TENTATIVE AGENDA CITY OF SALEM, MISSOURI BOARD OF ALDERMEN CITY HALL COUNCIL CHAMBERS 202 N. WASHINGTON ST. NOVEMBER 23, 2021 6:00 P. M.

ITEM I CALL TO ORDER

ITEM II ROLL CALL

ITEM III CONSENT AGENDA

Special Board of Aldermen Meeting Minutes-November 12, 2021

ITEM IV INTRODUCTION AND READING OF BILLS AND RESOLUTIONS

RESOLUTION NO. 34-2021- A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF SALEM, MISSOURI AND ENERGY SOLUTIONS PROFESSIONALS, LLC (ESCO) FOR THE HVAC/MAINTANCE PROJECT.

RESOLUTION NO.35-2021- A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF SALEM, MISSOURI AND THE DEPARTMENT OF SOCIAL SERVICES FOR THE LOW-INCOME HOUSEHOLD WATER ASSISTANCE PROGRAM.

ORDINANCE NO. 3495- AN ORDINANCE AUTHORIZING THE MAYOR TO SIGN AND EXECUTE TASK ORDER NO.12 PERTAINING TO AN AGREEMENT BETWEEN THE CITY OF SALEM, MISSOURI AND C.M. ARCHER GROUP, P.C. DATED FEBRUARY 3, 2020 FOR ENGINEERING DESIGN SERVICES RELATED TO WATER WELL NO. 9 AND ELEVATED STORAGE TANK.

TENTATIVE AGENDA CITY OF SALEM, MISSOURI BOARD OF ALDERMEN CITY HALL COUNCIL CHAMBERS 202 N. WASHINGTON ST. NOVEMBER 23, 2021 6:00 P. M. PAGE TWO

ITEM V REPORTS OF CITY OFFICIALS, BOARDS AND COMMITTEES

E. Ray Walden, Jr., City Administrator

Kim Steelman, Mayor

Sally Burbridge, Economic Development

Mark Nash, Public Works

Melissa Dubois, Parks and Recreation

Aldermen Reports

ITEM VI BIDS

New Skid steer

ITEM VII <u>NEW AND MISCELLANEOUS BUSINESS</u>

Street Closure for 2021 Santa Dash

ITEM VIII OLD BUSINESS

SFY 2022 Officer Safety and Equipment Technology (OSET) Award TENTATIVE AGENDA
CITY OF SALEM, MISSOURI
BOARD OF ALDERMEN
CITY HALL COUNCIL CHAMBERS
202 N. WASHINGTON ST.
NOVEMBER 23, 2021
6:00 P. M.
PAGE THREE

ITEM IX CLOSED SESSION

Pursuant to Section 610.021(12) of the Revised State Statutes of the State of Missouri pertaining to sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected.

ITEM X ADJOURNMENT

BOARD OF ALDERMEN AGENDA NOVEMBER 23, 2021 6:00 P.M.

1. <u>ITEM I</u>: <u>CALL TO ORDER</u>

2. <u>SUBJECT</u>: Start of Board Meeting

3. <u>DISCUSSION</u>: The Board is called to order.

Pledge of Allegiance and Prayer.

BOARD OF ALDERMEN AGENDA NOVEMBER 23, 2021 6:00 P.M.

1. <u>ITEM II</u>:

ROLL CALL

2. **SUBJECT**:

Calling of Roll

3. **DISCUSSION**:

Mayor Kim STEELMAN

Alderman Greg PARKER

Alderman Shawn BOLERJACK

Alderman Kevin JAMES

Alderwoman Kala SISCO

City Administrator Ray WALDEN

City Clerk Tammy KOLLER

City Attorney James K. WEBER

Public Works Director Mark NASH

Chief of Police Joe CHASE

Other CITY STAFF if present

BOARD OF ALDERMEN AGENDA NOVEMBER 23, 2021 6:00 P.M.

1. <u>ITEM III</u>: <u>CONSENT AGENDA</u>

2. <u>SUBJECT</u>: All matters listed under the Consent Agenda are considered to be routine by the Board and will be enacted by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

3. <u>DISCUSSION</u>:

(a) If no item is offered for discussion and removed from Consent Agenda, a motion and a second are required to accept the Consent Agenda.

SPECIAL MEETING CITY OF SALEM, MISSOURI BOARD OF ALDERMEN SALEM COMMUNITY CENTER @ THE ARMORY 1200 W. ROLLA RD.

NOVEMBER 12, 2021 5:45 P. M.

Mayor Steelman called the meeting to order at 5:45 pm with the following present:

ALDERMEN

OTHER CITY OFFICIALS

Kevin James (Zoom)

Mayor Kim Steelman

Greg Parker Shawn Bolerjack (Zoom) City Attorney James Weber City Administrator Ray Walden

Kala Sisco

Others present: Caleb Brubacker with Salem News and Carrie Weber.

Attorney Weber read Bill No. 3494-An Ordinance amending the City of Salem, Missouri Code of Ordinances, Chapter 110 Mayor and Board of Aldermen, Article I Board of Aldermen, Section 110.120 Vacancies – How Filled.

Alderman James made the motion to approve Bill No. 3494, Alderman Parker seconded.

Roll Call Vote:

Ayes: Aldermen James, Parker, Bolerjack, Sisco

Nays: None

Attorney Weber read Resolution No. 33-2021-A Resolution repealing Resolution No. 32-2021 and providing for the Municipal Election for the City of Salem, Missouri on April 5, 2022.

Alderman Bolerjack made the motion to approve Resolution No. 33-2021, Alderman James seconded.

Roll Call Vote:

Ayes: Aldermen James, Parker, Bolerjack, Sisco

Nays: None

Alderman Parker made a motion to adjourn, Alderwoman Sisco seconded.

Roll Call Vote:

Ayes: Aldermen James, Parker, Bolerjack, Sisco

Nays: None

Mayor Steelman adjourned the meeting at 5:52 pm.

Kevin James President, Board of Aldermen		
APPROVED:	ATTEST:	-
Kim Steelman Mayor	Tammy Koller City Clerk	

Date Approved by the Board of Aldermen

BOARD OF ALDERMEN AGENDA NOVEMBER 23, 2021 6:00 P. M.

- 1. <u>ITEM IV(A)</u>: <u>INTRODUCTION AND READING OF BILLS & RESOLUTIONS</u>
- 2. <u>SUBJECT</u>: RESOLUTION NO. 34-2021-A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF SALEM, MISSOURI AND ENERGY SOLUTIONS PROFESSIONALS, LLC (ESCO) FOR THE HVAC/MAINTANCE PROJECT.
- 3. **DISCUSSION**:

RESOLUTION NO. 34-2021

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF SALEM, MISSOURI AND ENERGY SOLUTIONS PROFESSIONALS, LLC (ESCO) FOR THE HVAC/MAINTENANCE PROJECT.

WHEREAS, The City of Salem, Missouri agree to enter into an agreement with Energy Solutions Professionals for the purpose of providing comprehensive energy services designed to save energy, water and other operating costs as described in "Attachment A" Energy Performance Contract.

WHERAS, ESCO has completed a comprehensive study (attached hereto as "Attachment A") of the Premises under a separate contract and will design and install certain facility improvement measures and measure their performance.

WHEREAS, The City of Salem desires to retain ESCO to provide services for the design and installation of certain equipment of the type or class described in "Attachment A", "Schedule C" attached hereto, and to provide other services for the purpose of achieving cost reductions.

SECTION 1: The City of Salem owns and operates buildings which are included as part of this contract as described in "Attachment A" "Schedule B" attached hereto.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the City of Salem, Missouri, as follows:

PASSED BY THE BOARD OF ALDERMEN OF THE CITY OF SALEM, MISSOURI, AND APPROVED BY THE MAYOR THIS 23rd DAY OF NOVEMBER, 2021.

APPROVED:	
Kim Steelman Mayor	
ATTEST:	APPROVAL AS TO FORM:
Tammy Koller City Clerk	James K. Weber City Attorney



ENERGY PERFORMANCE CONTRACT

This Energy Performance Contract ("Contract") is made and entered into by and between *Energy Solutions Professionals, LLC* ("ESCO"), a Kansas company, having its principal offices at 6400 W. 95th Street, Suite 202, Overland Park, KS 66212, and City of Salem ("Client") for the purpose of providing comprehensive energy services designed to save energy, water and other operating costs.

This Contract shall be effective immediately upon execution by both parties.

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

Schedule A	Terms and Conditions
Schedule B	Client Premises
Schedule C	Scope of Work
Schedule D	Compensation to ESCO
Schedule E	Baseline Utility Consumption
Schedule F	Savings Guarantee
Schedule G	Savings Measurement, Calculation Formulae, and Baseline Adjustments
Schedule H	Funding
Schedule I	Standards of Comfort / Operating Parameters
Schedule J	Construction and Installation Schedule
Schedule K	Training Responsibilities
Schedule L	Maintenance Responsibilities
Schedule M	Certificates of Completion
Schedule N	Project Closeout Documents
Schedule O	Warranty
Schedule P	Investment Grade Audit

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Contract by their duly authorized officers.

ESCO: Energy Solutions Professionals, LLC	CLIENT: The City of Salem	
Ву:	By:	
Print Name:	Print Name:	
Title:	Title:	
Date:	Date:	

SCHEDULE A

TERMS AND CONDITIONS

RECITALS

WHEREAS, Client owns and operates the facilities described in *Schedule B (Client Premises)* ("Premises"), and is in need of energy saving and facility improvement services designed to reduce utility consumption and associated costs at said Premises;

WHEREAS, ESCO has completed a comprehensive study (the "Investment Grade Audit" which is attached hereto as **Schedule P**) of the Premises under a separate contract and is willing to design and install certain facility improvement measures (the "Equipment"), and measure their performance;

WHEREAS, Client desires to retain ESCO to provide services for the design and installation of certain equipment of the type or class described in *Schedule C (Scope of Work)*, and to provide other services for the purpose of achieving cost reductions within Premises, as more fully set forth herein; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Client and ESCO hereto covenant and agree as follows:

SECTION 1. <u>DEFINITIONS</u>

- 1.1 "Actual Utility Savings" shall mean the amount of annual Utility Savings accruing to the Client after the Guarantee Commencement Date as calculated by the ESCO using the processes and procedures described in Schedule G.
- 1.2 "Baseline" shall mean the representative energy use during a twelve (12) calendar month period of the Premises' pre-retrofit energy consumption and the variables that contribute to that consumption as specified in Schedule E (Baseline Energy Consumption).
- 1.3 "Change Order" shall mean a document signed by ESCO and Client reflecting an agreement between the parties changing the Work, the Turnkey Installed Price, or adjusting the schedule set forth in Schedule J.
- 1.4 "Client" shall mean the owner and its duly authorized agents and employees. The address of Client is <u>City of Salem, MO, 400 N Iron St, Salem, MO 65560.</u>
- 1.5 **"Construction Period"** is the period beginning with the first day that Equipment is first installed and continuing until the Guarantee Commencement Date.
- 1.6 "Construction Period Savings" shall mean the Total Actual Savings that occurs during the Construction Period.
- 1.7 "Contract" shall mean the Energy Performance Contract and shall include all schedules attached thereto.
- 1.8 "Contract Start Date" shall mean the date the Contract is fully executed and is in full force and effect.
- 1.9 "Day" or "days", unless otherwise expressly defined in the Contract, shall mean a calendar day or days of twenty-four (24) hours each.

- 1.10 "Debt Service" shall mean the Client's total annualized cost for the Work spread over the Term as more fully described in Section 3.1, including, if applicable, all interest and principal payments, or all lease payments, as stated on an annual basis in Schedule H.
- 1.11 "Energy Conservation Measure" or "ECM" shall mean a specific portion of the Work as detailed in Schedule C (Scope of Work).
- 1.12 "Equipment" shall be the equipment to be installed on the Premises as described in Schedule C (Scope of Work).
- 1.13 "ESCO" shall mean Energy Solutions Professionals, LLC, and its duly authorized agents, contractors and employees. The mailing address of Energy Solutions Professionals, LLC is 9218 Metcalf Ave, Suite 274, Overland Park, KS 66212.
- 1.14 "Final Completion" shall mean the date the Project is fully completed including completion of all punch list items, and the documents identified in *Schedule N (Project Closeout Documents)* have been delivered to Client as mutually agreed by Client and ESCO, all of which is evidenced by the execution of a Certificate of Final Completion per *Schedule M (Certificates of Completion)*.
- 1.15 "Guarantee Commencement Date" shall mean the first day of the first month following the date of Final Completion.
- 1.16 "Guarantee Year" is each successive one-year period following the Guarantee Commencement Date, plus, if applicable, the Construction Period which is noted as Guarantee Year 0 on Schedule F), which period may be longer than 12 months.
- 1.17 "Guaranteed Utility Savings" shall mean the amount of annual Utility Savings calculated by the ESCO and shown on Schedule F.
- 1.18 "Lease Agreement" shall mean the agreement between the Client and the third-party financier/leasing company, if any.
- 1.19 "Operational Savings" shall mean those non-utility savings resulting from the implementation of energy conservation measures at the Premises (e.g., costs for parts, outsourced repair/maintenance, service agreements, etc.) and/or those non-utility savings resulting from the Client not incurring those costs at a later date by having the cost of those improvements included in this Contract, and/or planned or budgeted expenses for the replacement or addition of systems or equipment that would have occurred had the Work not been performed, and are agreed to at contract execution. Operational Savings, if any, are shown in Schedule F, Energy Savings Guarantee.
- 1.20 "Premises" shall mean the property upon which the Project is being constructed as identified in Schedule B.
- 1.21 "Project" shall be the construction and installation of Equipment described in the Scope of Work as set out in Schedule C for the facilities described in Schedule B (Premises).
- 1.22 "Savings Guarantee" is an amount each year equal to the lesser of the annual Total Guaranteed Savings for that year as shown on Schedule F, or Client's annual Debt Service for that year as shown on Schedule H. If the Debt Service on Schedule H is shown as zero, the Savings Guarantee shall be the Total Guaranteed Savings.

- 1.23 "Substantial Completion" shall mean the date determined by the ESCO and mutually agreed to by Client when the Work or designated portion thereof is complete in accordance with the Contract, so the Client may beneficially utilize the equipment and occupy the Premises or designated portion thereof for its intended use. Execution of a Certificate of Substantial Completion per Schedule M (Certificates of Completion) shall signify Substantial Completion.
- 1.24 "Term" shall mean the duration of the Contract as stated in Schedule F, commencing on the Guarantee Commencement Date.
- 1.25 "Total Actual Savings" shall mean the total of all Actual Utility Savings and Operational Savings.
- 1.26 "Total Guaranteed Savings" shall mean the total of all Guaranteed Utility Savings and Operational Savings.
- 1.27 "Turnkey Installed Price" shall mean the total contract price(s) payable to ESCO as detailed in Schedule D (Compensation to ESCO).
- 1.28 "Work" shall mean the labor, materials, equipment, and services furnished by the ESCO under the Contract to complete the ESCO's obligations detailed in *Schedule C (Scope of Work)*.
- 1.29 "Utility Savings" shall mean electric energy reduction, fossil fuel energy reduction (e.g., natural gas, propane, fuel oil, etc.) and water and sewer reduction, etc., as calculated per Schedule G.

SECTION 2. PRINCIPAL TERMS

ESCO agrees to perform the Work described herein and guarantee the savings described herein in exchange for Client's agreement to pay ESCO the compensation described in **Schedule D** hereto in the amounts and manner described in **Schedule D**.

SECTION 3. FINANCIAL INFORMATION

- 3.1 It is hereby agreed by ESCO and the Client that ESCO's obligation to perform under this Contract is expressly contingent upon the Client securing financing or furnishing reasonable evidence satisfactory to ESCO that the Client has adequate funds available and allocated to fulfill Client's obligations under the Contract. Upon execution of this Contract, the Client will have thirty (30) days to furnish evidence of such financing or funds. If financing is not secured within such period, this Contract may be terminated by ESCO or the Client and the Client shall immediately pay the cost of the Investment Grade Audit unless the Parties mutually agree in writing to extend such period. The annual payments due on such financing, or the total annual lease payments if financing is obtained through a Lease Agreement, shall be stated on Schedule H as the Debt Service.
- 3.2 If Client is entering into a Lease Agreement to finance the Work, a copy of the Lease Agreement shall be attached to this Contract as part of **Schedule H** (Funding). In the event the Lease Agreement is terminated because of Client's default or non-payment of the same, this Contract shall immediately terminate and ESCO will have no further obligations to Client hereunder.

SECTION 4. DUTIES

4.1 ESCO Duties.

(a) <u>Performance of the Work</u>. ESCO shall install the Equipment and perform the Work in the manner set forth herein. ESCO shall proceed in accordance with the construction schedule set out in **Schedule J**.

(b) <u>Training by ESCO</u>. ESCO shall deliver detailed operations and maintenance manuals and also conduct the training program described in *Schedule K*, which shall be completed prior to acceptance of the Work by Client. ESCO agrees that Client may video or otherwise record any training for its own use.

4.2 Client Duties.

- (a) Service by Client. Except for any maintenance obligations reserved to the ESCO as stated in Schedule L (Maintenance Responsibilities), Client shall be responsible for maintaining the Equipment. Client shall operate service and maintain the Equipment in the manner required by the ESCO and in the manner required by the manufacturer of the Equipment as set out in the Operations and Maintenance manuals delivered to Client. Client shall notify ESCO as soon as reasonably possible if it knows of (a) any material malfunction in the operation of the Equipment, (b) the existence of any emergency or dangerous condition affecting the Equipment, or (c) any interruption or alteration of the energy supply to the Premises.
- (b) Client shall ensure that the Equipment is operated in a manner that results in the Premises conforming to the Standards of Comfort in Schedule I and otherwise in accordance with the energy conservation procedures established by the ESCO.
- (c) <u>Maintenance of Premises and Existing Systems</u>. Client agrees to maintain the Premises and all existing mechanical systems, equipment and other energy consuming systems located on the Premises in good repair, in the same condition or better condition, reasonable wear and tear excepted, as existed prior to construction of the Project, and to protect and preserve the building envelope and the operating condition and standard of performance of all mechanical systems, equipment and other energy consuming systems located on the Premises. Client's maintenance obligations under this Section 4.2(c) shall include, but not be limited to, the specific requirements set out on Schedule L, if any. Client may not remove, alter or change in any material way the Equipment, or any part thereof, without first consulting ESCO, except in an emergency.
- (d) Client agrees that ESCO shall have the right to periodically, with prior notice, inspect the Premises to determine if Client is complying with its obligations as set forth above in this Section 4.2. Client shall make the Premises available to ESCO for and during each inspection, and shall have the right to witness each inspection or record any inspection and any measurements taken or records made.

SECTION 5. ESCO GUARANTEE

- 5.1 Guarantee. The ESCO guarantees to Client that the Total Actual Savings each year will exceed the Savings Guarantee after all adjustments allowed in this Contract. Client agrees that the amount by which the Total Actual Savings in any year exceeds the Savings Guarantee for that year shall be carried forward to the succeeding year such that the Savings Guarantee for the succeeding year shall be reduced by that amount. If there is no Savings Guarantee for the Construction Period, the Total Actual Savings for the Construction Period shall be added to the Total Actual Savings for year 1 in determining whether the Savings Guarantee has been met in year 1.
- 5.2 Measurement and Verification of Savings. The ESCO will determine the annual Total Actual Savings. ESCO will utilize the processes and procedures described in Schedule G to calculate the annual Total Actual Savings. The rates identified in Schedule F are then applied to these savings values to determine the associated dollar savings amount, which will then be compared to the Savings Guarantee on an individual energy conservation measure and aggregate savings basis. The measured parameter(s), the number of times and/or duration of measurements, and the quantity of devices to be measured are specified in Schedule G.
 - If the calculation that is based upon measured criteria demonstrates that the Savings Guarantee has been
 met or exceeded for each individual measure, then no further calculations are necessary. In this case,
 ESCO will tabulate the measurements and computed savings into a report and deliver the same to Client.
 - 2. In the event that the measurement-based computations indicate that the Savings Guarantee has not been achieved for an individual energy conservation measure, the ESCO will calculate an aggregate savings for

all measures, and determine whether the aggregate savings meets or exceeds the Savings Guarantee. If the aggregate savings meets or exceeds the Savings Guarantee the ESCO will tabulate all measurements and calculations into a report and deliver the same to Client.

- 3. In the event that measurement-based calculated aggregate savings does not meet or exceed the Savings Guarantee, the ESCO shall pay the Client the amount of the savings shortfall on an annual basis at the anniversary of the Guarantee Commencement Date for as long as the savings shortfall persists; said payment to be made within 60-days of the anniversary of the Guarantee Commencement Date.
 - a. Client, at its discretion, may elect to have ESCO provide services, in lieu of receiving a payment for the savings shortfall.
 - b. ESCO, at its discretion, may:
 - 1. Implement field adjustments and/or equipment modifications or replacements (at the ESCOs cost) that facilitate bringing the field measurement calculations to a level that ensures the Savings Guarantee is achieved in future years
 - a) ESCO will, at its cost, take additional measurements and readings to prove the results of any such adjustments, modifications or replacements, and Client may witness the measurements.
 - b) Any adjustments, modifications and/or equipment replacements will meet the Standards of Comfort in *Schedule I*, and may not adversely affect the operation of the Client equipment or facilities.
 - Or, in lieu of making adjustments and taking additional measurements, ESCO may present-value the savings shortfall for the Term and make one payment to finalize all of ESCO's Contract obligations.
- 5.3 If Client fails to materially comply with its duties under Section 4.2 hereof or Client takes other action for which the Savings Guarantee may be changed hereunder, the Savings Guarantee shall be reduced by the cost of the excess energy consumed by Client as a result of its failure. The amount of the reduction shall be determined by the ESCO. ESCO will not be responsible under the Savings Guarantee for any loss of Total Actual Savings due to a material malfunction in the operation of the Equipment, an alteration of energy supply to the Premises, or any failure of Client to fulfill all terms of this Contract.
- 5.4 Independent Audit. If Client disputes any calculation by the ESCO in determining the Total Actual Savings or any adjustments to the Savings Guarantee under this Section 5, Client shall be required to obtain an independent audit of the calculations used by the ESCO in making such determinations. In such case, the Client and ESCO shall mutually agree upon an independent auditor to complete the audit. The audit shall follow all methods, procedures, calculations and formulas identified in this Contract, and the auditor shall submit its findings to the parties in a written report, which findings shall be deemed final for purposes of determining the annual Total Actual Savings and any Savings Guarantee adjustment. If the audit determines that the Total Actual Savings are equal to or greater than those calculated by the ESCO, then the Client shall pay the cost of the audit. If the audit determines that the Total Actual Savings are less than those calculated by the ESCO, then the ESCO shall pay the cost of the audit. If either party disputes the results of the audit, they may use the remedies identified in Section 16.

