

MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: February 20, 2017

RE: **Energy Services Agreement with Schneider Electric Buildings America, Inc. for Glendale Biosolids Energy Efficiency Project**

Attached hereto for your consideration is an Energy Services Agreement and corresponding contract documents with Schneider Electric Buildings America, Inc. (Schneider) for services related to Water Utilities' Glendale Biosolids Energy Efficiency Project. The City Commission previously approved an agreement with Schneider on September 2, 2014, for an Investment Grade Energy Audit (Energy Audit) at the Glendale Wastewater Treatment Plant (Glendale). Schneider completed the Energy Audit, including its cost estimates for energy savings, which it presented to City staff on December 10, 2015.

In accordance with the Energy Audit, Schneider proposed an Energy Savings Project (Project) for Glendale in accordance with the guaranteed energy, water, and wastewater performance savings contracting requirements set forth in Florida Statute §489.145. The purpose of the Project is to provide a comprehensive integrated solution to reduce Glendale's energy usage, optimize the anaerobic digestion process and implement cogeneration. Specifically, Schneider's services will include:

- Installation and commissioning of a new combined heat and power (CHP) system.
- New gas collection and conditioning system.
- New building to house the gas conditioning equipment, instrumentation/controls and CHP system.
- Electrical system upgrades to enable future expansion.
- Upgrades to the sludge pumping and conditioning process.
- Replacement of two aging heat exchangers.
- Replacement of digester valves.
- Continuing performance assurance services.

During the City's Departmental Budget Hearings held in 2016, the City Commission directed Water Utilities' staff to seek funding for the Project through the Florida Department of Environmental Protection's State Revolving Fund (FDEP SRF). On July 5, 2016, the City Commission approved a resolution to enter into a FDEP SRF Loan Agreement with a 0% interest rate.

In performing the work for this Project, Schneider will need to take off line components from the Glendale Digestion Complex. As such, the Water Utilities Department recommends that maintenance activities approved in future years as part of the Capital Improvement Plan be performed now when the components are already off line. Water Utilities' staff is also recommending additional controls work be performed by Schneider Performances Assurances Services Support to ensure the project is operated for maximum performance once completed.

Services pursuant to the Agreement are anticipated to commence on March 15, 2017, upon approval by the City Commission, and be completed within 575 days or approximately nineteen (19) months. The total cost for the Project is \$11,222,922, which includes all of the additional work recommended by the Water Utilities' staff. Pursuant to the Agreement, Schneider has proposed a guaranteed savings of \$5,015,100 over a twenty (20) year period with an additional \$8,625,232 in non-guaranteed savings over the same twenty (20) year period, as evidenced by the attached cash flow table for the Project. In the event that the actual savings are less than the guaranteed savings, Schneider will be required to pay the City the difference during a specified twelve (12) month period. Alternatively, should there be excess savings in any given period, those amounts would be used to offset any payments Schneider would be required to make to the City for a shortfall.

It is recommended that the appropriate City Officials be authorized to enter into this Energy Savings Agreement with Schneider for the Glendale Biosolids Energy Efficiency Project on behalf of the City.

attachments



ENERGY SERVICES CONTRACT

This is an Energy Services Contract (this "Contract") by and between Schneider Electric Buildings Americas, Inc. ("ESCO") and City of Lakeland, a municipality organized and existing in accordance with the laws of the State of Florida ("OWNER"), dated March 15, 2017 (the "Date of Commencement") whereby ESCO agrees to provide and perform the energy conservation measures ("ECMs") set forth in the attached schedules and exhibit(s) which are listed below and incorporated fully herein, subject to the terms and conditions set forth herein:

- Schedule A: Scope of Work**
- Schedule B: Performance Assurance Support Services Agreement**
- Schedule C: Performance Guarantee**
- Schedule D: Measurement & Verification ("M&V") Plan**
- Schedule E: OWNER Responsibilities for Performance Guarantee**
- Exhibit A: Performance Assurance Support Services**
- Exhibit B: Performance Bond**
- Exhibit C: Florida FDEP State Revolving Fund Supplementary Conditions**

City of Lakeland

Schneider Electric Buildings Americas, Inc.

By _____	(Signature)	By _____	(Signature)
Print Name	R. Howard Wiggs	Print Name	_____
Title	Mayor	Title	_____

Attest:

By: _____
Kelly S. Koos, City Clerk

Approved as to form and correctness:

By: _____
Timothy J. McCausland, City Attorney

DEFINITIONS

- "Actual Savings" is defined as the sum of the total savings realized using the procedures defined in Schedule D plus all adjustments and non-measured savings.
- "Annual Savings Guarantee" is the amount of energy savings guaranteed by ESCO for a twelve (12) month period beginning on the Savings Guarantee Commencement Date and any subsequent twelve (12) month anniversary thereafter.
- "Change Order" is defined as a written change in 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, other documents listed in the Contract and any mutually agreed upon written modification issued after execution of this Contract. 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 date provided above or the date that all funding is in place, whichever is later.
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. "Financing Agreement" means the financing arrangement that OWNER will utilize to provide the funds to pay the Contract Sum. (See Article 2)
9. "Financing Agency" means the Clean Water State Revolving Loan Program managed and operated in the State of Florida by The Florida Department of Environmental Protection Division of Water Restoration Assistance.
10. "Guarantee Year" is the twelve (12) month period beginning on the Savings Guarantee Commencement Date and each subsequent twelve (12) month anniversary thereafter.
11. "Implementation Contract" means those portions of this Contract that refer to the Project.
12. "Non-Appropriation" means the failure of an appropriation or availability of the governing body of the OWNER to appropriate money for any Fiscal Year sufficient for the continued performance by the OWNER of all of OWNER's obligations under this Contract.
13. "Performance Guarantee" is the sum of the Annual Savings Guarantee for each year of the guarantee term as set forth in Schedule C or unless terminated earlier in accordance with the Contract Documents.
14. "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.
15. "Project" refers to scope of work, as set forth in Schedule A: Scope of Work, made to facilities of OWNER.
16. "Savings Guarantee Commencement Date" means the first day of the first utility billing period following the month in which ESCO delivers to OWNER the project warranty letter.
17. "Substantial Completion" refers to and shall mean the date the individual scopes of work are sufficiently implemented in accordance with the Contract Documents that OWNER may utilize the Project for the use for which it is intended, and is fully complete except for minor items, adjustments and/or corrections.
18. "Warranty Period" is as defined in Article 4.3.
19. "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 545 calendar days from Date of Commencement, and ESCO will achieve Final Completion 575 calendar days from the Date of Commencement (the “Contract Time”), subject to adjustments of this Contract Time as provided in the Contract Documents.

1.2 This Contract is contingent upon OWNER arranging appropriate financing and obtaining appropriate approval of the Financing Agency. ESCO will comply with all requirements of the Financing Agency.

ARTICLE 2 – CONTRACT SUM AND PAYMENTS

2.1 The total of all implementation contract payments shall be \$11,222,992, (the “Contract Sum”). Construction progress payments shall be made 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 OWNER at the beginning of project implementation in sufficient detail to serve as the basis for progress payments during the performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work. The Schedule of Values will be based upon the project cost less the project mobilization payment.

2.2 ESCO and OWNER shall agree on the portion of Work that is complete and ESCO shall then submit “Payment Request Forms” and payments shall be made to ESCO on a monthly basis during construction subject to review and approval of the OWNER within forty-five (45) days of receipt of ESCO’s Payment Request Form. If there is a dispute as to any portion of the Payment Request, OWNER shall pay the undisputed portion and provide ESCO with written notice of the disputed portion and basis for such dispute. If any undisputed payment is over thirty (30) days late from the due date stated on the invoice, OWNER shall pay to ESCO a 1% late penalty per month in accordance with Florida Statute §218.74 et. seq., the Local Government Prompt Payment Act, and ESCO reserves the right to terminate this Contract due to non-payment upon thirty (30) days prior written notice. ESCO shall pay any portion due, but not in dispute, to all subcontractors and material suppliers within thirty (30) days upon receipt of payment from OWNER.

2.3 ESCO shall submit filled out and signed Payment Request Forms to the OWNER for review covering Work completed as of the date of Payment Request Form and accompanied by such supporting documentation as required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site the Payment Request Form shall also be accompanied by a bill of sale, invoice, or other documentation warranting that the Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment covered by appropriate property insurance or other arrangements to protect the OWNER’s interest therein, all of which must be satisfactory to OWNER. Payment Request Forms should conform to the Engineer Joint Contract Document Committee (EJCDC) standard payment request. Each payment request shall be accompanied by a current project Schedule.

2.4 Beginning with the second Payment Request, each Payment Request Form shall include an affidavit of the ESCO stating that all previous progress payments received on account of the Work have been applied on account to discharge ESCO’s legitimate obligations associated with prior Payment Request Forms.

2.5 ESCO warrants and guarantees that title to all Work, materials, and equipment covered by any

Payment Request Form, whether incorporated in the Project or not, will pass to the OWNER no later than the time of payment free and clear of all Liens.

2.6 Upon the written request of ESCO, within thirty (30) days of the Date of Commencement, OWNER shall make payment to ESCO for expenses incurred to date and project mobilization expenses ("Project Mobilization Payment") in the amount of 10% of the implementation contract payment total of the Contract Sum.

2.7 For the initial five (5) years beginning at the Savings Guarantee Commencement Date, OWNER shall receive the services as described in the Performance Assurance Support Services Agreement ("PASS Agreement") at no additional cost. Thereafter, the PASS Agreement shall renew for a period of one (1) year upon mutual written agreement of the parties, whereby OWNER can maintain the current service or upgrade the level of service as provided for in Schedule B.

2.8 Payments may be withheld on account of (1) Defective Work not remedied, (2) claims filed by third parties, (3) failure of ESCO to make payments properly to the "Subcontractor(s)" or for labor, materials or equipment, or (4) repeated failure to carry out the Work in accordance with the Contract Documents.

2.9 Final payment shall not become due until ESCO has delivered to OWNER a complete release of all liens arising out of this Contract covering all labor, materials, equipment for which a lien could be filed, or a bond satisfactory to OWNER to indemnify OWNER against such lien, consent of the surety, if applicable, to final payment, a list of all Claims against the OWNER that the ESCO believes are unsettled and including submittal of all Florida Licensed Engineer Signed and Sealed Record Drawings, specifications, addenda, modifications and shop drawings, written and/or extended warranties and all manufacturers' instructional and parts manuals delivered to and accepted by the OWNER.

2.10 The making of final payment shall constitute a waiver of claims by OWNER 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.

2.11 The acceptance of final payment shall constitute a waiver of all claims by ESCO against OWNER other than those previously made in accordance with the requirements herein and expressly acknowledged by OWNER in writing as still unsettled.

ARTICLE 3 – OWNER

3.1 Except for permits and fees, which are the responsibility of ESCO under the Contract Documents, OWNER shall secure and pay for necessary approvals, easements, assessments and charges required for the use or occupancy of permanent structures or permanent changes in facilities.

3.2 If with the Warranty Period, ESCO fails to correct Work that is not in material accordance with the requirements of the Contract Documents ("Defective Work") or repeatedly fails to carry out the Work in accordance with the Contract Documents, OWNER, upon seven (7) days prior written notice to ESCO, and if ESCO does not correct or diligently commence to correct such failure within such notice period, may order ESCO to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, the right of OWNER to stop the Work shall not give rise to a duty on the part of OWNER to exercise this right for the benefit of ESCO or any other person or entity.

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

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

3.5 OWNER shall notify ESCO in writing of any or all uses or restrictions in usage of all areas of

OWNER's facility.

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

3.7 OWNER reserves the right to procure materials directly from suppliers for ESCO's use pursuant to this Contract to qualify for a direct purchase tax exemption in accordance with Florida Statute §212.08(6).

ARTICLE 4 – ESCO

Pursuant to this Contract, ESCO makes the following representations:

4.1 ESCO has visited the site and is familiar with and is satisfied as to the general, local and site conditions that may affect the cost, progress, performance or furnishing of the Work.

4.2 ESCO is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work. ESCO has received, reviewed and is familiar with OWNER's facility site plans, records, data, monthly discharge monitoring reports, investigative reports, process control data, and all sundry records that have been requested by ESCO and provided by OWNER that may affect cost, progress, performance and furnishing of the Work.

4.3 ESCO has carefully studied all reports requested by ESCO and provided by OWNER. ESCO has reviewed all ESCO requested drawings provided by OWNER of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site, with the exception of Underground Facilities.

4.4 ESCO accepts the determination of the extent of the "technical data" contained in such drawings upon which ESCO is entitled to rely as provided in paragraph 4.2. ESCO acknowledges that such drawings are not Contract Documents and may not be complete for ESCO's purposes.

4.5 ESCO acknowledges that OWNER does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. ESCO has obtained and carefully studied all such additional supplementary examinations, investigations, and data concerning conditions (including surface, subsurface and Underground Facilities) at or contiguous to the site as requested by ESCO and provided by OWNER or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by ESCO and safety precautions and programs incident thereto. Based on ESCO requested information and investigations provided by OWNER, ESCO does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Schedule as outlined in Article 1.1. However, ESCO reserves the right to conduct additional tests, explorations and studies prior to any excavation or construction, which will be performed at ESCO's sole cost and expense.

4.6 ESCO is aware of the general nature of Work to be performed by OWNER, its subcontractors or other third parties at the site as it relates to the Work specified in the Contract Documents.

4.7 ESCO has correlated the information known or should be known to ESCO, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

4.8 ESCO has arranged all permitting for the Work and for the OWNER including, but not limited to, all local, state, and federal permitting for the modification of the Glendale Facility and the installation of cogeneration equipment.

4.9 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.

4.10 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.

4.11 ESCO warrants to OWNER for a period of one (1) year from the date of Substantial Completion that the materials and equipment manufactured 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 does not warrant products not manufactured by ESCO, but it will pass on to OWNER 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), AND NEITHER PARTY WILL BE RESPONSIBLE FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OF THE OTHER PARTY. ESCO'S RESPONSIBILITY IN WARRANTY OR CONTRACT SHALL NOT EXCEED THE TOTAL CONTRACT PRICE EXCLUDING CLAIMS FOR BODILY INJURY, ESCO'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR AS MAY BE REQUIRED BY LAW.

4.12 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.

4.13 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.

4.14 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.

4.15 ESCO shall provide OWNER access to the Work in preparation and progress wherever located.

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

4.17 Except to the extent of the negligence or willful misconduct of OWNER, or its agents, representatives, employees, officers, directors or assigns, ESCO shall indemnify and hold harmless OWNER, and agents and employees thereof from and against all 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 (other than the Work itself), but only to the extent caused in whole or in part by negligent acts or omissions of ESCO, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

4.18 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. The remedies of OWNER 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 giving rise to the claim, excluding claims for bodily injury, ESCO'S gross negligence or willful misconduct or as may be required by law.

ARTICLE 5 – DISPUTE RESOLUTION

5.1 The parties shall attempt in good faith and, to the extent allowed by applicable law, to resolve any controversy, claim or dispute arising out of or relating to this Contract, or Contract Documents, or any breach thereof, by negotiation of the parties. Any controversy, claim or dispute that is not resolved in the normal course of business within forty-five (45) days of written notice, the parties shall endeavor to settle the dispute by mediation. The parties shall select a mediator that is mutually agreeable to conduct the mediation. The parties agree to equally share the costs and expenses of mediation, which shall not include the expenses incurred by each party for its own legal expenses or travel expenses in connection with the mediation. If the dispute has not been resolved by nonbinding means as provided herein within ninety (90) days and, unless otherwise extended by mutual written agreement of the parties, either party may initiate litigation to enforce its rights pursuant to the Agreement. However, the time limits specified herein shall not apply if one party fails to participate in the negotiation or mediation process. In such event, the requesting party may initiate litigation prior to the expiration of any of the above-specified time periods.

