

APPENDIX A

CONSERVATION EFFORTS

BY HUD AND OTHERS

Past HUD Conservation Efforts

HUD has taken a number of steps to encourage conservation in public housing in the past. HUD required, for example, that housing authorities reduce energy consumption in 1981 and 1982, and reduced the operating subsidy for those that did not by 5% for the fiscal year 1983 or 1984.

HUD also provided Urban Development Action Grants (UDAG) from 1977 to 1993, with the goal of encouraging commercial, neighborhood or industrial projects in cities threatened with economic decline. Funds were awarded as the result of a competitive application process. Energy conservation projects were given priority under UDAG.

The Public Housing Management Assessment Program

The Public Housing Management Assessment Program is a system established by HUD to grade the performance of housing authorities. Twelve indicators are used to assess housing authority performance, with one of these indicators being the pattern of utility consumption. The utility indicator measures the previous year's energy consumption compared to the average for the three previous years. The housing authority is given a grade of "C" or better if energy consumption decreases, remains stable or increases by less than 5%. If consumption increases by more than 5%, a grade of "D," "E" or "F" is assigned. Housing authorities that receive an overall grade below a minimum established by HUD are required to enter a binding contract with HUD to correct deficiencies.

The Initiative on Energy Efficiency in Housing

The Department of Energy (DOE) and HUD launched the Initiative on Energy Efficiency in Housing in 1990. The five-year program was intended to find ways to reduce the consumption of energy and water in public and assisted housing. DOE offered technical assistance to housing authorities taking part in the program.

Goals of the program included:

- Research on energy efficient building techniques
- Implementing field demonstrations of energy efficient practices
- Making institutional and administrative changes within HUD to promote energy efficiency
- Creating innovative financing partnerships and leveraging federal funds with private funds.
- Providing education, training and technical assistance for those involved in public and assisted housing.

A total of 27 projects were completed under the initiative in cooperation with a variety of state and local governments and organizations that work with public housing from around the country.

Other Federal Weatherization Programs

Housing authorities have used a variety of federal weatherization programs to increase the energy efficiency of public housing facilities in the past. The first national weatherization programs were created in reaction to the 1973 Arab oil embargo. Low-income people were especially hard hit by the dramatic increase in energy prices that followed the embargo.

As a result, the Office of Economic Opportunity and later the Community Services Administration (CSA) encouraged local community action agencies to assist their clients by providing fuel-bill assistance, and by reducing energy needs through weatherization programs. In 1974, the CSA authorized community action agencies to spend up to 10% of CSA general operating grants on weatherization and fuel-bill assistance. As part of the program, community action agencies provided an energy audit at no cost to the client. The maximum expenditure allowed under the program was \$450 per household.

The Energy Conservation and Production Act of 1976

The Energy Conservation and Production Act of 1976 created the Low-Income Weatherization Assistance Program (WAP), administered by the Department of Energy (DOE). Under the program, weatherization funds are distributed to the states through DOE regional offices. The states then distribute the money to local Community Action Agencies and tribal governments (or in some cases, local governments or other local nonprofit organizations) that administer the actual weatherization. WAP funds pay for about two-thirds of the 250,000 low-income residences weatherized each year.

The majority of WAP funds are spent on single-family homes. The program is limited to households that earn less than 150% of the federal poverty line. For an entire apartment building to be weatherized using WAP money, at least two-thirds of the residents must qualify as low income. In many states, the landlord must invest in the project before it can receive WAP funds.

The Petroleum Violation Escrow Account

The Petroleum Violation Escrow Account is funded by fines paid by oil companies found guilty of violating federal laws governing petroleum prices. Money from the account has been used to fund conservation improvements in public housing. The fund peaked at \$200 million in 1988, but was no longer used for conservation funding by the mid 1990s.

Low Income Home Energy Assistance Program

The Low Income Home Energy Assistance Program (LIHEAP), administered by the Department of Health and Human Services, provides fuel-bill assistance to low-income homes. Initiated in 1982 as a block grant to the states, total LIHEAP appropriations were about \$2 billion per year through the mid-1980s. Total funding dropped to less than \$1 billion by the mid-1990s amid attempts in Congress to eliminate the program.

The states have authority under the legislation to spend up to 15% of their block grant funds on weatherization, and as much as 25% may be spent on conservation with HHS authorization. Income eligibility is the only restriction for spending LIHEAP funds on weatherization, but many states use the guidelines developed by the DOE for WAP. The use of LIHEAP funds for weatherization peaked in 1987, and has been declining since that time. LIHEAP funds are sometimes used to exceed the \$1,600 per household maximum imposed on WAP weatherization funds.

APPENDIX B

FUEL EQUIVALENCY TABLE

BTU Content of Various Fuels

Fuel Oil

No. 2: 140,000 Btu Per Gallon

No. 4: 155,000 Btu Per Gallon

No. 6: 153,000 Btu Per Gallon

Gas

Natural: 1,000 Btu Per Cubic Foot; 100,000 Btu Per Therm

Manufactured: 550 Btu Per Cubic Foot

Propane

2,250 Btu Per Cubic Foot; 92,000 Btu Per Gallon

Electricity

3415 Btu/KW

Coal

Anthracite: 13,000 Btu Per Pound

Semi-Anthracite: 13,700 Btu Per Pound

Bituminous: 12,500 Btu Per Pound

Lignite: 7,000 Btu Per Pound

APPENDIX C

FEDERAL REGULATIONS

Federal regulations are included here for ease of reference when reading this manual. These regulations may change. Be sure to check most recent versions, which can be obtained online, through the Government Printing Office or in government document sections of libraries.

**U.S. Department of Housing and Urban Development
PUBLIC AND INDIAN HOUSING**

NOTICE PIH 95-26 (HA) Issued: April 28, 1995 Expires: April 30, 1996

SUBJECT: Incentives for Public Housing Agencies and Indian Housing
 Authorities to Reduce The Cost of Utilities

1. Purpose. The purpose of this Notice is to call the attention of public housing agencies and Indian housing authorities (hereafter, collectively called HAs) to changes in the Performance Funding System (PFS) regulations at 24 CFR Parts 990 and 905. These changes provide significant cost savings opportunities to HAs through a set of energy conservation incentives mandated by Section 118(a) of the Housing and Community Development (HCD) Act of 1987.

2. Background. The Department of Housing and Urban Development (HUD) published amendments to the regulations implementing the energy conservation provisions of Section 1118(a) of the HCD act of 1987, as well as others not pertinent to this Notice, on September 11, 1991, 24 CFR parts 990 and 905. The rule became effective on January 1, 1992. A Final Rule was published on June 30, 1994, (59 FR 33652) which extends, for an additional period, not to exceed six years, sharing of energy rate savings that continue to be cost-effective implementing Section 114(c) of the HCD Act of 1992. The provisions of the rule relating to energy conservation incentives revised the PFS to permit HAs, with HUD approval, to (1) benefit from HA-initiated actions that result in lower utility rates and (2) retain a share of the savings generated by energy reduction improvements funded, under performance contracting arrangements with HA, with non-federal, non-HA funds. The regulations also permit the payment of additional subsidy for the amortization cost of energy improvements financed through HUD-approved loans from non-federal sources and to share in savings from the consumption reductions.

It is important to point out that by using these incentives, HAs are able to finance energy improvements without use of Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant Program (CGP) funds. HAs will then be able to use those funds to do other priority work.

HUD issued instructions for approval of energy performance contracts under Notice PIH 93-9(PHA). This notice updates that Notice to reflect current delegations of authority permitting Field Offices to approve energy performance contracting and to advise HAs of new provisions which extend the period of energy rate savings noted in 3A below.

3. Energy Conservation Incentives. The specific incentives authorized by the current regulation provisions include:
 - A. Utility Rate Reduction. A HA may take actions to reduce the rate it pays for utilities (including water, fuel oil, electricity and gas). Examples of such actions are the well-head purchase of natural gas, administrative appeals, or where justified, legal action (beyond normal public participation in general ratemaking proceedings).

Under these circumstances, the HA will be permitted to retain one-half of the cost savings attributable to its actions for the first year and, upon determination that the action was cost-effective in the first year, for up to an additional six years, if the action continues to be cost-effective. The rate savings must be directly related to the actions of the HA.

B. Energy Conservation Contracts.

(1) Fixed Payment Contracts. A HA may enter into a contract for energy conservation measures financed with non-HUD funds which does not make the HA's payments dependent on cost savings resulting from the improvement, e.g., improvements financed by a loan from a utility. The HA will receive operating subsidy in addition to its eligibility calculation under the PFS in an amount sufficient to cover the annual cost of amortizing the improvements loan during the term of the contract. The HA benefits from this incentive in two ways. First, HUD pays for the cost of amortizing the loan; and second, the HA realizes savings equal to one and one half times the annual savings from the measure. Contract terms cannot exceed 12 years.

(2) Savings Driven Contracts.

(a) Performance Contracting. A HA may enter into a contract for energy conservation measures financed with non-HUD funds, the repayment of which is dependent on the savings. In this case, the HA's Allowable Utilities Consumption Level for the project and utility involved will be frozen for the duration of the contract period. The HA will be permitted to retain the savings resulting from the reduced consumption. The HA must use at least 50 percent of the resulting cost savings to pay the contractor. The remaining savings can be used to make prepayments to the contractor or be retained by the HA and used for training of HA employees, counseling of residents, the HA's management cost of an energy conservation program, and any other eligible costs. Contract terms cannot exceed 12 years.

(b) Guidebook on Performance Contracting. A HUD publication, "Energy Performance Contracting for Public and Indian Housing: A Guide for Participants," was distributed to Field Offices and to all HA's with 500 or more units in 1993. The guidebook is a step-by-step instruction on how to do performance contracting. The guidebook was developed with the inexperienced user in mind. It also provides guidance on applicable HUD procurement requirements, contractor selection, negotiation and monitoring. HAs with under 500 units interested in obtaining a copy of the guidebook or HAs wishing to obtain additional copies may do so by contacting their local HUD Field Offices. HUD Field Offices should contact the Headquarters Energy Division on (202) 708-2504 if additional copies are required.

4. **HUD Approval.** HAs must obtain HUD approval to qualify for the new energy conservation incentives. Approval of an energy conservation contract will be based largely upon a determination that payments under the contract can be funded from the reasonable anticipated energy cost savings. If energy performance contracting is used, HAs must obtain HUD approval to issue solicitations and execute contracts. Consequently, HAs are encouraged to contact the appropriate HUD field Office early in the process to facilitate expeditious approval. The central point of contact regarding these incentives is the Field Office General Engineer assigned to the HA. The HA request is to be submitted to the appropriate Field Office for review.
- A. **Field Office Review.** Field Office reviews will cover: (1) utility, engineering and contracting aspects by the General Engineer, (2) Performance Funding System issues by the Financial Analyst; and (3) other management issues such as they effect modernization funding under the CGP or CIAP, as needed, by either the Housing Management Specialist or the General Engineer. After the field Office review is completed, the General Engineer shall prepare a letter for the signature of the Director, Office of Public Housing, approving or disapproving the request.
- B. **Indian Housing.** The Administrator, Office of Native American Programs (ONAP) has the authority to approve applications from Indian Housing Authorities (IHAs). ONAP will review IHA requests in a manner similar to public housing as outlined in 5(a) above.
5. **HUD Monitoring of Approvals.** Copies of approvals, as well as annual cost savings achieved, must be submitted to Headquarters, Maintenance and Supply Division, with an additional copy to the Office of Native American Programs for Indian Housing Authorities.
6. **Questions and Advice.** As noted above, HAs should direct questions regarding performance contracting to the appropriate HUD Field Office. Field Offices that have questions regarding utilities, engineering or contracting aspects of the new provisions of the regulations (24 CFR Parts 905, 965, and 990) should contact William C. Thorson, Director, Maintenance and Supply Division on (202) 708- 4703. Questions concerning PFS issues should be directed to John Comerford, Director, Financial Management Division on (202) 708-1872.
7. **Public Housing Transformation.** The Department is proposing to substantially revise the public housing program. These changes, if approved, may result in the elimination of operating subsidies in favor of tenant-based assistance.

The Department intends to propose that any changes in the public housing program take into consideration existing contractual agreements between HAs and energy service companies that rely on operating subsidies for the repayment of non-HUD financing. Accordingly, the Department continues to encourage HA to aggressively pursue energy improvements as outlined in this Notice.

[When it is completed, Appendix C will also include relevant passages from the *Code of Federal Regulations*, including all passages cited in the text.]

APPENDIX D
HUD FORMS

APPENDIX E
SAMPLE REQUEST FOR PROPOSALS

**Sample Housing Authority
Request for Proposals
Energy Services Management**

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Sample Housing Authority
(Replace with Correct Name)
Request for Proposals
Energy Services Management

Date

Overview

It is the intention of the Sample Housing Authority (SHA) to enter into a contract to obtain energy conservation technology and services to reduce its energy consumption and related expenditures. Toward this end, the SHA is soliciting proposals from energy services companies (ESCOs) to increase the energy efficiency of the following locations:

<u>Project Name</u>	<u>Project Number</u>	<u>Address</u>
(insert information)	(insert information)	(insert information)

The SHA is interested in entering into a cooperative relationship with an energy services firm to implement a full range of water and energy conservation measures and related capital improvements, to be financed through a performance-based contract, guaranteed savings, or a similar agreement at no initial capital cost to the SHA itself. These services will result in reduced energy consumption and associated costs for one or more of the following systems: water; lighting; heating, ventilation and air conditioning; the building envelope; and/or domestic energy consumption, including domestic refrigeration and hot water heating. In addition, the SHA is interested in savings that do not result directly from the reduction in consumption, such as fuel switching or demand reductions.

Through this agreement, the SHA seeks to maximize its energy savings and related improvement. Within the framework of available financing, therefore, ESCOs are encouraged to advocate the installation and implementation of conservation measures providing the greatest possible energy savings.

Services to be provided by the selected ESCO may include, but are not limited to, an energy audit and the design, acquisition, installation, modification, and maintenance of existing and/or new energy-related equipment. Services will also include the training of SHA staff on routine maintenance and operation of all improvements, and training of residents on conservation methods and procedures.

Plans for the training of SHA staff, maintenance manuals, resident training, and planned energy management shall be subject to the acceptance and approval of the SHA.

Improvements must result in a guaranteed minimum energy savings, with the ESCO payments linked to actual measured reductions in energy cost and/or consumption. At a minimum, the energy cost savings achieved by the installed projects over the contract term must be sufficient to cover all project costs including debt service and contractor fees for design, maintenance, monitoring, and profit. Annual cost savings from ESCO initiated improvements, which exceed the guaranteed minimum savings, will be divided between the SHA and the selected contractor based on a formula to be agreed upon during final contract negotiations.

The Procurement Process

The process for obtaining energy services is expected to follow these steps:

1. Site Visits

All ESCOs considering submitting proposals in response to the RFP are invited to attend an information session to be held (insert date here) at (insert time here) at (insert location and address here). Representatives of the SHA will be available to answer questions about the ESCO selection process and the properties in question. Immediately following will be an optional walk-through inspection of the buildings. These sessions are not mandatory and are being offered solely to assist ESCOs with the preparation of their proposals. Firms that will be sending a representative to this meeting are asked to notify (insert name here) at (insert telephone number here) no later than (insert date here).

ESCOs which are unable to send a representative to this meeting but would like to tour the buildings in question, or firms which would like to visit the buildings a second time prior to submission of a proposal, should contact (insert name here) at (insert telephone number here) no later than (insert date here).

All proposers are encouraged to carefully evaluate the building profile data contained in the technical appendix and to visit the facilities in order to enhance their understanding of existing building conditions and retrofit opportunities.

2. Submission of a Written Proposal

In accordance with this RFP, proposers shall submit one original and five (5) copies of Attachments B and C and all supporting and supplemental documentation requested in Attachment A. This documentation is intended to demonstrate the firm's qualifications for undertaking this project, and ESCOs are, therefore, asked to be complete and thorough in their submissions. Proposals should be placed in a sealed envelope addressed to (insert name here) and marked "RFP for Energy Services Management." All proposals must be received no later than (insert time here) on (insert date here) at (insert location and address here).

All proposals become the property of the SHA and will not be returned to the submitting firm. In addition, all costs associated with preparation of the written proposal shall be borne by the proposer.

3. Evaluation

For all firms submitting a written proposal, the SHA will thoroughly read and evaluate the written proposal based on the criteria listed in the Contract Award section (see below). In addition, the SHA

will contact at least two prior clients of each ESCO to inquire about the performance of the firm and its retrofits in situations similar to those faced by the SHA.

Following evaluation of all written submissions and all reference interviews, the SHA will select no more than three (3) qualified ESCOs for further competition.

4. Oral Interview

Each of the three selected firms will participate in a detailed oral interview to answer questions from the SHA and to more fully discuss how their approach to this project satisfies the requirements set forth in this RFP. All persons with major responsibility for the project's technical design, management, and contract negotiation should be present at the oral interview.

A more complete description of the interview process and logistical information will be mailed to the three finalists by the SHA no fewer than two (2) weeks prior to the interviews.

5. "Best and Final Offer"

Following the oral interviews, finalists may submit to the SHA modifications of their written proposals. Such modifications will be considered new written proposals and will be reevaluated and re-ranked accordingly.

6. Development of the Contract

Based on the information provided in the written proposal and in the oral interview, the SHA will select the best qualified firm to conduct a complete technical analysis of the facility and to propose contract terms, including a complete set of proposed energy improvements, the timetable for completing engineering and construction work, a detailed description of services to be provided, specific financing terms and arrangements, and an estimate of energy savings, as well as special conditions offered by the company. The SHA intends to negotiate a final contract for these services that includes a minimum savings guarantee.

If an acceptable contract cannot be reached within ninety (90) days from the date of ESCO selection, negotiations with the second-ranked ESCO may be initiated.

The initial and final contracts must be approved by representatives of the Department of Housing and Urban Development (HUD).

Selection Timetable

The ESCO selection process will follow the following schedule:

<u>Activity</u>	<u>Date</u>
Issue RFP	(Insert Date)
Information Meeting/Scheduled Tour	(Insert Date)
Site Visits	(Insert Date)
Proposals Due, (insert time here)	(Insert Date)
Proposals Reviewed/References Interviewed	(Insert Date)
Interview Information Mailed to Finalists	(Insert Date)

Oral Interviews	(Insert Date)
ESCO Recommended	(Insert Date)
SHA Board Approval of Selected ESCO	(Insert Date)
ESCO Selection Sent to HUD for Approval	(Insert Date)
Technical Audit, Project Analysis, and Contract Negotiations	(Insert Date)
SHA Board Approval of Final Contract	(Insert Date)
Final Contract sent to HUD for Approval	(Insert Date)
Final Contract Presented and Signed	(Insert Date)

Contract Award

ESCOs will be evaluated and ranked on the basis of their written proposals, oral interviews, and the responses and recommendation of previous clients according to the following criteria, which are not listed in any particular order:

Project Management

- Clear assignment of responsibility for various project tasks to specific individuals.
- Ability to manage construction, repairs, regular service, and emergencies effectively.
- Comprehensiveness of management, maintenance, and monitoring services provided and the specific benefits to the SHA of such services.
- Ability to complete all phases of the project on schedule
- Responsiveness to the specific goals identified in the RFP and technical appendices.
- Quality of communication skills of the ESCO’s representatives at the oral interview.
- Ability to coordinate project construction with local utilities, subcontractors, equipment suppliers, SHA personnel, and residents of occupied buildings.
- Quality of provisions for training SHA personnel and residents.
- Ability to interface ESCO’s project management with SHA management.
- Ability to coordinate ESCO’s improvement measures with possible SHA unit improvements.
- Guidance on resident involvement in the project.

