

# ENERGY SERVICES CONTRACT

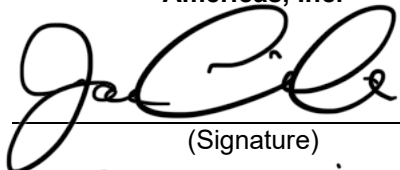
This is an Energy Services Contract (this "Contract") by and between Schneider Electric Buildings Americas, Inc. ("ESCO") and City of St. Joseph, Missouri ("Customer"), dated \_\_\_\_\_ (the "Date of Commencement") whereby ESCO agrees to provide and perform the energy conservation measures ("ECMs") set forth in the Contract Documents including the Schedules and Exhibit(s) listed below and incorporated fully herein, subject to the terms and conditions set forth herein:

The following sections and schedules are listed below and incorporated herein shall be in addition to the original Energy Services Contract signed December 17, 2018 between ESCO and the Customer and the Change Order #1 signed April 25<sup>th</sup>, 2019 between ESCO and the Customer.

- Schedule A: Scope of Work**
- Schedule C: Performance Guarantee**
- Schedule D: Measurement & Verification ("M&V") Plan**

The parties agree that with respect to the following schedules listed below, the rights and obligations established in the original Energy Services Contract signed December 17, 2018 between ESCO and the Customer and the Change Order #1 signed April 25<sup>th</sup>, 2019 between ESCO and the Customer shall continue to be in full effect and shall also be applicable to this Contract.

- Schedule B: Performance Assurance Support Services Agreement**
- Exhibit A – Performance Assurance Support Services**
- Schedule E: Customer Responsibilities for Performance Guarantee**

<b>City of St. Joseph, Missouri</b>		<b>Schneider Electric Buildings Americas, Inc.</b>	
By _____	By _____		_____
(Signature)	(Signature)	JOE CINALLI	
Print Name _____	Print Name _____	Director, Midwest	
Title _____	Title _____		

## DEFINITIONS

1. "Actual Savings" is defined as the sum of the total savings realized using the procedures for measuring of savings as set forth in Schedule D plus all adjustments and non-measured savings.
2. "Annual Savings Guarantee" is the amount of the Actual Savings that is guaranteed by ESCO for a twelve (12) month period beginning on the Savings Guarantee Commencement Date and any subsequent twelve (12) month anniversary thereafter.
3. "Change Order" is defined as a written change to the Project executed by both parties.
4. "Contract Documents" consist of this Contract with the terms and conditions set forth herein, the Schedules identified above, and any mutually agreed upon written modification issued after execution of this Contract as provided in a Change Order. The intent of the Contract Documents is to include all

items necessary for the proper execution and completion of the Work by ESCO. The Contract Documents are correlative and complimentary, and ESCO'S performance shall be required only to the extent consistent with the Contract Documents.

5. "Date of Commencement" is the later of the date first written above or the date funding occurs.
6. "Day" as used herein shall mean calendar day unless otherwise specifically designated.
7. "Excess Savings" is the amount of Actual Savings in excess of the Performance Guarantee to date including any savings achieved during construction.
8. "Guarantee Year" is the twelve (12) month period beginning on the Savings Guarantee Commencement Date and each subsequent twelve (12) month anniversary thereafter.
9. "Performance Guarantee" is the sum of the Annual Savings Guarantee for each year of the guarantee term as set forth in Schedule C unless terminated earlier in accordance with the Contract Documents.
10. "Performance Period" is defined as the period beginning on the Savings Guarantee Commencement Date and extending through the time period as defined in the Performance Guarantee.
11. "Project" refers to scope of work, as set forth in Schedule A: Scope of Work, made to facilities of Customer.
12. "Savings Guarantee Commencement Date" means the first day of the first utility billing period following the month in which ESCO delivers to Customer the project warranty letter.
13. "Substantial Completion" refers to and shall mean the date the individual scopes of work are sufficiently implemented in accordance with the Contract Documents that Customer may utilize the Project for the use for which it is intended, and is fully complete except for minor items, adjustments and/or corrections.
14. "Warranty Period" is for one (1) year from the dates set forth in the project warranty letter.
15. "Work" means the services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by ESCO to fulfill ESCO'S obligations. The Work may constitute the whole or a part of the Project.

# TERMS AND CONDITIONS OF IMPLEMENTATION PORTION OF CONTRACT

## ARTICLE 1 – DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

1.1 ESCO projects it will achieve Substantial Completion of the Work within 600 days from Date of Commencement (the “Contract Time”), subject to adjustments of this Contract Time as provided in the Contract Documents.

## ARTICLE 2 – CONTRACT PRICE AND PAYMENTS

2.1 The total of all implementation contract payments shall be \$1,615,506 (the “Contract Price”). ESCO shall invoice Customer for construction progress payments which shall be paid to ESCO monthly based on the percentage completion of items delineated on a “Schedule of Values” completed during the prior month. The Schedule of Values will be developed by ESCO and provided to Customer at the beginning of project implementation. The Schedule of Values will be based upon the project cost less the Project Mobilization Payment. If any payment is over thirty (30) days late from the due date stated on the invoice, Customer shall pay to ESCO a 1% late penalty per month and ESCO reserves the right to terminate this Contract due to non-payment upon fifteen (15) days prior written notice.