5.2 The mediation proceeding location shall be in the county in which the Project is located.

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 ESCO shall furnish in writing to OWNER the names of the Subcontractors to whom ESCO plans to award Work. Contracts between ESCO and Subcontractors shall (1) 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 OWNER (2) allow to the Subcontractor the benefit of all rights, remedies and redress afforded to ESCO by these Contract Documents, and (3) ESCO shall strive to employ women and minority owned firms as Subcontractors .

ARTICLE 7 – CHANGES IN THE WORK

7.1 OWNER may request order changes in Work consisting of additions, deletions or modifications, whereby, the Contract Sum and Contract Time 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 OWNER 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 OWNER and ESCO prior to any actual changes being implemented,

7.2 Notwithstanding anything to the contrary contained in the Contract Documents, changes to the Contract Sum and Contract Time shall be changed only by Change Order.

The cost or credit to OWNER from a change in the Work shall be determined by mutual written 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 OWNER 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 of OWNER or OWNER 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 Sum 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 OWNER 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 OWNER payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination.

7.4 OWNER may stop work if work is defective, or ESCO fails to supply skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents. OWNER may order ESCO to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the OWNER to stop the Work shall not give rise to any duty on the part of the OWNER to exercise this right for the benefit of the ESCO, Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

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, 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 and such adjustment shall be the ESCO's sole and exclusive remedy for the delays described in this paragraph.

8.3 It is acknowledged that ESCO's failure to achieve Substantial Completion of the Work within the Contract Time provided by the Contract Documents will cause the OWNER to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by the OWNER of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, ESCO agrees that liquidated damages may be assessed and recovered by the OWNER as against ESCO , in the event of delayed completion and therefore ESCO shall be liable to the OWNER for payment of liquidated damages in the amount of One Thousand Dollars (\$1,000) for each calendar day that Substantial Completion is delayed beyond the Contract Time as adjusted for time extensions provided by the Contract Documents, provided, however, that (i) such damages shall not accrue during any period during which OWNER has prohibited ESCO's prosecution of the Work at the site or during a *force majeure* event and (ii) ESCO's liability for Liquidated Damages shall not exceed \$2 million. Such liquidated damages are not intended as a penalty, and ESCO shall pay them to OWNER without limiting OWNER'S right to terminate this Contract for default as provided elsewhere herein.

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, (2) claims filed by third parties, (3) failure of ESCO to make payments properly to the Subcontractors or for labor, materials or equipment, or (4) repeated failure to carry out the Work in accordance with the Contract Documents.

9.3 Upon Substantial Completion, OWNER will issue a certificate of Substantial Completion to ESCO. Title and risk of loss or damage for all items shall be the responsibility of ESCO until the date of Substantial Completion unless such loss or damage results from the negligence or willful misconduct of the OWNER.

9.4 Final payment shall not become due until ESCO has delivered to OWNER a complete release of all liens arising out of this Contract covering all labor, materials, equipment for which a lien could be filed, or a bond satisfactory to OWNER to indemnify OWNER against such lien, including submittal of all Florida

Licensed Engineer Signed and Sealed Record Drawings, specifications, addenda, modifications and shop drawings, written and/or extended warranties and all manufacturers' instructional and parts manuals are delivered to and accepted by the OWNER. .

9.5 The making of final payment shall constitute a waiver of claims by OWNER 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.

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 and its subcontractors shall be responsible for following OWNER's Process Safety Management plan as it relates to Chlorine safety. All ESCO employees and its subcontractors shall undergo OWNER provided chlorine safety training prior to being permitted access to OWNER's Facility. ESCO employees and subcontractors will be provided with Facility identification badges upon completion of the chlorine safety training. OWNER provided identification badges must be visible at all times when on the Facility. Any ESCO employee or subcontractor on the Facility site without proper OWNER provided identification badges shall be immediately escorted offsite. Repeated violation of the chlorine safety training requirement will result in a trespass warning from the Lakeland Police Department to the ESCO employee or subcontractor and their permanent exclusion from OWNER's Facility.

10.3 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.

10.4 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. OWNER 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 OWNER. OWNER warrants and represents to the best of OWNER'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.

10.5 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 OWNER 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. If appropriate, ESCO will be entitled to an equitable adjustment of the Contract Sum for any increased costs or other charges incurred by ESCO in connection with the existence of its rights under this paragraph.

10.6 OWNER 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. OWNER specifically agrees, to the extent allowed by state law, to indemnify and to hold ESCO,

its officers, agents and employees harmless from and against any and all claims, demands, damages, or causes of action in any way arising out of the release of hazardous materials into the air, soil, or any water system or water course, or any actions taken in connection with same, or any failure to act, except for those resulting from or arising out of ESCO's negligent acts, omissions or willful misconduct.

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, Automobile Liability covering all owned, hired and other non-owned vehicles and Commercial General Liability covering public liability, property damage and completed operations with limits not less than \$2,000,000 per occurrence. Certificates of such insurance shall be provided to OWNER prior to commencement of the Work. "City of Lakeland", shall be listed as additional insured with respect to ESCO's Commercial General Liability and Automobile Liability insurance policies. It is agreed that ESCO's Commercial General Liability and Automobile Liability insurance policies shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the OWNER for liability arising out of the operations of this Contract. Required insurance shall be documented in Certificates of Insurance. ESCO shall notify OWNER within thirty (30) days of its receipt of written notice from an applicable insurer that a policy required hereunder will be cancelled. New Certificates of Insurance shall be provided to the OWNER at least fifteen (15) days prior to coverage renewals.

11.2 ESCO shall provide payment and performance bonds for 100% of the Contract Sum 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. ESCO shall ensure that bonds are in accordance with Florida Statute §255.05.

ARTICLE 12 – TERMINATION OF THE CONTRACT

12.1 If OWNER fails to make payments to ESCO as required in this Contract, through no fault of ESCO, ESCO may, upon thirty (30) days written notice to OWNER, terminate the Contract and recover from OWNER payment for all Work executed and for proven loss with respect to materials, equipment, tools, and machinery, including reasonable overhead, profit and damages applicable to the Project. In no event shall OWNER'S failure to pay for reason of Non-Appropriation of funds as set forth in Article 16 constitute an Event of Default. OWNER'S failure to pay due to Non-Appropriation of funds shall be governed in accordance with Article 16.

12.2 If OWNER (1) fails or neglects to maintain OWNER 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 OWNER thirty (30) 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, OWNER, after delivery of written notice and providing ESCO thirty (30) days to cure such breach, may make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due ESCO.

12.4 In addition, OWNER may terminate the Contract upon the occurrence of an Event of Default as specified below:

- 12.4.1 ESCO's failure to perform the Work in accordance with the Contract, including but not limited to, failure to supply skilled workers or suitable materials and equipment);
- 12.4.2 ESCO's failure to comply with applicable Laws or Regulations of any public body having jurisdiction;
- 12.4.3 ESCO's failure to timely complete Work in accordance with the Schedule set forth in the Contract, except for extensions to the Schedule as agreed to by the OWNER and ESCO.
- 12.4.4 ESCO's initiation of a proceeding in any court, seeking liquidation, reorganization, debt arrangement, dissolution, winding up, appointment of trustee, receiver, custodian or the like for substantially all of its assets, and such proceeding continues un-dismissed, un-stayed and in effect for a period of sixty (60) consecutive days, or an order for relief is entered in an involuntary case under the federal bankruptcy laws or other similar laws not or hereafter in effect.

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 shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

13.2 Nothing herein shall be deemed to establish a relationship of principal and agent between ESCO and OWNER, 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 of Florida. The Parties consent to jurisdiction and venue of the Courts of Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa Division in connection with any action or proceeding arising out of or relating to this Contract, document or instrument delivered pursuant to, in connection with, or simultaneously with this Contract.

13.4 As between OWNER 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 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.

13.6 This Contract shall be contingent upon annual budgetary appropriation by the OWNER, and funds availability through the Financing Agency. In the event of non-appropriation, OWNER shall provide written notice to ESCO of termination and OWNER shall pay ESCO any payments that are due and have not been paid at or before the end of its then current Fiscal Year with respect to this Agreement. OWNER shall endeavor to provide ESCO with reasonable notice of such termination prior to the end of the Fiscal Year for which appropriations were made.

13.7 Nothing herein shall be construed to prohibit disclosure required pursuant to Florida Statute Chapter 119, the Florida Public Records Act or any other applicable law.

13.8 IF ESCO HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT,

**CONTACT THE CUSTODIAN OF PUBLIC RECORDS: KEVIN COOK -
DIRECTOR OF COMMUNICATIONS AT: PHONE: 863-834-6264, E-MAIL:
KEVIN.COOK@LAKELANDGOV.NET, ADDRESS: ATTN:
COMMUNICATIONS DEPARTMENT, 228 S. MASSACHUSETTS AVE.,
LAKELAND, FLORIDA 33801.**

This Contract will be governed, interpreted and construed by, under and in accordance with the laws, statutes and decisions of the state in which the Services are to be performed, without regard to its choice of law provisions. The Parties consent to jurisdiction and venue of the Courts of Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa Division in connection with any action or proceeding arising out of or relating to this Contract, document or instrument delivered pursuant to, in connection with, or simultaneously with this Contract.

In accordance with Florida Statute §119.0701, ESCO shall keep and maintain public records required by OWNER in performance of services pursuant to this Contract. Upon request from OWNER's custodian of public records, ESCO shall provide OWNER with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided pursuant to Florida Statute Chapter 119 or as otherwise provided by law. ESCO shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract term and following completion of this Contract if ESCO does not transfer the records to OWNER. ESCO shall, upon completion of this Contract, transfer, at no cost, to OWNER all public records in possession of ESCO or keep and maintain public records required by OWNER to perform services pursuant to this Contract. If ESCO transfers all public records to OWNER upon completion of this Contract, ESCO shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If ESCO keeps and maintains public records upon completion of this Contract, ESCO shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to OWNER, upon request from OWNER's custodian of public records, in a format that is compatible with the information technology systems of OWNER.

ARTICLE 14 - APPROPRIATE USE OF GOVERNMENT FUNDS

14.1 No Local, State, or Federal funds have been paid or will be paid to any person for influencing or attempting to influence any elected official, any officer or employee of Local, State, or Federal government with the award or performance of any governmental contract, the making of any governmental grant, the making of any governmental loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any governmental contract, grant, loan, or cooperative agreement.

ARTICLE 15 – OWNERSHIP

15.1 OWNERSHIP OF EXISTING EQUIPMENT. OWNERSHIP OF THE EQUIPMENT AND MATERIALS PRESENTLY EXISTING AT OWNER'S FACILITY AT THE TIME OF EXECUTION OF THIS AGREEMENT SHALL REMAIN THE PROPERTY OF THE OWNER. EQUIPMENT THAT WILL BE REPLACED HEREUNDER OR ITS OPERATION MADE UNNECESSARY BY THE WORK PERFORMED BY ESCO PURSUANT TO THIS AGREEMENT MAY BE REMOVED AND DISPOSED OF BY ESCO SUBJECT TO PRIOR WRITTEN APPROVAL OF THE OWNER.

15.2 OWNERSHIP OF INSTALLED EQUIPMENT. AFTER THE COMMENCEMENT DATE AND DURING THE TERM OF ANY THIRD PARTY FINANCING AGREEMENT OR FINANCING OF THE EQUIPMENT, LEGAL TITLE TO AND OWNERSHIP OF ALL EQUIPMENT AND ANY AND ALL REPAIRS,

REPLACEMENTS, SUBSTITUTIONS AND MODIFICATIONS THERETO SHALL BELONG TO THE OWNER.

ARTICLE 16- NON-APPROPRIATION OF FUNDS

16.1 OWNER is a municipal government and its performance and obligation to pay under this Contract is contingent upon an annual appropriation. OWNER is subject to the appropriation of funds by its governing body in an amount sufficient to allow continuation of its performance in accordance with the terms and conditions of this Contract for each and every Fiscal Year following the Fiscal Year in which this Contract is in effect.

16.2 In the event insufficient funds are not available to continue the performance under this Contract, OWNER shall provide prompt written notice to ESCO of such event ("Notice of Non-Appropriation).

16.3 Upon termination for Non-Appropriation, OWNER shall no longer be responsible for payment of any additional payments coming due in succeeding Fiscal Years.

SCHEDULE A: SCOPE OF WORK

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

The project includes the installation of a biogas engine-generator set (genset), genset ancillaries, gas conditioning equipment, system piping, instrumentation and controls, and the upgrade and installation of associated pumps, heat exchange equipment, electrical systems, and appropriate enclosures. The project also includes the demolition of existing heat exchange equipment, existing pumps and existing micro turbine/evap cooler.

The genset will convert conditioned digester gas into electricity. Excess gas will be burned by waste gas burners. When the genset is not operational, the digester gas will bypass the genset to maintain gas flow through the Biostrip process. The digester gas will feed the existing boiler to provide digester heating. Multiple heat exchangers will be upgraded to reduce maintenance, operational downtime and energy usage via increased heat transfer efficiency and hot water demand.

Multiple sets of pumps will be replaced to accommodate the increase in thickened solids concentrations and the increased heating and cooling water demands of the new equipment.

All equipment and materials provided by ESCO shall be FOB (Free on Board) Destination.

Cogeneration System

- 1) DEMO existing, failed microturbine, evaporative cooler and FDTN's. OWNER has confirmed that ESCO can DEMO microturbine.
- 2) DEMO equipment is the responsibility of contractor for removal and/or salvage upon approval of the OWNER who maintains the right of first refusal for all DEMO equipment.
- 3) The cogeneration system will comprise of a 400 kW CAT Manufacturer.
- 4) The IC engine will be equipped with heat recovery from the engine water jacket and exhaust stack.
- 5) The cogeneration system will be installed in the Cogeneration Facility listed below.
- 6) The cogeneration system will be connected to the gas conditioning system and interconnected to the facility's electrical system for power distribution.
- 7) Scope includes all required electrical, mechanical, structural, computer (SCADA) and facility upgrades/improvements for turnkey operation.
- 8) Scope includes all required structural concrete pads to support the GenSet components
- 9) All valves directly exposed to methane gas will be stainless steel. All other valves not directly exposed to methane gas can be other.
- 10) Empty conduit and PAD is included for a 2nd GenSet for future use.
 - a. Electrical wiring, piping to gas conditioning, etc is not included for potential future GenSet
- 11) OWNER is responsible for performing all required future maintenance and service on GenSet equipment after initial start-up and commissioning.
- 12) Cogeneration system and all associated equipment will communicate with the existing SCADA system to the main office at the Glendale Facility for communication, feedback information, and remote operation. Scope includes tie in of the cogeneration system and all associated equipment to the existing SCADA system and the scope includes all required system upgrades/improvements for turnkey operation. SCADA points list can be found below in SCADA Control System Scope of Work.

Gas Conditioning System

- 1) Install a new gas conditioning system in the Cogeneration Facility listed below. Scope includes all required electrical, mechanical, structural, computer (SCADA) and facility upgrades/improvements for turnkey operation.