Technical Approach

- Understanding of the existing building conditions, structure, systems, operations, and schedules.
- Qualifications of the technical design personnel.
- The number of past retrofit projects completed by the person(s) responsible for this project’s technical design that include technical measures like those expected to be included in this project.

- Quality of a sample technical analysis for a similar type of facility that has been completed by the person(s) responsible for this project's technical design.
- Reliability of equipment performance in the ESCO's past retrofit projects.
- Documented energy savings of previous retrofit projects managed by the ESCO.
- Comprehensiveness and clarity of the technical approach to this project, based on improvements likely to be included and on the conceptual design creativity demonstrated during the oral interview.
- Typical baseline energy and water use calculation methodology.
- Approach to adapting central strategies, equipment, and maintenance practices in response to changes in utility rates, technology, and building conditions in order to enhance project performance.

Financial Approach

- Financial soundness and stability of the ESCO.
- Demonstrated ability to provide or arrange project financing.
- Sample Financing arrangement proposed for this project.
- Cost of the energy audit, as requested in Attachment A.
- Quality and clarity of the financial savings calculations, including the intended calculation methodology and the formula for dividing savings that exceed the guaranteed amount between the ESCO and the SHA.
- Reconciliation accounting methods for adjusting windfalls/shortfalls in project cash flow.
- Completeness of most recent annual fiscal report.
- Clarity of the sample project invoice.
- Terms of the guarantee of the project's financial performance.

Legal Approach

- Demonstrated understanding of and familiarity with HUD regulations pertaining to the Housing and Community Development Act of 1987.
- Quality of sample legal agreement.
- Contractual provisions to accommodate changes in building energy use (i.e., occupancy, schedule, etc.).
- Flexibility of legal agreement to accommodate the needs of the SHA.

- The quality of provisions for early termination of the contract at the initiative of either party.

These criteria will be applied and interpreted solely at the discretion of the SHA. Proposals should include all necessary information that is pertinent to these evaluation criteria. Additional information required for proper assessment of proposals may be requested from ESCOs at the discretion of the SHA.

The SHA recognizes that it is premature to place a major emphasis on projected final benefits prior to the completion of a detailed engineering study and negotiation of the project structure. Therefore, the SHA recognizes that it is premature to place a major emphasis on projected final benefits prior to the completion of a detailed engineering study and negotiation of the project structure. Therefore, the SHA will place more emphasis on the qualifications of the submitting firms than on audit cost or initial estimated savings during the evaluation of these proposals. Selection for negotiations of a final contract for the provision of energy services will be made to the responsible proposer having the highest rank.

The SHA reserves the right to reject any and all submissions, to waive minor irregularities in submissions received, and to accept any submissions deemed to be in the best interest of the SHA.

Contract Specifics

Contract Duration

The contract for the provision of energy services shall not be fewer than six (6) years nor exceed twelve (12) years and is subject to annual federal appropriations.

Scope of Services

Under the terms of the Agreement, the selected ESCO will perform a detailed water and energy audit of the SHA properties described in the Technical Appendices within one hundred twenty (120) days after the execution of the initial contract. Based upon the results of this audit, the firm will resubmit to the SHA, in final form, the ESCO's Approach to the Project, as outlined in Attachment A of this RFP. If the SHA agrees to the terms of the firm's final proposal, such terms will be incorporated into the Agreement and the ESCO will proceed to implement the recommended measures. Following installation and implementation of conservation measures, the ESCO will be responsible for maintaining and monitoring the measures to ensure optimal performance.

The SHA reserves the right to make energy improvements to the work sites and to monitor the performance of the installations independently of the ESCO. Additionally, the SHA is very interested in integrating work items from its Comprehensive Grant Program, which may or may not contain energy savings opportunities, with ESCO initiated energy conservation work. It, therefore, requests that proposers be prepared to discuss how they would approach such integration of work items.

Renegotiation

The SHA reserves the right to renegotiate the awarded contract if changes in the regulatory or utility climates or in the SHA's use of energy warrant and/or permit the addition of sites to the contract.

Necessary Contract Provisions

At a minimum, the following technical requirements and contract provisions must be included in the final contract negotiated between the SHA and the selected ESCO:

Technical Requirements

- The selected ESCO's proposed contract terms must include the performance and presentation of a detailed technical energy audit of quality acceptable to the SHA. If the SHA decides not to enter into a final contract for retrofit services from this ESCO after the audit has been accepted, the SHA agrees to pay the cost of the audit as stated in the submitted proposal, provided that all proposed contract terms offered by the ESCO meet the conditions set forth in this RFP.
- Specific standards of comfort will be defined via negotiation in the final contract and will be maintained by the ESCO throughout the life of the contract. Failure to maintain specified climate and lighting conditions will constitute a default.
- A registered professional engineer must, at a minimum, review and approve all design work done under the final contract.
- The SHA requires a minimum guaranteed savings approach to the project. If the project does not generate the guaranteed level of savings in any given year, the ESCO will be responsible for reimbursing the SHA the amount of the shortfall necessary to pay for annual project financing and all related contract obligations.
- The ESCO will be required to work with the current building management and maintenance personnel in order to coordinate construction and provide appropriate training in retrofit operation to SHA personnel. No equipment shall be installed which would necessitate the SHA hiring additional personnel unless contract negotiations produce an explicit exemption from this provision for a specific installation.
- All equipment installed which is comparable to similar equipment at other SHA sites shall be of the same manufacturer for standardization of equipment agency-wide.
- The ESCO must provide mylar, reproducible "as built," and three (3) sets of record drawings of all existing and modified conditions associated with this project, conforming to typical engineering standards. These should include architectural, mechanical, structural, and control drawings and operating manuals. Drawings must be provided to the SHA within thirty (30) days of the completion of installation. Moreover, if these drawings are produced on a computer, the ESCO will also provide to the SHA disk copies of said drawings and one licensed copy of the version of the program used to produce them.
- At least three (3) maintenance manuals will be provided for all equipment replacements and/or upgrades at each location. Manuals are subject to the approval of the SHA.
- At least three (3) copies of record product data will be provided to the SHA for each location.

Contract Provisions

- The contents of the initial written statement of qualifications submitted in response to this RFP become part of the final contract.
- The SHA retains final approval over the scope of work and all end-use conditions.
- The SHA retains the right to approve any ESCO selected subcontractor prior to its commencement of work on this project.
- The SHA retains the right to have its representative visit the site during the audit and implementation phases of the project, and to attend relevant on-or-off site meetings of the ESCO and/or its subcontractors.
- All work completed under this contract must be in compliance with all applicable federal, state, and local laws, rules, and regulations, including waste disposal laws and regulations; in accordance with sound engineering and safety practices; and in compliance with all reasonable SHA rules relative to the premises. The ESCO and its subcontractors will be responsible for obtaining any and all required governmental permits, consents, and authorizations, and for payment of any and all state and city required taxes and fees which result from this contract.
- The ESCO must provide a final schedule of project milestones including equipment servicing and preventive maintenance provisions, which will become part of the final contract. In the event any milestone or equipment servicing provision is not met as scheduled without prior approval from the SHA, the SHA reserves the right to consider it a default and withdraw from all contractual obligations without penalty.
- Prior to the commencement of work, the ESCO must provide evidence of insurance for both the construction and operations phases of the project. This shall include:
 - ⇒ The ESCO and all subcontractors shall maintain throughout the term of the contract Comprehensive General Liability Insurance in the amount of two million dollars (\$2,000,000) with an A-rated company recognized in the State of (insert state), and the SHA shall be named as an additional insured party on all policies. This coverage will indemnify the SHA against all claims and demands for injury or death of persons or damage to property which may be claimed to have occurred upon, or as a result of, the negligence of the ESCO and/or its subcontractors' employees, agents, licensees, or invitees, in the performance of the contract.
 - ⇒ The ESCO shall maintain throughout the term of the contract Errors and Omissions Insurance in the amount of two million dollars (\$2,000,000) with an A-rated company recognized in the State of (insert state).
 - ⇒ The ESCO and all subcontractors shall maintain throughout the term of the contract Worker's Compensation Insurance, in accordance with state law, for all employees under contract.
 - ⇒ The ESCO and all subcontractors will maintain throughout the life of the contract

Automobile Liability Insurance on all owned, non-owned, and hired vehicles used in connection with the project. This coverage will be carried through an A-rated company recognized in the State of (insert state), and will have a combined single limit for bodily injury and property damage of not less than five hundred thousand dollars (\$500,000) per occurrence.

- The ESCO will provide to the SHA assurance of completion in the form of separate performance and labor and material payment bonds, each in the sum of 100 percent of all subcontracts.
- The SHA will have access and right to inspect, test, and approve the work conducted in the buildings during construction and operations.
- The SHA and HUD shall have right and access to the account books, records, and other compilations of data which pertain to the performance of the provisions and requirements of this agreement. Records will be kept in a generally recognized accounting basis, and calculations will be kept on file in legible form and retained for three years after the close-out.
- All drawings, reports, and materials prepared by the ESCO specifically in performance of this contract shall become the property of the SHA and will be delivered to them as needed or upon completion of construction.
- Upon completion of the contract, the ESCO shall provide to the SHA a single comprehensive schedule of necessary preventive maintenance for all installations for the five (5) years following contract close-out.
- The contract must contain a mutually acceptable clause whereby unanticipated changes in occupancy and use can be accommodated in a fair manner for both parties.
- At the time of contract expiration, the SHA will have the option to either renegotiate the contract or terminate it without penalty.
- The contract must permit the SHA to prepay the contractor, in part or in whole, without penalty.
- The contract will also include all clauses required by federal, state and local statutes, executive orders, and their implementing regulations. This shall include, but is not limited to the following:
 - ⇒ Termination for Convenience
 - ⇒ Termination for Default
 - ⇒ Drug Free Workplace Act
 - ⇒ Equal Employment Opportunity
 - ⇒ Anti-Kickback Act
 - ⇒ Davis-Bacon Act
 - ⇒ Contract Work Hours & Safety Act, Reporting Requirements

- ⇒ Patent Rights
- ⇒ Rights in Data
- ⇒ Clean Air and Water Acts
- ⇒ Water-Energy Efficiency Standards
- ⇒ Bid Protests & Contract Claims
- ⇒ Section 3 of the HUD Act of 1968, as amended
- ⇒ Minority Business Enterprise and Women Owned Business Enterprise Opportunities
- ⇒ Value Engineering
- ⇒ Payment of funds to influence certain federal transactions

ATTACHMENTS

To aid ESCOs in their response to this RFP, the following items are included in this proposal package:

1. Attachment A Required Documentation
2. Attachment B Documentation Checklist
3. Attachment C ESCO Profile Form
4. Technical Appendices, which describe the properties under consideration. (See Appendix F, "Sample Technical Section of the RFP.")

Attachments and Appendices

Sample Housing Authority Request for Proposals Energy Management Services

Attachment A Required Documentation

One original and five (5) copies of all documentation, except the sample technical audit, must be submitted in response to this RFP. Please submit only three (3) copies of the sample audit, under separate cover. In the main proposal document, Attachment B must immediately follow the cover and Attachment C and its attached pages must immediately follow Attachment B. Other required information and documents are as follows:

General Information

- Attachment C: Please complete and return the included ESCO Profile form.
- Business Licenses: Please attach copies of all business licenses and required certifications in order to conduct energy and water-related business in the State of (insert state).
- Affirmative Action Plan: Please attach a plan for compliance with Section 3 and MBE/WBE regulations.

Personnel Information

- Resumes: Please attach the resumes of the principal individuals who will be directly responsible for this project. Indicate the specific qualifications of each individual and the role(s) they will play for the duration of the contract. Clearly identify who will have the primary responsibility of the technical analysis and design of the project.
- Personnel Experience: Please give the number of years of design and construction experience for each of the individuals with primary responsibility for this project, including their supervisory responsibilities and a list of all projects each has been associated with during the past five (5) years, including type and dollar value of each project.
- Legal Counsel: Please identify your firm's legal counsel for this project. Give the name and address of the primary individual responsible for contract negotiations.

Financial References

- Financial Report: Please attach the most recent copy of your annual financial report.

- Statement of Financial Conditions: Please attach the most recent year-ending Statement of Financial Conditions, including balance sheet and income statement, dated within the past twelve (12) months.
- Accounting Firm Information: If these financial documents were not produced in-house, please indicate the name, address, and telephone number of the firm(s) that prepared these financial statements.

Project Information

- Proposal List: Please list all energy services proposals submitted by your firm in response to publicly advertised RFPs during the past three (3) years. Please include the name of the project, its location, its owner, and the name and telephone number of the owner's representatives with whom you worked.
- Project List: List all contracts to provide energy services entered into by your firm during the past three (3) years. Please include the name of the project, its location, its owner, the name and telephone number of the owner's representatives with whom you worked, and the current status of each project. Place an asterisk by those projects with buildings similar to the buildings described in the technical appendices.
- Project Histories: Please briefly describe the past three energy performance contracts for related projects your firm has managed. Please be sure to include the following information for each project: Name, location, owner, dollar value of installations, source of funds, type of contract (i.e., shared-savings, guaranteed savings, etc.), the name(s) of primary design personnel, the start and end dates, and the names and telephone numbers of the owner's representatives with whom you worked. You may also add comments as you feel necessary. In addition, please provide information on the anticipated and actual savings in energy consumption during each project, including the projected annual savings, the guaranteed savings, and the achieved savings for each of the first five (5) years of the project. Please list these in fuel units, such as gallons, kWh, or therms, rather than dollars or BTU's.
- Approach to Project: Please completely address each of the following topics with regard to this project. Reference each of the categories, in turn.

General

- Project Summary (not to exceed five (5) pages): Summarize the scope of services (design, financial operations, maintenance, and training) your firm would offer for this project. Please include a brief description of your firm's approach to management and of the specific benefits your organization can offer the SHA.
- Training Provision: Describe your firm's capabilities and experience in providing technical training for the client's facility personnel.
- Design and Monitoring: Describe your firm's approach to the technical design of this project and your provisions for on-going monitoring of this project's performance.

- Cost of Audit: Please estimate the total cost of the energy audit.
- Calculation Methodology: Describe in detail the methodology you normally use to compute baseline energy use.
- Adjustments to Baseline Methodology: Describe the method(s) used by your firm to adjust the baseline energy use, due to conditions such as weather and facility use changes.
- Energy Savings Calculations: Please list all the procedures, formulas, and methodologies, including special metering or equipment, your firm will use to calculate reduced energy consumption by the SHA.
- Dollar Savings Calculation: Describe the procedure used by your firm to assign a dollar value to the energy savings indicated above.
- Vendor Fee Calculation: Please describe the methods used to calculate your firm's fees as a function of the project's energy performance.
- Savings Guarantee Calculation: Describe the methods used by your firm for measuring the project's performance, and how the guarantee provisions work in the event the project results vary from the projections.
- Billing and Invoices: Please describe your organization's standard billing procedure and attach a sample invoice.
- Provisions of Financing: Briefly describe various "creative" or "innovative" financing arrangements provided by your firm for past retrofit projects.
- Equipment Ownership and Service Responsibility: Please explain the ownership status of equipment and the service responsibilities at contract expiration.
- Sample Contract: Attach a sample contract offered by your firm.

Site Specific

- Technical Site Analysis: Based on your preliminary assessment of the information provided by the SHA, please describe any equipment modifications, installations, or replacements at the facility that your firm would consider installing as part of this project.
- Operation and Maintenance: Please describe any major changes in the operation or maintenance of SHA facilities that your company foresees, based on the information provided.
- Project Financing: Describe your firm's preferred approach to providing or arranging financing for this project, and please note any special conditions associated with this method.
- Sample Audit: Under separate cover, please provide to the SHA three (3) copies of a sample audit conducted by your firm for a project similar to this one. This audit must include detailed energy and economic calculations, and, like the rest of the proposal package, will not be returned.

Attachment B Documentation Checklist

All items included in this proposal package must be checked off below, and this form must be included at the beginning of the proposal package and signed by the representative of the submitting firm. All supporting documentation must be included in the proposal package in the order listed below.

- _____ Attachment B. Documentation Checklist
- _____ Attachment C. ESCO Profile Form
- _____ Business Licenses and Certifications
- _____ Affirmative Action Plan
- _____ Resumes of All Proposed Project Personnel
- _____ Personnel Experience Information
- _____ Legal Counsel Information
- _____ Most Recent Financial Report
- _____ Audited Statement of Financial Conditions
- _____ Accounting Firm Information
- _____ Proposal List
- _____ Project List
- _____ Project Histories
- _____ Approach to Project
- _____ Sample Audit (Three (3) copies under separate cover)

I have verified that the above documents have been included in this proposal document and I certify that they have been completed fully and truthfully to the best of my knowledge and belief. I understand that failure to provide necessary documentation or any deliberate attempt to mislead the representatives of the Sample Housing Authority may result in the disqualification of my firm from competition to provide energy services to SHA.

ESCO Representative Signature

Date

ESCO Representative Name

Title

Attachment C ESCO Profile Form

NOTE: All questions must be answered completely and truthfully by the submitting firm for this qualifying form to be properly completed. Failure by the proposer to complete any question in whole or in part, or any deliberate attempt by the proposer to mislead the SHA, may be used as grounds to find the proposing ESCO ineligible. If any question does not apply to your firm, please indicate that fact with the symbol "N/A." If you require additional space in which to answer any question, please attach 8 1/2" X 11" sheets clearly labeled with the name of your firm and number of the question to which the sheet refers.

1. Firm Name _____
 Address _____
 City _____ State _____
 County _____ Zip Code _____

2. Names of two contact persons:
 1) _____ Phone _____
 2) _____ Phone _____

3. Date Prepared _____

4. Submission is for Parent Company Division
 Subsidiary Branch Office

Please list any Division or Branch Offices that are to be included in the Prequalification Rating. Attach a separate sheet if more than one.

Firm Name _____
 Address _____
 City _____ State _____
 County _____ Zip Code _____

5. Type of firm Corporation Partnership
 Sole Ownership Joint Venture

6. Federal Employer Identification Number _____

7. Year firm was established _____

8. Please indicate the name and address of the parent company, if applicable:

Firm Name _____
 Address _____
 City _____ State _____
 County _____ Zip Code _____

9. Please indicate all former names of this organization, if applicable, and the length of time it was known by each.

10. How long has the firm been in business under its current name? _____ years

11. Is this firm a recognized Minority Business Enterprise? Yes No

If yes, please indicate the appropriate category:

American Indian Female Owned Black
 Spanish Surname Asian American Other _____

(Please Describe)

12. How long has this firm been providing energy related services? _____ years

13. Please fill in the Index Number which describes the annual value of your firm's energy related service contracts for each of the following years.

