPLEMENTATION REQUIREMENTS

Project implementation consists of the Energy Services Contractor (Contractor) providing all materials and services for the execution of projects previously, developed and defined in project work orders, to improve energy efficiency in County facilities. The special terms and conditions herein are in addition to the general terms and conditions in the Contract to which this Exhibit is incorporated. Where these Special Terms and Conditions are in conflict with general terms and conditions in the Contract, the Special Terms and Conditions shall control.

I. SAVINGS GUARANTEE

A. Energy and Cost Savings Guarantee

ESCO shall formulate an Energy and Cost Savings Guarantee (Guarantee) for inclusion in the final Project Proposal (Proposal) and Project Work Order (PWO) presented to Owner. The Guarantee shall be structured so that the total energy and approved operations savings are sufficient to cover the specified project internal rate of return on the initial investment for equipment installed and services performed, plus all net annual costs for maintenance and operations as agreed to by the Parties in the approved Proposal and PWO. The Guarantee shall be structured to facilitate fulfillment of the requirements of Section C Annual Review and Reconciliation below.

All costs and savings shall be determined in accordance with the methods of savings measurement and verification agreed to by the parties. Such savings shall be subject to the adjustments provided for Material Changes below. The Energy and Cost Savings Guarantee shall be set forth in annual increments for the investment term of the measures being guaranteed, and shall be sufficient to cover all Owner costs required for operation and maintenance of equipment installed, or for related services, as defined in the accepted Project Proposal and resulting Project Work Order.

B. Commencement Date

The Commencement Date for energy savings and post-construction services shall be the first day of the month after the month the Owner has inspected and accepted said installation and operation as evidenced by issuance of a Notice of Final Completion of the work in any particular Implementation Work Order. .

Notwithstanding anything to the contrary, the Commencement Date shall not occur and the Owner shall not be required to accept the work under this Contract unless and until all Equipment installation or specified Services for the Project Site(s) are completed by ESCO in accordance with the terms and conditions of this Contract. Owner shall have _____ days after notification by the ESCO to inspect and accept the Equipment. Owner reserves the right to reject the Equipment or Services if they fail to meet reasonable standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with this Contract. ESCO shall not be paid in full, including retainage, until after the punch list is completed and ESCO has satisfied any and all claims for labor and materials and the Certificate of Acceptance has been signed. The Certificate of Acceptance will not be unreasonably withheld by the Owner.

Compensation payments due to ESCO for any post-construction services and maintenance under this Contract shall be negotiated between the Parties and specified in the Implementation Work Order, including

C. Annual Review and Reconciliation

A plan for measuring and verifying energy-related cost savings shall be developed by the ESCO and included in the final Proposal and PWO. A report documenting compliance with the savings guarantee shall be prepared by the ESCO and delivered to the Owner within ninety (90) days of the end of each anniversary of the Commencement Date, or otherwise as negotiated by the Parties and incorporated in the PWO.

In the event the Energy and Cost Savings achieved during such guarantee year are less than the Guaranteed Energy and Cost Savings approved in the PWO, ESCO shall pay the Owner an amount equal to the deficiency. ESCO shall have _____ days from written notice by the Owner of such monies due to review and accept or contest any Owner invoice. The ESCO shall remit such payments to the Owner within ____ days of acceptance.

All savings in excess of the guarantee shall accrue to the Owner exclusively.

The Owner reserves the right to negotiate a one time settlement of any projected shortfall in savings.

Owner shall furnish (or authorize its energy suppliers to furnish) the ESCO all of its utility records and such other data as may be available concerning energy and water usage and related maintenance for the Project Site(s) in a timely manner as stated in the PWO for as long as the Guarantee is in effect, or as otherwise agreed by the Parties.

D. Owner's Responsibilities**1. Methods of Operation by Owner**

ESCO shall develop a schedule of operations and maintenance (O&M Schedule) responsibilities for all measures implemented in this project. Such measures shall be usual and customary for the measures covered. The parties acknowledge and agree that said Energy and Cost Savings would not likely be obtained unless certain procedures and methods of operation designed for energy and water conservation shall be implemented, and followed by Owner on a regular and continuous basis.

2. Owner Maintenance Responsibilities

Owner agrees that it shall adhere to, follow and implement the procedures and methods of operation and maintenance agreed to in the O&M Schedule, such schedule to be attached to the applicable Project Work Order and made part thereof after Owner's approval, such approval not to be unreasonably withheld, conditioned or delayed.

