**INVESTMENT GRADE AUDIT CONTRACT**

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**INVESTMENT GRADE AUDIT CONTRACT**

This Investment Grade Audit Contract (Contract) is made and entered into between ***Qualified Energy Service Provider Name,*** (ESP), having its principal offices at ***Address***, and ***Governmental Entity Name,*** (Entity), having its principal offices at ***Address***.

# RECITALS

WHEREAS, ESP was selected from the list of qualified energy service providers established by the Department of Environmental Quality (DEQ) and pursuant to **RFP #** to provide Energy Performance Contracting services to Entity; and

WHEREAS, authority exists for the Entity to enter into this Contract and funds have been budgeted, appropriated, and otherwise made available; and

WHEREAS, Entity desires to enter into a contract to have ESP perform an Investment Grade Audit (IGA) to determine the feasibility of entering into an Energy Performance Contract (EPC) to provide for the installation and implementation of energy, water, and other operating cost-saving measures at Entity’s facilities; and

WHEREAS, if such measures are determined to be feasible, and if the amount of savings can be reasonably sufficient to cover the financed amount of the EPC in accordance with state laws and administrative rules, the Entity may negotiate an EPC under which the ESP will design, procure, install, implement, and monitor such measures. However, this Contract does not require Entity to enter into such EPC.

THEREFORE, the ESP and the Entity agree as follows:

# CONTRACT DATE AND NOTICE OF NON-LIABILITY

This Contract becomes effective upon approval and acceptance by the Entity. The Entity is not liable to pay or reimburse the ESP for any work or services prior to the effective date of this Contract. The Entity is not bound by any provision prior to the effective date of this Contract.

## Definitions

##### Certificate of Acceptance for the Investment Grade Audit Report

“Certificate of Acceptance for the Investment Grade Audit Report” means the document issued by the Entity signifying the completion of the Work and acceptance of the Investment Grade Audit Report by the Entity. A Certificate of Acceptance for the Investment Grade Audit Report form is attached as Exhibit C.

##### Contract

“Contract” means this Contract, its terms and conditions, Exhibits and other Attachments, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments, or references incorporated herein pursuant to state law and administrative rules.

##### Contract Funds

“Contract Funds” mean the funds available for payment by the Entity to ESP under this Contract.

##### ESP’s Intellectual Property

“ESP’s Intellectual Property” means the items purchased, licensed or developed by ESP prior to or outside of the Contract or purchased, licensed or developed by ESP or its Subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon.

##### Entity

 “Entity” means:

1. a department, board, commission, institution, or branch of state government;
2. a county, consolidated city-county government, city, town, or school district;
3. a special district, as defined in 2-2-102, MCA;
4. the university system or a unit of the university system; or
5. a community college district.

##### Exhibits and other Attachments

The following are attached and incorporated by reference: Attachment A - Scope of Work, Exhibit A - Location of the Investment Grade Audit, Exhibit B – Cost and Pricing Tool, and Exhibit C – Certificate of Acceptance for the Investment Grade Audit Report.

##### Goods:

“Goods” means the tangible material acquired, produced, or delivered by ESP either separately or together with the Work performed by ESP and the Services ESP renders.

##### Party or Parties

“Party” means the Entity or ESP and “Parties” means both the Entity and ESP.

##### Premises

“Premises” means the property owned or controlled by the Entity as identified in Exhibit A – Location of the Investment Grade Audit.

##### Services

“Services” means the required services to be performed by ESP pursuant to this Contract.

##### Subcontractor

“Subcontractor” means a third-party engaged by ESP to aid in performance of ESP’s obligations.

##### Work

“Work” means the tasks and activities ESP is required to perform to fulfill its obligations under this Contract and Attachment A, including the performance of the Services and delivery of the Goods.

##### Work Product

“Work Product” means the tangible or intangible results of ESP’s Work, including, but not limited to, research, reports, studies, data, photographs, or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type (but not including software), including drafts. Work Product does not include ESP’s Intellectual Property.

## Contract Term

Unless otherwise provided herein, the term of this contract shall end <135> days after the Entity issues the Certificate ofAcceptance – Investment Grade Audit Report (Exhibit C).

## Statement of Work

### Work

The ESP shall perform an Investment Grade Audit (IGA) according to Attachment A Scope of Work. The IGA shall be performed at the location(s) listed in Exhibit A – Location of Investment Grade Audit. The IGA shall determine the scope and feasibility of an EPC to implement cost-saving measures.

The ESP shall complete the IGA and provide to the Entity a final report within [Number of Days –120 days recommended depending on size and complexity of facilities and time needed to review the audit] calendar days from the execution of this Contract.

The ESP shall prepare an Energy Performance Contract proposal with cost-saving measures and details as specified in the Scope of Work (Attachment A). The Parties may enter into an Energy Performance Contract, based on the IGA report and project proposal.

The Parties consider that this will be an interactive process and that the Entity will have a reasonable amount of time to review and determine acceptance at various stages of completion, before issuing the Certificate of Acceptance for the IGA Report (Exhibit C).

### Goods and Services

The ESP shall procure goods and services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable by the Entity.

### Employees

All persons employed by the ESP or Subcontractors to perform Work under this Contract shall be the ESP’s or the Subcontractor’s employee(s) for all purposes and shall not be employees of the Entity for any purpose under this Contract.

### Acceptance

The Entity prepares the Certificate of Acceptance for the Investment Grade Audit Report and submits the Certificate to the ESP. The Certificate must be fully executed before payment is authorized and before an Energy Performance Contract may be executed.

## Payments to ESP

The Entity, in accordance with the provisions of this section, shall pay the ESP in the amounts and according to the following:

### Maximum Amount

The total amount payable by the Entity to the ESP under this agreement shall not exceed $xx (contract amount) based on the Scope of Work and pricing information in Exhibit B. If components identified in the Scope of Work are not audited or evaluated, the ESP shall not charge the Entity for those components.

If the ESP determines at any time during the IGA that savings cannot be attained to meet the Entity’s requirements as set forth in Attachment A of this Contract, the IGA will be terminated by written notice from the ESP to the Entity. In this event, this Contract shall be cancelled and the Entity shall have no obligation to pay, in whole or in part, the amount specified in the cost of the IGA Contract.

The Entity shall pay the ESP within 45 days after the Certificate of Acceptance for the Investment Grade Audit Report has been signed. If the Entity and ESP execute an EPC within 120 days after the Certificate of Acceptance has been signed, then at the discretion of the Entity,

(a) the cost for the IGA may be incorporated into the total cost of the EPC and paid as a part of the EPC, or

(b) the Entity may pay the cost of the IGA to the ESP directly.

The ESP shall provide the Entity with the complete IGA report and any underlying data including building, infrastructure and equipment specifications, architectural and engineering drawings, etc. The Entity reserves the right to use such information from the IGA and underlying data at the sole risk of the Entity without liability to the ESP or ESP’s subcontractors.

### Payment

The ESP shall initiate any payment requests by submitting invoices to the Entity in the form and manner set forth by the Entity.

The Entity shall pay in full each invoice within 45 days of receipt of the invoice. Invoiced amounts not paid by the Entity within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full. Interest shall not accrue however, on unpaid amounts that are subject to a good faith dispute by the Entity. The ESP shall invoice the Entity separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days for which interest is to be paid, and the interest rate.

Payments pursuant to this Contract shall be made only from available funds allocated for this Contract, and the Entity’s liability for such payments shall be limited to the amount of such allocated funds. If Entity funds are not appropriated, or otherwise become unavailable to fund this Contract, the Entity may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions.