SECTION 6. <u>ESCO COMPENSATION AND FEES</u>.

6.1 The Client agrees to pay compensation to ESCO for the Work and any other energy services provided through this Contract in the amount set forth in *Schedule D (Compensation to ESCO)*.

- 6.2 <u>Billing Information Procedure</u>. Payments due to ESCO shall be calculated in accordance with the completion of the Work in this Contract and compensated as defined in *Schedule D (Compensation to ESCO)* in the following manner:
 - (a) Payment for the IGA. Payment for the IGA will be invoiced upon the signing of this Contract.
 - (b) <u>Progress Payment Application</u>. By no later than the 5th day of each month, ESCO shall submit an application for payment (the "Payment Application") to the Client; each application will represent, on an ECM by ECM basis, the amount of Equipment purchased by ESCO and the Work completed through the end of the previous month less the amounts requested in previous Payment Applications. The Payment Application shall subtract the correct amount of Retainage. Each Application for Payment shall be accompanied by a partial lien waiver from the ESCO.
 - (c) <u>Final Payment Application</u>. Upon execution of Final Completion, ESCO shall submit a final application for payment (the "Final Payment Application") to the Client; Final Payment Application will represent the amount of all Equipment purchased by ESCO and the Work completed that was not included in previous Payment Applications as well as the amount of Retainage that has not been billed in previous Payment Applications. The Application for Final Payment shall be accompanied by a final lien waiver from the ESCO.
- 6.3 Payment. The ESCO's invoice shall be due and payable within thirty days of Client's receipt of the same. If the ESCO's invoices are not paid within 30 days, a \$150 late fee will be assessed. All checks shall be mailed to:

Energy Solutions Professionals 9218 Metcalf Ave., Suite 274 Overland Park, KS 66212

- (a) If Client reasonably disputes some or all of the ESCO's invoice, Client must pay the undisputed portion of the invoice per above and notify ESCO in writing, within seven (7) days of receipt of the invoice, of its disagreement with the invoice and describe to ESCO with reasonable detail its basis for its disagreement. Within seven (7) days of Client's notification of disagreement with an invoice, Client and ESCO shall meet at the site or other agreeable location to discuss and resolve issues concerning the invoice. Payment shall be due within 20 days of resolution of the disputed portion of the invoice.
- (b) Client is not in breach of its obligations to make payment to ESCO if the basis for non-payment is the lender's failure to fund due to inadequacies in the Work performed by ESCO or the failure to provide lien waivers, and not due to the act or omission of the Client.
- 6.4 <u>Retainage</u>. Client shall retain five (5%) percent of each progress payment application. Upon Substantial Completion of each ECM, Retainage will be reduced to one-half (1/2%) percent for the portion of the Turnkey Installed Price attributable to the ECM, and ESCO will invoice and Client will pay all Retainage in excess of one-half (1/2%) percent for that portion of the Turnkey Installed Price. Client will pay ESCO the final one-half (1/2%) percent Retainage upon Final Completion of an ECM.
- 6.5 <u>Late Payment</u>. Amounts not paid to ESCO when due will accrue interest at the rate of 12% per annum from the due date until the amount due is paid in full.

SECTION 7. PERMITS AND APPROVALS; COORDINATION

7.1 <u>Permits and Approvals</u>. Client shall use its best efforts to assist ESCO in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Client be responsible for payment of any permits. The equipment installed by ESCO shall conform to all federal, state and local code requirements.

- ESCO shall furnish copies of each permit or license which is required to perform the Work to the Client before ESCO commences the portion of the Work requiring such permit or license.
- 7.2 <u>Coordination</u>. Client and ESCO shall coordinate the activities of ESCO's equipment installers with those of the Client, its employees, and agents. ESCO shall not commit or permit any act which will interfere with the performance of business activities conducted by the Client or its employees without prior written approval of the Client.

SECTION 8. EQUIPMENT

- 8.1 Ownership of Existing Equipment Ownership of the equipment and materials existing at the Premises at the time of execution of this Contract shall remain the property of the Client even if it is replaced or its operation made unnecessary by work performed by ESCO pursuant to this Contract. If applicable, ESCO shall advise the Client in writing of all equipment and materials to be replaced at the Premises and the Client shall have thirty days to designate in writing to ESCO which equipment and materials that are not to be disposed of offsite by ESCO. It is understood and agreed to by both Parties that the Client shall be responsible for and designate the location and storage for any equipment and materials that are not be disposed of off-site. ESCO shall be responsible for the disposal of all equipment and materials not designated by the Client for retention in accordance with all applicable laws and regulations regarding such disposal. If Client fails to make any designation regarding disposal of equipment and materials within the required thirty days, the ESCO may dispose of all equipment and materials off-site.
- 8.2 New Equipment. All Equipment and materials incorporated in the Work shall become the property of the Client upon installation. The ESCO warrants to the Client that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The ESCO further warrants that the Equipment will conform to the requirements of the Contract Documents and will be free from defects.
- 8.3 <u>Startup and Equipment Commissioning.</u> At Substantial Completion, the ESCO shall conduct a thorough and systematic performance test of each element of the installed Equipment to ensure that the Equipment operates in the manner necessary to achieve the Standards of Comfort in *Schedule I*. The ESCO shall provide notice to the Client of the scheduled test(s) and the Client and/or its designees shall have the right to be present at any or all such tests conducted by ESCO and/or manufacturers of the Equipment, as well as to video or otherwise record the testing. ESCO shall be responsible for correcting and/or adjusting all deficiencies in the Equipment that may be observed during Equipment commissioning procedures.
- 8.4 Storage, location, and access. Client shall provide mutually satisfactory rent-free space for storing the Equipment and materials, for installation and operation of the Equipment, and for completing the Work. Client shall protect the Equipment and materials in the same careful manner that Client protects its own property, and Client shall be responsible for any loss or damage to the same caused by the Client or its agents. Client shall provide access to the Premises for ESCO and its contractors or subcontractors during regular business hours, or such other hours as may be requested by ESCO and reasonably acceptable to Client, to adjust, inspect, maintain and repair the Equipment and to otherwise complete the Work and other duties and responsibilities under this Contract. ESCO shall have free access to the Premises to correct any emergency condition.
- 8.5 Service by ESCO. If Client requests ESCO to perform maintenance or repairs for any reason other than ESCO's failure to perform its duties and obligations under the Contract, including but not limited to any act, error, omission, negligence or willful misconduct of Client or any employee or other agent of Client, ESCO has the right to charge Client for the reasonable and customary time and materials cost of maintenance or repair.
- 8.6 <u>Upgrading or Altering of Equipment by ESCO</u>. ESCO shall have the right at all times during construction and measurement & verification period, subject to Customer's prior written approval which shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment, or implement other energy saving actions in the Premises, provided that:

- such replacements, modifications, or additions to the Equipment, and any operational changes or new
 procedures implemented, are necessary to enable the ESCO to achieve the Savings Guarantee at the
 Premises and;
- after any such changes, the Equipment will operate in the manner necessary to achieve the Standards
 of Comfort set forth in Schedule I (Standards of Comfort / Operating Parameters).

All replacements, deletions, substantial alterations, or additions of equipment or revisions to the prescribed procedures shall be described in an additional schedule to be attached hereto and identified as Schedule C-2 or C-3, and so forth. Replacements, substantial alterations, or additions of Equipment shall belong to and become the property of Client upon installation, and shall be part of the Equipment for purposes of this Contract. Any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the ESCO unless they are required by either unforeseen conditions or Client requested changes to the Scope of Work, in which case the Turnkey Installed Price will be adjusted by Change Order. No modifications, additions or replacements of the Equipment shall occur without Client's reasonable consent.

8.7 <u>Damage or Destruction of Equipment.</u> If after installation any significant item of Equipment or part of the Work is irreparably damaged by casualty or by the negligence or willful misconduct of the Client, its agents, employees, invitees, or guests, Client shall repair or replace said item within a reasonable period of time, not to exceed 120 days, and ESCO will not be responsible for lost Total Actual Savings. If Client fails to repair or replace such damaged Equipment, ESCO may elect to: a) adjust the Savings Guarantee to reflect any reduction in savings associated with the missing or damaged Equipment, or b) terminate this Contract by delivery of a written notice to Client, whereupon both parties shall have no further liability to each other.

SECTION 9. WARRANTIES

ESCO shall provide a one-year full parts and labor warranty on the Equipment and the Work from the Substantial Completion Date. Client may have longer warranties on the Equipment as provided in *Schedule* 0. Warranty start and end dates shall be documented and provided to the Client by ESCO at the completion of construction. All manufacturer warranties on the Equipment shall be transferred to and extend to the Client. The warranties shall specify that only new, and not reconditioned parts, may be used and installed when repair is necessitated by malfunction.

SECTION 10. PERFORMANCE BY ESCO

- 10.1 Performance by ESCO. ESCO shall complete the Work in such a manner so as not to harm the structural integrity of the Premises or its operating systems. ESCO shall repair and restore to its original condition any area of damage caused by ESCO's performance under this Contract. All costs to repair damage caused by ESCO's performance of the Work shall be borne by ESCO. ESCO shall remain responsible for the professional and technical accuracy of all services performed, whether by the ESCO or its contractors, subcontractors, or others on its behalf, throughout the term of this Contract.
- 10.2 <u>Standards of Comfort</u>. The Equipment, when installed, shall perform in the manner necessary to achieve the Standards of Comfort as set forth in *Schedule I*.

SECTION 11. MATERIAL CHANGE

11.1 Material Change Defined. A Material Change shall be defined as any change in or to the Premises or the use thereof, whether structural, operational or otherwise in nature, which reasonably could be expected, in the reasonable judgment of the ESCO, to increase or decrease annual energy consumption ("Material Change"). If a Material Change occurs, ESCO shall determine, in its sole discretion, whether the Material Change is temporary ("Temporary Material Change") or permanent ("Permanent Material Change") in nature. Material Change includes but is not limited to, the following changes:

- (a) manner of use of the Premises by the Client;
- (b) hours of operation for the Premises or for any equipment or energy using systems operating at the Premises;
- (c) changes in the operation of the Equipment such that the Standards of Comfort set forth in Schedule I (Standards of Comfort / Operating Parameters) are not complied with;
- (d) occupancy of the Premises;
- (e) structure of the Premises;
- (f) types and quantities of equipment used at the Premises;
- (g) modification, renovation or construction at the Premises;
- (h) the Client's failure to properly maintain and repair to the Equipment as required;
- the information provided by Client to the ESCO for use in determining the Baseline is not accurate, as determined by the ESCO; or
- (j) any other conditions other than climate affecting energy use at the Premises.
- 11.2 Reported Material Changes; Notice by Client: The Client shall use its best efforts to deliver to ESCO a written notice describing all actual or proposed Material Changes in the Premises or in the operations of the Premises which could reasonably be expected to affect energy consumption within the Premises or ESCO's determination of the Baseline. The written notice shall be delivered to the ESCO at least thirty (30) days before any actual or proposed Material Change is implemented, or as soon as practicable after an emergency or other unplanned event or error in the information provided to ESCO for the Baseline is discovered. Notice to ESCO of Material Changes resulting from a bona fide emergency or other situation which precludes advance notification shall be deemed sufficient if given by the Client within thirty (30) days after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Client to have occurred.
- 11.3 <u>Unreported Material Change.</u> If there is a material increase in energy use at the Premises and Client has not reported a Material Change, the increased energy use shall be deemed to be caused by a Material Change, unless Client can establish to the ESCO's satisfaction otherwise.
- Effect of Material Changes: ESCO shall determine the excess energy usage caused by the Material Change in accordance with Schedule G, and the Savings Guarantee shall be reduced in an amount determined by ESCO. If in the ESCO's discretion the Material Change is a Temporary Material Change, then an appropriate adjustment will be made to the Savings Guarantee for the current year only. If in the ESCO's discretion the Material Change is a Permanent Material Change, then ESCO will make an appropriate adjustment to the Savings Guarantee for the current year and all future years. If Client disagrees with ESCO's adjustments resulting from a Material Change, Client shall utilize the Independent Audit procedure described in Section 5.4 to contest the same.

SECTION 12. INDEMNIFICATION / LIMITED LIABILITY / INSURANCE / BONDS

12.1 Indemnification. ESCO and Client (each an Indemnifying Party) agree to indemnify, defend and hold the other Party and its employees, directors, officers, managers, members shareholder and agents harmless from and against any and all third party claims, actions, costs, expenses, damages and liabilities (including reasonable attorneys' fees) resulting from bodily injury or damage to property of others, arising out of, connected with or resulting from the negligence or misconduct of the Indemnifying Party or its employees or other agents in connection with its activities within the scope of this Contract. If the parties are both at fault, the obligation to indemnify shall be per the applicable state's comparable fault laws. The duty to indemnify will continue in full force and effect notwithstanding the expiration or early termination of this Contract with respect to any claims based on facts or conditions which occurred prior to termination or for a period of two (2) years after such expiration or early termination. It is agreed that in performing the Work, ESCO is not an insurer, and does not guarantee that no damage or injury to persons or property will occur.

12.2 Limited Liability. To the extent Client has a claim against ESCO not otherwise covered by insurance, ESCO's total liability to Client for damages or injury to persons or property that may be caused by or arise through performing any obligation under the Contract shall be limited only to losses proximately caused by ESCO's negligence. Notwithstanding any provision in this Contract to the contrary, neither party, nor its officers, employees, agents, or affiliates shall be liable to the other party, its officers, employees, agents, partners, affiliates or contractors, for incidental, indirect, consequential, exemplary, punitive or other special damages, including but not limited to damages for loss of anticipated profits (except as derived from payment or other compensation due for performance hereunder), loss of use or revenue, losses by reason of cost of capital connected with or resulting from any performance or lack of performance hereunder regardless whether a claim is based on contract, tort (including negligence) or theory of strict liability. Neither party shall have any remedy at law or in equity which is inconsistent with any provision of this Contract, and neither party shall have a right to terminate this Contract except as specifically and explicitly set forth in this Contract.

12.3 Insurance

- (a) At all times during the term of this Contract, ESCO shall maintain coverage in full force and effect at its expense, as identified in (1) through (4) below:
 - (1) General Liability Insurance, with Client named as an additional insured: \$2,000,000 aggregate, \$1,000,000 per occurrence.
 - (2) Installation Floater on Equipment on premises: \$2,000,000 limit per location and per disaster.
 - (3) Workmen's Compensation Insurance sufficient to cover all of the employees of ESCO working to fulfill this Contract.
 - (4) Professional Liability Insurance (Errors & Omissions Insurance): \$1,000,000 aggregate, \$1,000,000 per occurrence.
- (b) Prior to commencement of the Work under this Contract, ESCO will be required to provide Client with current certificates of insurance specified above.
- (c) ESCO shall notify client at least thirty (30) days prior to any change or cancelation of the coverage afforded under the policies.
- (d) Upon Substantial Completion, Client shall provide ESCO with evidence of insurance on the property installed.
 - (1) In the event of a casualty that damages or destroys installed Equipment or completed Work, Client shall utilize proceeds from Client's own insurance to pay the ESCO to restore the damaged Work and replace the damaged Equipment.
 - (2) In such case, the parties shall execute a mutually agreed Change Order extending the completion date in Schedule J, and increasing the Turnkey Installed Price in an amount to cover the ESCO's cost in performing such work.
- 12.4 <u>Performance and Payment Bonds</u>: Prior to commencing the Work, ESCO shall provide a Performance Bond and a statutory/public works Payment Bond each in the sum of one hundred percent (100%) of the Turnkey Installed Price. The Performance Bond shall apply to the performance of the Work, and the Payment Bond shall apply to and cover those providing labor, materials, equipment, supplies and services in connection with the performance of the Work. The Bonds shall be maintained in full force and effect until Final Completion. The bonds are not being furnished to cover the performance of any energy guaranty or guaranteed savings under this Contract, and exclude any work, warranties, performance guarantees, etc. not identified in this

Contract. Client agrees that upon Final Completion, the Performance and Payment Bonds shall be released and all obligations arising thereunder shall be terminated.

SECTION 13. HAZARDOUS MATERIALS; DIFFERING SITE CONDITIONS

- 13.1 Hazardous Materials. Client recognizes that in connection with the Work, ESCO may encounter, but is not responsible for, (a) asbestos and materials containing asbestos, (b) pollutants, petroleum, urea formaldehyde, hazardous wastes, hazardous materials or contaminants, (c) lamps and ballasts containing PCB's & DEHP, (collectively, clauses (a), (b) and (c) constitute "Hazardous Materials"), and (d) the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal or containment thereof. The materials and activities listed in the foregoing sentence are referred to as "Excluded Materials and Activities." Client acknowledges that Client is the sole generator of any Excluded Materials and Activities and is solely responsible for every aspect of the Excluded Materials and Activities. Client agrees that if performance of Work involves any Excluded Materials and Activities, ESCO may perform or arrange for the performance of such Work but Client shall bear the sole risk and responsibility therefore. Furthermore, in handling any of Client's property, including, without limitation, Client's lighting ballasts that may contain PCBs or DEHP and Clients fluorescent tubes, ESCO does not take title to any such property, nor does ESCO assume any responsibility for the storage, handling, use, transportation, treatment, disposal, discharge, leakage, detection, removal or containment of such property. Client shall be solely responsible for disposing of its Hazardous Materials in a timely manner and in accordance with all federal, state and local laws, statutes and regulations applicable thereto. At ESCO's option, certain costs associated with Work related to Excluded Materials and Activities necessary for the implementation of the Equipment may be included in the Turnkey Installed Price, notwithstanding the fact that such costs are the responsibility of Client and shall be incurred by Client. In furtherance of the foregoing Client agrees to release, indemnify, defend and hold harmless ESCO, its directors, consultants, contractors, and officers, agents, assignees and employees of and from all costs, claims, damages and liability arising out of or relating to Excluded Materials and Activities, acts or omissions of ESCO or third parties relating thereto, or injury caused thereby, excepting only such costs, claims, damages or liability as are the direct result of any gross negligence or willful misconduct of ESCO. Upon disposition of Hazardous Materials by Client, Client shall provide to ESCO copies of all manifests or other evidence or confirmation of removal of such Hazardous Materials showing Client as the sole generator of such Hazardous Materials upon ESCO's request for the same.
- 13.2 <u>Differing Site Conditions</u>. ESCO shall promptly notify Client in writing upon discovery of any: (a) subsurface or latent physical conditions at the Premises differing materially from those indicated in the Contract or Investment Grade Audit, or (b) theretofore unknown physical conditions at the Premises, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Scope of Work of the character provided for in the Contract. Client shall investigate the conditions, and if it finds that such conditions do so materially differ and cause an increase or decrease in the Client's cost of, or the time required for, performance of any part of the Work, and which could not have reasonably been anticipated by ESCO, whether or not changed as a result of such conditions, an equitable adjustment shall be made in the Turnkey Installed Price, time of completion and/or other terms and conditions of the Contract, and the Contract shall be modified in writing accordingly by Change Order.

SECTION 14. CONDITIONS BEYOND CONTROL OF THE PARTIES

If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of God, insurrections or riots, or similar events, this Contract shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days' notice to the performing party, in which event neither party shall have any further liability to the other with the exception of payments as defined in **Schedule D** for Services completed up to the time of termination.

SECTION 15. EVENTS OF DEFAULT

15.1 Events of Default by Client. Each of the following events or conditions shall constitute an "Event of Default" by Client:

- (a) any failure by Client to pay ESCO any undisputed sum due within ten days after written notification by ESCO that Client is delinquent in making payment and provided that ESCO is not in default in its performance under the terms of this Contract; or
- (b) any other failure by Client to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty days after written notice to Client demanding that such failures to perform be cured or if such cure cannot be effected in thirty days, Client shall be deemed to have cured default upon the commencement of a cure within thirty days and diligent subsequent completion thereof;
- (c) any representation or warranty furnished by Client in this Contract which was false or misleading in any material respect when made.
- 15.2 <u>Events of Default by ESCO</u>. Each of the following events or conditions shall constitute an "Event of Default" by ESCO:
 - (a) the Standards of Comfort set forth in *Schedule I (Standards of Comfort / Operating Parameters)* are not provided due to failure of ESCO to properly design, maintain, repair or adjust the Equipment per the terms of this Contract except that such failure, if corrected or cured within thirty days after written notice by Client to ESCO demanding that such failure be cured, shall be deemed cured for purposes of this Contract.
 - (b) any representation or warranty furnished by ESCO in this Contract is false or misleading in any material respect when made;
 - (c) any other failure by ESCO to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within thirty days after written notice by the Client to ESCO demanding that such failure to perform be cured;
 - (d) the filing of a bankruptcy petition whether by ESCO or its creditors against ESCO which proceeding shall not have been dismissed within sixty days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of ESCO;
 - (e) any failure by ESCO to pay Client any sum due within ten days after written notification by Client that ESCO is delinquent in making payment and provided that Client is not in default in its performance under the terms of this Contract

SECTION 16. REMEDIES UPON DEFAULT; DISPUTES; MEDIATION; ARBITRATION

- 16.1 Remedies upon Default. Any controversy, claim or dispute of whatever nature arising between the parties in connection with this Contract, including those arising out of or relating to any agreement between the parties, or the breach, termination, enforceability, scope or validity thereof, whether such claim existed prior to or arises on or after the date of this Contract (a "Dispute"), shall be resolved by good faith negotiations between ESCO and Client, by mediation or, failing mediation, by binding arbitration in accordance with this Section 16. ESCO shall continue with the performance of the Work during the pendency of any claim, dispute or controversy or arbitration, nonbinding mediation, or other proceeding to resolve such claim, dispute or controversy. The Client shall continue to make payments of undisputed amounts to ESCO in accordance with the Contract Documents, but the Client shall be under no obligation to make payments to ESCO of disputed amounts or for claims, disputes, or controversies during the pendency of any arbitration, nonbinding mediation or other proceeding to resolve such claims, disputes or controversies.
- 16.2 Mediation. Neither party shall commence an arbitration proceeding pursuant to the provisions set forth below unless such party shall first give a written notice (a "Dispute Notice") to the other party setting forth the nature of the Dispute. The parties shall attempt in good faith to resolve the Dispute by mediation under the

American Arbitration Association ("AAA") mediation procedures in effect at the time of this Contract. If the parties cannot agree on the selection of a mediator within 20 days after receipt of the Dispute Notice, the mediator will be selected in accordance with the AAA procedures. The expenses of the mediation shall be borne equally by the parties to the mediation, provided that each party shall pay for and bear the cost of its own experts, evidence and counsel.

