

**COMMONWEALTH OF VIRGINIA  
STANDARD CONTRACT**

**ENERGY EQUIPMENT INSTALLATION CONTRACT**

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

**WITNESSETH** that the ESCO and the Purchasing Agency, in consideration of the mutual covenants, promises and agreements herein contained and contained in the Department of General Services Contract DEB20110611, agree as follows:

This Contract is for Professional Services for energy efficiency improvements at King and Queen County Public Schools Project agreement # 85730116. The parties have also entered into an Energy Savings Contract of even date here with (the "Energy Savings Contract").

ESCO will provide all professional services; engineering; design; procurement; and installation of the infrastructure improvements indicated in Exhibit A - Scope of Work (the "Work"), to deliver a complete installation. All Work will be subject to the terms and conditions set forth on Exhibits A, B and C.

The purchase price for the Work will be **\$1,420,781.00 (One Million Four Hundred Twenty Thousand Seven Hundred Eighty One dollars and zero cents)**. The work will be performed in one phase and is valued at **\$1,420,781.00**. The Work performed under this Agreement will be substantially complete and ready for Owner's beneficial use within an estimated 18 months following Agency's acceptance and ESCO's approval of this Agreement. The ESCO cannot proceed until a written Notice to Proceed is forwarded by the Owner but in no circumstances will the Notice to Proceed be issued any later than November 23, 2015.

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 proposal 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 Purchasing Agency as set forth in the contract documents.

The contract documents shall consist of:

- (1) This signed form
- (2) The following Exhibits:
  - a. Exhibit A – Scope of Work
  - b. Exhibit B – Payment Schedule
  - c. Exhibit C – Project Schedule
  - d. Exhibit D – Notice to Proceed

**SECTION 1.0 PAYMENTS TO ESCO**

**Section 1.1** Construction Installment Payments.

Agency agrees to make construction installment payments to ESCO, or its assignee, for the Equipment in accordance with the terms and conditions of this Contract and Exhibit B. Payments shall be based on percentage of project completion. On a monthly basis ESCO shall review the progress of the project and agree upon the amount complete. The invoiced amount shall then be based on this amount and submitted to the Agency. These amounts are estimated in Exhibit B. Agency's obligation to make the Installment

Payments shall be absolute and unconditional in all events except as expressly set forth. After acceptance of the Equipment, Agency covenants that it will not assert any right to set off, counterclaim, abatement, or recoupment of the Installment Payments.

**Section 1.2** If applicable and only to the extent permitted by applicable law, any tax benefits, rebates or deductibles related to the energy efficiency improvements such as, but not limited to, those under section 179D of the Internal Revenue Code regarding the Energy Policy Act of 2005 are assigned to Contractor as part of this Agreement; provided Agency shall remain the owner of the energy efficiency improvements for federal tax purposes. Customer will use commercially reasonable efforts to assist with executing any necessary documents for Contractor to obtain such benefits.

**SECTION 2.0 This section intentionally left blank**

**SECTION 3.0 CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION APPROVAL**

**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 and Agency has inspected and accepted said installation and operation as evidenced by the Certificate of Acceptance. ESCO shall be responsible for the professional and technical accuracy, of all construction and services performed in accordance with the Construction and Professional Services Manual, whether by ESCO or its subcontractors or others on its behalf, throughout the term of this Contract.

**Section 3.2** ESCO shall provide overall coordination, management, and responsibility, and shall assure that all work is completed in a good and workmanlike manner. ESCO's services shall include the following:

- i. Engineering Design: A survey of the Premises for purposes of designing the Program.
- ii. Procurement, Installation, Start-Up: Subject to other provisions of this Contract, ESCO will act as a turn-key general contractor assuming total responsibility for the procurement of labor and material for installation and start-up of the Equipment, including: selecting subcontractors and suppliers in concert with Agency; awarding subcontracts; receiving and evaluating submitted drawings on the equipment; progress inspections during installation; developing and presenting subcontractor punch lists after each inspection; receiving and evaluating record drawings; and operation and maintenance manuals from subcontractors; providing for training of Agency personnel on proper operation of the newly installed Equipment; and final inspection and recommendation for approval to the Agency for acceptance of the equipment. The Agency reserves the right to review the bids solicited by the ESCO for equipment and labor.