At the Entity’s sole discretion, payments made to the ESP in error for any reason, including overpayments or improper payments, and unexpended or excess funds received by the ESP, may be recovered from the ESP by deduction from subsequent payments under this Contract or other contracts, grants, or agreements between the Entity and the ESP, or by other appropriate methods and collected as a debt due to the Entity.

### Use of Funds

Contract Funds shall be used only for eligible costs identified in this Contract.

## ESP Records

### Maintenance

The ESP shall keep, maintain, and allow inspection by the Entity of all records, documents, communications, notes and other written materials, and electronic media files and communications, pertaining to the Work or delivery of goods and services under this Contract. The ESP shall maintain such records for a period of three years after the date this Contract terminates.

### Inspection

The Entity reserves the right to inspect the Work at all reasonable times and places during the term of this Contract. If the Work fails to conform to the requirements of this Contract, the Entity may require the ESP promptly to bring the Work to conform with Contract requirements at the sole expense of the ESP. If the Work cannot be brought into conformance, the Entity may require the ESP to take necessary action to ensure that future performance conforms to Contract requirements and may exercise the remedies available under this Contract in lieu of or in conjunction with such corrective measures.

## Representations and Warranties

The ESP makes the following specific representations and warranties, each of which was relied on by the Entity in entering this Contract.

### Standard and Manner of Performance

ESP shall perform its obligations with the standard of care, skill, and diligence in ESP’s industry, trade, or profession and in the sequence and manner set forth in this Contract.

### Legal Authority

ESP warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract, or any part thereof, and to bind the ESP to the terms of this Contract.

### Licenses, Permits, Etc.

ESP represents and warrants that as of the Contract date, it has all licenses, certifications, qualifications, approvals, insurance, permits, and other authorizations required by law to perform its obligations.

ESP warrants that it shall maintain throughout the Contract term all necessary licenses, certifications, qualifications, approvals, insurance, permits, and other authorizations required to properly perform the terms of this Contract, without reimbursement by the Entity or other adjustment in Contract Funds.

Additionally, all employees, agents, and Subcontractors of the ESP performing Services under this Contract shall hold all required licenses, certifications, or qualifications, if any, to perform the terms of this Contract.

ESP, if a foreign corporation or other foreign entity transacting business in the State of Montana, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Montana and has designated a registered agent in Montana to accept service of process.

Any revocation, withdrawal or non-renewal of licenses, certifications, qualifications, approvals, insurance, permits, or any such similar requirements necessary for ESP to properly perform the terms of this Contract is a material breach by ESP and constitutes grounds for termination of this Contract. A revocation of or failure to maintain an ESP’s listing as a qualified ESP is a material breach by the ESP of this contract.

## Insurance

Before commencing any Work under this Contract, the ESP and its Subcontractors shall obtain and maintain insurance as specified in this section at all times during the term of this Contract. [Entity to insert their insurance requirements here]

### ESP – Subcontractors

1. Worker’s Compensation

The ESP shall carry Workers’ Compensation Insurance. Workers’ Compensation Insurance shall protect the ESP from claims made by its own employees, the employees of any Subcontractor, and anyone directly employed by the ESP or Sub-contractor. The ESP shall require each Subcontractor similarly to provide Workers’ Compensation Insurance for its own employees.

1. General Liability

Comprehensive General Liability Insurance written on an “occurrence” basis. Such insurance shall bear a combined single limit per occurrence of $1,000,000 and annual aggregate of not less than $2,000,000 exclusive of defense costs. Such insurance will name Entity as an additional insured as respects ESP's acts or omissions, and shall contain standard cross-liability or severability of interest provisions and waiver of litigation.

1. Automobile Liability

Automobile liability covering any auto with a minimum limit of $1,000,000 each accident combined single limit.

1. Primacy of Coverage

Coverage required of ESP and Subcontractor shall be primary over any insurance or self-insurance program carried by ESP or the Entity, except to the extent any loss, claim, or action is caused by the negligence of one or more of the additional insured.

1. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 30 days’ prior written notice to ESP. ESP shall forward such written notice to the Entity in accordance with Article 12 within seven days after ESP’s receipt of such notice.

1. Subrogation Waiver

All insurance policies related to this Contract and secured and maintained by ESP or its Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against ESP or the Entity, its officers, agents, employees, and volunteers

### Certificates

The ESP shall provide to the Entity certificates showing insurance coverage of the ESP and its Subcontractors within seven business days after the date of this Contract. No later than 30 days prior to the expiration date of any such coverage, the ESP shall provide the Entity certificates of insurance evidencing renewals of such coverage of the ESP and its Subcontractors. In addition, upon request by the Entity at any other time during the term of this Contract or any sub-contract, the ESP shall provide the Entity evidence satisfactory to the Entity of compliance with the provisions of this section within 10 days of such request.

## Breach

In addition to any breaches specified in other sections of this Contract, the failure of the ESP to maintain its qualified listing with DEQ, or the failure of the Entity or the ESP to timely perform any of its material obligations under this Contract constitutes a breach of this Contract.

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party as required in Article 12. If the breach is not cured within 30 days after receipt of the written notice or, if a cure cannot be completed within 30 days, cure of the breach has not begun within 30 days after receipt of the written notice and pursued with due diligence, the aggrieved Party may exercise any of the remedies set forth in Article 9. The aggrieved Party, in its sole discretion, need not provide notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to protect public safety.

## Remedies

If the ESP fails to cure its breach of this Contract as provided in Article 8, the Entity shall have all remedies listed in this section in addition to all other remedies set forth in other sections of this Contract. The Entity may exercise any or all remedies available to it, in its sole discretion, concurrently or consecutively.

### Termination for Cause and/or Breach

The Entity may terminate this Contract or any part of this Contract by providing written notice to the ESP. Exercise by the Entity of this right shall not be a breach of its obligations. The ESP shall continue performance of this Contract to the extent not terminated.

1. Obligations and Rights

To the extent specified in the termination notice, the ESP shall not incur further obligations or continue performance past the effective date of the termination notice, and shall terminate outstanding orders and subcontracts with third parties. However, the ESP shall complete and deliver to the Entity all Work, Services, and Goods not cancelled by the termination notice and may incur obligations necessary to do so within this Contract’s terms. At the sole discretion of the Entity, the ESP shall assign to the Entity the ESP's right, title, and interest in the terminated orders or subcontracts; provided that the ESP’s obligations with respect to the ESP’s Intellectual Property are set forth in Article 10 below. Upon termination, the ESP shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the ESP in which the Entity has an interest. All materials owned by the Entity in the possession of the ESP shall be immediately returned to the Entity. All Work Product, at the option of the Entity, shall be delivered by the ESP to the Entity and shall become the Entity’s personal property.

1. Payments

The Entity shall reimburse the ESP for accepted performance up to the date of termination. If, after termination by the Entity, it is determined that the ESP was not in breach or that the ESP's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Contract had been terminated in the public interest, as described herein.

1. Damages and Withholding

Notwithstanding any other remedial action by the Entity, the ESP shall remain liable to the Entity for any damages sustained by the Entity due to any breach under this Contract by the ESP. The Entity may withhold any payment to the ESP to mitigate the Entity’s damages, until such time as the exact amount of damages due to the Entity from the ESP is determined. The ESP shall be liable for excess costs incurred by the Entity in procuring replacement Work, Services, or substitute Goods from third parties.