2.2 Within thirty (30) days of the Date of Commencement, Customer shall make payment to ESCO for expenses incurred to date and project mobilization expenses, including but not limited to engineering, project start-up and mobilization, equipment and material procurement, bonds and other expenses incurred to date (“Project Mobilization Payment”) in the amount of not to exceed 20% of the implementation contract payment total of the Contract Price as provided for on the Project Mobilization Payment invoice attached hereto and made a part hereof.

2.3 For the initial one (1) year beginning at the Savings Guarantee Commencement Date, Customer shall receive the services as described in the Performance Assurance Support Services Agreement at no additional cost. Thereafter, the Performance Assurance Support Services Agreement shall automatically renew for a period of one (1) year, whereby Customer can maintain the current service, upgrade the level of service, or terminate, as provided for in Schedule B.

2.4 Final payment for the Work shall not become due until ESCO has delivered to Customer a complete release of all liens arising out of this Contract covering all labor, materials, and equipment for which a lien could be filed, or a bond satisfactory to Customer to indemnify Customer against such lien.

2.5 The making of final payment shall constitute a waiver of claims by Customer except those arising from (1) liens, claims, security interests or encumbrances arising out of the Contract and which are unsettled, (2) failure of the Work to comply with the requirements of the Contract Documents, or (3) terms of special warranties required by the Contract Documents.

2.6 Notwithstanding any provision herein to the contrary, Customer is obligated only to make the payments set forth in this Contract as may lawfully be made from funds budgeted and appropriated for that purpose during the Customer’s then current fiscal year at the direction of the City of St. Joseph. If no funds are appropriated or otherwise made legally available to make any required payments for this Contract during the next occurring fiscal year (an “Event of Non-Appropriation”), this Contract will terminate at the end of the then current fiscal year as if terminated expressly. The failure or inability of Customer to appropriate funds for this Contract in any subsequent fiscal year shall not be deemed a breach of this Contract by any party. Should Customer terminate the contract for non-appropriation, Customer must pay ESCO for all Work installed at the time of the notice of termination. Additionally, should the contract be terminated by Customer, all requirements of the Performance Guarantee would be voided.

## **ARTICLE 3 – CUSTOMER**

3.1 Except for permits and fees that are explicitly the responsibility of ESCO under the Contract Documents, Customer shall secure and pay for necessary approvals, inspections, easements, assessments and charges required for the use or occupancy of permanent structures or permanent changes in facilities, including, but not limited to inspections for concrete and/or earthen compaction, where applicable.

3.2 If ESCO fails to correct Work that is not in material accordance with the requirements of the Contract Documents within the Warranty Period (“Defective Work”) or repeatedly fails to carry out the Work in accordance with the Contract Documents, Customer shall provide written notice to ESCO detailing any alleged deficiencies. If the noticed deficiencies are not resolved or if ESCO does not diligently commence to address such deficiencies within thirty (30) days of receipt of the written notice, Customer may order ESCO to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, the right of Customer to stop the Work shall not give rise to a duty on the part of Customer to exercise this right for the benefit of ESCO or any other person or entity.

3.3 Customer agrees to repair or replace as necessary any defective existing equipment that is intended to be reused.

3.4 Information under Customer’s control shall be furnished by Customer with reasonable promptness as requested by ESCO.

3.5 Customer shall notify ESCO in writing of any or all uses or restrictions in usage of all areas of Customer’s facility or the location of the Project.

3.6 The foregoing are in addition to any other duties and responsibilities of Customer set forth herein or in any other Contract Documents, including but not limited to those duties and responsibilities set forth in Schedule E.

## **ARTICLE 4 – ESCO**

4.1 ESCO shall supervise and direct the Work, using ESCO’S skill and attention. ESCO shall be solely responsible for and have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters, in coordination with Plant Staff.

4.2 Unless otherwise provided in the Contract Documents, ESCO shall provide and pay for labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Work.

4.3 ESCO warrants to Customer for a period of one (1) year from the corresponding dates of each project warranty letter that the materials and equipment provided by ESCO will be of good quality and new unless the Contract Documents require or permit otherwise, and further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. ESCO’S warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by or for ESCO, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. ESCO shall repair or replace defective material or equipment and re-perform Work to correct any defect within the Warranty Period. ESCO will pass on to Customer any manufacturer’s warranty to the extent permitted. THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND REMEDIES WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OR TRADE).

4.4 Unless otherwise provided in the Contract Documents, ESCO shall pay sales, consumer, use, and other similar taxes which are legally enacted when bids are received or negotiations concluded, whether or not effective or merely scheduled to go into effect, and shall secure and pay for the building permit and other permits, licenses and inspections necessary for proper execution and completion of the Work.

4.5 ESCO shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work.

4.6 ESCO shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, ESCO shall remove from and about Project waste materials, rubbish, ESCO's tools, equipment, machinery and surplus material.

4.7 ESCO shall provide Customer access to the Work in preparation and progress wherever located.

4.8 ESCO shall pay all royalties and license fees, shall defend Customer from suits or claims for infringement of patent rights, and shall hold Customer harmless from loss on account thereof.

4.9 To the extent allowed by law, except to the extent of the negligence or willful misconduct of Customer, or its agents, representatives, employees, officers, directors or assigns, ESCO shall indemnify and hold harmless Customer, and agents and employees thereof from and against all third party claims, damages, losses and expenses, including, but not limited to, reasonable attorney's fees, arising out of or resulting from performance of the Work provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including the Work itself), but only to the extent caused in whole or in part by willful or negligent acts or omissions of ESCO, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

4.10 NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, ESCO SHALL NOT BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER. CUSTOMER AGREES TO THE FOREGOING TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF MISSOURI. The remedies of Customer set forth herein are exclusive where so stated and the total cumulative liability of ESCO with respect to this Contract or anything done in connection therewith, such as the use of any product covered by or furnished under the Contract, whether in contract, in tort (including negligence or strict liability) or otherwise, shall not exceed the Contract Price for the specific product, equipment, material or service work performed that gives rise to the claim, excluding third party claims for personal injury, death or property damage or as may be required by law.