Year	Index Number	Index Number	Range of Values
1995	_____	1	Less than \$100,000
1994	_____	2	\$100,000 - \$250,000
1993	_____	3	\$250,000 - \$500,000
1992	_____	4	\$500,000 - \$1 million
1991	_____	5	\$1 million - \$5 million
1990	_____	6	\$5 million or greater

14. Please identify all states in which this firm is legally qualified to do business.

15. Please identify your surety company, including their name, address and phone number, and indicate the current line of bonding credit that the company has extended your firm.

16. Has your firm been involved in a construction related lawsuit (other than labor or personnel litigation) during the past five (5) years? Yes No

If yes, please attach an additional sheet immediately following this Attachment which explains in detail the nature of the claim, the circumstances, the amount in dispute, the date the suit was filed, and the outcome of the case (or the current status, if still ongoing).

17. Has your firm been involved in any construction arbitration demands during the past five (5) years? Yes No

If yes please attach an additional sheet immediately following this Attachment which identifies the nature of the claim, the amount in dispute, the parties, and the ultimate resolution of the proceeding.

18. Has your firm been involved in any lawsuits, administrative proceedings, or hearings initiated by the National Labor Relations Board or a similar state or federal agency during the past five (5) years regarding your firm's safety practices? Yes No

If yes, please attach an additional sheet immediately following this attachment which identifies the nature of the claim and the ultimate resolution of the proceeding.

19. Has your firm been involved in any lawsuits, administrative proceedings, or hearings initiated by the Occupational Safety and Health Administration or a similar state or federal agency during the past five (5) years regarding the safety of one of your firm's projects? Yes No

If yes, please attach an additional sheet immediately following this Attachment which identifies the nature of the claim and the ultimate resolution of the proceeding.

20. Has your firm, or any of its parents or subsidiaries, ever had a bankruptcy petition filed in its name, voluntarily or involuntarily? Yes No

If yes, please attach an additional sheet immediately following this Attachment which explains in detail the circumstances, the date the protection order was filed, and the resolution of the case (or the current status, if still ongoing).

I hereby certify that all questions in Attachment C have been answered truthfully and completely to the best of my knowledge and belief. I understand that failure to answer any question, in whole or in part, or any deliberate attempt to mislead the representatives of the Sample Housing Authority in answering any question on this attachment may result in disqualification of my firm from competition for provision of energy services to SHA.

ESCO Representative Signature

Date

ESCO Representative Name

Title

APPENDIX F
SAMPLE TECHNICAL SECTION
OF THE RFP

Instructions for Preparation of the Technical Section of the Request for Proposals

OVERVIEW

Vendors need a description of your facilities to evaluate the opportunity for a successful energy performance contract. It is impractical to supply every technical detail available in the RFP, but we suggest you be prepared to respond to requests for additional data from individual vendors. The RFP will contain a brief description of your facilities and a list of any energy retrofit measures you would like vendors to investigate. You should also be prepared to provide the data in Section VII upon request to individual vendors. A complete description should be prepared for each site being considered for energy performance contracting.

SECTION I: GENERAL FACILITY DATA

1. Name of Building _____
2. Address of Building _____
3. Primary Use _____
4. Building Operator _____
5. Building Engineer _____ Phone: _____
6. Building Manager _____ Phone: _____
7. Year Constructed _____ Year of last major structural modification _____
8. Briefly describe any major changes made during the last four (4) years which affected annual building energy use by 2% or more. What was done? What were the effects on energy use?

9. Describe any major change planned to occur during the next five years which could affect annual energy use by 2% or more. What changes? Anticipated effects?

SECTION II: OPERATING DATA

1. Describe the operating hours of your major HVAC and lighting systems by hour and day of the week. Also include an annual holiday schedule during which major reductions in the operation of lighting and HVAC systems are made. If substantial zones of the building have differing hours of operation or large variations in occupancy, please describe the use of these zones.
2. What are the general summer and winter temperature setpoints for your building? If you do night setback, what is your target temperature? Please describe any zones with special temperature, humidity or ventilation requirements.
3. If you have an operating EMS controlling your building, please list the manufacturer, year installed, # of points, control functions it performs, and who is responsible for system operation.
4. Describe the manufacturer(s), age, type, and condition of the existing control system(s) in the building.

SECTION III: PHYSICAL DATA

1. Give the total square footage of conditioned space. If the total areas which are heated and cooled differ in size, please describe their respective sizes.
2. Briefly describe the predominant wall and roof construction. Also describe the type and condition of existing windows.

SECTION IV: ENERGY AND WATER CONSUMPTION DATA

1. Use the attached tables to summarize utility consumption and costs over the last three years. Please attach copies of utility rate schedules which apply to your building.

SECTION V: ENERGY SYSTEMS DATA

1. Briefly describe the major type(s) of HVAC system(s) serving your building (e.g., terminal reheat, multizone, dual duct, variable air volume, induction, fan coil, heat pump, air exhaust, radiation). List the main fuels used to drive the heating and cooling systems.
2. Estimate the percentage of total area lamped by high efficiency fluorescent ballasts and bulbs, standard florescent ballasts and bulbs and incandescent bulbs. Estimate the annual hours of operation for each type of lighting. If you have a significant amount of HID lighting, please describe it in similar terms.
3. Briefly describe any laundry or food facilities which use more than 2% of your annual energy consumption. If you operate a kitchen, how many meals do you serve per year?
4. Briefly describe any major labs or medical equipment which uses more than 2% of your annual energy use.

5. Describe your domestic hot water heating, distribution, and control system(s).
6. Please describe any other energy consuming equipment or facilities which use more than 2% of your annual energy use (e.g. incinerator, pool, etc.).

SECTION VI: IMPROVEMENT OPPORTUNITIES

1. Briefly describe any serious equipment, operating, or comfort problems in your building(s). Identify any major mechanical or electrical systems scheduled for replacement during the next five years.
2. Briefly list any major energy conservation options identified by a previous analysis of your building.
3. Please describe any building improvements that you would like to investigate during this project.

SECTION VII: ADDITIONAL SITE DATA PROVIDED UPON VENDOR REQUEST (IF AVAILABLE)

1. Actual copies of the last three years of utility bills for the building.
2. A more detailed schedule for major mechanical equipment including: age, manufacturer, size, capacity, hours of operation, and areas served.
3. Copies of previous technical analyses or audits of energy conservation options in your building.
4. Detailed documentation related to your energy management system.

Building Identifier _____
Building Name (if different from above) _____
Utility Company _____

ELECTRIC

	Meter Read Date	Read Type (Est. or Actual)	KWH Consumed	Price Per KWH	Demand kW	Price Per Demand kW	Reactive Charges	Price Per RkVAR
Month 1								
Month 2								
Month 3								
Month 4								
Month 5								
Month 6								
Month 7								
Month 8								
Month 9								
Month 10								
Month 11								
Month 12								
Month 13								
Month 14								
Month 15								
Month 16								
Month 17								
Month 18								
Month 19								
Month 20								
Month 21								
Month 22								
Month 23								
Month 24								

WINTER DEMAND: \$ _____/KW
_____KWH

SUMMER DEMAND: \$ _____/KW

ON PEAK COST: \$

OFF PEAK COSTS: \$ _____/KWH

HEATING COST: \$ _____/KWH

TAX RATE: _____%

Building Identifier _____
Building Name *(if different from above)* _____
Utility Company _____

GAS Are you billed for CCF, MCF, Therms or Gallons (Propane)?

	Meter Read Date	Read Type (Est. or Actual)	Units Consumed	Price Per Unit	Other Charges	Description of Other Charges
Month 1						
Month 2						
Month 3						
Month 4						
Month 5						
Month 6						
Month 7						
Month 8						
Month 9						
Month 10						
Month 11						
Month 12						
Month 13						
Month 14						
Month 15						
Month 16						
Month 17						
Month 18						
Month 19						
Month 20						
Month 21						
Month 22						
Month 23						
Month 24						

AVG. COST: \$ _____/THERM (Based on the latest annual consumption/cost data)

CONTRACT GAS: Yes No **GAS COST:** \$ _____/THERM **TRANS. COST:** \$ _____THERM **TAX**

RATE: ____%

Building Identifier _____
Building Name *(if different from above)* _____
Oil Company _____

OTHER

	Delivery Date	Amount Delivered	Type	Price Per Unit	Other Charges	Description of Other Charges
Month 1						
Month 2						
Month 3						
Month 4						
Month 5						
Month 6						
Month 7						
Month 8						
Month 9						
Month 10						
Month 11						
Month 12						
Month 13						
Month 14						
Month 15						
Month 16						
Month 17						
Month 18						
Month 19						
Month 20						
Month 21						
Month 22						
Month 23						
Month 24						

AVG. COST: \$ _____ / _____ (Based on latest annual consumption/cost data)

TAX RATE: _____%

Building Identifier _____
Building Name (if different from above) _____
Utility Company _____

WATER

	Meter Read Date	Read Type (Est. or Actual)	Gallons Consumed	Price/Unit of Water	Sewage Discharged	Price/Unit Sewage	Other Charges	Description of other Charges
Month 1								
Month 2								
Month 3								
Month 4								
Month 5								
Month 6								
Month 7								
Month 8								
Month 9								
Month 10								
Month 11								
Month 12								
Month 13								
Month 14								
Month 15								
Month 16								
Month 17								
Month 18								
Month 19								
Month 20								
Month 21								
Month 22								
Month 23								
Month 24								

AVG. COST: \$ _____ / _____ (Based on latest annual consumption/cost data)

TAX RATE: _____%

APPENDIX G

SAMPLE ESCO RANKING FORM

RANKING FORM FOR EVALUATING WRITTEN CONTRACTOR QUALIFICATIONS

Evaluator's Name: _____

Contractor: _____

Evaluator's Dept.: _____

Date: _____

EXPERIENCE

1. Level of past experience with similar projects: \$\$ Level of experience: _____ #: _____

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

2. Quality of key personnel qualifications as listed on resumes:

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

3. Ability to achieve energy savings on past projects:

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

4. Amount of experience arranging project financing:

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

5. Adequacy of description of performance on past projects:

Superior_____	Very Acceptable_____	Acceptable_____	Not Acceptable_____	Unqualified to Rank_____
---------------	-------------------------	-----------------	------------------------	-----------------------------

Discussion: _____

6. Qualification of major designated subcontractors:

Superior_____	Very Acceptable_____	Acceptable_____	Not Acceptable_____	Unqualified to Rank_____
---------------	-------------------------	-----------------	------------------------	-----------------------------

Discussion: _____

MANAGEMENT

7. Quality of the project summary:

Superior_____	Very Acceptable_____	Acceptable_____	Not Acceptable_____	Unqualified to Rank_____
---------------	-------------------------	-----------------	------------------------	-----------------------------

Discussion: _____

8. Overall Approach to project management:

Superior_____	Very Acceptable_____	Acceptable_____	Not Acceptable_____	Unqualified to Rank_____
---------------	-------------------------	-----------------	------------------------	-----------------------------

Discussion: _____

9. Adequacy of proposed maintenance services:

Superior_____	Very Acceptable_____	Acceptable_____	Not Acceptable_____	Unqualified to Rank_____
---------------	-------------------------	-----------------	------------------------	-----------------------------

Discussion: _____

10. Quality of sample training description:

Superior_____	Very Acceptable_____	Acceptable_____	Not Acceptable_____	Unqualified to Rank_____
---------------	-------------------------	-----------------	------------------------	-----------------------------

Discussion: _____

11. Adequacy of proposed equipment monitoring services:

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

12. Adequacy of methods for project performance monitoring:

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

13. Overall quality of communication skills of contractor's representatives

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

TECHNICAL

14. Understanding of existing facility conditions and systems:

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

15. Quality and comprehensiveness of preliminary technical retrofits proposed

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

16. Quality of sample audit submitted:

Superior_____	Very Acceptable_____	Acceptable_____	Not Acceptable_____	Unqualified to Rank_____
---------------	-------------------------	-----------------	------------------------	-----------------------------

Discussion: _____

17. Quality of methodology for establishing fuel baseline

Superior_____	Very Acceptable_____	Acceptable_____	Not Acceptable_____	Unqualified to Rank_____
---------------	-------------------------	-----------------	------------------------	-----------------------------

Discussion: _____

18. Accuracy and clarity of methods for measuring energy savings:

Superior_____	Very Acceptable_____	Acceptable_____	Not Acceptable_____	Unqualified to Rank_____
---------------	-------------------------	-----------------	------------------------	-----------------------------

Discussion: _____

FINANCIAL

19. Financial soundness of the contractor

Superior_____	Very Acceptable_____	Acceptable_____	Not Acceptable_____	Unqualified to Rank_____
---------------	-------------------------	-----------------	------------------------	-----------------------------

Discussion: _____

20. Attractiveness of contractor's proposed vendor fee calculation methodology:

Superior_____	Very Acceptable_____	Acceptable_____	Not Acceptable_____	Unqualified to Rank_____
---------------	-------------------------	-----------------	------------------------	-----------------------------

Discussion: _____

21. Accuracy and clarity of methods for determining value of energy savings:

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

22. Attractiveness of the terms of the proposed savings guarantee:

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

23. Attractiveness of proposed invoicing and billing procedures:

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

24. Quality of proposed financing methodology:

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

25. Attractiveness of Proposed Interest Rate

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

26. Attractiveness of Cash Flows for Project

Superior _____ Very Acceptable _____ Acceptable _____ Not Acceptable _____ Unqualified to Rank _____

Discussion: _____

27. Cost of Energy Audit:

Reasonable: ____ Too High: ____ Too Low: ____ Unqualified to Rank: _____

LEGAL

28. Quality of contractor's understanding and familiarity with the HUD performance contracting regulations:

Superior____ Very Acceptable____ Acceptable____ Not Acceptable____ Unqualified to Rank_____

Discussion: _____

29. Attractiveness of Sample Contract:

Superior____ Very Acceptable____ Acceptable____ Not Acceptable____ Unqualified to Rank_____

Discussion: _____

30. Attractiveness of the terms of the agreement relating to the accommodation of changes in building energy use or occupancy:

Superior____ Very Acceptable____ Acceptable____ Not Acceptable____ Unqualified to Rank_____

Discussion: _____

GENERAL RESPONSE TO RFP

31. Did the ESCO respond to all of the questions in the ESCO profile form completely:

Yes: ____ No: ____ Not qualified to respond: _____

32. Did the ESCO provide all of the materials requested in the RFP:

Yes: ____ No: ____ Not qualified to respond: _____

33. Did the ESCO provide the requested sample audit:

Yes: ____ No: ____ Not qualified to respond: _____

34. Did the ESCO provide the requested number of copies of the proposal and the sample audit:

Yes: ____ No: ____ Not qualified to respond: _____

35. Were all submissions by the ESCO provided on time as per the RFP:

Yes: ____ No: ____ Not qualified to respond: _____

36. Quality of grammar, spelling, information clarity and quality control of proposal

Excellent ____ Fair: ____ Poor: ____

APPENDIX H

SAMPLE SCORE SHEET FOR
ESCO RANKING FORM

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ESCO REFERENCE FORM

APPENDIX J

SAMPLE ENERGY SERVICES AGREEMENT

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DRAFT ENERGY SERVICES AGREEMENT

This Energy Services Agreement, referred to herein as "Agreement" or "ESA" dated as of _____ by and between _____ referred to herein as "the Company" and _____ Public Housing Authority referred to herein as "the PHA" for the purpose of providing energy conservation measures (ECMs), consisting of services, systems and facilities designed to reduce energy consumption in buildings owned and operated by the PHA which are referred to herein as the "Premises," or "Parties" as appropriate.

RECITALS

WHEREAS, the PHA owns and operates the Premises, and is in need of energy conservation measures, consisting of services, systems and facilities designed to reduce energy consumption and associated energy costs at said Premises; and

WHEREAS, the Company was selected by the PHA, through a competitive selection process, to provide professional services which will result in decreased energy consumption and guaranteed energy savings, which services may include but are not limited to the following: energy use analyses, the design and delivery of ECMs which consist of systems and devices to be installed and maintained on the Premises, the training of designated PHA employees, and the maintenance and monitoring of the ECMs as provided herein and measurement, reporting and verification of energy savings; and

WHEREAS, the PHA desires to retain the Company to provide certain energy conservation measures and professional services for the purpose of achieving energy cost savings within the Premises, as more fully set forth herein; and

WHEREAS, the Company has agreed to guarantee a level of energy savings to be achieved as the result of the professional services to be provided under this Agreement and

WHEREAS, the PHA is authorized under the laws of the State of _____ to enter into this Agreement of the purposes set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, the PHA and the Company hereby covenant and agree as follows:

ARTICLE 1: THE COMPANY'S RIGHTS AND RESPONSIBILITIES

1.1 Legal Responsibility.

The Company shall perform or cause to be performed the Work and all other services required by this Agreement. The Company Shall assure that all services which require the exercise of professional skills or judgment shall be accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed in the State of _____, if required by law. The Company shall remain responsible for the professional and technical accuracy of all services performed, whether by the Company or its subcontractors or others on its behalf, throughout the term of this Agreement.

If the Company fails to comply with the foregoing standards, the Company shall perform again, at its own expense, any and all Work required to be performed as a direct or indirect result of such failure. Any review, approval, acceptance or payment for any and all of the Company's performance by the PHA shall not relieve the Company of its responsibility for the professional and technical accuracy of its performance. This provision in no way limits the PHA's right against the Company either under this Agreement, at law or in equity.

1.2 Insurance.

The Company shall purchase and maintain insurance coverage as set forth in Schedule S. The insured specified in Schedule S shall be maintained during any period which the Work is being performed.

The Company's failure to carry or keep such insurance in force shall constitute an event of default under this Agreement within the meaning of Article 11, and the PHA maintains the right to stop the Work until evidence of the requisite coverage is provided. The Company shall require all subcontractors performing any portion of the Work to carry the insurance required in Schedule S, and the Company may, at its option, provide the coverage for any or all subcontractors, and, if so, the evidence of insurance submitted shall so stipulate. The Company and each of its subcontractors agree that each insurer shall waive its rights of subrogation against the PHA.

The Company may not commence performance of the Work and/or services under this Agreement until all required insurance is purchased and evidence of it is received and approved by the PHA, but the failure of the PHA to obtain such evidence from the Company before permitting the Company to commence work shall not be deemed to be a waiver by the PHA, and the Company shall remain under continuing obligation to maintain the coverage and to supply evidence of coverage in accordance with Schedule S.

When such insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Company shall, not less than thirty (30) days prior to such expiration or renewal date, supply the PHA with updated replacement Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of

protection, and scope of coverage, as was provided by the Certificates of amendatory riders or endorsements originally supplied.

The Company expressly understands and agrees that any insurance protection furnished by the Company hereunder shall in no way limit its responsibility to indemnify and save harmless the PHA under the provisions of this Agreement.

