

**COMMONWEALTH OF VIRGINIA
STANDARD CONTRACT**

ENERGY SAVINGS CONTRACT

This contract ("Agreement" or "Contract") is entered into this _____ day of _____, 2015 between ABM Building Services, hereinafter called the "ESCO" or "Contractor" and King and Queen County Public Schools hereinafter called the "Agency or Owner".

WITNESSETH that the ESCO and the Agency, in consideration of the mutual covenants, promises and agreements herein contained and the Department of General Services Contract.

This Agreement provides for certain Energy Unit Savings to be achieved in connection with the Work performed under the Energy Equipment Installation Contract Project Agreement Number 85730116 between ABM Building Services and King and Queen County Public Schools, Virginia dated _____, 2015 at the King and Queen County Public Schools.

ESCO will provide the Energy Unit Savings Guarantee set forth in Exhibit "B" subject to the terms and conditions set forth in this Contract hereto.

The annual fee for the Work and the energy guarantee will be \$3,807 and will be billed in advance (12 months following the completion of the installation project). The annual fee will be escalated at 3% annually starting in 2017 through 2018. After third year, beginning in 2019 the annual fee will be \$4,160 with 3% annual escalation continuing until the final audit period. This cost includes the data analysis required for the guarantee. There will be an annual renewal of the Contract and can be terminated at any time as set forth in Section 4.2 hereof.

This proposal is proprietary property of ESCO and is provided for Agency's use only. ESCO guarantees the price stated in this Agreement for thirty (30) days from the "Agreement" date above. The proposal will become a binding Agreement only after acceptance by Agency and approval by an officer of ESCO as evidenced by their signatures below. This Agreement, including all Exhibits and Attachments hereto, sets forth all the terms and conditions binding upon the parties hereto; and no person has authority to make any claim, representation, promise or condition on behalf of ESCO which is not expressed herein.

SCOPE OF CONTRACT: The ESCO shall provide the goods/services to the Agency as set forth in the Contract documents.

PERIOD OF PERFORMANCE:

Annually renewable for 15 years

The contract documents shall consist of:

- A. This signed form
- B. The following negotiated items:
 - A. Exhibits A through G
 - a. Exhibit A – Definitions
 - b. Exhibit B – Savings Guarantee Scope of Work
 - c. Exhibit C – Miscellaneous Terms and Conditions
 - d. Exhibit D – Annual Guaranteed Savings
 - e. Exhibit E – Measurement and Verification Plan
 - f. Exhibit F – Energy Equipment Installation / Implementation Contract # 85730116
 - g. Exhibit G – Appendix – Lighting Hours

SECTION 1.0 ENERGY MANAGEMENT PLAN

Section 1.1 Plan Details. ESCO has completed the Technical Energy and Water Savings Audit and reviewed with the Agency. It has been approved by Agency and the audit included all energy conservation measures agreed upon by the parties.

Section 1.2 Schedules. ESCO has prepared and Agency has approved and accepted the Schedules as set forth, copies of which are attached hereto and made a part of this Contract by reference.

SECTION 2. ENERGY USAGE RECORDS AND DATA

Agency shall furnish (or cause its energy suppliers to furnish) to ESCO, upon its request, all of its records and complete data concerning energy usage and energy-related maintenance for the Premises described in Exhibits A and B including the following data for the most current thirty-six (36) month period; utility records; occupancy information; descriptions of any changes in the building structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Premises; bills and records relating to maintenance of energy-related equipment, and a description of energy management procedures presently utilized, if not provided under the Technical Energy and Water Savings Audit. If requested, Agency shall also provide any prior energy audits of the Premises, and copies of Agency's financial statements and records related to energy usage and operations for said thirty-six (36) month period at said Premises, and shall make agents and employees familiar with such records available for consultations and discussions with ESCO.

SECTION 3. COMMENCEMENT DATE AND TERMS; INTERIM PERIOD

Section 3.1 Commencement Date. The Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by the Agency, ESCO has delivered a Notice to the Agency that it has installed and commenced operating all of the Equipment specified in project contract #85730116 and in accordance within all the provisions the said contract; and Agency has inspected and accepted said installation and operation as evidenced by the Certificate of Acceptance. Compensation payments due to ESCO for service and maintenance under this Contract as described herein shall begin no earlier than 2 months from the Commencement Date as defined herein.

Section 3.2 Term of Contract; Interim Period. Subject to the following sentence, the term of this Contract shall be one (1) year, renewable at the Agency's options for no more than fourteen (14) additional one (1) year periods measured beginning with the Commencement Date. Nonetheless, the Contract shall be effective and binding upon the parties immediately upon the "Effective Date." The Effective Date is the date this Contract is sent to the ESCO after it has been fully executed by Agency and ESCO and all approvals required by Commonwealth contracting procedures have been obtained. The period from Contract execution until the Commencement Date shall be known as the "Interim Period". All energy savings achieved during the interim period will be fully credited to Agency.