## **ARTICLE 5 – [INTENTIONALLY OMITTED]**

## **ARTICLE 6 – SUBCONTRACTS**

6.1 A Subcontractor is a person or entity who has a direct contract with ESCO to perform a portion of the Work at the site.

6.2 Unless otherwise stated in the Contract Documents or the bidding requirements ESCO, if requested in writing by Customer, shall furnish in writing to Customer the names of the Subcontractors to whom ESCO plans to award Work. Contracts between ESCO and Subcontractors shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to ESCO by the terms of the Contract Documents, and to assume all the obligations and responsibilities which ESCO, by the Contract Documents, assumes toward Customer.

## **ARTICLE 7 – CHANGES IN THE WORK**

7.1 Customer may request changes in Work consisting of additions, deletions or modifications, whereby, the Contract Price, Contract Time and/or Performance Guarantee shall be adjusted accordingly. Such changes in the Work shall be authorized by written Change Order that shall be mutually agreed to and signed by Customer and ESCO. The parties shall negotiate in good faith and use their best efforts to execute any Change Order, and any Change Order must be fully executed in writing by Customer and ESCO prior to any actual changes being implemented.

7.2 The cost or credit to Customer from a change in the Work shall be determined by mutual agreement and, in the absence of a mutual agreement being reached within a reasonable amount of time after the request for such Change Order was made, the cost or credit to Customer shall be decided by the dispute resolution process as provided in the Contract Documents.

7.3 In the event of any suspension or delay due to the acts or omissions of Customer or Customer directives to stop Work for any reason, through no fault of ESCO, the Contract Time for Substantial Completion shall be extended to reflect such period of interruption and the Contract Price shall be equitably adjusted to recover ESCO'S costs of demobilization, delay and remobilization related to such suspension or delay. ESCO agrees it will cooperate with Customer and mitigate such costs to the extent and efforts commercially reasonable. If such suspension or delay continues for more than ninety (90) consecutive days, through no act or fault of ESCO, ESCO may terminate this Contract and recover from Customer payment for Work executed.

## **ARTICLE 8 – TIME**

8.1 The date of Substantial Completion is the date certified by ESCO in accordance with Article 9.3.

8.2 If ESCO is delayed at any time in progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any other causes which are beyond the control of ESCO, then the parties hereto agree to execute a Change Order allowing for a mutually agreeable extension of time for performance of ESCO'S Work to cover such delay.

## **ARTICLE 9 – PAYMENTS AND COMPLETION**

9.1 Payments shall be made as provided in Article 2 of the Contract.

9.2 Payments may be withheld on account of (1) Defective Work not remedied per Article 3.2, (2) failure of ESCO to make payments properly to the Subcontractors or for labor, materials or equipment, or (3) repeated failure to carry out the Work in accordance with the Contract Documents.

9.3 Upon Substantial Completion of each portion of the Work, ESCO will issue a project warranty letter and operations and maintenance manuals for Schedule A Scope of Work to Customer.

9.4 Final payment shall not become due until ESCO has delivered to Customer a complete release of all liens arising out of this Contract covering all labor, materials, and equipment for which a lien could be filed.

## **ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY**

10.1 ESCO shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. ESCO shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby, (2) the Work and materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto.

10.2 ESCO shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss.

10.3 The scope of work or service to be performed by ESCO pursuant to this Contract, and the compensation to be paid to ESCO hereunder for Work or services performed, expressly exclude any Work or service of any nature associated or connected with the identification, abatement, cleanup, control or removal of environmentally hazardous materials beyond what is specifically defined and identified in Schedule A of this Contract. "Hazardous Materials" to include, but not be limited to, asbestos and PCBs discovered in or on the premises. Customer agrees that all duties and obligations in connection with any hazardous materials located in or on the premises, other than those defined in Schedule A, are strictly the responsibility of Customer. Customer warrants and represents to the best of Customer's knowledge there are no hazardous materials in or on the premises which will affect, be affected by, come in contact with, or otherwise impact upon or interfere with the Work to be performed by ESCO pursuant to this Contract.

10.4 Should ESCO become aware or suspect the presence of hazardous materials beyond those to be addressed in Schedule A during performance of its Work under this Contract, ESCO will be authorized to cease Work in the affected area immediately and will promptly notify Customer of the conditions discovered. Should ESCO stop Work because of the discovery or suspicion of hazardous materials, the time for performance of ESCO'S Work or service will be extended to cover the period required for abatement, cleanup, or removal of the hazardous materials. ESCO will not be held responsible for any claims, damages, costs, or expenses of any kind associated with the period during which ESCO has stopped Work as a result of hazardous materials. Agreeable by both parties, ESCO will be entitled to an equitable adjustment of the Contract Price for any increased costs or other charges incurred by ESCO in connection with the existence of its rights under this paragraph.

10.5 Customer will be responsible for taking all necessary steps to correct, abate, clean up, or control hazardous materials not addressed by ESCO in Schedule A in accordance with all applicable statutes and regulations.