**Section 3.3** Construction and Equipment installation shall proceed in accordance with the construction schedule approved by Agency and attached hereto as Exhibit C.

**Section 3.4** Systems Startup and Equipment Commissioning: The ESCO shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified by the manufacturer and prior to acceptance of the project by Agency. The ESCO shall provide notice to the Agency of the scheduled test(s) and the Agency and/or its designees shall have the right to be present at any or all such tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures.

**Section 3.5** In order for ESCO to receive payments during the design/build stages of the Contract, the Agency shall authorize disbursements from any escrow account established and

maintained pursuant to any escrow Contract entered into between Agency and any third party financing company. Agency shall request disbursements from the escrow account only for portions of the equipment that are functionally complete, operationally independent, and accepted by the Agency.

**Section 3.6** Statutory Requirements. In the installation of the Equipment, ESCO shall be required, and shall require its contractors and subcontractors to comply with all Terms and Conditions under contract DEB20110611, unless noted and agreed to as an exception.

## **SECTION 4.0 WARRANTIES**

**Section 4.1** General. Should any item of Equipment be found to be defective within one (1) year from the date of installation, ESCO agrees to repair such item or, if necessary, furnish and install, without charge, similar items to replace it; provided, however, that the original item is returned to ESCO and inspection by the manufacturer establishes the claim. All shipping and transportation costs involved in the repair or replacement of the defective Equipment shall be paid by ESCO.

On all systems installed pursuant to this Contract, ESCO shall provide, at no charge during the warranty period, any labor required to repair or replace defective Equipment or parts. Such labor shall include adjustment of controls, air balancing, and correction of mechanical difficulties if such adjustments are due to defective equipment or improper installation.

If the Equipment fails to fulfill the performance guarantees, ESCO shall have the opportunity to make such changes as it deems necessary to fulfill such guarantees. If a demonstration is required, ESCO shall be given the opportunity to test the equipment under requisite conditions.

The warranty provisions under this Section 4.1 are in addition to and not in lieu of any warranties made by equipment or component manufacturers. After installation of all ECMs, ESCO shall deliver to the Agency all manufacturer warranty certificates, documents, operation and maintenance instructions and manuals, and similar documents.

**Section 4.2** Equipment Warranties. ESCO covenants and agrees that all Equipment installed as part of this Contract is new, in good and proper working condition and protected by appropriate written warranties covering all parts and equipment performance. ESCO further agrees to deliver to the Agency for inspection and approval, all such written warranties and which shall be attached, to pursue rights and remedies against manufacturer of the Equipment under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance (provided, however, that ESCO shall have no obligation to incur costs to legally enforce any such rights or remedies), to notify the Agency whenever defects in Equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by ESCO. The cost of any risk of damage or damage to the Equipment and its performance, including damage to property and Equipment of the Agency or the Premises, due to ESCO's failure to exercise its warranty rights shall be borne solely by ESCO.

All warranties shall be transferable and extend to the Agency. ESCO shall use commercially reasonable efforts to have the warranties specify that only new, and not reconditioned parts, may be used and installed when repair is necessitated by malfunction.

All ESCO warranties required hereunder shall be in force for a minimum of one year from the Commencement Date as defined in Section 3.1 hereof.

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

**Section 4.3** Performance and Payment Bond. ESCO shall provide an annually renewable Performance and Payment Bond in the full amount of the contract. The costs for said bonds shall be included in the contract price. The bond may be extended for additional term(s) of twelve (12) months at the option of the surety, by continuation certificate executed by the surety. At no time will the period of exposure under the bonds exceed twelve (12) months. Notification of non-renewal shall be given by certified mail to the obligee no later than thirty (30) days prior to the expiration date of the bonds. Failure of the surety to issue a Continuation Certificate, or otherwise extend the term, shall not constitute a default under the performance and/or payment bond.