SECTION 4. PAYMENTS TO ESCO

Section 4.1 Energy Savings Guarantee. As set forth in Exhibits B, C and D, ESCO has formulated and, subject to the adjustments provided for, has guaranteed the annual level of energy unit savings to be achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract. The Energy Savings Guarantee is set forth in annual increments for the term of the Contract as specified.

Section 4.2 Annual Review and Reimbursement/Reconciliation. If at the end of any year during the guarantee period as specified in Exhibit D, the ESCO has failed to achieve the annual Energy Unit Savings Guarantee specified in Exhibit D, upon written request by the Agency, which shall be given no earlier than the end of such year and no later than sixty (60) days thereafter, the ESCO will pay the Agency the difference

between the Guaranteed Energy Unit Savings for such year and the total Energy Unit Savings for that Measurement Year, not to exceed the Guarantee Energy Unit Savings amount set forth in Exhibit "D". The ESCO shall remit such payments to the Agency within sixty (60) days of written notice by the Agency of such monies due. When the total energy unit savings in any one year during the guarantee period exceed the Energy Unit Savings Guarantee as set forth in Exhibit D and are in addition to those monies due the ESCO for compensation for services as set forth herein, such excess savings shall first be applied to reimburse ESCO for any payment ESCO made to Agency to meet ESCO's guarantee for previous years in which the energy savings fell short of ESCO's Energy Unit Savings Guarantee, and as set forth in Exhibit B. In no event shall credit for excess savings be used to satisfy performance guarantees in future years of the contract, however, savings generated during construction may be applied to the overall guarantee obligation. The Agency may terminate the energy savings contract on the annual anniversary date of this Contract.

Section 4.3 Billing & Information Procedure.

- (i) By the 30th day after receipt, Agency shall provide ESCO with copies of all information required as per Exhibits A, B and C for the Premises, which it shall have received for the preceding month;
- (ii) Upon receipt of the required information, ESCO shall calculate the savings in accordance with the agreed-upon calculation formulae in Exhibits A, B, C and D.
- (iii) Agency shall pay ESCO within thirty (30) days of receipt of ESCO's invoice failure will result in a cancelation of all guarantee obligations

SECTION 5.0 NONAPPROPRIATION OF FUNDS

In the event no Agency funds or insufficient Agency funds are appropriated and budgeted in any Agency Fiscal Year for payments due under this Contract, then Agency will immediately notify ESCO or its assignee of such occurrence and this Contract shall terminate on the last day of Agency's Fiscal Year for which appropriations were received without penalty or expense to Agency of any kind whatsoever. In the event of such termination, Agency agrees to peaceably surrender possession of all the Equipment in good operating condition for which payment to ESCO has not been made, subject to normal wear and tear to ESCO or its assignee on the date of such termination. ESCO or its assignee will have all legal and equitable rights and remedies to take possession of such Equipment. Upon such termination, title to such Equipment will revert to ESCO or its assignee.

If, on the thirtieth (30th) day after the commencement of any Agency Fiscal Year, sufficient funds have not been appropriated for the purpose of making all of the payments scheduled to be paid in such Fiscal Year, Agency shall cause to be delivered written notice thereof (a "notice of non-appropriation") to ESCO within ten (10) calendar days after such thirtieth (30th) day. Upon ESCO's receipt of a notice of non-appropriation, this Contract shall terminate, as of the end of the Fiscal Year just ended; provided, however, such termination shall not become effective as of the end of such Fiscal Year just ended if, within ten (10) calendar days of the thirtieth (30) day after the end of such Fiscal Year just completed, Agency shall cause to be delivered to ESCO a written statement to the effect that it reasonably expects sufficient funds for the then-current Fiscal Year to be appropriated therefore, and in such event the term shall continue into the then-current Fiscal year so long, but only so long, as an appropriation becomes available from which to make the payments.

SECTION 6.0 EQUIPMENT SERVICE

Section 6.1 Actions by Agency. Agency shall provide all service, repairs, and adjustments to the Equipment installed under terms of the Contract # 85730116. The Agency is responsible for Equipment service, repairs, and adjustments, however, if the need for maintenance or repairs principally arises due to the negligence or willful misconduct of the Agency or any employee or other agent of Agency, and ESCO can so demonstrate such causal connection, ESCO may charge Agency for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

Section 6.2 Malfunctions and Emergencies. Agency shall use its best efforts to notify the ESCO or its designee(s) within 24 hours after the Agency's actual knowledge and occurrence of:

- (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the guaranteed energy savings,
- (ii) any interruption or alteration to the energy supply to the Premises, or
- (iii) any alteration or modification in any energy-related equipment or its operation.

Where Agency exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings. Agency shall notify ESCO within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. ESCO shall respond or cause its designee(s) to respond within forty eight (48) hours and shall promptly proceed with corrective measures. Any telephonic notice of such conditions by Agency shall be followed within three business days by written notice to ESCO from Agency. If Agency unreasonably delays in so notifying ESCO of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, such conditions will be treated as an Energy Performance Change and the applicable provisions of Section 11 shall be applied.

