



State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES
25 Capitol Street - Room 100
Concord, New Hampshire 03301
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May 12, 2022

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

(1) Authorize the Department of Administrative Services to enter into a contract with Energy Systems Group, Newburgh, IN; vendor code #689765, to install energy conservation measures at eight state owned buildings located in Concord, NH. The cost to implement the various energy conservation measures is \$4,005,712. The project includes monitoring and verification for 5 years after the date of final completion. The contract will be effective upon Governor and Council approval through November 13, 2028.

(2) Further, authorize the Department of Administrative Services to install and pay for additional energy and fossil fuel energy conservation measures with the use of any rebates or grants that may be obtained during the life of the project. These energy and fossil fuel energy conservation measures are contingent on receipt of any rebates and or grants generated through this project, effective upon Governor and Council approval through November 13, 2028. The rebate funds shall be deposited in the following account: Department of Administrative Services, Energy Efficiency Revolving Fund 01-14-14-144010-60470000-003-404693

Funding provided by Banc of America Public Capital Corp will be deposited into an escrow account and available to the Department of Administrative Services in SFY2022 through SFY2024 to pay Energy Systems Group for work performed under the contract.

EXPLANATION

The Department of Administrative Services developed a Request for Proposals to implement guaranteed energy conservation measures at eight state owned buildings located in Concord, NH. The buildings fall under the Department of Administrative Services, General Services. These savings will be utilized to offset the cost of the measures with a payback of less than 20 years. In accordance with RSA 21-I:19-d the cost of the energy and fossil fuel reduction improvements must be financed within 20 years from guaranteed energy cost savings through a performance contract and requires no upfront capital from the State.

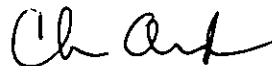
Notification of the RFP was released on October 14, 2020 to several firms within the industry. The RFP was also posted on the Department of Administrative Services web site. Bids were received and reviewed from three Energy Service Companies. The RFP requested that the Energy Service Companies propose their energy and fossil fuel saving measures for the following categories: lighting systems and controls, building automated control systems, HVAC, premium efficiency motors and variable frequency drives, building envelope, water conservation, domestic hot water systems and renewable energy systems. In accordance with Executive Order 2016-3 state agencies are required to reduce fossil fuel usage. A project such as this one makes progress towards this goal without investment from the capital budget.

Proposals were submitted on January 28, 2021 from three firms. A five-member review team comprised of representatives from Department of Administrative Services, Department of Environmental Services, and Department of Natural & Cultural Resources, (collectively referred to as "the State") rated each proposal using criteria established and published in the RFP. The criteria were broken down into the following areas: 20% energy reductions, 5% presentation and responsiveness, 10% qualifications, experience and resources, 35% technical approach, 20% project cost and 10% management approach. Based on the evaluation criteria, Energy Systems Group, LLC was chosen as the highest-ranking proposal.

Energy Systems Group conducted a detailed Investment Grade Audit "IGA" of the eight state owned buildings from August 2021 to March 2022. The results of the IGA were submitted to the state on March 11, 2022. The state then worked with Energy Systems Group to develop the scope of work and specifications that are included in this contract to install the actual energy saving measures.

This is a complete turnkey project with Energy Systems Group providing design, construction and commissioning of the energy saving initiatives. The cost for the energy saving initiatives (Requested Action #1) totals \$4,005,712 and is detailed in Exhibit 1. This cost includes \$10,834 annually for Energy Systems Group to provide measurement and verification (M&V) services for 5 years after completion of the project. Annual energy savings in the amount of \$266,647 are being guaranteed for five years after the final acceptance of the project. In accordance with RSA 21-1: 19-d, the cost of the energy conservation measures will be financed through a separate financing agreement with Banc of America Public Capital Corp through the State Treasurer and paid back with energy cost savings over a period 20 years.

Respectfully submitted,



Charles Arlinghaus,
Commissioner

STATE OF NEW HAMPSHIRE
 Bureau of Purchase and Property
 RFP 2021-254
 1/28/2021 @ 12:00 PM
 Energy Performance Contracting Services
 Department of Administrative Services

CATEGORIES	AVAILABLE POINTS	Energy Systems Group	Ameresco	Energy Efficiency Investments, Inc.
TOTAL SCORES	100	82.8	72.8	46.2

SCORING

Missing (an entire section is missing or item is not addressed in proposal) = 0

Poor (the proposal or section is deficient in many characteristics) = 1-20%

Unsatisfactory (the proposal or section is deficient in several characteristics) 21-40%

Below Avg (the proposal or section is deficient in one or more characteristics) = 41-55%

Average (the proposal or section is satisfactory in all aspects) = 56-70%

Good/Above Average (The proposal or section is satisfactory in all aspects and contains one or more significant desirable characteristics beyond the satisfactory level) = 71-85%

Outstanding/Excellent (The proposal or section is satisfactory in all aspects and contains many significant desirable characteristics beyond the satisfactory level) = 86-100%

Scoring Committee

Paul Rhodes	Department of Administrative Services	Bureau of Purchasing
Kevin Zayas	Department of Administrative Services	General Services
Chris Scoglund	Department of Environmental Services	Air Resources Division
Seth Prescott	Department of Natural and Cultural Resources	Office of Commissioner
Chris Moore	Department of Administrative Services	Energy Management Office

**State of New Hampshire; Department of Administrative Services - RFP
2021-254 - Concord ESPC**

Name of ESCO: ESG			
Please insert score (0 -100) in yellow highlighted boxes	Section Weight	Final Score	Section Score
Technical Approach – 35%	100%		28.1
Project Summary and Plan	20%	6.2	
Demonstrated understanding of the Scope of Work and the opportunities and potential problems presented by the proposed project.			
Responsiveness to the specific goals (and any specific equipment-related goals) identified in the RFP.			
Employment of technologies that have been successfully implemented before by the proposer and for which local maintenance, repair, and training support are readily available			
Facility Impact	20%	4.8	
Procedures for minimizing facility disruption and resolving unexpected problems or emergencies during construction and the operational period			
An understanding and ability to respond to the unique needs of secure areas, lab and data center operations, and office facilities			
Commissioning and Measurement and Verification	20%	5.7	
Demonstration of a sound methodology for establishing baseline usage, measuring and verifying energy usage, and adjusting the baseline for weather and facility use changes			
Ease of implementing proposed methods for creating an energy baseline and calculating energy cost savings			
Proposed commissioning plan and acceptance tests			
Training	15%	4.5	
Training plan demonstrates understanding of state personnel needs and the project conditions			
Operation and Maintenance	15%	4.4	
Clear delineation of organization and contractor participation in, and responsibility for, equipment operation			
Availability and location of qualified technicians, spare parts and other resources to support maintenance and repair of contractor-installed measures			
Emergency repair procedures (with proposer's response time) and ability to meet time requirements specified in the RFP			
Overall cost (detailed in Form E-3) of Proposed Annual Service Agreement			
Closeout	5%	1.4	
Plan for achieving smooth transition of equipment operation and/or maintenance at end of contract term			
Design and Appearance	5%	1.1	
Satisfactory design and aesthetics for building improvements that will have a visual impact			
Energy Savings – 20%	100%		20

Energy efficiency measures are used to reduce overall energy use within the building	100%	20.0	
Project Cost – 20%	100%		15
Itemized mark-up costs (Form E-4)	100%	15.0	
Qualifications, Experience, and Resources – 10%	100%		7.012
Qualifications	25%	2.2	
The qualifications, education, and experience of the personnel (prime and subcontractor), including design professionals, proposed for this project			
Access to a NH Professional Engineer, as well as the depth of local support will be considered with this category			
Experience	5%	0.4	
The project team's experience with similar projects and facilities			
References and Reputation			
Reliability and equipment performance of contractor's past retrofit projects, including energy-savings performance relative to projections	25%	2.2	
Experience developing and implementing measurement and verification (M&V) plans appropriate to the size and complexity of the project	15%	1.3	
The quality of the proposer's references	10%	0.9	
Financial Qualifications			
Financial soundness of the proposer (submitted financials to be reviewed by DAS)	20%	0.0	
Management Approach – 10%	100%		8.195
Responsibility and Management Approach			
Clear assignment of responsibility and authority for all project tasks and phases to specific individuals	20%	1.68	
Proposer addresses and provides an adequate contingency plan to perform, in the absence of primary personnel	20%	1.6	
Provisions to allow for ongoing input from state personnel on design, equipment selection, operation, and maintenance on an ongoing basis	20%	1.62	
Adequacy of overall management system to successfully perform under the contract, including how cost and technical performance status is determined, assessed, and reported through contract completion	10%	0.81	
Resources			
Availability and adequacy of resources, services, equipment and qualified personnel needed to accomplish the scope of work in the proposed timeframe	10%	0.86	
Schedule	10%	0.8125	
Reasonable project implementation schedule	10%	0.8125	
Presentation and Responsiveness to RFP – 5%	100%		4.45
Quality, completeness, and clarity of proposal	100%	4.5	

This score can be adjusted up or down based on the interview (if they are done)

FINAL SCORE

82.8

**State of New Hampshire; Department of Administrative Services - RFP
2021-254 - Concord ESPC**

Name of ESCO: **AMERESCO**

Please insert score (0 -100) in yellow highlighted boxes	Section Weight	Final Score	Section Score
Technical Approach - 35%	100%		25.7
Project Summary and Plan	20%	5.5	
Demonstrated understanding of the Scope of Work and the opportunities and potential problems presented by the proposed project.			
Responsiveness to the specific goals (and any specific equipment-related goals) identified in the RFP.			
Employment of technologies that have been successfully implemented before by the proposer and for which local maintenance, repair, and training support are readily available			
Facility Impact	20%	4.4	
Procedures for minimizing facility disruption and resolving unexpected problems or emergencies during construction and the operational period			
An understanding and ability to respond to the unique needs of secure areas, lab and data center operations, and office facilities			
Commissioning and Measurement and Verification	20%	5.3	
Demonstration of a sound methodology for establishing baseline usage, measuring and verifying energy usage, and adjusting the baseline for weather and facility use changes			
Ease of implementing proposed methods for creating an energy baseline and calculating energy cost savings			
Proposed commissioning plan and acceptance tests			
Training	15%	4.1	
Training plan demonstrates understanding of state personnel needs and the project conditions			
Operation and Maintenance	15%	4.0	
Clear delineation of organization and contractor participation in, and responsibility for, equipment operation			
Availability and location of qualified technicians, spare parts and other resources to support maintenance and repair of contractor-installed measures			
Emergency repair procedures (with proposer's response time) and ability to meet time requirements specified in the RFP			
Overall cost (detailed in Form E-3) of Proposed Annual Service Agreement			
Closeout	5%	1.2	
Plan for achieving smooth transition of equipment operation and/or maintenance at end of contract term			
Design and Appearance	5%	1.1	
Satisfactory design and aesthetics for building improvements that will have a visual impact			
Energy Savings - 20%	100%		15
Energy efficiency measures are used to reduce overall energy use within the building	100%	15.0	

Project Cost = 20%	100%		13
Itemized mark-up costs (Form E-4)	100%	13.0	
Qualifications, Experience, and Resources = 10%	100%		6.66
Qualifications	25%	2.2	
The qualifications, education, and experience of the personnel (prime and subcontractor), including design professionals, proposed for this project			
Access to a NH Professional Engineer, as well as the depth of local support will be considered with this category			
Experience	5%	0.4	
The project team's experience with similar projects and facilities			
References and Reputation			
Reliability and equipment performance of contractor's past retrofit projects, including energy-savings performance relative to projections	25%	2.0	
Experience developing and implementing measurement and verification (M&V) plans appropriate to the size and complexity of the project	15%	1.2	
The quality of the proposer's references	10%	0.9	
Financial Qualifications			
Financial soundness of the proposer (submitted financials to be reviewed by DAS)	20%	0.0	
Management Approach = 10%	100%		8.065
Responsibility and Management Approach			
Clear assignment of responsibility and authority for all project tasks and phases to specific individuals	20%	1.62	
Proposer addresses and provides an adequate contingency plan to perform, in the absence of primary personnel	20%	1.62	
Provisions to allow for ongoing input from state personnel on design, equipment selection, operation, and maintenance on an ongoing basis	20%	1.58	
Adequacy of overall management system to successfully perform under the contract, including how cost and technical performance status is determined, assessed, and reported through contract completion	10%	0.8	
Resources			
Availability and adequacy of resources, services, equipment and qualified personnel needed to accomplish the scope of work in the proposed timeframe	10%	0.82	
Schedule	10%	0.8125	
Reasonable project implementation schedule	10%	0.8125	
Presentation and Responsiveness to RFP = 5%	100%		4.35
Quality, completeness, and clarity of proposal	100%	4.4	
This score can be adjusted up or down based on the interview (if they are done)			