#### **SECTION 5.0 TRAINING BY ESCO**

The ESCO shall conduct the training program related to operation of the equipment described in Exhibit A. The training related to the scope specified in Exhibit A must be completed prior to acceptance of the Equipment installation; such acceptance shall not be unreasonably delayed by the Agency. The ESCO shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software for 24 months after installation is completed. Such training shall be provided at no additional charge to the Agency.

#### **SECTION 6.0 PERFORMANCE BY ESCO**

**Section 6.1** ESCO shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the manufacturer standards and the construction schedule specified in Exhibit C. The Agency reserves the right to review the work performed by ESCO and to direct ESCO to take certain corrective action if, in the opinion of the Agency, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by ESCO's performance of the work shall be borne by ESCO.

#### **SECTION 7.0 OWNERSHIP**

**Section 7.1** Ownership of Certain Proprietary Property Rights. Agency shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. The ESCO shall grant to the Agency a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Agency to continue to operate, maintain, and repair the Equipment in a manner that will yield maximal energy consumption reductions.

**Section 7.2** Ownership of Existing Equipment. Ownership of the equipment and materials presently existing at the Premises at the time of execution of this Contract shall remain the property of the Agency even if it is replaced or its operation made unnecessary by work performed by ESCO pursuant to this Contract. If applicable, ESCO shall advise the Agency in writing of all equipment and materials to be replaced at the Premises and the Agency shall within fifteen (15) days designate in writing to the ESCO which equipment and materials that should not be disposed of off-site by the ESCO. It is understood and agreed to by both Parties that the Agency shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. The ESCO shall be responsible for the disposal of all equipment and materials, excluding any hazardous waste materials, such as asbestos, designated by the Agency as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

**Section 7.3** Ownership of New Equipment. Upon installation of the Equipment by ESCO and acceptance by Agency, the Agency shall own the Equipment. Agency shall execute the documents necessary for ESCO or the third party financing company to secure and maintain a security interest in the Equipment.

## **SECTION 8 RISK OF LOSS**

**Section 8.1** ESCO will not have responsibility for repair or replacement necessitated by freezing weather, electric power failure, low voltage, burned-out main or branch fuses, low water pressure, vandalism, misuse or abuse of the system(s), requirements of governmental, regulatory or insurance agencies, or other causes beyond control of ESCO.

**Section 8.2** ESCO's obligations under this Contract do not include the identification, abatement or removal of any asbestos products or other hazardous substances. In the event such products or substances are encountered, ESCO's sole obligation will be to notify the Agency of the existence of such products and materials. ESCO shall have the right thereafter to suspend its work until such products and materials and the resultant hazards are removed. The time for completion of the work shall be extended to the extent caused by the suspension and the contract price equitably adjusted.

**Section 8.3** ESCO shall not be liable for any delay, loss, damage or detention caused by 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 8.4** 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.

**Section 8.5** Intentionally deleted. .

**Section 8.6** 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's negligence or willful misconduct in the performance of the work under this Contract.

**Section 8.7** 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.

## **SECTION 9 EVENTS OF DEFAULT**

**Section 9.1.** 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 a service of more than sixty (60) 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. 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

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

**Section 9.2** 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 A are not provided due to failure of ESCO to properly design, install, repair or adjust the Equipment as may be required hereunder except that such failure, if corrected or cured within thirty (30) days after written notice by Agency to ESCO demanding that such failure be cured, shall be deemed cured for purposes of this Contract;
- ii. Any representation or warranty furnished by ESCO in this Contract is false or misleading in any material respect when made;
- iii. Failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in Exhibit A.
- iv. Any other material failure by ESCO 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 thirty (30) days after written notice to ESCO demanding that such failure to perform be cured, if corrected or cured within thirty (30) days after ESCO's receipt of such written notice shall be deemed cured for the purpose of this Contract.
- v. Any lien or encumbrance upon the equipment by any subcontractor, laborer or material man of ESCO;
- vi. 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;
- vii. Any change in ownership or control of the ESCO without the prior approval of the Agency, which shall not be unreasonably withheld;
- viii. Failure by the ESCO to pay any amount due the Agency or perform any obligation under the terms of this Contract ; or
- ix. Repossession or removal of the Equipment by ESCO or a third party without good cause.