Section 6.3 Actions by Agency. Agency shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of ESCO. Notwithstanding the foregoing, Agency may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify ESCO before taking any such actions. In the event of such an emergency, Agency shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency action provided in advance by ESCO. Agency agrees to maintain the Premises in good repair and to protect and preserve all portions thereof which may in any way affect the operation or maintenance of the Equipment.

SECTION 7.0 UPGRADING OR ALTERING THE EQUIPMENT

ESCO shall at all times have the right, subject to Agency's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Premises, provided that:

- (i) the ESCO complies with the standards of comfort and services set forth in the Exhibits herein;
- (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the energy savings at the Premises and;
- (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the ESCO.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Exhibits to be provided to the Agency for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall be new and have equal or better potential to reduce energy consumption at the Premises than the Equipment being replaced. The ESCO shall update any and all software to be used in connection with the Equipment in accordance with the provisions of the terms and conditions of Contract # 85730116. All replacements of and alterations or additions to the Equipment shall become part of the Equipment described in subsequent Exhibits and shall be covered by the provisions and terms of Section 3 of the Energy Equipment Installation Contract.

SECTION 8.0 STANDARDS OF COMFORT

ESCO will maintain the current standards of comfort and those described in Exhibit D in areas where the ESCO is performing work on the applicable equipment. The equipment is being maintained by the owner and the owner agrees to operate the Equipment in a manner which will provide the standards of heating, cooling, hot water, and lighting as described in Exhibit D.

SECTION 9.0 FACTOR AND BASELINE CHANGES

Section 9.1 Reported Factor Changes; Notice by Agency: The Agency shall use its best efforts to deliver to the ESCO a written notice describing all actual or proposed Factor Changes in the Premises or in the operations of the Premises at least 30 days before any actual or proposed Factor Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the ESCO of Factor Changes which results because of a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the Agency within twenty four (24) hours after having actual knowledge that the event constituting the Factor Change occurred or was discovered by the Agency to have occurred.

Section 9.2 ESCO will determine the effect that any such change will have on the Base Energy Rates and/or Energy Unit Savings and present to the Agency a written analysis of the effects of the changes. Changes that are long term or permanent will be reflected in a change to the Base Energy Rates. Temporary changes that affect energy use will be calculated and added to or subtracted from the corresponding month's Energy Unit Savings. If a change in any of the Factors involved in the Baseline occurs and results in a reduction of Energy Unit Savings, then the Energy Unit Savings to be guaranteed by ESCO will be decreased by the same amount.

Section 9.3 Unreported Factor Change. In the absence of any Factor Changes in the Premises or in their operations, the Baselines as set forth in Exhibit D should not change more than one percent (1 %) during any month from the projected energy usage for that month, after adjustments for changes in climatic conditions. Therefore, if energy consumption for any month deviates by more than one percent (1%) from the energy consumption for the same month of the preceding contract year after adjustments for changes to climatic conditions, then such deviation shall be timely reviewed by the ESCO to ascertain the cause of deviation. The ESCO shall report its findings to the Agency in a timely manner and the ESCO and Agency shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in Exhibits D and E.

Section 9.4 Agency and ESCO may from time to time desire to make changes to the Project infrastructure for the express purpose of increasing Energy Unit Savings. It is agreed that these changes will only be made with the written consent of both parties, which will not be unreasonably withheld. The Baseline will not be adjusted to reflect any changes agreed to under this subparagraph without the mutual agreement of the parties, except that if ESCO elects to pay for the cost of any such changes that would not unreasonably interfere with the conduct of Agency's business, and the Agency does not consent to such changes, then the Baseline will be adjusted upward by the amount of savings projected from the changes.

Section 9.5 If the Agency fails to notify ESCO of changes in Factors affecting energy use or fails to supply ESCO with requested information that is required for the calculation of saving in a timely manner, Energy Unit Savings for the period will be equal to the Projected Energy Unit Savings for the period. If information for the period in question is supplied at a later date, the Energy Unit Savings will be modified only if the calculated savings for the period exceed the Projected Energy Unit Savings for that period of time.

Section 9.6 ESCO has the right to charge the Agency for work required to assess the effect on savings for any large scale changes, including, but not limited to, building additions, new buildings, and new or changed HVAC equipment, that require more than forty (40) hours per year to be spent in calculating their effect on the Energy Unit Savings. Such hours will be billed at current ESCO engineering rates. Current

rates for engineering are based at \$125/hr. starting in July, 2015 before initiating such work, ESCO will notify the Agency in writing of the intent and cost associated with the work. The Agency will, within 45 days in writing, notify ESCO with permission to proceed or, alternatively at no charge, to stipulate that the Projected Energy Unit Savings for the existing facility in question be used for the purpose of calculating the Energy Unit Savings. If ESCO does not receive written notice within 45 days, the Projected Energy Unit Savings for the existing facility in question will be used as Energy Unit Savings until such time that the Agency approves the work, as long as the scope of the work has not changed.