FINAL SCORE

72.8

**State of New Hampshire; Department of Administrative Services - RFP
2021-254 - Concord ESPC**

Name of ESCO: EEI			
Please insert score (0 -100) in yellow highlighted boxes			
	Section Weight	Final Score	Section Score
Technical Approach - 35%	100%		16.5
Project Summary and Plan	20%	3.3	
Demonstrated understanding of the Scope of Work and the opportunities and potential problems presented by the proposed project.			
Responsiveness to the specific goals (and any specific equipment-related goals) identified in the RFP.			
Employment of technologies that have been successfully implemented before by the proposer and for which local maintenance, repair, and training support are readily available			
Facility Impact	20%	3.0	
Procedures for minimizing facility disruption and resolving unexpected problems or emergencies during construction and the operational period			
An understanding and ability to respond to the unique needs of secure areas, lab and data center operations, and office facilities			
Commissioning and Measurement and Verification	20%	3.4	
Demonstration of a sound methodology for establishing baseline usage, measuring and verifying energy usage, and adjusting the baseline for weather and facility use changes			
Ease of implementing proposed methods for creating an energy baseline and calculating energy cost savings			
Proposed commissioning plan and acceptance tests			
Training	15%	2.6	
Training plan demonstrates understanding of state personnel needs and the project conditions			
Operation and Maintenance	15%	2.6	
Clear delineation of organization and contractor participation in, and responsibility for, equipment operation			
Availability and location of qualified technicians, spare parts and other resources to support maintenance and repair of contractor-installed measures			
Emergency repair procedures (with proposer's response time) and ability to meet time requirements specified in the RFP			
Overall cost (detailed in Form E-3) of Proposed Annual Service Agreement			
Closeout	5%	0.7	
Plan for achieving smooth transition of equipment operation and/or maintenance at end of contract term			
Design and Appearance	5%	0.9	
Satisfactory design and aesthetics for building improvements that will have a visual impact			
Energy Savings - 20%	100%		5

Energy efficiency measures are used to reduce overall energy use within the building	100%	5.0	
Project Cost – 20%	100%		13
Itemized mark-up costs (Form E-4)	100%	13.0	
Qualifications, Experience, and Resources – 10%	100%		4.8
Qualifications	25%	1.6	
The qualifications, education, and experience of the personnel (prime and subcontractor), including design professionals, proposed for this project			
Access to a NH Professional Engineer, as well as the depth of local support will be considered with this category			
Experience	5%	0.3	
The project team's experience with similar projects and facilities			
References and Reputation			
Reliability and equipment performance of contractor's past retrofit projects, including energy-savings performance relative to projections	25%	1.5	
Experience developing and implementing measurement and verification (M&V) plans appropriate to the size and complexity of the project	15%	0.8	
The quality of the proposer's references	10%	0.6	
Financial Qualifications			
Financial soundness of the proposer (submitted financials to be reviewed by DAS)	20%	0.0	
Management Approach – 10%	100%		4.8175
Responsibility and Management Approach			
Clear assignment of responsibility and authority for all project tasks and phases to specific individuals	20%	1.04	
Proposer addresses and provides an adequate contingency plan to perform, in the absence of primary personnel	20%	0.82	
Provisions to allow for ongoing input from state personnel on design, equipment selection, operation, and maintenance on an ongoing basis	20%	0.88	
Adequacy of overall management system to successfully perform under the contract, including how cost and technical performance status is determined, assessed, and reported through contract completion	10%	0.45	
Resources			
Availability and adequacy of resources, services, equipment and qualified personnel needed to accomplish the scope of work in the proposed timeframe	10%	0.59	
Schedule	10%	0.5	
Reasonable project implementation schedule	10%	0.5375	
Presentation and Responsiveness to RFP – 5%	100%		2.05
Quality, completeness, and clarity of proposal	100%	2.1	

This score can be adjusted up or down based on the interview (if they are done)

FINAL SCORE

46.2

RFP #2021-254

Subject: Performance Contract for eight (8) state-owned facilities in Concord, NH

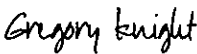
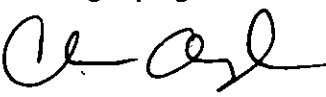
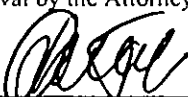
Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name NH Department of Administrative Services		1.2 State Agency Address 25 Capitol Street, Concord, NH 03301	
1.3 Contractor Name Energy Systems Group, LLC		1.4 Contractor Address 9877 Eastgate Court, Newburgh, IN 47630	
1.5 Contractor Phone Number (812) 471-5000	1.6 Account Number Multiple	1.7 Completion Date November 13, 2028	1.8 Price Limitation \$4,005,712
1.9 Contracting Officer for State Agency Chris Moore		1.10 State Agency Telephone Number (603) 271-2697	
1.11 Contractor Signature DocuSigned by:  Date: 5/10/2022 8:20 AM PDT		1.12 Name and Title of Contractor Signatory Gregory E. Knight, Manager & Executive Vice President	
1.13 State Agency Signature  Date: 5/20/22		1.14 Name and Title of State Agency Signatory Charles Arlinghaus, Commissioner Department of Administrative Services	
1.15 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.16 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: 5/23/22			
1.17 Approval by the Governor and Executive Council (if applicable) G&C Item number: _____ G&C Meeting Date: _____			

DS
YES
112

2. SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT B which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.17, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.13 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds affected by any state or federal legislative or executive action that reduces, eliminates or otherwise modifies the appropriation or availability of funding for this Agreement and the Scope for Services provided in EXHIBIT B, in whole or in part. In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT C which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete

compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all applicable statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal employment opportunity laws. In addition, if this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all federal executive orders, rules, regulations and statutes, and with any rules, regulations and guidelines as the State or the United States issue to implement these regulations. The Contractor shall also comply with all applicable intellectual property laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.


6.3. The Contractor agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials 
Date 5/10/2022 | 8:20

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely cured, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 give the Contractor a written notice specifying the Event of Default and set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 give the Contractor a written notice specifying the Event of Default, treat the Agreement as breached, terminate the Agreement and pursue any of its remedies at law or in equity, or both.

8.3. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

9. TERMINATION.

9.1 Notwithstanding paragraph 8, the State may, at its sole discretion, terminate the Agreement for any reason, in whole or in part, by thirty (30) days written notice to the Contractor that the State is exercising its option to terminate the Agreement.

9.2 In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall, at the State's discretion, deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT B. In addition, at the State's discretion, the Contractor shall, within 15 days of notice of early termination, develop and

submit to the State a Transition Plan for services under the Agreement.

10. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

10.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

10.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

10.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.

12.1 The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice, which shall be provided to the State at least fifteen (15) days prior to the assignment, and a written consent of the State. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of the Contractor.

12.2 None of the Services shall be subcontracted by the Contractor without prior written notice and consent of the State. The State is entitled to copies of all subcontracts and assignment agreements and shall not be bound by any provisions contained in a subcontract or an assignment agreement to which it is not a party.

13. **INDEMNIFICATION.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, its officers and employees, from and against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement, or other claims asserted against the State, its officers or employees, which arise out of (or which may be claimed to arise out of) the acts or omissions of the

Contractor, or subcontractors, including but not limited to the negligence, reckless or intentional conduct. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph 13. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and continuously maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 commercial general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate or excess; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 10.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days prior to the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

17. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

18. CHOICE OF LAW AND FORUM. This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court which shall have exclusive jurisdiction thereof.

19. CONFLICTING TERMS. In the event of a conflict between the terms of this P-37 form (as modified in EXHIBIT A) and/or attachments and amendment thereof, the terms of the P-37 (as modified in EXHIBIT A) shall control.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional or modifying provisions set forth in the attached EXHIBIT A are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

EXHIBIT A

Special Provisions

1. Provision 12.

Amend provision 12 by adding the following language after the first sentence:

In the event of a Change of Control Contractor shall provide the State written notice as soon as possible and no later than 15 business days following the Change of Control.

2. Provision 13:

Amend provision 13 by adding the following language:

In no event shall either Party be liable for consequential damages, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) any claims covered by any specific provision in the Contract providing for liquidated damages (if any); or (ii) any claims for torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries, death or property damage.

3. Provision 14.3:

Amend 14.3 with the following language:

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than ten (10) days following the expiration date of each insurance policy. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference.

4. Add the following new provision:

Provision 25. IRC 179D or Similar Income Tax Deduction Benefits. As a result of Contractor's design and implementation of this Project, a federal income tax deduction under Section 179D of the Internal Revenue Code ("IRC 179D") may become available to Contractor as the party primarily responsible for designing energy efficiency improvements implemented at State Facilities. Contractor may submit to the State documentation related to Contractor's effort to secure the IRC 179D deduction, such documentation will confirm Contractor's performance of the Work in State Facilities. The State, at its discretion, may elect to execute such documentation when presented. Contractor assumes sole responsibility for preparing the documentation and submitting it to the State for its consideration.

Agreement for Guaranteed Energy Savings

Exhibit B Scope of Services

1. The State of New Hampshire, acting through the Department of Administrative Services ("State"), engages Energy Systems Group, LLC, ("Contractor") to perform, and the Contractor shall perform, that work or sale of goods, or both, identified and more particularly described in Exhibits 1-6 incorporated herein ("Services").

2. Contractor has performed a comprehensive assessment of the Facilities and submitted an Investment Grade Audit to provide certain services and equipment. The Contractor shall perform the Services at the following facilities (each, a "Facility" and collectively, the "Facilities" or the "Project"):

Facility Name	Street	City	Area
ADMINISTRATIVE SERVICES DEPT			343,105
General Services			
Emergency Operations Center	224 Sheep Davis Road	Concord	67,644
Materials & Research, DOT	5 Hazen Drive	Concord	29,318
Mechanical Services, DOT	226 Sheep Davis Rd.	Concord	85,900
Pillsbury Street - Old Labor	19 Pillsbury Street	Concord	9,198
Supreme Courthouse	1 Charles Doe Drive	Concord	41,045
Supreme Courthouse Admin	2 Charles Doe Drive	Concord	12,000
Walker Building	21 S. Fruit Street	Concord	110,000
John O. Morton	7 Hazen Drive	Concord	96,800
Grand Total			439,905

3. The Contractor is guaranteeing that the State will realize energy cost savings during each year of the Term, as defined in Section 3.1, calculated and adjusted according to the terms of Exhibit 3, equal or greater than the guaranteed amounts shown in Section 7.

4. The State has accepted the Investment Grade Audit dated April 28, 2022, and wishes to engage Contractor to evaluate, design, furnish, install, commission, measure and verify energy efficiency improvements to the Facilities for the purpose of reducing energy consumption and costs.

5. The work to be performed at the Facilities by Contractor (the "Services" or the "Project") will be performed in two phases. The first phase will be a complete design,

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installation, commissioning, and initial measurement and verification of the Energy Conservation Measures (ECMs). The second phase will be the periodic measurement and verification of the ECMs and guarantee of energy cost savings. The first phase will also include facility staff training in the operation and maintenance of the installed ECMs. A delineation of Operation, Maintenance Services and Responsibilities for both the State and Contractor is attached as Exhibit 4.

6. This Project will be financed through a Master Lease Financing Program established by the State. A lease agreement with the financial services provider will be established for this Project.

1. Definitions

Agreement. This Energy Savings Performance Agreement, including all appendices and exhibits attached hereto and all amendments and supplements hereto including the accepted Investment Grade Audit all of which are made part hereof as though herein set forth in full.

Alteration Order. A written agreement between the Contractor and the State that amends the Agreement and identifies Work that affects either the Contract Price, completion date for any Energy Conservation Measure, Guaranteed Savings, Credit or any combination thereof.

Baseline Energy Use. A calculation of energy use of a building or piece of equipment for a specified period that is used to project energy use had the Project not been implemented. It is calculated by taking the energy consumption for a similar period prior to Project implementation (as recorded in the Energy Use History) and adjusting it to reflect changes for agreed upon variables, such as degree days, occupancy and building use, energy costs in accordance with a methodology set forth in Exhibit 3. Energy use savings attributable to the Project are determined in accordance with the methodology set forth in Exhibit 3.

Certificate of Project Acceptance. The written Certificate of Final Completion and Acceptance is issued by the State to the Contractor pursuant to Section 7.5 certifying that the State accepts the Project as complete.

Commissioning Report. The report, required by section 7.1 of this Agreement, provided by the Contractor after installation of an ECM to verify that the specified equipment has been properly installed, is functioning properly, and with proper maintenance and operation has the potential to generate the predicted savings. The Commissioning Report includes documentation that provides a description and inventory of the installed energy efficient equipment, performance test results and estimates of energy savings.

Compensation Schedule. The meaning assigned to that term in Exhibit C.

Conditional Nature of Agreement. The meaning assigned to that term in Paragraph 4 of the General Terms and Conditions Form P-37.

Contract Documents. Collectively DAS RFP #2021-254 Performance Contract for six (6) state-owned facilities in Concord, NH, with addendums #1 – 6 which is incorporated herein by reference, proposal in response to RFP # 2021-254, dated January 28, 2021, contract performance and payment bond, Specifications, Drawings, and other documents included in the Agreement, and modifications, clarifications, and authorized Alteration Orders, agreed to by the Parties after the execution of the Agreement, to complete the Project. All documents shall be written in English.

Contract Price. The meaning assigned to that term in Exhibit C, Paragraph 1.1

Contractor. The Energy Services Company that is responsible to perform according to the requirements set forth in this Agreement and includes all agents, subcontractors, employees and consultants whose services are utilized by the Energy Services Company in the performance of this Agreement.

Credit. Any change that results in a reduction in the Contract Price. All credits shall be processed with an Alteration Order.

Day. Shall refer to calendar day unless otherwise specified.

Drawings (Plans). The graphic and pictorial documents or reproductions thereof, which show the location, character, dimensions, and details of the prescribed work.

Effective Date. The meaning assigned to that term in Section 3.1.

Energy Conservation Measure ("ECM"). Each and all of the new devices or systems; or modifications of existing systems; or revised operations and maintenance procedures; furnished, installed, and/or implemented by the Contractor for the purpose of reducing energy use and achieving the Guaranteed Savings, as described in Exhibit 3.

Energy Conservation Measure Acceptance. The written certification by the State that it has accepted the ECM as complete and installed in accordance with the design, equipment, implementation and commissioning standards as set forth in this Agreement.