- Arbitration. If any Dispute is not settled by mediation, upon the request of any party involved (and without regard to whether or not any provision of this Contract expressly provides for arbitration), such Dispute shall be submitted by either party to and settled by arbitration in the state of the location of the Premises in conformance with rules of the American Arbitration Association then in effect (or at any other place or under any other forum or arbitration mutually acceptable to the parties). Any award rendered shall be final and conclusive upon the parties, and a judgment thereon may be entered in the highest court of a forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the parties to the arbitration, provided that each party shall pay for and bear the cost of its own experts, evidence and counsel.
- 16.4 <u>Remedies</u>. Notwithstanding the provisions in this Section 16, the parties recognize that certain business relationships could give rise to the need for one or more of the parties to seek emergency, provisional or summary relief and for temporary injunctive relief. Immediately following the issuance of any such relief, the parties agree to the stay of any judicial proceedings pending mediation or arbitration of all underlying claims between the parties.

SECTION 17. ASSIGNMENT

- Assignment by ESCO. ESCO acknowledges that the Client is induced to enter into this Contract by, among other things, the professional qualifications of the ESCO. The ESCO agrees that neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of the Client. Notwithstanding the forgoing, ESCO may, with prior written approval of the Client, which consent shall not be unreasonably withheld, delegate its duties and performance under this Contract, and/or utilize contractors, provided that any assignee(s), delegate(s), or contractor(s) shall fully comply with the terms of this Contract. ESCO shall remain jointly and severally liable with its assignees(s), or transferee(s) to the Client for all of its obligations under this Contract.
- 17.2 <u>Assignment by Client</u>. Client may transfer or assign this Contract and its rights and obligations herein to a successor or purchaser of the Premises or an interest therein so long as the successor or purchaser assumes Client's obligation hereunder in writing.

SECTION 18. REPRESENTATIONS AND WARRANTIES

Each party warrants and represents to the other that:

- (a) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
- (b) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organizational instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (c) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
- (d) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder

SECTION 19. ADDITIONAL REPRESENTATIONS OF THE PARTIES

- 19.1 Client hereby warrants, represents and promises that it has provided or shall provide timely to ESCO, all records relating to energy usage and energy-related maintenance of Premises requested by ESCO, including all information provided to the ESCO during the Investment Grade Audit, and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects.
- 19.2 ESCO hereby warrants, represents and promises that:
 - a. it shall have provided proof and documentation of required insurance pursuant to Section 12.3 of this Contract;
 - b. it shall make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;
 - that ESCO is authorized and licensed to perform all Work under this contract that it shall use
 qualified subcontractors and delegates, licensed and bonded in this state to perform the work so
 subcontracted or delegated pursuant to the terms hereof;
 - d. that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Contract.
 - e. it shall complete the Work in compliance with the Contract and without any liens attaching to the Premises.

SECTION 20. APPLICABLE LAW

This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State where the Premises is located.

SECTION 21. COMPLIANCE WITH LAW AND STANDARD PRACTICES

ESCO shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of Client relative to the Premises. ESCO shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder.

SECTION 22. INDEPENDENT CAPACITY OF THE ESCO

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

SECTION 23. NO WAIVER

The failure of ESCO or Client to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of ESCO or Client.

SECTION 24. SEVERABILITY

In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable or unconscionable

SECTION 25. COMPLETE CONTRACT

This Contract, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Contract shall constitute the entire Contract between both parties and this Contract may not be amended, modified, or terminated except by a written Change Order or Contract signed by the parties hereto.

SECTION 26. FURTHER DOCUMENTS

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract

SECTION 27. NOTICE

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail or telefax (Fax), return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO ESCO:

Energy Solutions Professionals, LLC

Attn: Jeff Flathman

9218 Metcalf Avenue, Suite 274 Overland Park, KS 66212

(913) 273-1499 jeff@energyesp.com

TO CLIENT:

City of Salem, MO

Attn: Mr. Ray Walden, City Administrator

400 N Iron St. Salem, MO 65560

SCHEDULE B

CLIENT PREMISES

Description of Premises

The following buildings are included as part of this contract. The buildings affected are listed below.

Building Name	Address	Square Footage
City Admin Offices	400 N. Iron St.	5,850
Old City Hall	202 N. Washington	10,000
Community Center	1200 W. Rolla Rd	20,000
Police Station	500 N. Jackson	3,000
Parks & Rec	N. Grand & 3rd St.	4,774
Water Electric Bldg	1201 & 1205 S. Wines St.	6,469
		50,093

SCHEDULE C

SCOPE OF WORK

General notes to all scope:

- 1. Work hours shall consist of Monday Friday from 8:00 AM 5:00 PM.
- 2. Comply with all local codes and regulations.
- 3. Acquire all required permits necessary to complete the work.
- 4. Exclude all sales taxes from the proposal to complete the scope of work as the project is tax exempt.
- 5. For the purposes of low voltage control wiring, plenum rate cable may be used in concealed areas provided it is tied up to avoid sagging. In exposed areas, conduit or wiremold must be used as consistent with raceway currently existing in the room/building.
- 6. Asbestos abatement if necessary, will be completed by others and is not included in this scope. ESCO will however assist in identifying specific locations that need to be abated by others to complete ESCO's work. (No monies have been included in the price of the project to cover abatement)

The list of ECMs is shown in the table below, followed by a description of the detailed scope of work.

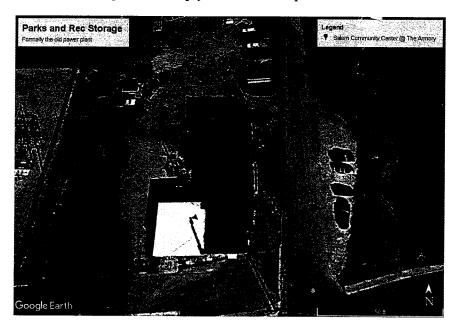
ECM #	Energy Conservation Measure and Associated Building
1	Roofing
2	Building Envelope
3	Windows and Doors
4	Basement Doors, Enclose Stairwell, Drainage
5	Reframe Overhead Doors
6	Tuckpointing
7	HVAC
8	Health and Life Safety Assessment
9	Al Brown Ball Fields

ECM #1 – ROOFING

Parks/Rec & Water Building (Old Power Plant, Red Shaded Area)

- Coordinate a "Site Safety" plan setting up safety markers and barriers as needed.
- Tear off old roofing down to wood deck. Replace any deteriorated decking at the cost listed below.

- Mechanically attach 5.2 in ISO insulation.
- Mechanically attach 60 mil white Mule-Hide or GAF TPO over insulation.
- Flash walls by fully adhering 60 mil TPO up and over.
- Flash all penetrations according to manufacturer's specifications.
- Terminate around perimeter using 1" aluminum termination bar.
- Dispose of all debris and leave roof broom-swept clean.
- A 15-year manufacturer's warranty and 2-year workmanship guarantee are included.
- In addition to the above, replace any deteriorated decking at \$50 per sheet of ½", exterior grade, CDX plywood or \$3.50 per linear foot of 1x decking.



Community Center (Red, Blue, and Brown Shaded areas)

- Coordinate a "Site Safety" plan setting up safety markers and barriers as needed.
- Clean and prepare existing roof for new roof lay over.
- Mechanically attach 1 in ISO insulation.
- Mechanically attach 60 mil white Mule-Hide or GAF TPO over insulation.
- Flash walls by fully adhering 60 mil TPO up and over.
- Flash all penetrations according to manufacturer's specifications.
- Terminate around perimeter using 1" aluminum termination bar.
- Dispose of all debris and leave roof broom-swept clean.
- A 20-year manufacturer's warranty and 2-year workmanship guarantee are included.



ECM #2 – BUILDING ENVELOPE

Administration Building

- Weatherstrip 4 exterior doors on 1st floor.
- Caulk will have a 50-year manufacturer's warranty.
- Door sealing materials consist of a heavy metal aluminum carrier, and a strip of Q-lon which is a formed & angle sponge wrapped in vinyl.
- Door sweeps will utilize a double fin film seal between a set of brushes, also embedded in a heavy aluminum carrier.

Community Center

- Weatherstrip 15 exterior doors.
- Caulk will have a 50-year manufacturer's warranty.
- Door sealing materials consist of a heavy metal aluminum carrier, and a strip of Q-lon which is a formed & angle sponge wrapped in vinyl.
- Door sweeps will utilize a double fin film seal between a set of brushes, also embedded in a heavy aluminum carrier.
- Mold Inspection and Mitigation

Parks and Rec Building

- Weatherstrip 1 exterior doors and 1 interior door.
- Caulk will have a 50-year manufacturer's warranty.
- Door sealing materials consist of a heavy metal aluminum carrier, and a strip of Q-lon which is a formed & angle sponge wrapped in vinyl.
- Door sweeps will utilize a double fin film seal between a set of brushes, also

- embedded in a heavy aluminum carrier.
- Roof and wall joint to be sealed with 2-part foam. 30 feet.
- Seal of air conditioner with weatherstrip and flexible cover.
- 2 overhead doors to be sealed on 4 sides.
- Mold Inspection and Mitigation

Police Department

- Weatherstrip 4 exterior doors.
- Caulk will have a 50-year manufacturer's warranty.
- Door sealing materials consist of a heavy metal aluminum carrier, and a strip of Q-lon which is a formed & angle sponge wrapped in vinyl.
- Door sweeps will utilize a double fin film seal between a set of brushes, also embedded in a heavy aluminum carrier.

Water and Electric Shop

- Weatherstrip 5 exterior doors and 3 interior doors.
- Caulk will have a 50-year manufacturer's warranty.
- Door sealing materials consist of a heavy metal aluminum carrier, and a strip of Q-lon which is a formed & angle sponge wrapped in vinyl.
- Door sweeps will utilize a double fin film seal between a set of brushes, also embedded in a heavy aluminum carrier.
- Seal of 2 air conditioners with weatherstrip and flexible cover.
- 6 overhead doors to be sealed on 4 sides.

Council Chambers and Auditorium

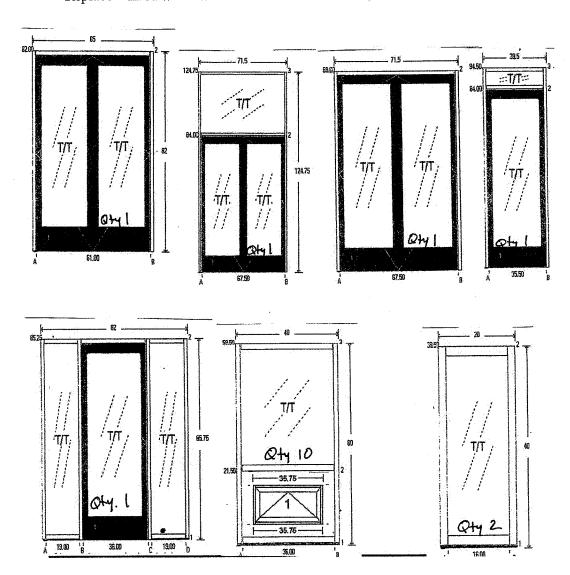
- Weatherstrip 12 exterior doors and 1 interior door.
- Caulk will have a 50-year manufacturer's warranty.
- Door sealing materials consist of a heavy metal aluminum carrier, and a strip of Q-lon which is a formed & angle sponge wrapped in vinyl.
- Door sweeps will utilize a double fin film seal between a set of brushes, also embedded in a heavy aluminum carrier.
- Roof and wall joint to be sealed with 2-part foam. 30 feet.
- Seal of air conditioner with weatherstrip and flexible cover.
- 2 overhead doors to be sealed on 4 sides.

ECM #3 – WINDOWS AND DOORS

Old City Hall - Council Chambers & Auditorium

- Replace 5 sets of aluminum doors.
 - White finish.
 - o Rim Panics.

- o Removable mullion bars.
- o 1" low-e tempered glass.
- o Medium stile
- o 10" bottom rails.
- Heavy duty closers.
- O Single door with 2 sidelights with ADA automatic operator and two remote buttons.
- Replace 10 fixed windows with awning windows below.
- Replace 2 fixed windows.



ECM #4 – BASEMENT DOORS, ENCLOSE STAIRWELL, DRAINAGE

Police Department - Basement stairwell:

ESP shall construct an enclosure above the existing basement stairwell:

- Construction will be 2x4 wooden study 16" O.C. Metal paneling exterior.
- Metal paneling shall be 28-gauge rib panel, color choice by owner. 40-year paint warranty.
- Flashing to existing masonry included.
- Tyvek wrap between metal and
- Install one $1 \frac{3}{4} \times 7$ x 3' hollow metal door and frame at the top of the stairs. 20ga.
- Replace existing basement stairwell hollow metals doors with new 20ga hollow metal doors. Sidelight shall be framed in with metal panel.

ESP shall do the following to address drainage on the north side of the building:

- Route both roof drains into the existing drainage box nearby using 6" drain tile.
- Regrade 220sft of greenspace between the drive way and building.
- Install 220sft of 4" 3500psi concrete in the greenspace.
 - Concrete shall be reinforced with rebar in a 2' grid and dowelled into the building.
 - Flashing & Sealant to prevent water infiltration between building and slab.
 - o 4" rock base minimum.

ECM #5 – REFRAME OVERHEAD DOORS

Parks and Rec Building

Prepare the existing overhead doors at the Parks and Rec storage building

- Remove and replace rot wood with treated lumber.
- Install new metal trim as needed.
- Repair adjacent masonry around overhead doors.
- Repair/patch threshold as needed.

ECM #6 – TUCKPOINTING

Police Department

North side: Remove damaged mortar joints from brick and stone veneer to a depth of 5/8" of an inch. Tuckpoint the joints with dyed restoration mortar to match existing mortar. Vertical joints of the coping stone will be caulked with a limestone-colored caulk. Repair damaged limestone. Wash repaired areas with a masonry detergent.

East side: Infill chimney area with a red brick and colored mortar. Remove damaged mortar joint below coping stone. Tuckpoint the joint below coping stone

and caulk vertical joint in coping stone. Wash repaired areas with a masonry detergent.

South side: Remove damaged mortar joints from brick and stone veneer to a depth of 5/8" of an inch. Tuckpoint the joints with dyed restoration mortar to match existing mortar. Vertical joints of the coping stone will be caulked with a limestone-colored caulk. Repair damaged limestone. Wash repaired areas with a masonry detergent.

Community Center

Cut out damaged joints 3/4" deep using grinder and HEPA vacuum on the first and second level of the building. Tuck point joints with colored restoration mortar, wash with masonry restoration detergent.

Cut out and replace damaged brick throughout building. Wash with a masonry detergent.

Council Chambers/Auditorium

Remove existing angle irons and brick above the 3 large windows on the north side of the building. Replace with new irons and relay the original brick. Wash with a masonry detergent.

Cut out all mortar joints 3/4" deep using grinder and HEPA vacuum. Repoint with a colored type N mortar. Seal all repairs with silaxane sealer/waterproofer above large windows on south side various small locations on north and south side.

Demo southern chimney to roof line. Cap with a 4" concrete cap.

Parks and Rec Building (Old Power Plant)

Cut out mortar joints 3/4" deep using grinder and HEPA vacuum. Repoint joints with colored type N mortar. Wash with a masonry detergent. Apply a silaxane sealer/waterproofer.

FOUNDATION TO TOP OF THE

WALL(Brick):

- -South brick wall
- -20' of the southeast wall

TOP 4' OF WALL(Brick)

East wall

North wall

West wall

Demo block above the south garage door to repair sagging lintels and block. Replace old lintels with new, 4x6x 3/8 irons. Relay with new block.

NW Corner Repair: Remove exterior 4" brick veneer from foundation to top of wall and from garage door to 12" around the corner. Relay corner with new brick. Wash with masonry detergent and seal with a silaxane sealer/waterproofer.

Cut out damage joints in the block portion of the building and also cut out cracked or damaged blocks. Repoint the damaged mortar joints and relay the removed block with new block.

* Painting of block/brick excluded.

ECM #7 - HVAC

Administration Offices

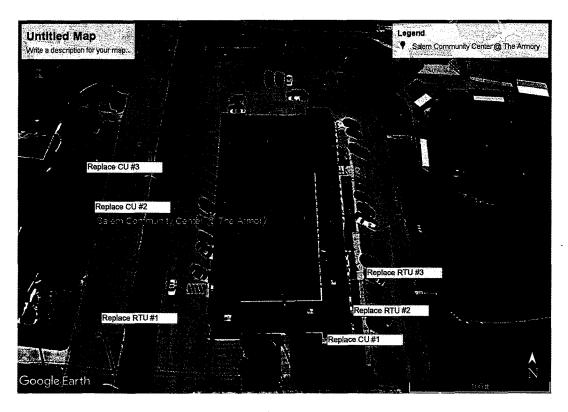
- Replace split systems with 14 SEER A/C and 92% eff single stage gas furnace (fuel switch to Natural Gas). York TM9E furnaces and York YCS condensers.
- Split twin system into two separate zones
- Add indoor air quality air cleaners (Ionization)
- Add WiFi thermostats to new units
- Electrical work included.

Police Station

- Replace split systems with 14 SEER A/C and 92% eff single stage gas furnace (fuel switch to Natural Gas). York TM9E furnaces and York YCS condensers.
- Add indoor air quality air cleaners (Ionization)
- Add WiFi thermostats to new units
- Electrical work included.

Community Center

- Replace 3 split systems with 14 SEER A/C and 92% eff single stage gas furnace (fuel switch to Natural Gas). York TM9E furnaces and York YCS condensers.
- Replace 3 existing RTUs with York PCG4036 units
- Install 6 Aprilaire model 1850 dehumidifiers to address humidity issues.
- Add indoor air quality air cleaners (Ionization)
- Add WiFi thermostats to new units
- Electrical work included.



Council Chambers/Auditorium

- Replace 3 split systems with 13 SEER A/C and 92% eff single stage gas furnace (fuel switch to Natural Gas). York TM9E furnaces and York YCS condensers.
- Replace 5 existing RTUs with 18 seer units with modulating heat and cooling.
- Add indoor air quality air cleaners (Ionization)
- Add WiFi thermostats to new units
- Electrical work included.

*Single phase equipment shall carry the following warranties on parts:

- All 10 year
- Compressor 10 year
- Heat Exchanger Lifetime

*Three phase equipment shall carry the following warranties on parts:

- All -1 year
- Compressors 5 year
- Heat Exchanger 10 year

ECM #8 - HEALTH AND LIFE SAFETY ASSESSMENT ALLOWANCE

Old City Hall

ESP shall hire a licensed architect to conduct a life-safety study of the Council Chambers/Auditorium. The study shall consist of:

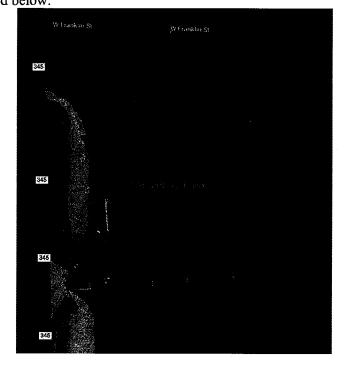
- ADA compliance evaluation.
- Fire safety evaluation.
- Electrical safety evaluation.
- Local code compliance.
- Occupant load study.
- A report prioritizing life safety improvements.
- Repairs within the allowance.

ECM #9 - AL BROWN BALL FIELDS

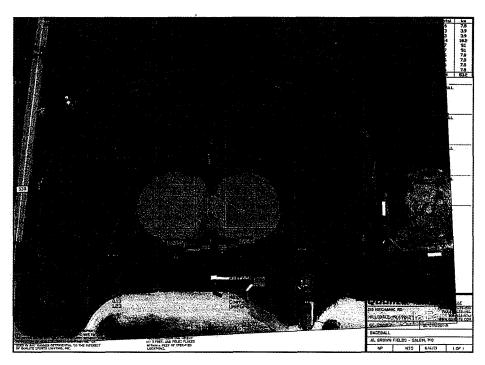
Al Brown Softball and Baseball Complex:

Lighted ball fields for older youth and adult ball playing are located on Hwy 32-72 West. Complex includes, concessions, two baseball / softball fields, and a multi-purpose field located to the south of the complex for soccer etc.

Current SOW is to install new poles, and LED lighting systems to serve the two baseball fields as pictured below.



1. Design LED Qualite Sports lighting system to achieve the photometric layout shown below.



- 2. Installation of the LED Qualite Sports Lighting package, QL#21523D1
 - Qualite QLED Gen 3 fixtures on stanchions, pre-aimed
 - Remote driver boxes with disconnect switches and surge protection
 - Wiring harness from pole top to driver boxes.
 - Wireless control system
 - Standard 25 Year Maintenance Free Warranty
 - 2 70' mounting height steel poles
 - 7 60' mounting height steel poles
 - Retrofit pole adder for B1 pole
 - Foundation design
 - Freight
 - Light Audit
- 3. Pole Installation
 - Drill caissons
 - Offload, assemble, erect and aim each light pole assembly
 - Stabilize the pole and fill to the conduit entry point
 - After trenching and backfill, soil will be used for final 18" fill around poles
- 4. Crane service to install light pole assemblies
- 5. Lighting controls, programming and operations testing

Exclusions:

1. If close access to the pole locations is limited, additional charges will be incurred. This applies to the caisson drilling as well. We assume that caisson drilling equipment and crane can drive right to the pole locations.