SECTION 10.0 RISK OF LOSS

ESCO and Agency agree that all Work required for this Contract, including that of all other contractors and subcontractors for the Agency, if applicable, shall be performed in accordance with a schedule of activities prepared by ESCO in advance of their commencement. ESCO shall provide a detailed schedule of its activities; their relationship with other activities, and their access requirements and durations, and ESCO agrees to perform such activities with as little disruption to Agency's normal operation as possible. The schedule shall be based upon commencement and completion dates stated in this Agreement. ESCO shall be entitled to an extension of contract time in the event the Work or any part thereof is delayed by any cause beyond ESCO's reasonable control. Such causes include, but are not limited to, acts of God or public enemy: compliance with any order, decree, or request of any government authority; acts of declared or undeclared war; sabotage; fire; floods; adverse weather conditions; explosions; accidents; riots; strikes; labor disputes; inability to obtain necessary materials or equipment from normal sources of supply; or any other cause not within the reasonable control of the ESCO.

SECTION 11.0 CASUALTY OR CONDEMNATION OF PREMISES

Any construction or restoration of the Premises following or necessitated by fire, flood, or other casualty, or any condemnation affecting any portion of the Premises, shall be deemed an Energy Performance Change, and the provisions of Section 9 and 10 shall be applicable. If the casualty or condemnation renders fifty percent (50%) or more of the Premises uninhabitable or unusable and, in the case of a casualty, the affected portion is not reconstructed or restored within one hundred and twenty (120) days from the date of such casualty, Agency shall have the option to terminate this Contract by a notice to ESCO. In the event of condemnation, Agency agrees that ESCO shall be entitled to that portion of the condemnation award equal to the purchase option value applicable at that time with appropriate adjustments for applicable portions of the Premises which are condemned versus portions of the Premises which are unaffected. Upon such termination, ESCO may remove the Equipment from the condemned portion of the Premises.

SECTION 12.0 EVENTS OF DEFAULT

Section 12.1 Events of Default by Agency. Each of the following events or conditions shall constitute an "Event of Default" by Agency:

- (i) Any failure by Agency to pay ESCO any sum due for the measurement and verification (annual audit) service of more than thirty (30) days after written notification by ESCO that Agency is delinquent in making payment and provided that ESCO is not in default in its performance under the terms of this Contract; or
- (ii) Failure to properly maintain, repair or adjust the Equipment except that such failure, if corrected or cured within thirty (30) days after written notice by ESCO to Agent demanding that such failure be cured, shall be deemed cured for purposes of this Contract;
- (iii) Any other material failure by Agency to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for sixty (60) days after notice to Agency demanding that such failures to perform be cured or if such cure cannot be effected in sixty (60) days, Agency shall be deemed to have cured default upon the commencement of a cure within sixty (60) days and diligent subsequent completion thereof; or

- (iv) Any representation or warranty furnished by Agency in this Contract which was false or misleading in any material respect when made.

Section 12.2 Events of Default by ESCO. Each of the following events or conditions shall constitute an "Event of Default" by ESCO:

- (i) The standards of comfort and service set forth in Exhibit D are not provided through standard operating equipment schedules.
- (ii) Any representation or warranty furnished by ESCO in this Contract is false or misleading in any material respect when made
- (iii) The filing of a bankruptcy petition whether by ESCO or its creditors against ESCO which proceeding shall not have been dismissed within thirty (30) days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of ESCO;
- (iv) Any change in ownership or control of the ESCO without the prior approval of the Agency, which shall not be unreasonably withheld;
- (v) Failure by the ESCO to pay any amount due the Agency or perform any obligation under the terms of this contract or the Energy Savings Guarantee as set forth in Exhibit D; or
- (vi) Repossession or removal of the Equipment by ESCO or a third party without good cause.

SECTION 13. REMEDIES UPON DEFAULT

Section 13.1 Remedies upon Default by Agency. If an Event of Default by Agency occurs, ESCO may, without a waiver of other remedies which exist in law or equity, elect one or more of the following remedies:

- i. Exercise any and 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 Agency, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy;
- ii. Without recourse to legal process, terminate this Contract by delivery of a notice declaring termination.
- iii. Any legal action relating to this agreement, or breach thereof, shall be commenced in the Circuit Court of King and Queen County, King and Queen, Virginia. Both Agency and Contractor submit to the jurisdiction of the Circuit Court of King and Queen County, Virginia for determination of any breach of duties and damages thereof.

Section 13.2 Remedies Upon Default by ESCO. In the Event of Default by ESCO, Agency shall have the choice of one or more of the following remedies without waiving any other rights or remedies in law or equity:

- (i) Exercise and any all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred;
- (ii) ESCO (but not the assignee) will be liable to Agency for damages incurred by Agency as a result of any default by ESCO. Such damages may include, but are not limited to: (a) damages as a result of breach of warranty, failure to meet specifications, or damages incurred by Agency resulting from ESCO's failure to comply with any requirements of this Contract, and (b) any other damages recoverable by law.

- (iii) Any legal action relating to this agreement, or breach thereof, shall be commenced in the Circuit Court of King and Queen County, King and Queen, Virginia. Both Agency and Contractor submit to the jurisdiction of the Circuit Court of King and Queen County, Virginia for determination of any breach of duties and damages thereof.