Energy Conservation Measure Acceptance Date. The date on which ECM Acceptance occurs, which shall be shown on the Certificate of ECM

Acceptance to be provided by the State as set forth in Section 7.6.

Energy Savings Performance Agreement. This Agreement which is for an energy cost reduction project where the cost of implementing ECMs and the ongoing energy services, including equipment maintenance, energy savings guarantees, and measurement and verification activities, is recovered through energy and energy-related cost savings. Financing will be provided through Third-Party Financing.

Facility(ies). The buildings, systems, and other energy-consuming or -producing equipment included in the scope of this Agreement, as documented in Exhibit 1 and the Investment Grade Audit.

Force Majeure. The meaning assigned to that term in Section 12.

Guaranteed Savings. The annual energy savings calculated according to the method described in Exhibit 3, which Contractor guarantees will be realized by the State as a result of the Project.

Investment Grade Audit. Also referred to as the "Audit Report" or the "Study Report". A survey of existing energy systems of a Facility for the purpose of proposing ECMs and verifying that the proposed ECMs have the potential to generate energy savings and meet the financial requirements within the specified term. The results of an Investment Grade Audit are presented in a written report that includes a methodology for the calculation of the Baseline Energy Use and a description of physical conditions, equipment counts, nameplate data and control strategies. For each ECM recommended, the Investment Grade Audit generally provides equipment counts, implementation costs, efficiency levels or performance characteristics of the equipment comprising the proposed ECM, on-going maintenance costs, annual energy and cost savings, the useful life of the ECM and a life-cycle cost analysis. Projected energy savings must account for interaction among recommended ECMs. See Section 4 and the State RFP #2021-254 "Performance Contract for six (6) stated-owned facilities in Concord, NH".

Measurement and Verification (M&V). The process of monitoring and measuring the energy consumption of a facility or specific equipment or systems, before and after Project implementation, to determine if guaranteed or predicted energy savings are being realized.

Operations and Maintenance (O&M). The process of operating and maintaining newly installed energy saving equipment as further described in Exhibit 4.

Project. The energy and cost reduction program contemplated herein, pursuant to, inter alia, RSA 21-I:19 a-e. Project refers to the Work as defined in Exhibit B.

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Project Acceptance ["Final Acceptance"]. The written certification by the State that it has accepted the Project as complete and installed in accordance with the design, equipment, implementation and commissioning standards as set forth in this Agreement.

Project Acceptance Date ["Final Acceptance Date"]. The date on which Project Acceptance occurs, which shall be shown on the Certificate of Project Acceptance to be provided by the State as set forth in Section 7.6.

Punch List. Uncompleted or corrective work that the Contractor is to complete or correct promptly prior to Project Acceptance.

Specifications. Exhibit 2 information that consists of written requirements for material, equipment, construction systems, standards and workmanship, and other documents or reports as applicable.

Standards of Service and Comfort. The facility performance requirements to be maintained in accordance with Section 10 and Exhibit 6.

State. State of New Hampshire

Study Acceptance Form. The meaning assigned to that term in Section 4.3.

Substantial Completion. As reasonably determined by an inspection by the State that the work or a portion thereof is substantially complete in accordance with the Contract Documents, such that the State may occupy or utilize the Work for its intended use without disruption or interference by the Contractor in completing or correcting any remaining unfinished or unacceptable Work.

Third Party Financing. Project financing provided to the State by an independent financial institution.

Total Project Cost. All costs associated with the development and implementation of an Energy Performance Contract, including, but not limited to: Investment Grade Audit, ECM design, procurement and installation; construction contract bonds; interest charges; training of facility staff; Technical Assistance and Project Oversight; Measurement and Verification; maintenance and service; project management; and contractor overhead and profit.

Work. (or "Project") The construction and services required by the Contract Documents as specified in Exhibit B to furnish all labor, materials, equipment, and incidentals necessary to complete the duties, obligations, and requirements imposed by the Agreement.

2. Project Financing and Contract Bond

2.1 This Project is contingent upon financing being provided by - Banc of America Public Capital Corp. The established finance rate at the time of Governor and Council review shall be used to determine whether this Project continues to meet the 20 year payback requirements as stated in RSA 21-I:19 d.

The successful Contractor shall furnish the State with a Payment and Performance Bond in an amount equal to 100% of the value of the Contract Price. The Payment and Performance Bond shall be in place for the duration of the construction phase of the Project which will conclude at Project Acceptance. The Contractor shall bear the full expense of the Payment and Performance Bond. The requirement for the Payment and Performance Bond will be terminated by the State on the Project Acceptance Date.

The Payment and Performance Bond shall be in a form and substance satisfactory to the State. The Payment and Performance Bond shall be maintained by the Contractor in full force and effect until Project Acceptance. The Contractor or any of its sureties shall not be released from their obligations under the Payment and Performance Bond from any change or extension of time, or termination of this Contract.

Notwithstanding any other provision of this Contract or the bonds, in no event and in no manner shall coverage under the Performance Bond and Payment Bond extend to Guaranteed Savings, as further set forth in Exhibit 3 or any related provisions.

The Payment and Performance Bond shall be issued by a licensed insurance company authorized to do business in the State of New Hampshire and made payable to the State of New Hampshire. The Payment and Performance Bond shall contain the Contract number and dates of performance.

The Contract Bond shall comply with RSA 447:16 and be executed by the Contractor and their Surety or Sureties, guaranteeing complete execution of the contract and all supplemental agreements pertaining thereto including the payment of all legal debts pertaining to the Project.

The State reserves the right to review the Payment and Performance Bond and to reasonably require the Contractor to substitute a more acceptable Payment and Performance Bond in such form(s) as the State deems necessary prior to acceptance of the Payment and Performance Bond.

2.2 The Contractor assumes all liability for damage to or loss of Equipment and material directly purchased by the Contractor prior to its

installation and Substantial Completion.

3. Effective Date: Completion of Services

3.1 This Agreement, and all obligations of the parties hereunder, shall, following the execution by Contractor, become effective on the date the Governor and Council of the State of New Hampshire approve this Agreement ("the Effective Date") and shall continue for a period of 78 months (the "Term"), which is comprised of an estimated eighteen (18) months of construction, followed by sixty (60) months of Metering and Verification Services commencing after the Project Acceptance Date, unless sooner terminated under an Event of Default as described in the General Provisions.

3.2 If the date for commencement in Exhibits 1 through 6 precedes the Effective Date, all services performed by Contractor between the commencement date and the Effective Date shall be performed at the sole option and sole risk of the Contractor and in the event that this Agreement does not become effective, the State shall be under no obligation to pay the Contractor for any costs incurred or services performed; provided, however, if this Agreement becomes effective, all costs incurred prior to the effective date shall be paid under the terms of this Agreement. All construction and ECM implementation services must be completed by the date specified for construction completion.

4. Investment Grade Audit and Report

4.1 **Investment Grade Audit.** Contractor has performed an investment grade audit (the "Study") of the Facility. The Study has identified all feasible energy conservation, load management, building envelope, water conservation and renewable resource options for which the total savings benefits are expected to exceed Total Project Cost over a period not to exceed twenty (20) years.

4.2 **Submittals.** The Contractor has furnished a written report of its findings (the "Study Report" contained in Appendices B & C which are incorporated herein by reference) including all of the information listed in Exhibits 1 through 6.

4.3 **Review; Acceptance.** The State has reviewed the Study Report and executed the Study Acceptance Form.

5. Design

5.1 Within 14 days of written receipt of the Governor and Council's approval of this Agreement for Guaranteed Energy Savings, Contractor shall commence the design and/or specification, as applicable, of the ECMs. Drawings and specifications for this Project shall be in compliance with all applicable laws, ordinances, rules,

codes, regulations and requirements for the ECMs noted in Exhibit 2 and shall be submitted to the State for review and approval, which shall not be unreasonably withheld or delayed.

5.2 The Contractor shall submit all Professional Engineer stamped drawings and specifications for review and approval as required by the New Hampshire State Fire Marshal. No actual construction of the portions of the work that require a Professional Engineer's stamp shall begin before obtaining approval from the State Fire Marshal.

5.3 Design review meetings shall be held when mutually deemed necessary and at a minimum when design drawings are 50% complete and fully complete. Contractor shall provide six (6) complete sets of documents for State review prior to each review meeting. State shall have 10 business days to review and provide comments after documents are received.

5.4 The Contractor shall not proceed with obtaining or installing any ECM until the State has given written notice that it has reviewed and accepted the design documents or specifications, as applicable, for such ECM. Such acceptance shall not be unreasonably withheld or delayed.

5.5 The Scope of Work, including the complete design, engineering, procurement, and installation of the ECMs listed on Exhibit 1 and as further detailed in Appendix C, the Study Report, shall be accomplished in accordance with the requirements outlined in the Study Report and all provisions of this Agreement.

5.6 The drawings and specifications prepared for this Project shall not, without the prior written approval of the State, specify or require any article, design or process which requires payment by the State of royalties for its use.

6. Installation

6.1 Within 14 days of written receipt of notice of State acceptance of the design documents or specifications, as applicable, Contractor shall commence procuring, installing and/or implementing the ECMs.

6.2 Without relieving it of, or in any way limiting, its obligations to the State under this Agreement, the Contractor may enter into purchase orders for the purchase of materials or Equipment in accordance with the provisions of Exhibit 2.

6.3 All Project materials and Equipment installed in the Facilities by the Contractor or its subcontractors shall become the sole property of the State after installation and upon ECM Acceptance.

6.4 During the installation, the Facilities will be occupied. The Contractor shall perform all work with extreme care to avoid damage to existing construction and installations. The Contractor shall make all commercially reasonable provisions as to the scheduling of work and storage of materials to minimize interferences to the extent practicable and, to the extent practical, shall confine its operations, materials, and equipment within the immediate vicinity of the work. Contractor shall prearrange all disruptive and/or noise-producing construction activities with the DAS staff so as not to unreasonably interfere with ongoing activities within the Facilities. The work shall be coordinated and planned in a manner which will permit normal operation of the facility with as minimal as practicable interruptions and/or inconvenience.

6.5 Unless otherwise specifically provided for in the design documents, all equipment, materials and articles incorporated in the work covered by this Agreement are to be new and of the specification indicated in the Study Report. All work to be executed shall be of the high quality and performed by skilled mechanics in a workmanlike manner. The State may require the Contractor to dismiss from the work any employee, employees, or subcontractors that the State reasonably deems incompetent, careless, insubordinate, or otherwise objectionable. The State may reject any equipment and materials if such equipment and materials are inconsistent with the specifications of Exhibit 2. All equipment shall be installed to allow for easy access to perform maintenance and repairs.

6.6 The Contractor shall provide adequate, clearly marked and/or lighted barricades or warning signs at all open trenches, excavation and contract work areas for the protection of the work and safety of the public and occupants.

6.7 Contractor shall acquire and maintain, at its own cost, any and all permits, licenses, easements, waivers, and permissions of every nature necessary to perform the work. This includes any City of Concord building and inspection permits.

The Contractor shall, as directed during the progress of the work, remove and properly dispose of resultant dirt and debris and keep the premises reasonably clean. The Contractor shall take all necessary precautions during the progress of the work to protect the Facility as well as adjoining property, roadways, walkways, trees, lawns, landscape, and buildings from damage and injury and shall promptly repair any such damage to the satisfaction of the State, at no cost to the State.

6.8 The Contractor shall be responsible for quality control during ECM installation. The Contractor shall provide a competent superintendent, either directly employed by Contractor or through one of Contractor's subcontractors, satisfactory to the State, on the work at all times during progress of the work with authority to act for the Contractor, specific to superintendence of the work. The Contractor shall inspect and test all work performed to insure compliance with Agreement requirements. The Contractor shall maintain records of inspections and tests, including inspections and

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tests conducted by or for utility or other regulatory agencies.

6.9 The Contractor shall provide to the State once each month during the period that design, engineering, procurement, installation, implementation and Commissioning for the ECMs are performed hereunder, brief progress reports comparing actual work progress to the planned work progress as shall be presented in the Exhibit 5 Installation Schedule for the preceding month. Such reports shall describe any difficulties encountered during the reporting period and shall include a statement of the Contractor setting forth the costs of the work during the reporting period. Progress Reports shall be submitted in duplicate no later than the 15th of each month. Progress Reports shall be in a letter format and shall include the following subjects, with appropriate explanation and discussion: During construction the Contractor shall hold weekly construction meetings to discuss the progress to date and provide a 2 week look ahead for the project.

- a. Title of project.
- b. Agreement number.
- c. Period of this report.
- d. Actual Progress during reporting period.
- e. Planned progress in the future.
- f. Identification of problems.
- g. Planned solutions.
- h. Ability to meet schedule, reasons for slippage in schedule.
- i. Schedule – percentage completed and projected percentage of completion of performance by months – could be a bar chart or milestone chart.
- j. Analysis of Project cost incurred in relation to the Compensation Schedule, Exhibit C.

The Contractor shall meet with representatives of the State upon reasonable notice to discuss any matters concerning the Project.

6.10 In the event that unknown circumstances or conditions at a Facility (such as the presence of asbestos or faulty wiring) are discovered after the Agreement is signed, and such conditions increase the agreed upon cost of completing an ECM installation or implementation at a specific facility, work on that ECM shall be immediately suspended until the State and the Contractor mutually determine if or how the installation work shall be completed. The Agreement may be revised by an Alteration Order to incorporate necessary changes in the scope of work, the Guaranteed Savings, the Equipment, or the costs not to exceed Section 1.8 of the P-37 contract form.