3. Inspection of Project Site(s)

Owner agrees that ESCO shall have the right once a month, with prior notice, to inspect Project Site(s) to determine if Owner is complying, and shall have complied with its obligations as set forth the O&M Schedule. For the purpose of determining Owner's said compliance, a performance checklist developed by the ESCO and included with the O&M Schedule shall be used by the ESCO to measure and record Owner's said compliance. Owner shall make the Project Site(s) available to

ESCO for and during each monthly inspection, and shall have the right to witness each inspection and ESCO's recordation on the checklist. Owner may complete its own checklist at the same time. ESCO agrees to not interfere with the Owner operations during any monthly inspection.

E. Material Changes

Notification requirements included in this section shall be in effect only so long as the energy savings guarantee are in effect, and shall no longer be required or enforceable upon expiration or cancellation of the savings guarantee.

1. Material Change Defined

A Material Change shall include any change in or to the Project Site(s), whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Owner, to increase or decrease annual energy consumption by covered equipment and systems by at least ___% after adjustments for climatic variations. Actions by the Owner which may result in a Material Change include but are not limited to the following:

- a. manner of use of the Project Site(s) by the Owner; or
- b. hours of operation for the Project Site(s) or for any equipment or energy using systems operating at the Project Site(s); or
- c. Permanent changes in the established comfort and service parameters; or
- d. occupancy of the Project Site(s); or
- e. structure of the Project Site(s); or
- f. types and quantities of equipment used at the Project Site(s) or
- g. modification, renovation or construction at the Project Site(s); or
- h. the Owner's failure to provide appropriate maintenance of and repairs to the Equipment; or
- i. any other conditions other than climate affecting energy use at the Project Site(s) including but not limited to the replacement, addition or removal of energy and water consuming devices whether plug in or fixed assets,
- j. casualty or condemnation of the Project Site(s) or Equipment, or
- k. changes in utility provider or utility rate classification, or
- l. any other conditions other than climate affecting energy or water use at the Project Site(s).
- m. Modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules.

2. Reported Material Changes; Notice by Owner

The Owner shall use its best efforts to deliver to the ESCO a written notice describing all actual or proposed Material Changes in the Project Site(s) or in the operations of the Project Site(s) at least ___ days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event.

3. Other Adjustments

Owner will alert ESCO of materials changes as known. Both parties have a vested interest in meeting the guaranteed savings of the Contract. As such, the ESCO will work with Owner to investigate, identify and correct any changes that prevent the guaranteed savings from being

realized. As a result of such investigation, ESCO and Owner shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in the Savings Guarantee. Any disputes between the Owner and the ESCO concerning any such adjustment shall be resolved in accordance with the contract provisions for dispute resolution.

II. Special Conditions for Project Implementation

A. Open Book Pricing and Competitive Bidding Requirements

Projects Work Orders will be developed subject to open book pricing and competitive bidding requirements in this section.

1. Open Book Pricing

The Contractor will fully disclose all costs of materials and labor in the development of Project Work Orders and as purchased and subcontracted by the ESCO during performance of the work. Labor costs shall include a list of hourly rates and position descriptions for labor or services provided by the ESCO. Contractor will maintain cost accounting records on authorized work performed under actual costs for labor and material, or other basis requiring accounting records. Contractor will afford Agency access to these records and preserve them for a period of three (3) years after final payment. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices or shall be acquired through Competitive Bidding as specified below. The pricing methodology and individual cost markups disclosed during preliminary contract negotiations will be expected to be applied, providing the scope and size of the project remain the same as assumed when markups were disclosed.

2. Competitive Bidding

The contractor shall be required to purchase all construction labor and materials through a competitive procurement process agreed to by the parties during development of specific Project Work Orders. Where Contractor can provide labor from in-house resources, Contractor is not restricted from doing so where in-house costs can be demonstrated to be cost effective. Owner and Contractor may waive this requirement during development of specific Project Work Orders, subject to agreement by both parties.

B. Standards of Comfort

ESCO will design and install the Equipment in a manner which will provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality and levels as determined by the parties and incorporated in the approved Technical Audit and Project Proposal.

C. Coordination During Construction and Performance of Services

1. Coordination During Construction

The Owner and ESCO shall coordinate the activities of ESCO's equipment installers with those of the Owner, its employees, and agents. ESCO shall not commit or permit any act which will interfere with the performance of business activities conducted by the Owner or its employees without prior written approval of the Owner.