## **ARTICLE 11 – INSURANCE AND BONDS**

11.1 ESCO shall maintain adequate levels and types of insurance coverage appropriate to its business and profession and as may be required by applicable law and the Contract Documents. Such insurance shall be in companies authorized to do business in the jurisdiction in which the Project is located with an A.M. Best's rating of at least A- VII and as a minimum shall include Workers' Compensation and Employer's Liability at statutory limits ESCO shall maintain at all times during the term of this Agreement and for a period of three (3) years thereafter Automobile Liability covering all owned, hired and other non-owned vehicles with a combined single limit of One Million Dollars (\$1,000,000) and Commercial General Liability covering public liability, property damage and completed operations with limits not less than Two Million Dollars (\$2,000,000) per occurrence, and Four Million Dollars (\$4,000,000) general aggregate. ESCO shall maintain Professional Liability Insurance with minimum limits of Two Million Dollars (\$2,000,000). Certificates of such insurance shall be provided to Customer prior to commencement of the Work. All certificates shall be executed by a duly authorized agent of each of the applicable insurance carriers and state that at least thirty (30) days' notice shall be given to Customer before any policy covered thereby is changed or canceled. Such certificate shall be in a form acceptable to Customer. ESCO's Commercial General Liability and Commercial Automobile Liability, as set forth above, shall be endorsed to include Customer as an additional insured. ESCO's Auto Liability insurance policies shall include Customer as an additional insured, but only with respect to liability arising out of operations of ESCO on behalf of Customer where required by written contract. ESCO Shall include a One Million Dollar (\$1,000,000) pollution liability coverage.

11.2 If required in the Contract Documents, and upon Customer's request and expense, ESCO shall provide payment and performance bonds for 100% of the Contract Price to secure the faithful performance of the Work, compliance with the terms of this Contract and to insure ESCO'S payment obligations to its

Subcontractors and suppliers related to the Work. Notwithstanding any provision to the contrary herein, any payment and performance bonds associated with this Contract guarantee only the performance of the installation portion of the Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, (2) any support or maintenance service agreement, or (3) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of the Contract.

11.3 The ESCO's commercial general liability policy and business automobile liability police, as set forth above, shall be endorsed to include the City as an additional insured.

11.4 ESCO shall maintain worker's compensation with statutory limits, including Employer's Liability coverage with a minimum limits of Five Hundred Thousand Dollars (\$500,000), disability benefits and other similar employee benefit laws.

11.5 Nothing herein shall be deemed to permit a cause of action against the City for damages or be deemed a waiver of the City's sovereign immunity relative to any claim against the City.

## **ARTICLE 12 – TERMINATION OF THE CONTRACT**

12.1 If Customer fails to make payments to ESCO as required in this Contract, through no fault of ESCO, ESCO may, upon fifteen (15) days written notice to Customer, terminate the Contract and recover from Customer payment for all Work executed.

12.2 If Customer (1) fails or neglects to maintain Customer responsibilities as set forth in Schedule E, or (2) fails to fulfill any of its other obligations or responsibilities under the Contract Documents, ESCO may, after delivery of written notice and providing Customer fifteen (15) days to cure, terminate the Contract, including, but not limited to the termination of any obligation of ESCO to provide the Performance Guarantee.

12.3 If ESCO breaches a material provision of this Contract, Customer has provided written notice to ESCO detailing the alleged breach, and within thirty (30) days of receipt of the written notice the alleged breach is either not cured or ESCO has not diligently commenced to cure such breach, Customer may make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due ESCO.

12.4 Termination of any of the Contract Documents shall release ESCO of all remaining obligations under all of the Contract Documents as of the effective date of such termination.

12.5 Any remedies provided for in this Article 12, shall not be exclusive of any additional remedies available to a party pursuant to this Contract, in equity or in the law.

## **ARTICLE 13 – OTHER CONDITIONS OR PROVISIONS**

13.1 If any provision of this Contract is determined to be invalid, illegal, or unenforceable as written, such provision shall be construed consistent with and to the fullest extent permitted under the law, and any such determination shall not affect or impair the validity, legality and enforceability of the remaining provisions.

13.2 Nothing herein shall be deemed to establish a relationship of principal and agent between ESCO and Customer, or any of their respective agents or employees, and this Contract and the Contract Documents may not be construed as creating any form of legal association or arrangement that would impose liability upon one party for the act or failure to act of the other party.

13.3 This Contract shall be governed by the laws of the state where the Project is located.

13.4 As between Customer and ESCO, any applicable statute of limitation shall commence to run and



any alleged cause of action shall be deemed to have accrued (1) not later than the date of Substantial Completion for acts or failures to act occurring prior to the relevant date of Substantial Completion, or (2) not later than the date of the relevant act or failure to act by either party for acts or failures to act occurring after the date of Substantial Completion.

13.5 ESCO shall prepare and provide and Customer agrees to participate in press release(s) and business case studies limited to the business relationship with ESCO and Customer's use of ESCO's services. Customer agrees to grant ESCO the right to use Customer's trademarks, for the term contained herein, in connection with press releases, case studies or website marketing, advertisement, promotion, sale, and distribution of ESCO's services. Prior written notice of use shall be provided to Customer by ESCO and Customer's written approval is necessary for any press releases or case studies.

13.6 This Contract sets forth the entire understanding between the parties and supersedes all prior oral or written understandings relating to the subject matter herein. This Contract may not be altered or modified except by a written instrument signed by a duly authorized representative of each party.