### Early Termination in the Interest of the Entity

The Entity is entering into this Contract to have the ESP conduct an IGA to reduce Entity’s utility costs. If this Contract ceases to further the purpose of the Entity, the Entity, in its sole discretion, may terminate this Contract in whole or in part. Exercise of this right by the Entity shall not constitute a breach of the Entity’s obligations hereunder. This subsection shall not apply to a termination of this Contract by the Entity for cause or breach by the ESP, which shall be governed by Section 9.1 or as otherwise specifically provided for herein.

1. Method and Content

The Entity shall notify the ESP of such termination in accordance with Article 12. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

1. Obligations and Rights

Upon receipt of a termination notice, the ESP shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the ESP in which the Entity has an interest. All materials owned by the Entity in the possession of the ESP shall be immediately returned to the Entity.

1. Payments

If this Contract is terminated by the Entity pursuant to this section, the ESP shall be paid an amount that is the same percentage of the total reimbursement under this Contract as the ESP’s obligations that were satisfactorily performed under this Contract, less payments previously made. Additionally, if this Contract is less than 60% completed, the Entity may reimburse the ESP for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the ESP which are directly attributable to the uncompleted portion of the ESP’s obligations; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to the ESP.

### Early Termination for Insufficient Cost Savings

The ESP is entering into this Contract to provide an Investment Grade Audit. The ESP may terminate this Contract in accordance with Section 4.1 (c) prior or subsequent to the completion of the Audit. The ESP shall notify the Entity in writing that the ESP is unable to guarantee a level of energy savings which exceeds the costs associated with performing the audit, installing cost-savings measures, related maintenance, and measurement and verification services as required. Exercise by the ESP of this Early Termination for Insufficient Cost Savings shall not be deemed a breach of the ESP’s obligations.

1. Method and Content

The ESP shall notify the Entity of such termination in accordance with Article 12. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

1. Obligations and Rights

Upon receipt of a termination notice, the ESP shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the ESP in which the Entity has an interest. All materials owned by the Entity in the possession of ESP shall be immediately returned to the Entity.

1. Payments

If the ESP terminates this Contract because of insufficient cost savings, the Entity shall not be obligated to pay the ESP, in whole or in part, the amount specified in Article 4. ESP shall return to Entity any payments ESP has received from Entity under this Contract.

### Available Funds – Contingency - Remedies

The ESP’s compensation is contingent upon the continuing availability of Entity appropriations. Payments pursuant to this contract shall only be made from available funds encumbered for this Contract, and the Entity’s liability for such payments shall be limited to the amount remaining of such encumbered funds. If Entity funds are not appropriated, or otherwise become unavailable to fund this Contract, the Entity may immediately terminate the Contract in whole or in part without further liability in accordance with Section 9.1 Termination for Cause of this Contract.

## IGA Contract Deliverables

The ESP shall provide an IGA Report under this this Contract. Except for the ESP’s Intellectual Property, any research, reports, studies, data, drawings, models, materials, or Work Product of any type, including drafts, prepared by the ESP in the performance of this Contract shall be the property of the Entity. All such property shall be delivered to the Entity upon completion or termination of this Contract. The Entity’s nonexclusive rights to such property shall include, but not be limited to, the right to copy, publish, display, transfer and prepare derivative works.

## Order of Precedence

In the event of conflict or inconsistency between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions.

2. Contract - general terms and conditions

3. Other exhibits or attachments

## Notices

The individuals identified below are the respective Party’s contact for administration of this Contract. All notices required by the Contract shall be in writing and sent to the other Party’s contact at the addresses provided below. Parties may change the contact information by providing written notice to the other Party. Unless otherwise provided, all notices shall be effective upon receipt.

1. Entity

|  |
| --- |
| Name and Title of Person |
| Address |
|  |
| City, State, Zip |
| Email |

1. ESP

|  |
| --- |
| Name and Title of Person |
| Address |
|  |
| City, State, Zip |
| Email |

## General Provisions

### Assignments and Subcontracts

The ESP’s rights and obligations under this Contract may not be transferred, assigned, or subcontracted without the prior, written consent of the Entity. Any attempt to transfer, assign, or subcontract the ESP’s rights and obligations without the Entity’s written consent shall be void. Any rights and obligations of the ESP that have been transferred assigned or subcontracted with the written consent of the Entity are subject to the provisions of this Contract. The ESP shall be solely responsible for executing any documents necessary to subcontract its rights and obligations under this Contract. After its rights and obligations under the Contract have been transferred, assigned, or subcontracted, the ESP remains responsible for the performance of work and services under this Contract.

### Binding Effect

This Contract shall be binding upon the Parties’ respective heirs, legal representatives, successors, and assigns.

### Counterparts

This Contract may be executed in any number of counterparts, each of which is an original and all of which taken together shall constitute one agreement.

### Entire Understanding

This Contract represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes shall not have any force or effect whatsoever, unless embodied herein. No subsequent renewal, addition, deletion, or other amendment shall have any force or effect unless embodied in a written Change Order or Amendment to this Contract.

### Indemnification

The ESP shall indemnify, save, and hold harmless the Entity and its employees and agents against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by ESP, or its employees, agents, Subcontractors, or assignees pursuant to the terms of this Contract.

### Jurisdiction and Venue

This Contract is governed by the laws of Montana. Legal actions related to this Contract must be brought in the state district court where the facility listed in Exhibit A is located. The parties waive any objection to personal jurisdiction or venue in that court. Each party shall pay its own costs and attorney fees for any such action.

## Special Provisions

These Special Provisions apply to this contract except where noted.

1. **Fund Availability:** Financial obligations of the Entity payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
2. **Independent Contractor:** The ESP shall perform its duties as an independent contractor and not as an employee. Neither the ESP nor any agent or employee of ESP shall be deemed to be an agent or employee of the Entity. The ESP and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the Entity and the Entity shall not pay for or otherwise provide such coverage for the ESP or any of its agents or employees. Unemployment insurance benefits will be available to the ESP and its employees and agents only if such coverage is made available by the ESP or a third party. The ESP shall pay when due all applicable employment taxes and other taxes incurred pursuant to this Contract. The ESP shall not have authorization, express or implied, to bind the Entity to any agreement, liability, or understanding, except as expressly set forth herein. The ESP shall

(a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law,

(b) provide proof thereof when requested by the Entity, and

(c) be solely responsible for its acts and those of its employees and agents.

1. **Compliance with Law:** The ESP shall comply with all applicable federal and state laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
2. **Choice of Law:** Montana law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.
3. **Binding Arbitration Prohibited:** The Entity does not agree to binding arbitration by any extra-judicial body or person.
4. **Software Piracy Prohibition:** Public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. ESP hereby certifies and warrants that, during the term of this contract and any extensions, ESP has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the Entity or the State determines that ESP is in violation of this provision, the Entity or the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
5. **Employee Financial Interest/Conflict of Interest:** The signatories aver that to their knowledge, no employee of the Entity has any personal or beneficial interest in the service or property described in this Contract. The ESP has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of ESP’s services and ESP shall not employ any person having such known interests.

## Signatures

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this agreement on the date first written above.