2. Performance of Services

ESCO shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the agreed upon comfort standards and the construction schedules. ESCO shall repair and restore to its original condition any area of damage caused by ESCO's performance under this Contract. The Owner reserves the right to review the work performed by ESCO and to direct ESCO to take certain corrective action if, in the opinion of the Owner, the structural integrity of the Project Site(s) or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by ESCO's performance of the work shall be borne by ESCO.

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

3. Systems Startup and Commissioning

The ESCO shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with accepted industry standards. Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the requirements of the approved Proposal and PWO, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The ESCO shall provide notice to the Owner of the scheduled test(s) and the Owner and/or its designees shall have the right to be present at any or all such tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures. The Contractor shall be responsible for correcting and/or adjusting all deficiencies in Equipment operation that may be observed during system testing procedures. Prior to Owner acceptance ESCO shall also provide Owner with satisfactory documentary evidence that the Equipment installed is the Equipment specified in the PWO.

D. Modification, Upgrade or Alteration of Equipment

The requirements of this section D shall only be valid and enforceable if included in specific Project Work Orders issued under this agreement.

1. Modification of Equipment

Owner will not, without the prior written consent of ESCO, affix or install any accessory Equipment or device on any of the Equipment during the initial, or any subsequent, period for which the Savings Guarantee is in effect if such addition will change or impair the originally intended functions, value or use of the Equipment without ESCO's prior written approval, which shall not be unreasonably withheld.

2. Upgrade or Alteration of Equipment

In the event the savings provided in the Savings Guarantee are not being achieved, ESCO shall have

the right, subject to Owner's prior written approval, which approval shall not be unreasonably withheld except as provided below, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Project Site(s), provided that: (i) the ESCO complies with the agreed to standards of comfort and services; (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the guaranteed energy and cost savings 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 ESCO.

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 Owner for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall, unless otherwise agreed, be new and have equal or better potential to reduce energy consumption at the Project Site(s) than the Equipment being replaced. All replacements of and alterations or additions to the Equipment shall become part the Equipment described in the affected PWO and shall be covered by the provisions and terms thereof.

3. Rights and Remedies

Should the Owner violate section D.1, or should Owner choose to disallow a reasonable request for system modifications requested by the ESCO in accordance with section D.2, ESCO shall have the right to cancel the savings guarantee 30 days from the date of written notice to cancel by the ESCO to Owner. Should ESCO cancel the savings guarantee, Owner shall have the right to terminate any and all agreements for services entered into as a result of this Agreement, including any maintenance or service contracts.

E. Training by ESCO

The ESCO shall develop a training program recommendation in the final Proposal and shall implement the training of Owner personnel in accordance with the training program approved by the Owner and included in the PWO. The training specified must be completed prior to acceptance of the Equipment installation. The ESCO shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software. Such training shall be provided at no charge to the Owner and shall have no effect on prior acceptance of Equipment installation.

III. Equipment Servicing and Warranty

A. Equipment Service

The ESCO shall identify in the Project Proposal all operational or service requirements required for the installed equipment and systems, including any maintenance or other requirements to protect the Owner's warranties. The ESCO may propose performance of some or all these requirements in the Project Proposal, subject to Owner's acceptance. Owner shall be under no obligation to select the ESCO for performance of such work. Should Owner determine to engage the ESCO in performance of some or all the operational and maintenance services recommended, a separate agreement shall be negotiated between the parties.

B. Warranty

ESCO agrees to set forth and include warranty specifications for all equipment warranties in the the final Project Proposal and Project Work Order.

ESCO agrees to warrant workmanship for all installation for a period of one year from the date of Substantial Completion, which shall be defined as the stage in the progress of the Work where the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can utilize and take beneficial use of the Work for its intended use or purpose. Substantial Completion does not occur until the Equipment or system has been commissioned, accepted, and the Owner issues a notice of Substantial Completion., and include warranty specifications in the final

ESCO warrants that all equipment sold and installed as part of this Contract is new, will be materially free from defects in materials or workmanship, will be installed properly in a good and workmanlike manner, and will function properly for a minimum period of one (1) year from the date of the Substantial Completion.

After the warranty period, ESCO shall have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims relating to the Equipment, except as negotiated between the parties in a separate agreement.