6.11 The State will be responsible for overseeing the actual installation of ECMs to ensure that all identified codes and regulations are met and that the

Contractor complies with the Specifications as detailed in Exhibit 2.

6.12 The Contractor and all of its Subcontractors shall follow all applicable Federal, State, and local codes; ordinances; and Health and Safety laws, as required by law.

6.13 For the applicable ECMs, the Contractor shall provide two signed affidavits each from the registered design professionals responsible for architecture, mechanical engineering, electrical engineering, structural engineering, and civil engineering.

Design affidavits shall be submitted at the conclusion of the design phase, but prior to the beginning of the construction phase, and shall state that the design professionals' respective design meets all applicable state and federal codes. The Installation affidavit shall be submitted after Substantial Completion of the Project for each ECM for which design services are provided, but before the issuance of a Certificate of Occupancy, and shall state that the design professionals made periodic visits to the site to observe the work and, to the best of their knowledge, information and belief, the ECM was constructed in accordance with the design. The frequency of site visits shall be such as to provide the design professionals a reasonable assurance that the work is being done per the design documents.

The design professional shall keep a log of all site visits, noting the dates and times of the visits and all pertinent observations and shall submit monthly reports to the Contractor noting all findings during the site visits of that month. The design professionals shall promptly notify the Contractor of any of the following events or conditions which they observe in the course of performing their duties: code violations; changes which affect code compliance; the use of any materials, assemblies, components, or equipment prohibited by code, major or substantial changes between approved plans and specifications and the work in progress; or any condition which they identify as constituting an immediate hazard to the public.

The following ECMs will include design services:

Materials and Research

- Laboratory Airflow Reduction
- Humidifier Replacement/Optimization
- Boiler Replacement

Walker Building

- Hydronic loop control optimization
- Server Room WSHP Installation
- WSHP Control Valve Additions

Emergency Operations Center

- Hydronic loop control optimization
- Humidifier Replacement / Optimization
- Solar Photovoltaic Array

DOT Mechanical Services

- Stock Room IR heater relocation
- Heavy Equipment Shop IR Heater Addition

7. Commissioning, Energy Conservation Measure Acceptance, Project Acceptance

7.1 The Contractor shall deliver to the State a written report (the "Commissioning Report") as each ECM covered by the Agreement is completed. In the Commissioning Report(s), the Contractor shall provide measurement and verification documentation, as applicable in accordance with Exhibit 3, that verifies that the specified equipment or systems have been properly installed, are functioning properly and have the potential to generate the Guaranteed Savings (or that ECM's share of the Project's Guaranteed Savings).

7.2 The Commissioning Report(s) shall include the results of performance tests to verify that the installed ECM(s) will operate as designed, consistent with the standards set forth in the design documents, which shall minimally conform to all applicable codes. The tests shall be conducted in accordance with the methodology prepared for each type of ECM in Exhibit 3 during the installation phase. As mutually agreed upon, the Commissioning Report(s) shall be accompanied by complete reproducible as-built record drawings that are CAD generated in .DWG format, conforming to generally accepted engineering standards of all modified or newly installed equipment including, but not limited to, architectural, mechanical, electrical, and controls, along with manufacturers' operating and repair manuals and parts lists. Manufacturer's warranties shall accompany the Commissioning Report(s) and shall be assigned to the State upon completion and ECM Acceptance.

7.3 Within 10 business days of receiving a Commissioning Report from Contractor, the State shall review the report and inspect the ECM and either (a) deliver to the Contractor a written Certificate of Final Completion and Acceptance of the ECM(s) or (b) provide the Contractor with a written Punch List of corrective action the State deems necessary. If ECM(s) are rejected, the State will set forth the reasons for such rejection and the Contractor shall promptly remedy the deficiencies.

7.4 Upon receipt of a written notice from the Contractor that the Punch List items have been completed, the State shall have ten (10) calendar days to respond.

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Final Completion and Acceptance shall occur when all reasonable or undisputed Punch List work is complete. If the State fails to respond within the ten-calendar-day period, Final Completion and Acceptance shall be deemed to have occurred.

7.5 Within 15 business days of submission of the final Commissioning Report, Contractor shall deliver to the State notice that the Project is completed and a request for Project Acceptance.

7.6 Within 15 business days of receipt of the request for Project or ECM Acceptance, The State shall either deliver to Contractor: a) a written Certificate of Project or ECM Acceptance; b) a written extension of time notice to review for Project and or ECM Acceptance; or c), if good cause exists, a written punch list of the corrective actions it deems necessary. In the event the State delivers a punch list, Contractor shall promptly remedy the deficiencies and the applicable procedures set forth in this Section for notice and Project or ECM Acceptance shall apply again. In the event the State doesn't deliver a), b) or c) above, the ECM shall be deemed accepted.

7.7 Upon Project Acceptance by the State, all right, title, and interest in and to all improvements and equipment constructed or installed on the premises and additions, shall vest exclusively in the State at no additional cost, free and clear of all and any liens and encumbrances created or caused by the Contractor.

7.8 Contractor guarantees that the State will realize energy and cost savings, calculated and adjusted as set forth in Section 9 and Exhibit 3, each year for five (5) years after the Project Acceptance Date as follows:

Year	Guaranteed Cost Savings
1	\$266,647
2	\$266,647
3	\$266,647
4	\$266,647
5	\$266,647

*Note: The Guaranteed cost Savings only applies for those years in which M&V is being performed.

8. Operations, Maintenance, Repairs, and Training

8.1 The Contractor's and the State's responsibilities for operation, maintenance and repair of all installed ECMs are described in Exhibit 4. Maintenance includes all work and costs associated with periodic inspections, tests, calibrations, and adjustments required to sustain and/or restore energy system operational status to as-designed performance and performance requirements of this Agreement. Repair includes all labor, material, equipment, and services required to replace, rebuild, or restore to as-designed performance systems and equipment that have failed, are in danger of failing, or are inadequate. Required response times for repair activities shall be as described in Exhibit 4.

8.2 The State shall perform or cause to be performed all operation, maintenance, and repairs to its unmodified pre-existing equipment necessary to realize the Guaranteed Energy Savings. Such operation, maintenance, and repairs are fully described in Exhibit 4.

8.3 Contractor shall furnish operation and maintenance manuals and recommended spare parts lists for operations and maintenance of the ECMs and modified State equipment. Prior to Project Acceptance, Contractor shall train State personnel needed to operate and maintain the ECM(s) in order to perform any State maintenance responsibilities required under this Agreement or in the event of emergency. The training to be provided is detailed in Exhibit 4. During the Term, Contractor shall train State personnel (or State's designee) to operate and maintain the ECM(s) to preserve the ECM(s) energy efficiency performance, as specified in Exhibit 4.

9. Measurement and Verification of Energy Savings

9.1 The monitoring and measurement of the Energy Savings that result from the ECM(s) shall be as set forth in the Measurement and Verification Plan (M&V Plan) included in Exhibit 3.

9.2 The Measurement and Verification Plan shall be in accordance with concepts and definitions provided in the International Performance Measurement and Verification Protocol (IPMVP).

- a) In the event that the M&V Plan requires the use of Contractor-owned measurement equipment, Contractor shall test such meters, metering devices, and equipment in the manner and frequency described in the M&V Plan and such testing shall be at Contractor's expense. Contractor shall give the State reasonable advance notice of all metering tests and the State shall have the right to observe such tests.

- b) If, upon testing, any measurement equipment is found to be inaccurate by more than the agreed upon level of accuracy as specified in the M&V Plan, then previous recordings of or by such equipment shall be considered inaccurate and will be corrected to an agreed upon level of accuracy, approved by the State. If the period of inaccuracy cannot be accurately determined as a basis for adjustment, then retroactive billing adjustments for errors shall be made for a period equal to one-half of the time elapsed since the previous test, but in no event more than six months. Contractor shall promptly adjust such equipment to record correctly.

9.3 Measurement and Verification of savings shall commence on the Project Acceptance Date and shall continue for a period of 5 years after the Project Acceptance Date unless terminated earlier in accordance with Exhibit 3.

9.4 The energy savings shall be determined in the manner described in Exhibit 3 Guaranteed Energy Savings.

9.5 The Contractor will prepare an Energy Cost Savings Report detailing the results of the M&V services based off of the M&V Plan detailed in Exhibit 3.

9.6 Within 150 days from the date of each anniversary of the Project Acceptance Date, the Contractor shall submit a verification of energy cost savings in accordance with the M&V Plan detailed in Exhibit 3. The calculation shall incorporate all adjustments in energy cost savings as provided for in Exhibit 3.

Should the energy savings be less than the annual guaranteed amount of savings, pursuant to the M&V Plan in Exhibit 3, the Contractor shall pay the State an amount equal to the difference. Said check shall be provided to the State following the State's acceptance of the Energy Cost Savings Report. At the State's discretion, the parties may elect to have Contractor provide mutually agreed upon work or services in lieu of a check.

This Guarantee of Energy Cost Savings only applies for those years in which M&V is being performed, in accordance with Exhibit 3.

10. Standards of Service and Comfort

10.1 Contractor shall design and install and the State shall operate, and maintain the ECMs to deliver the facility performance requirements described in Exhibit 6 throughout the Agreement Term.

10.2 The Contractor's services shall be performed in a good, workmanlike manner so that the Equipment will perform consistent with the standards for heating,

cooling, hot water, and lighting pursuant to Exhibit 6, Standards of Service and Comfort.

11. Representations and Warranties

11.1 Each party hereby represents and warrants to the other that subject to the requisite approvals including but not limited to those of Governor and Council and requisite financing and appropriation:

- a) it has or will obtain all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- b) this Agreement has been duly executed and delivered for it by the signatories authorized, and it constitutes its legal, valid and binding obligation;
- c) its execution, delivery, and performance of this Agreement shall not result in a breach or violation of, or constitute default under, any agreement, lease, or instrument to which it is a party or by which it or its properties may be bound or affected; and
- d) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits, or orders which would materially and adversely affect its ability to perform hereunder.

11.2 Contractor further represents and warrants that:

- a) it is financially capable and technically qualified to perform the Project;
- b) it is familiar with and will comply with all general and special federal, state, municipal, and local laws, ordinances, codes, and regulations, that may in any way apply to or affect the performance of this Project;
- c) the design, supervision, and workmanship furnished with respect to completing the Project shall be in accordance with sound and currently accepted construction and engineering practices; and
- d) all materials, equipment, and workmanship furnished by it and by subcontractors in performance of the Project or any portion thereof shall be free of defects in design, material, and workmanship, and

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all such materials and equipment shall be in accordance with the requirements of the Agreement, shall conform with all applicable laws, codes, specifications, standards, regulations, rules, and ordinances in accordance with sound and currently accepted engineering and construction practices. Contractor shall promptly remedy any and all defective materials or workmanship furnished by Contractor or any subcontractor upon receipt of written notice thereof from Owner. If required by Owner, Contractor shall furnish satisfactory evidence as to kind and quality of materials and equipment used in connection with the Project. The warranty set forth herein shall continue to be effective for a period of one year following Owner's acceptance or beneficial use of each ECM, whichever comes first. Owner shall give Contractor written notice of all defective work, specifically detailing the deficiencies to be corrected, and Contractor shall repair or otherwise remedy such defective work in an expeditious manner. CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Contractor makes no warranty or representation of any kind regarding reducing, preventing, eliminating or inhibiting the transmission or spread of contaminants or pathogens (including COVID-19 and any other virus) in connection with the work or services provided under this Agreement. To the extent possible, Contractor shall assign to the State all warranties that Contractor receives from its vendors and/or subcontractors for any materials or equipment, which are or are to become permanent features of the Project, which shall be in addition to the other warranties provided herein.

12. Force Majeure

12.1 The term "Force Majeure" as used herein means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the party claiming Force Majeure. Force Majeure includes, but is not limited to, acts of God, labor disputes, sabotage, riot, epidemic/pandemic or quarantine, terrorism, sudden actions of the elements, actions or inactions by federal, state and municipal agencies and actions or inactions of legislative, judicial, or regulatory agencies which, in any of the foregoing cases, by exercise of due foresight such Party could not reasonably have been expected to avoid.

12.2 If either Party documents that it is unable to perform its obligations under this Agreement because of Force Majeure, then the affected Party shall be

excused from whatever performance is affected by the Force Majeure, to the extent it is affected, except as to obligations to pay money, and shall not be liable in damages or otherwise resulting from the Force Majeure, provided that:

- a) the non-performing Party provides as promptly as possible a written notice to the other Party describing the events of the Force Majeure. In no event shall notification occur later than 30 days after the non-performing Party learns of the impact of the event;
- b) the suspension of the performance is of no greater scope and of no longer duration or magnitude than is reasonably required by the Force Majeure;
- c) the non-performing Party uses all reasonable efforts to remedy its inability to perform; and
- d) as soon as the non-performing Party is able to resume performance of its obligations excused as a result of the occurrence, it shall give prompt written notification thereof to the other Party.

13. Environmental Compliance

13.1 Hazardous Materials shall include, without limitation, substances defined or classified as "hazardous substances," "hazardous waste," or "toxic substances" under federal, state, or local law, statute, regulation, or ordinance (collectively "Hazardous Materials"). Hazardous Materials shall include, any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste; hazardous substance; pollutant or contaminant under applicable law, rule, or regulation relating to or addressing employee health and safety and protection of the environment; or which is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, mutagenic, or otherwise hazardous; or which is or contains petroleum, gasoline, diesel fuel, another petroleum hydrocarbon product, or polychlorinated biphenyls. Hazardous Materials specifically include mold and lead based paint and specifically excludes ACM. The Contractor shall have no obligations relating to the identification, abatement, cleanup, control, removal, or disposal of mold, regardless of the cause of the mold. Contractor shall fully comply with all applicable federal, State of New Hampshire, and local laws, statutes, codes, regulations, and ordinances in effect or which shall come into effect during the Term of this Agreement regarding the generation, use, storage, handling, transportation and disposal of Hazardous Materials.