- 2) Gas Conditioning system is designed to provide 100 scfm of gas treatment for 24 hour operation of a CAT 400 kW cogeneration system. The gas conditioning system treatment vessels will be sized for 200 scfm to allow for future expansion.
- 3) The gas conditioning system will be capable of removing siloxanes and hydrogen sulfide from the digester gas to a quality which meets the inlet gas quality criteria of the CAT 400 kw cogeneration system.
- 4) The control panel for the gas conditioning system is included.
- 5) The gas conditioning system will include metering to provide feedback information on the amount of methane gas produced.
- 6) The two hydrogen sulfide treatment vessels (Biostrip and Polishing) are included and installed on the exterior of the Cogeneration Facility and will be sized to allow for up to 200 scfm of treatment capacity.
 - a. Upgrades to this system will be required if additional GenSet units or system capacity is added at a later date.
- 7) All valves directly exposed to methane gas will be stainless steel. All other valves not directly exposed to methane gas can be other.
- 8) Scope includes all interconnecting mechanical and electrical connections to the gas conditioning system.
- 9) OWNER is responsible for performing all required future maintenance, media and service on gas condition equipment after initial media loading, start-up and commissioning.
- 10) Gas Conditioning system and all associated equipment will communicate with the existing SCADA system to the main office at the Glendale Facility for communication, feedback information, and remote operation. Scope includes tie in of the Gas Conditioning system and all associated equipment to the existing SCADA system and the scope includes all required system upgrades/improvements for turnkey operation.
- 11) Scope includes all required structural concrete pads to support the gas conditioning system components. SCADA points list can be found below in SCADA Control System Scope of Work.

Cogeneration Facility Building

- 1) Construct masonry Cogeneration Facility Building to enclose the cogeneration and gas conditioning systems in a single storage building large enough for expansion of the cogeneration system at a later date.
- 2) DEMO Berm wall. The bermed area south of the existing microturbine location will need to be demolished to make room for the new genset building.
- 3) DEMO drying bed to make room for the new genset building.
- 4) Install man-door access to the building with removable louver system for access to GenSet. and Gas conditioning equipment per drawings and specifications.
- 5) Provide propane connection in building for gas blending capabilities if needed in the future. Propane piping will be installed and capped in the building and not connected to the current system.
- 6) Install roof exhauster to provide ventilation in the gas conditioning partition and GenSet partition.
- 7) Genset room ventilation fans, louvers, and accessories.
- 8) Gas conditioning room ventilation fans and accessories
- 9) Electrical room air conditioning equipment and accessories
- 10) Install conduit to the various camera and access door locations noted on the project drawings. The OWNER will take responsibility for the purchase and installation of all of the hardware, wiring and termination of the Cat-6 cable into the appropriate locations
- 11) Provide necessary interior and exterior lighting inside the building.
- 12) All required electrical for the Genset, gas conditioning and ancillary electrical systems for the cogeneration building and equipment.
- 13) All sidewalks and driveways will be poured concrete or asphalt
- 14) A ladder shall be provided for access to the Cogeneration Building roof.
- 15) All roofing will adhere to roofing specification provided by the OWNER.

- 16) Gas detection devices, audible horns and strobe elevated above and within 10 ft of fuel trains, engine connections and gas conditioning skids shall be provided. System shall connect to genset alarm panel or other building alarm panels.
- 17) Cogeneration Facility Building will communicate with the existing SCADA system to the main office at the Glendale Facility for communication, feedback information, and remote operation. Scope includes tie in of the Cogeneration Building to the existing SCADA system and the scope includes all required system upgrades/improvements for turnkey operation

Heat Exchangers

- 1) DEMO existing SolTech supplementary cooling heat exchanger
- 2) DEMO existing SolTech heat recovery exchanger
- 3) DEMO equipment is the responsibility of contractor for removal and/or salvage
- 4) The heat recovery heat exchanger pad will not be demolished. The contractor shall verify the condition of the existing pad for the placement of the new heat exchanger. If existing pad is not in satisfactory condition, contractor shall provide a new pad. The existing heat recovery heat exchanger pad contains two (2) pumps and instrumentation that will be removed so the new heat recovery heat exchanger can be set. Existing supply water to the pumps will be capped with a ball valve.
- 5) Install new Walker Water-to-Sludge Supplementary Cooling Heat Exchanger
- 6) Install new Walker Sludge-to-Sludge Heat Recovery Heat Exchanger
- 7) Install new Muffin Monster™ grinder pump on suction side of ESD sludge transfer pumps (on discharge line from FST).
- 8) Re-use and expand current heat exchanger foundations as required for new heat exchangers
- 9) Scope includes all required mechanical and electrical work to remove and install the heat exchangers
- 10) Install new canopy over existing walker heat exchanger and new Walker heat exchangers for shading over equipment
- 11) Heat Exchanges and associated equipment will communicate with the existing SCADA system to the main office at the Glendale Facility for communication, feedback information, and remote operation. Scope includes tie in of the Heat Exchangers and associated equipment to the existing SCADA system and the scope includes all required system upgrades/improvements for turnkey operation.

Sludge Transfer Pumps

- 1) DEMO Three (3) FST Re-circulation/ ESD Feed/ Sludge Transfer Pumps
- 2) DEMO equipment is the responsibility of contractor for removal. OWNER has right of first refusal on all DEMO equipment.
- 3) Install Three (3) Netzsch FST Re-circulation/ESD Feed/ Sludge Transfer Pumps
- 4) Scope includes all required mechanical and electrical work to remove and install the new pumps.
- 5) Pump FDTN's can be re-used and extended as needed
- 6) Electrical disconnects can be cleaned and re-used if proper performance is confirmed
- 7) Sludge Pumps and associated equipment will communicate with the existing SCADA system to the main office at the Glendale Facility for communication, feedback information, and remote operation. Scope includes tie in of the Sludge Pumps and associated equipment to the existing SCADA system and the scope includes all required system upgrades/improvements for turnkey operation

ESD Hot Water Re-Circulation Pumps

- 1) DEMO Two (2) ESD Hot-Water Re-Circulation Pumps
- 2) DEMO equipment is the responsibility of contractor for removal. OWNER has right of first refusal on all DEMO equipment.
- 3) Install Two (2) Goulds Pump ESD Hot Water Re-circulation pumps.
- 4) Scope includes all required mechanical and electrical work to remove and install the new pumps.
- 5) Pump FDTN's can be re-used and extended as needed
- 6) Electrical disconnects can be cleaned and re-used if proper performance is confirmed

- 7) ESD Hot-Water Re-Circulation Pumps and associated equipment will communicate with the existing SCADA system to the main office at the Glendale Facility for communication, feedback information, and remote operation. Scope includes tie in of the ESD Hot Water Re-Circulation Pumps and associated equipment to the existing SCADA system and the scope includes all required system upgrades/improvements for turnkey operation

GBT Pumps

- 1) DEMO Two (2) pumps for gravity belt thickeners
- 2) DEMO equipment is the responsibility of contractor for removal. OWNER has right of first refusal for DEMO equipment,
- 3) Install Two (2) new progressive cavity GBT pumps.
- 4) Scope includes all required mechanical and electrical work to remove and install the new pumps.
- 5) Pump FDTN's can be re-used and extended as needed
- 6) Electrical disconnects can be cleaned and re-used if proper performance is confirmed
- 7) Pumps and associated equipment will communicate with the existing SCADA system to the main office at the Glendale Facility for communication, feedback information, and remote operation. Scope includes tie in of the Sludge Pumps and associated equipment to the existing SCADA system and the scope includes all required system upgrades/improvements for turnkey operation.

SCADA Control System

1. All ESCO supplied PLC's shall be Modicon-340.
2. Each Ethernet switch shall include the following functionality:
 - a. shall support the quantity of 10/100/1000Tx ports and 10 BaseFL/100Base FX fiber ports to meet functionality of the Work indicated in the project, with 20% spare UTP, auto-negotiating 10/100/1000Base-T, RJ-45 ports.
 - b. All necessary memory upgrades, software feature sets and cables needed for proper operation of these switches shall be furnished with each switch.
3. Based upon the scope vendor data and the expected operating mode of the planned cogeneration system, the following points are recommended for addition to the site SCADA. These points provide sufficient information to remotely monitor the normal operation of the system and to cue operations to abnormal conditions.
4. Note that process changes throughout the plant will include replacement of several pumps. These changes may precipitate instrumentation changes that will require updates within the SCADA for ranges, units, etc. However, no points should be added or removed in this process.

Point Description	Source	Type
New Field Inputs – Connect at Existing I/O Panels		
Heating Water Supply Temperature	Field	AI
Heating Water Return Temperature	Field	AI
Gas Conditioning PLC – Allen Bradley - Ethernet		
Gas Conditioning System Alarm	Gas Cond Cntrl Pnl	DI
Gas Conditioning System Run Status	Gas Cond Cntrl Pnl	DI

Sludge Mixing System PLC – Modicon – Ethernet		
Sludge Mixing System Pressure	Sludge Mixing Master Control Panel	AI
Sludge Mixing System Firing Sequence	Sludge Mixing Master Control Panel	String
Sludge Mixing System Firing Frequency	Sludge Mixing Master Control Panel	String
Sludge Mixing System Firing Duration	Sludge Mixing Master Control Panel	String
Sludge Mixing System Running	Sludge Mixing Master Control Panel	DI
Sludge Mixing System General Alarm	Sludge Mixing Master Control Panel	DI
Sludge Mixing System Enable/Disable Mixing	Sludge Mixing Master Control Panel	String
Sludge Mixing System Firing Sequence	Sludge Mixing Master Control Panel	String
Sludge Mixing System Firing Frequency	Sludge Mixing Master Control Panel	String
Sludge Mixing System Firing Duration	Sludge Mixing Master Control Panel	String
Sludge Mixing System Fault Reset	Sludge Mixing Master Control Panel	DO
Generator Control Panel - CAT EMCP – Modbus RS-485		
G1 System Condition	Gen Cntrl Pnl Gen Swgr	DI
G1 Run Status	Gen Cntrl Pnl Gen Swgr	DI
Main Breaker (52T) Closed	Gen Cntrl Pnl Gen Swgr	DI
Main Breaker (52T) Open	Gen Cntrl Pnl Gen Swgr	DI
Generator Switchgear Main Volts	Gen Cntrl Pnl Gen Swgr	AI
Generator Switchgear Main Amps	Gen Cntrl Pnl Gen Swgr	AI
Generator Switchgear Main PF	Gen Cntrl Pnl Gen Swgr	AI
Generator Switchgear Main Kilowatts	Gen Cntrl Pnl Gen Swgr	AI
Generator Switchgear Main Kilowatt-Hours	Gen Cntrl Pnl Gen Swgr	AI
Gen Breaker (52G1) Closed	Gen Cntrl Pnl Gen Swgr	DI
Gen Breaker (52G1) Open	Gen Cntrl Pnl Gen Swgr	DI
Generator G 1 Volts	Gen Cntrl Pnl Gen Swgr	AI
Generator G 1 Amps	Gen Cntrl Pnl Gen Swgr	AI
Generator G 1 Power Factor	Gen Cntrl Pnl Gen Swgr	AI
Generator G 1 Kilowatts	Gen Cntrl Pnl Gen Swgr	AI
Generator G 1 Kilowatt-Hours	Gen Cntrl Pnl Gen Swgr	AI

Mixing Tank and Piping

- 1) A new mixing system will be installed in the WAS Tank and Anaerobic Digester No. 6 to be used for storage of unthickened combined sludge. The mixing system will send large pulses of air through nozzles mounted on the tank floor. Air flow to the nozzle header pipes in each tank will be controlled by poppet valves within a valve control panel.
- 2) The scope included all equipment, piping and valves required for operation.
- 3) Ancillaries:
 - a. Master control panel
 - b. Valve control panels (2)
 - c. 10 HP rotary-screw air compressors (2)
 - d. 120-gallon air receiver tank
 - e. Complete piping from compressors to air receiver tank, valve panels, and in-tank headers and nozzles

1. ESCO will be allowed to work daytime, evenings, weekends, and holidays subject to OWNER's prior written approval, unless otherwise specified in the Scope of Work. ESCO will coordinate schedule with OWNER, in attempting to limit any disruptions to facility operation.
2. Additional labor cost due to restriction of allowable work hours, provided however, ESCO is aware that OWNER's facilities are used as an operable facility and has been provided the current operating schedules.
3. OWNER will provide lay down area of equipment during construction period within reasonable access of construction zones.
4. OWNER has agreed to reasonable downtime of systems, as defined by the OWNER, during the change-outs/addition of equipment. OWNER will incur all temporary distribution costs of by-product of systems shut downs during this period. ESCO will coordinate schedule with OWNER and OWNER shall have approval authority over proposed ESCO schedule. ESCO is familiar with and understands the OWNER's facility is a fully operational Wastewater Water Reclamation Facility and Federal, State and local rules, regulations and statutes must be met during the construction phase of this project. If the proposed ESCO schedule conflicts with a Federal, State or local rule, regulation or statute the proposed schedule shall be modified by the ESCO to meet the requirements of the rule, regulation or statute. The ESCO shall not have the right to seek additional compensation to meet existing Federal, State or local requirements.
5. OWNER agrees to provide the necessary maintenance and operation of the new installed equipment throughout the project terms. This includes necessary engine rebuilds and required maintenance per the manufacturer specifications provided at the time of facility commissioning.
6. Costs incurred due to lack of access to required areas or due to access to storage areas to which materials are to be delivered.
7. Costs of providing access, access control, or security escorts not specified in the Scope of Work.
8. Hazardous materials testing and abatement not specified in the Scope of Work.
9. Materials and labor associated with modifications to existing systems and equipment not identified in these documents as included in the Scope of Work.
10. Testing, adjusting, and balancing of existing systems not identified in these documents as included in the Scope of Work.
11. Commissioning of existing systems not identified in these documents as included in the Scope of Work.
12. Waste disposal other than that required to accomplish the Scope of Work.
13. Removal of equipment, piping and accessories indicated herein to be abandoned in-place unless indicated herein to be included.
14. The cost for utilities including natural or propane gas, fuel oil, electricity, potable or non-potable water during the construction period.
15. Cost escalation of materials as a result of a delay in the construction schedule caused by OWNER action or inaction.
16. Fees for third party engineers acting as OWNER's agent.
17. As-built drawings will be provided. If required, hardcopy drawings will be provided in full/half size format (1 copy) as well as digital (pdf) format on disk (1 copy).
18. Excludes all damage and performance limitations considered Acts of God.

SCHEDULE B: PERFORMANCE ASSURANCE SUPPORT SERVICES AGREEMENT

This Performance Assurance Support Services Agreement (this "PASS Agreement"), is by and between Schneider Electric Buildings Americas, Inc. ("ESCO"), and "City of Lakeland, a municipality organized and existing in accordance with the laws of the State of Florida ("OWNER"). To the extent that the terms and conditions in this PASS Agreement conflict with the terms and conditions in the Contract, the terms and conditions of this PASS Agreement shall control. Any capitalized terms used and not defined herein are as defined in the Contract.

City of Lakeland

Schneider Electric Buildings Americas, Inc.

By _____ (Signature)	By _____ (Signature)
Print Name <u>R. Howard Wiggs</u>	Print Name _____
Title <u>Mayor</u>	Title _____
Date _____	Date _____

Attest:

By: _____
Kelly S. Koos, City Clerk

Approved as to form and correctness:

By: _____
Timothy J. McCausland, City Attorney

A. TERM

This PASS Agreement shall commence at the Savings Guarantee Commencement Date and continue for five (5) years (the "Initial Term") and shall renew for additional one (1) year periods thereafter upon mutual written agreement of the parties subject to sufficient annual appropriation made by OWNER. After the Initial Term, OWNER may terminate this PASS Agreement at any time prior to thirty (30) days to the end of the then current term.