**SECTION 10.0 REMEDIES UPON DEFAULT**

**Section 10.1** 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 both 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, enter the Premises, and dismantle and/or remove its Equipment from the Premises, without liability to Agency;
- (iii) Any legal action relating to this agreement, or breach thereof, shall be commenced in the Circuit Court of King and Queen County, Virginia. Both customer 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 10.2 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. If the payments under this Contract have been assigned, and the Equipment has been accepted by Agency, the Agency shall declare ESCO to be in default, but continue to make the payments under Exhibit B for the Equipment which has been so accepted. If no Equipment has been so accepted, Agency may terminate this Contract without liability to make any payments;
- iii. If the payments under this Contract have not been assigned, Agency may set off or counterclaim against its obligation to make any of the payments provided in default; or
- iv. 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) payments made to ESCO or its assignee which represents payment towards a unit of Equipment for which acceptance was revoked because of a latent defect (b) the difference in price between the market price of the Equipment which was not delivered or which was rejected (or the actual purchase price if Agency purchases replacements (like Equipment) for any undelivered or rejected unit of Equipment) and the purchase price indicated in the Contract for such units of Equipment) (c) damages as a result of breach of warranty, failure to meet specifications, or damages incurred by Agency resulting from the delivery of Equipment which is defective or fails to meet specifications, or resulting from ESCO's failure to comply with any other requirements of this Contract, and (d) any other damages recoverable by law;
- v. Any legal action relating to this agreement, or breach thereof, shall be commenced in the Circuit Court of King and Queen County, Courtland, Virginia. Both customer 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 11.0 REPRESENTATIONS AND WARRANTIES**

Each party warrants and represents to the other that:

- i. It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
- ii. Its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- iii. Its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
- iv. It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances,

regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

**SECTION 12.0 ADDITIONAL REPRESENTATIONS OF THE PARTIES.**

**Section 12.1** Agency hereby warrants, represents and promises that:

- i. 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 12.2** ESCO hereby warrants, represents and promises that:

- i. Before commencing performance of this Contract:
- ii. It is or shall become licensed or otherwise permitted to do business in the Commonwealth of Virginia and shall have a Class A Contractor's License
- iii. ESCO will carry Commercial General Liability Insurance and Automobile Insurance with occurrence and aggregate limits of the following, which will include products and completed operations coverage, and shall name Agency as an additional insured on these policies to the extent indemnified herein (excluding Workers Compensation).

**Workers Compensation:**

State:	Statutory
Applicable Federal	Statutory
Employer's Liability	\$1,000,000

**General Liability:**

General per Contract Aggregate	\$3,000,000
Products – Completed Operations per Contract	\$3,000,000
Personal and Advertising Injury	\$3,000,000

**Each Occurrence**

(Bodily Injury and Property Damage)	\$3,000,000
Property Damage liability insurance shall provide Explosion, Collapse and Underground Coverage where applicable	

**Excess or Umbrella Liability:**

General per Contract Aggregate	\$1,000,000
Each Occurrence	\$1,000,000

**Automobile Liability:**

Bodily Injury:	
o Each Person	\$1,000,000
o Each Accident	\$1,000,000
Property Damage	
o Each Accident	\$1,000,000
o Or a combined Single Limit of	\$1,000,000
o Include applicable No-Fault converges	
o Include all owned vehicles non-owned vehicles and hired vehicles	

Agency will carry shall cause ESCO to be named as an additional insured in a policy of builder's risk insurance on each building while then subject to the Work, including extended coverage, with limits equal to the replacement value of such building, including equipment installed thereon under this Contract. Agency will provide a copy of the builder's risk policy to ESCO for review.