ESP ENTITY

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

**Attachment A**

**Scope of Work**

1. **Project Requirements**

The Entity has established the following criteria which must be met for consideration as an EPC project:

Select criteria as appropriate for Entity. Consider:

* Maximum capital outlay before financing
* Maximum total project cost including financing charges
* Maximum term of financing (See Section 3.2 below)
* Maximum simple payback period for the project
1. **Process**

The IGA will be an interactive effort of the ESP working with the Entity, following these steps:

* 1. Preliminary Assessment of Needs and Opportunities
		1. Meet with Entity to establish interests, plans, problems, etc. related to facilities and operation of facilities.
		2. Collect general facility information (data and background information on buildings, equipment, energy use and costs, and facilities operation).
		3. Inventory existing systems and equipment (facility inspection and facility interviews to log information on major energy and water-using equipment)
		4. Perform a preliminary walk-through of facilities and interview staff and occupants to identify potential measures.
		5. Meet with Entity to present preliminary findings and establish agreement on measures to analyze further.
	2. Preliminary Analysis of Measures
		1. Establish baseline and/or base year consumption and reconcile with end-use consumption estimates.
		2. Identify and assess potential cost-saving measures.
		3. Submit the 30% completion level audit to the Entity.
		4. Meet with Entity to present preliminary findings.
		5. Establish agreement on measures for detailed analysis.
	3. Detailed Analysis and IGA Report
		1. Develop the preliminary Investment Grade Audit Report following prescribed format in Step 6 of this attachment
		2. Savings analysis
		3. Cost estimates
		4. Develop a preliminary Measurement and Verification plan
		5. Develop a preliminary Commissioning plan
		6. Submit the 90% completion level Investment Grade Audit Report
		7. Meet with Entity to present results
		8. Prepare final Investment Grade Audit Report
	4. IGA Report Acceptance
		1. Entity (and DEQ if applicable) reviews the IGA report
		2. Entity issues Certificate of Acceptance indicating that the IGA report is accepted as complete.
	5. Energy Performance Contract Proposal
		1. Develop Energy Performance Contract proposal
		2. Meet with Entity to present results and negotiate final terms
1. **Scope Guidelines and Requirements**
	1. Pre-Approved Markup Costs

The markup costs are presented in **Cost and Pricing Tool (Exhibit B)**. These rates are within the maximum rates ESP proposed in response to the RFP and will be used in the Investment Grade Audit. If the Entity proceeds to an Energy Performance Contract, these rates are the maximum rates allowed under that contract.

* 1. Energy Performance Contract Term

The Energy Performance Contract may not exceed 20 years, the cost-weighted average useful life of the cost-savings measures, or the term of financing, whichever is shortest.

* 1. Allowable cost and savings factors approved for consideration.
		1. Payment sources that can be incorporated:
			1. Energy and water cost savings
			2. Non-Entity labor cost savings, including maintenance contracts
			3. Any savings related to maintenance and operation of the facilities will be limited to those that can be thoroughly documented according to the M&V Plan.
		2. Payment sources that may also be considered and negotiated:
			1. In-house labor costs, except shifting of personnel costs or similar short-term cost savings that cannot be definitively measured.
			2. Non-Entity fund sources (e.g. utility incentives, grants, etc.)
		3. Additional factors related to establishing savings that cover all costs:
			1. Escalation rates for each commodity as determined by the current version of the Energy Escalation Rate Calculator. These are rates used in cash flow projections for project development purposes and in determining potential shortfall payments to the Entity. Escalation rates, if used, must be guaranteed.
			2. Interest rates and other project financing fees
	2. Guaranteed Cost Savings and Cost-effectiveness

Guaranteed cost savings are the annual measurable monetary reduction in utility and operating and maintenance costs resulting from cost-saving measures. The guaranteed cost savings plus any unguaranteed cost savings attributable to utility unit price escalation must equal or exceed any financing repayment obligation each year of the finance term.

The guaranteed cost savings plus any unguaranteed cost savings attributable to utility unit price escalation must also be greater than or equal to either the total project cost divided by 20 or the total project cost divided by the cost-weighted average useful life of the cost-saving measures.

* 1. Independent Third-Party Review Paid from Savings (optional)

ESP may reserve [\_\_\_\_\_\_] % of annually guaranteed savings for the Entity to hire an independent third-party EPC industry expert to serve as the Entity’s representative. This representative may provide technical and advisory services related to the IGA and EPC contracts, including the review of contracts, reports, implementation of cost-saving measures, and other documents related to EPC.

* 1. Excess Savings

Annual cost savings in excess of the guaranteed cost savings will be retained by the Entity, and will not be used to offset shortfalls in previous or future years.

* 1. Annual Savings

The annual cost savings for all measures must be estimated for each year of the finance term.

* 1. Escalation Rates

Escalation rates shall be applied independently to each commodity: gas, electricity, water, operation and maintenance savings, etc. Escalation rates shall be determined according to the Energy Escalation Rate Calculator. These rates will be agreed upon at the start of the audit and used in economic evaluations for project development purposes.

* 1. Interest Rates

Proxy interest rates will be agreed upon at the start of the audit. A proxy interest rate will be used until a 30-day period before EPC financing transaction closing date. After the financing transaction closing date, the actual interest rate must be used.

1. **Data and Background Information**
	1. Collect General Facility Information

The Entity agrees to work diligently to furnish ESP, upon request, accurate and complete data and information, as available. The Entity will allow ESP reasonable access to facility staff to ensure understanding of existing systems and operations. The Entity may collect utility information from utilities to reduce ESP time and expense.

The ESP shall collect data and background information from the Entity concerning facility operation and energy and water use, including any changes to operation, energy use, and water use anticipated within the next 5 years. ESP agrees to work diligently to assess the validity of information provided and to confirm or correct the information as needed. Where information is not available from the Entity, ESP will make a diligent effort to collect such information through the facility inspection, staff interviews, and utility companies.

Collect data and background information concerning facility operation and energy use for the most recent three years, including:

* + - Building square footage and age (including age of major remodels or additions)
		- Construction data of buildings and major additions including building envelope
		- General use of facility
		- Utility company invoices
		- Description of all energy-consuming or energy-saving equipment used on the premises, as available
		- Description of any structural or building use changes
		- Records of any improvements or modifications related to energy, water or operational efficiencies that have been installed during the past three years
		- Description of any current or future plans regarding building or equipment modifications
		- Drawings, as available (may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels)
		- Original construction submittals and factory data (specifications, pump curves, etc.), as available
		- Occupancy and occupancy schedules
		- Description of energy management procedures utilized on the premises
		- Description of current operational practices
		- Operating engineer logs, maintenance work orders, etc., as available
		- Records of maintenance expenditures on energy or water-using equipment, including any service contracts
		- Prior energy audits or studies, if any
	1. Inventory Existing Systems and Equipment

Compile an inventory based on a physical inspection of the major electrical and mechanical systems at the Facility as applicable, including:

* Cooling systems and related equipment
* Heating and heat distribution systems
* Automatic temperature control systems and equipment
* Air distribution systems and equipment
* Outdoor ventilation systems and equipment
* Kitchen and associated dining room equipment
* Exhaust systems and equipment
* Hot water systems
* Motor loads for electric motors 5 HP and larger
* Transmission and drive systems
* Interior and exterior lighting
* Laundry equipment
* Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.
* Other major energy using systems

Address the following considerations:

* The loads, proper sizing, efficiencies, and hours of operation for each system (Where measurement costs, facility operating or climatic conditions necessitate, engineering estimates may be used, but for large fluctuating loads with high potential savings, appropriate measurements are required unless waived in writing by the Entity.)
* Current operating condition for each system
* Remaining useful life of each system
* Feasible replacement systems
* Hazardous materials and other environmental concerns

Use data loggers and conduct interviews with facility operation and maintenance staff regarding systems operation, occupancy patterns and problems with comfort levels or equipment reliability.