SECTION 14. ADDITIONAL REPRESENTATIONS OF THE PARTIES.

Section 14.1 Agency hereby warrants, represents and promises that:

- (i) It has provided or shall provide timely to ESCO, all records relating to energy usage and energy-related maintenance of Premises requested by ESCO and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and
- (ii) It has not entered into any leases, contracts or contracts 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. Agency shall provide ESCO with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Premises which may be executed from time to time hereafter within thirty (30) days after execution thereof.

Section 14.2 ESCO hereby warrants, represents and promises that before commencing performance of this Contract:

- (i) It is or shall become licensed or otherwise permitted to do Energy Services Business in the Commonwealth of Virginia and shall have a Class A Contractor's License
- (ii) It shall have provided proof and documentation of required insurance pursuant to terms and conditions and shall make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;
- (iii) It shall use qualified subcontractors and delegees, licensed and bonded in this state to perform the work so subcontracted or delegated pursuant to the terms hereof;
- (iv) That it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Contract.

SECTION 15.0 INDEPENDENT CAPACITY OF THE ESCO

The parties hereto agree that ESCO, and any agents and employees of ESCO, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the Agency.

SECTION 16.0 NO WAIVER

The failure of ESCO or Agency 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 Contract in the event of a continuing or subsequent default on the part of ESCO or Agency.

SECTION 17.0 ESCO RESPONSIBILITY PROVISIONS

Section 17.1 ESCO certifies that it is not currently under suspension or debarment by the Commonwealth of Virginia, any other state, or the federal government.

Section 17.2 If ESCO enters into any subcontracts under this Contract with subcontractors who are currently suspended or debarred by Commonwealth or federal government or who become suspended or debarred by Commonwealth or federal government during the term of this Contract or any extensions or renewals thereof, Agency shall have the right to require ESCO to terminate such subcontracts.

Section 17.3 ESCO agrees that it shall be responsible for reimbursing Agency for all necessary and reasonable costs and expenses incurred by the Office of the Attorney General relating to an investigation of ESCO's compliance with the terms of this or any other Contract between ESCO and Agency which results in the suspension or debarment of the ESCO.

SECTION 18. AGENCY'S COMPLIANCE WITH FACILITIES MAINTENANCE CHECKLIST

Section 18.1 The parties acknowledge and agree that ESCO has entered into this Contract in reliance upon the prospect of earning compensation based on guaranteed energy unit savings in energy used at Premises, as set forth in Exhibit D attached hereto and made a part hereof.

Section 18.2 The parties further acknowledge and agree that the said guaranteed energy savings would not likely be obtained unless certain procedures and methods of operation designed for energy conservation shall be implemented, and followed by Agency on a regular and continuous basis.

Section 18.3 Agency agrees that it shall adhere to, follow and implement the energy conservation procedures, maintenance practices and methods of operation to be set forth in Exhibits A, B, C and D, to be attached hereto and made a part hereof after Agency's approval.

Section 18.4 Agency agrees that ESCO shall have the right once a month, with prior notice, to inspect Premises to determine if Agency is complying. Agency shall make the Premises available to ESCO for and during each monthly inspection, and shall have the right to witness each inspection and the recommendations on the checklist.

SECTION 19. Other General Terms and Conditions

- i. Agency shall permit ESCO free and timely access to areas and equipment, and allow ESCO to start and stop the equipment as necessary to implement the Savings Measurement & Verification Plan. All work by ESCO under this Contract will be performed during normal working hours; except that no work will interfere with Agency's activities.
- ii. ESCO will carry Commercial General Liability insurance with limits for bodily injury and property damage of not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate; and 2) Commercial Automobile Liability insurance with limits of liability for bodily injury and property damage of not less than \$1,000,000 per occurrence. Such policies will name Agency as an additional insured to the extent indemnified herein.
- iii. ESCO agrees to indemnify Agency from and against any and all claims, losses, or liabilities for personal injuries or property damages, as well as costs and expenses incurred in the defense thereof, including reasonable attorney's fees, caused by ESCO negligence in the performance of the Work under this Agreement.
- iv. To the extent permitted by applicable law, Agency agrees to indemnify ESCO from and against any and all claims, losses, or liabilities for personal injuries or property damages, as well as costs and expenses incurred in the defense thereof, including reasonable attorney's fees, caused by Agency's negligence.
- v. ESCO expressly disclaims any and all responsibility and liability for the indoor air quality of Agency's facility, including without limitation injury or illness to occupants of the facility or third parties, except to the extent of ESCO's adjudicated negligent acts or omissions or willful misconduct.
- vi. Excess Savings:
 - a. For each Measurement Year in which the Energy Unit Savings exceed the Guaranteed Unit Savings, the Excess Savings shall be the value of the difference.
 - b. The total excess Energy Unit Savings for any positive or negative pre-M&V Commencement Date savings (construction period Energy Unit Savings) will be added to the Energy Unit Savings for the first Measurement Year. With respect to any Measurement Year in which ESCO has made a Guarantee Payment to the Agency, the negative energy unit savings will be set to zero for the following Measurement Year.