- iv. It shall have provided all performance and payment bonds and labor and material bonds for the work to be performed.
- v. It shall use qualified subcontractors and delegates, licensed and bonded in this state to perform the work so subcontracted or delegated pursuant to the terms hereof;
- vi. 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 13.0 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 14.0 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 15.0 ESCO RESPONSIBILITY PROVISIONS**

**Section 15.1** ESCO certifies that it is not currently under suspension or debarment by the Commonwealth of Virginia, any other state, or the federal government.

**Section 15.2** 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 15.3** 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 16.0 INTENTIONALLY OMITTED.**

### **SECTION 17.0 SPECIAL PROVISIONS**

**Section 17.1** For future Energy Savings Performance Contracting (ESPC) work, King and Queen County Public Schools, and their funded entities, including King and Queen County reserves the right to conduct future phases of work with ABM Building Service as their ESCO partner.

### **SECTION 18.0 CONFIRMATION OF FUNDING**

**Section 18.0** Confirmation of Funding: This contract is contingent upon Agency confirmation of funding. (see Exhibit D)

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, 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 for which payment to ESCO has not been made. 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.

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

ESCO:

PURCHASING AGENCY:

By: \_\_\_\_\_  
(Signature in Ink)

By: \_\_\_\_\_  
(Signature in Ink)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
(Signature and Date)

Attest: \_\_\_\_\_  
(Signature and Date)

Schedules, Exhibits, Attachments

## Exhibit A – Scope of Work

The following pages are the technical site assessment broken down by each individual building by General Description. Below is a complete list of each ECM. Each ECM is described in detail on the following pages. The building by building information is presented in this order:

**The ECM's listed below are in order based on the Department of Energy's Technology Categories. Therefore if ECM numbers are missing it is because that category does not apply.**

### **Central High School**

- ECM – CHS1 – Boiler Plant Improvements
- ECM – CHS3 – Building Automation System (BAS) Installation
- ECM – CHS4 – Energy Recovery Ventilator Repair
- ECM – CHS5 – Lighting Upgrades
- ECM – CHS8 – Variable Frequency Drives

### **King and Queen Elementary**

- ECM – KQES3 - Building Automation System (BAS) Installation
- ECM – KQES4 – HVAC Upgrades
- ECM – KQES5 – Lighting Upgrades

### **Lawson Marriott Elementary School**

- ECM – LMES3 - Building Automation System (BAS) Installation
- ECM – LMES4 – HVAC Upgrades
- ECM – LMES5 – Lighting Upgrades: With Classroom Fixture Replacement

# Central High School Detailed Scope

## ECM Number: CHS1

### ECM Title: Boiler Plant Improvements

- Remove two (2) existing 1,200 MBH (input) 960 MNH (output) propane boilers and properly dispose of offsite
- Provide all required rigging and crane services
- Provide for freight, shipping, storage, and transport of all new equipment
- Provide and install two (2) new condensing boilers Model # FBL1001 (1,000,000 BTU input, 962,000 BTU output, LP, PVC Vent) or equivalent
- Provide and install secondary circulating pumps for new condensing boilers
- Modify existing stack connections to fit new equipment
- Provide required electrical and piping connections to existing infrastructure
- Provide and install insulation on new piping
- Provide all required labor, material, travel, freight, and permits as required
- Check, test and startup new equipment

## ECM Number: CHS3

### ECM Title: Building Automation System (BAS) Installation

- Decommission existing local and integrated controls
- Install new wireless networked thermostats for WSHPs 1-67 and ERV 1.
- Install wireless repeaters as necessary to complete the mesh network throughout the facility
- Allow local controls to maintain the boiler, cooling tower, and pumps
- Install appliance manager to network new wireless controls to an online platform.
- Provide set points and scheduling program
- Test and commission all controls points
- Provide up to 8 hours of owner training

## ECM Number: CHS4

### ECM Title: Energy Recovery Ventilator Repair

- Replace 4 non-functioning motor starters.
- Replace One (1) ½ horsepower enthalpy wheel motor and install one (1) new five (5) foot link belt.
- Replace nonfunctioning 460v primary 120v secondary control transformer
- Replace two (2) existing failed blower motor belts
- Replace air filters
- Clean evaporator coils
- Replace condenser with a new nominal ten (10) ton condenser to match existing evaporator coil.