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

B. SERVICE SCOPE AND PAYMENT

ESCO shall provide the Performance Assurance Support Services (the "Services") to OWNER as set forth

in Exhibit A, Section 1 during the Initial Term.

After the end of Initial Term and each subsequent term thereafter, OWNER may either (1) continue with the same level of Services as set forth in the previous term, (2) change the Services level by selecting one or more of the options as set forth in Exhibit A, Section 2 of this PASS Agreement, or (3) terminate this PASS Agreement and the Performance Guarantee in accordance with the termination provisions contained herein.

The available Services options may be amended from time to time at the sole discretion of ESCO.

1. After the Initial Term, the prices set forth in Exhibit A shall be adjusted upwards annually in accordance with the increase in Consumer Price Index ("CPI").
2. After the Initial Term, payment for each year's PASS Agreement is due within forty-five (45) days of the start of that year's term. ESCO reserves the right to add 1.0% per month to any balance due beyond thirty (30) days of invoice date in accordance with Florida Statute §218.74 et. seq., the Local Government Prompt Payment Act. OWNER acknowledges and understands that all charges are exclusive of any applicable federal, state, or local use, excise, sales taxes or similar fees whether charged to or against ESCO or OWNER for the Services. OWNER may utilize purchase orders for ease of administration and ordering purposes in implementation of this PASS Agreement (to include: specific products or services, scope of work, quantities, price and delivery terms only), however, no pre-printed, additional, inconsistent or different terms contained or referenced in such purchase order shall have any force or effect, it being the intent of the parties that the terms of this PASS Agreement shall apply. OWNER is a Florida municipality and is exempt from state sales and use tax. OWNER shall provide ESCO with a valid tax exemption certificate upon execution of this Agreement. Where possible OWNER may direct purchase equipment to utilize tax exemption. ESCO will utilize the tax exemption certificate where applicable.

C. ACCESS

Services provided under this PASS Agreement will be performed during normal working hours (normal working hours shall mean 8:00 a.m. to 5:00 p.m., local time, Monday through Friday, excluding ESCO holidays) unless specifically stated otherwise in the PASS Agreement and subject to supervised access by OWNER. However, ESCO may have the need to access OWNER facilities during non-normal working hours and on holidays in order to identify and troubleshoot energy savings issues. Therefore, OWNER will provide and permit ESCO reasonable supervised access to OWNER's facility and equipment to the extent necessary for ESCO'S personnel to perform the Services. OWNER shall also provide supervised access to key personnel to discuss facility operating requirements. ESCO will use commercially reasonable efforts to minimize any disturbance with OWNER's operations while providing the Services.

D. RELATIONSHIP

OWNER and ESCO are independent contracting parties. Nothing in this PASS Agreement shall be construed to make either party or any of its employees, the partner, joint venture, agent, or legal representative of the other for any purpose whatsoever, nor grants either party any authority to assume or create any obligation on behalf of or in the name of the other party. As an independent contractor, the mode, manner, method and means employed by ESCO in the performance of the terms and conditions of this PASS Agreement shall be of ESCO'S selection and under the sole control and direction of ESCO. Under the terms of this PASS Agreement, neither OWNER nor any company in which it owns a controlling interest shall be required to furnish ESCO or any of its employees with any benefits, including but not limited to severance benefits, unemployment compensation or worker's compensation.

E. INSURANCE

ESCO shall maintain insurance coverage, including without limitation, Workers' Compensation and Employer's Liability at statutory limits, Automobile Liability covering all owned, hired and other non-owned

vehicles, and Commercial General Liability covering public liability and property damage with limits generally required for its respective industry and operations with not less than \$1,000,000 minimum coverage per occurrence. Such insurance shall be with reputable and financially responsible carriers authorized to transact business in the state in which the facility is located and the services are being performed with an A.M. Best's rating of at least A- VII. "City of Lakeland" shall be listed as additional insured with respect to ESCO's Commercial General Liability and Automobile Liability insurance policies. It is agreed that ESCO's Commercial General Liability and Automobile Liability insurance policies shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the OWNER for liability arising out of the operations of this Contract. Required insurance shall be documented in Certificates of Insurance. ESCO shall notify OWNER within thirty (30) days of its receipt of written notice from an applicable insurer that a policy required hereunder will be canceled. New Certificates of Insurance shall be provided to the OWNER at least fifteen (15) days prior to coverage renewals.

F. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGE OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR PROFIT REGARDLESS OF THE FORM OF ACTION OR THEORY OF RECOVERY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF ESCO WITH RESPECT TO THIS AGREEMENT OR ANYTHING DONE IN CONNECTION THEREWITH, SUCH AS THE USE OF ANY DELIVERABLE FURNISHED HEREUNDER SHALL NOT EXCEED THE TOTAL CONTRACT PRICE EXCLUDING CLAIMS FOR BODILY INJURY, DEATH, ESCO'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR AS MAY BE REQUIRED BY LAW.

G. EXCUSABLE DELAY

Any delay or failure of either party to perform its obligations hereunder (with the exception of payment) shall be excused, and time to perform extended, and shall not be held liable if and to the extent that the delay or failure to perform is caused by an event or occurrence beyond the reasonable control of the party whose performance is interfered with, and without its fault or negligence and which by the exercise of due diligence, said party is unable to prevent.

H. SUCCESSORS

Neither this PASS Agreement nor any rights arising hereunder may be assigned, pledged, transferred or hypothecated by ESCO without the written consent of OWNER; such consent cannot be unreasonably withheld. No Work performed pursuant to this PASS Agreement may be subcontracted in whole or in part by ESCO without the prior written consent of OWNER; such consent cannot be unreasonably withheld.

I. ENTIRE AGREEMENT

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

J. SEVERABILITY

If any provision of this PASS Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

K. GOVERNING LAW

This PASS Agreement will be governed, interpreted and construed by, under and in accordance with the

laws, statutes and decisions of the state in which the Services are to be performed, without regard to its choice of law provisions. The Parties consent to jurisdiction and venue of the Courts of Polk County, Florida or the United States District Court in and for the Middle District of Florida, Tampa Division in connection with any action or proceeding arising out of or relating to this Contract, document or instrument delivered pursuant to, in connection with, or simultaneously with this Contract.

L. PUBLIC RECORDS

ESCO shall comply with Florida Statute Chapter 119, the Florida Public Records Act, as it relates to records kept and maintained by ESCO, in performance of the services pursuant to this Contract. In accordance with Florida Statute, §119.0701, ESC) shall be required to provide access to such records at a cost that does not exceed the statutory requirements or otherwise provided by law. In the event any such records are exempt or confidential from public records disclosure ESCO shall ensure those records are not disclosed except as authorized by law. ESCO shall meet all requirements for retaining public records and shall transfer at no cost to the OWNER, all public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the OWNER in a format that is compatible with the information technology system of the OWNER.

SCHEDULE C: PERFORMANCE GUARANTEE

The Performance Guarantee provided by ESCO will be as follows:

Year	Measured Savings	Non-Measured Savings	Avoided Capital Savings	Annual Guaranteed Savings	Cumulative Guaranteed Savings
1	\$189,625	\$250,899	\$1,043,192	\$1,483,716	\$1,483,716
2	\$194,331	\$258,426	\$557,546	\$1,010,302	\$2,494,018
3	\$199,147	\$266,179	\$32,546	\$497,872	\$2,991,890
4	\$204,078	\$274,164	\$32,546	\$510,788	\$3,502,678
5	\$209,126	\$282,389	\$32,546	\$524,061	\$4,026,739
6	\$214,293	\$290,861	\$32,546	\$537,699	\$4,564,438
7	\$219,581	\$299,586	\$32,546	\$551,714	\$5,116,152
8	\$224,994	\$308,574	\$32,546	\$566,114	\$5,682,266
9	\$240,212	\$317,831	\$32,546	\$590,589	\$6,272,855
10	\$246,172	\$327,366	\$32,546	\$606,084	\$6,878,939
11	\$252,274	\$337,187	\$32,546	\$622,007	\$7,500,946
12	\$258,520	\$347,303	\$32,546	\$638,369	\$8,139,315
13	\$264,915	\$357,722	\$32,546	\$655,182	\$8,794,497
14	\$271,460	\$368,453	\$32,546	\$672,459	\$9,466,956
15	\$278,159	\$379,507	\$32,546	\$690,212	\$10,157,168
16	\$285,016	\$390,892	\$32,546	\$708,454	\$10,865,623
17	\$304,293	\$402,619	\$32,546	\$739,458	\$11,605,081
18	\$311,843	\$414,698	\$32,546	\$759,087	\$12,364,168
19	\$319,573	\$427,138	\$32,546	\$779,258	\$13,143,425
20	\$327,486	\$439,953	\$32,546	\$799,984	\$13,943,410
Total	\$5,015,100	\$6,741,746	\$2,186,564	\$13,943,410	\$13,943,410

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, OR IN ANY CONTRACT DOCUMENT, IN THE EVENT THAT THE PASS AGREEMENT IS CANCELED OR TERMINATED BY OWNER FOR ANY REASON, THE PERFORMANCE GUARANTEE SET FORTH IN SCHEDULE C SHALL BE DEEMED TO HAVE BEEN MET AND FULFILLED AS OF THE EFFECTIVE TERMINATION DATE OF THE PASS 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

OWNER, 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 and OWNER shall jointly determine the Actual Savings for such Guarantee Year hereafter defined as "Savings Reconciliation".

In the event the Actual Savings are less than the Guaranteed Savings for the corresponding twelve (12) months, ESCO will pay OWNER the difference between the Annual Savings Guarantee and the Actual Savings for the corresponding twelve (12) months. ESCO will make payments for any savings shortfall to OWNER within thirty (30) days of that year's Savings Reconciliation. In the event that there are any Excess Savings, such Excess Savings shall be used to offset any payments made by ESCO with respect to any shortfall.

If ESCO has written a savings shortfall check to OWNER, and later Actual Savings exceed the Performance Guarantee to date, OWNER 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

PROJECTED ANNUAL SAVINGS

The Performance Guarantee as established in Schedule C shall consist of savings from multiple scopes of work. The projected savings for Year 1 are shown in the table below:

ECM	Annual Projected Savings		
	Consumption	Demand	Units
Cogeneration Savings	3,320,440	3,192	kWh, kW

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

The cost of energy in any period will be determined by applying the rates as defined below ("Baseline Energy Rates") with 3% annual rate escalation, or the actual energy rates during the period, at the discretion of ESCO, to the energy used in a given period for each fuel type.

Utility Company:	Lakeland Electric		
Rate Schedule:	General Service Large Demand		
Component	Charge	Unit	Description
Consumption Charge	\$0.063024	Per kWh	
Demand Charge	\$4.33	Per kW	

MEASUREMENT & VERIFICATION DETAILS

OPTION B – COGENERATION PRODUCTION

- A. Overview of M&V Plan, and Savings Calculation**
- B. Energy Savings Calculations**
- C. Key Parameters Measurement Strategy**
- D. Parameter Estimates**
- E. Cost Savings Calculations**

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

The method of determining energy savings described in this section uses “Option B – Retrofit Isolation with All Parameter 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.

B. Energy Savings Calculations

Energy savings are simply the sum of the produced power through the new cogeneration at the Glendale Waste Water Treatment Plant. All kWh generated will be metered and totaled to determine the consumption savings from this ECM.

Peak demand savings are a function of both the performance of the cogeneration system and the overall energy use of the plant. This is difficult to measure directly while isolating the performance of the cogeneration system. To deal with this challenge, peak demand savings will be measured indirectly. Downtime is expected periodically for maintenance, limiting the demand savings in months where maintenance is performed for an extended period. The following approach is used to value demand savings:

- 1) Each month, the bottom 10% of production readings will be discarded.
- 2) The average of the remaining 90% of production readings will be computed for each month.
- 3) The lowest two months will be discarded.
- 4) The average of the remaining ten monthly averages will be computed.
- 5) 2/3 of the resulting value in Step 4 will be reported each month as the peak demand savings.

C. Key Parameters Measurement Strategy

All energy savings will come from electric sub-metering on the production output from the new cogeneration system. No additional measurements are required for computing the savings. Additional measurements may be performed to validate sufficient gas flow and quality to produce the expected electricity, but these measurements are not required.

D. Parameter Estimates

No estimated parameters are necessary to compute the savings, but there are several necessary performance factors for proper performance of the cogeneration system. If these factors change, a non-routine baseline adjustment may be required to estimate the energy impact due to the difference. Proper maintenance is performed on the cogeneration system. The OWNER is responsible for maintaining all system equipment and operations to produce required uptime of 95%. The OWNER is responsible for operating the system to achieve the gas production outlined in the Theory of Operation outlined in Schedule E.

E. Cost Savings Calculations

Provided below are the methods and equations used to determine the cost savings associated with this

particular methodology.

Cost Savings are calculated by applying the utility rates as defined in Schedule D, Energy, Water, and O&M Rate Data, including 3% annual rate escalation, to the energy and demand savings from Paragraph B.

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. OWNER 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 OWNER 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, with 3% annual escalation, for each measure will be claimed for each Guarantee Year after the Savings Guarantee Commencement Date.

Utility Cost Savings Measure	Cost Savings
Gas Conditioning	-\$12,285
Sludge Conditioning	-\$390
Cogeneration Auxiliary Loads	-\$4,473
Mixer Load	-\$8,500
ATAD Electric Savings	\$87,718
ATAD O&M Savings	\$75,000
ATAD Sludge Reduction Savings	\$71,816
Sludge Reduction	\$21,000
Propane Savings	\$21,013

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

Avoided Capital Cost Savings

The annual savings in the table below will be claimed for the defined Guarantee Year after the Savings Guarantee Commencement Date:

Project Year	FST/HWR Pumps	Heat Exchanger	Digester Valves	Total Savings
1	\$32,546	\$525,000	\$485,646	\$1,043,192
2	\$32,546	\$525,000	\$0	\$557,546
3	\$32,546	\$0	\$0	\$32,546
4	\$32,546	\$0	\$0	\$32,546
5	\$32,546	\$0	\$0	\$32,546
6	\$32,546	\$0	\$0	\$32,546
7	\$32,546	\$0	\$0	\$32,546
8	\$32,546	\$0	\$0	\$32,546
9	\$32,546	\$0	\$0	\$32,546
10	\$32,546	\$0	\$0	\$32,546
11	\$32,546	\$0	\$0	\$32,546
12	\$32,546	\$0	\$0	\$32,546
13	\$32,546	\$0	\$0	\$32,546
14	\$32,546	\$0	\$0	\$32,546
15	\$32,546	\$0	\$0	\$32,546

16	\$32,546	\$0	\$0	\$32,546
17	\$32,546	\$0	\$0	\$32,546
18	\$32,546	\$0	\$0	\$32,546
19	\$32,546	\$0	\$0	\$32,546
20	\$32,546	\$0	\$0	\$32,546

SCHEDULE E: OWNER RESPONSIBILITIES FOR PERFORMANCE GUARANTEE

GENERAL RESPONSIBILITIES

OWNER acknowledges and agrees that proper maintenance is essential to any energy conservation program. Therefore, OWNER agrees to undertake the following responsibilities:

OWNER agrees to: (1) provide, or cause its suppliers to provide, periodic utility invoices to ESCO within ten (10) days of receipt, (2) execute all OWNER responsibilities as outlined herein, and (3) provide to ESCO reasonable access to all OWNER facilities and information necessary for ESCO to perform its responsibilities. Access will include, but is not limited to, the following items:

- All buildings listed within this Contract
- All buildings served by the meters listed within this Contract
- All mechanical equipment rooms in the buildings listed within this Contract
- All temperature control and energy management systems which control part or all of any of the buildings listed within this Contract
- Personnel with responsibility for operating and/or managing any of the buildings listed within this Contract
- Monthly utility invoices and billing history for all of the meters listed within this Contract
- Construction documents, equipment inventories, and other documents that may be helpful in evaluating a cause for adjustment as listed within this Contract
- Any data from meters or sub-meters relevant to M&V associated with this Contract
- All SCADA and plant information as requested by ESCO to be provided by OWNER in a timely manner to ensure system performance. Since OWNER cannot provide remote access to plant operating data, all information outlined in Theory of Operation and additional plant information should be provided to ESCO at a minimum twice a month to ensure system performance. OWNER is responsible for sending the data in the agreed upon format for review.
- Additional requests for information may be required greater than twice a month. ESCO will discuss those needs with OWNER before requests.