- vii. During the Energy Unit Savings Term when the effect on savings cannot be accurately determined due to construction or major changes, Projected Energy Unit Savings for the facility will be used for the period of such changes and until the effect of the changes can be determined by ESCO.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

ESCO:

By: _____
(Signature in Ink)

Name: _____

Title: _____

Date: _____

Attest: _____
(Signature and Date)

PURCHASING AGENCY:

By: _____
(Signature in Ink)

Name: _____

Title: _____

Date: _____

Attest: _____
(Signature and Date)

Schedules, Exhibits, Attachments

Exhibit A **Definitions**

1. **Annual Savings Period or Measurement Year:** shall mean the consecutive twelve (12) month period beginning with the M&V Commencement Date. Savings and rebates during the Project period prior to the M&V Commencement Date will go towards first year savings.
2. **Baseline:** In determining Baselines, ESCO identifies some of the factors which may affect energy use for the Facilities, including but not limited to: hours and levels of occupancy; student population; adjustments in labor force; building use and operational procedures; temperature, humidification, and ventilation levels; installed lighting and scheduled use; building construction and size; general level of repair and efficiency of heating and air conditioning equipment and other energy-using equipment; and amount of heating and air conditioning and other energy-using equipment (“Factors”). After consideration of those Factors and certain other uses of the Facilities, ESCO establishes initial Baselines. It is understood that in the event changes in Factors affect energy use, the Baselines may be revised from time to time as detailed in this Contract. In addition, data collected during the period before construction may indicate a change of the energy use pattern at the facility and require a change to the Baselines. ESCO shall notify the Agency, in writing, of all such changes.
3. **Baseline Dates:** shall mean the start and end dates determining the Baseline. The Baseline Dates for King and Queen County Public Schools, Virginia Agreement shall be January 2013 through December 2013
4. **Initial Base Energy Rates:** The “Base Energy Rates” are the units of dollars per energy unit developed from the Baselines and are identified in Exhibit D, and shall be used by ESCO to calculate the initial EC Savings.
5. **ESCO** shall mean and include ABM Building Services, 3711 Saunders Avenue, Richmond, VA 23227
6. **Agency** shall mean King and Queen County Public Schools, 242 Allen’s Circle, King and Queen, VA 23837
7. **EC Savings:** The energy conservation savings, having units of dollars (\$), are those savings achieved through the reduction in energy consumption, demand, energy rates, maintenance, or materials calculated using the Initial Base Energy Rates from Exhibit D or the actual rates, whichever results in greater Energy Unit Savings.
8. **Energy Unit Savings Term:** The “Energy Unit Savings Term” shall be the number of Measurement Years shown in Exhibits D and Exhibit F or until the termination of this agreement.
9. **Energy Unit Savings:** The energy conservation savings in units of energy, power, water, etc., achieved through the reduction in energy consumption, demand, energy rates, maintenance, or materials. Units of energy may include kWh, MCF, MMBTU, Gallons and are identified in Exhibit D.
10. **M&V Commencement Date:** “M&V Commencement Date” shall be the first day of the month following both:
 - 1) The signed Certificate of Final Completion of the Project in accordance with the King and Queen County Public Schools, Virginia Project Agreement # 85730116, and
 - 2) ESCO’S receipt of all payments due and owing under the Project Agreement.
11. **Projected Energy Unit Savings:** the savings expected from the Project as identified in Exhibits D
12. **Savings Measurement & Verification Plan:** ESCO’S process of preparing reports, taking on-site measurements, monitoring building automation systems, and/or any additional work to quantify Energy Unit Savings for the purpose of meeting the Guaranteed Energy Unit Savings as identified in Exhibit D. ESCO’s measurement and verification activities shall not include maintenance of the Project or record keeping related to such maintenance, which shall be the sole responsibility of Agency.