13.7 Ethics. In the event Customer has concerns related to ethics, compliance or ESCO's Trust Charter, and/or any potential violations of these policies, Customer is welcome to make use of ESCO's Trust Line. The Trust Line is a confidential channel through which customers can ask questions and raise concerns. Reports can be made using the following link:

<https://secure.ethicspoint.eu/domain/media/en/gui/104677/index.html>.

13.8 Compliance with Law. Each party shall comply in all respects with all applicable legal requirements governing this Agreement and/or the duties, obligations, and business practices of that party. Neither party shall take any action in violation of any applicable legal requirement that could result in liability being imposed on the other party. Without limiting the generality of the foregoing, the products, software, services, information, other deliverables and/or the technologies embedded therein (hereinafter referred to as "Deliverables") provided by ESCO under this Agreement may contain components and/or technologies from the United States of America ("US"), the European Union ("EU") and/or other nations. Unless applicable export licenses have been obtained from the relevant authority and ESCO has approved, the Deliverables shall not (i) be exported and/or re-exported to any destination or party restricted by applicable US, EU or other national or international export control laws and/or regulations ("Applicable Laws"); or (ii) be used for those purposes or fields restricted by any Applicable Laws. ESCO shall be excused from performing any obligations under this Agreement that would violate any Applicable Laws or expose ESCO to a risk of liability thereunder.

13.9 Cybersecurity. ESCO is not responsible for implementing or maintaining a security program to safeguard and protect Customer's or the end user's computer network, systems, machines, and/or data (collectively, "Systems"), including those Systems on which it runs the Deliverables provided by ESCO, against Cyber Threats ("Security Program"). "Cyber Threat" means any circumstance or event with the potential to adversely impact, compromise, damage, or disrupt Systems or that may result in any unauthorized access, acquisition, loss, misuse, destruction, disclosure, and/or modification of Systems, including through malware, hacking, or similar attacks. Failure by Customer and/or the end user to maintain an appropriate Security Program in accordance with industry standards may result in the Deliverables or Systems becoming vulnerable to certain Cyber Threats or result in impaired functionality, and ESCO shall not be liable or responsible for any losses or damages that may result.

13.10 Nothing herein shall be deemed to permit a cause of action against the City for damages or be deemed a waiver of the City's sovereign immunity relative to any claim against the City.

# SCHEDULE A

## SCOPE OF WORK

Customer hereby acknowledges and agrees that the scope of work shall be limited to, and ESCO shall only perform, the following:

### BUILDING AUTOMATION SYSTEM

The existing Schneider Electric EcoStruxure Building Operation (EBO) System is to be augmented for a newly designed mechanical renovation project. The existing EBO system will be expanded to incorporate the newly designed chilled water system within the City Hall facility. The EBO system will add additional points of control and monitoring as outlined below for City Hall.

The City Hall facility will have a newly installed chilled water system for the existing HVAC equipment. The existing EBO controllers will be configured to allow incorporation of the new chilled water valves on the existing AHU equipment and newly installed controller for the control of the chiller and chilled water pump system. Existing points of control are to remain with exception of existing DX control as it is to be eliminated during the chilled water retrofit.

Newly installed RTU-3 and RTU-4 are to be replaced, in kind, and are to be reattached to existing BAS Controller in same space. Equivalent monitoring and control parameters to be reattached after mechanical replacement.

With a new FCU for the IT closet, the existing VAV system is no longer necessary for this area. The existing VAV controller will be closed for damper control, although the existing sensor shall be used for monitoring of the space and alarming on high temperature limits.

Control parameters are as follows:

#### AHU 1 & 2 (Typical of 2)

<i>Control Points</i>	<i>Monitoring Points</i>
<ul style="list-style-type: none"><li>▪ Chilled Water Isolation Valve</li><li>▪ Chilled Water Valve Position</li></ul>	

#### AHU 5, 6, 7 (Typical 3)

<i>Control Points</i>	<i>Monitoring Points</i>
<ul style="list-style-type: none"><li>▪ Chilled Water Valve Position</li><li>▪ Hot Water Valve Position</li></ul>	

## Chilled Water System (Basement & 4<sup>th</sup> Floor)

Control Points	Monitoring Points
<ul style="list-style-type: none"> <li>▪ Chiller Enable</li> <li>▪ Chilled Water Pump Command 1</li> <li>▪ Chilled Water Pump Speed 1</li> <li>▪ Chilled Water Pump Command 2</li> <li>▪ Chilled Water Pump Speed 2</li> <li>▪ Chilled Water Booster Pump Command</li> </ul>	<ul style="list-style-type: none"> <li>▪ Chiller Alarm</li> <li>▪ Chilled Water Pump 1 Status</li> <li>▪ Chilled Water Pump 1 Speed Feedback</li> <li>▪ Chilled Water Pump 2 Status</li> <li>▪ Chilled Water Pump 2 Speed Feedback</li> <li>▪ Chilled Water Booster Pump Status</li> <li>▪ Chilled Water Supply Temperature</li> <li>▪ Chilled Water Return Temperature</li> <li>▪ BACnet Integration – 15pts<sup>1</sup></li> </ul>

<sup>1</sup> – Integration options to be determined during final design and implementation. The integration of the chiller to provide additional points of monitoring for the graphical interface – up to 15pts.