1.3 Performance Bonds.

The Company shall, no later than the date of execution hereof, deliver to the PHA a Performance Bond and Labor and Material Payment Bond in accordance with the requirements of Schedule S, securing its obligations to be performed under this Agreement on or prior to the final acceptance of the Work.

1.4 Joint and Several Liability.

Each and every obligation or undertaking herein stated to be fulfilled or performed by the Company shall be the joint and several obligation of the Company and its successors or assigns.

1.5 Miscellaneous.

Other rights and responsibilities of the Company are set forth throughout this Agreement and the Project Documents are included under other titles, articles, sections and headings for convenience. It is the responsibility of the Company to familiarize itself with all provisions of this Agreement and the Project Documents in order to understand fully the entirety of its rights and responsibilities hereunder.

ARTICLE 2: THE PHA'S RIGHTS AND RESPONSIBILITIES

2.1 Project Administration.

The PHA shall appoint a Project Engineer who is responsible for the administration of the performance required under this Agreement.

Administration of the Final Agreement implies authority to discuss and negotiate changes, modification, clarifications, amendments, or other alterations to the terms, conditions, and specifications of such contract. However, final authorization to execute such alterations shall be with the PHA's Purchasing Department. Unless a change is provided in writing, the Engineer/Project Manager for this project is:

Name, Title
Name of Housing Authority
Address
City, State Zip Code

Phone
Fax
E-Mail

2.1.1 Responsibilities of the Project Engineer.

Tasks to be performed by the Project Engineer in the administration and coordination of this Agreement include, but are not limited to the following areas:

- (I) review required insurance coverage and bonds within ten (10) business days following receipt to ensure compliance with the terms of this Agreement;
- (II) review ECM submittals required under 2.1.2. hereof within ten (10) business days following receipt to ensure that the design and installation of the ECMs is adequately described and illustrated;
- (III) review ECM submittals required under 2.1.2 hereof to ensure that the design and installation of the ECMs is consistent with current and known future capital projects at the PHA,
- (IV) review ECM submittals to ensure that plans, drawings and specifications provide sufficient detail;
- (V) Review submittals required under Article 7 and participate as necessary relative to determining Substantial and Final Completion;
- (VI) review/approve requests for change orders submitted by the Company;
- (VII) attend project meetings.

2.1.2 ECMs Submittals.

ECMs submittals include: drawings, plans, specifications, shop drawings, product data, and samples which provide sufficient detail to allow the Project Engineer to complete the reviews described in 2.1.1.

The Company shall submit up to two (2) sets of ECM submittals prior to the commencement of any of the Work covered by such submittals.

Whenever an article of any class of materials or equipment is specified by the trade name of any particular patentee, manufacturer, or dealer, it shall be taken to mean that the article provided shall be equal to the specified article in quality, finish, and durability and equally as serviceable for the purpose for which it is intended. The Engineer shall make the decision as to whether the materials or equipment offered are equal to those specified, and the decision of the Engineer shall be final.

At the request of the PHA, the Company shall provide on-site “mockups” and demonstrations of the ECMs at the Premises which shall also be construed as ECM submittals under the provisions of the paragraph.

Submittals shall include:

- (I) Date and revision dates.
- (II) Project Number and Title.
- (III) Names, as applicable, of the subcontractor, sub-subcontractor, supplier, manufacturer, detailer.
- (IV) Identification of product or material.
- (V) Relation to adjacent structure or material.
- (VI) Field Dimensions, clearly identified.
- (VII) Specification page and number
- (VIII) Specified standards, such as ASTM or ANSI.
- (IX) Identification of previously approved deviation from Project documents.
- (X) Company’s stamp, initialed or signed, certifying to review of submittal, verification of field measurements and compliance with contract.

The Project Installation Schedule set forth in Schedule K shall reflect the time frame for delivery by the Company to the Project Engineer of the ECMs submittals required. Whenever possible, the ECM submittals will be provided by the Company in advance of the delivery dates specified in Schedule K to facilitate the Project Engineer’s review of the submittals. Within ten (10) business days of receipt of the submittals, the Project Engineer shall complete its review of the submittals and provide written approval of the submittal or if the submittal has not been approved, written explanation as to the reason therefor. The Company shall submit a revised submittal within ten (10) business days to the Project Engineer for review and approval and the Project Engineer shall have ten (10) business days from receipt thereof to complete his review of the revised submittal. The Company shall be responsible for any delays caused by rejection of incomplete or inadequate submittals. The Company may not commence any of the Work which requires the submittals without written approval by the Project Engineer.

The Company’s responsibility for errors, omissions, deviation from existing conditions, or deviation from the Project Documents in submittal is not relieved by the Project Engineer review.

2.1.3 Delivery of Submittals.

The Company shall deliver all submittals required by the Project Engineer as well as any related correspondence to the Project Engineer as set forth in paragraph 2.1.2. hereof.

2.1.4 Correspondence, Project Notices and Submittals.

All project related notices, correspondence and submittals shall be directed to the individuals identified in paragraph 10.10.

2.1.5 Drawings, Specifications and Surveys Provided by the PHA.

(a) The PHA will make available for review by the Company, any of its working drawings and specifications concerning the Premises which are available to the PHA and which are reasonably necessary for the execution of the Work.

(b) The Project Engineer shall provide the Company with such surveys as it may have describing the physical characteristics, legal limitations and utility locations for the site of the Work.

(c) The Project Engineer will make available for review by the Company such working drawings, specifications, surveys and "As-Built" drawings concerning the Premises which are available and which relate to work being performed by other contractors at the Premises;

(d) All drawings, specifications, surveys and copies thereof furnished by the PHA are and shall remain PHA property. All "As-Built" drawings prepared under this Agreement, are and shall remain PHA property. The Company acknowledges that such drawings, specifications, surveys and "As-Built" drawings are to be used only with respect to the performance of this Agreement and are not to be used on any other project. With the exception of one set of such drawings, specifications, surveys and "As-Built" drawings for each party hereto, such drawings, specifications, surveys and "as-Built" drawings are to be returned or suitably accounted for to the Project Engineer on request at the completion of the Work.

2.1.6 Ownership, Dissemination and Publication of Documents.

The drawings, specifications, reports, renderings, models, electronic media and all such other documents to be prepared and furnished by the Company pursuant to this Agreement, shall be the property of the PHA and the PHA shall have a license to use any copyrighted material contained in such documents. All documents listed above may be issued for informational purposes by the PHA without additional compensation to the Company.

2.1.7 Interpretation of Agreement.

The PHA shall have the authority to determine questions of fact that arise in relation to the interpretation of this Agreement and the Company's performance hereunder. However, such determinations are subject to the Alternate Dispute Resolution procedures as

described in Schedule Q. Unless the Parties agree otherwise, or the Work cannot be continued without a resolution of the question of fact, such determinations and/or Alternative Dispute Resolution procedures shall not be cause for delay of the Work. The Company shall proceed diligently with the performance of this Agreement and in accordance with the PHA's decision whether or not the Company, or anyone else, has an active claim pending. Continuation of the Work shall not be construed as a waiver of any rights accruing to the Company.

ARTICLE 3: THE ENERGY CONSERVATION PROJECT (THE "PROJECT")

3.1 Project Defined.

The Company shall design, procure, fabricate and install the energy conservation measures specified in Schedule A and provide training, commissioning, maintenance and monitoring and all other services specified in this Agreement and the Project Documents set forth in paragraph 3.5 hereof.

3.2 Energy Analysis Report.

The Energy Analysis Report prepared by the Company and accepted by the PHA contains specific recommendations concerning the energy conservation measures, systems and services to be provided at the Premises. In the event of any inconsistencies between the Energy Analysis Report and the provision of this Agreement, the latter shall govern. Acceptance of the Energy Analysis Report is reflected in Exhibit 1.

3.3 Energy Savings Guarantee.

The Company has formulated and guaranteed the level of energy savings and costs which will be achieved as a result of the performance by Company of the services provided for in this Agreement utilizing the Savings Calculation Methodology set forth in Schedule B.

3.4 Annual Review and Reimbursement.

Energy savings achieved at the Premises shall be reported, reconciled and verified pursuant to the provisions of Schedule B. If said annual review, reconciliation and verification of energy savings discloses that the Company has failed to achieve the annual guaranteed energy savings set forth in Schedule B, upon written request by the PHA, the Company will pay the PHA the difference between the annual amount guaranteed and the amount of actual annual energy and operating cost savings achieved at the Premises. The Company shall remit such payments to the PHA within thirty (30) days of written demand therefor by the PHA.

3.5 Project Documents.

The Project Documents include:

- The Executed ESA
- The Energy Analysis Report
- Submittals Required by Article 7
- Certificates of Insurance
- Executed Performance Bond and Labor and Material Payment Bond
- Approved Change Orders
- Drawings, Specifications and Surveys Furnished by the PHA in Accordance With Paragraph 2.1.5

The Project Documents also include the following Schedules when executed by the PHA and the Company.

Schedule A	ECMs to the Installed
Schedule B	Energy Savings Guaranty & Savings Calculation Methodology
Schedule C	Compensation to Company
Schedule D	Premises
Schedule E	Calculation of Baseline
Schedule F	Financing Schedule
Schedule G	Company Maintenance Responsibilities
Schedule H	PHA Maintenance Responsibilities
Schedule I	Standards of Comfort and Service
Schedule J	Company Training Responsibilities
Schedule K	Project Installation Schedule
Schedule L	Current and Known Future Capital Projects
Schedule M	Pre-Installation Equipment Inventory
Schedule N	Pre-Existing Service Agreements
Schedule O	Subcontractor/Vendor Disclosure
Schedule P	Systems Startup and Commissioning of ECMs
Schedule Q	Alternative Dispute Resolution Procedures
Schedule R	Working Conditions
Schedule S	Insurance and Bonds
Schedule T	Disposition of Interim Savings
Schedule U	Warranties

Additional Schedules as warranted.

3.6. Review of Project Documents.

The Company shall carefully review all Project Documents, including all addenda, and shall promptly report to the Project Engineer all errors, inconsistencies or omissions it may discover. The Company shall review the drawings and specifications relating to Work to be performed by its subcontractors in connection with the Project and any other contractors performing work at the Premises under separate contracts with the PHA unrelated to Company's performance under this Agreement. All Work to be performed under this Agreement which the Company discovers may be in conflict with the work of any of its subcontractors or other contractors performing on the Premises, shall be brought to the attention of the Project Engineer before the

Work is performed. If, after the discovery of such conflict, the Company fails to promptly notify the Project Engineer, the Company shall, upon written direction from the PHA, remove all such Work or portion thereof so conflicting, and rebuild it as directed at not additional cost to the PHA.

3.7. Project Codes, Standards and Regulations.

Project Documents prepared by the Company shall be in accord with all applicable codes, standards and regulations and shall be prepared by qualified personnel.

ARTICLE 4: TERMS; INTERIM PERIOD; AND ACCEPTANCE DATE

4.1 Term of Agreement.

This Agreement shall take effect as of the execution date hereof and extend for a period of time not less than ten (10) years from the Acceptance Date set forth in Paragraph 4.3. The period from ESA execution until the acceptance Date is referred to in this Agreement as the "Interim Period." The disposition of energy savings achieved during the Interim Period as a direct result of the Company's performance under this Agreement is described in Schedule T.

4.2 Interim Period.

During the Interim Period, the Company shall design, procure, fabricate, install and commission the energy conservation measures described in Schedule A in accordance with the provisions of Article 5. The performance required during the Interim Period shall be completed in accordance with the Project Installation Schedule set forth in Schedule K.

4.3 Acceptance Date.

The Acceptance Date shall be the date on which the PHA delivers an Acceptance Certificate to the Company. Such delivery of the Acceptance Certificate shall occur after the Company submits its notification, in accordance with Article 7 herein, that it has substantially completed the installation and commenced operating substantially all of the energy conservation measures specified in Schedule A, and the Project Engineer has inspected and accepted said installation and operation. From and after the Acceptance Date, payment to the Company for the ECMs shall be authorized pursuant to Paragraph 6.2 hereof. Fees due to the Company for maintenance, monitoring and training services under Paragraph 6.3 of this Agreement and Schedule G and J shall begin to accrue no earlier than the Acceptance Date.

ARTICLE 5: IMPLEMENTATION OF THE ENERGY CONSERVATION PROJECT ("THE WORK")

5.1 Supervision of the Work

5.1.1 Description of the Work.

The design, procurement, fabrication and installation of the specified ECMs and certain training services described in Schedule A, are referred to in this Agreement as the “Work.” The maintenance and monitoring services detailed in Schedule G and the training service detailed in Schedule J, performance of which does not commence until after the Acceptance Date, shall not be part of the Work.

5.1.2 Supervision of the Work.

The Company shall supervise and direct the performance of the Work using its best skill, attention and judgment. The Company shall be solely responsible for site safety and for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under this Agreement.

5.1.3 Rejection of the Work by the PHA.

The PHA may reject any sequences or procedures proposed by the Company in connection with the Work which might constitute or create a hazard to the Premises, or to persons or property, or which deviate from the Project Documents or will result in schedule delays or additional costs to the PHA. This provision shall not be construed to mean that Work which is not rejected is therefore approved or accepted, since the Company is solely responsible for all the work to be performed under this Agreement.

5.1.4 Responsibility for the Work.

The Company shall not be relieved of its obligations to perform the Work in accordance with the Project Documents by reason of observations or inspections, tests or approvals by a person other than the Company.

5.1.5 Coordination of the Work.

The Company shall perform the Work in accordance with the Working Conditions set forth in Schedule R. The Company shall consult with the buildings management and maintenance personnel at the Premises, its employees and agents, in order to coordinate the Work, including installation of any ECM, and to provide appropriate training in the operation of any ECM. The Company shall not permit any act which will interfere with the performance of the PHA’s business activities or the activities of other contractors performing at the Premises without the prior approval of the PHA. The Company may install no ECM that will require the hiring of additional personnel by the PHA.

5.1.6 Sufficient Workforce.

The Company shall furnish a competent and adequate staff as necessary for the proper administration, coordination and supervision of the Work; organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; and

ensure that an adequate force of skilled workmen are available to complete the Work in accordance with all requirements of this Agreement.

5.1.7 Competent Superintendent.

The Company shall employ a competent superintendent satisfactory to the PHA who shall be in attendance at the Premises throughout the active performance of the Work and at such other times as may be reasonably necessary, and who shall be authorized to commit the Company with regard to manpower, schedule, coordination and cooperation. The superintendent shall have not less than two years of documented experience in responsible field supervision for projects of comparable size and complexity. The Company shall not change the superintendent unless it has given the PHA a written request for change thirty (30) days in advance of its proposed change, and the PHA has given authorization to do so. In the event the superintendent fails to perform its duties under this Agreement, the PHA may, in writing, require the Company to remove the superintendent from the project, and the Company shall provide a competent replacement.

5.1.8 Harm to Structure of the Premises.

The Company shall perform all tasks/phases of the Work under this Agreement and install the ECMs in such a manner so as not to harm the structural integrity of the Premises or their operating systems, and so as to conform to the standards set forth in Schedule I and the Project Installation Schedule. The Company shall repair and restore to its original condition any area of damage caused by its performance under this Agreement. The PHA reserves the right to review the Work performed by the Company and to direct the Company to take certain corrective action, if in the opinions of the PHA, the structural integrity of the Premises or its operating systems are or will be harmed.

5.1.9 Responsibility for Damages.

The Company shall be responsible for all loss or damage to the Work, the Premises, the PHA or to improvements thereon and the work of other contractors caused by the Company's operation during the performance of the Work.

5.1.0 Laying out the Work.

The Company shall be responsible for properly and accurately laying out the Work, including, where appropriate, the laying out of all lines, levels, elevations and measurements for all of the Work to be performed under this Agreement. The Company shall develop project documents that refine, amplify, depict and describe, in detail, the project required by the detailed Energy Analysis report. These documents shall incorporate and comply with all current, applicable regulations, codes and statutes, and must have prior approval from appropriate authorities having jurisdiction including the Project Engineer. The Drawings shall be sheets 24" X 36" overall with 1/2 inch borders all around and north arrow shall be indicated in the same direction for all plans and details. Specifications shall be in consonance with Final Drawings and shall clearly indicate the type of quality materials, products, and workmanship incorporated in the project. The Specifications shall be provided to the Project Engineer in Word for Windows 6.0 format on 3.5" disks and the Design Drawings shall also be provided in AutoCAD 13 format on 3.5" disks, and delivered to the Project Engineer prior to start of the construction phase.

5.1.11 Verification of Dimensions and Existing Conditions.

The Company has become fully knowledgeable of the conditions relating to the performance of the Work and the conditions under which the Work is to be performed. All dimensions and existing conditions have been verified by the Company during the energy analysis conducted at the Project site, by actual measurement and observation. All discrepancies between the requirements of the Project Documents and the existing conditions or dimensions shall be reported to the PHA as soon as they are discovered. Failure to verify and report shall constitute the Company's acceptance of existing conditions as fit for the proper execution of the Work under this Agreement.

5.1.12 Changed Conditions.

Should the Company encounter subsurface or latent physical conditions at the site which differ materially from those indicated in the Project Documents or from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in this Agreement, the Company shall give written notice to the PHA and the Project Engineer before any such condition is disturbed or further disturbed. No claim of the Company under this provision will be allowed unless the Company has given the required notice. The PHA and the Project Engineer will promptly investigate and if it is determined that the conditions materially differ from those which Company should reasonably have been expected to discover or anticipate, the PHA and the Project Engineer will approve such changes in the Project Documents as may be necessary. If such changed conditions cause an increase or decrease in the Company's cost or time of performance, an appropriate change order will be approved. However, any increase in the Company's cost of performance must not result in an increase in the not-to-exceed price set forth in Paragraph 6.1.

5.1.13 Right to Carry Out the Work

(a) In the event the Company neglects or fails to carry out the Work in accordance with this Agreement and the Project Documents, the PHA may correct such deficiencies after giving twenty (20) business days written notice to the Company and its surety. This shall be without prejudice to any other remedy the PHA may have. The PHA may deduct from the payments then or thereafter due the Company all costs incurred in correcting deficiencies made necessary by such neglect or failure. If the payments then or thereafter due the Company are not sufficient to cover such amount, the Company shall be liable in such amount to the PHA.

(b) Emergencies: In case of emergencies as determined by the PHA involving public health or public safety or to protect against further loss or damage to the PHA's property or to prevent or minimize serious disruption of PHA services or to insure the integrity of the PHA records, the PHA may cause such Work as is necessary to be performed without prior notice to the Company or its surety.