13.2 Asbestos - Containing Materials. Neither party desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of asbestos-containing materials ("ACM"). Consistent^{nt-os}

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with applicable laws, rules and regulations, the State shall provide the Contractor with any information in its possession relating to the presence of ACM in areas where the Contractor undertakes any work or measure and verification services that may result in the disturbance of ACM. If either the State or the Contractor become aware of or suspects the presence of ACM that may be disturbed by the Contractor's work or measure and verification services, it shall promptly stop the work or measure and verification services in the affected area and notify the other. The State shall be responsible at its sole expense for addressing the potential for or the presence of ACM in conformance with all applicable laws, rules and or regulations and addressing the impact of its disturbance before the Contractor continues with its work or measure and verification services unless, the Contractor had actual knowledge that ACM was present and acted with intentional disregard of that knowledge, in which case the Contractor shall be responsible at its sole expense for remediating areas impacted by the disturbance of the ACM, and the State shall resume its responsibilities for the ACM after Contractor's remediation has been completed in compliance with all laws, rules and regulations.

13.3 As part of the Study Report submitted to the State by the Contractor, Contractor has certified in writing that Contractor has a plan to coordinate all activities involving handling, transport, and disposal of known Hazardous Materials, including asbestos, affected by the installation of ECMs under this Agreement. Hazardous material abatement and/or disposal, and assumed responsibilities, are contained under "General Assumptions and Clarifications" in Exhibit 2.

13.4 This Project has the potential to develop waste such as, but not limited to, PCB ballasts, mercury-containing lamps, electronic waste (or e-waste), etc. The Contractor is responsible for properly disposing of (i.e. recycling) all waste materials generated from this Project with the exception of Asbestos Containing Materials and Hazardous Materials.

14. Personnel

14.1 The performance of the Services shall be carried out by the Contractor. The Contractor shall at its own expense, provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

14.2 The Contractor shall not hire, and shall permit no subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services, to hire any person who has a contractual relationship with the State or who is a State officer or employee, elected or appointed.

14.3 The Contracting Officer specified, or his or her successor, shall be the State's representative.

15. Project Suspension

15.1 Stop Work Order. The State may at any time, by written stop work order to the Contractor, require the Contractor to stop all or any part of the work called for by this Agreement for a period of up to 90 calendar days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a stop work order; the Contractor shall forthwith comply with its terms and take all steps to minimize the incurrence of costs and public health and safety problems allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 calendar days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:

- a) By written notice to the Contractor, cancel the stop work order, which shall be effective as provided in such cancellation notice, or if not specified therein, upon receipt by the Contractor, or
- b) Terminate the work covered by such order as provided in Paragraph 9 Termination, of Form P-37.

15.2 If a stop work order issued under this section is cancelled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, if any, or a combination thereof, and in any other provisions of the Agreement that may be affected, and the Agreement shall be modified in writing accordingly, if:

- a) The stop work order results in an increase in the time required for, or in the Contractor's compensation for, the performance of any part of this Agreement, and
- b) The Contractor asserts a claim for such adjustments within 30 calendar days after the end of the period of work stoppage; provided that, if the State decides the facts justify such action, the State may receive and act upon any such claim asserted at any time prior to final payment under this Agreement.

15.3 If a stop work order is not cancelled and the work covered by such stop work order is terminated, the reasonable costs resulting from the stop work order shall be paid to Contractor by equitable adjustment or otherwise.

15.4 Notwithstanding the provision of this Section, the maximum amount payable by the State to the Contractor pursuant to this Section shall not be increased or deemed to be increased except by specific written amendment hereto.

16. Changes

16.1 **Emergency Situations:** The Contractor and the State shall use their best efforts to notify the respective parties or their designee within twenty-four (24) hours after actual knowledge of an emergency situation or other occurrence that might affect performance including:

- a) Any malfunction in the operation of the installed Equipment or any pre-existing energy-related equipment;
- b) Any interruption or alteration of the energy supply to the facilities;
- c) Any alteration or modification of the installed Equipment or its operation, and;
- d) Any other emergency situation likely to affect the Project.

16.2 **Proposed and Non-Emergency Material Changes.** The Contractor and or the State shall report all such changes in the Facilities to the respective party with a written notice describing and explaining all actual or proposed changes in the State's selected Facilities or in their operations and the anticipated effect on energy use. Except as otherwise provided below with respect to the closing of a Facility, notice must be delivered to either party no less than seven (7) calendar days before any actual or proposed change occurs except for Emergency Situations as provided by Section 16.1 hereof. In the event the Facility is contemplated to be closed for a period of three hundred sixty-five (365) calendar days or longer, the State agrees to give the Contractor a minimum of sixty (60) calendar days' notice of the closing of such Facility. In the event of such closing, this Agreement shall be deemed terminated with respect to such Facility and any ECM(s) affecting such Facility, and the State shall pay the Contractor in accordance with Paragraph 9 Termination, of Form P-37. Upon such facility's closure, the parties shall recalculate the Guaranteed Savings Amount and amend this Contract accordingly, subject to the State's approval.

16.3 Upon acceptance of the installation by the State and in the absence of any reported Material Changes in the Facility or in its operations, it is agreed energy consumption should not change substantially from year to year. Therefore, beginning one (1) year after installation, if energy consumption for any month increases from the energy consumption for the same month of the preceding year, the Contractor shall have the right to investigate the Facilities to ascertain whether or not a Material Change has occurred which may require a change in the Baseline Energy Use data. Any resulting changes shall be subject to State approval, which shall not be unreasonably withheld or delayed.

16.4 **Fire, Flood, or Other Casualty.** Any construction or restoration of a facility following or necessitated by fire, flood, or other casualty, shall be deemed a Material Change, and the provisions of Section 16 hereof and its subparts shall be applicable. If the casualty renders a majority of any facility uninhabitable or unusable and the restoration or reconstruction of the affected portion is not commenced within twelve months from the date of such casualty, the Contractor shall have the option to terminate its Agreement with respect to that site by a written notice to the State. Upon such termination, the State shall pay to the Contractor in accordance with Paragraph 9 Termination, of Form P-37. The mere occurrence of a fire, flood or other casualty shall not affect, modify, impair or limit the State's obligation to make payments to the Contractor. The parties shall recalculate the Guaranteed Savings, as a result of such fire, flood or other casualty or any resulting termination.

17. **Entire Agreement**

17.1 **Contract Documents**

This Contract consists of the following Contract Documents:

- a. Form P-37 Standard Terms and Conditions
- b. Exhibit A Special Provisions
- c. Exhibit B Scope of Work
- d. Exhibit C Payment Terms ["Cost Detail" and "Schedule of Values and Expected Monthly Draws"]
- e. Exhibit 1 Energy Conservation Measures
- f. Exhibit 2 Specifications
- g. Exhibit 3 Guaranteed Energy Savings, Measure and Verification Plan, and Commissioning
- h. Exhibit 4 Operations and Maintenance, Training
- i. Exhibit 5 Installation Schedule
- j. Exhibit 6 Standards of Service and Comfort
- k. Appendix A Specifications
- l. Appendix B Energy Saving Calculations dated April 28, 2022 (Attached by Reference)
- m. Appendix C Investment Grade Audit dated April 28, 2022 (Attached by Reference)

17.2 **Order of Precedence.** In the event of conflict or ambiguity among any of the text of the Agreement, the following Order of Precedence shall govern:

- a) Form P-37 General Terms and Conditions as may be modified in Exhibit A
- b) Exhibits B and C, Exhibits 1 through 6 and Appendixes A, B and C.
- c) DAS RFP #2021-254 Performance Contract for six (6) state-owned facilities in Concord, NH, with addendums #1-6 which is incorporated herein by reference; then
- d) Proposal in response to RFP # 2021-254, dated January 28, 2021, which is incorporated by reference herein.

18. Notice

18.1 Any notice by a party hereto to the other party, unless specifically provided for herein, shall be deemed to have been duly delivered, or given at the time of mailing. All notices required or permitted under this Agreement shall be in writing and shall be personally delivered or sent by certified United States mail, postage prepaid, or overnight express mail or courier service addressed as follows:

If to Contractor to:

Jarrett E. Simon, Vice President
Energy Systems Group, LLC
9877 Eastgate Court
Newburgh, IN 47630

If to the State Agency to:

Donald Perrin, State Energy Manager
NH- Dept. of Administrative Services
Division of Plant & Property Mgmt
25 Capital Street, Rm. 102
Concord, NH 03301

or to such other person at such other address as a Party shall designate by like notice to the other Party. Any notices sent by email or facsimile shall also be sent by mail or overnight express or courier service.

Exhibit 1

Included ECMs and Savings Summary

The following ECMs are included in the Project:

EC IA #	ECM Category	ECM Name	EOC	Materials & Research, DOT	Mechanical Services, DOT	Pillsbury Street - Old Labor	Supreme Courthouse	Walker Building	Probate Court	Morton Building	
1a	Lighting Systems and Controls	LED Lighting and Lighting Controls Upgrades - Interior	X	X	X	X	X	X	X	X	
1b		LED Lighting and Lighting Controls Upgrades - Exterior	X	X		X		X			
3a	Building Automated Control Systems	Equipment Scheduling & Setback; Setpoint Optimization	X	X	X	X		X			
3b		Hydronic loop control optimization (pump & valve operation)	X					X			
3c		Heat pump boiler control optimization						X			
3d		OAT Sensor Sequence optimization						X			
3e		Rm 113 Cooling Optimization	X								
3f		CRAC / AHU Control Optimization	X								
3g		ReCx Stairwell / Lobby Controls							X		
3h		ReCx ERVs	X						X		
3i		ReCx IR Heater & MAU Controls				X					
3j		ReCx Steam Controls					X				
3k		ReCx VAV System	X	X							
3l		Replace all obsolete controllers	X								
3m		Controls Expansion (misc. spaces)	X	X					X		
4a		Heating, Ventilation and Air Conditioning	Boiler Replacement		X						
4b			Laboratory Airflow Reduction		X						
4c	Humidifier Replacement / Optimization		X	X				X			
4d	Stock Room IR heater relocation					X					
4e	Heavy Equipment Shop IR Heater Addition					X					
4f	Building-Wide Heat Pump Installation										
4g	Server Room WSHP Installation							X			
4h	WSHP Control Valve Additions							X			
4i	Variable Speed Control - Pumps		X					X			
5a	Motors and VFDs	Variable Speed Control - Fans	X	X				X			
5b		Building Envelope Improvements	X	X				X			
6a	Building Envelope	Building Envelope - Capital Projects									
6b		Water Conservation	X					X			
7a	Water Conservation	Irrigation Deduct Meter		X			X				
7b		Truck Wash Bay Water Recycling System									
7c		ReCx									
8	DHW Systems	DHW System Improvements			X						
9	Equipment	Compressed Air System Improvements			X						
10	Transformers	Transformer Replacements		X				X			
11a	Renewable Energy	Solar Photovoltaic System Installation - Direct Ownership	X								
11b		Solar Photovoltaic System Installation - PPA									
11c		CHP System Installation									
12a	Addit. ECMs	Pipe, Valve and Fitting Insulation	X	X							
12b		Steam Trap Replacement									

Additional details on each ECM are included in the Investment Grade Audit.