Exhibit B
Savings Guarantee Scope of Work

1. The annual Energy Unit Savings will be calculated using standard computerized Energy Unit Savings auditing procedures, as described herein, which compare the Agency's energy consumption during the 12 months dating from January 2013 through December 2013 before implementation of the Project. ("Baseline Conditions") with that of the consumption during the applicable Annual Savings Period (the "Calculated Savings"). The Annual Savings Period for the Agency shall begin upon final completion of project # 85730116. The anticipated start date of the Annual Savings Period being December 1, 2016 and ending the following year November 30, 2017 and subsequent years following. Published degree days will be used in auditing process to allow for differences of weather conditions between Baseline Dates and each year of Guaranteed Unit Savings. Increase in utility rates will be adjusted with audits.
2. Except to the extent of any annual maintenance program with the ESCO, the Agency shall be solely responsible to maintain the Project in a manner consistent with the manufacturer's or ESCO'S recommended maintenance schedules and procedures, maintain all records associated with such maintenance, and upon request of the ESCO, provide copies of such records thereof. ESCO may, if it deems necessary, inspect the Facilities from time to time to implement its Savings Measurement & Verification Plan.
3. For the purpose of determining Energy Unit Savings, ESCO shall prepare reports, take on-site measurements, monitor building automation systems, and/or additional work as required by and detailed in its Savings Measurement & Verification Plan.
4. The Agency acknowledges and consents to ESCO'S right to monitor Energy Unit Savings and energy management performance by conducting on-site measurements, including, but not limited to, reading meters and installing and observing on-site monitoring equipment. The Agency shall cooperate fully with any such measures instituted by ESCO pursuant to this Subsection. ESCO shall not institute any measures that unreasonably interfere with the business of Agency conducted at the Agency's location.
5. For the purpose of determining Energy Unit Savings, Agency shall cooperate with ESCO by providing utility bills and other applicable information and maintenance records, changes in factors affecting energy use, and/or additional information as requested by ESCO personnel.
6. Savings Guarantee: Subject to changes in the Factors, ESCO guarantees that the Agency will realize total Energy Unit Savings during the Energy Unit Savings Term of not less than the Guaranteed Savings set forth in Exhibit "D".
7. Guarantee Payment: Should the Agency's total Energy Unit Savings during any Measurement Year be less than the Guaranteed Energy Unit Savings for that year, ESCO guarantees that it shall pay to the Agency, within 30 days of the acceptance of the annual Energy Unit Savings report, the difference between the Guaranteed Energy Unit Savings for such year and the total Energy Unit Savings for that Measurement Year, not to exceed the Guarantee Energy Unit Savings amount set forth in Exhibit "D". If in the judgment of the Agency, Agency would benefit from additional energy services or energy saving retrofits, Agency and ESCO may mutually agree upon such services or retrofits in lieu of the Guarantee Payment. For the purposes of this ESCO, such services or retrofits actually delivered by ESCO will be considered a Guarantee Payment for that Measurement Year.

Exhibit C Miscellaneous Terms and Conditions

I. Lighting Retrofit Savings

Lighting power consumption shall be measured before and after retrofitting and the reduction shall be used to represent the actual power savings for each retrofitted fixture. Light Energy Unit Savings are stipulated and shall be calculated assuming the operating hours specified in the appendix

Buildings Included:

Central High School
Lawson Marriott Elementary School
King and Queen Elementary School

II. Utility Bills Comparison

Guaranteed Energy Unit Savings will be derived from new and retrofitted mechanical equipment, controls, light fixture retrofits, new utility rate structures, lighting specifications and efficiency improvements as generated by new and retrofitted mechanical equipment as listed in Exhibit A of King and Queen County Public Schools Project Agreement 85730116. Guaranteed Energy Unit Savings related to the lighting retrofit are incorporated into the annual Guaranteed Energy Unit Savings set forth in Exhibit "D".

III. Baseline Conditions

Baseline Conditions is defined as the set of conditions that determined Agency's energy consumption during the 12 months dating from January 2013 through December 2013 before implementation of the Project. The Guaranteed Energy Unit Savings are based on consistent utility consumption patterns in the future as compared to the Baseline Conditions, with adjustments made for non-performing devices made operational as per building code requirements.

The Guaranteed Energy Unit Savings set forth in Exhibit "D" are based on the Factors, as they are at the time this Agreement is executed. New facility heating or air conditioning loads and major increases in student enrollment will be adjusted for according to the effect on original criteria.

IV. Run Times / Conditions

The design space temperatures for heating are 68 to 70 degrees Fahrenheit during the day or less; the design space temperatures for cooling are 72-74 degrees Fahrenheit during the day or more. The control system will be set to achieve the nominal design space temperature for heating or cooling.

The normal hours of operation are described below. It is understood by both parties that there will be events and/or meetings that will go beyond the normal hours of operation and have been accounted for in the Baseline Conditions. When student classes are not in session such as school holidays and summer breaks the systems shall be set to night/weekend set back modes. The heating setback switches shall be adjusted to 55 degrees and 60 degrees during periods of extreme cold. During the cooling season setback switches shall be activated for nighttime temperature with a set point of 85 degrees unless the physical plant is specifically exempt to provide comfortable temperatures for special programs in a school.

Central High School

SUN	MON	TUES	WED	THURS	FRI	SAT
none	6 am – 6pm	6 am – 6pm	6 am – 6pm	6 am – 6pm	6 am – 6pm	none

Lawson Marriott Elementary School

SUN	MON	TUES	WED	THURS	FRI	SAT
none	6 am – 5pm	6 am – 5pm	6 am – 5pm	6 am – 5pm	6 am – 5pm	none

King and Queen Elementary School

SUN	MON	TUES	WED	THURS	FRI	SAT
None	6 am – 5pm	6 am – 5pm	6 am – 5pm	6 am – 5pm	6 am – 5pm	none

Exhibit D
Annual Guaranteed Energy Unit Savings:

Annual Baseline Usage

Electric: 2,211,399 kWh
MMBTU (propane): 3,793 MMBTU

Annual Savings

ESCO will guarantee the annual kWh, BTU reduction listed below:

Lighting Savings (Option A) : 432,084 kWh
Other Electrical Savings: 566,659 kWh
Fuel Savings: 532 MMBTU

Initial Base Energy Rates

Building / Facility	Elec (\$/kWh)	Propane (\$/MMBTU)
Central High School	\$ 0.08	\$ 14.8
King & Queen Elementary School	\$ 0.09	\$ 14.9
Lawson-Marriott Elementary School	\$ 0.09	\$ 13.2

Operational and Maintenance Savings

The following dollar savings/cost avoidance values have been agreed to by both parties and will occur as a result of the installation of the project. The sum of these savings/cost avoidance values for each guarantee year will be added to the Energy Unit Savings for each specific year as noted and will therefore be deemed achieved upon execution of this contract.