5.1.14 Right to Reject or Stop the Work.

The PHA may reject any of the Work which does not conform to the Project Documents. If the Company fails to correct defective Work or fails to supply labor, materials or equipment in accordance with the Project Documents, the PHA may order the Company to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

5.1.15 Right to Terminate.

If the Company fails or refuses to prosecute the Work with such diligence as to allow completion of the Work in accordance with the Project Installation Schedule, or commits a material breach of any other provision of this Agreement of the Project Documents, the PHA may terminate the Company's right to proceed with the Work and to perform the maintenance, monitoring and training services specified in Schedules G and J. In such case, the PHA will give the Company and its surety written notice of intention to terminate and the reason therefore and, unless within seven (7) business days the delay or violation shall cease or satisfactory arrangement of correction is made, the PHA may issue a termination notice for the Company and its surety. Thereupon, the surety will be given the opportunity to complete the Work in accordance with the Project Documents. Such completion may include, but not be limited to, the use of a completing contractor pursuant to a written takeover agreement, the payment of a sum of money required to allow the PHA to complete the Work, or other arrangements agreed to by the PHA and the surety. If within seven (7) business days the surety fails to notify the PHA that it intends to exercise its right to undertake the Work, the PHA may take over the Work, exclude the Company from the site and take possession of all of the Company's tools, appliances, equipment and machinery at the site and use the same to the full extent that could have been used by the Company (without liability for trespass or conversion) incorporate into the Work all materials and equipment stored at the site and finish the Work as the PHA may deem expedient by contract publicly advertised or otherwise. In such case, the Company shall not be entitled to receive any payment until the Work is finished. If the PHA's expenses in completing the Work exceed the price specified in this Agreement, the Company shall pay the difference to the PHA.

5.1.16 Permits and Approvals.

The Company is solely responsible for obtaining all necessary permits and approvals for the design, installation and operation of the ECMs. The PHA shall exercise its best efforts to assist the Company. The ECMs and the operation of the ECMs by the Company shall at all times conform to all applicable codes.

The Company shall furnish copies of each permit or license which is required to perform the Work to the PHA and the Project Engineer before the Company commences the portion of the Work requiring such permit or license.

If the Company observes that any of the Project Documents are at variance with permits or licenses granted, or laws, ordinances, codes, rules or regulations of government authorities, the Company shall promptly notify the Project Engineer in writing and shall make any necessary changes, subject to the approval thereof by the Project Engineer in accordance with the terms of this Agreement. If the Company performs any Work which is contrary to any permit or license granted, or any applicable laws, ordinances, codes, rules or regulations, the Company shall make changes as required to comply therewith, and shall bear all costs arising therefrom without additional compensation from the PHA.

5.1.17 Taxes.

The PHA is generally exempt from Federal Excise Tax, State and Local Sales Taxes. _____ law (*Site codes applicable to specific state here*).

5.1.18 Royalties and Patents.

The Company shall pay all royalties and license fees. The approval of any method of construction, invention, appliance, process, article, device, material or equipment of any kind by the PHA will only be an approval of its adequacy for the work, and will not be an approval of the use thereof by the Company in violation of any patent or other rights of any third person. The Company shall indemnify the PHA against all suits and claims that may be based on an infringement of patent. If in the Company's opinion, the property furnished hereunder is likely to or does become the subject of a claim of infringement of a United States patent, the Company shall immediately notify the PHA in writing, and, without diminishing Company's obligations herein, the Company shall at its option and at its sole expense, (a) substitute suitable property satisfactory to the PHA, (b) obtain the right for the PHA to continue the use of such property or (c) provide an alternative acceptable to both the Company and the PHA.

If the use of the property by the PHA shall be prevented by permanent injunction, the Company shall take back such property and the Company at its cost shall substitute suitable property satisfactory to the PHA.

5.1.19 Project Schedule.

The Company, recognizing that the contract time is of the essence of this Agreement, shall perform the Work in such manner and with such sufficient equipment and forces to complete the Work by the date specified in the Project Installation Schedule as set forth in Schedule K.

5.1.20 Extensions.

Extensions of time will be allowed for delays which affect critical items on the project Installation Schedule arising from unforeseeable causes beyond the control and without the fault or negligence of the Company or of its subcontractors or suppliers, including but not restricted to:

- (I) Acts of God
- (II) Acts of the PHA in compliance with the terms of this Agreement;
- (III) Acts of other contractors in the performance of a contract with the PHA, except when such other contracts are assigned to the Company and
- (IV) Fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather or other perils causing damage to the Project.

A request for an extension of time will not be considered unless made in writing to the Project Engineer within fifteen (15) calendar days after the cause of delay. In the case of a continuing cause of delay, only one request is necessary. Extensions of time may be made by the Project Engineer during performance of the Work. However, any extensions granted must fall within the term of the Interim Period set forth in Paragraph 4.2. The grant of any extension of time to the Company shall not impair or prejudice the rights of the PHA.

5.1.21 No Compensation for Delay.

The Company shall not be entitled to payment or compensation of any kind from the PHA for any alleged damages, costs for expenses whatsoever, including but not limited to costs or acceleration, arising in any manner because of hindrance or delay from any cause whatsoever, whether such hindrances or delay be reasonable, foreseeable or avoidable. The Company shall not be entitled to recover from the PHA, and hereby waives all rights which it or its subcontractors or any other person may otherwise have to recover, any costs, expenses and damages of any nature which it or its subcontractors or any other person, may suffer by reason of delay in the performance of the Work or any portion thereof, the extension of time granted herein being the Company's sole and exclusive remedy.

5.1.22 Subcontracts and Subcontractors.

The Company shall have the right to have any of the services to be provided by the Company under this Agreement accomplished by subcontractors pursuant to written subcontracts between the Company and such subcontractors.

The Company shall, upon entering into any agreement with a subcontractor, furnish the PHA with three (3) copies thereof. All subcontracts shall contain provisions that require all services to be performed in strict accordance with the requirements of this Agreement and shall provide that the subcontractors are subject to all the terms of this Agreement. Provided that such agreements do not prejudice any of the PHA's rights under this Agreement, such agreements may contain different provisions than are provided herein with respect to extensions of schedule, time of completion, payments, guarantees and matters not affecting the quality of the Work.

The Company shall not allow any lien for labor or material to attach to the ECMs, the Premises or any other property owned by the PHA.

5.1.23 Hazardous Materials

(a) The Company acknowledges that compliance with the National Emission Standard for Hazardous Air Pollutants as promulgated by the United States Environmental Protection Agency pursuant to Section 112 of the Clean Air Act is a continuing obligation requiring any and all demolition or renovation activity completed by or on behalf of the PHA, to conform to the standards for such activity as set forth in 40 CFI 61.145. The Company shall observe all notification procedures established by the United States and Environmental Protection agencies in the execution of the Work under this Agreement.

(b) the following options are available to the PHA in the event that undisclosed hazardous materials are encountered in the performance of the Work by the Company or its subcontractors:

- (i) If feasible, the PHA may direct the Company to modify the scope of the Work to eliminate portions of the Work affected by the undisclosed hazardous substance or material. If an acceptable modification is proposed by the Company, the parties will execute a change order.
- (ii) The PHA may terminate this Agreement upon payment to the Company of the amount of services or materials supplied by the Company prior to suspension of the Work. Provided, however, that the PHA shall not be liable for costs or expenses incurred by the Company if the existence of the hazardous substance or material was disclosed to the Company by the PHA or, if as a result of the Company's review of the Project Documents, including any Asbestos Management Plan developed for the Premises and its investigation of the Premises, the Company should reasonably have been expected to discover or anticipate the existence of the hazardous substance or material and the Company could have developed the scope of the Work in such a manner as to avoid said hazardous substance or material.

(c) The Company and the PHA agree that any work relating to hazardous substances or materials including the abatement, removal, containment, treatment, storage, handling, use, transportation or disposal thereof is the responsibility of the PHA, unless specifically agreed to by the Company and provided for in this Agreement. Any work relating to (i) asbestos, material containing asbestos, or the existence, use, detection, removal, containment or treatment thereof or (ii) pollutants, hazardous wastes, hazardous materials, contaminants (collectively "Hazardous Materials") or the storage, handling, use, transportation, treatment or the disposal, discharge, leakage, detection removal or contaminant thereof which is not specifically provided for this Agreement is the responsibility of the PHA.

If an Asbestos Management Plan has been developed for the Premises, the PHA shall make said plan available for the Company's review and inspection throughout the Interim Period.

5.1.24. Material and Workmanship.

(a) The Company shall ensure that all materials used by the Company and its subcontractors and workmanship performed or caused to be performed by the Company in connection with the Work meets or exceeds all applicable codes. Where conflicts exist between applicable codes, the more stringent provision shall apply;

(b) The Company shall ensure that all equipment and materials to be used in the Work for which Underwriters Laboratory labeling services is provided shall be UL labeled;

(c) The Company shall obey the following list of codes where applicable:

- 1) Applicable Construction and Electrical Code;
- 2) Underwriters Laboratories (UL)
- 3) Insulated Power Cable Engineers Association (IPCEA);
- 4) National Electrical Code (NEC);
- 5) National Electrical Manufacturers Association (NEMA);
- 6) American National Standards Institute (ANSI); and
- 7) Institute of Electrical and Electronic Engineers (IEEE).

5.1.25. Warranty of Materials.

The Company warrants that all materials and equipment furnished under this agreement will be new unless otherwise specified, and that all work will be of good quality, free from faults, and defects and in conformance with the Project Documents. All work not so conforming to these requirements may be considered defective. If required by the Project Engineer, the Company shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions of Paragraph 8.1 below. This warranty of materials, equipment and workmanship is separate from, independent of, and in addition to any other guarantees in this Agreement or any other warranties in this Agreement or required by the Project Documents.

5.1.26 Responsibility for Materials.

The PHA does not assume any responsibility for the availability of any controlled materials or other materials and equipment required for the Work. The Company shall be responsible for the contracted quality and standards of all materials, components or completed Work furnished by the Company pursuant to the terms hereof. Materials, components or completed work which fails to comply with this Agreement and the Project Documents may be rejected by the Project Engineer and shall be replaced by the Company at no cost to the PHA. The Company shall remove from the Premises within a reasonable time any materials or components so rejected at the entire expense of the Company, after written notice has been delivered by the Project Engineer to the Company that such materials or components have been rejected.

5.1.27 General Inspection.

(a) All materials and equipment and each part of the detail of the Work shall be subject at all times to inspection by the Project Engineer or the PHA and the Company will be held strictly to the true intent of this Agreement and the Project Documents with regard to quality of materials, workmanship, and the diligent execution of the Work.

(b) The Company shall allow the Project Engineer and the PHA access to all parts of the Work, and shall furnish such information and assistance as is required to make a complete and detailed inspection or inspections.

(c) All material used in the Work must be inspected, tested and approved in accordance with the Project Documents and this Agreement prior to its use.

(d) The Company shall, if the Project Engineer or the PHA requests, remove or uncover such portions of the finished Work as the Project Engineer or the PHA may direct. After the examination, the Company shall restore said portion of the Work to the standard required by this Agreement and the Project Documents. If the Work thus exposed or examined proves acceptable, the expenses of uncovering or removing and the replacing of the parts removed shall be the responsibility of the PHA and such uncovering, removing and replacing shall be deemed to be an excusable event of delay, if a delay in completion is caused thereby. If the Work so exposed or examined is unacceptable, the expense of uncovering or removing and replacing of the same in accordance with this Agreement and the Project Documents will be borne by the Company and no request for a time extension or claim for a delay will be granted.

(e) The Project Engineer will make an inspection of the Work as soon as practicable after notification by the Company that the Work is substantially completed and ready for acceptance. If such Work is not acceptable to the Project Engineer and the PHA at the time of inspection, the Company shall be notified as to the particular defects to be remedied before acceptance of such Work can be made.

5.1.28 Change Orders.

The PHA may order changes in the Work, or approve changes in the Work initiated by the Company, consisting of additions, deletions or modifications to the Work only as provided herein. The Work shall be changed and the Not-to-Exceed Price of the Work and the Project Installation Schedule shall be modified only pursuant to a written change order which has been reviewed and approved in writing by the Project Engineer, prior to the commencement of any Work which is the subject of the Change order. Change orders which result in the increase to the Not-to-Exceed Price of the Work shall be approved by the PHA. Change orders will not be approved to compensate the Company for any increase in the Installation Cost set forth in Schedule C unless the scope of the ECMs set forth in Schedule A is expanded by mutual agreement of the PHA and the Company and reflected in an appropriate change order.

5.1.29 Project Meetings.

The Company shall provide for monthly project meetings in the Project Installation Schedule, and shall give timely advance written notice and agenda of such meetings to

the Project Engineer. The Company shall record minutes and distribute copies of minutes of meetings to the PHA and the Project Engineer within five (5) business days after each meeting. The Company shall schedule additional project meetings if requested by the Project Engineer.

5.1.30 Assignment of Claims.

Except for the Company's sale and assignment of its right under Schedule F, the PHA shall not be bound by any assignment by the Company to third parties of moneys due or to become due or of any other claims it may have under this Agreement except where the PHA consents in writing to be so bound.

5.1.31 Claims and Disputes.

The Company shall promptly notify the PHA in writing of any claims or disputes. Failure to notify the PHA in such instances may result in rejection of any such claim.

ARTICLE 6: NOT-TO-EXCEED PRICE, PAYMENTS RELATING TO CERTAIN ENERGY CONSERVATION MEASURES

6.1 Not-to-Exceed Price for the Work.

The Not-to-Exceed Price agreed to by the PHA and the Company as compensation to the Company for the Work to be performed under the provisions of Article 5 is \$_____. the Not-to-Exceed Price is inclusive of all costs to be paid by the PHA for the Work and is not subject to increase.

6.2 Purchaser Installment Payments.

The Company shall provide certain energy conservation measures specified in Schedule A (the "ECMs") by selling the ECMs to the PHA on an installment basis. The PHA shall pay the purchase price of the ECMs by making Purchaser Installment Payments (as defined in Schedule F) at such times and in such amount as set forth in Schedule F.

6.3 Maintenance Monitoring and Training Fees.

The PHA shall pay fees to Company for maintenance, monitoring and training services performed after the Acceptance Date pursuant to and in accordance with Schedule(s) G and J. Except for training services which are part of the Work pursuant to Paragraph 8.6 and Schedule J, maintenance, monitoring and training fees shall not begin to accrue prior to the Acceptance Date.

ARTICLE 7: SUBSTANTIAL COMPLETION, FINAL ACCEPTANCE

7.1 Systems Startup/Commissioning.

The Company shall conduct a thorough and systematic performance test of each element and total system of the installed ECMs in accordance with Schedule P. The Company shall provide notice to Project Engineer of the scheduled test(s). The Project Engineer shall have the right to designate representatives to be present at any or all such tests. The Company shall demonstrate that all ECMs installed comply with the requirements of the Project Documents. The Company shall test all components and systems of the installed ECMs. The Company shall correct or adjust all deficiencies in operation observed during system commissioning.

7.2 Interim Period Training.

As part of the Work to be performed under Article 5, the Company shall provide training covering the operation of the installed ECMs to designated PHA personnel as detailed in Schedule J.

7.3 Substantial Project Completion Defined.

Substantial Project Completion shall occur when the Company's performance is sufficiently complete in accordance with the Project Documents so that the PHA can utilize the installed ECMs for their intended use and the Energy Savings Guaranty provided by Company under Schedule B becomes effective.

7.3.1 Notice.

When the Company considers the Work substantially complete, and after systems startup and when commissioning and interim period training of PHA personnel has been successfully accomplished, the Company shall submit a written notice to the PHA that the Work is substantially complete.

7.3.2 Inspection.

The Project Engineer will schedule an inspection to be attended by the Project Engineer and the Company within seven (7) business days after receipt of the Company's notice, to determine whether Substantial Completion has been achieved.

7.3.3 Required Submittals by the Company.

The Company shall submit the following documents to the Project Engineer with its notice of Substantial Completion:

a) All guarantees, warranties and four (4) sets of operation and maintenance materials, that provide effective instructions for all installed components. O & M Manuals shall be developed in commercial quality 8 1/2 X 11 three-ring binders with hardback plastic covers. Each manual shall contain detailed descriptions for operating instructions to include pre-operational checks, start-up and shutdown procedures, automatic and manual operations, emergency procedures, and maintenance requirements and procedures.

Information pertaining to maintenance shall include all items for predictive and preventive maintenance, instructions for corrective maintenance, method for troubleshooting all equipment and information for all required tools and equipment. Additionally, exploded view, assembly and project drawings and spare information shall be incorporated into manuals.

b) maintain for project record and render the original Project Drawings and Specifications into Contractor updated mylar "as-built" drawings and modifications, additions, and deletions that have transpired during construction. Final as-built shall also be provided in Auto CAD 13 format on 3.5" disks and delivered to the Project Engineer.

c) detailed breakdown of costs for equipment, materials, and labor itemized by ECM for each building.

d) lien waivers from the Company and all subcontractors and suppliers totaling the full amount of the Not-to-Exceed Price of the Work under this Agreement reflecting any adjustments made in accordance with the provisions of Paragraph 6.1. The Company shall use lien waiver forms provided by the Project Engineer.

7.3.4 Substantial Completion Package.

Upon its determination that Substantial Completion has been achieved, the Project Engineer will prepare and provide a Substantial Completion package, containing:

- a) Certificate of Substantial Completion
- b) Date of substantial completion.
- c) Punch lists of items to be completed or corrected
- d) The time within which punch list items shall be completed or corrected.
- e) Date and time the PHA will take possession of the ECMs

7.4.2 Final Cleaning.

At completion of the Work, or when directed by the PHA, the Company shall remove all waste, debris, rubbish, tools, construction aids, fences, barriers, temporary utilities, equipment, machinery and surplus materials. The Company is responsible for the cleaning operations of its subcontractors.

The Company shall clean and repair all exposed surfaces, including windows and leave the Premises clean and ready for occupancy. The Company shall repair, patch and touch up marred surfaces to specified finish, to match adjacent surfaces. The Company shall broom clean all exposed concrete and paved surfaces, and mop all hard surface flooring. the Company Shall vacuum all carpet.

The Company shall maintain the Work until the Work or designated portions of the Work are accepted by the Project Engineer. No partial or entire use of the ECMs by the PHA shall constitute acceptance of the Work, or any labor, goods or materials provided under this Agreement which are not in accordance with the Project Documents or the terms of this Agreement.

ARTICLE 8: THE ENERGY CONSERVATION MEASURES

8.1 Warranties.

The Company warrants that all ECMs purchased pursuant to Article 5 and installed as part of this Agreement are new, in good and proper working condition and are of merchantable quality and fit for the particular purposes of enabling the PHA to reduce energy consumption and cost. The Company further warrants that the ECMs are protected by appropriate written warranties covering all parts and equipment performance in accordance with Schedule U. The Company shall deliver to the Project Engineer for inspection and approval of all such written warranties and shall pursue rights and remedies against the manufacturer and each prior seller of the ECMs under the warranties in the event of equipment malfunction, improper or defective function, or defects in parts, workmanship or performance. The Company shall notify the PHA whenever defects in equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by the Company. The cost of any damage, loss or claims by any person arising out of the use or operation of the ECMs or damage to the ECMs and their performance, including damage to other property and equipment of the PHA of the Premises due to the Company's failure to exercise its warranty rights shall be borne solely by the Company.

All warranties shall be transferable and extend to the PHA. The warranties shall specify that only new, and not reconditioned, parts may be used and installed when repair is necessitated by malfunction.