### CLARIFICATIONS AND EXCLUSIONS

The following clarifications and exclusions apply to ESCO's scope of work above:

#### CLARIFICATIONS

- To the best of Schneider Electric's knowledge, the points above represent all that are necessary to effectively operate the indicated systems. If additional points are required to operate the systems specifically indicated above per Schneider Electric's Sequences of Operation, they will be incorporated under this scope of work. If any of the points indicated above are unable to be included within the final system, such points shall be excluded from this scope of work. Points associated with new mechanical equipment (if applicable) are subject to change based on those points available from the equipment ultimately furnished and the points deemed necessary for operation of the system.
- ESCO may reuse existing equipment including (but not limited to) valves, dampers, controllers, and actuators for the execution of this contract, and assumes the equipment or devices are in good working order. Should the equipment or devices require repair or replacement, this will be the responsibility of the owner unless specifically indicated otherwise in the scope of work. ESCO will create an equipment deficiency report (EDR) to provide the owner with written notification if such equipment or devices are identified.
- ESCO will only control equipment and/or devices shown in the Scope of Work. Equipment and devices not in the Scope of Work are excluded. ESCO is not responsible for the functionality of such equipment even if such equipment is operated by an existing BAS.
- Matching of ceiling tile color and pattern shall be limited by current commercial availability should replacement tile be required. Similar or complementary tiles shall be provided where exact matches are not available.
- Demolition of the existing HVAC controls / building automation equipment will be performed as needed to implement the new DDC system installation (reuse of enclosures, wire, and end devices will be solely at the discretion of ESCO). The total demolition of any remaining abandoned or obsolete control elements will be the responsibility of the owner, unless otherwise stated.
- ESCO is not responsible for safeties on existing equipment including smoke detectors, fire alarm interlocks, and low or high temperature cut-outs or any life safety equipment. Pre and post testing of smoke, fire, and life safety systems will be the responsibility of the customer and the sequence will be provided to ESCO. Where life safety equipment utilizes compressed air (pneumatics), the source of the air, logic, and actuators will not be removed or modified within the execution of the project.
- ESCO will not be responsible for any modification or expansion of the owner's existing WAN/LAN for the execution of this project. Owner to provide ESCO with designated open port(s) as required at existing network switches in all facilities within this scope of work. ESCO to provide CAT5e Ethernet cable from control equipment to Owner network switch.
- Where new control panels are to be installed, conduit will be installed from the panel knock-out to a height of 8' or the level of the finished ceiling if present – whichever is lower – for all low voltage wiring.

Conduit will not be required in other applications unless otherwise indicated by the scope of work above. All wiring shall be in compliance with local codes and authorities having jurisdiction.

## **EXCLUSIONS**

- Repair of existing HVAC and control equipment beyond the scope of work above is excluded.
- Any repair patching of existing walls, sheetrock, plaster, brick, wood, etc. due to the removal of existing thermostats (for retrofit with DDC sensor or new thermostat)

## **MECHANICAL AND ELECTRICAL SCOPE**

### **CITY HALL:**

- **Convert DX Cooling to Chilled Water**
  - Demolish (2) 100-ton condensing units on roof along with all refrigerant piping and (2) evaporator coils within existing basement air handling units.
  - Demolish (3) DX split systems and their associated duct mounted hot water heating coils serving 4<sup>th</sup> floor spaces.
  - Provide (1) roof mounted air-cooled chiller and (2) new chilled water evaporator coils within each basement AHU. Chiller will be sized to handle the building's cooling load utilizing ASHRAE's design outdoor ambient temperature.
  - Provide (3) air-handling units with chilled water and hot water coils to supply heating and cooling for the 4<sup>th</sup> floor.
  - Modify, extend, replace ductwork as required on the 4<sup>th</sup> floor to re-zone spaces for improved comfort and eliminate window unit air conditioning in the 4<sup>th</sup> floor IT space. IT space will receive new diffusers to match rest of floor. Thermal zones shall be configured as follows:
    - Conference room and IT space on one zone.
    - Inspection Services and Property Maintenance on one zone.
    - Human Resources on one zone.
  - Provide (2) new chilled water pumps (one pump handles load, so redundant pumps) along with expansion tank, buffer tank, coalescing air-dirt separator, chemical pot feeder, and glycol feed system for 30% propylene glycol solution for the new chilled water system. New chilled water pumps will include VFDs for soft start and balancing. System's pumping arrangement will be constant primary.
  - Bi-polar ionization generators shall be added to the (2) basement air handling units along with the (3) new 4<sup>th</sup> floor air handling units to improve indoor air quality.
  - Structural engineering services along with any structural modifications associated with the new chiller being supported on the roof is incorporated within project scope.
  - New electrical branch circuiting to support the mechanical modifications is included within scope of services. Electrical work shall adhere to National Electrical Code requirements.
    - New duplex receptacle will be provided within the boiler room for facility's use within the old coal room.
  - System start-up for the chiller, pumps and (3) new air handlers is included within the scope of service
  - Chilled water hydronic test and balancing of new chilled water system is included within scope of services.
  - Airside test and balancing of the (3) new air handling units serving the 4<sup>th</sup> floor shall include balancing down to diffuser level balancing.
  - Airside test and balancing of the (2) existing basement air handling units shall include balancing the air handling units only. Diffuser level balancing is not included.
  - Commissioning of new equipment indicated above is included to ensure proper system operation.