* 1. Establish Baseline

The following four components shall be used to establish the baseline:

Estimate Loads

* Estimate loads, usage and/or hours of operation for all major end uses of total facility consumption including: lighting, heating, cooling, motors (fans and pumps), plug loads, kitchen equipment, water, and other major energy and water using equipment.
* Where loading or usage are highly uncertain (including variable loads such as cooling), ESP will use its best judgment, spot measurements or short-term monitoring. ESP should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.
* All estimates are to be documented.

Establish Baseline Usage

* Examine utility bills for the past 36 months for electricity, gas, steam, water, etc.
* Establish base year and/or baseline consumption
* Present base year and/or baseline consumption in terms of energy or water units (kWh, kW, ccf, Therms, gallons, or other units used in bills), in terms of dollars, and in terms of dollars per square foot.
* Describe the process used to determine the base year and/or baseline consumption and demand (averaging, selecting most representative contiguous 12 months, or sampling).
* Consult with facility personnel to account for any anomalous schedule or operating conditions on billings or equipment conditions that could skew the base year and/or baseline representation.
* ESP will account for periods of time when equipment was broken or malfunctioning in calculating the base year or baseline definition period.

Reconcile Estimated Loads

Reconcile end-use estimated consumption and demand with the annual base year consumption. The purpose of this is to place reasonable limits on potential savings. Guidelines include:

* Monthly and annual end use estimated consumption within 5% for electricity (kWh), fuel and water.
* Monthly electrical peak demand within 5% of the base year peak.

Baseline Adjustments

* Propose adjustments to the baseline for energy and water saving measures that will be implemented in the EPC.
* Baseline adjustments shall be made only with written approval by the Entity.
	1. Identify potential cost-saving measures

Interview the facility manager, maintenance staff, subcontractors and occupants of each building regarding:

* + - Facility operation, including energy management procedures
		- Equipment maintenance problems
		- Comfort problems and requirements
		- Equipment reliability
		- Projected equipment needs
		- Occupancy and use schedules for the facility and specific equipment.
		- Facility improvements – past, planned and desired
		- Other project sustainability goals, metrics or standards (LEED, Energy Star, etc.)

Survey major energy-using equipment as applicable, including

* lighting (indoor and outdoor)
* heating and heat distribution systems
* cooling systems and related equipment
* automatic temperature control systems and equipment
* air distribution systems and equipment
* outdoor ventilation systems and equipment
* exhaust systems and equipment
* hot water systems
* electric motors
* transmission and drive systems
* special systems (kitchen/dining equipment, etc.)
* renewable energy systems
* other energy using systems
* water use systems (restroom fixtures, water fountains, irrigation systems, etc.)
* plug loads
* server room equipment

Perform "late-night" surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules, if deemed necessary.

* 1. Assess potential cost-saving measures

Consider the following for each system:

* + - Comfort and maintenance problems
		- Energy use, loads, proper sizing, efficiencies and hours of operation
		- How the measures interact
		- Current operating condition
		- Remaining useful life
		- Feasibility of system replacement and replacement costs
		- Hazardous materials and other environmental concerns
		- Entity’s plans for equipment replacement or building renovations
		- Facility operation and maintenance procedures that could be affected
		- Capability to monitor energy performance and verify savings

Develop a preliminary analysis of potential cost-saving measures.

* + List all potential opportunities, whether cost-effective or not.
	+ Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, control systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, and water saving devices.
	+ Identify measures which appear likely to be cost-effective and therefore warrant detailed analysis.
* Estimate the cost, savings and life expectancy of each proposed measure.
* Conduct a preliminary analysis of potential measures using life cycle cost analysis and examining the value of non-energy benefits of specific measures
	1. Present findings
	+ Submit the list of cost-saving measures to the Entity based on the agreed upon schedule.
	+ Meet with Entity to present preliminary findings prior to thorough analysis.
	+ Describe how the projected project economics meet the Entity’s terms for completing the Investment Grade Audit. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an Energy Performance Contract.
	+ Develop a list of recommended measures for further analysis.

The Entity may reject calculations of savings, potential savings allowed, or project recommendations.

1. **Further Analysis for Investment Grade Audit**
	1. Analyze savings for each cost-saving measure
	* Follow the methodology of ASHRAE or other nationally-recognized authority identified for each retrofit option following the engineering principle(s) of such methodology.
	* Utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings. Include accurate marginal costs for each unit of savings at the time the audit is performed. Document material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility.
	* Use best judgment regarding the employment of instrumentation and recording durations to achieve an accurate characterization of energy use.
* Provide analysis methodology, supporting calculations and assumptions used to estimate savings. Provide calculations which account for the interactive effects of the recommended measures.
* Manual calculations must disclose essential data, assumptions, formulas, etc. so that a reviewer could replicate the calculations based on the data provided.
* For savings estimates using computer simulations, ESP shall provide all inputs and assumptions used, and input and output files in native format, if requested by the Entity or DEQ.
* Provide detailed calculations for any rate savings proposals.
* Provide detailed supporting calculations for any proposed maintenance savings.
* Estimate any environmental costs or benefits of the proposed cost-saving measures (e.g. disposal costs, avoided emissions, water conservation, etc.).
* Specify facility operations and maintenance procedures which will be affected by the installation/implementation of the proposed cost saving measures (CSMs);
	1. Cost Estimates
		+ - Provide detailed estimates of costs associated with the installation, implementation and commissioning of each cost-saving measure (CSM) proposed in the Audit, including breakouts for design, equipment, materials, installation, maintenance, M&V, commissioning, and training.
			- Cost estimates shall include any contractor contingency.
			- Use markups and fees stated in Exhibit B Cost and Pricing Tool in all cost estimates.
			- Provide estimates of annual costs associated with sustaining the project performance including breakouts for maintenance fees, monitoring fees, and training fees.
	2. Measurement and Verification Plan

Develop a preliminary measurement and verification plan for each proposed CSM following the principles of the IPMVP or the FEMP M&V Guidelines: Measurement and Verification for Performance-Based Contracts.

* 1. Commissioning Plan

Provide a preliminary commissioning plan for the proposed cost-saving measures.

1. **Investment Grade Audit Report**

Prepare a preliminary Investment Grade Audit report. The report provides an engineering and economic basis for negotiating a potential Energy Performance Contract between the Entity and the ESP. The report shall be completed within <90**>** calendar days after the date of execution of this Contract. The report shall include:

* 1. Overview
		+ Contact information
		+ Executive Summary
		+ Description of the facility
		+ Summary table of recommended cost-saving measures, including
			- Total implementation cost for each CSM
			- Annual maintenance costs or savings
			- First-year savings (in dollars and utility units)
			- Simple payback and equipment service life
		+ Summary of annual energy and water use in units and cost by source type for the existing or base year condition
		+ Calculation of cost savings expected if all recommended measures are implemented and total percentage savings of total facility energy cost.
		+ Description of the existing facility and its mechanical and electrical systems
		+ Summary description of CSMs, including estimated costs and savings for each
		+ Available rebates and incentives
		+ Discussion of measures considered but not investigated in detail
		+ Conclusions and recommendations
	2. Baseline and/or base year energy use
		+ Description and itemization of current billing rates, including schedules and riders
		+ Summary of all utility bills for all fuel types and water
		+ Identification and definition of base year consumption and description of how established
		+ Provide detail on baseline adjustments, if any, as approved by the Entity.
		+ Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc.) with base year (include discussion of any unusual findings)
	3. Full description of each cost-saving measure including:

Written description

* Existing conditions
* Description of equipment to be installed and how it will function
* Detailed descriptions for each measure including analysis method, supporting calculations (submitted in appendices), results, proposed equipment and implementation issues, including a discussion of facility operations and maintenance procedures that will be affected by installation/implementation
* Plan for installing or implementing the recommendation
* Discussion of the conclusions, observations and caveats regarding cost and savings calculations

Savings calculations

* Base year energy use and cost
* Post-implementation energy use and cost
* Savings calculations including analysis methodology, supporting calculations, and assumptions used.
* Annual savings estimates in both units saved and dollars.
* Savings estimates must be limited to savings allowed by the Entity.
* Description and calculations for any proposed rate changes
* Explanation of how savings interactions between CSMs are accounted for in calculations
* Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the equipment.
* If computer simulation is used, include a short description and identify the software used. Key input data and output reports are to be included in the IGA report with documentation that explains how the final savings figures are derived from the program output. If requested by Entity or DEQ, the ESP shall provide all assumptions and inputs used, and all input and output files in native format.
* If manual calculations are employed, formulas, assumptions, and key data shall be stated together with their sources.
* Conclusions, observations, caveats

Cost estimate

* Detailed narrative, suitable for cost estimating, of the construction work needed. Include all anticipated costs associated with installation and implementation. Provide specifications for major mechanical components as well as detailed lighting and water fixture counts.
* Engineering/design costs
* ESP/vendor estimates for labor, materials, and equipment; include special provisions, overtime, etc., as needed to accomplish the work with minimum disruption to the operations of the facilities.
* Contractor contingency
* Permit costs
* Construction management fees
* Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.)
* Maintenance and repair costs
* All markups and fees stated in this Contract shall be used in the cost estimates
* Conclusions, observations, caveats

Other

* Estimate of average useful service life of equipment
* Preliminary commissioning plan
* Preliminary measurement and verification plan, following the IPMVP or the FEMP M&V Guidelines: Measurement and Verification for Performance-Based Contracts, explaining how savings from each CSM is to be measured and verified (stipulated by Contract, utility bill analysis, measurements, calculations, etc.).
* Discussion of impacts that facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc., and identify who is responsible for maintenance.
* Compatibility with existing systems. NOTE: Include the name of the existing controls system, if new controls systems will have to be compatible with an existing brand of controls. Also note if a sole-source vendor is established for controls systems.
* Complete appendices that document the data used to prepare the analyses. Describe how data were collected. Include the equipment inventory referred to in section 4.2.
* Recommend presenting data using the tables in FEMP M&V Guidelines: Measurement and Verification of Performance-Based Contracts
	1. Review Meeting with Entity

Review the recommendations, savings calculations, and impact of the measures on the operations of the facility. Describe how the projected economics of the project meet the Entity’s terms for completing the Investment Grade Audit.

Revise the audit report as directed by the Entity. The final IGA report shall be signed and stamped by a professional engineer registered in Montana.

**Exhibit A – Location of the Investment Grade Audit**

Buildings and Infrastructure Included in Scope of Work

(Update the tables between the IGA contract and the final Scope of Work in the Energy Performance Contract)

Entity Name:

The following tables list the buildings included in the Investment Grade Audit (IGA) Scope of Work. The Building Total Audit $ may be either the product of Building Gross Square Feet times the Building Audit $/SF or a fixed fee. Add rows as necessary to list all buildings.

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| --- | --- | --- | --- | --- | --- |
| Building  | Building Type | Building Age | Building Gross Square Feet-GSF | Building Audit $/SF | Building Total Audit $ |
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| TOTAL |  |  |  |  |  |

Indicate the cost for other facilities (building or infrastructure) where the Gross Square Foot (GSF) audit fee may not be appropriate, e.g., water or wastewater treatment plants, warehouses, arenas, irrigation, exterior lighting.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Building or Infrastructure | Facility Type | Facility Age | Facility GSF (or other applicable measurement) | Unit cost for audit (if applicable) | Facility Total Audit Cost $ |
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| TOTAL |  |  |  |  |  |

**TOTAL COST OF IGA:**

**Exhibit B** – **Cost and Pricing Tool**

The Cost and Pricing Tool provides DEQ, Entity, and ESP with standard EPC project cost details. Certain information is required of the ESP, and other information is provided at specific steps during EPC project development. This Tool was provided by the ESP in its response to the Entity’s Request for Proposals (RFP). This Contract may modify the percentages based on project scope and project size. Factors used in cost estimates may not exceed the percentages presented in the column “EPC Maximum % of Total Project Cost” or “EPC Maximum % Markup” of **Table B1: Project Cost Estimate**.

For each category, the term “ESP” includes the ESP and any close affiliate, parent, or wholly-owned subsidiary. Any individual category costs, whether for services provided directly by the ESP ("ESP-direct") or purchased from others, such as contractors, vendors, or material providers, may not include markups or profit. All ESP markups must be presented in the “EPC Maximum % Markup” column. All ESP profit must be presented in line **4 Profit** of **Table B1:** **Project Cost Estimate**.

Burdened labor cost is the base rate of compensation plus employment taxes, insurance, and general benefits – vacation time, sick time, holiday pay, retirement benefits, and flexible spending accounts for dependent care and health. Commissions, bonuses, use of a company vehicle, profit-sharing, and other similar benefits must be included in line **4 Profit** of **Table B1:** **Project Cost Estimate**.

The Work is defined, collectively, as the equipment, professional services, and construction related to the project.

The ESP enters information for the total cost of the IGA. The ESP may reduce, but may not increase, values in the shaded cells of the columns “EPC Maximum % of Total Project Cost” and “ECP Maximum % Markup” from the values provided in the RFP.

The ESP does not enter percentages for Trade Subcontracts, Design/Build Subcontracts, and Direct Purchase Equipment now, since these are actual costs that will be input during proposal development.

1. **PRE-CONSTRUCTION COSTS**

Pre-Construction Costs are all costs (except for costs contained in the IGA) that are incurred after signing the EPC contract and prior to commencing implementation of any cost-saving measure in the EPC. Costs presented for ESP services may not include markup or profit. Markups for the cost categories must be included in the “EPC Maximum % Markup” column. Profit for the project must be identified in the “Profit” line item of **Table B1:** **Project Cost Estimate**. The Montana EPC Program recommends open-book pricing. The ESP shall present direct costs and quotes to the Entity.

1. **Design and Other Engineering**

Design and other engineering includes all professional architectural and engineering costs required to design and specify projects to be installed as part of the Work. Cost of design completed by an ESP includes burdened labor cost associated with design of measures included in the EPC. If design is subcontracted to an A&E firm, the amount that may be charged by the ESP is the quoted cost from the A&E firm plus burdened labor cost of ESP energy engineers to oversee and direct A&E design services. Costs of design and other engineering services include applicable code review costs. Any non-billable time or non-engineering supervision of engineers associated with engineering and/or design efforts must be included in the Other Pre-Construction Costs category.

Energy engineering includes all energy modeling, energy savings calculations, and other energy engineering costs that were not accounted for in IGA costs. Costs include burdened labor cost for energy engineers, supervision of energy engineers, or other support. Training costs for energy engineers must be included in the Other Pre-Construction Costs category.

1. **Pre-Construction Services**

Pre-construction services include construction management and project development services. To coordinate and bring many complex technical details together and present a proposal to the Entity, an ESP may employ Business Development Representatives, Project Developers, and/or other resources that act as the key contact between the Entity and the ESP. This line item includes all burdened labor cost and any other direct cost associated with presenting the best information to the Entity in an understandable format.