- 2. Permits and inspections are not included in the quote, and typically are not required.
- 3. We are assuming that soils conditions are normal in nature for the caisson drilling and do not require shoring, sleeves, casings, slurry, pumping, blasting, rock drilling or other special conditions. If these conditions are encountered additional funds will be required.
- 4. In some areas we may need to cross sidewalks, concrete drives and sod areas with equipment. All precautions will be used (timbers, cribbing etc.) but some concrete damage or sod and soil damage may occur. We will point out these locations prior to work in that area.
- 5. Sod and sprinkler repair or replacement is not included.
- 6. Any utility company charges are not included in this quote.
- 7. Trenching conduit and wire to the poles is by others.

SCHEDULE D

COMPENSATION to ESCO

Following is a table showing the total installed cost for the Energy Conservation Measure (ECM) included in Schedule C – Scope of Work. The ECM Summary table below provides a synopsis of the measures included in the scope of work and identifies what the total cost will be for each scope item included. The total cost is the Turnkey Installed Cost which is due and payable to the ESCO under the terms set out in Section 6 of Schedule A.

Energy Conservation Measure and Associated Building	Turnkey Installed Price
City Admin Offices	\$36,172
CA-Bldg Envelope	\$1,600
CA-HVAC Good	\$34,572
Old City Hall	\$811,925
CH-Windows and Doors	\$94,400
CH-Health and Life Safety Assessment and Upgrades: Allowance	\$25,000
CH-Tuckpointing	\$29,132
CH-Bldg Envelope	\$4,763
CH-HVAC Better	\$298,041
AB - Baseball Field Lighting	\$360,590
Community Center	\$296,440
CC Roofing 20 yr warranty	\$138,564
CC-Bldg Envelope	\$5,944
CC-Tuckpointing	\$6,814
CC-HVAC Good	\$145,118
Police Department	\$77,632
PD-Bldg Envelope	\$2,364
PD-Basement Doors, Enclose Stairwell, Drainage	\$19,348
PD-Tuckpointing	\$14,183
PD-HVAC Good	\$41,737
Parks and Rec Bldg (Old Power Plant)	\$116,242
PR Roofing	\$61,402
PR-Bldg Envelope	\$5,527
PR-Tuckpointing	\$31,286
PR-Reframe Overhead Doors	\$18,027
Misc	\$37,479
WE-Bldg Envelope	\$12,479
CC-PR Mold Inspection and Mitigation: Allowance	\$25,000
Other	\$85,649
Energy Awareness & WR	\$4,800
ESP Performance Bonds	\$18,963
Contingency	\$61,886
	Ţ ,
PROJECT TOTALS (for selected measures)	\$1,461,539

NOTES:

- 1. The Turnkey Installed Cost includes all Construction Costs (Labor, Material, associated installation costs), Design and Energy Engineering, Construction Management, Project Management, System Commissioning, Training, as well as Measurement & Verification to quantify and prove savings are achieved. The table above identifies costs for each individual scope of work included in Schedule C.
- 2. The Turnkey Installed Cost is a Guaranteed Max price that ensures no ESCO or Subcontractor-initiated change-orders. Any overage in the Total Installed Cost for the selected energy conservation measures; with scope of work as defined in Schedule C, shall be the responsibility of the ESCO.
- 3. The Project Contingency amount is to address any potential unforeseen conditions or scope gaps that arise on the project. ESCO will use a Project Contingency Allocation Log to track all scope changes during construction. Any unused Project Contingency funds will be reinvested into the Client facilities by adding ECMs.
- 4. ESCO will provide Payment and Performance Bonds for 100% of the Contract Sum.
- 5. This project pricing was put together based on the Scope of Work being tax exempt, so taxes have not been included in the above pricing.
- 6. The anticipated Draw Schedule for the base project is shown below.

City of SalemProjected (Depends on Contract Signing Date) Draw Schedule

Application for		ESTIMATED	
Payment (AFP)	AFP Date	AFP Amount	Notes
AFP#1	Month 1	\$ 73,076.97	Moblization
AFP#2	Month 2	\$ 219,230.92	Progress Payment
AFP#3	Month 3	\$ 365,384.86	Progress Payment
AFP#4	Month 4	\$ 365,384.86	Progress Payment
AFP#5	Month 5	\$ 292,307.89	Substantial Completion
AFP#6	Month 6	\$ 146,153.94	Final Completion

SCHEDULE E

BASELINE ENERGY CONSUMPTION

The ESCO has completed a detailed utility analysis of the Client's facility, and established a baseline for each individual building. Refer to Utility Analysis of Schedule P – Investment Grade Audit Report for comprehensive analysis regarding the utility consumption, graphical depiction of historical consumption and detailed information on each individual site.

Baseline

City of Salem Total

	BASELINE ENERGY USAGE										
	ELEC	TRIC	Gas	WATER	Sewer		\$				
Month	kW	kWh	therms	kgals	kgals		Cost				
JAN	68	44,436	870	28	28	\$	5,844				
FEB	64	35,427	693	28	28	\$	4,701				
MAR	68	38,925	416	40	40	\$	4,917				
APR	67	24,344	150	40	40	\$	3,127				
MAY	65	29,408	46	34	34	\$	2,390				
JUN	74	35,265	31	20	20	\$	3,790				
JUL	69	28,466	26	38	38	\$	3,558				
AUG	68	27,959	33	41	41	\$	3,343				
SEP	68	22,288	31	45	45	\$	2,935				
OCT	67	30,032	120	36	36	\$	3,751				
NOV	51	47,210	509	29	29	\$	5,641				
DEC	72	66,733	939	30	30	\$	8,204				
TOTALS	801	430,494	3,863	410	410	\$	52,201				

City of Salem City Admin Offices

		BASI	LINE ENER	GY USAGE			
	ELEC	TRIC	Gas	WATER	Sewer		\$
Month	kW	kWh	therms	kgals	kgals	Cost	
JAN	-	4,160	-	2	2	\$	425
FEB	-	4,120	-	3	3	\$	429
MAR	<u>-</u>	4,080	1	6	6	\$	426
APR	-	3,360	_	2	2	\$	204
MAY	-	3,880	-	1	1	\$	199
JUN	-	4,320	-	2	2	\$	238
JUL	-	4,267	_	19	19	\$	378
AUG	-	4,640	-	22	22	\$	557
SEP	-	2,853	-	21	21	\$	455
ост	-	3,147	-	13	13	\$	423
NOV	-	5,093	-	6	6	\$	381
DEC	-	4,640	-	2	2	\$	459
TOTALS	-	48,560	-	100	100	\$	4,576

The electric baseline period is defined as the average of Jul 2016 thru Nov 2018.

The water baseline period is defined as the average of Jul 2016 thru Nov 2018.

City of Salem Old City Hall

		BASE	ELINE ENER	GY USAGE			
	ELE(CTRIC	Gas	WATER	Sewer		\$
Month	kW	kWh	therms	rms kgals kgals		Cost	
JAN		23,636	-	8	8_	\$	2,529
FEB	-	15,427	-	8	8	\$	1,665
MAR	-	20,105	-	8	8	\$	2,158
APR	_	10,454	-	. 8	8	\$	1,131
MAY	_	7,368	1	8	8	\$	874
JUN	_	10,025	-	8	8	\$	1,103
JUL		8,893	-	5	5	\$	963
AUG	_	3,506	-	5	5	\$	445
SEP	_	2,968	-	8	8	\$	453
OCT	-	13,099	•	8	8	\$	1,484
NOV	_	27,850	-	5	5	\$	2,953
DEC	_	37,533	-	8	8	\$	4,002
TOTALS		180,864	-	83	83	\$	19,762

The electric baseline period is defined as the 12-month period of Dec 2017 thru Nov 2018. The water baseline period is defined as the average of Jul 2016 thru Nov 2018.

City of Salem Community Center

	BASELINE ENERGY USAGE										
	ELEC	TRIC	Gas	WATER	Sewer		\$				
Month	kW	kWh	therms	kgals	kgals kgals		Cost				
JAN	40	10,520	870	17	17	\$	2,248				
FEB	36	10,460	692	15	15	\$	2,029				
MAR	39	10,360	416	23	23	\$	1,843				
APR	36	8,560	150	28	28	\$	1,412				
MAY	53	13,720	44	22	22	\$	1,063				
JUN	62	16,620	31	7	7	\$	1,960				
JUL	56	10,707	25	11	11	\$	1,866				
AUG	55	15,027	32	11	11	\$	1,808				
SEP	55	12,347	31	13	13	\$	1,564				
ОСТ	46	10,240	120	12	12	\$	1,435				
NOV	37	9,907	507	15	15	\$	1,820				
DEC	40	15,460	939	17	17	\$	2,803				
TOTALS	554	143,927	3,855	189	189	\$	21,850				

The electric baseline period is defined as the average of Jul 2016 thru Nov 2018.

The gas baseline period is defined as the average use between Jul 2017 thru Jun 2019.

The water baseline period is defined as the average of Jul 2016 thru Nov 2018.

City of Salem Police Station

		BASE	LINE ENER	GY USAGE			
	ELEC	TRIC	Gas	WATER	Sewer		\$
Month	kW	kWh	therms	kgals kgals			Cost
JAN	28	6,120	•	3	3	\$	642
FEB	28	5,420	1	3	3	\$	578
MAR	29	4,380	1	3	3	\$	489
APR	31	1,970	-	3	3	\$	380
MAY	13	4,440	2	4	4 4		253
JUN	13	4,300		4	4	\$	489
JUL	13	4,600	1	. 3	3	\$	351
AUG	13	4,787	1	3	3	\$	534
SEP	13	4,120	-	3	3	\$	463
ОСТ	20	3,547	-	3	3	\$	409
NOV	14	4,360	2	3	3	\$	487
DEC	32	9,100	-	3	3	\$	940
TOTALS	247	57,143	8	39	39	\$	6,013

The electric baseline period is defined as the average of Jul 2016 thru Nov 2018.

The gas baseline period is defined as the average use between Jul 2017 thru Jun 2019.

The water baseline period is defined as the average of Jul 2016 thru Nov 2018.

City of Salem Parks and Recreation Bldg

		BASI	ELINE ENERG	Y USAGE			
	ELEC	TRIC	Gas	WATER	Sewer		\$
Month	kW	kWh	therms	kgals	kgals	Cost	
JAN	-	-	-	-	-	\$	-
FEB		-	-	-	-	\$	-
MAR	-	_	-	-	-	\$	-
APR	- 1	-	-	-	-	\$	
MAY	_				-	\$	
JUN	-	-		_		\$	-
JUL	-	_	-	-	-	\$	-
AUG	-	<u>-</u>		-	-	\$	_
SEP	-	_	-	<u>-</u>	-	\$	-
OCT	-	-	_	-	_	\$	-
NOV	-	-	-	-	•	\$	
DEC	_	-		-	-	\$	
TOTALS	-	-	_			\$	_

The electric use for this building was unavailable.

The gas use for this building was unavailable.

The water use for this building was unavailable.

City of Salem Water & Electric Building

	BASELINE ENERGY USAGE										
	ELECT	TRIC	Gas	WATER	Sewer		\$				
Month	kW	kWh	therms	kgals	kgals	C	Cost				
JAN	<u>-</u>	-	-	-	-	\$					
FEB	-	-	-	-	-	\$	-				
MAR	<u> </u>	-	-	-	-	\$	-				
APR	_	-	-	-	-	\$	-				
MAY	_	-	-	-		\$					
JUN	- 1	-		-	_	\$					
JÚL	_	-	-		-	\$	-				
AUG		-	- [-		\$					
SEP		_	-	-	-	\$	_				
ОСТ	- 1	_	-	-	-	\$	-				
NOV	-		-	-		\$					
DEC	-	_	_	_	-	\$	_				
TOTALS	- 1	-	-	-	_	\$	-				

The electric use for this building was unavailable.

The gas use for this building was unavailable.

The water use for this building was unavailable.

SCHEDULE F

SAVINGS GUARANTEE

A. Magnitude of Savings Guarantee

The table below identifies the amount of the annual Savings Guarantee in units of energy and associated dollar savings. The amounts identified for Operational Savings have been agreed to by Client and ESCO.

	PROJEC	TED UTILI	TY S	AVINGS	GUARAN	NTEED UT	ILITY	SAVINGS	l	ERATIONAL SAVINGS		TOTAL ARANTEED SAVINGS
ENERGY CONSERVATION MEASURE	kWh	therms		\$	kWh	therms		\$		\$		\$
Roofing							Gara	· .				7, W 1.
CC Roofing 20 yr warranty	1,200	400	\$	574	1,140	380	\$	545	\$	-	\$	545
PR Roofing	-	-	\$_	-	-	-	\$	-	\$	_	\$	
Building Envelope				4.4 (2.5)	1971 Say (1)		Star.					
CA-Bidg Envelope	3,391	-	\$_	270	3,221	-	\$	257	\$	-	\$	257
CH-Windows and Doors	3,488	-	\$_	367	3,314	-	\$	349	\$	-	\$	349
CH-Tuckpointing	-	-	\$	_	-	-	\$	_	\$	-	\$	
CH-Bldg Envelope	2,609	_	\$	275	2,479	-	\$	261	\$		\$	261
CC-Bldg Envelope	1,183	608	\$	800	1,124	578	\$	760	\$	-	\$	760
CC-Tuckpointing	-	-	\$	-	-	-	\$	-	\$	-	\$	-
PD-Bldg Envelope	5,862	-	\$	544	5,569	-	\$	517	\$	-	\$	517
PD-Basement Doors, Enclose Stairwell, Drainage	-	-	\$	-	-	-	\$	-	\$	-	\$	-
PD-Tuckpointing	-	-	\$	-	-	-	\$	-	\$	-	\$	-
PR-Bidg Envelope	32	-	\$	3	30	-	\$	3	\$	-	\$	3
PR-Tuckpointing	-		\$	-	-	-	\$	-	\$		\$	-
PR-Reframe Overhead Doors	-	-	\$	-	-	-	\$	-	\$	-	\$	-
WE-Bidg Envelope	6,478	-	\$	656	6,154	-	\$	623	\$	-	\$	623
Mechanical Upgrades				Silve D								
CA-HVAC Good	9,712	(276)	\$	774	9,226	(262)	\$	735	\$		\$	735
CH-HVAC Better	20,748	(643)	\$	1,476	19,710	(611)	\$	1,402	\$	-	\$	1,402
CC-HVAC Good	21,589	578	\$	3,042	20,510	549	\$	2,890	\$	-	\$	2,890
PD-HVAC Good	11,429	(488)	\$	524	10,857	(463)	\$	498	\$	-	\$	498
Other		in a salah dari dari dari dari dari dari dari dari				V			2, 2		1. 5	
City Wide Operations and Maintenance	-	-	\$	_	-	-	\$	_	\$	9,000	\$	9,000
City Wide Avoided Future Costs	-	-	\$	_	-	-	\$	-	\$	99,642	\$	99,642
CH-Health and Life Safety Assessment	-	_	\$		-	-	\$	_	\$	-	\$	-
Al Brown Ball Fields	7,532	-	\$	600	7,155	-	\$	570	\$	600	\$	1,170
TOTALS	95,253	179	\$	9,905	90,489	171	\$	9,410	\$	109,242	\$	118,652

B. Term of Guarantee

The term of the Energy Savings Guarantee is 15 Years.

C. Utility Rates Used to Calculate Utility Savings

The dollar savings values have been derived by applying average utility rates costs for each building to the calculated units of energy savings in each building.

The average rates that have been applied for calculating the dollar magnitude of savings are as follows:

Rate Name	Electrical kWh	Electrical kW	Water kgal	Sewer kgal	Natural Gas Therm
City Admin Offices	\$0.0797	\$0.000	\$3.466	\$3.625	\$0.000
Old City Hall	\$0.1052	\$0.000	\$4.232	\$4.334	\$1.100
Community Center	\$0.1115	\$0.000	\$4.089	\$4.213	\$1.099
Police Station	\$0.0927	\$0.000	\$5.299	\$5.465	\$1.099
Other	\$0.1012	\$0.000	\$4.081	\$4.213	\$1.173
Al Brown Ball Fields	\$0.0797	\$0.000	\$3.466	\$3.625	\$0.000

These energy rates reflect the current utility costs for the Client.

SCHEDULE G

SAVINGS MEASUREMENT AND CALCULATION FORMULAE; METHODOLOGY TO ADJUST BASELINE

A. Savings Measurement & Methodology

The Measurement & Verification of all measures installed as part of this Project will follow either:

- 1. Federal Energy Management Program M&V Guidelines: Measurement and Verification for Federal Energy Projects, Version 2.2., or
- 2. International Performance Measurement and Verification Protocol (*IPMVP Volume I EVO 10000-1:2012*), or
- 3. Engineering Calculations based on industry accepted standards, manufacturer data, and stipulated and/or measured values agreed to by the Client and ESCO.

The specific types of measurement and verification to be included in the Project are defined below:

- Engineering Calculations savings have been calculated using standard engineering methods, manufacturer data, and stipulated and/or measured values during the Investment Grade Audit, and are agreed to by Client and ESCO. These savings are agreed to by the Client and ESCO for each measure listed as "Calculated".
- IPMVP Option A For each measure identified as using IPMVP Option A, the ESCO will utilize field measurements of the parameters that impact the savings for the given energy conservation measure. The ESCO will clearly identify the parameters to be measured, time of measurement and the number of measurements to be taken (i.e., verify the quantity of measurements that will be taken) to obtain an acceptable cross-sectional-percentage for each ECM. Both Client and ESCO will agree on an acceptable confidence and precision criteria.

(Note: All field measurements will be taken in the presence of Client and ESCO personnel and will be mutually signed-off on by both Client and ESCO staff.)

The table below provides a summary of the ECMs to be measured, the specific M&V methodology that will be utilized to verify the savings, the measured parameter(s), the number of times and/or duration of measurements, and the quantity of devices to be measured:

<u>Table G.1</u>: Measurement & Verification Methodology by Energy Conservation Measure

ECM Description Roofing CC Roofing 20 yr warranty	M&V Methodology Calculated	Measured Parameter N/A	Number of times and/or duration measured N/A	
Building Envelope				
CA-Bldg Envelope				
CH-Windows and Doors				
CH-Bldg Envelope				
CC-Bldg Envelope	Calculated	N/A	N/A	
PD-Bldg Envelope				
PR-Bldg Envelope				
WE-Bldg Envelope				
Mechanical Upgrades				
CA-HVAC Good				
CH-HVAC Better	Option A	Programming	One-time	
CC-HVAC Good	Option A	i i ograninining	One-time	
PD-HVAC Good				
Operation and Maintenance				
Operational Savings	Calculated	N/A	N/A	

B. Measurement & Verification Reporting

The ESCO shall prepare and deliver a Measurement & Verification Report within 60-days following the signing of the Certificate of Final Completion in Schedule M. If there are seasonal items (i.e., boilers, chillers, etc.) that require a heating or cooling load for proper operation and measurement that the ESCO is unable to measure within the 60-day time period, ESCO will note those items in the report and submit a revised report when seasonal conditions allow for measurements.

The M&V Report will clearly identify the Guaranteed and Achieved savings levels for both the Construction Period (which may not necessarily be a one-year period) and Year 1, based on the M&V Plan identified here-in.

ESCO shall include a summary of all baseline adjustments, including calculations and assumptions used to derive each adjustment.

C. ECM Specific Measurement Methods

The ESCO will utilize the methods and formulae identified on the following pages to measure, calculate and verify savings for each ECM identified above as "Measured".

The formulae and measurement parameters for each Measured ECM are as follows:

- a. HVAC Unoccupied Setback
 - The ESCO has calculated the magnitude of savings that is achievable through setback of temperature when a space is unoccupied. The most practical way of verifying the savings are achieved is to ensure that the schedule, set-point and other operating parameters are actually programmed and functioning per design intent.
 - The system functionality, temperature set-points, and operating schedules have been reviewed and agreed to by the Customer and ESCO. It is understood by both parties that the operating schedules and set-points are a dynamic feature within facilities. Special events and/or needs may arise that cause the operating parameters to be changed from time to time. The ESCO will help the Customer develop time-effective methods for checking these parameters on a regular basis so that Customer can return to "optimal" operating conditions in terms of generating energy savings. The temperature set-points and schedules identified in Schedule K have been agreed to as the "target" conditions, and these represent the values at which the savings calculations have been based (with some conservatism adjustments to account for operational variations).
 - The ESCO will verify that all schedules and set-points are set according to Schedule I in order to achieve energy savings.

D. Measurement & Verification Templates

ESCO will work with the Client to develop templates of tables to utilize for verification of equipment performance. The Client's staff will have the option to be present during all measurements and will have the opportunity to inspect all equipment and measurement devices utilized by ESCO in obtaining the field data that will be utilized to quantify the actual achieved energy saving levels for each measured ECM.

SCHEDULE H

FUNDING

The Client intends to sign, within 30 days of the date of signing the EPC agreement, a Lease Agreement, Escrow Agreement and other required documents with the Lessor that offers the best-value for the Client. The total annual lease payments under the Lease for purposes of Debt Service is \$118,652. These documents will be attached to this Energy Performance Contract as an addition to this Schedule H.

This energy performance contract is considered binding upon execution of the Lease and Escrow Agreements and other documents necessary to establish the funding-date and secure the financing in the Escrow Account.

The Cash Flow table on the following page is provided as a reference to give the Client an understanding of how the financial parameters of the Energy Performance Contract will work. Actual Debt Service payment amounts will be per the Final Amortization Schedule in the Lease Agreement between Client and Lessor. The Final Amortization schedule must be structured such that annual Debt Service payments are less than the Total Funds Available for the project. If the rate and resulting Debt Service amount is LOWER than estimated in the Potential Cash Flow table then the Savings Guarantee will be reduced accordingly. If the rate is higher than estimated, the Term may need to be extended beyond the Financing Term reflected below, or perhaps a balloon payment plan may be utilized.