- New plasma air cleaners will be installed in each indoor unit to isolate and eliminate air contaminants at the source which will lessen the amount of outside air needed to meet ASHRAE Standard 62.1.
- Check, test and startup new equipment

**ECM Number: CHS5**

**ECM Title: Lighting Upgrades**

- Retrofit all existing 4ft T12 fixtures with new electronic low power factor ballasts and 28 watt T8 lamps
- Replace 400 watt gymnasium fixtures with new 4 lamp T5 high output fixtures with protective lenses and wire cages
- Replace existing 400 watt exterior lights with new 120 watt LEDs
- Replace existing 26 watt compact fluorescents in the interior can lights with new 15 watt LEDs
- Install wall or ceiling mounted lighting occupancy sensors where needed

\*\* Please see attached room by room lighting scope for full details of existing and proposed

**ECM Number: CHS8**

**ECM Title: Variable Frequency Drives**

- Replace two (2) existing 40hp constant volume condenser water pumps with new.
  - Sensorless integrated variable frequency drives
  - Suction inlet guides and triple duty valves
  - Maximum 780 gallons per minute (GPM)
  - Rated at 140 foot of head
  - Integrated fused disconnect
- Replace existing 15hp constant volume closed circuit cooling tower fan motor with new inverter rated motor, with new sheave pulley
- Install new variable frequency drive integrated with inlet water temperature sensor
- Check, test and startup new equipment

# King and Queen Elementary School Detailed Scope

## ECM Number: KQES3

### ECM Title: Building Automation System (BAS) Installation

- Decommission existing local and integrated controls
  - RTU 1-25
  - HP 1-3
  - Boiler 1
- Install new wireless networked thermostats for RTUs 1-25 and HPs 1-3.
- Install wireless repeaters as necessary to complete the mesh network throughout the facility
- Install appliance manager to network new wireless controls to an online platform.
- Provide set points and scheduling program
- Test and commission all controls points
- Provide up to 8 hours of owner training

## ECM Number: KQES4

### ECM Title: HVAC Upgrades

- Remove fifteen (15) existing packaged rooftop HVAC units and three (3) existing split heat pumps systems and dispose of offsite
- Decommission and remove existing LP boiler
- Provide all required rigging and crane services
- Provide for freight, shipping, storage, and transport of all new equipment
- Provide and install sixteen (16) new gas/electric packaged rooftop systems and 3 split heat pump systems, complete with new fused service disconnects
- Route gas piping from existing boiler room to the roof to serve the new units that are replacing the existing electric/electric RTUs (4).
- Provide required electrical and piping connections to existing infrastructure
- Provide all required labor, material, travel, freight, and permits as required
- Check, test and startup new equipment

\*\* Please see attached submittals and equipment schedule

## ECM Number: KQES5

### ECM Title: Lighting Upgrades

- Retrofit all existing 4ft T12 fixtures with new electronic low power factor ballasts and 28 watt T8 lamps
- Replace 60 watt incandescent with 7 watt LEDs
- Replace existing 400 watt exterior lights with new 120 watt LEDs
- Replace existing 150 watt exterior wallpack lights with new 40 watt LEDs
- Install wall or ceiling mounted lighting occupancy sensors
- Retrofit all existing 4ft T12 fixtures with new electronic low power factor ballasts and 28 watt T8 lamps associated with Bus Garage.

\*\* Please see attached room by room lighting scope for full details of existing and proposed

# Lawson Marriott Elementary School Detailed Scope

**ECM Number: LMES3**

**ECM Title: Building Automation System (BAS) Installation**

- Decommission existing local and integrated controls
  - RTU 1-27
- Install new wireless networked thermostats for RTUs 1-27.
- Install wireless repeaters as necessary to complete the mesh network throughout the facility
- Install appliance manager to network new wireless controls to an online platform.
- Provide set points and scheduling program
- Test and commission all controls points
- Provide up to 8 hours of owner training