As an additional level of coordination, the ESP may utilize a construction manager prior to construction to solicit bids for final construction and help review designs to ensure constructability. This cost includes the burdened labor cost of the construction manager associated with these efforts, if applicable.

1. **Other Pre-Construction Costs**

Site visits and Entity meetings are necessary before implementation to ensure designs and equipment meet customer needs and fit project objectives. Other Pre-Construction Costs may include administrative support, legal review, accounting services, printing, copying, binding, office supplies, business travel, business meals, and supervision of project development staff. The burdened labor cost must be used for all in-house personnel.

**1T PRE-CONSTRUCTION COSTS SUBTOTAL**

This is a subtotal of all pre-construction fees and costs expended by the ESP to complete the Work for the Entity. This subtotal may not include any overhead or profit of the ESP or any close affiliate, parent, or subsidiary entity belonging to the ESP.

1. **CONSTRUCTION FEES AND COSTS**

For components in this category that are directly purchased by the ESP, such as from subcontractors, vendors, or material providers, to complete the Work, the costs presented may not include any ESP markups or profit. Markup for the project must be identified in the “Markup” column and profit for the project shall be identified in the “Profit” line item of **Table B1:** **Project Cost Estimate**. Costs presented for ESP-direct work may not include profit, as profit for the project must be identified in the “Profit” line. The ESP must present direct costs and quotes to the Entity.

1. **Trade Subcontractors**

Trade subcontractors are construction contractors selected by the ESP and may be subject to approval by the Entity. These subcontractors are selected by the ESP from bidding on specifications developed by the ESP. They are subcontracted directly to the ESP. Such subcontractors may include lighting contractors, sheet metal contractors, piping contractors, electricians, plumbers, carpenters, controls contractors, and other trade contractors as necessary to complete the Work.

1. **Design-Build Subcontractors**

Design-build subcontractors are construction and design contractors subcontracted directly to the ESP and may be subject to Entity approval. Design-build subcontractors act as their own design agents and finalize the design of the Work to be installed. Such subcontractors include lighting contractors that complete their own audit and design; mechanical contractors that coordinate all of their own electrical, sheet metal work, piping, and other support work; specialty contractors like pool cover vendors; and other specialty contractors necessary to complete the Work.

1. **Direct-Purchase Equipment**

Any equipment directly purchased by the ESP is included in this category.

1. **ESP Construction Labor**

ESP Construction Labor includes the ESP's burdened labor cost of ESP staff directly involved with implementation of the cost-saving measures for the project. Labor overhead costs must be included in the "markup" column. Any profit for construction labor must be identified in the “Profit” line of Table B1.

1. **Construction Management**

Construction Management includes the ESP's burdened labor cost of a construction manager and site superintendent directly supporting the project and to oversee and coordinate subcontractors on the project. Profit for construction management must be identified in the “Profit” line of **Table B1**.

1. **Project Engineering**

During construction, the ESP's design engineers or subcontracted A&E firm may make periodic inspections of work and support the construction manager with engineering analysis of required field modifications. This cost includes the burdened labor cost of engineering or quoted subcontract A&E services.

1. **General Conditions**

General Conditions may be required on larger and longer-term projects. General conditions may cover miscellaneous non-staffing costs directly related to the project, such as: job trailer, trailer office equipment, temporary utilities, permanent utility connection fees, barriers/security fencing, scaffolding, equipment rental, site guards, cleaning, and trash and recycling dumpsters. Markup for General Conditions must be identified in the “Markup” column and profit for the project must be identified in the “Profit” line of **Table B1:** **Project Cost Estimate**.

1. **Construction Completion**
2. **Commissioning**

At the completion of construction, the ESP completes pre-functional and functional tests of all installed measures to ensure proper operation. This work is normally completed by commissioning agents. If it is completed by ESP employees, the cost includes the burdened labor cost of commissioning staff. If it is outsourced to a commissioning firm, this cost includes the cost of necessary commissioning services.

1. **O&M Manuals**

At the completion of the implementation phase of the project, the ESP provides the Entity with complete Operation and Maintenance Manuals providing documents detailing proper maintenance of installed equipment. O&M manuals must include as-built architectural or engineering drawings. The cost to prepare most O&M materials must be included in relevant subcontractor costs above. This cost is for the work to combine all subcontractor-provided material into project O&M Manuals and to print, copy, bind, and deliver printed and electronic copies to the Entity.

1. **Training**

Training of the Entity’s staff may be provided by subcontractors; if so, training costs will be included in their subcontractor bids. However, if the ESP plans to provide the training, or to supervise or coordinate training by subcontractors, the burdened labor cost for such training must be included in this line item. In addition to labor, this line item may include costs of materials or services for formal classroom training, training videos, online training programs, and other training efforts that include labor and materials required to provide necessary training to the Entity. This line item cannot be a repeat of training provided directly by subcontractors that is billed in subcontractor costs.

1. **Other Construction Costs**

Site visits and Entity meetings are necessary at the end of construction to ensure the project has been completed properly before the Entity issues the Implementation Certificate of Acceptance. Such items as administrative support, legal review, accounting services, printing, copying, binding, office supplies, business travel, business meals, and supervision of staff may be acceptable post-construction indirect costs. Other construction costs may include:

1. **Permits**

Construction is completed in jurisdictions requiring compliance with building, electrical, plumbing, and other codes. The ESP must pay code reviewers to review design drawings and render decisions on whether designs meet code. In addition, the ESP must apply for and receive any necessary construction permits based on designs and/or code review. This line item includes all costs associated with paying code reviewers and application and inspection fees for such permits. It does not include design fees or engineering labor to work with code officials or submit permit applications. These design fees and the associated burdened labor cost must be included in the engineering and/or construction management categories listed above.

1. **Insurance**

The ESP may be required to possess various levels of Builder's Risk Insurance, Automobile Liability Insurance, Professional Liability Insurance, and other insurance policies as identified in the Contract. This line item must include an average amount of insurance that would be attributed to this project. Worker's Compensation Insurance is not included in this line item and must be included in the appropriate burdened labor cost categories.

1. **Performance & Payment Bonds**

The ESP is required to provide a bond for the performance and payment of all work from a reputable surety. The cost of the performance and payment bond must be included in this category for the anticipated amount of work to be completed without expending contingency funds. When contingency funds are expended, any increase in bond cost must be included with contingency cost expenditure proposals.

1. **Warranty Labor**

Warranty labor is the burdened labor cost associated with time anticipated to be expended by ESP staff in supporting the ESP’s direct purchase equipment warranties and/or equipment provided by subcontractors. All actual warranty replacement costs must be included in lines D, E, and F of Construction Costs and may not be included in this line item.

**2T CONSTRUCTION COSTS SUBTOTAL**

This is a subtotal of all construction fees and costs expended by the ESP to complete the Work for the Entity.

1. **IMPLEMENTATION COSTS SUBTOTAL**

This is a subtotal of all the implementation cost expended by the ESP to complete the Work for the Entity.

1. **PROFIT**

The anticipated, but not guaranteed, gross profit associated with the project. Note that overhead is included in General Conditions.

1. **ESTIMATED PROJECT COST**

The estimated project cost is the total of Pre-Construction, Construction, and Markup and Profit associated with the construction project.