					City	of Salem					
		Potentia	I Ca	sh Flow fo	r Energy P	erformance	Contract Pro	oject (Energ	gy)		
Project	Costs						Projected Ann	ual Savings			
Turnk	ey Installed Pric	е	\$	1,461,539			Utility Cost Sa	avings	\$	9,905	
Inves	tment Grade Aud	dit Fee	\$	-			O&M Savings		\$	9,000	
Closi	ing Costs / Legal	Fees	\$	-			Repair & Repl	ace Savings	\$	-	
Utility	y Incentives		\$	_							
Def.N	/laint/Capital Con	tribution	\$	-							
Net Cap	italized Costs		\$	1,461,539	- =		Total Annual S	Savings	\$	18,905	
Annual	Costs						Finance Facto	rs			
On-Go	ing Technical Se	rvice / M&V	\$	-			Term (10 to 15	Year)		15.00	years
Avoide	d Future Costs		\$	100,242			Rate (Range 2	.8% to 3.8%)		2.57%	
							Escalation Rai	te		2.0%	
	*						Energy Escala	ation Rate		2.0%	
YEAR	PROJECTED UTILITY COST SAVINGS	GUARANTEED UTILITY COST SAVINGS	F	ER & MAINT / R&R COST SA VINGS	AVOIDED FUTURE COST	TOTAL FUNDS AVAILABLE	DEBT SERVICE	ON-GOING TECHNICAL		ARANTEED BRAM COST	PROJECTED EXCESS SAVINGS

YEAR	PROJECTED UTILITY COST SAVINGS	GUARANTEED UTILITY COST SAVINGS	OPER & MAINT / R&R COST SAVINGS	AVOIDED FUTURE COST	TOTAL FUNDS AVAILABLE	DEBT SERVICE	ON-GOING TECHNICAL SERVICE FEE	GUARANTEED PROGRAM COST	PROJECTED EXCESS SAVINGS
Interim	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
1	\$9,905	\$9,410	\$9,000	\$100,242	\$118,652	\$118,652	\$0	\$118,652	\$495
2	\$10,103	\$9,598	\$9,180	\$100,242	\$119,020	\$118,652	\$0	\$118,652	\$873
3	\$10,305	\$9,790	\$9,364	\$100,242	\$119,396	\$118,652	\$0	\$118,652	\$1,259
4	\$10,511	\$9,986	\$9,551	\$100,242	\$119,779	\$118,652	\$0	\$118,652	\$1,652
5	\$10,721	\$10,186	\$9,742	\$100,242	\$120,170	\$118,652	\$0	\$118,652	\$2,053
6	\$10,935	\$10,390	\$9,937	\$100,242	\$120,569	\$118,652	\$0	\$118,652	\$2,462
7	\$11,154	\$10,598	\$10,136	\$100,242	\$120,976	\$118,652	\$ 0	\$118,652	\$2,880
8	\$11,377	\$10,810	\$10,339	\$100,242	\$121,391	\$118,652	\$0	\$118,652	\$3,306
9	\$11,605	\$11,026	\$10,546	\$100,242	\$121,814	\$118,652	\$0	\$118,652	\$3,741
10	\$11,837	\$11,247	\$10,757	\$100,242	\$122,246	\$118,652	\$0	\$118,652	\$4,184
11	\$12,074	\$11,472	\$10,972	\$100,242	\$122,686	\$118,652	\$0	\$118,652	\$4,636
12	\$12,315	\$11,701	\$11,191	\$100,242	\$123,134	\$118,652	\$ 0	\$118,652	\$5,096
13	\$12,561	\$11,935	\$11,415	\$100,242	\$123,592	\$118,652	\$0	\$1 18,652	\$5,566
14	\$12,812	\$12,174	\$11,643	\$100,242	\$124,059	\$118,652	\$0	\$118,652	\$6,045
15	\$13,068	\$12,417	\$11,876	\$100,242	\$124,535	\$118,652	\$0	\$118,652	\$6,534
16	\$13,329	\$12,665	\$0	\$0	\$12,665	\$0	\$0	\$0	\$13,329
17	\$13,596	\$12,918	\$0	\$0	\$12,918	\$0	\$0	\$0	\$13,596
18	\$13,868	\$13,176	\$0	\$0	\$13,176	\$0	\$0	\$0	\$13,868
19	\$14,145	\$13,440	\$ 0	\$0	\$13,440	\$0	\$0	\$0	\$14,145
20	\$14,428	\$13,709	\$0_	\$0	\$13,709	\$0	\$0	\$0	\$14,428
TOTALS	\$240,649	\$228,648	\$155,649	\$1,503,635	\$1.887.931	\$1,779,781	\$0	\$1,779,781	\$120,152

Notes:

¹⁾ ESP guarantees the energy savings identified in column 3 will be achieved. 100% of excess savings used at Client's discretion.

²⁾ Escalation rates are conservative estimates to reflect increased utility and maintenance costs/savings over time.

³⁾ Maintenance savings represent reduced costs for outsourced maintenance and materials costs, but no internal labor savings.

SCHEDULE I

STANDARDS OF COMFORT / OPERATING PARAMETERS

Listed below are the standards of comfort / operating parameters at which the savings calculations and the subsequent guaranteed energy savings are based upon.

Temperature Set Points	Heating	Cooling
Occupied	70'F	76'F
Unoccupied	55'F	85'F

The typical occupied for each building is as follows:

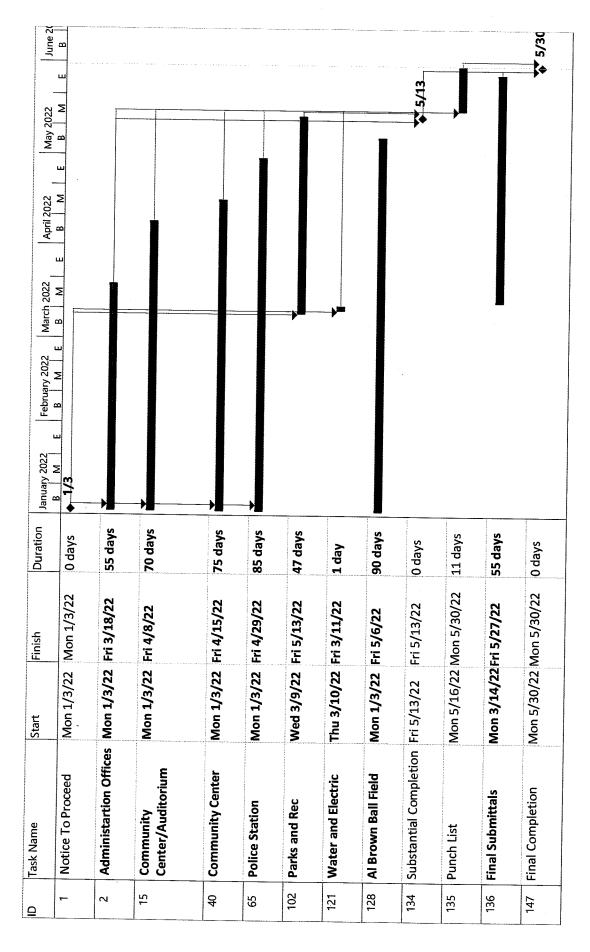
Area	Occupied	Day of Week	Notes
City Admin Offices	8:00 a.m. – 5:00 p.m.	M-F (year round)	
Old City Hall	8:00 a.m. – 5:00 p.m.	M-F (year round)	
Community Center	Approximately 24 hours per week.	Sporadic	
Police Station	8:00 a.m. – 5:00 p.m.	S-S (year round)	
Parks and Rec Bldg	8:00 a.m. – 5:00 p.m.	M-F (year round)	
Water & Electric Bldg	Sporadically	S-S (year round)	

SCHEDULE J

CONSTRUCTION & INSTALLATION SCHEDULE

See next page for full construction schedule. The actual start date of the schedule will be adjusted to match the Contract Start Date and/or the date that proof of financing or funding is in place.

City of Salem Schedule



SCHEDULE K

TRAINING RESPONSIBILITIES

ESCO will provide Client with the following training in order to ensure that Client staff fully understands how to operate and maintain the equipment for optimal energy efficiency.

OVERVIEW

ESCO will lead a 2-hour workshop with facilities staff at conclusion of construction that summarizes all energy conservation measures across all facilities. This general overview will describe improvements in building infiltration, mechanical upgrades, and roofing improvements. The workshop will identify any concerns from building staff about the scope of the Energy Performance Contract and will describe ESCO warranty management support during the first year of operation.

MECHANICAL UPGRADES

ESCO will provide up to 4 hours of initial on-site training on the new mechanical systems. ESCO will follow up initial training with specific training topics as identified during an online survey assessment of the initial training session. ESCO will coordinate with the equipment manufacturer rep for additional webinar training as needed during first year of operation to ensure thorough familiarity of building staff with operational processes.

SCHEDULE L

MAINTENANCE RESPONSIBILITIES

ESCO Maintenance Responsibilities

The Client has elected not to have ESCO provide any on-going maintenance services as part of this Contract, so ESCO does not have any responsibilities with respect to maintaining the equipment over time.

SCHEDULE M

CERTIFICATES OF COMPLETION

The Certificates of Completion presented in this schedule will serve as templates for approval and sign-off by Client and ESCO for Substantial Completion and Final Completion.

CERTIFICATE OF SUBSTANTIAL COMPLETION BY SCOPE OF WORK

		SUBSTANTIAL	SIGN-OFF	(INITIALS)
LOCATION	SCOPE OF WORK	COMPLETION DATE	CLIENT	ESCO
			-	
	Vork to which this Certificate app of the Client and ESCO and four			ntially

A "Punch-List" of items to be completed or corrected is attached hereto. This list may not be allinclusive, and the failure to include an item in it does not alter the responsibility of the ESCO to complete all of the Scope of Work in accordance with this Contract. The items in the tentative list shall be completed or corrected by the ESCO within days of the above date of Substantial Completion. ESCO: By_____ Date Print Name: Title: _____ CLIENT: Date Print Name: _____ Title: ____

CERTIFICATE OF FINAL COMPLETION PER SCOPE OF WORK

	·	FINAL	SIGN-OFF (INITIALS)		
LOCATION	SCOPE OF WORK	COMPLETION DATE	CLIENT	ESCO	
			<u> </u>		
				· · · · · · · · · · · · · · · · · · ·	
			-		
<u></u>				·	

The Scope of Work to which this Certificate applies has been inspected by authorized representatives of the Client and ESCO and all work for the specific scope of work has been performed in accordance with the terms of this Contract, including the specific "Punch List" of items associated with that scope of work.

ESCO:		
Date	ByPrint Name:	
	Title:	
CLIENT:		
Date	By:	
	Print Name:	
	Title:	

CERTIFICATE OF FINAL COMPLETION

The undersigned hereby certifies:

- 1. All work including work required under change order(s) has been performed in accordance with the terms of this Contract.
- 2. All changes to the work (except minor modifications and field adjustments) have been authorized in writing by the Client.
- 3. The Punch List items as agreed upon at Substantial Completion have all been remedied.
- 4. The Project Closeout Documents as defined in Schedule N have been provided to the Client.

ESCO:		
Date	ByPrint Name:	
	Title:	
CLIENT:		
Date	By:	
Date	Print Name:	
	Title:	

SCHEDULE N

PROJECT CLOSEOUT DOCUMENTS

1. ESCO shall provide to the Client an electronic copy of the items identified in the table below:

PROJECT CLOSEOUT DOCUMENTATION					
	Approved Submittals	O&M Manuals	Warranty Information	Sequence of Operation	As-Built Drawings
ECM					
Roofing	X	_ X	X		
Building Envelope	X	X	X	_	
Window and Doors	X		X		X
Basement Doors, Stairwell, Drainage	X		X		X
Tuckpointing	X				
HVAC	X	X	X		

- 2. ESCO shall provide a summarized ECM matrix that details all the start and end dates for the warranties as well as the associated contractors and manufacturers that apply.
- 3. Complete printed sets of the documentation can be provided to the Client at a cost of \$500 per set.

SCHEDULE O

WARRANTIES

The following items carry warranties from the manufacturer or others that are separate and concurrent to the one-year parts and labor warranty provided by the ESCO. All warranties start at the time of Substantial Completion unless otherwise noted:

ECM	Components	Warranty
Roofing – Community Center	Roofing Material	20-year material 2-year workmanship
Roofing – Parks & Rec, Water Building	Roofing Material	15-year material 2-year workmanship
Building Envelope	Caulk	50-year material
	3 phase equipment	5-year compressor only, no labor
	3 phase equipment	10-year heat exchanger
HVAC	1 phase equipment	10-year all parts warranty, no labor
	1 phase equipment	Lifetime heat exchanger, no labor

SCHEDULE P

INVESTMENT GRADE AUDIT

The ESCO has completed a comprehensive Investment Grade Audit of Client facilities. The findings of this report are included as support documentation for the Energy Performance Contract, and the IGA Report is submitted under separate cover.

BOARD OF ALDERMEN AGENDA NOVEMBER 23, 2021 6:00 P. M.

- 1. ITEM IV (B): INTRODUCTION AND READING OF BILLS & RESOLUTIONS
- 2. <u>SUBJECT</u>: RESOLUTION NO. 35-2021-A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF SALEM, MISSOURI AND THE DEPARTMENT OF SOCIAL SERVICE FOR THE LOW-INCOME HOUSEHOLD WATER ASSISTANCE PROGRAM.
- 3. **DISCUSSION**:

RESOLUTION NO. 35-2021

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF SALEM, MISSOURI AND THE DEPARTMENT OF SOCIAL SERVICE FOR THE LOW-INCOME HOUSEHOLD WATER ASSISTANCE PROGRAM.

WHEREAS, the Low-Income Household Water Assistance Program will provide up to \$750.00 for water and wastewater disconnection fees, customers who are in threat of disconnection, arrearages, and reconnection fees for eligible clients as written in "Attachment A" attached hereto.

WHEREAS, the Low-Income Household Water Assistance Program is authorized under Section 553 Title V of Division H of the Consolidated Appropriation Act, 2021, Public Law No: 116-260. Consistent with legislative instructions, program requirements use existing processes, procedures, and policies currently in place to provide assistance to low-income households.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE CITY OF SALEM, MISSOURI AS FOLLOWS:

Section 1.

The agreement period shall be effective October 1, 2021 through September 30, 2023. This agreement shall not bind, nor purport to bind, the Department of Social Services for any commitment in excess of the original agreement period.

This Resolution shall be in full force and effect from and after the date of its passage and approval.

PASSED BY THE BOARD OF ALDERMEN OF THE CITY OF SALEM, MISSOURI, AND APPROVED BY THE MAYOR THIS 23rd DAY OF NOVEMBER, 2021.

APPROVED:	ATTEST:
Kim Steelman	Tammy Koller
Mayor	City Clerk
Way of	APPROVAL AS TO FORM:
	James K. Weber
	City Attorney

ATTACHMENT A

For clients to be eligible, they must:

- Be responsible for paying the water and/or wastewater (sewer) bill
- Be a United States citizen (or have been legally admitted for permanent residence)
- Have \$3,000 or less in bank accounts, retirement accounts, or investments
- Meet specific income guidelines based on household size

Client's Income Guidelines Requirements

Household Size	Household Must be Under the Below Monthly Income Amounts to Receive the Benefit
1	\$0 - \$2,211
2	\$0 - \$2,891
3	\$0 - \$3,571
4	\$0 - \$4,252
5	\$0 - \$4,932
6	\$0 - \$5,612
7	\$0 - \$5,740

Utility companies can participate in the program by:

- 1. Signing the attached "Supplier Agreement" and returning it to DSS at:
 - Email: fsd.lihwap@dss.mo.gov, OR
 - Fax: (573) 522-9557, OR
 - Mail to:

Department of Social Services/LIHWAP 3418 Knipp Dr. Ste. C Jefferson City, MO 65109

2. Register in MissouriBuys. Please see the attached "Missouri Buys Vendor Registration Checklist" for more information.

ED1	1	osw
17 17 1		11.700

LOW INCOME HOUSEHOLD WATER ASSISTANCE PROGRAM SUPPLIER AGREEMENT BETWEEN MISSOURI DEPARTMENT OF SOCIAL SERVICES **FAMILY SUPPORT DIVISION**

And

WATER/WASTERWATER SUPPLIERS

1. **Purpose**

1.1 This agreement, made by and between the Department of Social Services, Family Support Division (hereinafter referred to as the Department) and the Home Water/Wastewater Supplier stated below, (hereinafter referred to as the Supplier) shall be as follows:

(Name of Company)

- 1.2 Missouri's Low Income Household Water Assistance Program (LIHWAP) is authorized under Section 553 Title V of Division H of the Consolidated Appropriations Act, 2021, Public Law No: 116-260. Consistent with legislative instructions, program requirements use existing processes, procedures, and policies currently in place to provide assistance to low-income households. In particular, Office of Community Services (OCS) has closely modeled the LIHWAP terms and conditions on assurances and requirements outlined in the Low Income Household Energy Assistance Act, 42 U.S.C. 8621 et seg.
- 1.3 This agreement shall govern the purchase of water/wastewater services from the Supplier on behalf of households eligible for LIHWAP. Funds awarded shall be used as part of an overall emergency effort to prevent, prepare for, and respond to the COVID-19 pandemic, with the public health focus of ensuring that low-income households have access to drinking water and wastewater services. The funds will be used to cover or reduce arrearages, rates, and fees associated with reconnection or preventions of disconnections of service, and rate reduction to eligible households for such services. This agreement is for the provision of water bill payments to assist low-income households with water and wastewater reconnection and ongoing services.
- The parties acknowledge that this agreement and the services provided by the Supplier are governed by and subject to the federal and state laws and regulations in accordance with the LIHWAP supplemental terms and conditions.

Definitions 2.

- Credit Balance any surplus of funds remaining on the account of an eligible customer created as the result of a LIHWAP payment to the supplier at the conclusion of the appropriate program period defined in the agreement.
- Eligible Customer a household that makes application for assistance under LIHWAP, is determined eligible 2.2 for benefits by the Department or contractor, and is accepted by the Supplier as an active account.
- 2.3 **Payment** - a line of credit payment to the Supplier equal to the maximum subsidy per eligible customer as set forth in Attachment A of this agreement.

3. **Terms of Agreement/Modifications**

- The agreement period shall be effective October 1, 2021 through September 30, 2023. This agreement shall not bind, nor purport to bind, the Department for any commitment in excess of the original agreement period. This agreement shall become effective upon signature by authorized representatives of the Supplier and the Department and shall apply to water/wastewater assistance to eligible customers under LIHWAP in accordance with the following program period, as established above.
 - a. Water/Wastewater: home drinking water and wastewater consumed beginning on or after October 1st of each year and ending no later than the end of the first billing cycle for an eligible customer after September 30th of each year - not to extend past September 30, 2023.
- 3.2 Changes to this agreement must be made by a formal agreement amendment signed and approved by and between the duly authorized representative of the Supplier and the Department prior to the effective date of

such modification. No other document, including correspondence, e-mail, acts, or oral communications by or from any person, shall be used or construed as an amendment or modification to the agreement.

3.3 This document expresses the complete agreement of the parties. Performance of the agreement shall be governed solely by the specifications and requirements contained in the agreement. The exclusive venue for any litigation arising under this agreement shall be Cole County, Missouri. This agreement shall be interpreted in accordance with the laws of the State of Missouri.

4. Responsibilities of the Parties

- 4.1 The Department agrees to:
 - a. Provide the Supplier with a weekly listing of eligible customers (Customer Eligibility Listing or CEL) who have designated the company as their primary water/wastewater supplier. These listings shall include at least the following data elements:
 - 1. Complete name of eligible customer;
 - 2. Complete address of eligible customer;
 - 3. Customer account number provided on the Supplier's billing information;
 - 4. Amount of payment the Department will make on behalf of each eligible customer whose name appears on the listing; and
 - 5. Social Security Number of the customer supplied by the Department.
 - b. Secure from each eligible customer and from its agents or contractors, written authorization for the release of information concerning the eligible customer's account with the Supplier.

4.2 The Supplier agrees to:

- a. Require any of its districts, regional or local companies who provide services to eligible customers in Missouri, to comply with all provisions of this agreement. The Supplier shall complete and submit to the Department Exhibit #1 Supplier Information and the signed agreement the complete name and address of any sub-suppliers who will be involved under the terms of this agreement.
- b. As conditions for receiving payment for its eligible customers under Missouri's Low Income Household Water Assistance Program, the Supplier:
 - 1. Shall not discriminate with regard to the terms or conditions of the sale, availability of credit, or price of home water offered to eligible customers in relation to its other residential customers.
 - 2. Shall return Customer Eligibility Listings (CEL's) to the Department within fifteen (15) calendar days after they are received, indicating whether the LIHWAP payment to be made on behalf of the eligible customer can be accepted by the Supplier. If the Supplier notifies the Department that they cannot accept payment on behalf of a particular eligible customer for reasons other than those stipulated in this agreement, payment will automatically be made on behalf of the eligible customer. If the Supplier fails to return a CEL within a thirty (30) calendar day timeframe, direct payments will be made on behalf of all customers who appeared on said listing.
 - 3. Shall accept the LIHWAP payment to be made on behalf of an eligible customer; and not use any portion of the LIHWAP payment made on behalf of the eligible customer for reimbursement of fees charged by collection agencies.
 - 4. Shall credit, through normal billing process, the full amount of the LIHWAP pledge received to an eligible customer's account. The Supplier may apply any portion of the received LIHWAP pledge to an eligible customer's previous account balance, provided the pledge will continue/restore services for at least thirty (30) calendar days after the LIHWAP pledge is applied to the eligible customer's previous account balance.
 - 5. Should make an effort to offer eligible customers, on whose behalf the Department has made payment, a deferred payment plan for any balance due on their account that exceeds the amount made by the Department and consider continued provision of water and wastewater services to the eligible customer who maintains their deferred payment plan for the duration of this agreement.
 - 6. Shall provide water and wastewater services at least equivalent to the amount of the pledge made by the Department on behalf of the eligible customer. Services shall be restored or continued during the service period covered by the payment for at least thirty (30) calendar days from the date of the pledge made on behalf of the eligible customer.