OWNER will perform daily facilities monitoring and promptly review any alarm summaries.

OWNER will designate two (2) "Primary Operators" of the system. The Primary Operators are defined as individuals who will be trained by ESCO during the installation period and will be responsible for daily operation and maintenance of the equipment and systems necessary to achieve the Performance Guarantee. OWNER will notify ESCO, in writing, within five (5) days after the departure or termination of any Primary Operator. Within ten (10) days of the departure of a Primary Operator, OWNER will designate another Primary Operator and shall provide ESCO access to train the new Primary Operator. ESCO shall train the new Primary Operator at the sole expense of OWNER on a time and materials basis.

MAINTENANCE RESPONSIBILITIES

OWNER agrees to use its best efforts to maintain the ECMs in original operating condition ("Original Operating Condition") with allowance for normal wear and tear. If an ECM is operating at any state other than the Original Operating Condition as defined above ("Failed ECM"), OWNER agrees to (1) repair or replace the ECM immediately, and (2) contact a PASS representative at 1-800-274-5551 option 4, within 24 hours of such event.

ESCO reserves the right to adjust the amount of Performance Guarantee associated with the Failed ECM for the duration of the failure in the Annual Savings Guarantee.

OWNER will agree to maintain all parts of the Project site(s) where the ECM(s) reside including but not

limited to components, equipment, machinery, energy management systems, structure of the facility(s), computer hardware, network and IT systems, either existing or newly installed. OWNER must comply with the general maintenance requirements specified by equipment manufacturers and the maintenance tasking guidelines included in the operating and maintenance manual. OWNER will be responsible to provide to ESCO documentation that proper maintenance has been performed at ESCO's request within thirty (30) days of written request. This includes scheduled preventive O&M, responsive maintenance for unexpected issues, regular re-builds and overhauls, and all other maintenance necessary to keep the ECMs in Original Operating Condition.

Notwithstanding anything to the contrary contained herein, all ECM(s) must be maintained in proper working condition in all cases where the performance of said ECM(s) affects or could affect the ability to achieve, measure or verify the Annual Savings Guarantee. Should OWNER refuse to perform the required maintenance as required in this Contract, ESCO and OWNER shall agree to one of the following means of recourse: (1) ESCO will adjust the Performance Guarantee associated with that ECM pursuant to Schedule E, or (2) ESCO may terminate this Performance Guarantee and any and all obligations and liabilities of ESCO associated therewith upon fifteen (15) days written notice.

ADJUSTMENT RESPONSIBILITIES

In addition to the responsibilities of OWNER set forth in this Schedule, OWNER also agrees to undertake the responsibilities set forth in the Adjustment Schedule as necessary.

ADJUSTMENT SCHEDULE

Below is the procedure for accounting for non-routine adjustments for any of the utility meters included in Schedule D. A non-routine adjustment is required for any change outside of those explicitly defined in Schedule D that will impact the energy use or the verified savings under this Contract. It is OWNER's responsibility to notify ESCO of any changes that may necessitate a non-routine baseline adjustment and to perform the required non-routine baseline adjustment steps identified below at OWNER's sole expense.

OWNER REQUIRED NON-ROUTINE BASELINE ADJUSTMENT RESPONSIBILITIES

The system design and performance is based on the Theory of Operation. The OWNER will operate the system to achieve the parameters set forth in the Theory of Operation. The responsibility of operating the plant to achieve the Theory of Operation is that of the OWNER. The power production of the GenSet is directly correlated to achieving the parameters and ranges outlined in the theory of Operation. These include and are not limited to:

1. Influent TSS (mg/L)
2. VS % of TSS
3. VS % destroyed
4. Average flow (MGD)
5. Gas production efficiency (CF/# VS destroyed)
6. BTU content of gas being produced (BTU/CF)

Theory of Operation

The following information on operating parameters and maintenance requirements are essential to the success of the project, as agreed upon with ESCO and OWNER.

The existing 2PAD thermophilic-mesophilic anaerobic digestion process at the Glendale Wastewater Reclamation Facility (GWWRF) produces Class AA biosolids by meeting time-and-temperature requirements for pathogen reduction and a minimum 38% volatile solids destruction requirement for vector attraction reduction, per the US EPA 503 and associate state regulations. This is achieved at the GWWRF by heating solids in the thermophilic egg-shaped digester (ESD) at a minimum of 131oF for three hours and achieving an average volatile solids destruction of 40%.

Staff at the GWWRF operate the 2PAD system in accordance with operating protocols provided by the vendor, IDI [Infilco Degremont Inc.], and have done an excellent job at consistently meeting the Class AA requirements. Thickening and digester equipment improvements included in the digester gas combined heat and power (co-gen) improvements project are intended to maintain Class AA pathogen and vector attraction reduction while increasing volatile solids destruction and digester gas production to maximize the potential for generating in the co-gen system. Adding thickened, undigested solids from Lakeland's Northside WWRf (NWWRF) to the GWWRF digestion process, which has been proposed by Lakeland, adds additional volatile solids to the digestion process for additional gas production. Proposed refinements to solids thickening and digester operations at the GWWRF, which are intended to create conditions in the digesters that are more favorable for a higher level of volatile solids destruction than is currently achieved, are also expected to add to the increase in gas production.

Proposed operational considerations for managing the addition of NWWRF solids and thickening and digester operations at the GWWRF are based on a number of key parameters for good digester performance and the potential for increased volatile solids destruction, as summarized in Table 1.

Operating parameters for current GWWRF operations and with the proposed improvements, including the addition of NWWRF solids, are compared to IDI design parameters for the 2PAD process in Table 2. As shown in Table 2, the current digester feed solids concentrations and ESD and overall digestion process volatile solids loading rates are right at or slightly below the minimum values specified in the IDI design criteria. The recommended refinements and the addition of NWWRF under the "Improved Glendale + Northside scenario result in feed solids concentrations that align with IDI design criteria for feed solids concentration. By reducing the operating volume in the ESD, the recommended improvements increase the ESD volatile solids loading rate above the IDI minimum criterion and within the acceptable range for the IDI design. Note also for the improvements scenario that the overall volatile solids loading rate using the volume of both mesophilic digesters is slightly less than the IDI minimum criterion. However, the majority of active mesophilic digestion and gas production is expected to occur in Digester No. 1 at the almost 12-day HRT provided with the recommended improvements. The overall loading rate using only the volume of the ESD and Digester No. 1 is a more appropriate measure of VS loading, which is within the overall loading range derived from the IDI design criteria.

Table 1 – Operating Considerations

Key Operational Parameter	Proposed GWWRF Operation
<p>Maintain consistent and appropriate supply of food – biodegradable volatile solids – to the digesters.</p> <ul style="list-style-type: none"> • Minimize the variability in the type of solids feed to the digesters, especially the proportions of primary solids and waste activated solids. • Maintain appropriate volatile solids loadings so as not to overfeed OR underfeed the digesters. • Feed digesters regularly. For a batch process such as 2PAD, more frequent feed cycles per 24 hour period are preferred to less frequent cycles. 	<ul style="list-style-type: none"> • Operate solids thickening at the GWWRF and delivery of solids from the NWWRF as follows to avoid large variations in digester feed: <ul style="list-style-type: none"> ○ Combine GWWRF PS and WAS in WAS Storage Tanks (Digester Nos. 3 and 6) and co-thickened on the GBTs. ○ Change WAS wasting schedule from 12 hrs/day to 24 hrs/day. PS pumping on blanket level is acceptable. ○ Pump thickened solids from the GBTs to the FST, coordinated with ESD feed cycles. ○ Thicken NWWRF WAS to 4.5% to 5% solids. ○ Transfer thickened NWWRF WAS from trucks into the FST in equal batches throughout the day, one batch per cycle, rather than all at once. • Operate the 2PAD process at 4 feed cycles/day per day, per the IDI protocol, if time and temperature requirements can be maintained. 3 feed cycles/day is acceptable if time and temperature can't be met at 4 cycles/day. • Maintain a 2.1 day HRT in the ESD, per the IDI protocol. • Maintain feed solids to the ESD in the range of 4.5% to 5.5% TS, with a monthly average of 5%. This is consistent with the

	3% to 6% feed solids on which IDI based the ESD and mesophilic digester system/equipment design.
Maintain appropriate relationship between hydraulic retention times and volatile solids loading rates. Hydraulic retention times of 20 to 30 day days typically result in increased volatile solids destruction and gas production, assuming that volatile solids loading rates can be maintained so as not to underfeed the digester.	<ul style="list-style-type: none"> • Maintain 2.1 day HRT in the ESD, per the IDI protocol. • For series operation of Mesophilic Digester Nos. 1 and 2: <ul style="list-style-type: none"> ○ Maximize HRT in Digester No. 1 by maintaining operating depth of at least 17 feet. ○ Maintain operating depth in Digester No. 2 at or above 14.75 ft (minimum depth per IDI mixing system design). This provides mixing and maintains approximately 120,000 gal volume for operational flexibility.
Maintain and minimize the variability in digester temperatures.	<ul style="list-style-type: none"> • ESD – maintain target daily average temperature at 133°F to 135°F; do not exceed 137°F. • Mesophilic digesters – maintain target temperature of 96°F to 99°F, keep temperature variation to $\leq 1.8^\circ\text{F}/\text{day}$, and avoid exceeding 100°F.
Maintain good mixing of digester contents.	<ul style="list-style-type: none"> • Operate ESD recirculation pump following IDI protocols. • Maintain operating levels in Digester Nos. 1 and 2 at or above the minimum design level for mixing and operate the mixing system per IDI protocols.
Performance Requirements from operation of system	<ul style="list-style-type: none"> • The Owner agrees to operate the system according to this Theory of Operation. • At GWWRF's current flows and loadings, including the addition of NWWRF solids, the system is designed to achieve the following parameters if operated according to this Theory of Operation: : <ul style="list-style-type: none"> • 45%-55% VS Destruction • 14-16 scf digester gas/lb VS destroyed • 500-600 BTU/scf digester gas

Table 2 – Comparison of Digestion Process Operating Parameters

	IDI 2PAD Design Criteria	Current GWWRF (Aug 2015 to Jul 2016 data)	Improved GWWRF + NWWRF (Aug 2015 to Jul 2016 data)
Combined Primary + WAS to Digestion			
TS, lb/day		22,420	27,160
VS, lb/day		18,430	22,480
% TS		3.4%	4.9%
Flow, gpd		78,805	66,105
Thermophilic Digester Parameters			
% TS solids feed	3% to 6%	3.4%	4.9%
HRT, days	2.1	2.1	2.1

Total digester volume, gallons	268,000		
Digester volume at HRT, gallons		165,491	138,821
% of total volume		62%	52%
VS loading, lb/ft ³ -day	> 0.75 ⁽¹⁾	0.83	1.21
Mesophilic Digester Parameters			
Operating depths and volumes			
Maximum operating depth, ft	17.75		
Max. operating volume per digester, gallons	753,400		
Total max. operating volume – 2 digesters, gallons	1,506,800		
Minimum operating depth for mixing, ft	14.75		
Min. operating volume used at HRT, gallons	626,068		
Total HRT, days	10.5	10.5	20.4
Total digester volume used at HRT, gallons		827,455	1,347,637
% of max. operating volume used		55%	89%
Digester No. 1			
Depth, ft		NA ⁽²⁾	17.00
Volume, ft		NA ⁽²⁾	721,570
HRT, days		NA ⁽²⁾	10.9
Digester No. 2			
Depth, ft		NA ⁽²⁾	14.75
Volume, ft		NA ⁽²⁾	626,068
HRT, days		NA ⁽²⁾	9.5
Total Digestion Process			
Total HRT, days	12.6	12.6	22.5
Total digester volume at HRT, gallons		992,945	1,486,459
ESD + Digester No. 1 volume, gallons		NA ⁽²⁾	860,391
VS loading, lb/ft³-day			
Total	>0.12 ⁽¹⁾	0.14	0.11
Total ESD + Digester No. 1		NA ⁽²⁾	0.20

(1) VS loading rates calculated from IDI design HRT and 3% to 6% feed solids range from range from 0.71 to 1.43 lb VS/ft³-day to the ESD and 0.12 to 0.24 lb/ft³-day for the overall digestion process.

(2) Not indicated in available GWWRF plant data.

If the Theory of Operation is not followed within the operating parameters a non-routine baseline adjustment will be performed. The adjustment will follow the calculation process of the impact of the parameter that falls outside the allowable threshold limit for the parameters. OWNER agrees to operate the facility to achieve the gas production while following all state and federal applicable laws and permitting of the facility.

In addition, changes made to the operation and maintenance of the cogeneration building and all equipment outside of the current design parameters of this contract will result in a non-routine baseline adjustment.

EXHIBIT A: PERFORMANCE ASSURANCE SUPPORT SERVICES

SECTION 1 – SERVICES DURING INITIAL TERM

ESCO shall provide the Performance Assurance Support Services (the “Services”) defined below to OWNER during the Initial Term as defined in Schedule B.

Contract Year 1

Training

ESCO will provide 1 On Site training session. Training sessions will be scheduled at least 14 days in advance. ESCO and OWNER will work to schedule a mutually acceptable date for each visit. OWNER will be responsible for providing access to the training location and paying for any fees associated with that location. The training location must include internet and OWNER EMS access. ESCO does not impose any restrictions on the number of OWNER employees attending training sessions so long as the location will accommodate that number.

Remote System Monitoring & Reporting

ESCO will remotely access your energy management system on a bi-monthly basis. During each session, the system will be inspected and variables will be compared to the contractual agreement. Additionally, ESCO will inspect the system for proper operation and report those findings for OWNER review. All findings will be reported and that report delivered to OWNER electronically. ESCO will notify OWNER if remote access is not available. OWNER is responsible for restoring remote access and notifying ESCO. ESCO is not responsible for providing the planned service session if remote access is unavailable.

Measurement & Verification with Savings Reporting

ESCO will perform the measurement & verification as outlined in the M&V plan and will update the Energy Production and Performance report on a quarterly basis. This can only be completed if remote access is maintained by the client and other necessary information is made available per the contract. Notification of report updates will be sent via email to the contacts specified by the OWNER. Changes to that contact list can be made at any time. OWNER will need to contact ESCO with the new contact list and changes will be made before sending the next email update. If remote access and other necessary information are not provided, per the Contract, ESCO is not responsible for providing the Performance report for that time period.

Remote Technical Support

ESCO will provide 10 hours of remote support. All Remote Support is client initiated and it is the expectation of ESCO that if a client does not remain on the phone for the duration of the time required to accomplish the task, the OWNER will accept the time, up to the limit of the hours already purchased and not used, that the ESCO representative documents as used for that task. No credit will be given towards future years if all of the 10 hours are not used by the end of the project year. If all of the hours are exhausted at any time before the end of the year, additional hours can be purchased in 10 hour blocks which will remain available for use until the end of the next project year.