- **Replace Two Rooftop Units Serving Council Chambers**
  - Demolish (2) packaged DX cooling and electric heating rooftop units.
  - Provide (2) new packaged DX cooling and electric heating rooftop units in same location where existing are removed. New units will be sized to handle the council chamber's heating and cooling loads utilizing ASHRAE's design outdoor ambient summertime and wintertime temperatures.
  - Bi-polar ionization generators shall be added to the (2) new council chamber RTUs to improve indoor air quality.
  - New electrical branch circuiting to support the mechanical modifications is included within scope of services. Electrical work shall adhere to National Electrical Code requirements.
  - System start-up along with airside test and balancing of the (2) new RTUs is included within scope of services. Balancing shall include the units only, not diffuser level balancing.
  - Commissioning of new equipment indicated above is included to ensure proper system operation.
  
- **Replace First Floor IT Window Air Conditioning Unit for Ductless Mini-Split**
  - Demolish (1) window air conditioning unit serving the first floor's IT room.
  - Provide (1) new ductless mini-split system within first floor's IT room. Condensing unit associated with new system shall be installed within basement air handling room. New equipment will be sized to handle the IT space current cooling loads.
  - New electrical branch circuiting to support the mechanical modifications is included within scope of services. Electrical work shall adhere to National Electrical Code requirements.
  - System start-up along with commissioning of new equipment is included to ensure proper system operation.

#### MECHANICAL AND ELECTRICAL EXCLUSIONS

- Night/holiday work unless otherwise specified in the Scope of Work.
- Additional labor cost due to restriction of allowable work hours.
- Costs incurred due to lack of access to required areas or due to access to storage areas to which materials are to be delivered.
- Costs of providing access, access control, or security escorts not specified in the Scope of Work.
- Hazardous materials testing, and abatement not specified in the Scope of Work. Asbestos abatement not part of Schneider Electric's scope of work. Customer shall have any asbestos abated within the areas that impact mechanical, electrical and controls work prior to commencement of mechanical, electrical and controls work.
- Materials and labor associated with modifications to existing systems and equipment not identified in these documents as included in the Scope of Work.
- Testing, adjusting, and balancing of existing systems not identified in these documents as included in the Scope of Work.
- Commissioning of existing systems not identified in this document as included in Scope of Work.
- Upgrading existing mechanical systems to provide ventilation rates in compliance with current Codes and Standards unless indicated herein to be included.
- Repair or replacement of ceiling beyond that required to accomplish the Scope of Work.
- Painting of floors, walls, or ceilings beyond that required to match existing surfaces in the immediate work area.
- Waste disposal other than that required to accomplish the Scope of Work.
- Demolition of equipment, piping and accessories indicated herein to be abandoned in-place unless indicated herein to be included.
- The cost for utilities including natural or propane gas, fuel oil, electricity, potable or non-potable water during the construction period.
- The cost for equipment and/or utilities to provide temporary heating or cooling of facilities during the construction period.
- Cost escalation of materials because of delay in the construction schedule caused by Customer

action or inaction.

- Inspection and permitting fees for agencies (state and/or federal) other than the local authority having jurisdiction.
- Fees for third party engineers acting as Customer's agent.
- Costs and labor associated with customer's third-party commissioning agent.
- Structural modifications not specified in the Scope of Work.
- Replacement of ductwork and diffusers not specified in the Scope of Work.
- Replacement of piping not specified in the Scope of Work.
- Ductwork and piping insulation not specified in the Scope of Work.
- Equipment replacement and their components not specified in the Scope of Work.
- Quick shipping of equipment or material.
- Repair of existing systems, equipment, or controls.
- Dust control, containment, or HEPA exhaust.
- Fire and smoke control interlock wiring.
- Cleaning of existing mechanical equipment.
- Temporary water, sewer, heat, cooling, or humidity control.
- Any testing, monitoring, clean-up, removal of asbestos or any other known pollutants.
- Upgrades to existing systems to meet code requirements.
- Sealing of existing ductwork.
- Repair of existing ductwork, including flex duct.
- Chemical treatment and equipment.
- Sprinkler work.

# SCHEDULE C PERFORMANCE GUARANTEE

**Relationship to other contracts**

The guarantee below is provided in addition to the guarantee in Change Order #1 signed April 25<sup>th</sup>, 2019. Year 1 of the Phase 2 guarantee will be pro-rated to align with the original guarantee term which began March 1, 2020. The Phase 2 guarantee term is estimated to be 11 years in the table below, but may be different depending on when the Phase 2 guarantee begins relative to the original guarantee term, and will end when the original term ends.

The Performance Guarantee provided by ESCO for this phase of work will be as follows:

Year	Measured Savings	Non-Measured Savings	Annual Guaranteed Savings	Cumulative Guaranteed Savings
0	\$0	\$0	\$0	\$0
1	\$2,563	\$81	\$2,644	\$2,644
2	\$2,639	\$84	\$2,723	\$5,367
3	\$2,719	\$86	\$2,805	\$8,172
4	\$2,800	\$89	\$2,889	\$11,061
5	\$2,884	\$91	\$2,976	\$14,036
6	\$2,971	\$94	\$3,065	\$17,101
7	\$3,060	\$97	\$3,157	\$20,258
8	\$3,152	\$100	\$3,252	\$23,510
9	\$3,246	\$103	\$3,349	\$26,859
10	\$3,344	\$106	\$3,450	\$30,308
11	\$3,444	\$109	\$3,553	\$33,861
Total	\$32,820	\$1,041	\$33,861	

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OR IN ANY CONTRACT DOCUMENT, IN THE EVENT THAT THE PERFORMANCE ASSURANCE SUPPORT SERVICES AGREEMENT IS CANCELED OR TERMINATED BY CUSTOMER FOR ANY REASON, THE PERFORMANCE GUARANTEE SET FORTH IN THIS SCHEDULE C SHALL BE DEEMED TO HAVE BEEN MET AND FULFILLED AS OF THE EFFECTIVE TERMINATION DATE OF THE PERFORMANCE ASSURANCE SUPPORT SERVICES AGREEMENT AND ESCO SHALL HAVE NO FURTHER OBLIGATIONS OR LIABILITIES ASSOCIATED WITH SUCH PERFORMANCE GUARANTEE.