- 7. Should consider waiving deposits, name change or late payment fees for an eligible customer for whom the Supplier agrees to accept a LIHWAP payment.
- 8. Shall not transfer any portion of the LIHWAP payment made on behalf of an eligible customer to any other customer's account.
- 9. Should notify each eligible customer in writing of the amount of any credit balance remaining on their account because of the LIHWAP payment, no later than the end of the first billing cycle for the eligible customer after September 30th of each year. In the case of payments received after September 30th, notification of any credit balance must be made no later than the next regular billing cycle for the customer on whose behalf the LIHWAP payment is received.
- 10. Shall refund any LIHWAP credit balance remaining on an eligible customer's account to the Department and any remaining customer credit balance directly to the customer, when the customer voluntarily terminates service with the Supplier or leaves the Supplier's designated service area, no later than sixty (60) calendar days after their final billing statement or by the end of the program year (September 30th).
- 11. In the event the designated customer dies during the program coverage period and the credit balance on their account is not used by a surviving household member over the age of eighteen (18) at the same address, it will be refunded to the Department. Any credit balances that cannot be utilized under the terms of this agreement will be refunded to the Department no later than September 30th of each program year.
- 12. Refunds must include the following information: Customer name and address, date of LIHWAP payment to the Supplier, and reason for return.
- 13. Shall not accept the LIHWAP payment on behalf of customers with the following account status:
 - a. <u>Inactive Account:</u> an account on which service was terminated and the Supplier does not agree to restore or continue service to this customer under the provisions of this agreement;
 - b. <u>Commercial Account:</u> an account identified by the Supplier via rate structures or other means as generally being utilized by a commercial business;
 - c. <u>Not Our Customer:</u> an account which the Supplier is unable to identify via existing records as being a customer of the company;
 - d. <u>Invalid Account Number:</u> an account which the Supplier is unable to identify via existing records the customer account number;
 - e. <u>Needs Additional Payment:</u> an account on which the Supplier needs additional funds to restore and continue services:
 - f. <u>Negative Customer Response:</u> an account which the Supplier is able to verify, but, the customer failed to call and make an appointment to restore services; or
 - 14. Must utilize the identifying information below concerning eligible customers served when corresponding with the Department:
 - Complete name of eligible customer (account holder):
 - Complete address of eligible customer;
 - Customer account number of eligible customer; and
 - Social Security Number of the customer supplied by the Department.

5. Payments

- 5.1 The Department agrees to provide payment to the Supplier within fifteen (15) calendar days for those customers on whose behalf the Supplier has agreed to accept payment.
 - a. Failure to submit the CELs within the time frames set forth in this agreement may delay payment to the Supplier.
- 5.2 The Supplier is encouraged to participate in the Department's direct deposit program and to complete an Automatic Clearing House/Electronic Funds Transfer (ACH/EFT) application.
- 5.3 If funds for payment of service costs of eligible customers are not sufficient to permit the Department to reimburse the Supplier in accordance with the payment maximums specified in Attachment A, the Department will prorate payments to the Supplier on the basis of the total obligations for water and wastewater services costs of all eligible customers in Missouri and the amount of funding available to meet

these obligations. The Department will utilize this procedure until all available funding for the payment of water and wastewater services costs of eligible customers has been expended.

6. Monitoring/Reporting

- 6.1 The Department is required to perform a review of actual usage data of eligible customers served during the program year. The Department will provide a report to the Supplier at the end of the program year. The Supplier shall submit to the Department actual usage data for each eligible customer in each billing cycle or calendar month of the pertinent period set forth under the program period defined in this agreement. Actual usage data submitted shall include:
 - a. The complete name and address of each eligible customer;
 - b. The customer's account number;
 - c. The Social Security Number of each customer;
 - d. The amount of any credit balance remaining on the account of an eligible customer at the end of the first billing cycle for an eligible customer after September 30th of each year;
 - e. The amount of an eligible customer's outstanding account balance at the time the Supplier agreed to accept the LIHWAP payment if the Supplier used the payment in accordance with this agreement;

Confidentiality

- 7.1 The Supplier shall understand that all discussions with the Supplier and all information gained by the Supplier as a result of the Supplier's performance under this agreement shall be confidential. The contractor shall not release reports, documentation, or material prepared required by this agreement without the prior written consent of the Department.
- 7.2 The Department shall only use information provided by the Supplier about the account of an eligible customer for administering LIHWAP. The Department shall obtain the same agreement from any of its Suppliers.
- 7.3 The Supplier agrees not to use or disclose any information related to its eligible customers to any parties except the Department with all applicable state and federal laws dealing with privacy and confidentiality of information related to eligible customers of LIHWAP. This agreement shall immediately be declared null and void if the Supplier is determined to be out of compliance with privacy and confidentiality laws
- 7.4 The Supplier shall ensure that all persons in its employ who are authorized to have access to or use information obtained from the Department understand the conditions of this agreement. In the case of information obtained electronically or by using the web-based access, attest to such understanding in writing by signing a DSS Security Access and Confidentiality Agreement form. Availability of this information must be limited to employees with a "need to know". The Department shall deny access to information if the Supplier is determined to be out of compliance. The Department may declare this agreement null and void if the Supplier is determined to be out of compliance with the agreement.
- 7.5 The Supplier agrees to retain all books, records, and other documents relevant to this agreement for a minimum of five (5) years or until any litigation, claim, negotiation, audit, or other action involving the records that was initiated prior to the expiration of this five (5) year period has been completed. Upon request of the Department, the Supplier shall permit authorized representatives of the Department, and such other Federal or State agencies as may require such information, to have access to such records as may be necessary to confirm the Supplier's compliance with the provisions of this agreement.

8. Fraud Prevention and Reporting

- 8.1 The Supplier shall report any financial fraud or abuse or misconduct in the administration of LIHWAP to the Department of Social Services (DSS), Division of Legal Services (DLS). The Supplier shall call 877-770-8055 or report by email at DLS.ReportVendorFraud@dss.mo.gov. Suppliers shall cooperate with all DLS investigations of suspected fraud or abuse or misconduct.
- 8.2 The Supplier may be prosecuted under applicable federal or state law or both for false claims, statements, or documents, or concealment of material fact.

9. Termination

9.1 Termination of this agreement without cause may occur by either party terminating its duties under this agreement upon provision of thirty (30) calendar days written notice to the other, except that the duties of Section 4.2b 9 through 13, 5.3 and 6.1 shall survive. Additionally:

- a. It is understood and agreed upon that in the event funds or appropriation authority from local, state, and federal sources are not obtained and continued at an aggregate level sufficient to allow for the purchase of the indicated quantity of services, as determined by the Department, the obligation of each party hereunder shall thereupon terminate immediately upon receipt of written notice from the Department;
- b. Either party may terminate this agreement immediately by written notice for cause related to the adequacy of performance. Any written notification shall be effective upon deposit in the mail; and
- c. The Supplier shall not incur new obligations for the terminated portion of the agreement after the effective date of the termination for cause. The Supplier shall cancel as many outstanding obligations as possible.

10. **Debarment Certification**

10.1 The Supplier, by signing the signature page of this original agreement and any amendment signature page(s), certifies that the Supplier is not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded from participation, or otherwise excluded from or ineligible for participation under federal assistance programs. The Supplier should complete and return the attached certification regarding debarment, etc., Exhibit #2 with the agreement. The Supplier must satisfactorily complete this certification prior to award of this agreement.

11. Business Compliance

- 11.1 The Supplier must comply with the laws regarding conducting business in the State of Missouri. The Supplier certifies by signing the signature page of this original document and any amendment page(s) that the Supplier and any proposed subcontractors either are presently in compliance with such laws or shall comply with such laws prior to any resulting agreement. The Supplier shall provide documentation of compliance upon request by the Department. The compliance to conduct business in the state shall include, but not necessarily be limited to:
 - a. Registration of business name (if applicable);
 - b. Certificate of authority to transact business/certificate of good standing (if applicable);
 - c. Taxes (e.g., city/county/state/federal);
 - d. State and local certifications (e.g., professions/occupations/activities);
 - e. Licenses and permits (e.g., city/county license, sales permits); and
 - f. Insurance (e.g., worker's compensation/unemployment compensation).
- 11.2 The provider must complete and submit Exhibit #3, <u>Registration of Business Name (if applicable) with the Missouri Secretary of State</u>, prior to award of contract.
- 11.3 In the event the Supplier contracts with any other party (subcontractor) to carry out the terms of this agreement, the Supplier shall include in its contracts with any other party this agreement as an incorporation by reference.

This agreement and any attachments thereto set forth all promises, agreements, and understandings between the Department and the Supplier. In witness thereof, the Department and the Supplier hereby execute this agreement,

Authorized Representative of Supplier	Authorized Representative of the Department of Social Services
Date	Date

EXHIBIT #1: SUPPLIER INFORMATION

PLEASE COMPLETE THE INFORMATION BELOW AND RETURN WITH THE SIGNED AGREEMENT AND EXHIBIT #2. THE DIVISION WILL COMPLETE THE LAST LINE AND RETURN WITH THE SUPPLIER COPY OF THE SIGNED AGREEMENT.

Please attach a complete listing of all your branch offices, including their names, address, telephone and fax numbers and current e-mail addresses.

COMPANY NAME			····		
COMPANY MAILING A	ADDRESS				
CITY	STATE				
COUNTY					
TELEPHONE NUMBE	R ()	······			
FAX NUMBER ()					
E-MAIL ADDRESSES	(Primary)	·		· .	
	(Other)			Thirtings.	
	(Other)				
	(Other)				
	(Other)				
	(Other)				
Water and wastewa	ter services				
For State Office Use	Only:				
Supplier Num	her Assianed:				

	·					
HOUSEHOLD	MONTHLY INCOME AMOUNTS					
SIZE	0%-60% STATE MEDIAN INCOME (SMI)					
1	\$0-2,211					
2	\$0-2,891					
3	\$0-3,571					
4	\$0-4,252					
5	\$0-4,932					
6	\$0-5,612					
7	\$0-5,740					
8	\$0-5,868					
9	\$0-5,996					
10	\$0-6,124					
11	\$0-6,252					
12	\$0-6,380					
13	\$0-6,508					
14	\$0-6,636					
15	\$0-6,764					
16	\$0-6,892					
17	\$0-7,020					
18	\$0-7,148					
19	\$0-7,276					
20	\$0-7,404					

Benefit Amount	
Not to exceed \$750.00	

Exhibit 2 - Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by 2 CFR Part 180.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS FOR CERTIFICATION)

- (1) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Company Name	DUNS#
Authorized Representative's Printed Name	Authorized Representative's Title
Authorized Representative's Signature	Date

Instructions for Certification

- 1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds is providing the certification as set out below.
- 2. 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 recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department of Labor (DOL) may pursue available remedies, including suspension or debarment.
- The prospective recipient of Federal assistance funds shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective recipient of Federal assistance funds learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- 5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is deharred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the DOL.
- 6. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to check the <u>List of Parties</u>

 <u>Excluded from Procurement or Nonprocurement Programs</u>.
- 8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the DOL may pursue available remedies, including suspension or debarment.

EXHIBIT #3:

Registration of Business Name (if applicable) with the Missouri Secretary of State:

The vendor should indicate the vendor's charter number and company name with the Missouri Secretary of State. Additionally, the vendor should provide proof of the vendor's good standing status with the Missouri Secretary of State. If the vendor is exempt from registering with the Missouri Secretary of State pursuant to section 351.572, RSMo, identify the specific section of 351.572 RSMo, which supports the exemption.

Charter Number (if applicable)

Company Name

If exempt from registering with the Missouri Secretary of State pursuant to section 351.572 RSMo, identify the section of 351.572 to support the exemption:

If your business entity is not registered, you may go to the link provided below to register:

www.sos.mo.gov/fileonline

If you believe your business entity is exempt from registering with the Secretary of State due to one of the specific exemptions contained in the Missouri Revised Statutes, please indicate in your response the specific exemption that applies to your business entity.

Below are the exemption sections of the Missouri Revised Statutes for the most popular business entity types:

- General Business section 351.572, RSMo, located at: <a href="http://revisor.mo.gov/main/OneSection.aspx?section=351.572&bid=18804&hl="http://revisor.mo.gov/main/OneSection.aspx?section=351.572&bid=18804&hl="http://revisor.mo.gov/main/OneSection.aspx?section=351.572&bid=18804&hl=
- Limited Liability Company section 347.163.5, RSMo, located at: <a href="http://revisor.mo.gov/main/OneSection.aspx?section=347.163&bid=18500&hl="http://revisor.mo.gov/main/OneSection.aspx?section=347.163&bid=18500&hl="http://revisor.mo.gov/main/OneSection.aspx?section=347.163&bid=18500&hl=
- 3. Limited Partnership section 359.551.5, RSMo, located at: http://revisor.mo.gov/main/OneSection.aspx?section=359.551&bid=19476&hl=
- 4. Non-Profit section 355.751.2, RSMo, located at: http://revisor.mo.gov/main/OneSection.aspx?section=355.751&bid=19289&hl=
- 5. Professional Corporation section 356.231, RSMo, located at: <a href="http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl="http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl="http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl="http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl="http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl="http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl="http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl="http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl="http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl="http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl="http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl="http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl="http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl="http://revisor.mo.gov/main/OneSection.aspx?section=356.231&bid=19340&hl="http://revisor.mo.gov/main/OneSection.aspx.gov/mai

Note: Limited Liability Partnerships have no exemptions.

For questions regarding registration, contact the Missouri Secretary of State at: corporations@sos.mo.gov or (573) 751-4153 (toll free 866-223-6535)



PATRICK LUEBBERING, CHIEF FINANCIAL OFFICER DIVISION OF FINANCE AND ADMINISTRATIVE SERVICES P.O. BOX 1082 • JEFFERSON CITY, MO 65102-1082 WWW.DSS.MO.GOV • 573-751-2542 • 573-751-7598 FAX

The Low-Income Household Water Assistance Program (LIHWAP) is administered by the Department of Social Services (DSS) and is funded by the Administration of Children and Families. The program will provide up to \$750 for water and wastewater (sewer) disconnection fees, customers who are in threat of disconnection, arrearages (past due bills), and reconnection fees. LIHWAP is expected to begin in Missouri on October 1, 2021 for elderly and disabled households, and November 1, 2021 for other households.

How the Program Works:

- DSS and Contracted Agencies will notify potentially eligible clients about the availability of the LIHWAP program.
- The client will apply for benefits through DSS Contracted Agencies.
- DSS will send a letter to clients stating they are or are not eligible for the program.
- If the client is eligible, DSS will send a Customer Eligibility Listing (CEL) to the utility company to make a pledge on the clients account.
- If the utility company agrees to accept payment (pledge), DSS will send the payment electronically or with a paper check.
- If the utility company will not accept payment or participate in the program, DSS will send the payment directly to the client.
- Applications will be processed in the order they are received. The program will
 continue until the funding is spent, or through September 30, 2023.

TDD / TTY: 800-735-2966 RELAY MISSOURI: 711

Contracted Agency Contacts

Audrain, Boone, Callaway, Cole, Cooper, Howard, Moniteau, and Osage: Central Missouri Community Action Agency - (573) 443-1100

St. Louis County: Community Action Agency of St. Louis County - (314) 446-4420

Andrew, Buchanan, Clinton, and DeKalb:

Community Action Partnership of Greater St. Joseph - (816) 233-8281

Atchison, Gentry, Holt, Nodaway, and Worth: Community Services, Inc. of Northwest Missouri - (660) 582-3113

Barton, Jasper, Newton, and McDonald: Economic Security Corporation of Southwest Area - (417) 781-0352

Bollinger, Cape Girardeau, Iron, Madison, Perry, St.Francois, St. Genevieve, and Washington:
East Missouri Action Agency - (800) 392-8663

Dunklin, Mississippi, New Madrid, Pemiscot, Scott, and Stoddard: Delta Area Economic Opportunity Corporation - (573) 379-3851

Caldwell, Daviess, Grundy, Harrison, Linn, Livingston, Mercer, Putnam, and Sullivan: Community Action Partnership North Central Missouri - (660) 359-3907

City of St. Louis and Wellston: Urban League - (314) 615-3632

Jefferson and Franklin: Jefferson-Franklin Community Action Corporation - (636) 789-2686

Camden, Crawford, Gasconade, Laclede, Maries, Miller, Phelps, and Pulaski: Missouri Ozarks Community Action, Inc. - (573) 765-3263

> Carroll, Chariton, Johnson, Lafayette, Pettis, Ray, Saline: Missouri Valley Community Action Agency - (660) 831-5331

Lewis, Lincoln, Macon, Marion, Monroe, Montgomery, Pike, Ralls, Randolph, Shelby, St. Charles, and Warren:

North East Community Action Corporation - (573) 324-0120

Adair, Clark, Knox, Schuyler, and Scotland: Community Action Partnership North East Missouri - (660) 665-9855

Douglas, Howell, Oregon, Ozark, Texas, and Wright: Ozark Action, Inc. - (417) 256-6147

Barry, Christian, Dade, Dallas, Greene, Lawrence, Polk, Stone, Taney, and Webster:
Ozarks Area Community Action Corporation - (417) 864-3460

Butler, Carter, Dent, Reynolds, Ripley, Shannon, and Wayne: South Central Missouri Community Action Agency - (800) 325-4633

Jackson, Clay, and Platte: Mid-America Assistance Coalition - (816) 768-8900

Bates, Benton, Cass, Cedar, Henry, Hickory, Morgan, St.Clair, and Vernon: West Central Missouri Community Action Agency - (660) 476-2185



Vendor Registration Checklist

(Updated August 25, 2020)

To register as a vendor in MissouriBUYS, the State of Missouri's secure statewide eProcurement system, go to https://MissouriBUYS.mo.gov. Click on the **Vendor Registration** button to enter the Web**Procure** system. MissouriBUYS is powered by Web**Procure**, through the State of Missouri's partner, Perfect Commerce.

Registering as a vendor in the secure system is a multi-step process. It would be helpful to have the following information on hand before initiating your registration in MissouriBUYS:

- o Legal Name of Organization/Company
- Organization/Company Information including the organization's main point of contact Information
- Company's Taxpayer ID Number (TIN)
- Business Type (Corporation, LLC, Sole Proprietorship, etc.)
- o Email Address
- o Internal Revenue Service (IRS) W-9 Form (Request for Taxpayer Identification Number (TIN) and Certification)
 - A signed IRS W-9 Form (https://www.irs.gov/pub/irs-pdf/fw9.pdf)
 - An IRS Form W-9 is required in order to submit ACH-EFT information
- o ACH-EFT Payment Information
- o Missouri Counties/Regions Served
- Diversity/Disadvantaged Business Classifications
- Emergency Contact Information (if registering as an Emergency Purchase Vendor)
- Applicable Commodity/Service Code(s)
 - A search box will be provided when registering to help you determine which UNSPSC commodity/service code(s) apply to your organization's business
 - Vendors must select at least one UNSPSC commodity/service code when registering
 - Automated email notifications sent to vendors on bid opportunities are based on the UNSPSC commodity/service code(s) chosen by the vendor

Once the required information is entered and submitted, you will receive an email from Perfect Commerce/Web**Procure** confirming submission of your registration as a vendor in MissouriBUYS. The state will process your 'Pending' registration. Once the review process is complete and your company's registration is approved, you will receive an email from Perfect Commerce/Web**Procure** that confirms the 'Approved' status in MissouriBUYS.

- 1. ITEM IV (C): INTRODUCTION AND READING OF BILLS & RESOLUTIONS
- 2. <u>SUBJECT</u>: BILL NO. 3495- AN ORDINANCE AUTHORIZING THE MAYOR TO SIGN AND EXECUTE TASK ORDER NO. 12 PERTAINING TO AN AGREEMENT BETWEEN THE CITY OF SALEM, MISSOURI AND C.M. ARCHER GROUP, P.C. DATED FEBRUARY 3, 2020 FOR ENGINEERING DESIGN SERVICES RELATED TO WATER WELL NO. 9 AND ELEVATED STORAGE TANK.
- 3. <u>DISCUSSION</u>:

AN ORDINANCE AUTHORIZING THE MAYOR TO SIGN AND EXECUTE TASK ORDER NO. 12 PERTAINING TO AN AGREEMENT BETWEEN THE CITY OF SALEM, MISSOURI AND C. M. ARCHER GROUP, P.C. DATED FEBRUARY 3, 2020 FOR ENGINEERING DESIGN SERVICES RELATED TO WATER WELL NO. 9 AND ELEVATED STORAGE TANK.

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SALEM MISSOURI AS FOLLOWS;

Section 1.

That the Mayor is hereby authorized to sign and execute on behalf of the City of Salem, Missouri TASK ORDER NO. 12 pertaining to an Agreement by and between the City of Salem, Missouri ("Owner") and C. M. Archer Group, P.C. ("Engineer") dated February 3, 2020, and sign all documents related to this project for professional services related to Water Well No. 9 and Elevated Storage Tank.

Section 2.

All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

Section 3.

This Ordinance shall take effect and be in full force and effect from and after the date of its passage and approval.

PASSED BY THE BOARD OF ALDERMEN OF THE CITY OF SALEM, MISSOURI, AND APPROVED BY THE MAYOR THIS 23rd DAY OF NOVEMBER, 2021.

APPROVED:	ATTEST:
Kim Steelman Mayor	Tammy Koller City Clerk
	APPROVE AS TO FORM:
	James Weber City Attorney

TASK ORDER NO. 12

This Task Order pertains to an Agreement by and between <u>City of Salem, Missouri</u>, ("OWNER"), and CM Archer Group, P.C., Inc. ("ENGINEER"), dated February 3, 2020, ("the Agreement"). Engineer shall perform services on the project described below as provided herein and in the Agreement. This Task Order shall not be binding until it has been properly signed by both parties. Upon execution, this Task Order shall supplement the Agreement as it pertains to the project described below.

TASK ORDER NUMBER: No. 12

PROJECT NAME: Water Well No. 9 and Elevated Storage Tank

PART 1.0 PROJECT DESCRIPTION:

Design and construction administration for:

- A new drinking water well (capacity to be determined during design phase), including well and surface casing depths based upon MDNR-DGLS recommendations, well house, controls and site piping. Actual well production capacity will be determined during the well pump test during construction.
- A 150,000 to 250,000 gallon elevated storage tank, site grading and piping plan. Tank manufacturer will be responsible for detailed design calculations for the tank structure and foundation. Specific design criteria to be developed during the engineering report phase.
- A new water main and highway bore to connect the proposed well/tower to the existing 8" water main located on the east side of Hwy 72, near the Salem Memorial Hospital.

PART 2.0 SCOPE OF SERVICES TO BE PERFORMED BY ENGINEER ON THE PROJECT:

A. ENGINEERING REPORT

Engineer shall prepare an Engineering Report to develop well design criteria, opinion of probable construction cost and elevated storage tank sizing based upon existing system capacity and maximum daily flow as well as City construction budget. The Engineering Report shall be submitted to MDNR for review.