8.2 Correction of Warranted Work.

(a) Commencing with the date of beneficial use of each ECM to the PHA and continuing for the warranty periods specified in Schedule U for each ECM, or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Project Documents, the Company shall correct or replace all defective or nonconforming Work and all faulty or defective Work in accordance with the time frames set forth in 8.2(c) after receipt of written notice from the PHA to do so whether such fault or defect was observed before or after final acceptance of the Work and whether such Work was fabricated, installed or complete unless the PHA has previously given the Company a written waiver of the specific fault or defect. Notice may be given by telephone in the event of an emergency situation. The Company shall bear all costs of replacing or correcting such rejected or faulty or defective Work.

(b) The Company shall, at its own expense, remove from the Premises all portions of defective and nonconforming Work which Company is obligated to replace or correct under this Paragraph 8.2 unless removal has been waived in writing by the PHA.

(c) If the Company fails to correct defective or nonconforming Work as provided in this Section within twenty-four (24) hours after notice, in the case of emergency conditions, or within five (5) business days in other cases after the Company's receipt of written notice from the PHA of such defective or nonconforming Work, the PHA may correct such work at the Company's expense including costs incurred due to the removal of non-conforming of defective Work and removal and storage of equipment or materials left at the Premises by the Company.

(d) If the Company does not pay the cost incurred by the PHA for such repair, removal and storage within ten (10) days of written demand therefor, the PHA may, upon ten (10) additional days notice, sell any material and equipment not removed by the Company at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Company. If such proceeds of sale do not cover all costs which the Company should have borne, the difference shall be charged to the Company. If the payments then or thereafter due the Company are not sufficient to cover such amount, the Company shall pay the difference to the PHA.

(e) The Company shall bear the cost of repairing or replacing all work of other contractors destroyed or damaged by such removal or correction.

(f) Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation which the Company might have under the Project Documents. The establishment of the time period set forth in paragraph 8.2(a) above, relates only to the specific obligation of the Company to correct the Work and has no relationship to the time within which its obligation to comply with the Project Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Company's liability with respect to its obligations other than to specifically correct the Work. Notwithstanding the provisions of this paragraph 8.2, the Company shall, on demand made by the PHA at any time in writing during the ten (10) year period following Substantial Completion, promptly repair or replace all defective or non-conforming work resulting from fraudulent misrepresentation, fraudulent concealment or gross negligence by the Company or its subcontractors in the performance of the Work.

8.3 Location and Access.

The PHA shall provide sufficient space free of charge at the Premises for the installation and operation of the ECMs for the term of this Agreement. The PHA shall provide access to the Premises for the Company and its contractors or subcontractors to install, adjust, inspect, maintain and repair the ECMs in accordance with the terms of this Agreement during regular business hours, or such other reasonable hours as may be requested by the Company and acceptable to the PHA. The Company's access to correct any emergency condition shall be subject to the provisions of the Working Conditions detailed in Schedule R, and shall not be unreasonably restricted by the PHA.

8.4 Company Maintenance and Monitoring Responsibilities for ECMs.

The Company shall be responsible for providing the maintenance, monitoring, repairs, and adjustments to the ECMs as set forth in Schedule G. All repairs, parts, devices,

accessories and improvements of any kind or nature furnished or affixed to the ECMs or to the PHA's existing equipment during the term of this Agreement shall become a part of the ECMs or PHA's equipment. The Company shall be compensated for such maintenance and monitoring services pursuant to paragraph 6.3 and Schedule G hereof. The Company's failure to provide maintenance, service, repairs and adjustments to the ECMs, the PHA may withhold fees due to the Company for such services until such repairs or adjustments are completed.

8.5 PHA Operating and ECMs Maintenance Responsibilities.

The PHA shall be responsible for providing the maintenance, monitoring, service, repairs and adjustments to the ECMs as set forth in Schedule H. Except as set forth in Schedule H, the PHA shall not move, modify, remove, adjust, alter or change in any material way the approval of the Company, except in the event of an occurrence reasonably deemed by the PHA or the Company to constitute a bona fide emergency. The PHA acknowledges that substantial deviations from the operating parameters set forth in Schedule I may necessitate an adjustment to the baseline. In addition to the responsibilities set forth in Schedule H, the PHA shall use its best efforts to protect and preserve the ECMs and the operating conditions of all mechanical systems and energy related systems located at the Premises.

8.6 Training by the Company.

The Company shall conduct the training program described in Schedule J hereto. The Interim Period Training specified in Schedule J must be completed prior to acceptance of the ECMs. The Post-Acceptance Training specified in Schedule J shall be completed after Final Acceptance in accordance with the provisions of Schedule J. The Company shall provide ongoing training whenever needed, with respect to updated or altered ECMs, including updated software.

8.7 ECMs Upgrades: Alterations.

The Company shall have the right, at all times during the term of this Agreement, subject to the PHA's written approval, to modify or replace any of the ECMs and to revise any procedures for the operation of the ECMs or implement other procedures at the Premises provided that: (i) Company complies with the standards of comfort and service set forth in Schedule I; (ii) such modifications or additions to, or replacements of the ECMs, and any operation changes, or new procedures are necessary to enable the Company to achieve the energy savings guaranteed by the Company at the Premises and (iii) any costs incurred relative to such modifications, additions or replacements of the ECMs, or operational changes or new procedures which are not covered by the Energy Savings Guaranty set forth in Schedule B shall be the responsibility of the Company. All modifications, additions or replacements of the ECMs or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the PHA for approval, which shall not be unreasonably withheld, provided that any replacement ECM shall be new and have equal or better potential to reduce energy consumption at the Premises than the ECM being replaced. The Company shall update any and all software to be used in connection with the ECMs in accordance with the provision of Schedule G. All replacement of and alterations or additions to the ECMs shall become part of the ECMs described in Schedule A and shall be covered by the ownership provisions of Schedule F. The Company and the PHA shall determine in accordance with the provisions of

paragraph 9.5, what, if any, adjustments to the Baseline/Benchmarks set forth in Schedule E are necessary due to upgrades or alterations of the ECMs which are necessary to enable the Company to achieve the level of energy savings guaranteed by the Company.

8.8 Malfunction and Emergencies.

The PHA shall use its best efforts to notify the Company or its designee within forty-eight (48) hours after the PHA's actual knowledge of the occurrence of:

- 8.8.1.** Any material malfunction in the operation of the ECMs or any preexisting energy-related equipment;
- 8.8.2** Any material interruption or alteration of the energy supply to the Premises;
- 8.8.3** Any material alteration or modification in the ECMs or their operation; and
- 8.8.4** Any material alteration, modification or change in the Premises or the use of the Premises.

The PHA's obligation to use its best efforts to notify the Company as soon as reasonably possible shall be deemed satisfied if the PHA reports any said material malfunction, interruption, alteration, modification or change within forty-eight (48) hours of the PHA's actual knowledge of the occurrence.

8.9 Effect of Malfunctions on the PHA.

Except as provided in paragraph 8.9.1 following, in no event and at no time during or after the term of this Agreement will any party be liable to the other or any other person for any business expenses, lost profits, lost savings, lost revenues, or indirect, incidental, special, exemplary or consequential damages arising from, or in any way related to, this Agreement regardless of whether such liability is based in contract, tort, strict liability or other form of action. This limitation of liability will apply even if a party has been advised of the possibility of such expenses, losses or damages. Provided, however, that this paragraph 8.9 is not intended, nor shall be constructed as, a limitation of the warranties or indemnification's provided by the Company under this Agreement.

8.9.1 Effect of Malfunctions on the Company.

The Parties agree that in the event any ECM malfunction due solely or in part to nonperformance or error by the Company results in out-of-pocket expenses by the PHA, the Company shall compensate the PHA for such actual out-of-pocket expenses up to the amount of \$ _____ over the term of this Agreement.

8.10 Ownership of Certain Proprietary Property Rights.

The PHA shall acquire no ownership interest in any software, formulas, patterns, devices, secret inventions or processes, or copyright, patent, and other intellectual and proprietary

rights or similar items of property which are or may become used in connection with the ECMs. The Company shall grant to the PHA a perpetual, irrevocable royalty-free license of any and all software or other intellectual property rights necessary for the PHA to continue to operate, maintain, and repair the ECMs in a manner that will maximize energy consumption reductions beyond the expiration of this Agreement.

ARTICLE 9: THE PREMISES

9.1 Description of the Premises.

The Premises in which the ECMs are to be installed and services are to be provided by the Company under this Agreement are described in Schedule D.

9.2 Ownership of Existing Property.

The Premises and all equipment and materials existing at the Premises at the time of execution of this Agreement shall remain the property of the PHA even if it is replaced or its operation made unnecessary by work performed by the Company pursuant to this Agreement. The Company shall timely advise the PHA in writing of all equipment and materials to be replaced at the Premises as part of the Work and the PHA shall designate in writing to the Company the equipment and materials which should not be disposed of off-site by the Company. It is understood and agreed by the Parties the PHA is responsible for the removal and expense incident thereto for any equipment and materials designated to the Company as non-disposable. The PHA shall dispose of such equipment and material in a manner which will not unreasonably interfere with the performance obligations of the Company under the terms and conditions of this Agreement. The Company shall be responsible for the disposal of all equipment and materials designated by the PHA as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

9.3 Material Change Defined.

A Material Change shall include any change in or to the Premises, not covered by Schedule B, whether structural, operational or otherwise in nature which reasonably could be expected in the judgment of the PHA to increase or decrease annual costs of energy usage by at least \$_____, in the aggregate, after adjustments for climatic variations. Actions by the PHA which may result in a Material Change which is subject to this paragraph 9.3, include, but are not limited to the following:

9.3.1 changes in the manner of use of the Premises by the PHA; or

9.3.2 changes in the hours of operation for the Premises or for any equipment or energy using systems operating at the Premises; or

9.3.3 permanent changes in the comfort and service parameters set forth in Schedule I; or

- 9.3.4 changes in the occupancy of the Premises; or
- 9.3.5 changes in the structure of the Premises; or
- 9.3.6 changes in the types and quantities of equipment used at the Premises;
- or
- 9.3.7 modification, renovation or reconstruction at the Premises; or
- 9.3.8 the PHA's failure to provide maintenance of and repairs to the ECMs pursuant to paragraph 8.5 hereof; or
- 9.3.9 any significant damage to the Premises or the ECMs caused by fire, flood, or other casualty or any condemnation affecting a significant portion of the Premises; or
- 9.3.10 the closing of a building at the Premises which is contemplated to be closed for a period of 365 days or longer; or
- 9.3.11 any other condition other than climate affecting energy use at the Premises.

9.4 Reported Material Changes.

Notice by PHA. The PHA shall use its best efforts to deliver to the Company a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises no less than thirty (30) days before any actual or proposed Material Change is implemented. Notice to the Company of Material Changes which result because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the PHA within forty-eight (48) hours after the event constituting the Material Change occurred or was discovered by the PHA to have occurred.

9.5 Reported Material Changes.

Adjustments to Baseline-Benchmarks. Any changes in energy consumption or in energy savings which occur as the result of a Reported Material Change shall be timely reviewed by the Company and the PHA to determine what, if any, adjustments to the Benchmarks set forth in Schedules B and E are necessitated by such Material Change(s). Any disputes between the Company and the PHA concerning any such adjustment shall be resolved in accordance with the provisions of Schedule Q hereto.

9.6 Unreported Material Changes.

Upon and after the Acceptance Date and in the absence of any reported Material Change(s) in the Premises or in their operations, energy usage should not change more than five (5) percent during any month from projected energy usage for the month, after adjustment for changes in climatic conditions. If a deviation $\geq 5\%$ occurs, then the Company shall timely review such

changes to ascertain the cause of such deviation. The Company shall report its findings to the PHA in a timely manner. The Company and the PHA shall determine what, if any, adjustments to the baseline set forth in Schedule E are necessary. Any disputes between the Company and the PHA concerning any such adjustment shall be resolved in accordance with the provisions of Schedule Q hereto.

9.7 Casualty of Condemnation to Premises.

Any significant damage to the Premises caused by fire, flood, or other casualty, or any condemnation affecting any significant portion of the Premises, shall be reported to the Company as a Material Change, and the provisions of paragraph 9.4 shall be applicable.

9.8 Closing of Buildings.

Except for emergency situations, the PHA agrees to give the Company a minimum of sixty (60) days notice of closing a building which is contemplated to be closed for a period of three hundred sixty-five (365) days or longer. In emergency situations, as much notice shall be given as reasonably possible. In the event of such closing, the Company and the PHA shall determine the adjustment to the Baseline necessitated by such event.

ARTICLE 10: GENERAL TERMS AND CONDITIONS

10.1 Assignment.

The Company acknowledges that the PHA is induced to enter into this Agreement by, among other things, the professional qualifications of the Company. The Company agrees that except for the Company's sale and assignment of rights under Schedule F, neither this Agreement nor any right or obligation hereunder may be assigned in whole or in part, without the prior written approval of the PHA.

10.1.1 Assignment by Company.

The Company may, with prior written approval of the PHA, with consent shall not be unreasonably withheld, delegate its duties and its performance under this Agreement, and/or utilize contractors, provided that any assignee(s), delegee(s), or contractor(s) shall honor the terms of this Agreement. Notwithstanding the provisions of this paragraph, the Company shall remain jointly and severally liable with its assignee(s), or transferee(s) to the PHA for all of its obligations under this Agreement.

10.2 Non-Appropriation of Funds.

Subsequent to the Acceptance Date, and the payment to the Company for the Work as provided in paragraph 6.2, if sufficient funds are not lawfully appropriated to the PHA and other funds are not lawfully available for payment of fees for project costs financed, maintenance,

monitoring and training services due the Company in accordance with paragraph 6.2 and 6.3 and Schedule C, during any Fiscal Year, the PHA's obligations to make such payments to the Company shall be subject to termination and cancellation by the PHA without penalty. In the event of such termination and cancellation, Company's obligations to render the performance of maintenance, monitoring and training services, as well as to provide the energy Savings Guaranty required under this Agreement, shall cease without penalty in accordance with the provisions of this paragraph.

Non-Appropriation shall be deemed to occur if on the date on which the first financing payment or maintenance and monitoring fees in a Fiscal year comes due, there have not been enacted into law appropriations of funds for the payment of fees coming due during the Fiscal Year. The PHA shall provide immediate notice to the Company of any impending changes in the status of appropriations which may affect this Agreement of which it has notice.

In the event of such non-appropriation, on the first day following the date on which the last payment of fees for the financing agreement, maintenance, monitoring and training services, Schedule C can be made in full from lawfully appropriated funds, this Agreements shall be subject to termination and cancellation, provided that any such termination and cancellation shall not apply to fees for maintenance, monitoring and training services for which sufficient funds have been lawfully appropriated.

10.3 Indemnification

10.3.1 Duty to Indemnify.

The Company shall defend, indemnify, keep and save harmless the PHA, board members, agents and employees, in both individual and official capacities, against all suits, claims, damages, losses and expenses, including attorney's fees, caused by, growing out of, or incidental to, the performance of the Work under this Agreement by the Company or its subcontractors to the full extent as allowed by the laws of the State of _____. This indemnification obligation shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Company or any Subcontractor under Worker's Disability Compensation acts, disability benefit acts or other employee benefit acts.

10.3.2 Intellectual Property Claims Indemnification.

The Company shall protect, defend, indemnify and hold the PHA harmless against and from any and all attorneys' fees relating to alleged patent, trademark or copyright infringement, misappropriation of proprietary rights, or trade secrets or similar claims, resulting from actions taken by the Company in connection with this Agreement.

10.4.2 Not Cause for Delay.

The PHA shall have the authority to determine questions of fact that arise in relation to the interpretation of this Agreement and the Company's performance hereunder. However, such determinations are subject to the Alternate Dispute Resolution procedures as described in Schedule Q. Unless the Parties agree otherwise, such determinations and/or Alternative Dispute Resolution procedures shall not be cause for delay of the Work. The Company shall

proceed diligently with the performance of this Agreement and in accordance with the PHA’s decision whether or not the Company or anyone else has an active claim pending. Continuation of the Work shall not be construed as a waiver of any rights accruing to the Company.

10.5 Right of Enforcement.

The Failure of Company or the PHA to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either Party’s right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of the Company or the PHA.

10.6 Severability.

It is agreed that the illegality or invalidity of any term or clause of this Agreement, shall not affect the validity of the remainder of this Agreement and this Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein.

10.7 Complete Agreement: Amendments.

This Agreement, when executed, together with all Project Documents, Schedules referred to in paragraph 3.5 and any other exhibits or attachments referred to in this Agreement, shall constitute the entire Agreement between the Parties and this Agreement may not be amended, modified, or terminated except by a written agreement signed by the Parties hereto.

10.8 Further Documents.

The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

10.9 Applicable Law.

This Agreement and the construction and enforceability thereof shall be interpreted under the laws of the State of _____.

10.10 Notices.

All notices required under this Agreement shall be in writing and shall be deemed properly served if delivered in person to the individual to whom it is addressed or, three (3) days after deposit in the United States mail, if sent postage prepaid by United States registered or certified mail, return receipt requested, as follows:

- a) To the PHA: _____

Attention: _____

with a copy to: _____

Attention: _____

b) To the Company: _____

Attention: _____

with a copy to: _____

Attention: _____

ARTICLE 11: EVENTS OF DEFAULT: REMEDIES; TERMINATION; RIGHT TO OFFSET

11.1 Events of Default by the PHA.

Each of the following events or conditions shall constitute an "Event of Default" by the PHA with respect to its obligations under this Agreement.

(i) Any failure to pay the Company any fees due subsequent to the Acceptance Date pursuant to paragraphs 6.2 and 6.3 for maintenance, monitoring and training services for more than sixty (60) days after written notification by Company that PHA is delinquent in making such payment, provided that the Company is not in default in its performance under the terms of this Agreement;

(ii) any representation or warranty furnished by the PHA in this Agreement which proves to be false or misleading in any material respect when made;

(iii) any other material failure by the PHA to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein, except, that such failure if corrected or cured within thirty (30) days after written notice to the PHA demanding that such failure to perform be cured shall be deemed cured for purposes of this Agreement.

11.2 Remedies Upon Default by the PHA.

If an Event of Default by the PHA described in paragraph 11.1 occurs, the Company may, without a waiver of other remedies which exist at law or in equity, exercise all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by the PHA under paragraphs 6.2 and 6.3, and/or for damages which shall include all costs and expenses reasonably incurred in the exercise of its remedy.

11.3 Events of Default by the Company.

Each of the following events or conditions shall constitute an “Event of Default” by the Company for purposes of this Agreement with respect to obligations of the Company:

(i) The Company’s failure to furnish and install the ECMs in accordance with the provisions of this Agreement and within the time specified by this Agreement;

(ii) failure by the Company to pay any amount owing to the PHA due to the Company’s failure to achieve its Energy Savings Guaranty during any Guaranty Year throughout the term of this Agreement or to perform any obligation under the Energy Savings Guaranty;

(iii) the Standards of Comfort and Service set forth in Schedule I are not provided due to failure of the Company to properly design, install, maintain, repair or adjust the ECMs except that such failure if corrected or cured within thirty (30) days after written notice to the Company demanding that such failure be cured shall be deemed cured for purposes of this Agreement;

(iv) failure to perform its obligations in accordance with the terms of this Agreement, including failure to provide sufficient personnel, equipment or material to ensure the performance required and failure to meet the Project Installation Schedule provided in Schedule K, due to a reason or circumstance within the Company’s reasonable control;

(v) the Company’s failure to promptly re-perform within a reasonable time Work or services that were rejected as defective or nonconforming.