On-Site Visit

ESCO will provide On-Site Energy Consulting consisting of 3 site visits per year. This service will include a site assessment to determine current conditions and identify areas of improvement. Each site visit will be documented in a report indicating the findings. OWNER is responsible for providing access to all mechanical and electrical equipment and any supervision required by OWNER. Site visits must be requested 14 days or more prior to the requested date. ESCO and OWNER will work to schedule a mutually acceptable date for each visit.

Contract Year 2

Training

ESCO will provide 1 On Site training session. Training sessions will be scheduled at least 14 days in advance. ESCO and OWNER will work to schedule a mutually acceptable date for each visit. OWNER will be responsible for providing access to the training location and paying for any fees associated with that location. The training location must include internet and OWNER EMS access. ESCO does not impose any restrictions on the number of OWNER employees attending training sessions so long as the location will accommodate that number.

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ESCO will perform the measurement & verification as outlined in the M&V plan and will update the Energy Production and Performance report on a quarterly basis. This can only be completed if remote access is maintained by the client and other necessary information is made available per the contract. Notification of report updates will be sent via email to the contacts specified by the OWNER. Changes to that contact list can be made at any time. OWNER will need to contact ESCO with the new contact list and changes will be made before sending the next email update. If remote access and other necessary information are not provided, per the Contract, ESCO is not responsible for providing the Performance report for that time period.

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Contract Year 3

Measurement & Verification with Savings Reporting

ESCO will perform the measurement & verification as outlined in the M&V plan and will update the Energy Production and Performance report on a quarterly basis. This can only be completed if remote access is maintained by the client and other necessary information is made available per the contract. Notification of report updates will be sent via email to the contacts specified by the OWNER. Changes to that contact list can be made at any time. OWNER will need to contact ESCO with the new contact list and changes will be made before sending the next email update. If remote access and other necessary information are not provided, per the Contract, ESCO is not responsible for providing the Performance report for that time period.

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On-Site Visit

ESCO will provide On-Site Energy Consulting consisting of 1 site visit per year. This service will include a site assessment to determine current conditions and identify areas of improvement. Each site visit will be documented in a report indicating the findings. OWNER is responsible for providing access to all mechanical and electrical equipment and any supervision required by OWNER. Site visits must be requested 14 days or more prior to the requested date. ESCO and OWNER will work to schedule a mutually acceptable date for each visit.

Contract Year 4

Measurement & Verification with Savings Reporting

ESCO will perform the measurement & verification as outlined in the M&V plan and will update the Energy Production and Performance report on a quarterly basis. This can only be completed if remote access is maintained by the client and other necessary information is made available per the contract. Notification of report updates will be sent via email to the contacts specified by the OWNER. Changes to that contact list can be made at any time. OWNER will need to contact ESCO with the new contact list and changes will be made before sending the next email update. If remote access and other necessary information are not provided, per the Contract, ESCO is not responsible for providing the Performance report for that time period.

Remote System Monitoring & Reporting

ESCO will remotely access your energy management system on a bi-monthly basis. During each session,

the system will be inspected and variables will be compared to the contractual agreement. Additionally, ESCO will inspect the system for proper operation and report those findings for OWNER review. All findings will be reported and that report delivered to OWNER electronically. ESCO will notify OWNER if remote access is not available. OWNER is responsible for restoring remote access and notifying ESCO. ESCO is not responsible for providing the planned service session if remote access is unavailable.

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Contract Year 5

Measurement & Verification with Savings Reporting

ESCO will perform the measurement & verification as outlined in the M&V plan and will update the Energy Production and Performance report on a quarterly basis. This can only be completed if remote access is maintained by the client and other necessary information is made available per the contract. Notification of report updates will be sent via email to the contacts specified by the OWNER. Changes to that contact list can be made at any time. OWNER will need to contact ESCO with the new contact list and changes will be made before sending the next email update. If remote access and other necessary information are not provided, per the Contract, ESCO is not responsible for providing the Performance report for that time period.

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The available service options may be amended from time to time at the sole discretion of ESCO.

SECTION 2 – SERVICES AFTER INITIAL TERM

After the end of Initial Term and each subsequent term thereafter, OWNER may either (1) renew the same level of Service as set forth in the Initial Term or previous term, (2) change the Service level by selecting one or more of the options defined below, or (3) terminate this PASS Agreement and the Savings Guarantee in accordance with the termination provisions contained herein. All prices will be calculated at the time of renewal.

Contract Year 6

Proposed Services: \$15,375

Measurement & Verification with Savings Reporting

ESCO will perform the measurement & verification as outlined in the M&V plan and will update the Energy Production and Performance report on a quarterly basis. This can only be completed if remote access is maintained by the client and other necessary information is made available per the contract. Notification of report updates will be sent via email to the contacts specified by the OWNER. Changes to that contact list can be made at any time. OWNER will need to contact ESCO with the new contact list and changes will be made before sending the next email update. If remote access and other necessary information are not provided, per the Contract, ESCO is not responsible for providing the Performance report for that time period.

Remote System Monitoring & Reporting

ESCO will remotely access your energy management system on a bi-monthly basis. During each session, the system will be inspected and variables will be compared to the contractual agreement. Additionally, ESCO will inspect the system for proper operation and report those findings for OWNER review. All findings will be reported and that report delivered to OWNER electronically. ESCO will notify OWNER if remote access is not available. OWNER is responsible for restoring remote access and notifying ESCO. ESCO is not responsible for providing the planned service session if remote access is unavailable.

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The available service options may be amended from time to time at the sole discretion of ESCO.

SUPPLEMENTARY CONDITIONS (CONSTRUCTION)

Florida Department of Environmental Protection
State Revolving Fund Program
Supplementary Conditions
for

Formally Advertised
Construction Procurement

Revised July 2015

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ENVIRONMENTAL PROTECTION
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FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION SUPPLEMENTARY CONDITIONS

The intent of the Florida Department of Environmental Protection (FDEP) Supplementary Conditions is to complement and supplement other provisions of the Bidding Documents. However, if there is any conflict between the FDEP Supplementary Conditions and other provisions of the Bidding Documents, the FDEP Supplementary Conditions shall take precedence over the other provisions except when the other provisions are similar to, but more stringent than, the FDEP Supplementary Conditions. When other provisions of the Bidding Documents are similar to, but more stringent than, the FDEP Supplementary Conditions, the more stringent provisions shall apply.

ARTICLE 1 - DEFINITIONS

Wherever used in these Supplementary Conditions (except in the appendices to these Supplementary Conditions), the following terms have the meanings indicated, which are applicable to both the singular and plural thereof.

- 1.1 Addendum - A written or graphic instrument that is issued prior to the opening of bids and that clarifies, corrects, or changes the Bidding Documents.
- 1.2 Agreement or Contract - The written agreement between the Owner and the Contractor covering the Work to be performed and furnished; these Supplementary Conditions and other Contract Documents are attached to the Agreement/Contract and made a part thereof as provided therein.
- 1.3 Bid - The offer or proposal of a bidder submitted on the prescribed form and setting forth the price(s) for the Work to be performed and furnished.
- 1.4 Bidder - Any person, firm, or corporation that submits a bid directly to the Owner.
- 1.5 Bidding Documents - The Advertisement for Bids or the Invitation to Bid, the Instructions to Bidders or the Information for Bidders, the Bid Form, the proposed Contract Documents, and all addenda.
- 1.6 Bond - An instrument of security.
- 1.7 Change Order - A document that is recommended by the Engineer and signed by the Contractor and the Owner; that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Time; and that is issued on or after the Effective Date of the Agreement/Contract.
- 1.8 Contract Documents - The Agreement/Contract; the Contractor's Bid when attached as an exhibit to the Agreement/Contract; the Performance and Payment Bond(s); the General Conditions; the Supplementary Conditions (including these Supplementary Conditions); the Specifications (written technical descriptions of material, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto); the Drawings (drawings that show the character and scope of the Work to be performed and furnished); all addenda that pertain to the Contract Documents; and all change orders.
- 1.9 Contract Time - The number of days or the date stated in the Contract Documents for completion of the Work.
- 1.10 Contractor - The person, firm, or corporation with whom or which the Owner enters into the Agreement/Contract.
- 1.11 Effective Date of the Agreement/Contract - The date indicated in the Agreement/Contract on which the Agreement/Contract becomes effective, or if no such date is indicated in the Agreement/Contract, the date on which the Agreement/Contract is signed and delivered by the last of the two parties to sign and deliver the Agreement/Contract.
- 1.12 Engineer - The person, firm, or corporation named as such in the Contract Documents.
- 1.13 Minority Business Enterprise (MBE) - A historically Black college or university or a business that is (a) certified as socially and economically disadvantaged by the Small Business Administration, (b) certified as an MBE by a state or federal agency, or (c) an independent business concern which is at least 51-percent owned and controlled by minority group members. (A minority group member is an individual who is a citizen of the United States and one of the following: [i] Black American; [ii] Hispanic American [with origins from Puerto Rico, Mexico, Cuba, or South or Central America]; [iii] Native American [American Indian, Eskimo, Aleut, or native Hawaiian]; or [iv] Asian-Pacific American

[with origins from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, or the Indian Subcontinent].)

1.14 Notice to Proceed -The written notice given by the Owner to the Contractor fixing the date on which the Contract Time will commence to run and on which the Contractor shall start to perform its obligations under the Contract Documents.

1.15 Owner - The local government (municipality, county, district, or authority; or any agency thereof; or a combination of two or more of the foregoing acting jointly) with which the Florida Department of Environmental Protection (FDEP) may execute, or has executed, a State Revolving Fund loan agreement and for which the Work is to be provided.

1.16 Project - The total construction or facilities described in a State Revolving Fund loan agreement between the FDEP and the Owner, of which the Work to be provided under the Contract Documents may be the whole or a part.

1.17 Sponsor – The recipient of the State Revolving Fund loan agreement that provides funds for the project.

1.18 Subcontract - A direct contract between a subcontractor and the Contractor, or any other subcontractor at any tier, for the furnishing of goods (material and equipment) or the performance of services (including construction) necessary to complete the Work.

1.19 Subcontractor - A person, firm, or corporation having a direct contract with the Contractor, or any other subcontractor at any tier, for the furnishing of goods (material and equipment) or the performance of services (including construction) necessary to complete the Work.

1.20 Successful Bidder - The lowest responsive, responsible bidder to whom or which the Owner intends to award the Agreement/Contract.

1.21 Women's Business Enterprise (WBE) - A business that is (a) certified as a WBE by a state or federal agency or (b) an independent business concern which is at least 51-percent owned and controlled/operated by women. (Determination of whether a business is at least 51-percent owned by women shall be made without regard to community property laws [e.g., an otherwise qualified WBE that is 51-percent owned by a married woman in a community property state will not be disqualified because the married woman's husband has a 50-percent interest in the married woman's share of the business; similarly, a business that is 51-percent owned by a married man and 49-percent owned by women will not become a qualified WBE by virtue of the married man's wife having a 50-percent interest in the married man's share of the business].)

1.22 Work - The entire completed construction or the various separately identifiable parts thereof required to be performed and furnished under the Contract Documents; Work is the result of performing services, furnishing labor, furnishing material and equipment, and incorporating material and equipment into the construction as required by the Contract Documents.

ARTICLE 2 - PRIVACY OF AGREEMENT/CONTRACT

2.1. The Owner expects to finance this Agreement/Contract with assistance from the FDEP, which administers a State Revolving Fund loan program supported in part with funds directly made available by grants from the United States Environmental Protection Agency (USEPA). Neither the State of Florida nor the United States (nor any of their departments, agencies, or employees) will be a party to this Agreement/Contract or any lower-tier subcontract.

ARTICLE 3 - PROCUREMENT REQUIREMENTS

3.1. This Agreement/Contract and the Owner's solicitation and award of this Agreement/Contract are subject to requirements contained in Chapter 62-503 (Revolving Loan Program) and/or Chapter 62-552, Florida Administrative Code as applicable.

ARTICLE 4 - RESOLUTION OF PROTESTS AND CLAIMS/DISPUTES

Resolution of Protests Concerning the Owner's Solicitation and/or Award of this Agreement/Contract:

4.1. Protests concerning the Owner's solicitation and/or award of this Agreement/Contract must be filed in writing with the Owner to be considered.

4.2. All timely written protests concerning the Owner's solicitation and/or award of this Agreement/Contract are to be resolved in accordance with the Owner's dispute resolution process. A copy of the ordinance(s), resolution(s), or written policy (policies) that set forth the Owner's dispute resolution process is included elsewhere in the Bidding Documents or is to be made available by the Owner upon request.

4.3. Neither the (FDEP) nor the USEPA will become a party to, or have any role in resolving, protests concerning the Owner's solicitation and/or award of this Agreement/Contract. Protest decisions made by the Owner cannot be appealed to the FDEP or the USEPA.

Resolution of Claims and Disputes Between the Owner and the Contractor:

4.4. Unless otherwise provided in the Contract Documents, all claims and disputes between the Owner and the Contractor arising out of, or relating to, the Contract Documents or the breach thereof are to be decided by arbitration (if the Owner and the Contractor mutually agree) or in a court of competent jurisdiction within the State of Florida.

4.5. Neither the FDEP nor the USEPA will become a party to, or have any role in resolving, claims and disputes between the Owner and the Contractor.

ARTICLE 5 - CHANGES TO THE BIDDING AND CONTRACT DOCUMENTS

5.1. All changes to the Bidding Documents made subsequent to the FDEP's acceptance of the Bidding Documents and prior to the opening of bids are to be documented via addendum (addenda) to the Bidding Documents; all changes to the Contract Documents made after the opening of bids are to be documented by change order(s) to the Contract Documents. The Owner shall submit all addenda and change orders to the FDEP.

ARTICLE 6 - BONDS AND INSURANCE

Bid Guarantees:

6.1. Each bidder's bid is to be accompanied by a bid guarantee made payable to the Owner in an amount at least equal to five percent of the bidder's maximum bid price and in the form of a certified check or bid bond.

Performance and Payment Bond(s):

6.2. The Contractor shall furnish a combined performance and payment bond in an amount at least equal to 100 percent of the Contract Price (or, if required elsewhere in the Contract Documents, the Contractor shall furnish separate performance and payment bonds, each in an amount at least equal to 100 percent of the Contract Price) as security for the faithful performance and payment of all the Contractor's obligations under the Contract Documents. This(these) bond(s) are to be delivered to the Owner by the Contractor along with the executed Agreement/Contract. The Owner shall forward a copy of this (these) bond(s) to the FDEP.

Insurance:

6.3. The Owner and/or the Contractor (as required elsewhere in the Contract Documents) shall purchase and maintain, during the period of construction, such liability insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims that may arise out of, or result from, the Contractor's performance and furnishing of the Work (whether the Work is to be performed or furnished by the Contractor or any subcontractor at the Work site) and the Contractor's other obligations under the Contract Documents. This insurance is to include workers' compensation insurance, comprehensive general liability insurance, comprehensive automobile liability insurance, and contractual liability insurance applicable to the Contractor's indemnification obligations and is to be written for not less than the limits of liability and coverages determined by the Owner or required by law, whichever is greater.

6.4. The Owner and/or the Contractor (as required elsewhere in the Contract Documents) shall purchase and maintain, during the period of construction, property insurance upon the Work at the Work site in an amount equal to the full replacement cost of the Work or the full insurable value of the Work. This insurance is to include the interests of the Owner, the Contractor, and all subcontractors at the Work site (all of whom are to be listed as insured or additional insured parties); is to insure against the perils of fire and extended coverage; and is to include "all-risk" insurance for physical loss or damage due to theft, vandalism and malicious mischief, collapse, water damage, and/or all other risks against which coverage is obtainable.