B. DESIGN PHASE

Upon authorization to proceed by OWNER, the ENGINEER will prepare plans and specifications showing the general scope, extent, and character of the improvements listed above. In addition, ENGINEER will furnish Instructions to Bidders, Contract Documents, and other forms and items of information necessary for seeking competitive Bids. Contract forms and bonds shall be submitted to OWNER's legal counsel for review.

The plans and specifications will be submitted to all required regulatory agencies for their approval and such alterations made as they may require. The plans and specifications will also be submitted to any other agency, which might be involved in the financing of the project. Five complete sets of bid documents will be provided for OWNER'S use. Additional copies can be provided in accordance with the schedule of rates.

The ENGINEER will advise OWNER of the design progress at least monthly, advising OWNER of any adjustments to the opinion of probable construction costs.

C. BIDDING PHASE SERVICES

ENGINEER shall perform Bidding Phase Engineering as follows:

Provide assistance in obtaining bids, answering questions and preparing addendums during the bid letting, hold pre-bid meeting and site tour, open, review and tabulate bids, consult OWNER as to the acceptability of subcontractors proposed by the prime contractor(s), evaluation of bids and recommendation of award, and assembling and awarding contracts.

D. CONSTRUCTION PHASE

ENGINEER shall perform Construction Phase Engineering as follows:

- 1. Construction Administration ENGINEER shall: Draft and issue Notice of Award and Notice to Proceed documents, hold preconstruction conference, review Contractor submittals and shop drawings, provide contract document interpretation and response to requests for clarification, provide assistance to OWNER for equipment and materials procurement, hold monthly progress meetings, review contractor's schedule and work progress, review monthly pay applications, observe and record construction startup and testing, review Contractor closeout documents, review final operations and maintenance manuals, and draft and execute project change orders.
- 2. Construction Observation ENGINEER shall: conduct construction observations at least once per week for duration of the construction contract.
- E. SURVEY, EASEMENTS & ADDITIONAL CONSTRUCTION SERVICES

ENGINEER shall provide any topographic surveying and prepare easement exhibits necessary to perform the design services.

PART 3.0 OWNER'S RESPONSIBILITIES:

OWNER shall do the following in a timely manner so as not to delay the services of the ENGINEER:

- a. Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this agreement.
- b. Provide all criteria and full information as to OWNER's requirements for the Project, including design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- c. Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the project.
- d. Arrange for access for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
- e. OWNER agrees to indemnify, defend, and hold harmless ENGINEER and employees from and against all claims, losses, damages, cause of action, suits, liability or every kind including all expenses of litigation, cost to cure, court costs, and attorney fees resulting from inaccurate or insufficient information, data, or instructions provided by the OWNER, employees, ENGINEER, or agents.

PART 4.0 PERIODS OF SERVICE:

Design to be complete and submitted to permitting authorities within 240 calendar days. Bidding and Construction Administration to follow based upon construction contract time.

PART 5.0 PAYMENTS TO ENGINEER:

A. BASIC SERVICES

1. The OWNER shall compensate the ENGINEER for the tasks specified on a lump sum basis plus reimbursable expenses in the amounts and in the manner stated below:

A – Engineering Report

8,500.00

B – Design Phase

\$ 104,000.00

C – Bidding \$ 14,000.00 D – Construction Phase Engineering** \$ 56,000.00 E – Surveys, Easements & Add'l Services Hourly

B. REIMBURSABLE EXPENSES

Reimbursable Expenses area defined as actual non-labor expenditures incurred on the project including transportation, subsistence and other travel expenses, long distance telephone and facsimile, printing of specifications, reproductions, blueprints, mailing, computer charges, and similar items as approximately defined in Standard Form of Agreement between Owner and Engineer for Professional Services, Engineers Joint Contract Documents Committee No. 1910-1, hereafter "EJCDC No. 1910-1."

C. PAYMENTS TO ENGINEER

Invoices will be submitted to OWNER by ENGINEER monthly based on a percent completion as determined by ENGINEER. Invoice will be due and payable upon receipt; the OWNER agrees to render all payments within thirty days of receipt of invoices.

PART 6.0 ADDITIONAL SERVICES:

In addition to the described basic services, the following services will be provided at additional cost, but ONLY UPON PRIOR WRITTEN APPROVAL OF THE OWNER.

- 1. Specialized geotechnical, soils, hydraulic, or other additional engineering studies recommended by the ENGINEER.
- 2. Preparation of environmental impact statements, Cultural Resource Assessments, or other documents not included under Basic Services.
- Services resulting from significant change in the general scope, extent or character of the Project or its design due to causes beyond ENGINEERS' control.
- 4. Providing renderings or models for OWNER's use.

^{**} Construction Phase services include water main and well/wellhouse construction only. Elevated storage tank construction to be included in separate construction contract/phase.

- 5. Investigations and studies involving detailed consideration of operations, maintenance and overhead expenses, providing value engineering during the course of design, or the preparation of rate schedules and appraisals, unless specifically included under Basic Services.
- 6. Services resulting from the award of more separate prime contracts for construction, materials or equipment for the Project than are contemplated under Basic Services.
- 7. Providing property surveys, staking to enable Contractor(s) to proceed . with their work, and other special field surveys, unless included under Basic Services.
- 8. Preparation of operation and maintenance manuals unless included in Basic Services.
- 9. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the Project.
- 10. Extra cost for contract administration and resident project representation performed beyond the construction contract completion date specified in the construction contract documents.
- 11. Additional services in connection with the Project not otherwise provided for in this Agreement.

	This Task Order is executed this _ 20	day o	f,
City of Salem, "OWNER"	Missouri	CM Archer Grou "ENGINEER"	ıp, P.C.
BY:		BY:	
NAME:		NAME:	
TITLE:		TITLE:	
ADDRESS:		ADDRESS:	

1. <u>ITEM V (A):</u> <u>REPORTS OF CITY OFFICIALS AND BOARDS AND COMMITTEES</u>

2. SUBJECT: E. Ray Walden, Jr., City Administrator

1. ITEM V (B): REPORTS OF CITY OFFICIALS AND BOARDS AND

COMMITTEES

2. SUBJECT: Kim Steelman, Mayor

1. ITEM V (C): REPORTS OF CITY OFFICIALS AND BOARDS AND

COMMITTEES

2. SUBJECT: Sally Burbridge, Economic Development

1. ITEM V (D): REPORTS OF CITY OFFICIALS AND BOARDS AND

COMMITTEES

2. SUBJECT: Mark Nash, Public Works

1. <u>ITEM V (E):</u> <u>REPORTS OF CITY OFFICIALS AND BOARDS AND</u>

COMMITTEES

2. SUBJECT: Melissa Dubois, Parks and Recreation

1. ITEM V (F): REPORTS OF CITY OFFICIALS AND BOARDS AND

COMMITTEES

2. SUBJECT: Aldermen Reports

1. ITEM VI:

BIDS

2. <u>SUBJECT</u>:

New Skidsteer

3. <u>DISCUSSION</u>: Bid #1 Erb Equipment:

\$1,198.00 per month for 60 months

Bid #2 John Fabick Tractor Company

\$1,411.63 per month for 48 months

Uses for skid steer:

Pushing Brush

Asphalt Work

Snow Removal

Trenching for water & sewer

Signs

Brush Hogging

Unload trucks

Brush Clean up

Milling Asphalt

Finish Dirt Work

Drive Sign Posts

Clean ditches

Trenching for Electric Department





Quote ld: 25507937

Prepared For:

CITY OF SALEM



Prepared By: ZAKK CHAPMAN

Erb Equipment Co., Inc. 6885 Old Route 66 Cuba, MO 65453

Tel: 573-885-0500 Fax: 573-885-1494

Email: zakkchapman@erbequipment.com

1198 amonth

Date: 26 October 2021

7.5

Offer Expires: 30 November 2021





Quote Summary

Prepared For:

CITY OF SALEM MO

Home: 573-247-6398

Prepared By:

ZAKK CHAPMAN Erb Equipment Co., Inc. 6885 Old Route 66 Cuba, MO 65453

Phone: 573-885-0500

zakkchapman@erbequipment.com

Quote Id:

25507937

Created On:

26 October 2021

Last Modified On:

26 October 2021

Expiration Date: 30 November 2021

Equipment Summary

2021 JOHN DEERE 325G COMPACT TRACK LOADER -

1T0325GMJMJ407877

Selling Price

Qty

Extended

\$65,527.02 X

1

\$ 65,527.02

Equipment Total

\$ 65,527.02

Quote Summary

Equipment Total \$ 65,527.02 SubTotal

Est. Service Agreement Tax

\$ 65,527.02 \$ 0.00

Total

\$ 65,527.02

Balance Due

\$ 65,527.02

Salesperson : X

Accepted By: X



Selling Equipment



Quote ld: 25507937

Grapple Bucket

125500

	2021 JOHN DEERE 325G COMPACT TRACK LOADER - 1T0325GMJMJ407877								
Hours:	2								
Stock Numbe	r: 121131								
Code	Description	Qty							
00D2T	JOHN DEERE CAB, 2SP, H/F, ISO H SWIT, A-SEAT, CAMER	1							
100	Standard Option	e Paritini							
0755	2SP HIFL SLEV RC CB/AC PQT	1							
0953	ISO SWITCHABLE CTLS & JS PPK	1							
1301	ENGINE TURBO 4TNV98CT	1							
1501	ENGLISH OP MAN & DECALS	1							
1741	LESS JDLINK	1							
2600	RUBR TRKS WIDE TRK	· 1							
4001	2" SEAT BELT W/SHOULDERSTRAP	1							
6003	AIR SUSPENSION SEAT	1							
8042	REAR VIEW CAMERA	. 1							
8050	COLD START PACKAGE 110V	1							
8060	PRE CLEANER	1							
8380	FOOTREST WITH FLOORMAT	. 1							
	Dealer Attack	ments							
124842	Smooth bucket	1							
121899	6200 Forks	1	,						



Customer Purchase Order for John Deere Construction and Forestry Products - USA

PO# PO Revision#

08392431 Original

PURCHASER NAME AND ADDRESS (First Signer)							111	DEALER NAME AND ADDRESS								
									11	DEALER N		,	1		Account No. :	
NAM	NAME(First, Middle, Last)							<u>j</u> E	Erb Equipment Co., Inc. 178823							
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STRI	EE1	or	RR						6	885 Old F	Route 66	<u> </u>	·			
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Customer Purchase Order for John Deere Construction and Forestry Products - USA

PO# PO Revision# 08392431 Original

Quote ID: 25507937						(Customer Na	ame: BREN	T YOUNG	3		
COMMENTS:							(2) TOTAL TR	ADE-IN ALLOW	VANCE		\$0	00
							(3) TOTAL TR	ADE-IN PAY-O	FF		\$0	00
							(4) BALANCE			\$ 6	5,527	02
							(5) DELIVER	Y			\$0	00
							(6) RENTAL	INTEREST			\$0	00
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							(8) SUBTOTA	AL		\$ 6	5,527	02
							(9) RENTAL	APPLIED			\$0	
							(10) CASH W	ITH ORDER			\$0	
							(11) BALAN	CE DUE (8-(9 8	£ 10)	\$ 6	5,527	02
interests, liens, and encur listed on this document. The Purchaser execute a Time Sale Ag shown thereon, or to Product(s) to the Purchase Purchase Order is not a se of the Product(s) by the P security or its equivalent. P	promises to preement (Reement (Reement a execute a er, title shall curity agreer turchaser, as	eay the balarie etail Installm Lease Agr I remain with ment and that a debtor, fo	ce due (lir nent Cont reement, i the Selle t delivery or the pur	rie 11) shown tract), or a on or bef er until one o of the Produc poses of the	hereon Loan Agore deli of the for t(s) to the	ir cash, or to reement for the very of the regoing is acc e Purchaser pi e money secu	ne purchase p equipment complished. The ursuant to this urity provisions	rice of the Pro ordered here he Purchaser Purchase Ord in any statut	oduct(s), ple ein. Despi and the D der will not es relating	us additiona ite delivery lealer agres constitute po to persona	al charg y of l that t ossessi	ges the this ion
DISCLOSURE OF REGU Resources Board In-Use emissions of air pollutant http://www.arb.ca.gov/ms IMPORTANT WARRANT document provided by th the Warranty Statement. STANDARD WARRANTY CONDITIONS OR FITNES	Off-Road Di s. More info prog/ordies Y NOTICE: e dealer. P PURCHAS ' AND PU	lesel Vehicle rmation is a el/ordiesel.h	Regulati vailable o tm	on. It therefore the Califo	ore could ornia Air	l be subject Resources B	to retrofit or a	accelerated to at	urnover red	quirements	to red	uce
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USE OF INFORMATION/PRIVACY NOTICE I understand that John Deere Construction & Forestry Company and its affiliates ("John Deere") and Dealer collect information, including my personal information and machine data to provide warranty, customer service, product and customer support, marketing and promotional information about Dealer, John Deere and their equipment, products and services and to support other business processes and purposes. See the John Deere Privacy Statement (https://www.deere.com/en/privacy-and-data/privacy-statements/) for additional information on the types of personal information and machine data John Deere collects, how it is collected, used and disclosed. See Dealer directly for information about its privacy policy.												
Purchaser's signature below	/ acknowledg			received a co		Standard Wa	rranty, Version				(Initials	3)
Purchaser (First Signer)	BRENT YO			Signature				Date				
Purchaser (Second Signer)				Signature				Date				
Dealer Representative	Erb Equipm	ent Co., Inc.		Signature				– Date				_
Salesperson	СНАРМАN,	ZAKK		Signature				– Date				
DELIVERY ACKNOWLE	DGEMENT	Delivered	with Ope	erator's Man	ual On:	Purchaser S	ignature					

STANDARD WARRANTY FOR NEW JOHN DEERE CONSTRUCTION, UTILITY, CCE AND FORESTRY PRODUCTS – US & Canada

- Construction, Forestry & Compact Construction Equipment (CCE) Products*: 12 months Full Machine Standard Warranty
- * Compact Construction Equipment Products Delivered and settled on or after 01 June 2018: 24 months or 2000 hours (whichever comes first) Full Machine Standard Warranty
- C&E Series Pull-Type Scrapers: 6 months Full Machine Standard Warranty
- DC & DE Series Pull-Type Scrapers: 12 months Full Machine Standard Warranty
- Scraper Tractors: 24 Months or 2000 Hours (whichever occurs first) Full Machine Standard Warranty
- Forestry Attachments: 12 Months or 2000 Hours (whichever occurs first) Full Machine Standard Warranty
- Frontler Equipment: 6 months Full Machine Standard Warranty (90 days in rental applications)

The "Standard Warranty" is part of the warranty protection package available from John Deere Construction & Forestry Company (John Deere Limited in Canada) ("John Deere") to purchasers of new John Deere products ("product"):

STANDARD Warranty is John Deere's standard new product warranty, described in this document, provided at no additional charge to the purchaser.

EXTENDED Warranty Is a separate repair contract made available by John Deere for purchasers who wish to complement their Standard Warranty coverage. Complete Extended Warranty details, including coverage options and limitations, are set forth in the Application for Extended Warranty, which is available from authorized John Deere dealers.

STRUCTURALL Warranty applies to certain structural components as listed below and as described in this document.

FACTORY-INSTALLED UNDERCARRIAGE Warranty applies to certain undercarriage components as listed below and as described in this document.

A. STANDARD WARRANTY - GENERAL PROVISIONS

John Deere will repair or replace, at its option, any parts (except those specified below) of a new John Deere product that, as delivered to the original retail purchaser(s), are defective in material or workmanshlp. Performance of this warranty will be free of charge for parts and labor/labour, except as otherwise stated below. Standard Warranty applies only to purchases from John Deere and authorized John Deere dealers and, except as otherwise provided in the next sentence and section L below, is extended only to the original retail purchaser of the product. Remaining Standard Warranty applicable to a used John Deere product is transferred to a subsequent purchaser of the product only if the subsequent purchaser requests a transfer from an authorized John Deere dealer before the product's Standard Warranty expires. Coverage begins on the date of delivery of the product to the original retail purchaser. For purposes of this warranty, a product that has been rented, used for demonstration purposes for 150 or more hours, or otherwise used prior to its original retail purchase has been "used" for the total duration of such use. Warranty statements required by law covering engine emissions-related parts and components are found on a separate written warranty certificate provided to the purchaser at the time of the original retail purchase.

B. WHAT IS COVERED BY STANDARD WARRANTY -

All parts of a new John Deere product (except those noted in Sections D and E below) are covered during the Standard Warranty period set out above.

C. EXCLUSIVE REMEDY -

The repair or replacement of covered parts or components that are defective, as provided in Sections A, B, D.2 and D.3 herein, shall be the purchaser's exclusive remedy for any defect in the product. However, if after repeated attempts such repair or replacement fails to correct the performance problem caused by the defect, the purchaser's sole remedy shall be a refund of the amount paid for the product (in exchange for a return of the product), excluding any transportation charges, license fees, taxes and insurance premiums, and less a reasonable allowance for use of the product prior to its return. In no event will the dealer, John Deere or any company affiliated with John Deere be liable for any incidental or consequential damages, including but not limited to loss of profits, rental of substitute equipment or other commercial loss. Correction of defects in the manner provided above shall constitute fulfillment of all liabilities of the Dealer, John Deere, or any company affiliated with John Deere to the purchaser or any other

person, whether based upon contract, tort, strict liability, or otherwise. This limitation does not apply to claims for personal injury.

D. ITEMS COVERED SEPARATELY -

- 1. <u>Standard Warranty</u> does not apply to batteries, radios, tires, cameras, or to Cummins, MTU or Detroit Diesel Engines installed in John Deere products, which are covered by separate written warranties.
- 2. Factory-Installed Undercarriage Warranty covers all non-rubberized factory-installed undercarriage wear components for 3 years or 4,000 hours from the date of delivery to the original retail purchaser, whichever occurs first (unless terminated earlier under Section F, below). For purposes of this warranty, a product that has been rented, used for demonstration purposes for 150 or more hours, or otherwise used prior to its original retail purchase has been "used" for the total duration of such use. In addition to the items listed in section E below, Factory-Installed Undercarriage Warranty does not cover: failures due to wear, machine application, maintenance practices, or improper machine configuration; removal and installation labor/labour; transportation or hauling costs; unapproved parts; non-wear items; and rubberized undercarriage components such as rubber tracks. Warranty claims will be pro-rated based upon wear of the failed component and whether track shoe width is approved by John Deere. Factory-Installed Undercarriage Warranty does not apply to Scraper Tractors.
- 3. StructurALL Warranty for new John Deere Products (except Compact Excavators & Loaders, Skid-Steer Loaders, Compact Track Loaders, Scraper Tractors, Pull-Type Scrapers, and Forestry Attachments, which are not eligible for StructurALL Warranty) begins at the date of delivery to the original retail purchaser and ends (unless terminated earlier under Section F, below) after three (3) years, or 10,000 hours (whichever occurs first). For purposes of this warranty, a product that has been rented, used for demonstration purposes for 150 or more hours, or otherwise used prior to its original retail purchase has been "used" for the total duration of such use. StructurALL Warranty applies only to the following structural components listed below as installed on the product at the time of original manufacture. If a particular component is not listed below it is not covered by StructurALL Warranty.

Arm; Articulation Joint (incl. pins & bushings); Bin Frame; Boom; Carbody; C-Frame*; Circle Frame; Coupler (John Deere built ONLY); Dipperstick; Draft Frame; Engine Frame; Equipment Frame; Grapple Arch and Grapple Boom; Loader Arm; Loader Frame; Mainframe; Moldboard Lift Arm; NeverGrease™ Pin Joints [Includes steering pin and bushing joints (standard equipment), roller elements (roller bearings) in bucket to boom joints and sliding elements (bushing) for boom and linkage joints (optional equipment)]; Rollover Protection Structure (ROPS); Side Frame; Swing Frame; Track Frame; Undercarriage Frame; X-Frame; Z-bar loader linkage (including bell crank and bucket driver link); Specialty booms and arms marketed as "heavy duty" by John Deere.

Items Covered by StructurALL for Cut-to-Length Forestry Machines: Front frame (welded assembly); Rear frame (welded assembly); Crane king post with basement; Middle joint frame; Cabin swing frame; Main Boom

StructurALL Warranty does not apply to:

- Any product used primarily in extreme duty or severe duty applications such as but not limited to: demolition and wrecking, chemical plant (including fertilizer plants), salt mines, steel mill, land fill and transfer stations, scrap handling, scarifying and other applications that are similarly destructive or similarly heavy duty except specialty booms and arms as stated in Section D.3 above.
- 2. C-Frames on H-Series & J-Series Crawlers equipped with root rakes or used in forestry applications unless equipped with an "extreme duty" reinforcement package.
- 3. Cut-to-Length Forestry Heads and Slash Bundler Units.
- 4. Crawlers equipped with optional side booms.
- 5. Cut-to-Length Forestry, Excavator, and Log Loader swing bearings.
- 6. Motor Graders equipped with front- or rear-mounted snow wings.

E. ITEMS NOT COVERED -

John Deere is NOT responsible for the following:

- 1. Freight
- 2. Adjustments to compensate for wear, for periodic maintenance or adjustments that result from normal wear and tear.
- 3. Damage caused by unapproved adjustments (electronic or mechanical) to machine or machine components outside of published specifications including but not limited to engine, hydraulic components and relief valves.
- 4. Program updates, calibrations, and pressure adjustments.
- 5. Diagnostic Time
- 6. Additional Labor/Labour Time Above SPG/Labor/Labour Rate
- 7. Additional Cleaning Above SPG/Labor/Labour Rate
- 8. Rental Fees
- 9. Depreciation or damage caused by normal wear or application, lack of reasonable and proper maintenance, failure to follow operating instructions, misuse, negligence, collision or other accidents.
- 10. Premiums charged for Overtime Labor/Labour
- 11. Transportation to and from the dealership.
- 12. Travel time, mileage or service calls by the dealer.
- 13. Non-John Deere components or modifications, Rotobec grapples, and attachments installed aftermarket.
- 14. Shop supplies and maintenance items such as, but not limited to: filters, fuels, oil, hydraulic fluid, lubricants, coolants, conditioners, shop towels, cleaners and degreasers. Note: Reimbursement for refills of oils/coolants lost due to a warrantable failure is covered when a system failure occurs outside the boundaries of a normal oil change (within 25% of specified change interval as provided in the Operator's Manual).
- 15. Torn, cut, or worn hoses.
- 16. Wear items, such as, but not limited to: body liner, belts, blades, bulbs, lubricated joints (including pins and bushings), dry brakes, brake linings, dry clutch linings, saw blades, chains, skidder grapple shocks, color marking nozzles, and articulation bumpers.
- 17. Items such as cutting-edge parts, delimbing knives, bucket teeth and rubber track are not warranted for depreciation or damage caused by normal wear, lack of proper maintenance, misuse, failure to follow operating instructions, the elements or accident.
- 18. Any defect in a non-covered component, or damage to or failure of a covered component caused by a defect in a non-covered component.
- Secondary damage which occurs from continued operation of a product after recognition of the occurrence of a failure.
- 20. Parts supplied or modifications done by third party suppliers.
- 21. Topping off fluids when fluid levels fall in the range between low and full
- 22. Parts/Kits not ordered on machine and installed aftermarket. These parts will be covered by any applicable parts warranty.
- 23. Attachments installed aftermarket i.e. Winch not installed at factory.
- 24. Custom options installed outside the factory i.e. G.R. Manufacturing option packages.
- 25. Used Products (except as otherwise provided in section L below).