Savings Summary

Emergency Operations Center

ECM Name	ECM #	ECM Sell Price	savings - energy units					Energy Cost Savings (\$)	savings - other		M&V Cost	SPB (years) - with Rebate	SPB (years) - without Rebate
			kWh	kW-month	therms	kGal water	kGal sewer		O&M (\$)	rebate			
Lighting Systems and Controls	1	\$135,021	186,585	25	-	-	-	\$22,133	\$7,412	\$9,548	\$513	4.2	4.6
Building Automated Control Systems	3	\$227,561	137,179	5	10,209	-	-	\$22,866	\$2,000	\$0	\$865	9.2	9.2
Heating, Ventilation and Air Conditioning	4	\$100,986	22,932	-	(1,261)	-	-	\$1,549	\$0	\$0	\$384	65.2	65.2
Premium Efficiency Motors and Variable Frequency Drives	5	\$149,120	101,504	9	2,196	-	-	\$13,307	\$0	\$0	\$567	11.2	11.2
Building Envelope	6	\$19,798	1,367	-	1,510	-	-	\$1,270	\$0	\$0	\$75	15.6	15.6
Water Conservation	7	\$11,070	-	-	118	25	25	\$336	\$17	\$0	\$42	31.4	31.4
Renewable Energy	11	\$489,555	114,817	15	-	-	-	\$13,596	\$0	\$0	\$1,861	36.0	36.0
Additional Measures	12	\$4,471	-	-	254	-	-	\$189	\$0	\$0	\$17	23.7	23.7
TOTAL		\$1,137,581	584,384	54	13,024	25	25	\$75,248	\$9,429	\$9,548	\$4,325	13.3	13.4

Materials & Research, Mechanical Services, Morton Building

ECM Name	ECM #	ECM Sell Price	savings - energy units					Energy Cost Savings (\$)	savings - other		M&V Cost	SPB (years) - with Rebate	SPB (years) - without Rebate
			kWh	kW-month	therms	kGal water	kGal sewer		O&M (\$)	rebate			
Lighting Systems and Controls	1	\$592,745	353,342	98	-	-	-	\$49,061	\$5,586	\$25,482	\$2,254	10.4	10.8
Building Automated Control Systems	3	\$101,768	73,982	15	3,050	-	-	\$10,673	\$0	\$0	\$387	9.5	9.5
Heating, Ventilation and Air Conditioning	4	\$1,059,557	159,524	61	40,663	-	-	\$57,555	\$0	\$0	\$4,029	18.4	18.4
Premium Efficiency Motors and Variable Frequency Drives	5	\$11,215	-	-	-	-	-	\$0	\$0	\$0	\$43	-	-
Building Envelope	6	\$17,946	1,100	-	1,366	-	-	\$1,363	\$0	\$0	\$68	13.2	13.2
Water Conservation	7	\$18,877	-	-	-	-	252	\$1,513	\$0	\$0	\$72	12.5	12.5
Domestic Hot Water Systems	8	\$6,351	3,518	0	269	-	-	\$692	\$0	\$0	\$24	9.2	9.2
Equipment	9	\$39,247	16,150	6	-	-	-	\$2,639	\$0	\$3,800	\$149	13.4	14.9
Electric Distribution System and Transformers	10	\$27,298	18,068	2	-	-	-	\$1,763	\$0	\$0	\$104	15.5	15.5
Additional Measures	12	\$4,576	-	-	421	-	-	\$390	\$0	\$0	\$17	11.7	11.7
TOTAL		\$1,879,579	625,684	183	45,788	-	252	\$125,848	\$5,586	\$29,282	\$7,147	14.1	14.3

Pillsbury

ECM Name	ECM #	ECM Sell Price	savings - energy units					Energy Cost Savings (\$)	savings - other		M&V Cost	SPB (years) - with Rebate	SPB (years) - without Rebate
			kWh	kW-month	therms	kGal water	kGal sewer		O&M (\$)	rebate			
Lighting Systems and Controls	1	\$28,321	10,217	4	-	-	-	\$1,561	\$0	\$1,418	\$108	17.2	18.1
Building Automated Control Systems	3	\$6,051	506	1	600	-	-	\$714	\$0	\$0	\$23	8.5	8.5
TOTAL		\$34,372	10,722	5	600	-	-	\$2,275	\$0	\$1,418	\$131	14.5	15.1

Supreme Courthouse, Probate Court

ECM Name	ECM #	ECM Sell Price	savings - energy units					Energy Cost Savings (\$)	savings - other		M&V Cost	SPB (years) - with Rebate	SPB (years) - without Rebate
			kWh	kW-month	therms	kGal water	kGal sewer		OSM (\$)	rebate			
Lighting Systems and Controls	1	\$129,377	58,997	23	-	-	-	\$7,819	\$0	\$7,009	\$492	15.7	16.5
Water Conservation	7	\$18,121	-	-	-	-	335	\$2,011	\$0	\$0	\$69	9.0	9.0
TOTAL		\$147,498	58,997	23	-	-	335	\$9,829	\$0	\$7,009	\$561	14.3	15.0

Walker Building

ECM Name	ECM #	ECM Sell Price	savings - energy units					Energy Cost Savings (\$)	savings - other		M&V Cost	SPB (years) - with Rebate	SPB (years) - without Rebate
			kWh	kW-month	therms	kGal water	kGal sewer		OSM (\$)	rebate			
Lighting Systems and Controls	1	\$315,518	148,374	51	-	-	-	\$18,737	\$0	\$24,983	\$1,200	15.5	16.8
Building Automated Control Systems	3	\$97,520	30,622	8	1,647	-	-	\$5,122	\$0	\$0	\$371	19.0	19.0
Heating, Ventilation and Air Conditioning	4	\$175,116	112,526	13	12	-	-	\$11,875	\$0	\$0	\$666	14.7	14.7
Premium Efficiency Motors and Variable Frequency Drives	5	\$19,131	14,966	3	4,273	-	-	\$5,428	\$0	\$0	\$73	3.5	3.5
Building Envelope	6	\$34,032	1,660	-	1,906	-	-	\$1,837	\$0	\$0	\$129	18.5	18.5
Water Conservation	7	\$8,725	16,789	-	-	159	159	\$3,132	\$28	\$0	\$33	2.8	2.8
Electric Distribution System and Transformers	10	\$156,641	71,648	8	-	-	-	\$7,518	\$0	\$0	\$596	20.8	20.8
TOTAL		\$806,643	396,584	83	7,837	159	159	\$53,648	\$28	\$24,983	\$3,067	14.6	15.0

Exhibit 2

Specifications

Within 14 days of written receipt of the Governor and Council's approval of this Agreement for Guaranteed Energy Savings, Contractor shall commence the design and/or specification, as applicable, of the ECMs. Drawings and specifications for this Project shall be in compliance with all applicable laws, ordinances, rules, codes, regulations and requirements for the ECMs and shall be submitted to the State for review and approval, which shall not be unreasonably withheld or delayed.

Exhibit 3

Energy Savings Guarantee

3.1 The methodology for determining the guaranteed energy savings as well as the applicable utility rates are detailed in Appendix C, the Investment Grade Audit.

3.2 Contractor shall complete the following energy conservation measures (ECMs) and guarantee the total energy unit savings, not per ECM, as detailed in Table 1 below. Guaranteed Cost Savings are based on the guaranteed energy unit savings multiplied by the baseline rates defined herein. This guarantee shall apply for a period of five (5) years, which period shall commence on the first day of the calendar month following the Project Acceptance Date, as defined in Exhibit B.

Table 1: Guaranteed Energy Savings

ECM Name	ECM #	savings - energy units					Energy Cost Savings (\$)
		kWh	kW-month	therms	kGal water	kGal sewer	
Lighting Systems and Controls	1	757,514	200	-	-	-	\$99,312
Building Automated Control Systems	3	242,289	30	15,505	-	-	\$39,374
Heating, Ventilation and Air Conditioning	4	246,362	64	39,414	-	-	\$65,373
Premium Efficiency Motors and Variable Frequency Drives	5	116,470	11	6,469	-	-	\$18,734
Building Envelope	6	4,127	-	4,781	-	-	\$4,470
Water Conservation	7	16,789	-	118	184	771	\$6,991
Domestic Hot Water Systems	8	3,518	-	269	-	-	\$692
Compressed Air System Improvements	9	16,150	6	-	-	-	\$2,639
Electric Distribution System and Transformers	10	89,716	10	-	-	-	\$9,282
Solar PV	11	114,817	15	-	-	-	\$13,596
Pipe & Valve Insulation	12	-	-	675	-	-	\$579
TOTAL	-	1,656,372	348	67,230	184	771	\$266,647

3.3 The baseline energy usage for the Facilities included in this contract is detailed in Section 2 of the Investment Grade Audit.

3.4 Measurement and verification strategies are based on IPMVP Option A, Retrofit Isolation, or B, Measured Retrofit Isolation, as specified in the Performance Contract for six (6) state-owned facilities in Concord, NH, RFP#2021-254. Engineering calculations of the savings are based on key parameters that are measured and/or verified as well as parameters that are

estimated such as historical data, industry standard engineering values, typical operating hours, or manufacturer's equipment specifications.

The standard M&V protocols are described below:

Option A - Retrofit Isolation: Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the energy conservation measure's (ECM) affected system(s) and/or the success of the project. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer's specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required.

Option B - Measured Retrofit Isolation: Savings are determined by field measurement of all key performance parameters which define the energy use of the ECM-affected system.

The following table lists the M&V Options to be used for each ECM.

ECM Name	ECM #	M&V Option
Lighting Systems and Controls	1	A
Building Automated Control Systems	3	A
Heating, Ventilation and Air Conditioning	4	A
Premium Efficiency Motors and Variable Frequency Drives	5	A
Building Envelope	6	Non-Measured
Water Conservation	7	A and Non-Measured
Domestic Hot Water Systems	8	A
Compressed Air System Improvements	9	Non-Measured
Electric Distribution System and Transformers	10	A
Solar PV	11	B
Pipe & Valve Insulation	12	Non-Measured

3.5 Adjustments to Baseline

3.5.1 If the hours of occupied operation of the Property, or any portion thereof, are materially changed subsequent to the date of this Agreement, the baseline will be equitably recalculated by Contractor and will be documented in the Energy Savings Guarantee report for approval by the State, such approval not to be unreasonably withheld, conditioned or delayed.

3.5.2 In the event that the type of fuel used at the Property, or any portion thereof, changes at any time during the contract period in any manner which Energy Systems Group reasonably believes affects the baseline and/or Contractor's guarantee, the baseline and/or the guarantee will be equitably recalculated by Contractor and will be documented in the Energy Savings Guarantee report for approval by the State, such approval not to be unreasonably withheld, conditioned or delayed.

3.5.3 It is understood and agreed that the State may be subject to laws and regulations which may require the State to alter the minimum or maximum temperature at any given time and State shall comply with the same. In the event that Contractor reasonably believes that such a change in temperature affects the baseline and/or Contractor's guarantee, the baseline and/or the guarantee will be equitably recalculated by Contractor and will be documented in the Energy Savings Guarantee report for approval by the State, such approval not to be unreasonably withheld, conditioned or delayed.

3.5.4 If at any time during the Term of the Agreement additional space is planned to be occupied or is occupied or planned to be vacated or is vacated, Contractor will, if possible and at the State's expense, meter consumption of all energy by the space in question and make appropriate upward or downward adjustments, to the Baseline according to these meter readings, that will be documented in the Energy Savings Guarantee report for approval by the State, such approval not to be unreasonably withheld, conditioned or delayed. State shall notify Contractor at least ninety (90) days in advance of such changes and if possible six (6) months in advance for space which is to be vacated. If metering is not possible or State desires not to bear the costs of such, then the adjustments to the Baseline and/or the guarantee will be appropriately adjusted as the Parties may mutually agree in writing.

3.5.5 During the implementation phase of this Project, Contractor will attempt to note which energy consuming devices are not operational. In the event that the devices are repaired or retrofitted with the ECM's, Contractor will appropriately adjust the baseline and/or the guarantee in the Energy Savings Guarantee report.

3.5.6 In the event that State or persons using the Property add or remove energy consuming devices (including, but not limited to, vending machines, kilns, computers, printers and other electronic or fossil fuel consuming devices), or change the use of existing devices, which materially increase or decrease energy usage, State will inform Contractor by written notice within thirty (30) days of becoming aware thereof, as to any such changes which could result, in aggregate or over time, in a change of total annual energy savings hereunder (collectively "Material Change"). Within a reasonable period of time following Contractor's receipt of any such written notice from State regarding a Material Change, or within a reasonable period of time after Contractor's learning of a Material Change by Contractor's monitoring or other means, Contractor shall equitably recalculate the baseline and/or the guarantee and document such recalculation in the Energy Savings Guarantee Report for approval by the State, such approval not to be unreasonably withheld, conditioned or delayed, showing Contractor's modification of the baseline and/or the guarantee to reflect such a Material Change. Contractor and the State agree to discuss smaller changes on an annual basis and determine whether an adjustment to the baseline and/or the guarantee is required. Where State fails to inform Contractor of any such change in the baseline, Contractor may make retroactive

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adjustments to the baseline and/or the guarantee, subject to State's written approval (such approval not to be unreasonably withheld, conditioned or delayed), and there shall be retroactive commensurate adjustments to any payments which have been made by either Party to the other based upon an incorrect baseline or guarantee.

3.5.7 Weather related changes. In the event the applicable weather varies from the baseline weather, adjustments to the baseline and/or the guarantee may be warranted. Weather adjustments will be based on temperature correlation factors applied against the current weather, as measured in degree-days from the nearest available NOAA weather station, and documented in the Energy Savings Guarantee report for approval by the State, such approval not to be unreasonably withheld, conditioned or delayed.

Exhibit 4

Operation and Maintenance Services, Training

The following summarizes Operation and Maintenance Service (O&M) responsibilities for the State and Energy Systems Group, LLC ("Contractor") during construction close-out as well as during the service phase (also known as the 'second phase' under Exhibit B) of this project.

4.1 Operations

The State will perform all operations of installed equipment.

The Contractor shall provide training and operations manuals during the construction close-out phase of the project. Periodic verification and oversight of optimal operation of equipment will be provided during the first year following the Final Acceptance Date of the Project. During this period the Contractor shall communicate any deviations in the performance of the equipment observed while performing the M&V tasks described in Exhibit 3 that could affect potential energy savings.

4.2 Preventive Maintenance

The State will perform all preventive maintenance of installed equipment to maintain operational performance throughout the Term of the contract.

The Contractor shall provide training, operations manuals, preventive maintenance requirements and schedules, during the construction close-out phase of the work. During the first year following the Final Acceptance Date of the work, the Contractor shall communicate any deviations in the preventative maintenance or performance of the equipment observed while performing the M&V tasks described in Exhibit 3 that could affect potential energy savings in writing via the M&V report, to the State.

4.3 Equipment Repair and Replacement

Except for the warranty period for each ECM, the State will perform all equipment repair and replacement throughout the Term of the contract to maintain operational performance throughout the term.

The Contractor shall provide periodic verification and oversight of optimal maintenance of equipment observed while performing the M&V tasks described in Exhibit 3 during the first year following the Final Acceptance Date of the Project. During this same first year, the Contractor shall communicate via the M&V report any observed deviations in the repair and/or replacement of the equipment that could affect potential energy savings.