6.5. Before any Work at the Work site is started, the Contractor shall deliver to the Owner certificates of insurance that the Contractor is required to purchase and maintain in accordance with Paragraphs 6.3 and 6.4 of this Article and other provisions of the Contract Documents, and the Owner shall deliver to the Contractor certificates of insurance that the Owner is required to purchase and maintain in accordance with Paragraphs 6.3 and 6.4 of this Article and other provisions of the Contract Documents.

ARTICLE 7 - AWARD OF AGREEMENT/CONTRACT

7.1. If this Agreement/Contract is awarded, it is to be awarded to the lowest responsive, responsible bidder. A fixed price (lump sum or unit price or both) agreement/contract is to be used. A clear explanation of the method of evaluating bids and the basis for awarding this Agreement/Contract are included elsewhere in the Bidding Documents. All bids may be rejected when in the best interest of the Owner. After the contract has been awarded, the Owner shall give the Contractor a notice to proceed fixing the date on which the Contract Time will commence to run. The Owner shall forward a copy of this notice to proceed to the FDEP.

ARTICLE 8 - ITEMIZED CONSTRUCTION COST BREAKDOWN; CONSTRUCTION AND PAYMENT SCHEDULES

8.1. The Contractor shall submit to the Owner, within ten calendar days after the Effective Date of this Agreement/Contract, an itemized construction cost breakdown and construction and payment schedules.

8.1.1. The itemized construction cost breakdown, or schedule of values, is to include quantities and prices of items aggregating the Contract Price and is to subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices are to include an appropriate amount of overhead and profit applicable to each item of Work.

8.1.2. The construction, or progress, schedule is to indicate the Contractor's estimated starting and completion dates for the various stages of the Work and is to show both the projected cost of Work completed and the projected percentage of Work completed versus Contract Time.

8.1.3. The payment schedule is to show the Contractor's projected payments cumulatively by month.

ARTICLE 9 - FDEP/USEPA ACCESS TO RECORDS AND PROJECT SITE

9.1. Authorized representatives of the Owner, the FDEP, and the USEPA shall have access to, for the purpose of inspection, the Work site(s), any books, documents, papers, and records of the Contractor that are pertinent to this Agreement/Contract at any reasonable time. The Contractor shall retain all books, documents, papers, and records pertinent to this Agreement/Contract for a period of five years after receiving and accepting final payment under this Agreement/Contract.

NOTE: ARTICLE 10 ONLY APPLIES TO FEDERAL CAP GRANT PROJECTS

ARTICLE 10 - DISADVANTAGED BUSINESS ENTERPRISES

10.1 A goal of five percent of the Contract Price is established for Minority Business Enterprise (MBE) participation in the Work, and a goal of five percent of the Contract Price is established for Women's Business Enterprise (WBE) participation in the Work. If bidders or prospective contractors (including the Contractor) intend to let any lower-tier goods

or services (including construction) subcontracts for any portion of the Work, they shall physically include these percentage goals for MBE and WBE participation in all solicitations for subcontracts and shall take good faith efforts to assure that MBEs and WBEs are utilized, when possible, as sources of goods and services. Good faith efforts are to include the following:

- 10.1.1. Require Disadvantaged Business Enterprises (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- 10.1.2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- 10.1.3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- 10.1.4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- 10.1.5. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 10.1.6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs 10.1.1 through 10.1.5 of this section.

10.2. Within ten calendar days after being notified of being the apparent Successful Bidder, the apparent Successful Bidder shall submit to the Owner documentation of the affirmative steps it has taken to utilize Minority and Women's Business Enterprises (MBEs and WBEs) in the Work and documentation of its intended use of MBEs and WBEs in the Work. The Owner shall keep this documentation on file and shall forward to the FDEP a copy of the apparent Successful Bidder's documentation concerning its intended use of MBEs and WBEs in the Work.

ARTICLE 11 - DEBARMENT AND SUSPENSION (EXECUTIVE ORDER 12549)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

- 11.1. The bidder certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
- 11.2. Where the bidder is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
- 11.3. The bidder also certifies that it and its principals:
 - 11.3.1. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 11.3.2. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph 11.3.1 of this certification; and
 - 11.3.3. Have not within a three-year period preceding this proposal had one or more public transactions (federal, state or local) terminated for cause or default. Where the bidder is unable to certify to any of the above, such owner shall attach an explanation to this proposal.

11.3.4. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

11.3.5. The bidder shall incorporate the foregoing requirements 11.1 through 11.3 in all subcontracts.

ARTICLE 12 - EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

12.1. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246). (Applicable to contracts/subcontracts exceeding \$10,000)

12.1.1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

12.1.2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in Florida, are as follows:

Goal for female participation: 6.9 percent statewide

Goal for minority participation: (See Appendix B at FDEP-20 for goals for each county)

These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

12.1.3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

12.1.4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the State of Florida.

12.1.5. Contractors shall incorporate the foregoing requirements in all subcontracts.

12.2. Equal Opportunity Clause (Applicable to contracts/subcontracts exceeding \$10,000)

During the performance of this contract, the contractor agrees as follows:

12.2.1. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

12.2.2. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The notice can be obtained online at http://www.eeoc.gov/employers/upload/eeoc_self_print_poster.pdf. The Contractor shall state that all qualified applicants be considered without regard to race, color, religion, sex or national origin.

12.2.3. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

12.2.4. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

12.2.5. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

12.2.6. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

12.2.7. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

12.2.8. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs 12.2.1 through 12.2.8 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

12.3. The Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)

12.3.1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

- (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
- (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

12.3.2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

12.3.3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

12.3.4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the FEDERAL REGISTER in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

12.3.5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

12.3.6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

12.3.7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 12.3.7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

12.3.8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (12.3.7a through 12.3.7p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

12.3.9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

12.3.10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

12.3.11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12.3.12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

12.3.13. The Contractor, in fulfilling its obligation under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

12.3.14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

12.3.15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

12.4. Pursuant to 41 CFR 60-1.7, if the price of this bid exceeds \$10,000, the bidder, by signing and submitting this proposal, certifies the following:

- 12.4.1. Affirmative action programs pursuant to 41 CFR 60-2 have been developed and are on file;
- 12.4.2. Documentation of a previous contract or subcontract subject to the equal opportunity clause is available;
- 12.4.3. All reports due under the applicable filing requirements have been filed with the Joint Reporting Committee, the Deputy Assistant Secretary or the Equal Employment Opportunity Commission; and
- 12.4.4. Each prospective construction subcontractor that may be awarded a lower-tier construction subcontract with a price exceeding \$10,000 shall meet the above requirements 12.4.1 through 12.4.3.

12.5. Pursuant to 41 CFR 60-1.8, if the price of this bid exceeds \$10,000, the bidder, by signing and submitting this proposal, certifies the following:

- 12.5.1. That he/she does not maintain or provide for his/her employees any segregated facility at any of his/her establishments;
- 12.5.2. That he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained;
- 12.5.3. That he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments;
- 12.5.4. That he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained;
- 12.5.5. That a breach of this certification is violation of the Equal Opportunity Clause of this contract; and
- 12.5.6. That he/she will obtain identical certifications from proposed Subcontractors prior to the award of Subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his/her files.

As used in this certification, the term "segregated facilities" means any waiting rooms, work eating areas, time clocks, locker rooms, and other storage or dressing areas, transportation and housing facilities provided for employees which are in fact segregated on the basis of race, color, religion, or otherwise.

12.6. If the price of this Agreement/Contract exceeds \$10,000, the Owner shall give written notice to the Director of the Office of Federal Contract Compliance Programs within ten working days of award of this Agreement/Contract. The notice is to include the name, address, and telephone number of the Contractor; the employer identification number of the Contractor; the dollar amount of this Agreement/Contract; the estimated starting and completion dates of this Agreement/Contract; the number of this Agreement/Contract; and the geographical area in which the Work is to be performed.

12.7. If the price of this Agreement/Contract equals or exceeds \$50,000 and if the Contractor has 50 or more employees, the Contractor shall electronically file Standard Form 100 (EEO-1) online at <https://egov.eeoc.gov/eeo1/eeo1.jsp> within 30 calendar days after the award of this Agreement/Contract, unless the Contractor has submitted such a report within 12 months preceding the date of award of this Agreement/Contract. In addition, the Contractor shall ensure that each construction subcontractor having 50 or more employees and a lower-tier construction subcontract with a price equaling or exceeding \$50,000 also electronically files this form within 30 calendar days after the award to it of the lower-tier construction subcontract, unless the construction subcontractor has submitted such a report within 12 months preceding the date of award of the lower-tier construction subcontract.

ARTICLE 13 - IMMIGRATION REFORM AND CONTROL ACT OF 1986 (STATE OF FLORIDA EXECUTIVE ORDER 11-116)

The Immigration Reform and Control Act of 1986 prohibits employers from knowingly hiring illegal workers. The Contractor shall only employ individuals who may legally work in the United States – either U.S. citizens or foreign citizens who are authorized to work in the U.S. The Contractor shall use the U.S. Department of Homeland Security’s E-Verify Employment Eligibility Verification system (<http://www.uscis.gov/portal/site/uscis>) to verify the employment eligibility of:

- all new employees, during the term of this Agreement, to perform employment duties within Florida; and,
- all new employees (including subcontractors and subrecipients) assigned by the Contractor to perform work pursuant to this Agreement.

The Contractor shall include this provision in all subcontracts/subgrants it enters into for the performance of work under this Agreement.

ARTICLE 14 – ENVIRONMENTAL COMPLIANCE

The Contractor, and all subcontractors at any tier, shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857[h]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 (Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans), and 40 CFR Part 15.

ARTICLE 15 – FEDERAL LABOR STANDARDS PROVISION

Contracts being constructed with assistance from the State Revolving Fund Program are currently required to comply with the Federal Labor Standards Provisions as provided in Appendix C. Signing Appendix A certifies compliance with these provisions.

ARTICLE 16 – AMERICAN IRON AND STEEL PROVISION

Contracts being constructed with assistance from the State Revolving Fund Program are currently required to comply with The American Iron and Steel Provision as provided in Appendix D. Signing Appendix A certifies compliance with these provisions.

ARTICLE 17 - PROHIBITED LOCAL GOVERNMENT CONSTRUCTION PREFERENCES

- A. Pursuant to Section 255.0991, F.S., for a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds which have been appropriated at the time of the competitive solicitation, a state, college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:
1. The contractor’s maintaining an office or place of business within a particular local jurisdiction;
 2. The contractor’s hiring employees or subcontractors from within a particular local jurisdiction; or
 3. The contractor’s prior payment of local taxes, assessments, or duties within a particular local jurisdiction.
- B. For any competitive solicitation that meets the criteria in Paragraph A., a state college, county, municipality, school district, or other political subdivision of the state shall disclose in the solicitation document that any applicable local ordinance or regulation does not include any preference that is prohibited by Paragraph A.

**APPENDIX A TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
SUPPLEMENTARY CONDITIONS**

**CERTIFICATION OF COMPLIANCE WITH THE FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION SUPPLEMENTARY CONDITIONS**

This certification relates to a construction contract proposed by _____,
(insert the name of the Owner)

which expects to finance the proposed construction contract with assistance from the Florida Department of Environmental Protection (which administers a State Revolving Fund loan program supported in part with funds directly made available by grants from the United States Environmental Protection Agency). I am the undersigned prospective construction contractor or subcontractor.

I certify that I have read the Florida Department of Environmental Supplementary Conditions and agree to incorporate the following articles into the bid and/or contract:

- ARTICLE 11 DEBARMENT AND SUSPENSION (EXECUTIVE ORDER 12549)
- ARTICLE 12 EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)
- ARTICLE 13 IMMIGRATION REFORM AND CONTROL ACT OF (STATE OF FLORIDA EXECUTIVE ORDER 11-116)
- ARTICLE 14 ENVIRONMENTAL COMPLIANCE
- ARTICLE 15 FEDERAL LABOR STANDARDS PROVISION
- ARTICLE 16 AMERICAN IRON AND STEEL PROVISION

I agree that I will obtain identical certifications from prospective lower-tier construction subcontractors prior to the award of any lower-tier construction subcontracts with a price exceeding \$10,000. I also agree that I will retain such certifications in my files.

(Signature of Authorized Official) (Date)

(Name and Title of Authorized Official [Print or Type])

(Name of Prospective Construction Contractor or Subcontractor [Print or Type])

(Address and Telephone Number of Prospective Construction Contractor or Subcontractor [Print or Type])

(Employer Identification Number of Prospective Construction Contractor or Subcontractor)

**APPENDIX B TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
SUPPLEMENTARY CONDITIONS**

GOALS AND TIMETABLES FOR MINORITIES AND FEMALES

[Note: These goals and timetables are the goals and timetables referred to in Paragraph 2 of the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)"; these goals and timetables are to be included in all FDEP assisted construction contracts and subcontracts with a price exceeding \$10,000 and in all solicitations for such contracts and subcontracts.]

The following goals and timetables for female utilization shall be included in all federal and federally assisted construction contracts and subcontracts in excess of \$10,000. The goals are applicable to the contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a federal or federally assisted construction contract or subcontract.

Area covered: Goals for Women apply nationwide.

Goals and Timetables

Timetable	Goals (percent)
Indefinite	6.9

Goals for minority utilization can be found in the Department of Labor's Technical Assistance Guide for Federal Construction Contractors (May 2009), available on the internet at <http://www.dol.gov/ofccp/TAGuides/consttag.pdf>. These goals shall be included for each craft and trade in all federal or federally assisted construction contracts and subcontracts in excess of \$10,000 to be performed in the respective geographical areas. The goals are applicable to each nonexempt contractor's total onsite construction workforce, regardless of whether or not part of that workforce is performing work on a federal, federally assisted or non-federally related project, contract or subcontract.

Construction contractors which are participating in an approved Hometown Plan (see 41 CFR 60-4.5) are required to comply with the goals of the Hometown Plan with regard to construction work they perform in the area covered by the Hometown Plan. With regard to all their other covered construction work, such contractors are required to comply with the applicable SMSA or EA goal contained in this Appendix.

**APPENDIX C
TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
SUPPLEMENTARY CONDITIONS**

Davis-Bacon Requirements

FEDERAL LABOR STANDARDS PROVISIONS

(Davis-Bacon Act, Copeland Act, and Contract Works Hours & Safety Standards Act)

The Project to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such federal assistance.

1 Minimum Wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act, 29 CFR Part 3, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) The sponsor, on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The FDEP shall approve a request for an additional classification and wage rate and fringe benefits; therefore, only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the sponsor(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the sponsor to the FDEP. The FDEP will transmit the request to the Administrator of the Wage and Hour Division, employment Standards Administration, U. S. Department of Labor. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional

classification action within 30 days of receipt and so advise the FDEP or will notify FEDP within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event that the Contractor, the laborers or mechanics to be employed in the Classification or their representatives, and the sponsor do not agree on the proposed classification and wage rate (including the amount designed for fringe benefits, where appropriate), the FDEP shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of FDEP, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding.

The sponsor shall, upon written request of the EPA or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, EPA may, after written notice to the contractor, sponsor, applicant, or owners, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017).