(vi) the Company’s discontinuance of the required performance for reasons not beyond the Company’s reasonable control;

(vii) any lien or encumbrance upon the ECMs by any subcontractor, laborer, materialman or other creditor of the Company;

(viii) any change in ownership or control of the Company without the prior approval of the PHA, which shall not be unreasonably withheld;

(ix) default under any other agreement the Company may presently have or may enter into with the PHA during the term of this Agreement. The Company acknowledges and agrees that in the event of a default under this Agreement the PHA may also declare a default under any such other agreements;

(x) any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by the Company to the PHA or a third party;

(xii) any failure by the Company to perform or comply with the terms and conditions of this Agreement, including breach of any covenant contained herein except that such failure, if corrected or cured within thirty (30) days after notice to the Company demanding that such failure to perform be cured, shall be deemed cured for purpose of this Agreement.

11.4 Remedies upon Default by the Company.

The occurrence of any Event of Default described in paragraph 11.3(viii) or (xi) shall constitute an immediate default. The occurrence of any Event of Default other than an Event of Default described in paragraph 11.3(viii) or (xi) which the Company has failed to cure within thirty (30) calendar days after receipt of notice given in accordance with the terms of this Agreement and specifying the Event of Default shall, at the sole opinion of the PHA, permit the PHA to declare the Company in default; provided, however, that if such Event of Default cannot reasonably be cured within such thirty (30) day period, such Event of Default shall not constitute a default if the Company begins to cure such Event of Default within such thirty (30) day period and diligently pursues the action necessary to cure such Event of Default so that the Event of Default is cured as soon as reasonably possible. Whether to declare the Company in default is within the sole discretion of the PHA and neither that decision nor the factual basis for it is subject to review or challenge under the Alternative Dispute Resolution provisions of this Agreement. Notwithstanding any decision by the PHA to declare the Company in default, the Company shall have the right to challenge such determination and declaration in the _____ Court of Claims. Written notification of the Event of Default and any intention of the PHA to terminate this Agreement, shall be provided to the Company and such decision shall be final and effective upon the Company's receipt, as defined herein, of such notice. Upon the giving of such notice as provided herein, the Company must discontinue any services, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in process, to the PHA. At such time the PHA may invoke any or all of the following remedies:

(a) The right to take over and complete the Work, or any part thereof, pursuant to the applicable provisions of paragraph 5.2 hereof;

(b) The right to immediately terminate this Agreement as to any or all of the Work or other services yet to be performed by the Company;

(c) The right of specific performance, injunctive relief or any other appropriate equitable remedy;

(d) The right to money damages;

(e) The right to withhold all or any part of the Company's compensation hereunder,
and

(f) The right to deem Company non-responsible in future contracts to be awarded by the PHA.

If the PHA considers it to be in its best interests, it may elect not to declare default or to terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the PHA and that if the PHA permits the Company to continue to perform the Work and other services despite one or more Events of Default, the Company shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall the PHA waive or relinquish any of its rights.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power nor shall it be construed as a waiver of any Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

11.5 Right to Offset.

Any excess costs incurred by the PHA in the event of termination of this Agreement for default or otherwise resulting from the Company's performance under this Agreement or in the event the PHA exercises any of the remedies available to it under paragraph 11.4 hereof, and any credits due to or overpayments made by the PHA may be offset by use of any payment due for services completed before the termination for default or before the exercise of any remedies. If such amount offset is insufficient to cover such excess costs, the Company shall be liable for and promptly remit to the PHA the balance upon written demand therefore. This right to offset is in addition to and not a limitation of any other remedies available to the PHA.

ARTICLE 12: REPRESENTATIONS AND WARRANTIES.

12.1 ???

Each party warrants and represents to the other that:

(a) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;

(b) its execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with its organic instruments, and this Agreement has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

(c) its execution, delivery, and performance of this Agreement will not result in a breach or violation of, or constitute a 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, secrets, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

12.2 Representations and Warranties by the PHA.

The PHA hereby warrants and represents to the Company that:

(a) it has provided and shall continue to provide throughout the term of this Agreement (or cause its energy suppliers to furnish) to the Company, upon its request, copies of all available records and data concerning energy usage for the Premises including but not limited to the following data for the most current thirty-six (36) month period; utility records and rate schedules; occupancy information; descriptions of any major changes in the structure or use of the buildings or heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used on the Premises; descriptions of energy management procedures presently utilized; and any prior energy analyses of the Premises. The PHA shall make knowledgeable employees and agents available for consultations and discussions with the Company concerning energy usage of the Premises.

(b) it has not entered into any leases, contracts or agreements with other persons or entities regarding the leasing of energy efficiency equipment or the provision of energy management services for the Premises or with regard to servicing any of the energy related equipment located in the Premises other than those identified in Schedule D.

12.3 Representations and Warranties by the Company.

The Company represents and warrants the following to the PHA (in addition to the other representations and warranties contained in the Project Documents), as an inducement to the PHA to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement and the Final Completion of the Work.

(a) that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to compete the Work and perform its obligations under this Agreement;

(b) that it and each of its employees, agents and subcontractors of any tier are competent to perform its obligations under this Agreement;

(c) that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;

(d) that it is authorized to do business in the State of _____ and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Premises;

(e) that its execution of this Agreement and its performance thereof is within its duly authorized powers; and

(f) that its duly authorized representative has visited the Premises, familiarized itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Project Documents.

ARTICLE 13: APPLICABLE LAWS

13.1 Statutory and Regulatory Requirements.

All applicable Federal and State laws and the codes, rules and regulations of all authorities having jurisdiction over the performance of the Project shall apply to this Agreement throughout its term and they will be deemed to be included in this Agreement the same as though written herein in full. This Energy Services Agreement shall be interpreted under the laws of the State of _____ and _____ court shall have exclusive jurisdiction over this Agreement.

13.2 Company's Failure to Comply with Statutory and Regulatory Requirements.

The Company, and its subcontractors shall comply with all laws, rules and regulations applicable to performance of the Work and the maintenance, monitoring and training services to be performed pursuant to paragraph 6.3. Except where expressly required by applicable laws and regulations, the PHA shall not be responsible for monitoring the Company's compliance with any laws or regulations. When the Company observes conflicting regulatory requirements, it shall notify the PHA in writing immediately. If the Company performs any of the Work or other services required by this Agreement knowing or having reason to know that the Work or such services are contrary to such laws, rules and regulations, the Company shall pay all costs arising therefrom.

ARTICLE 14: RECORDS

14.1 Records of Time and Expenses.

The Company shall maintain records of its time and costs pertaining to the project. The Company shall also maintain records of its hourly Direct Wage Expense (DWE) rates. Such records shall be kept in accordance with generally accepted accounting standards and shall be made available to the PHA through its authorized representative(s) throughout the term of this Agreement and for a period of five (5) years after final payment.

Hourly DWE rates shall be defined as the actual hourly wages paid to employees exclusive of statutory and fringe benefits.

ARTICLE 15: EXECUTION

IN WITNESS WHEREOF, the parties have executed this Energy Savings Agreement by their authorized signatures as of this ____ day of _____, ____.

Name of PHA:
(The PHA)

THE COMPANY
(The Company)

BY: _____

BY: _____

TITLE: _____

TITLE: _____

APPENDIX K
SAMPLE GAS PURCHASE RFP

SAMPLE HOUSING AUTHORITY REQUEST FOR PROPOSAL TO PROVIDE NATURAL GAS SUPPLIES

Introduction

The Sample Housing Authority (SHA) is requesting proposals to provide natural gas to its facilities. These facilities are in the jurisdiction of three local distribution companies and account for a total annual consumption of dekatherms. SHA is contemplating selecting a non-utility supplier(s) to provide gas energy to these facilities. Upon evaluation of the proposer's Bid Package, SHA will select finalists to visit its offices for interviews which will assist in evaluating suppliers.

As with all public agencies, bidders must provide a variety of certifications and verifications regarding non-collusion, non-segregation of facilities, bonding, equal opportunity employment, minority and open ownership as well as a host of other issues. **All potential bidders should be aware that the initial bidding will attempt to eliminate as many of these items as possible.** However, all finalists will be required to provide this necessary information within five (5) working days of their selection. *If this information is not supplied within this time-frame that bidder will have to be disqualified.*

Under this solicitation, SHA will not simply evaluate and award the bid to the offeror with the lowest price. A contract will be awarded to the supplier(s) whose proposal represents the "best cost" to SHA. Suppliers must be able to offer services and reliability as well as the competitive price.

Contents of Request for Proposal

1. Description of Volumes & LDC Jurisdictions
2. Time Frame & Deadline
3. Description of Experience in the Region
4. References
5. Description of Firm Supply and Reliability Strategy
6. Mitigation of Demand Charges
7. Pricing Strategies
8. Supply Management
9. Bids
10. Evaluation Process
11. Notification

1. Description of Volumes & LDC Jurisdictions

Consumption

The facilities eligible for direct natural gas purchases consist of ___ separate accounts in 1995. During that calendar year a total of _____ dekatherms was consumed. The monthly usage patterns for these accounts are detailed in Attachment A. Currently, the following local distribution companies: _____ provide gas delivery services to these facilities. In 1995, the breakdown of service to for the total number of accounts to be supplied are as follows:

Company	# of Accounts	Volume (Dth)	Vol./Acct.
----------------	----------------------	---------------------	-------------------

TOTAL

Since these accounts represent household consumption, there are significant swings in monthly usage throughout the year. According to the attached 1995 data the average daily usage for _____ and _____ (the low and high usage months) in dekatherms are as follows:

Company	Ave. Daily Consumption	Ave. Daily Consumption
----------------	-------------------------------	-------------------------------

TOTAL

Current Costs

Currently, sales service that is available to these facilities represents 100% of all the gas service being utilized. Commodity rates that are currently being charged to these facilities, including _____ State taxes, range from _____ per Mcf.

The LDC transportation rates available for these facilities vary by jurisdiction. Generally, the rates contain meter and demand charges that are a constant cost through the year regardless of consumption. The transportation rates and tariff that would be applicable for each jurisdiction are in Attachment B.

The bidder will be asked to provide service to the city gates. However, the bidder should be cognizant of the ultimate end use prices in order to fully evaluate the benefits to SHA.

2. Time Frame and Deadline

Request for proposals have been posted and distributed to the gas industry during the first two weeks of _____. During this time, interested parties can call the SHA regarding questions or guidance in completing the bid. The preparation and bid package will be due _____. It is contemplated the review of the initial bids will be completed by _____. During the remainder of the month finalists will be invited to SHA for interviews and clarification of any questions. At that time, bidders will be required to complete the necessary certifications and verifications associated with contracting with a public agency. It is contemplated that SHA will announce the winning bidder or bidders by _____. Upon the announcement of the winning bid or bidders it is anticipated that a gas supply agreement will be reviewed and signed by both parties by _____. Deliveries of natural gas are to commence _____.

3. Description and Experience in the Region

SHA is interested to know the direct experience the bidder has in the _____ Area, _____ and the _____ region. Included in this report inquiry should be the type of customers that have been served in these areas, the operational constraints experienced in these areas and the extent of previous relationships with the applicable local utilities. (Please complete Form 1).

4. References

The bidder can submit as many references as it deems appropriate. SHA is primarily interested in reviewing and contacting references who have had direct experience with the bidder in the following areas: (Please complete Form 1).

- Operational integrity of the firm (i.e. pipeline or LDC contracts)
- Government or public agency experience
- Ability to serve and administer to commercial/multi-metered accounts
- Performance reliability

5. Description of Winter Supply and Reliability Strategy

The facilities being served are public housing units that have no alternate fuel capability. SHA is interested in understanding potential strategies the bidders are considering that would ensure a secure supply of gas to these facilities. Please feel free to discuss the portfolio of resources that are at your disposal. This description can address the use of firm transportation, storage, virtual storage and released capacity. (Please complete Form 2).

6. Mitigation of Demand Charges (If Applicable)

If the bidder's supply strategy will result in demand changes or fixed costs that will have to be passed through during non-peak periods, SHA is interested in a strategy that will mitigate those costs. Of particular interest is the ability of the supplier to incorporate these costs into other customer loads and to estimate what percent of these costs can be defrayed. The supplier may want to discuss these enhancements on a best efforts basis or as a discount to its price submission. (Please see Form 3).

7. Pricing Strategies

SHA is interested in a price of natural gas that will provide it with a level of commodity price and budget certainty. SHA realizes that fixed price bids at the city gate are dependent on several factors including the commodity price of gas in various supply basins and the change in the location differential between the _____ city gate and the relevant supply hubs. Due to these market dynamics, SHA is interested in reviewing bids for several price scenarios that will provide it with any array of options. SHA is interested in taking advantage of favorable market conditions and will be evaluating pricing options that require knowledge and ability in commodity price management.

As stated earlier the supplier will be required to deliver natural gas supplies to the city gate and all prices should be quoted at that receipt point in \$ per MCF. SHA is interested in a pricing strategy and quotes for the following options (Please complete Form 4).

- Fixed price of natural gas February 1, 1997 to January 31, 1998.
- Floating price (index) of natural gas February 1, 1997 to January 31, 1998 with an embedded call or ceiling. (It is expected that the option pricing should only apply to the commodity portion of the price and not the transportation segment. SHA does not want to purchase a basis option).
- New York Mercantile Exchange (NYMEX) plus differential February 1, 1997 to January 31, 1998 (SHA would like to retain the right to lock in the commodity price at its discretion).

8. Supply Management

It will be the supplier's responsibility to nominate and cause the delivery of supplies to the applicable city gate. Any penalties created by the supplier shall be the responsibilities of the supplier. The costs of providing these services should be included in the price offerings outlined in the above section. (Please complete Form 5).

9. Bids

All bids shall be received by _____ at _____ Standard Time, in the designated envelopes. SHA retains the right to reject all bids at its discretion.

10. Evaluation Process

All bids received by the above stated deadline will be evaluated. Those received after the deadline will be returned. Upon evaluation of bids a group of finalists will be chosen and interviewed. These finalists will also be required to complete the necessary verifications and certifications required for doing business with a public agency.

Evaluation of Criteria

Description of Experience in the Region - Experience in _____ and _____ specifically and in the _____ region in general, is important. Suppliers with a long standing and consistent presence in these geographic areas are desired. In addition, SHA will also look at the nature of the supplier's retail operation. The supplier should have a strong commitment to serving smaller end users and multi-account sectors (i.e. commercial users, offices, apartment building). A supplier primarily focused on wholesale operations (i.e. trading, sales to aggregators) is less preferable.

The supplier's operational experience in this area is also important. Suppliers should describe methods to prevent any operational pitfalls they have experienced and could expect in serving facilities in the applicable LDC jurisdictions.

References - Those references that indicate a high degree of confidence in the supplier will be most highly regarded. In addition, references should be able to detail specific strengths of the supplier.

Description of Winter Supply and Reliability Strategy - The review of this criteria will be viewed as a way to review supply security as well as a method to justify cost. Among the areas being evaluated is the portfolio of upstream capacity the supplier intends to employ in serving the facilities. Of particular interest in this evaluation is the type of upstream capacity that is under direct control of the supplier.

Mitigation of Demand Charges - Strategies to mitigate fixed upstream charges should be separately itemized. Suppliers will receive the highest consideration for any amount of fixed costs that are to be credited directly. In lieu of crediting an amount, the supplier can define a methodology and formula that would apply to defraying these costs. Any methodology of formula offered will be evaluated in terms of the most probable benefits to SHA.

Pricing Strategies - This criteria is crucial and will be heavily considered. The SHA may decide to use more than one of the pricing options requested. The price quotes will be evaluated in terms of relation to the other quotes submitted as well as the current level of the futures market.

As is the practice with most pricing bids and estimates in the natural gas industry, it is expected that price quotes for commodity pricing will be based off prices available on the New York Mercantile Exchange.

Supply Management - the key factors in evaluating this capability will be the commitment the company has made to human resources and technology in this area. In addition, SHA wants to be sure the supplier has knowledge of the key LDC personnel in this area.

Those companies submitting bids will be rated on their price quotes, past experience and their operational capability. Offerors are required to discuss their experience in transporting, operating and supply management on the applicable forms below. However, they are not limited to the space provided. These non-price factors will be evaluated on a company by company basis and those companies with comparable capabilities will then be evaluated by their price quotes. SHA will then evaluate the price quotes for each pricing option and will decide which buying strategy and price quote will provide the best value.

11. Notification

All finalists will be notified in writing and by phone for personal interviews. Selected supplier(s) will enter into contractual agreement soon after notification.

Winter Supply and Reliability

Form 2

Do you have firm transportation agreements to needed LDC primary receipt points? If so, please identify the agreement, volume and term.

Gas Company: _____

Pipeline #1

Pipeline #2

Pipeline #3

Gas Company: _____

Pipeline #1

Pipeline #2

Pipeline #3

Gas Company: _____

Pipeline #1

Pipeline #2

Pipeline #3

Do you plan to acquire additional capacity for these facilities? If current capacity is insufficient, how will you acquire additional capacity?

Do you ship or have you shipped released capacity in your name on the relevant pipelines? If not, are you pre-approved to do so? Identify the pipeline, volume, term and recall conditions.

Pipeline #1

Pipeline #2

Pipeline #3

Pipeline #4

Additional comments regarding supply strategy:

Mitigation of Demand Charges

Form 3

The supplier may use the following worksheet to illustrate the portion of the rate retained during capacity release or devise their own. As an example the following is provided:

Maximum Daily Quantity	3000	_____
Rate per Dkh	\$ 9	_____
Total Monthly Demand Charges	\$27,000	_____
% of Unused Capacity	60	_____
Released Monthly Demand Charges	\$16,200	_____
% of Released Charges Marketed	50	_____
Released Charges Marketed	\$ 8,100	_____
Contractor Share	\$ 4,050	_____
SHA Share	\$ 4,050	_____

Describe or discuss strategy to mitigate demand charges and share revenues:

Pricing Strategies

Form 4

Please provide prices (\$ per Mcf) for natural gas supplies delivered to the applicable city gate for the following price options during the term of _____ to _____.

Fixed Price:

Gas Co. #1 _____

Gas Co. #2 _____

Gas Co. #3 _____

Percentage of _____ produced gas in delivered price ____%

Floating price (index) with an embedded ceiling:

Company	Index	At-the-Money Strike Price	Premium	Transport Cost	Max. City Gate Price
Ex. Gas Daily/So.La		2.10	.12	.60	2.82

Co. #1 _____

Co. #2 _____

Co. #3 _____

Percentage of _____ produced gas in delivered price ____%

NYMES plus differential

Co. #1 NYMES Plus _____

Co. #2 NYMES Plus _____

Co. #3 NYMES Plus _____

Percentage of _____ produced gas in delivered price ____%

Supply Management

Form 5

Discuss your nominations, balancing and supply management capabilities.