4.4 Warranty

As detailed in Exhibit B Scope of Services, the Contractor shall provide a warranty including all parts and labor for one year after Owner's acceptance or beneficial use of each

ECM, whichever comes first. After the warranty expires, the State will be responsible for repair and replacement of failed equipment (other than failures caused by the Contractor's negligence) at its own expense.

4.5 Operations and Maintenance Oversight

During the construction close-out period, the Contractor shall develop a consolidated summary of maintenance recommendations for all new equipment, and a list of recommended responsibilities and schedule for annual and quarterly O&M work related to the ECMs installed by Contractor. These activities shall be closely coordinated with the State's maintenance staff.

As part of this O&M support and oversight responsibility the Contractor shall also provide operations and maintenance training and manuals for the State facility staff.

4.6 Training

The Contractor shall provide training, hands-on demonstrations, and training manual review. The training program shall be available to all appropriate facilities staff on-site beginning during the commissioning phase. The Contractor shall provide all necessary documentation such as service, operation, parts, and maintenance manuals for all affected equipment. These manuals shall be thoroughly reviewed with the appropriate facilities staff.

The Contractor shall provide the following training services:

All training shall be conducted on site at State of New Hampshire facilities during the construction close-out phase of the work. Training classes shall be available for up to 8 staff and must include training materials for all staff.

ECM	New Equipment	Training Topics	Recommended Personnel	Training hours
Lighting Systems and Controls	Lamps, fixtures, sensors	Lamp, driver and new fixture specifications being installed; like-for-like replacements in future. Occupancy sensor settings procedures; sensitivity and timing variables. LED outdoor lighting fixture and sensor maintenance. Download, operation and troubleshooting of Philips EasySense Control application	Electrical	4
Building Automated Control Systems	Field controllers, sensors, valves, actuators, thermostats	Sequences of operation, setpoints, new points, parameters critical to efficient operation, field controller operation and end user programming. Routine maintenance, recalibration, testing, and overrides. Routine checks on BMS displays for trouble areas and energy waste.	HVAC, Electrical, Controls	16
Heating, Ventilation and Air Conditioning	Boilers, humidifiers, IR heaters, heat pumps, exhaust fans, pumps, ductwork, ventless filtration lab hoods (enclosed and canopy)	Equipment (and system) operation, troubleshooting, safety, inspection & maintenance. Safe work and storage practices for new laboratory equipment. Filter removal/replacement for filtration equipment. Operation of portable Gas Chromatograph.	HVAC, Controls, Lab Personnel	16
Premium Efficiency Motors and Variable Frequency Drives	Motors and VFDs	VFD controller troubleshooting and maintenance, motor troubleshooting and	HVAC, Electrical	8s

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		maintenance. Setpoints and methods of adjusting speed.		
Building Envelope	Caulk, rigid board insulation, weatherstripping, closed cell SPF	No training recommended	None	0
Water Conservation	Faucet Aerators, Showerheads, Toilet China, Flush Valves	No training recommended	None	0
Domestic Hot Water Systems	VFD-driven recirculation pump	No training recommended	None	0
Compressed Air System Improvements	VFD-driven air compressor	Compressor operation, troubleshooting, safety, inspection, shutdown & maintenance	HVAC, Electrical	2
Electric Distribution System and Transformers	Low-voltage transformers	No training recommended	None	0
Renewable Energy (PV)	Solar modules, inverters, optimizers, racking, ballast	System operation, troubleshooting, safety, inspection, emergency procedures, shutdown & maintenance	Electrical	4
Pipe & Valve Insulation	Jacketed fiberglass insulation, removable blanket insulation	No training recommended	None	0
Total Training Hours				44

Exhibit 5 Implementation Schedule

The following schedule represents the estimated project schedule from the Investment Grade Audit (IGA) submission to final construction completion. This preliminary schedule is subject to revision based on actual contract execution date and changes in project timing. Naturally, all scheduling will be coordinated with DAS personnel to ensure that no work will interfere with normal operations.

This preliminary schedule represents a roll-up of major project activities from execution of the Agreement, through completion of improvements and the States' acceptance, to commencement of performance period services. As construction of this project requires significant involvement of State personnel for review and approval of project specifications, design work, and selection of subcontractors, the schedule is intended to be representative of the expected construction period but in no way is a guarantee that any specific activities or the aggregate project will be completed in accordance with the specified periods.

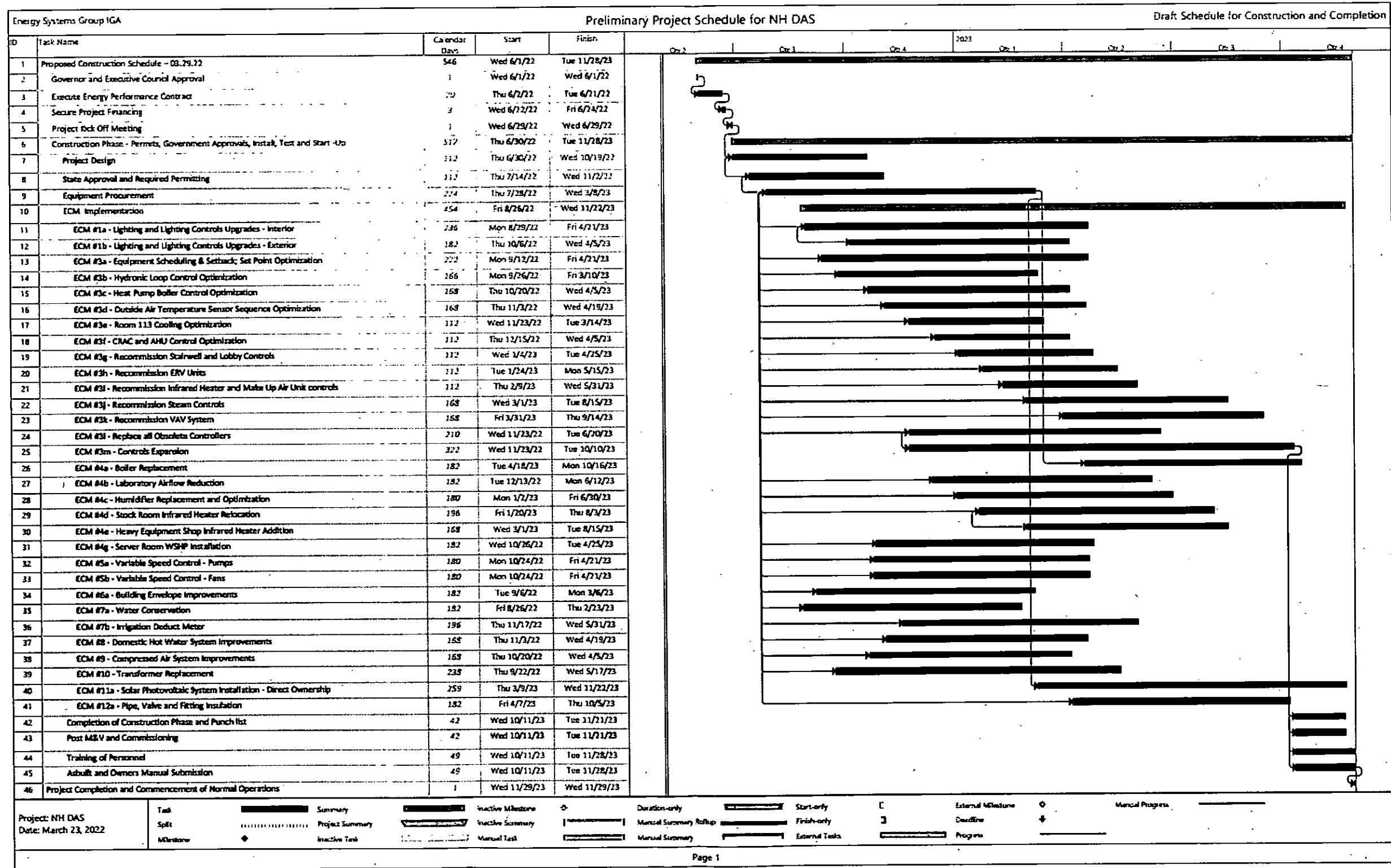


Exhibit 6

Standards of Service and Comfort

1) In conditioned areas, space temperatures shall be maintained between 68°F dry bulb (heating) and 76°F dry bulb (cooling) during scheduled occupied periods as controlled by the space thermostats or room sensors. In no instance shall the lowest occupied zone temperature in the building, as defined in paragraph 6 below, fall below 68°F during occupied periods (except in cases of boiler or chiller failure). These temperature requirements shall also apply to buildings that have central cooling systems. In buildings with ventilation systems, outside air cannot be reduced below the quantities found in ASHRAE standard 62.1-2019 "Ventilation for Acceptable Indoor Air Quality."

2) Standard Hours of Operation

Facility	Number of Staff	Red'q Temp & Relative Humidity – Occupied Mode	Red'q Temp & Relative Humidity – Unoccupied Mode	Hours of Human Occupancy	Equipment Run Time	Typical Weekend Activities & Runtime
Emergency Operations Center	75	68-72		<u>Building-wide:</u> M-F (24hrs/day), COVID 19 (24hrs/day- 7 days/wwk) <u>Housekeeping:</u> M-F 3:00 PM - 11:30 PM	24 hour	24 hour
Materials & Research, DOT	100	71-73	50 +/-5	<u>Building-wide:</u> M-F 6:00 AM - 4:00 PM <u>Housekeeping:</u> M-F 4:30 PM - 9:30 PM	MUA's 4am-4pm Building 4am-5:30pm	None
Mechanical Services, DOT	50	65-72	60-70	<u>Building-wide:</u> M-F 7:00 AM - 3:30 PM <u>Housekeeping:</u> M-F 5:00 PM - 9:00 PM		As-needed during emergencies and snowstorms
Pillsbury Street - Old Labor	22	68-72	60	<u>Building-wide:</u> M-F 7:00 AM - 4:30 PM <u>Housekeeping:</u> M-F 5:00 PM - 7:00 PM	24 hour on outdoor reset	None
Supreme Courthouse/Probate Court	120	71-74		<u>Building-wide:</u> M-F 7:00 AM - 6:00 PM <u>Housekeeping:</u> M-F 6:00 AM - 3:00 PM	Currently no night set back	None

Facility	Number of Staff	Red'q Temp & Relative Humidity – Occupied Mode	Red'q Temp & Relative Humidity – Unoccupied Mode	Hours of Human Occupancy	Equipment Run Time	Typical Weekend Activities & Runtime
Walker Building	345	68-72	85-55	<u>Building-wide:</u> M-F 8:00 AM - 4:30 PM <u>Housekeeping:</u> M-F 5:00 PM - 9:00 PM	8:00-4:30 M-F	None
Morton Building	300	68-72	85-55	<u>Building-wide:</u> M-F 6:00 AM - 4:00 PM <u>Housekeeping:</u> M-F 4:30 PM - 9:30 PM	Building 4am-5:30pm	None

- 3) During unoccupied periods, the heating and/or cooling systems may be turned off. However; the systems must be so designed that before any high or low temperatures or humidity conditions that could damage equipment in the spaces can occur, the heating and/or cooling system will restart and control the temperature or humidity as required. In any case, temperatures must be restored to the 68°F - 76°F range by the start of the next occupied period.
- 4) Hot water to kitchen areas will be supplied at a temperature of 120°F. Domestic hot water for bathrooms, showers and hygiene purposes shall be delivered at a temperature between 85°F and 110°F. All other domestic hot water temperature requirements must meet applicable NH plumbing code standards.
- 5) Minimum lighting levels shall be in accordance with applicable Illumination Engineering Society (IES) standards for each type of space and activity as of the time of the Measure installation. It is recommended a sampling of light level readings be taken at various locations before considering lighting upgrade options. This will assure post-retrofit light levels will be adequate and that lighting upgrades will not be based on existing light levels which may be below or above IES standards.

The setpoints agreed to above (68F heating and 76F cooling) shall be programmed into Energy Management Control System (where applicable) as the center point of the temperature control band, which, like all control devices typically has a +-1 to +-2 °F swing during equipment cycles. Zone space temperature will be reported by a single zone space sensor, and depending on the time of day and location within the zone it serves, actual space temperatures throughout the zone will be higher or lower than indicated by the zone sensor. Employees seated close to windows, for example, can experience temperatures lower than the zone sensor on a windy, cold day, and higher than the sensor on a sunny, hot day. As in all control systems, periodic recalibration of space sensors will be required to maintain their accuracy and to adjust for localized effects such as described above. Agreed-upon setpoints shall represent the space temperatures averaged throughout the zone and over a typical equipment heating/cooling operating cycle.

Appendix A

Specifications

Within 14 days of written receipt of the Governor and Council's approval of this Agreement for Guaranteed Energy Savings, Contractor shall commence the design and/or specification, as applicable, of the ECMs. Drawings and specifications for this Project shall be in compliance with all applicable laws, ordinances, rules, codes, regulations and requirements for the ECMs and shall be submitted to the State for review and approval, which shall not be unreasonably withheld or delayed.

Appendix B

Energy Calculations

This Appendix B includes by reference the Energy Calculations dated as of April 28, 2022 and submitted under separate cover.

Appendix C

Investment Grade Audit

This Appendix A includes by reference the Investment Grade Audit dated as of April 28, 2022 and submitted under separate cover.

Exhibit C

Payment Terms

1.1 The Contract Price, method of payment, and terms of payment are identified and more particularly described in the Compensation Schedule and Cost Detail incorporated herein and attached below. The Compensation Schedule and Cost Detail shall include all Project costs for each ECM. The Compensation Schedule will indicate progress payments owed by the State to Energy Systems Group, LLC, ("Contractor"). The Compensation Schedule shall be coordinated and consistent with the Installation Schedule in Exhibit B. Notwithstanding anything in this agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the Contract Price of \$4,005,712 as indicated in the Price Limitation block on Section 1.8 of the P-37 contract form.