1. **CONTINGENCY**

The project contingency is a predetermined amount or percentage of the contract held for unpredictable changes in the project. Contingency funds are held by the Entity and co-managed by the Entity and ESP. The intended purpose of the contingency is to account for errors and omissions in the construction documents, modify or change the scope of the project, and to pay for unforeseen elements of the scope of work, which may become known only after implementation of the Work has begun. The ESP will identify any Work items and costs for such items, and submit these items to the Entity for review and approval before any project contingency funds may be spent. The ESP will maintain an on-going record of the project contingency throughout the project. As the contracted scope of work nears completion, if project contingency funds remain, the ESP will work with the Entity to determine the best use of the remaining funds. One option is for the Entity to consider using the remaining contingency funds to pay for additional cost-saving measures. The ESP and Entity will work together to review the potential added measures. Any remaining contingency funds at the end of the Work remain with the Entity.

1. **MEASUREMENT AND VERIFICATION**

At the completion of construction, and throughout the guarantee period, the ESP completes the measurement and verification of installed equipment to verify post-implementation energy efficiency and operation. This is necessary to ensure that systems will meet the guaranteed cost savings and to start the M&V Services phase. If completed by ESP staff, this cost must include burdened labor cost of M&V Engineers. If completed by an external M&V agency, this cost includes the cost to provide necessary M&V services.

1. **TOTAL PROJECT COST**

The Total Project Cost includes all costs associated with the EPC, including IGA Costs, Estimated Project Cost, and Contingency.

**PAYMENT BY ENTITY**

Before paying any invoice, the Entity may audit, or request further documentation for, any cost included in any cost category to ensure that all costs are accounted for within standard Generally Acceptable Accounting Principles (GAAP).

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Table B1: Project Cost Estimate** |  |  |  |  |  |  |  |  |  |
|  | **Project Cost Categories** | **EPC Maximum % of Total Project Cost** | **EPC Maximum % Markup** | **Actual Final EPC Calculated % of Total Project Cost** | **Actual Final EPC Cost with Markup** | **Actual Final EPC Cost without Markup** | **Actual Final EPC Markup Cost** | **Actual Final EPC % Markup** | **Totals** | **Notes** |
| **Investment Grade Audit** | 0.00% |  |  |  |  |  $  | Negotiated |
| **Implementation Costs** |  |  |  |  |  |  |  |  |  |
| **1** | **Pre-Construction Fees and Costs** |  |  |  |  |  |  |  |  |  |
|  | **A** | Design and Other Engineering | 0.00% | 0.00% | 0.00% |  $  |  $  |  $  | 0.00% |  | Calculated |
|  | **B** | Pre-Construction Services | 0.00% | 0.00% | 0.00% |  $  |  $  |  $  | 0.00% |  | Calculated |
|  | **C** | Other Pre-Construction Costs | 0.00% | 0.00% | 0.00% |  $  |  $  |  $  | 0.00% |  | Calculated |
| **1T** | **Pre-Construction Cost Subtotal** |  |  | #DIV/0! |  |  $  |  $  | 0.00% |  $  | Sum A, B, C |
| **2** | **Construction Fees and Costs** |  |  |  |  |  |  |  |  |  |
|  | **D** | Trade Subcontractors | N/A | 0.00% | 0.00% |  $  |  $  |  $  | 0.00% |  | Calculated |
|  | **E** | Design-Build Subcontractors | N/A | 0.00% | 0.00% |  $  |  $  |  $  | 0.00% |  | Calculated |
|  | **F** | Direct Purchase Equipment | N/A | 0.00% | 0.00% |  $  |  $  |  $  | 0.00% |  | Calculated |
|  | **G** | ESP Construction Labor | N/A | 0.00% | 0.00% |  $  |  $  |  $  | 0.00% |  | Calculated |
|  | **H** | Construction Management | 0.00% | 0.00% | 0.00% |  $  |  $  |  $  | 0.00% |  | Calculated |
|  | **I** | Project Engineering | 0.00% | 0.00% | 0.00% |  $  |  $  |  $  | 0.00% |  | Calculated |
|  | **J** | General Conditions | 0.00% | 0.00% | 0.00% |  $  |  $  |  $  | 0.00% |  | Calculated |
|  | **K** | Construction Completion | 0.00% | 0.00% | 0.00% |  $  |  $  |  $  | 0.00% |  | Calculated |
|  | **L** | Other Construction Costs | 0.00% | 0.00% | 0.00% |  $  |  $  |  $  | 0.00% |  | Calculated |
| **2T** | **Construction Cost Subtotal** |  |  | #DIV/0! |  |  $  |  $  | 0.00% |  $  | Sum D-L |
| **3** | **Implementation Costs Subtotal** |  |  |  |  |  |  |  |  $  | Sum 1T+2T |
| **4** | **Profit** | 0.00% |  | 0.00% |  $  |  |  |  |  $  | Calculated |
| **5** | **Estimated Project Cost** |  |  |  |  |  |  |  |  $  | Sum 3 + 4 |
| **6** | **Contingency** | 0.00% | 0.00% | 0.00% |  $  |  $  |  $  | 0.00% |  $  | Calculated |
| **7** | **Measurement and Verification** | 0.00% |  | 0.00% |  $  |  |  |  |  $  | Calculated |
| **8** | **TOTAL PROJECT COST** |  |  |  |  |  |  |  |  $  | Sum IGA + 5 + 6 + 7 |

**ANNUAL COST CATEGORIES**

An energy performance contract has additional costs associated with it that vary depending on the specific project.

The Measurement and Verification cost is the annual cost for the services necessary to verify the guaranteed cost savings of the Energy Performance Contract. The cost for the guarantee is based upon the M&V option utilized, the risk of savings failure, the field time to measure building performance, and the time to document and present the report. Measurement and verification is required under § 90-4-1114(5)(a), MCA for all projects for an initial monitoring period of at least three years.

**Table B2: Measurement and Verification Costs** provides a summary of yearly M&V costs. Enter the information for how the price is determined in Table B2. The ESP shall provide actual costs for M&V at the time of the EPC.

**Table B2: Measurement and Verification Costs**

|  |  |  |  |
| --- | --- | --- | --- |
| **Year** | **Annual Cost** | **Total Cost** | **How Price is Determined** |
| 1 |  |  |  |
| 2 |  |  |  |
| 3 |  |  |  |
| 4 If applicable Add lines as needed |  |  |  |
| Total M&V |  |  |  |

Warranty is the burdened labor cost associated with time expended by ESP staff in supporting the ESP’s direct purchase equipment warranties or equipment provided by subcontractors. This warranty cost may also include costs for extended equipment warranties if the required/specified equipment warranty is longer than the manufacturer’s warranty.

For Other Annual Costs, the ESP describes the significance of other annual cost items. These costs may include training, maintenance, or similar services that the ESP will provide under the EPC.

**Table B3: Other Annual Costs**

|  |  |  |  |
| --- | --- | --- | --- |
| **Category** | **Total Annual Cost** | **How Price is Determined** | **Years Applied (One-time, Annual, etc.)** |
| Warranty |  |  |  |
| Other |  |  |  |
|  |  |  |  |

Exhibit C

**– Certificate of Acceptance –**

**Investment Grade Audit Report**

Date of COA Notice: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contract Project Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contract Number (if applicable): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Facility Location: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The Certificate of Acceptance (COA) for the Investment Grade Audit (IGA) defines the end of the IGA contract period. The Entity hereby confirms its review and acceptance of the final IGA report.

Accepted by:

|  |  |
| --- | --- |
| Name: |  |
| Title: |  |
| Signature: |  |
| Date: |  |

Ec: ESP contact lead

EPC Program Manager: Ronald Pecarina, rpecarina@mt.gov PH: 406-444-6590