(ii) (a) The contractor shall submit weekly for each week in which any contract work is performed, a copy of all payrolls to the sponsor. Such documentation shall be available upon request by FDEP. As to each payroll copy received, the sponsor shall provide a certification that the project is in compliance with the requirements of 29 CFR 5.5(a)(1) with each disbursement request. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(I), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site <http://www.dol.gov/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current addresses of each covered worker, and shall provide them upon request to the sponsor for transmission to the FDEP or EPA if requested by EPA, the FDEP, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsor. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149).

(b) Each payroll submitted shall be accompanied by a Statement of Compliance, signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR Part 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR Part 5.5 (a)(3)(I), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Option Form WH-347 shall satisfy the requirement for submission of the Statement of Compliance required by paragraph A. 3(ii)(b) of this section.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3(I) of this section available for inspection, copying, or transcription by authorized representatives of the FDEP or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FDEP may, after written notice to the contractor, or sponsor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

4. Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U. S. Department of Labor, the Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio

of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program, shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with the determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U. S. Department of Labor, the Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program the contract will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act Requirements.

The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. Subcontracts.

The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. Contract Termination, Debarment.

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3 and 5 are herein incorporated by referenced in this contract.

9. Disputes Concerning Labor Standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the sponsor, FDEP, EPA, the U. S. Department of Labor, or the employees or their representatives.

10. Certification of Eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded EPA contracts or participate in EPA programs pursuant to Executive Order 12549.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded EPA contracts or participate in EPA programs pursuant to Executive Order 12549.

(iii) The penalty for making false statements is prescribed in the U. S. Criminal Code, 18 U. S. C. 1001. Additionally, U. S. Criminal Code, Section 1010, Title 18, U. S. C., Federal Housing Administration transactions, provides in part "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement, knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both".

11. Complaints, Proceedings, or Testimony by Employees.

A. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this contract are applicable shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this contract to his employer.

B. **Contract Work Hours and Safety Standards Act.** The sponsor shall insert the following clauses set forth in paragraphs B.(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by item 3 above or 29 CFR 4.6. As used in the paragraph, the terms laborers and mechanics include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) **Withholding for unpaid wages and liquidated damages.** The sponsor, upon written request of the FDEP or an authorized representative of the Department of Labor, may withhold or cause to be withheld, from any moneys payable on

account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contract, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54.83 State 96).

(3) The contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

12. Guidance to Contractor for Compliance with Labor Standards Provisions

a) Contracts with Two Wage Decisions

If the contract includes two wage decisions, the contractor, and each subcontractor who works on the site, must submit either two separate payrolls (one for each wage decision) or one payroll which identifies each worker twice and the hours worked under each wage decision. One single payroll, reflecting each worker once, may be submitted provided the Contractor uses the higher rate in the wage decisions for each identical job classification. However, where a job classification is not listed in a wage decision and is needed for that portion of the work, the classification must be added to the wage decision. A worker may not be paid at the rate for a classification using the hourly rate for that same classification in another wage decision. After the additional classification is approved, the contractor may pay the higher of the two rates and submit one payroll, if desired.

b) Complying with Minimum Hourly Amounts

1) The minimum hourly amount due to a worker in each classification is the total of the amounts in the Rates and Fringe Benefits (if any) columns of the applicable wage decision.

2) The contractor may satisfy this minimum hourly amount by any combination of cash and bona fide fringe benefits, regardless of the individual amounts reflected in the Rates and Fringe Benefits columns.

3) A contractor payment for a worker which is required by law is not a fringe benefit in meeting the minimum hourly amount due under the applicable wage decision. For example, contractor payments for FICA or unemployment insurance are not a fringe benefit; however, contractor payments for health insurance or retirement are a fringe benefit. Generally, a fringe benefit is bona fide if (a) it is available to most workers and (b) involves payments to a third party.

4) The hourly value of the fringe benefit is calculated by dividing the contractor's annual cost (excluding any amount contributed by the worker) for the fringe benefit by 2080. Therefore, for workers with overtime, an additional payment may be required to meet the minimum hourly wages since generally fringe benefits have no value for any time worked over 40 hours weekly. (If a worker is paid more than the minimum rates required by the wage decision, this should not be a problem. As long as the total wages received by a worker for straight time equals the hours worked times the minimum hourly rate in the wage decision, the requirement of the Davis-Bacon and Related Acts has been satisfied.)

c) Overtime

For any project work over 40 hours weekly, a worker generally must be paid 150% of the actual hourly cash rate received, not the minimum required by the wage decision. (The Davis-Bacon and Related Acts only establishes minimum rates and does not address overtime. The Contract Work Hours Act contains the overtime requirement and uses basic rate of pay as the base for calculation, not the minimum rates established by the Davis-Bacon and Related Acts.)

d) Deductions

Workers who have deductions, not required by law, from their pay must authorize these deductions in writing. The authorization must identify the purpose of each deduction and the amount, which may be a specific dollar amount or a percentage. A copy of the authorization must be submitted with the first payroll containing the deduction. If deducted amounts increase, another authorization must be submitted. If deducted amounts decrease, no revision to the original authorization is needed. Court-ordered deductions, such as child support, may be identified by the responsible payroll person in a separate document. This document should identify the worker, the amount deducted and the purpose. A copy of the court order should be submitted.

e) Classifications Not Included in the Wage Decision

If a classification not in the wage decision is required, please advise the owner's representative in writing and identify the job classification(s) required. In some instances, the state agency may allow the use of a similar classification in the wage decision.

Otherwise, the contractor and affected workers must agree on a minimum rate, which cannot be lower than the lowest rate for any trade in the wage decision. Laborers (including any subcategory of the laborer classification) and truck drivers are not considered a trade for this purpose. If the classification involves a power equipment operator, the minimum cannot be lower than the lowest rate for any power equipment operator in the wage decision. The owner will provide forms to document agreement on the minimum rate by the affected workers and contractor.

The U.S. Department of Labor (USDOL) must approve the proposed classification and rate. The contractor may pay the proposed rate until the USDOL makes a determination. Should the USDOL require a higher rate, the contractor must make wage restitution to the affected worker(s) for all hours worked under the proposed rate.

f) Supervisory Personnel

Foremen and other supervisory personnel who spend at least 80% of their time supervising workers are not covered by the Davis-Bacon and Related Acts. Therefore, a wage decision will not include such supervisory classifications and their wages are not subject to any minimums under the Davis-Bacon and Related Act or overtime payments under the Contract Work Hours and Safety Standards Act. However, foremen and other supervisory personnel who spend less than 80% of their time engaged in supervisory activities are considered workers/mechanics for the time spent engaged in manual labor and must be paid at least the minimum in the wage decision for the appropriate classification(s) based on the work performed.

g) Sole Proprietorships / Independent Contractors / Leased Workers

The nature of the relationship between a prime contractor and a worker does not affect the requirement to comply with the labor standards provisions of this contract. The applicability of the labor standards provisions is based on the nature of the work performed.

If the work performed is primarily manual in nature, the worker is subject to the labor standards provisions in this contract. For example, if John Smith is the owner of ABC Plumbing and performs all plumbing work himself, then Mr. Smith is subject to the labor standards provisions, including minimum wages and overtime. His status as owner is irrelevant for labor standards purposes.

If a worker meets the IRS standards for being an independent contractor, and is employed as such, this means that the worker must submit a separate payroll as a subcontractor rather than be included on some other payroll. The worker is still subject to the labor standards provisions in this contract, including minimum wages and overtime.

If a contractor or subcontractor leases its workers, they are subject to the labor standards provisions in this contract, including minimum wages and overtime. The leasing firm must submit payrolls and these payrolls must reflect information required to determine compliance with the labor standards provisions of this contract, including a classification for each worker based on the nature of the work performed, number of regular hours worked, and number of overtime hours worked.

h) Apprentices / Helpers

A worker may be classified as an apprentice **only if participating in a federal or state program**. Documentation of participation must be submitted. Generally, the apprentice program specifies that the apprentice will be compensated at a percentage of journeyman rate. For Davis-Bacon Act purposes, the hourly rate cannot be lower than the percentage of the hourly rate for the classification in the applicable wage decision.

If the worker does not participate in a federal or state apprentice program, then the worker must be classified according to duties performed. This procedure may require classification in the trade depending on tools used, or as a laborer if specialized tools of the trade are not used. The contractor may want to consult with the Wage and Hour Division of the U.S. Department of Labor located in most large cities regarding the appropriate classification.

Presently, no worker may be classified as a helper. As with apprentices not participating in a formal apprentice program, the worker must be classified according to duties performed and tools used.

**APPENDIX D TO THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
SUPPLEMENTARY CONDITIONS**

American Iron and Steel Requirement

The Contractor acknowledges to and for the benefit of the _____ (“Owner”) and the State of Florida (the “State”) that it understands that iron and steel products to be installed as a part of this contract must be in compliance with the requirements in H.R. 3547, “Consolidated Appropriations Act, 2014,” (Appropriations Act). H.R. 3547 includes the following language in Division G, Title IV, Sec. 436, under the heading, “Use of American Iron and Steel,”:

(a) (1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) finds that--

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

For waivers to these requirements based on (2)(b) above, contact Sheryl Parsons at USEPA Region IV. She can be reached by phone at (404) 562-9337.

Project Value: \$11,222,292
 Capital Budget: \$0
 Financial Amount: \$11,222,292
 Annual Interest Rate: 0.00%
 Loan Term (Yrs): 20

Annual Utility Bill: \$65,651
 Theoretical Energy Savings: \$128,625
 Simplified Savings: (\$17,480)
 Meter Energy and O&M: (\$8,500)
 ATMO O&M Savings: \$57,718
 ATMO O&M Savings: \$75,000

Lakehead Biosolids Energy Efficiency Project

ATMO Sludge Reduction Savings: \$71,816
 Sludge Reduction Savings: \$21,600
 F51/H101 Pump Cap Cost Avoid: (\$60,918)
 Heat Ex Cap Cost Avoid: \$1,050,000
 Digester Value Capital Cost Avoid: \$485,646

Class B Production Heat: (\$116,727)
 Annual O&M Cost: (\$15,000)
 P&S Escalator: 2.50%
 Savings Escalator: 3.00%

Year	Annual Utility Cost	Guaranteed Savings	Simplified Energy Savings	Water	ATMO Energy Savings	ATMO O&M Savings	ATMO Sludge Reduction Savings	Sludge Reduction Savings	Prepave Savings	Capital Cost Avoidance (\$57/MWh Perm)	Capital Cost Avoidance (per sq)	Capital Cost Avoidance (lumpsum Value)	Total Savings	NPV	Class B Production (4 months)	O&M Services of Class B	Capex Includes	Support Services	Total Payments	Net Impact	
0	\$955,694	\$198,625	(\$17,480)	(\$8,500)	\$47,718	\$75,000	\$71,816	\$21,600	\$14,013	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$116,727)	(\$2,206)	\$0		(\$116,727)	(\$116,727)	
1	\$613,942	\$194,934	(\$17,460)	(\$8,250)	\$90,550	\$77,980	\$72,816	\$21,550	\$14,065	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$9,952)	(\$4,000)	\$0		(\$116,727)	(\$683,877)	
2	\$651,989	\$196,447	(\$16,978)	(\$9,020)	\$93,000	\$78,588	\$76,189	\$21,500	\$14,117	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$27,793)	(\$4,000)	\$0		(\$116,727)	(\$711,670)	
3	\$690,928	\$204,078	(\$16,788)	(\$9,489)	\$95,452	\$81,955	\$78,475	\$21,447	\$14,169	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$50,634)	(\$4,000)	\$0		(\$116,727)	(\$739,563)	
4	\$670,455	\$200,128	(\$19,300)	(\$9,877)	\$98,727	\$84,410	\$80,629	\$21,395	\$14,221	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$73,475)	(\$4,000)	\$0		(\$116,727)	(\$767,456)	
5	\$690,989	\$214,928	(\$19,879)	(\$9,854)	\$101,689	\$86,946	\$83,254	\$21,341	\$14,273	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$96,316)	(\$4,000)	\$0		(\$116,727)	(\$795,349)	
6	\$711,285	\$218,974	(\$20,479)	(\$10,749)	\$104,740	\$89,544	\$86,752	\$21,287	\$14,325	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$119,157)	(\$4,000)	\$0		(\$116,727)	(\$823,242)	
7	\$724,822	\$224,994	(\$21,090)	(\$10,780)	\$107,892	\$92,241	\$89,574	\$21,232	\$14,377	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$142,000)	(\$4,000)	\$0		(\$116,727)	(\$851,135)	
8	\$727,242	\$246,472	(\$21,723)	(\$10,780)	\$111,119	\$95,008	\$90,974	\$21,178	\$14,429	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$164,841)	(\$4,000)	\$0		(\$116,727)	(\$879,028)	
9	\$727,242	\$246,472	(\$21,723)	(\$10,780)	\$111,119	\$95,008	\$90,974	\$21,178	\$14,481	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$187,682)	(\$4,000)	\$0		(\$116,727)	(\$906,921)	
10	\$727,242	\$246,472	(\$21,723)	(\$10,780)	\$111,119	\$95,008	\$90,974	\$21,178	\$14,533	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$210,523)	(\$4,000)	\$0		(\$116,727)	(\$934,814)	
11	\$800,599	\$282,274	(\$23,272)	(\$11,668)	\$121,422	\$107,982	\$98,514	\$21,124	\$14,585	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$233,364)	(\$4,000)	\$0		(\$116,727)	(\$962,707)	
12	\$824,576	\$284,515	(\$24,449)	(\$12,159)	\$128,617	\$108,482	\$105,664	\$21,070	\$14,637	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$256,205)	(\$4,000)	\$0		(\$116,727)	(\$990,600)	
13	\$848,576	\$284,515	(\$25,347)	(\$12,408)	\$134,444	\$110,440	\$108,628	\$21,016	\$14,689	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$279,046)	(\$4,000)	\$0		(\$116,727)	(\$1,018,493)	
14	\$874,792	\$271,460	(\$25,989)	(\$12,819)	\$140,782	\$113,444	\$111,897	\$20,962	\$14,741	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$301,887)	(\$4,000)	\$0		(\$116,727)	(\$1,046,386)	
15	\$901,036	\$285,028	(\$26,716)	(\$13,246)	\$147,444	\$116,444	\$114,897	\$20,908	\$14,793	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$324,728)	(\$4,000)	\$0		(\$116,727)	(\$1,074,279)	
16	\$928,067	\$295,028	(\$27,519)	(\$13,690)	\$154,782	\$120,953	\$118,245	\$20,854	\$14,845	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$347,569)	(\$4,000)	\$0		(\$116,727)	(\$1,102,172)	
17	\$956,516	\$311,245	(\$28,249)	(\$14,151)	\$162,934	\$125,964	\$121,245	\$20,800	\$14,897	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$370,410)	(\$4,000)	\$0		(\$116,727)	(\$1,130,065)	
18	\$1,004,594	\$327,418	(\$29,559)	(\$14,639)	\$172,816	\$131,515	\$123,950	\$20,746	\$14,949	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$393,251)	(\$4,000)	\$0		(\$116,727)	(\$1,157,958)	
19	\$1,060,640	\$341,100	(\$30,729)	(\$15,159)	\$183,916	\$137,278	\$129,719	\$20,692	\$15,001	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$416,092)	(\$4,000)	\$0		(\$116,727)	(\$1,185,851)	
20	\$1,060,640	\$341,100	(\$30,729)	(\$15,159)	\$183,916	\$137,278	\$129,719	\$20,692	\$15,053	\$52,246	\$292,000	\$485,646	\$1,488,716	(\$561,150)	(\$438,933)	(\$4,000)	\$0		(\$116,727)	(\$1,213,744)	
Totals																					

Estimated average annual net benefit: \$46,431