1.2 This contract will enable the State to reduce utility costs by \$266,647 in the first year, through the acquisition of \$4,005,712 ("Contract Price") in capital improvements. The Contract Price will be financed through Banc of America Public Capital Corp. This financing is estimated to cost \$1,324,607 in interest costs. In addition, this project may qualify for electric and natural gas utility incentives and grants ("Rebates"). Rebates shall be applied to additional contingent ECMs that are identified by the State. In no event shall the Contractor proceed with the installation of contingent ECMs until the State and the Contractor reach mutual agreement on the contingent ECMs that will be installed and the Contractor receives written approval from the State. In no event shall the ("Total Project Cost") exceed the (Contract Price + Estimated Financing + Rebate Amount). This is the maximum cost allowed under the guidelines of RSA 21-l:19a-e.

1.3 The payment by the State of the Contract Price and any Rebate contingent projects with Rebate funds shall be the only, and the complete, reimbursement to the Contractor for all expenses, of whatever nature, incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the Contract Price plus the price of any contingent projects paid using Grants and Rebates.

1.4 The Compensation Schedule will be used as the basis for applications for payments to the Contractor by the State or the State's Lessor, based upon the percentage of completion of the ECMs.

1.5 The Contractor shall submit applications for payment on a monthly basis in a form acceptable to the State in accordance with the Compensation Schedule. All progress payments shall be subject to five (5%) percent retainage. Release of retainage shall occur when Final Acceptance has been achieved.

1.6 Upon receipt by the State or its designee of the application for payment, it shall be reviewed and, if approved by the State, Contractor shall be paid by the State directly or through the State's Lessor. If a portion of the application for payment is in dispute, the State shall not pay the disputed portion of the application for payment until such disputed portion is resolved between the Parties.

1.7 To the extent the State issues payment to the Contractor for the work and Services done by the subcontractors, the Contractor shall be obligated to pay the subcontractors for such work in accordance with applicable law or terms of the contract that may exist between Contractor and subcontractor.

1.8 Schedule of Value Cost Detail and Estimated Draw Schedule. The following tables provide the total turnkey price for each ECM and the estimated draw schedule for payments to be made by the State to Contractor during the Construction Phase.

ECM Name	ECM #	ECM Implementation Cost (\$)	M&V Cost (\$)	Total ECM Cost (\$)
Lighting Systems and Controls	1	\$1,196,415	\$4,566	\$1,200,981
Building Automated Control Systems	3	\$431,254	\$1,646	\$432,900
Heating, Ventilation and Air Conditioning	4	\$1,330,580	\$5,079	\$1,335,659
Premium Efficiency Motors and VFDs	5	\$178,783	\$682	\$179,465
Building Envelope	6	\$71,503	\$273	\$71,776
Water Conservation	7	\$56,577	\$216	\$56,793
Domestic Hot Water Systems	8	\$6,327	\$24	\$6,351
Equipment	9	\$39,098	\$149	\$39,247
Electric Distribution System/Transformers	10	\$183,239	\$699	\$183,939
Renewable Energy	11	\$487,693	\$1,861	\$489,555
Additional Measures	12	\$9,012	\$34	\$9,047
TOTAL	-	\$3,990,481	\$15,231	\$4,005,712

Month	Estimated Drawdown Amount
1	\$ 0
2	\$ 86,552
3	\$ 134,883
4	\$ 201,263
5	\$ 616,356
6	\$ 312,320
7	\$ 312,320
8	\$ 390,400
9	\$ 459,770
10	\$ 300,679
11	\$ 205,041
12	\$ 150,647
13	\$ 149,363
14	\$ 186,703
15	\$ 149,363
16	\$ 113,290
17	\$ 36,477
18	\$ 200,286
Total	\$ 4,005,712

1.9 Additional Rebate Funds. Any rebate funds that are earned by the State through the completion of this Project shall be deposited into the Energy Fund per RSA 21-1:19-f.

Compensation Schedule

CS.1 Contract Price: State shall pay to Contractor, an amount equal to Four Million Five Thousand Seven Hundred Twelve Dollars and No Cents (\$4,005,712.00) (the "Contract Price") in accordance with the terms described in Exhibit B of this Agreement.

CS.2 Operations and/or Maintenance: Not applicable.

CS.3 Measurement and verification: The cost of measurement and verification services as specified in Exhibit B will be paid by the State to Contractor annually for five years in increments of \$10,556. This cost is included in the Contract Price detailed in Section CS.1. Contractor shall invoice State for the first year of M&V at Final Acceptance.

CS.4 For each month during the construction period of the Project following the Effective Date of this agreement, State shall make monthly progress payments to Contractor based upon the percentage of the Project construction and equipment procurement performed at the end of each month as approved by the State as provided herein, less any retainage detailed in Exhibit C and any amounts disputed by the State. Contractor shall be paid the same percentage of the Contract Price as such percentage of completion. Following the end of each month, during the construction period of the Project, Contractor will provide to the State an invoice together with a list in sufficient detail to reasonably identify construction and equipment procurement during such month. Within thirty (30) days after receipt of such invoice, the State shall pay or cause to be paid to Contractor the undisputed portion of the amount due under such invoice. If the State disputes all or any portion of such invoice, the State shall notify Contractor in writing of such dispute prior to the expiration of such 30-day period and shall include a detailed explanation of the contractual basis for rejection. Contractor may submit any necessary information to the State addressing the basis for rejection. In the event, the State, after reviewing such information, no longer disputes all or any portion of the invoice, such rejected amounts may be included in the next month's invoice for payment. Notwithstanding the rejection of a portion of an invoice, all undisputed amounts in such invoice shall be paid as provided herein.

State of New Hampshire

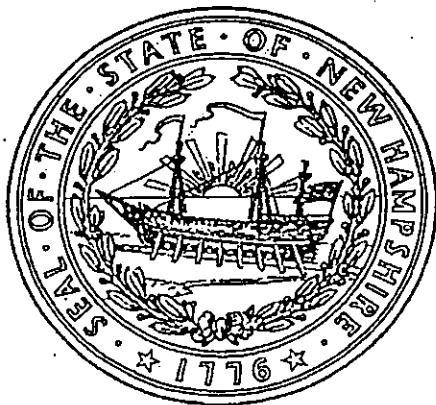
Department of State

CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that ENERGY SYSTEMS GROUP, LLC is a Indiana Limited Liability Company registered to do business in New Hampshire as VESCO - ENERGY SYSTEMS GROUP on April 05, 2013. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 689765

Certificate Number: 0005776322



IN TESTIMONY WHEREOF.

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 12th day of May A.D. 2022.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan
Secretary of State

ENERGY SYSTEMS GROUP, LLC
SECRETARY'S CERTIFICATE

APRIL 27, 2022

The undersigned, Vincent A. Mercaldi, does hereby certify that:

1. He is the duly elected, qualified and acting Secretary of Energy Systems Group, LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of Indiana, and, as such Secretary, the undersigned has custody of the records of the Company.

2. Each of the individuals named below is a duly elected, qualified and acting officer of the Company who is authorized to execute documents and contracts on behalf of the Company, and holds the office as set forth opposite his or her name as of the date hereof.

<u>Name</u>	<u>Title</u>
Gregory E. Knight	Manager & Executive Vice President
Jarrett E. Simon	Vice President
Brian K. Gower	Vice President & Treasurer
Sean P. Smith	Vice President
Rachel M. Feiertag	Vice President, General Counsel & Assistant Secretary
Steven C. Craig	Vice President
Steve T. Smith	Vice President
Monica Karuturi	Vice President
Jason M. Ryan	Vice President
Jacqueline M. Richert	Vice President & Assistant Treasurer
Brett A. Jerasa	Assistant Treasurer
Vincent A. Mercaldi	Secretary

3. The foregoing officers of the Company shall have such powers and duties as generally pertain to their offices as well as such powers and duties as from time to time shall be conferred by the Board.

4. The foregoing general grant of authority shall include, without limitation, the authority on behalf of the Company to sign and deliver contracts and agreements in the name of the Company; to obtain such licenses and permits, if any, as may be required for the conduct of the business of the Company by any federal, state, county, municipal or foreign governmental statute, ordinance or regulation; to file certificates, applications, statements, reports and other documents with governmental agencies; and take any and all action to enter into, execute and deliver any and all certificates, agreements, applications, affidavits, acknowledgements, instruments, contracts, leases, statements, deeds, powers of attorney, and other documents and to

do any and all things that, in the judgment of the officer or officers taking such action, are necessary or advisable to effectuate and carry out the business of the Company.

IN WITNESS WHEREOF, this Secretary's Certificate has been executed and delivered as of the date first written above.



Vincent A. Mercaldi

Secretary

ENERGY SYSTEMS GROUP, LLC



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/27/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER McGriff Insurance Services, Inc. P.O. Box 10265 Birmingham, AL 35202	CONTACT NAME: Melissa Williams PHONE (A/C, No, Ext): 800-476-2211 E-MAIL ADDRESS: mawilliams@mcgriff.com FAX (A/C, No):														
INSURED Energy Systems Group, LLC 9877 Eastgate Court Newburgh, IN 47630	<table border="1"><thead><tr><th>INSURER(S) AFFORDING COVERAGE</th><th>NAIC #</th></tr></thead><tbody><tr><td>INSURER A :The Continental Insurance Company</td><td>35289</td></tr><tr><td>INSURER B :American Casualty Company of Reading, Pennsylvania</td><td>20427</td></tr><tr><td>INSURER C :Continental Casualty Company</td><td>20443</td></tr><tr><td>INSURER D :</td><td></td></tr><tr><td>INSURER E :</td><td></td></tr><tr><td>INSURER F :</td><td></td></tr></tbody></table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A :The Continental Insurance Company	35289	INSURER B :American Casualty Company of Reading, Pennsylvania	20427	INSURER C :Continental Casualty Company	20443	INSURER D :		INSURER E :		INSURER F :	
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COVERAGES **CERTIFICATE NUMBER:CFVXRDKM** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> There is no XCU exclusion GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			7017699269	10/01/2021	10/01/2022	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 25,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			7015610027 (AOS) 7015610030 (CA)	10/01/2021	10/01/2022	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000 \$ \$ \$ \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: Form Number P-37; Contract Value \$4,005,712.00

CERTIFICATE HOLDER New Hampshire Department of Administrative Services Attn: Don Perrin, State Energy Manager 64 South Street Concord, NH 03301	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
--	--

AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

PRODUCER McGriff Insurance Services, Inc.		INSURED Energy Systems Group, LLC	
POLICY NUMBER			
CARRIER	NAIC CODE	ISSUE DATE: 04/27/2022	

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: _____ FORM TITLE: _____

Master Builder's Risk

Policy Number: MBR 0217688-08

Effective Dates: 10/01/2021 to 10/01/2022

Carrier: Zurich American Insurance Company

Project Limit: Contract value up to \$10,000,000



**Liberty
Mutual.**
SURETY

8044 Montgomery Rd, Ste. 150E
Cincinnati, OH 45236

April 27, 2022

Don Perrin, State Energy Manager
State Energy Management Office
NH Department of Administrative Services
64 South Street
Concord, NH 03301

**RE: RFP for Energy Performance Contracting Services for Six(6) state-owned facilities in Concord,
NH – RFP#2021-254**

Dear Mr. Perrin:

Energy Systems Group, LLC ("ESG") is a highly regarded and valued client of Liberty Mutual Insurance Company ("Liberty"). Liberty is A.M. Best rated "A XV" and has been providing surety bonding for ESG since 1997. Liberty is licensed in all 50 states, D.C., Guam, Puerto Rico, and the U.S. Virgin Islands; and is listed on the United States Department of the Treasury's "Listing of Approved Sureties".

We confirm that ESG is capable of obtaining Performance and Payment bonds in the amount of at least \$100 million and aggregate bonding capacity of \$500 million, which support level is well within ESG's prior experience. Please let us know should you have opportunities requiring higher levels of surety support. Our agreement to provide work programs or execute bonds is subject to final contract terms, conditions, and underwriting considerations at the time of request for bonding. We look forward to the opportunity to underwrite the contract documents and provide the Performance and Payments Bonds as may be required.

With an award of a project to (ESG) and subsequent to their request for bonds, Performance and Payment bonds may be executed in the full amount of the contract price by Liberty Mutual Insurance Company (A.M. Best Rating A), surety for (ESG), and shall remain in place for the duration of the construction phase of the Project which concludes at Final Project Acceptance. A separate annual renewable Energy Savings Guarantee Bond in the amount of the annual guarantee is also available. This Pre-qualification is conditioned on acceptable underwriting considerations such as final contract terms and conditions, bond forms and project details. We assume no liability to third parties or to you if for any reason we do not execute said bonds.

We are proud to be a part of the Energy Systems Group, LLC risk management and surety team. Should you have any questions or if you need any clarification, please do not hesitate to contact us.

Liberty Mutual Insurance Company

By: 
Megan J. Schlueter, Attorney-in-Fact

Member of Liberty Mutual Group



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8204866

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Megan J. Schlueter

all of the city of Raleigh state of NC each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 15th day of February, 2021.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey

David M. Carey, Assistant Secretary



STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 15th day of February, 2021, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, of Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company do hereby certify that this power of attorney executed by said Companies is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 27th day of April 2022



By: Renee C. Llewellyn

Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.