The procedure used to calculate savings is described in Schedule D.

**GUARANTEED SAVINGS RECONCILIATION**

Customer, if required, will send ESCO all necessary utility or energy data as set forth in Schedule E herein. Within sixty (60) days of receipt of such information for the previous Guarantee Year, ESCO will determine the Actual Savings for such Guarantee Year hereafter defined as “Guaranteed Savings Reconciliation”.

In the event the Actual Savings for the corresponding twelve (12) months are less than the Annual Savings Guarantee, ESCO will pay Customer the difference between the Annual Savings Guarantee and the Actual Savings for the corresponding twelve (12) months (“Savings Shortfall”). ESCO will make payments for any Savings Shortfall to Customer within thirty (30) days of that year’s Guaranteed Savings Reconciliation. In the event of Excess Savings from this or previous phases, such Excess Savings shall be used to offset any Shortfall Payment owed by ESCO.

If ESCO has written a savings shortfall check to Customer, and later Actual Savings exceed the Performance Guarantee to date, Customer will reimburse ESCO up to the amount of ESCO’S shortfall check(s), to the extent that the shortfall is made up by Excess Savings.

# SCHEDULE D MEASUREMENT & VERIFICATION PLAN

The Measurement & Verification Plan below is provided in addition to the Measurement & Verification Plans in Change Order #1 signed April 25<sup>th</sup>, 2019, and the Original Energy Services Contract signed December 17, 2018.

## PROJECTED ANNUAL SAVINGS

The Performance Guarantee as established in Schedule C shall consist of savings from multiple scopes of work. The projected savings from each scope of work is presented in the table below.

Site	Annual Projected Savings		
	Electric		Natural Gas
	kWh	kW	CCF
City Hall	30,428	0	131

The projected savings in the table above are provided for reference only and are not intended to construe a savings guarantee by meter, facility, or energy unit. The savings guarantee is fully defined in Schedule C.

## ENERGY, WATER, AND OPERATIONS & MAINTENANCE (O&M) RATE DATA

Rate information associated with the meters already being tracked as part of the Original project can be found in the Original Energy Services Contract signed December 17, 2018.

## COMMON ECM ASSUMPTIONS

ECM Assumptions associated with City Hall can be found in the Original Energy Services Contract signed December 17, 2018.



## MEASUREMENT & VERIFICATION DETAILS

### OPTION C – WHOLE TERM

- A. Overview of M&V Plan, and Savings Calculation
- B. Energy Savings Calculations

#### A. Overview of M&V Plan, and Savings Calculation

The method of determining energy savings described in this section uses “Option C – Whole Facility (Main Meter Measurement)” as described in the International Measurement and Verification Protocol (IPMVP Volume I, EVO 10000-1:2012). The remainder of this section provides the energy savings calculations, the key parameter measurements that will be conducted, the parameters that will be estimated and those values, and how cost savings will be calculated.

#### Guaranteed Meters

The meters below are already being tracked as part of the Original project and will be used to capture the additional savings of Phase 2 ECMs:

Meter Name	Account	Utility Type	Utility Company	Rate	Units
City Hall - New Mechanical Meter	1971441344-1	Electric	Evergy	LGS	kWh, kW
City Hall - Original Service	1971441344-2	Electric	Evergy	SDS	kWh, kW

#### Building Summary

The following table lists the buildings that were served by guarantee meters during the base year period.

Building Name	Area (ft <sup>2</sup> )
City Hall	47,135

#### B. Energy Savings Calculations

Energy savings calculations are detailed in the Original contract. Phase 2 savings will occur on meters already tracked as part of the Original project. No add additional calculation is necessary.

## NON-MEASURED SAVINGS

### A. Overview of M&V Plan, and Savings Calculation

### B. Annual Non-Measured Savings

### A. Overview of M&V Plan, and Savings Calculation

The Actual Savings associated with this methodology will be agreed upon as outlined herein and will not be verified by measurements after implementation has occurred. Customer and ESCO agree to accept the annual savings values included in Section B with no additional verification. In the event that verification steps are performed by Customer or ESCO, the annual savings values included in Section B will still be the reported savings and values used for reconciling the guarantee in Schedule C. Section B details the agreed upon savings by measure and by category.

### B. Annual Non-Measured Savings

#### Utility Cost Savings

Once the construction of each of the measures below has reached Substantial Completion, the annual savings in the table below will be prorated monthly for each measure until the Savings Guarantee Commencement Date. The annual savings in the table below for each measure will be claimed for each Guarantee Year after the Savings Guarantee Commencement Date. These savings will escalate at 3% per year beginning in Year 2 of this phase.

	Cost Savings
Utility Cost Savings Measure	Electric
City Hall - Natural Gas	\$81

Any savings accrued prior to the Savings Guarantee Commencement Date will be considered Excess Savings.