Fiscal Year	Operational and Maintenance Savings
Year 1	\$10,000.00
Year 2	\$10,000.00
Year 3	\$10,000.00
Year 4	\$10,000.00
Year 5	\$10,000.00
Year 6	\$10,000.00
Year 7	\$10,000.00
Year 8	\$10,000.00
Year 9	\$10,000.00
Year 10	\$10,000.00
Year 11	\$0.00
Year 12	\$0.00
Year 13	\$0.00
Year 14	\$0.00
Year 15	\$0.00

Savings Summary

Using the above Base Energy Rates, annual Guaranteed Energy Unit Savings, and Operational Savings the total guaranteed savings for Measurement Year One are **\$105,175**.

- | | |
|------------------------------------|------------|
| 1. Lighting Savings | \$ 37,554* |
| 2. Other Energy Savings | \$ 57,621 |
| 3. Agreed Upon Operational Savings | \$ 10,000* |

*Stipulated Savings

EXHIBIT E
Measurement & Verification Plan

ABM and the Agency agree that the Verified Savings will be determined using the following Measurement and Verification Plan. Through this plan, the Guaranteed Savings generated by the ECM installed in the Facilities will be verified.

Measurement & Verification Plan: ABM and the Agency agree that the Verified Savings by ECM will be determined using the following Measurement & Verification plans further described in this section. Through this plan, the guaranteed savings generated by the ECMs installed in the Facilities will be validated. The M&V methodologies proposed for these ECMs are based on the version 2.2 of the F.E.M.P. Measurement and Verification Guidelines. The objective of the plan is to quantify the actual electrical, water and fossil fuel and compare those to the specific Baseline Usage for each Facility, the difference of which is the Verified Savings.

During the term of the Agreement, ABM will make adjustments to energy savings due to changes in the standards and comforts as described in Exhibit C, building occupancy, weather data, and utility rate schedules, etc. The unit costs of energy will be applied to the energy savings calculated by this M&V plan. Current utility cost will be used as a basis for determining the unit cost, with floor and ceiling prices set by baseline rate information, presented herein this Attachment.

The following is a brief overview of the measurement and verification methodologies applicable to the Improvement Measures set forth below. ABM shall apply these methodologies, as more fully detailed in the guidelines and standards of the International Measurement and Verification Protocol (IPMVP) and/or the Federal Energy Management Program (FEMP), in connection with the provision of M&V Services hereunder.

Option A
Partially Measured Retrofit Isolation

Measured Project Benefits are determined by partial field measurement of the energy use of the system(s) to which an Improvement Measure was applied separate from the energy use of the rest of the facility. Measurements will be short-term with only one-time measurements before and after the Installation Period.

Partial measurement means that some but not all parameters will be measured. Careful review of the design and installation of Improvement Measures is intended to demonstrate that the stipulated values fairly represent the probable actual values. Agreed-upon values will be shown in the measurement and verification plan, along with analysis of the significance of the error they may introduce. Engineering calculations using short-term pre and post-retrofit measurements and stipulations are used to calculate Measured Project Benefits for the duration of the Guarantee Term.

ABM will use the listed M&V protocols per ECM as shown in the table below.

Measure	M&V Option	M&V Activity Description
Lighting & Controls	A	One time, measurement of operating hours used for baseline and post-installation engineering calculations 5 % of lighting fixture pre and post kW measurement to verify the lighting savings as well as lighting on/off loggers to verify the post retrofit hours

Measure	M&V Option	M&V Activity Description
Energy Management System Improvements	A	Baseline energy use calculated with engineering methods using measurements taken during pre-award development period to determine operating conditions of systems. Post-installations energy use determined with engineering methods using measured set points and trending data. EMS trending to verify HVAC control sequence of operation, temperature setbacks, and unit operating schedules
VFD on AHU Fans	A	Engineering methods used to calculate savings. Systems commissioned during post-installation period to verify savings. Onetime pre and post measurement of motor power (kW) Controls trending used to verify the hours at 100%, 75%, and 50% speeds to verify kW assumptions used in engineering equations
HVAC Equipment Upgrades	A	Engineering methods used to calculate savings. Existing name plate efficiency (EER/COP) used for baseline conditions. Verification of proper installation and new equipment efficiencies (EER/COP) and operation during commissioning phase to verify savings
Boiler Replacement	A	Baseline combustion efficiency is assumed to be the existing name plate efficiency. Post retrofit combustion efficiency should be measured one-time after the installation of new Boiler. Verify post-installation efficiency and proper installation and operation during commissioning phase