Are you currently providing these capabilities behind any of the pipelines and LDC's relevant in this RFP? Please explain.

Do you have access to applicable pipeline and/or LDC electronic bulletin boards? Please explain.

Identify the company personnel that would be responsible for supply management, the amount of experience such personnel have in supply management and the anticipated time per month such personnel would devote.

Identify methods to monitor and forecast daily consumption, balance end user's accounts and adjust nominations to keep end-users in balance with the LDC or pipeline (i.e. computer software, specialized processes)

Additional supply management comments/details.

APPENDIX L

PRISM

When evaluating the output generated by PRISM, there are several statistical measures that should be examined. to determine if the results are an accurate representation of the buildings' energy use. These include coefficient of variation and the r^2 .

Standard Error

The standard error of a modeling run is a measure of the reliability of the data it generates. The larger the standard error, the less reliable are the results. If an event is assigned a standard error of 0.01, this means we can have 95% confidence that the data are accurate within one standard error and a 67% chance that they are accurate within two standard errors.

Coefficient of Variation

The *coefficient of variation* is the relative standard error - the error as a percentage of the total NAC.

r^2

The r^2 of a computer run describes the "goodness of fit" of the data. An r^2 of 1 means that all of the variation in the data has been accounted for by PRISM, and therefore is due to outdoor temperature. No other variables, such as inaccurate data or changes in occupant use, are acting on fuel use. Data with a coefficient of variation of less than about 6% and a r^2 greater than 0.7 is

APPENDIX M

CASE STUDY

Case study

The Crescent Court Apartments is a 124-unit development in Brockton, Massachusetts, owned and managed by the Brockton Housing Authority. The complex consists of 13 one- and two-story apartment buildings and a one-story community center. The apartments were first occupied in 1968.

In 1986, the Brockton housing authority received a \$220,000 loan from the Massachusetts Weatherization Assistance Program to fund a major conservation retrofit of the apartments. The Citizen's Conservation Corporation (CCC) arranged the funding from MWAP at an interest rate of five per cent. The loan initially had a seven year term, but that was later extended to seven years.

Energy and water savings from the improvements would be used to repay the loan.

CCC arranged a waiver of PFS regulations from HUD to use performance contracting to complete the project, the first of its kind in U.S. public housing. The CCC plan called for the replacement of the existing manually controlled gas-fired boilers and conventional gas-fired, domestic hot water heaters with new, high-efficiency systems, a new control system and new thermostats. Insulation would also be added in the attic and crawlspace walls, and air leaks were to be sealed. CCC's energy audit was completed in January, 1986, and construction was completed by the end of the year. The projected savings for the project were 35%; while the actual savings from 1986 through 1992 were 31.4%.

APPENDIX N

**SAMPLE ENERGY ANALYSIS
REPORT AGREEMENT**

This Agreement is entered into on this _____ day of _____, 19__, by and between Public Housing Authority hereafter referred to as PHA and Energy Service ESCO hereafter referred to as ESCO.

WHEREAS, _____ submitted a response to the RFP and participated in a competitive evaluation procedure designed to select an energy service ESCO qualified to prepare an energy analysis report.

WHEREAS, a comprehensive energy analysis must be performed at the PHA in order to determine the feasibility of entering into an energy services agreement to provide for the installation and implementation of energy conserving measures at the PHA.

THEREFORE: the Parties agree as follows:

ARTICLE 1: SCOPE OF ENGINEERING ANALYSIS

The ESCO will perform the analysis and prepare a detailed engineering report (the "Report") which specifically identifies the energy improvements and operational changes which are recommended to be installed or implemented at the PHA. The Report shall contain detailed projections of energy and cost savings to be obtained by the PHA as a result of the installation of the recommended energy conservation measures and should itemize all anticipated project costs. The Report shall describe the ESCO's plan for installing or implementing the measures at the PHA. the primary purpose of the Report is to provide an engineering basis for negotiating an energy services agreement between the PHA and the ESCO.

The ESCO will perform the following tasks in performing the analysis and preparing the Report:

A. Energy Usage and Facility Data

ESCO shall thoroughly evaluate utility and fuel cost and consumption data in order to properly evaluate the economics of specific measures and to formulate an accurate energy/demand baseline.

B. Inventory Existing Systems and Equipment

ESCO shall compile an inventory based on a physical inspection of the major electrical and mechanical systems at the PHA including:

- Cooling systems and related equipment
- Heating and heat distribution systems
- Automatic temperature control systems and equipment
- Air distribution systems and equipment
- Outdoor ventilation systems and equipment
- Exhaust systems and equipment
- Hot water systems
- Electric motors, transmission and drive systems
- Interior and exterior lighting

The inventory shall contain the following data:

- (i) the actual loads, proper sizing operating efficiency, and hours of operation for each system;
- (ii) current operating condition for each system;
- (iii) remaining useful life of each system (exclusive of pre-mature equipment failure);
- (iv) an evaluation of feasible replacement systems.

The ESCO shall conduct interviews with PHA operation and maintenance staff regarding the PHA's mechanical systems operation, occupancy patterns and problems with comfort levels or equipment reliability as defined and identified by the PHA operation and maintenance staff. It is expected of the PHA that all systems such as those listed in Article 1(B) above shall be fully disclosed to the ESCO.

C. Develop a Comprehensive List of Potential Energy Conservation Measures (ECMs)

The ESCO shall:

- (i) identify potential ECMs for installation or implementation at the facility;*
- (ii) estimate the cost, savings and life expectancy of each proposed ECM;
- (iii) specify PHA operations and maintenance procedures which will be affected by the installation/implementation of the proposed ECMs

*At a minimum the ECMs listed on pages ___ of the RFQ must be analyzed.

D. Select Final Recommended ECMs

ESCO shall, in consultation with the PHA, recommend specific ECMs for installation and implementation at the PHA.

E. Estimates of Project Cost

The ESCO shall:

Provide detailed estimates of all costs and energy savings associated with the project including:

- engineering/design costs
- contractor/vendor estimates for ECMs (labor, materials, equipment)
- construction management
- maintenance/monitoring services
- commissioning
- training
- estimated financing costs
- estimated ESCO monitoring services

The Report shall be completed within ninety (90) days of the date of execution of this Agreement.

ARTICLE 2: ENERGY SERVICES AGREEMENT

The Parties anticipate that they will execute an Energy Services Agreement (ESA) under which the ESCO shall design, install and implement energy conservation measures which the Parties have agreed to and provide certain maintenance and monitoring services. However, nothing in this Agreement should be construed as an obligation on any of the Parties to execute such an ESA. The terms and provisions of such an ESA shall be set forth in a separate agreement.

ARTICLE 3: PAYMENT

The cost of the Energy Audit shall be \$17,500. Payment to ESCO for services performed in connection with the analysis and preparation of the Report shall be made by the PHA only in accordance with the provisions of Article 4 herein.

ARTICLE 4: TERMINATION**A. By ESCO**

ESCO shall terminate this Agreement prior to the completion of the analysis report if it determines that even though it can guarantee an annual _____ percent (___%) savings in energy costs, that amount plus _____ (\$_____) per year would be

insufficient to cover the costs associated with installing energy conservation measures and related maintenance and monitoring services.

In the event ESCO terminates the Agreement pursuant to Section 4(A), the PHA will not be liable for any expenses incurred by ESCO in performing the analysis required under this Agreement and ESCO agrees to provide the PHA with any preliminary notes, reports or analysis which have been produced or prepared prior to the effective date of the termination.

Termination under this section shall be effective upon the PHA's receipt of written notification from the ESCO stating the reason for the termination.

B. By Housing Authority:

- (i) If prior to the completion of the engineering analysis, the PHA notifies the ESCO, in writing, that it has elected to terminate the Agreement and not enter into an ESA, the PHA shall pay ESCO a partial audit fee of _____ (\$_____) as per the price quoted in the ESCO's Response to the PHA's RFP for same.

ESCO agrees to provide the PHA with any notes, reports, and analyses which have been produced or prepared prior to the effective date of the termination

Termination under this subsection B(i) shall be effective upon ESCO's receipt of written notification from the PHA.

- (ii) After the completion of the engineering analysis, if the PHA does not enter into an ESA with the ESCO within one hundred eight (180) days after receipt and written acceptance of the Report, the PHA agrees to pay the ESCO an amount not to exceed _____ (\$_____) for the Report. The Report must contain all of the items listed in Article I. The Report will become the property of the PHA and entitle the PHA to utilize the Report for its benefit.

ARTICLE 5: PAYMENT TERMS AND CONDITIONS

It is clearly understood by both parties hereto that if the Parties successfully negotiate and execute an Energy Services Agreement to implement the recommendations made the by ESCO in its Report, no payments shall be due for the analysis or report under the terms of this Agreement. The amount of money due to the ESCo under the terms of this Agreement shall be included in the financing under the Energy Services Agreement, and shall be paid to the ESCo when that financing has been secured by the ESCo for the PHA. This Agreement shall automatically terminate upon the execution of an ESA by ESCO and the PHA.

ARTICLE 6: STANDARD TERMS AND CONDITIONS

Section 1: Agreement Term

The Agreement shall commence on the date the Agreement is executed by the PHA and end ninety (90) days thereafter, unless earlier terminated pursuant to the provisions of Article 4 hereof. In the event that the PHA has not already supplied the ESCO's requested utility data by the date of the execution of this Agreement, the term shall be extended to end ninety (90) days after the date that all utility data as requested by the ESCO has been supplied to the ESCO by the PHA.

Section 2. Materials Equipment and Supplies

The ESCO shall provide or cause to be provided all facilities, materials, equipment and supplies necessary to perform the Analysis and prepare the Report.

Section 3. Subcontractor Disclosure

All subcontractors expected to perform work pursuant to this Agreement and to be paid with funds provided hereunder, who has been selected by ESCO as of the execution date hereof, have been disclosed, including the name, address and anticipated amount of payment to each subcontractor. If, during the term of this Agreement, the ESCO retains subcontractors to be paid with funds provided by this Agreement who were not disclosed, the ESCO shall so notify the PHA and the Parties shall file an amendment to this Agreement stating the names and addresses of the anticipated amount of payment to each subcontractor.

Section 4. Patent and Copyright Responsibility

The ESCO agrees that any material or design specified by the ESCO or supplied by the ESCO pursuant to this Agreement shall not knowingly infringe any patent or copyright and ESCO shall be solely responsible for securing any necessary licenses required for patented or copyrighted material utilized by the ESCO in the performance of the Analysis and preparation of the Report.

Section 5. Records Retention, Audit

The ESCO shall retain, for a minimum of five (5) years after the completion of the Agreement, adequate books, records, and supporting documents to verify the amount, receipts, and uses of all disbursements of funds passing in conjunction with the Agreement. The Agreement shall be available for review and audit by the PHA and the ESCO agrees to cooperate fully with any audit conducted and to provide full access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the PHA for the recovery of any funds paid by the PHA under the Agreement for which adequate books, records, and supporting documents are not available to support their purported disbursement.

Section 6. Release and Indemnity

The ESCO agrees to assume all risk of loss and to indemnify and hold the PHA, its officers, agents and employees harmless from and against any and all liabilities, demands, claims, suits, losses,

damages, causes of action, fines or judgments, including costs, attorneys' and witnesses' fees, and expenses incident thereto, for injuries to persons (including death) and for loss of, damage to, or destruction of property (including property of the PHA) because of ESCO's negligent or intentional acts or omissions. In the event that any demand or claim is made or suit is commenced against the PHA the PHA shall give prompt written notice thereof to ESCO and ESCO shall have the right to compromise or defend the same to the extent of its own interest. ESCO also agrees to indemnify and hold the PHA harmless should any goods or services provided by ESCO infringe upon the patent, copyright or trade secret of another.

Section 8. Waivers

No right of either party, hereto shall be deemed to have been waived by non-exercise thereof, or otherwise, unless such waiver is reduced to writing and executed by the party entitled to exercise such right.

Section 9. Assignment

This Agreement may not be assigned by the ESCO without the proper written consent of the PHA.

Section 10. Amendments

This Agreement and Attachments referenced herein constitute the entire Agreement between the Parties. No amendment hereof shall be effective until and unless reduced to writing and executed by the Parties.

Section 11. Governing Law

This Agreement shall be governed by and construed only in accordance with the laws of the State of Michigan. Any dispute relating to this Agreement shall be adjudicated in the Michigan Court of Claims.

ARTICLE 6: EXECUTION

IN WITNESS WHEREOF, the parties have executed this Agreement, this _____ day of _____, 19____.

PHA (name)

By _____

Title: _____

ESCO (name)

By _____

Title: _____

APPENDIX O

***ORAL INTERVIEW QUESTIONS
FOR SHORT-LISTED ESCOS***

Experience

1. Describe your firm's experience in providing financing or in developing financing mechanisms for performance contracting in housing authorities.
2. Can you provide examples based on actual work completed of the comparison of your firm's predicted savings and the actual savings resulting from the work with PHAs or projects most similar to what you anticipate will be done for Housing Authority?
3. With regards to the project references for performance contracting in public housing provided in your proposal:
 - a) How many (and which) have completed work and are in the performance period?
 - b) How many (and which) are under construction?
 - c) How many (and which) have completed audits and are now in the contract negotiation phase or are "on hold"?
 1. How long have they been in negotiation or "on hold"?
 2. If for a period exceeding two months, why are they still in negotiation or "on hold"?

Energy Audit

- I. What fuel information will be needed from Housing Authority to provide sufficient information to your organization so that it can determine an accurate baseline?
- II. Please describe the deliverables you provide when performing an energy audit such as one for which the price was quoted in your proposal.
- III. Please describe any specific problems with energy, comfort, operational or safety conditions that were noted during your inspection of the properties.
- IV. Please describe your methodology for calculating the projected savings at the completion of the audit.

HUD Regulations

- I. Which of the two available methods under HUD regulations for satisfying the debt service would you anticipate using for the Housing Authority projects?

Financing and Project Economics

- I. How will this project be financed? Please describe in detail the mechanics of the financing arrangement including projected interest rate, financing term, equipment ownership, the responsibilities/liabilities of each party, and any special terms and conditions that may be associated with the financing of this project.
- II. What specific cost components and services will be financed over the term of the contract? Are there any costs which will not be financed?
- III. Exactly what services will your firm be paid for over the contract term? How will your firm be paid for these services? If this project is financed by a third party, how will that party be paid?
- IV. Please estimate the total financed cost of this project.
- V. Please estimate the range of available energy and demand savings and please explain the basis for your estimate.
- VI. Please estimate the range of gross annual utility cost savings and the basis for your estimates.
- VII. Can you provide us with a sample financial arrangement provided to a similar facility including:
 - A. Interest rates
 - B. Shared savings percentages for each party to the agreement
 - C. Any additional fees or fee types aside from the audit and implementation costs
 - D. Any fees added to the project after contract negotiation

Energy Services Agreement

- I. What is a typical time frame for your firm's negotiation of performance contract?
- II. Please explain the impact of the performance and payment bonding requirements on the economics of this project.
- III. How are disputes over contract performance to be handled?
- IV. Please describe any terms for the buyout or early termination of the contract.
- V. Please describe how your firm will purchase the equipment to be installed for this project.
- VI. What Operations and Maintenance (O&M) services will your firm provide and for how long? Who will be responsible for maintaining new equipment?
- VII. What role, if any, will your firm play in the O&M of existing energy consuming equipment?
- VIII. How will your firm's O&M procedures be specified in the contract? To what extent will you use existing facility personnel?
- IX. Is it typical for your firm to provide software or hardware upgrades on computerized energy management systems? When new control upgrades are available for equipment, are they automatically installed by your firm, or is there an additional cost?

-
- X. How does your contract accommodate the HA's control over building conditions and changes in occupancy or operations? What constitutes a "material change" and how will changes in the properties be accommodated in the contract?
 - XI. Can you provide us with a sample contract negotiated for a similar facility.
 - XII. Can you provide us, along with the above, with sample contractual clauses describing how to accommodate building use or occupancy changes in a similar facility.
 - XIII. Can you provide us with a sample of educational materials and curricula used during a project with a similar facility.
 - XIV. What happens if any equipment installed by your firm fails to operate properly? Who is responsible for repairs or replacement? What constitutes a failure?

Project Implementation and Management Structure

- I. Will your firm and how will your firm be represented on site during the implementation phase?
 - A. Full time site representative
 - B. Part time site representative
 - C. Periodic visits from project manager
 - D. No site representation planned until project is complete
- II. Do you have a local partner named in your proposal?
 - A. What is your experience in working with this firm?
 - B. Have they worked with you on any of the projects listed as references in your proposal?
 - C. Do you envision your working relationship as a team or subcontractor relationship.
 - D. Have you also provided this firm's qualifications regarding whatever portion of the work that it would be performing?
 - E. What portion of the work will be performed by this firm?
 - F. Will this firm be responsible for any portion of the savings guarantee?
 - G. Have you noted in your proposal any key positions to be filled by this firm's personnel and, if so, that person's qualifications for the position?
- III. Discuss any familiarity you might have with _____ city codes and licensing standards.
- IV. Please describe the benefits of the services you provide that are in addition to design and construction.
- V. Please discuss your firm's approach to the management of this project and how you plan to ensure HA's satisfaction with your performance throughout project implementation and for the duration of the contract.
- VI. Please describe how your firm will involve facility personnel throughout the various phases of this project.

- VII. Please elaborate on what type of technical training is anticipated to be provided by your firm and to whom will this training be given. Will any training be provided beyond the first year of the contract and, if so, is there any additional charge? Please elaborate on your resident training program.
- VIII. Will your firm provide instruction for HA's financial managers on your company's billing procedures and back-up documentation?
- IX. Based upon your experience in working with public housing clients, please identify any major administrative obstacles that prevent or delay expeditious project implementation.
- X. Following the energy audit, what criteria will be used to determine what modifications are recommended? How do you determine what brands of equipment are to be installed?
- XI. Does your firm provide 24-hour emergency response service? Will your firm provide on-site response or will you subcontract that function?
- XII. Please explain how your firm will commission this project to ensure the energy savings performance as specified in the design and engineering of the systems.
- XIII. How long do you estimate it will take to complete the construction phase of this project?
- XIV. Please describe the anticipated structure of your contracts with subcontractors on this project.
- XV. Please describe the impact poor workmanship by subcontractors will have on the performance guarantee.

Monitoring and Verification

- I. Please describe how you propose to monitor and verify project performance for the duration of the contract. Will any metered measurements be used to track performance? How will utility meter readings be incorporated into your monitoring program and how will those actual readings be reconciled against any facility data (e.g. operating schedules, changes in equipment, etc.) you collect that may have an effect on energy savings?
- II. Based on your experience, what are the most common variables that tend to degrade energy savings over time? How quickly does your monitoring and/or maintenance program identify savings degradation and what provisions are typically made to restore optimum conditions?
- III. Please explain the effect of normal equipment wear, human intervention, occupancy changes, and other factors in the energy savings performance over time.