**ECM Number: LMES4**

**ECM Title: HVAC Upgrades**

- Remove eleven (11) existing packaged rooftop HVAC units and dispose of offsite
- Provide all required rigging and crane services
- Provide for freight, shipping, storage, and transport of all new equipment
- Provide and install eleven (11) new electric/electric packaged rooftop systems complete with new fused service disconnects
- Provide required electrical and condensation piping connections to existing infrastructure
- Provide all required labor, material, travel, freight, and permits as required
- Check, test and startup new equipment

\*\* Please see attached submittals and equipment schedule

**ECM Number: LMES5**

**ECM Title: Lighting upgrades with some classroom fixture replacement**

- Replace existing pendant, egg crate fixtures within classrooms with new wraparound fixtures with low power factor ballasts and T8 28 watt lamps
- Retrofit all existing 4ft T12 fixtures with new electronic low power factor ballasts and 28 watt T8 lamps
- Replace 60 watt incandescents with 7 watt LEDs
- Replace existing 13 watt compact fluorescents with 9 watt LEDs
- Replace existing 400 watt exterior lights with new 120 watt LEDs
- Replace existing 150 watt exterior wallpack lights with new 40 watt LEDs
- Install wall or ceiling mounted lighting occupancy sensors

\*\* Please see attached room by room lighting scope for full details of existing and proposed

**Exhibit B – Anticipated Construction Installment Payment Schedule**

<b>Project Sales Price</b>	<b>\$ 1,420,781.00</b>	
<b>Payment</b>	<b>Amount</b>	<b>Project Completion</b>
Mobilization	\$ 142,078.10	0%
Equipment Arrival Onsite	\$ 213,117.15	25%
1st Progress Payment	\$ 426,234.30	50%
2nd Progress Payment	\$ 497,273.35	95%
Retainage	\$ 142,078.10	100%
<b>Total</b>	<b>\$ 1,420,781.00</b>	

**\*Note: the schedules and payment installments are estimated time periods. Dates are subject to change depending on availability of equipment and access to the facility. Updated schedules and projections will be made available to the Agency.**



## Exhibit C – Project Schedule\*

### Overview

Preliminary Project Timeline King and Queen County Public Schools																																																		
	Oct-15				Nov-15				Dec-15				Jan-16				Feb-16				Mar-16				Apr-16				May-16				Jun-16																	
	1	7	14	21	28	1	7	14	21	28	1	7	14	21	28	1	7	14	21	28	1	7	14	21	28	1	7	14	21	28	1	7	14	21	28	1	7	14	21	28	1	7	14	21	28					
Lighting Upgrades																																																		
Building Automation Upgrades																																																		
Boiler Plant Improvements																																																		
HVAC Upgrades																																																		
Variable Frequency Drives																																																		
Commissioning																																																		
Punchlist																																																		

*\*Note: the above are estimated time periods and schedules. Dates are subject to change depending on availability of equipment and access to the facility. Updated schedules and projections will be made available upon request of the agency if requested.*

Exhibit D  
Notice to Proceed

This Notice to Proceed is attached to and made an integral part of that certain Energy Equipment Installation Contract # 85730116 dated \_\_\_\_\_, 2015 by and between ABM Building Services, LLC (the "ESCO") and King and Queen County Public Schools, (the "Agency") which provides as follows:

1) With regards to section 18.0 – Confirmation of Funding stating that “This contract is contingent upon Agency confirmation of funding”.

a) King and Queen County hereby confirms that project funding has been appropriated. The contingency requiring King and Queen County to provide ABM Building Services with evidence that funding acceptable to the Agency for the project has been allocated is hereby satisfied.

All other terms and conditions of the Contract shall remain the same and in full force and effect. Having read all of the foregoing, we, the undersigned, hereby ratify, approve, accept, confirm and acknowledge the same to be part of the contract and hereby authorize the ESCO to proceed with the installation of all ECM's.

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

ESCO (ESCO):

PURCHASING AGENCY:

By: \_\_\_\_\_  
(Signature in Ink)

By: \_\_\_\_\_  
(Signature in Ink)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_  
(Signature and Date)

Attest: \_\_\_\_\_  
(Signature and Date)