ESCO agrees to assign to Owner all available manufacturer's warranties relating to the Equipment and to deliver such written warranties to the Owner as part of project closeout; to pursue rights and remedies against the manufacturers under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance. ESCO shall endeavor, during the warranty period, to notify the Owner whenever defects in Equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by ESCO. During this period, the cost of any risk of damage or damage to the Equipment and its performance, including damage to property and equipment of the Owner or the Project Site(s), due to ESCO's failure to exercise its warranty rights shall be borne solely by ESCO.

All warranties, to the extent transferable, shall be transferable and extend to the Owner. The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction. All extended warranties shall be addressed as the property of the owner and appropriately documented and titled.

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

IV. Environmental Requirements**A. Responsibilities**

Owner recognizes that in connection with the installation and/or service or maintenance of Equipment at Owner's Project Site(s), ESCO may encounter, but is not responsible for, any work, except as may be agreed to by both Parties in approved Project Work Orders, relating to (i) asbestos, materials containing asbestos, or the existence, use, detection, removal, containment or treatment

thereof, or (ii) pollutants, hazardous wastes, hazardous materials, contaminants other than those described in the Sections below (collectively “Hazardous Materials”), or the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment thereof. The materials and activities listed in the foregoing sentence are referred to as “Excluded Materials and Activities”.

Owner agrees to supply Contractor with any information in its possession relating to the presence of such materials if their presence may affect Contractor’s performance of the Work. ESCO agrees to perform due diligence in preparation of the Technical Audit and Project Proposal to identify such “Excluded Materials and Activities” and propose a plan of action to be performed by one or both parties as determined through negotiation of the final Project Proposal.

In the event ESCO discovers Hazardous or Excluded Materials following commencement of work not identified during development of the Project Proposal, ESCO shall have the right to immediately cease work, remove all ESCO personnel or subcontractors from the site, and notify the Owner. ESCO shall undertake no further work on the Project Site(s) except as authorized by the Owner in writing. The Owner shall be responsible to handle such Materials at its expense.

Notwithstanding anything in this Contract to the contrary, any such event of discovery or remediation by the Owner shall not constitute a default by the Owner. In the event of such stoppage of work by ESCO, the Time for Completion of Work will be automatically extended by the amount of time of the work stoppage and any additional costs incurred by ESCO as a result will be added by Change Order.

ESCO shall be responsible for any hazardous or other materials, including, without limitation, those listed in this section that it may bring to the Project Site(s).

B. Covered Materials

1. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps

ESCO agrees that Polychlorinated Biphenyl (PCB) Ballasts and Mercury Lamps are specifically excluded from classification as Hazardous Materials as described above. ESCO will ensure the handling, storage, transport and disposal of all such ballasts and lamps in accordance with EPA approved procedures, and shall enter into an agreement(s) with an approved PCB ballast and lamp disposal company(ies) for proper disposal in accordance with established law and the general guidance of the Owner’s Waste Stream Management Plan.

2. Chemicals Internal to Systems Replaced

ESCO agrees that certain liquids, gases and chemicals that are typically found inside equipment that might reasonably be included in work anticipated by this Agreement shall be specifically excluded from classification as Hazardous Materials as described above. Examples of such materials include oils and other lubricants, refrigerant gases and refrigerant and other heat transfer fluids typical of heating and air conditioning systems, including but not limited to chillers, unitary heating and air conditioning equipment, boilers and cooling towers. ESCO will ensure the handling, storage, transport and disposal of all such fluids and gases and the equipment in which they resided in accordance with EPA approved procedures, and shall enter into an agreement(s) with an approved recycling or disposal company(ies) for proper disposal in accordance with established law and the general guidance of the Owner’s Waste Stream Management Plan.

ESCO's responsibility shall be for the proper and legal management of any of excluded Hazardous Materials as defined above that are removed as a result of the installation of the Equipment and shall be limited only until said materials are delivered to an approved disposal company for transportation. ESCO shall obtain and deliver to Owner in the project closeout documents copies of manifests and disposal records to document handling and disposal or recycling in accordance with these requirements.

EXHIBIT I

CONTRACTOR'S PRICING

Include here the specified markup and fee schedules from the Contractor's response to Owner's RFP, or as negotiated between Contractor and Owner and included in Master Contract.

OTHER EXHIBITS

Other exhibits may be added if agreed to by Contractor and Owner during or subsequent to contract negotiations.