F. TERMINATION OF WARRANTY-

John Deere is relieved of its obligations under Standard Warranty, StructurALL Warranty, Factory-Installed Undercarriage Warranty and/or Extended Warranty if:

- 1. Service (other than normal maintenance and replacement of service items) is performed by someone other than an authorized John Deere dealer; or
- 2. The product is modified or altered in ways not approved by John Deere; or
- 3. Any unapproved or improperly sized attachment is installed on the product. Approval and attachment size shall be at John Deere's sole discretion. (Consult dealer prior to installing attachments or product modification).
- 4. The product is moved outside the US and/or Canada.

G. PARTS REPLACED UNDER WARRANTY -

Only new or remanufactured parts or components furnished or approved by John Deere, will be used if John Deere elects to repair the product. If any such part or component is defective in material or workmanship when installed in the product, John Deere will repair or replace, as it elects, such defective part or component, provided the defect is

reported to an authorized John Deere dealer within 90 days of installation or before expiration of the applicable Standard Warranty, Factory-Installed Undercarriage Warranty and/or StructurALL Warranty whichever is later.

H. TELEMATICS

NOTICE: Products may be equipped with telematics hardware and software ("Telematics") that transmit data to John Deere/ Dealer. Purchaser may deactivate Telematics at www.idlink.com.

Notwithstanding Purchaser's right, title or interest in the Products, Purchaser agrees that John Deere and Dealer (their affiliates, successors and assigns), without further notice to Purchaser have the right to:

- 1. Access, use, collect and disclose any data generated by, collected by, or stored in, Products or any hardware or devices interfacing with Products ("Machine Data");
- Access Machine Data directly through data reporting devices integrated within, or attached to, Products, including Telematics ("Data Reporting Systems"); and
- 3. Update the Data Reporting Systems software from time to time. Machine Data will only be used in accordance with John Deere's Machine Data Policy, located at www.JohnDeere.com/MachineDataPolicy.

I. OBTAINING WARRANTY SERVICE -

To obtain warranty service, the purchaser must request warranty service from a John Deere dealer authorized to sell the product to be serviced. When making such a request, the purchaser must present evidence of the product's delivery date, make the product available at the dealer's place of business, and inform the dealer in what way the purchaser believes the product to be defective. Standard Warranty, Factory-Installed Undercarriage Warranty and/or StructurALL Warranty repairs may be made in the field if the purchaser and servicing dealer so desire. However, John Deere will not be responsible for any charges (such as dealer travel time, mileage or extra labor/labour) that would not have been incurred had the product been repaired at the dealer's place of business.

J. NO IMPLIED WARRANTY, CONDITIONS OR OTHER REPRESENTATION -

Where permitted by law, neither John Deere nor any company affiliated with it makes any warranties, representations, conditions or promises, express or implied, as to the quality, performance, or freedom from defect of its products, other than those set forth in this document and NO IMPLIED WARRANTY OF MERCHANTABILITY, CONDITIONS OR FITNESS IS MADE.

K. NO DEALER WARRANTY -

The selling dealer makes no warranty of its own on any item covered by this warranty, and makes no warranty on other items unless the dealer delivers to the purchaser a separate written warranty certificate specifically warranting the item. The dealer has no authority to make any representation or promise on behalf of John Deere, or to modify the terms or limitations of this warranty in any way.

L. USED JOHN DEERE PRODUCTS ONLY -

John Deere will transfer remaining Standard Warranty, Factory-Installed Undercarriage Warranty and/or StructurALL Warranty to the purchaser of a used John Deere construction and/or forestry product that has been used for less than the full warranty period provided at the product's original retail purchase. This transfer is not effective until change of ownership is registered by a John Deere dealer. ALL THE TERMS, INLCUDING LIMITATIONS AND EXCLUSIONS, OF THE JOHN DEERE STANDARD WARRANTY, FACTORY-INSTALLED UNDERCARRIAGE WARRANTY, AND/OR STRUCTURALL WARRANTY ORIGINALLY PROVIDED FOR THE PRODUCT REMAIN IN EFFECT AND APPLICABLE.

Caterpillar Financial Services Corporation

Finance Proposal

-				- CUSTO	MER -			
Name: CITY	OF SALEM N	ИO						
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State					Funded by			
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Telephone		·····				Quote Time	***************************************	04:25:21 PM
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Taxes:			•		-	be included in the	above payment a	imount.
Equipment:		-	-	-	-			eside in the United States
Approval:	This proposa	l is subject to	, among other	things, final pric	cing, credit	approval and docu	iment approval by	y CFSC.
The terms and								
ine terms and	conditions ou	innea nerein	are not all-incl	usive and are b	ased upon n	ntormation provid	ied to date. This	proposal may be withdrawn or

The terms and conditions outlined herein are not all-inclusive and are based upon information provided to date. This proposal may be withdrawn or modified by Lessor at anytime. This proposal does not represent an offer or commitment by CFSC to enter into a transaction or to provide financing and does not create any obligation for CFSC. A commitment to enter into the transaction described herein may only be extended by CFSC after this transaction has been approved by all appropriate credit and other authorities within CFSC.

Caterpillar Financial Services Corporation 2120 West End Avenue, Nashville, TN 37203 (615)-341-1000

We appreciate the opportunity to provide you a proposal for this transaction.		
Proposed by:	Acknowledged by:	
Caterpillar Financial Services Corporation	CITY OF SALEM MO	Date

1. <u>ITEM VII:</u> <u>NEW AND MISCELLANEOUS BUSINESS</u>

2. SUBJECT: Street Closure for 2021 Santa Dash

3. <u>DISCUSSION</u>: Kelsey with Community Center at the Armory requests 4th Street from Hwy 19 to MacArthur be closed from 8:30 AM to 10:00 AM for the Santa Dash. Kelsey has spoken to the business that would be affected by the closure.

1. <u>ITEM VIII:</u> <u>OLD BUSINESS</u>

2. <u>SUBJECT</u>: SFY Officer Safety and Equipment Technology (OSET) Award

MICHAEL L. PARSON Governor

SANDRA K. KARSTEN
Director



Lewis & Clark State Office Bldg. Mailing Address: P.O. Box 749 Jefferson City, MO 65101-0749

Telephone: 573-751-4905 Fax: 573-751-5399

STATE OF MISSOURI DEPARTMENT OF PUBLIC SAFETY OFFICE OF THE DIRECTOR

November 1, 2021

Everett Walden City Administrator Salem, Police Department 500 N. Jackson Street Salem, MO 65560

RE: SFY 2022 Officer Safety and Equipment Technology (OSET)

Award # 2022-OSET-075

Dear City Administrator Walden:

Enclosed is the SFY 2022 Officer Safety and Equipment Technology (OSET) Award Agreement in the amount of \$5,721.50. The Missouri Department of Public Safety, Criminal Justice Law Enforcement Unit, asks you to carefully review and sign the documentation provided. By signing the Award Agreement and initialing each page of the Articles of Agreement and Special Conditions you are certifying your acceptance of the award conditions. Once signed and initialed, please mail the original documents to our office at the address listed above by December 15, 2021.

The project period of performance for this award begins November 1, 2021 and ends April 30, 2022.

We look forward to working with you on this award. Should you have any questions or need additional information, do not hesitate to contact Debbie Musselman at (573) 751-5997 or Debbie.Musselman@dps.mo.gov.

Sincerely,

Michelle Branson, Grants Supervisor

Missouri Department of Public Safety

Criminal Justice/Law Enforcement Unit

Mexell Branson

Attachment(s): Award Agreement

Articles of Agreement/Special Conditions

Missouri Department of Public Safety **Criminal Justice/Law Enforcement Unit**

O Poy 740 Jofferson City MO 65101

AWARD AGREEMENT

DATE

Telephone: 573-526-1928 Fax: 573-751-5399		11/01/2021	11/01/2021		
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		2022-OSET-0	75		
RECIPIENT NAME Salem, Police Department		DUNS NUMBER 077145340			
ADDRESS 500 N. Jackson Street					
опу Salem	MO STATE		ZIP CODE 65560	· .	
TOTAL AMOUNT OF STATE \$5,721.50			· .		
PROJECT PERIOD FROM	PROJECT PERIO	D TO			
1/01/2021	04/30/2022				
PROJECT TITLE SFY 22 Officer Safety and Technology (OSET)	FUNDED BY Missouri De	partment of P	ublic Safety		
//ETHOD OF PAYMENT (Reimbursement – Advanced)	<u></u>			<u></u>	
Reimhursement					

CONTAC	TINFORMATION	
CJ/LE GRANT CONTACT	RECIPIENT PROJECT DIRECTOR	
NAME Debbie Mus selman	Joe Chase Chief of Police	
E-MAIL ADDRESS Debbie.Musselman@dps.mo.gov	ADDRESS (If different from above) 500 North Jackson	
TELEPHONE (573) 751-5997	CITY, STATE AND ZIP CODE Salem, MO 65560	
PROGRAM MANAGER Joni McCarter	TELEPHONE E-MAIL ADDRESS (573) 729-4242 jchase@salemmo.com	

SUMMARY DESCRIPTION OF PROJECT

The Officer Safety and Technology (OSET) Program provides funding to units of local government for the purpose of reducing crime and improving public safety.

AWARDING AGENCY APPROVA	AL.	RECIPIENT AUTHORIZED OFFICIAL AF	PROVAL
TYPED NAME AND TITLE OF DPS OFFICIAL		TYPED NAME AND TITLE OF RECIPIENT AUTHORIZED (DFFICIAL
Sandra K. Karsten, Director		Everett Walden City Administrator	•
OLONATURE OF A PRESSURE PRO OFFICIAL	15.==		Inches
SIGNATURE OF APPROVING DPS OFFICIAL	DATE	SIGNATURE OF RECIPIENT AUTHORIZED OFFICIAL EVER THE AUTHORIZED OFFICIAL	II/IO/2021

THIS AWARD IS APPROVED SUBJECT TO SUCH CONDITIONS OR LIMITATIONS SET FORTH ON THE ATTACHED SPECIAL CONDITION(S). BY SIGNING THIS AWARD AGREEMENT THE RECIPIENT IS AGREEING TO READ AND COMPLY WITH ALL SPECIAL CONDITIONS.

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AWARD NUMBER 2022-OSET-075	DATE 11/01/2021
-	AWARD AGREEMENT

ARTICLES OF AGREEMENT

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(UCR)

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DWI Law - Prosecutors
Article XXXI

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Article I - Governing Directives

The Recipient assures that it shall comply, and all its subcontractors as applicable shall comply, with the applicable provisions of the "OSET Solicitation", the "DPS Financial and Administrative Guide", the "DPS Subrecipient Travel Guidelines", any applicable federal nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d); the Victims of Crime Act (VOCA) of 1984 (42 U.S.C. § 10604(e)); the Juvenile Justice and Delinquency Prevention Act (JJDPA) of 2002 (42 U.S.C. § 5672(b)); the Violence Against Women (VAWA) Act of 2013 (42 U.S.C. 13925(b)(13)); Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12131-34); Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681. 1683, 1685-86); the Age Discrimination Act of 1975 (42 U.S.C. §§ 6101-07); 28 C.F.R. Part 31 (U.S. Department of Justice Regulations - OJJDP Grant Programs); 28 C.F.R. Part 42 (U.S. Department of Justice Regulations - Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Executive Order 13279 (equal protection of the laws for faith-based and community organizations); Executive Order 13559 (fundamental principles and policymaking criteria for partnerships with faithbased and other neighborhood organizations); 28 C.F.R. Part 38 (U.S. Department of Justice Regulations - Equal Treatment for Faith-Based Organizations); and 28 C.F.R. Part 54 (U.S. Department of Justice Regulations - Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance), and other applicable federal and state laws, orders, circulars, or regulations.

Article II - Compliance Training

As a recipient of state funds, the Recipient is required to participate in any applicable Compliance Training hosted by the Missouri Department of Public Safety. The Compliance Training will be hosted as a webinar to provide post-award information to include, but not limited to, award acceptance, project implementation, reporting requirements, award changes, civil right compliance, monitoring responsibilities, record retention, internal controls and accounting responsibilities.

Article III - Non-Supplanting

The Recipient assures that federal and/or state funds made available under this award will not be used to supplant other federal, state, or local funds but will be used to increase the amount of funds that would, in the absence of these funds, be made available for the activities of this project.

Article IV - Change in Personnel

The Recipient agrees to notify, within a timely manner, the Missouri Department of Public Safety if there is a change in or temporary absence as it affects the 'My Profile' module, 'Contact Information' component, and/or 'Budget' component within WebGrants. The notification shall be sent through the 'Subaward Adjustment' component of WebGrants as a Program Revision.

Article V - Subaward Adjustments

The Recipient understands that any deviation from the approved award must have prior approval from the Missouri Department of Public Safety. No additional funding shall be awarded to a Recipient (unless specifically notified by the Missouri Department of Public Safety of additional funding being

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awarded), but changes from one budget line to another budget line may be possible if the request is allowable and within the scope of the guidelines. Prior approval must be requested via the 'Subaward Adjustment' component of WebGrants.

Article VI – Monitoring

The Recipient agrees to maintain the records necessary to evaluate the effectiveness of the project. In addition, the Recipient assures that all documentation or records relating to this award shall be made available to monitoring representatives of the Missouri Department of Public Safety, the Office of Missouri State Auditor, the U.S. Department of Justice (DOJ), the DOJ Office of Inspector General, the Comptroller General of the United States, or any of their authorized representatives immediately upon request. The Recipient assures that fund accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records as the Missouri Department of Public Safety shall prescribe, will be provided to assure fiscal control, proper management, and efficient disbursement of funds received under this award.

Article VII - Protection from Reprisal for Disclosures

The Recipient understands, pursuant to 41 U.S.C § 4712, an employee or subcontractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee or subcontractor reasonably believes is evidence of gross mismanagement of the funds under this award, a gross waste of the funds under this award, an abuse of authority relating to the funds under this award, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to the funds under this award.

Article VIII - Fair Labor Standards Act: All Recipients of federal funds will comply with the minimum wage and maximum hour's provisions of the Federal Fair Labor Standards Act.

Article IX - Employment of Unauthorized Aliens: Pursuant to Section 285.530.1 RSMo, the Recipient assures that it does not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri, and shall affirm, by sworn affidavit and provision of documentation, its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Further, the Recipient shall sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

In accordance with Sections 285.525 to 285.550, RSMo a general contractor or subcontractor of any tier shall not be liable when such general contractor or subcontractor contracts with its direct subcontractor who violates subsection 1 of Section 285.530, RSMo if the contract binding the contractor and subcontractor affirmatively states that the direct subcontractor is not knowingly in violation of subsection 1 of Section 285.530, RSMo and shall not henceforth be in such violation and the contractor or subcontractor receives a sworn affidavit under the penalty of perjury attesting to the fact that the direct subcontractor's employees are lawfully present in the United States.

Article X – Relationship

The Recipient agrees that it will represent itself to be an independent Recipient offering such services to the general public and shall not represent itself or its employees to be employees of the Missouri

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Department of Public Safety. (This provision is not applicable to the Missouri Department of Public Safety or any of its divisions or programs.) Therefore, the Recipient shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers' compensation, employee insurance, minimum wage requirements, overtime, etc.

Article XI – Texting While Driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), the Missouri Department of Public Safety encourages the Recipient to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

Article XII - Computer Networks

The Recipient understands and agrees that funds awarded may be used to maintain or establish a computer network unless such network blocks the viewing, downloading, and exchanging of pornography. Nothing in this provision limits the use of funds necessary for any Federal, State, tribal, or local law enforcement agency or any other entity carrying out criminal investigations, prosecution, adjudication activities, or other law enforcement-or victim assistance-related activity.

Article XIII - Unlawful Employment Practices

The Recipient assures compliance with Section 213.055 RSMo in regards to non-discrimination in employment practices as it relates to race, color, religion, national origin, sex, ancestry, age, or disability.

Article XIV - Discrimination in Public Accommodations

The Recipient assures compliance with Section 213.065 RSMo in regards to non-discrimination in public accommodations as it relates to accommodations, advantages, facilities, services, or privileges made available in place of public accommodations.

Article XV - Fund Availability

The Recipient understands all awards are subject to the availability of appropriated funds and any modifications or additional requirements that may be imposed by law. It is understood and agreed upon that, in the event funds from federal and/or state sources are not appropriated and continued at an aggregate level sufficient to cover the costs under this award, or in the event of a change in federal and/or state law relevant to these costs, the obligations of each party hereunder shall thereupon be terminated immediately upon receipt of written notice.

Article XVI - Release of Funds

The Recipient acknowledges no funds will be disbursed under this award until such time as all required documents are signed by the Recipient Authorized Official and Recipient Project Director and returned to the Missouri Department of Public Safety for final review and signature by the Director or his/her designee.

Article XVII - Duplicative Funding

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The Recipient agrees that if it currently has an open award of federal and/or state funds or if it receives an award of federal and/or state funds other than this award, and those award funds have been, are being, or are to be used, in whole or in part, for one or more of the identical cost items for which funds are being provided under this award, the Recipient will promptly notify, in writing, the Missouri Department of Public Safety. If so requested and allowed by the Missouri Department of Public Safety, the Recipient shall submit an award Adjustment for a budget revision or program revision to eliminate any inappropriate duplication of funding.

Article XVIII - Allowable Costs

The Recipient understands that only allowable and approved expenditures will be reimbursed under this award. These monies may not be utilized to pay debts incurred by other activities. The Recipient agrees to obligate funds no later than the last day of the project period. (Funds are obligated when a legal liability to pay a determinable sum for services or goods is incurred and will require payment during the same or future period.) The Recipient also agrees to expend funds no later than the date identified in the "OSET NOFO". (Funds are considered to be expended when payment is made.) Any funds not properly obligated and/or expended will lapse. Any deviation from the approved award must have prior approval from the Missouri Department of Public Safety. The Recipient shall fully coordinate all activities in the performance of the project with those of the Missouri Department of Public Safety. The Recipient certifies that all expendable and non-expendable property purchased funds under this award shall be used for approved project purposes only.

Article XIX - Procurement

The Recipient assures that all procurement transactions whether negotiated or competitively bid and without regard to dollar value shall be conducted in a manner to provide maximum open and free competition. In addition, the Recipient assures that all procurement transactions will meet the minimum standards set forth in the "DPS Financial and Administrative Guidelines" and identified here:

- (a) All quotations and the rationale behind the selection of a source of supply shall be retained, attached to the purchase order copy, and placed in the accounting files.
- (b) Purchases to a single vendor totaling less than \$10,000 may be purchased with prudence on the open market.
- (c) Purchases estimated to total between \$10,000 but less than \$100,000 to a single vendor, must be competitively bid, but need not be solicited by mail or advertisement.
- (d) Purchases with an estimated total of \$100,000 or over to a single vendor shall be advertised for bids in at least two daily newspapers of general circulation in such places as are most likely to reach prospective bidders at least five days before bids for such purchases are to be opened.
- (e) Where only one bid or positive proposal is received, it is deemed to be sole source procurement.

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(f) Sole source procurement on purchases to a single vendor of \$10,000 and over requires prior approval from the Missouri Department of Public Safety.

Article XX – Buy American

The Recipient acknowledges Sections 34.350-34.359 RSMo regarding the Missouri Domestic Products Procurement Act (or commonly referred to as the Buy American Act) and the requirement to purchase or lease goods manufactured or produced in the United States, unless exceptions to the Buy American Act mandate in Section 34.353 RSMo are met.

Article XXI - Buy Missouri

The Recipient also acknowledges Sections 34.070 and 34.073 RSMo regarding the preference given to all commodities and tangible personal property manufactured, mined, produced, or grown within the State of Missouri and to all firms, corporations, or individuals doing business as Missouri firms, corporations, or individuals, or which maintain Missouri offices or places of business, when quality is equal or better and delivered price is the same or less, quality of performance promised is equal or better and the price quoted is the same or less, or when competing bids are comparable.

Article XXII - Compensation

The Recipient understands that federal funds may not be used to pay cash compensation (salary plus bonuses) to any employee of the Recipient at a rate that exceeds 110% of the maximum annual salary payable to a member of the federal government's Senior Executive Service (SES) at an agency with a Certified SES Performance Appraisal System. (The Recipient understands it may compensate an employee at a higher rate, provided the amount in excess of this compensation limitation is paid with non-federal funds.)

Article XXIII - Suspension/Termination of Award

The Missouri Department of Public Safety reserves the right to suspend or terminate any award entered into as a result of this award at its sole discretion and without penalty or recourse by giving written notice to the Recipient of the effective date of suspension or termination. In the event of termination pursuant to this paragraph, all documents, data, and reports prepared by the Recipient under the award shall, at the option of the Missouri Department of Public Safety, become property of the State of Missouri.

In the event an award is suspended or permanently terminated, the Missouri Department of Public Safety may take action as deemed appropriate to recover any portion of the award funds remaining or an amount equal to the portion of the award funds wrongfully used.

Article XXIV - Enforceability

If a Recipient fails to comply with all applicable federal and/or state requirements governing these funds, the State of Missouri may withhold or suspend, in whole or in part, funds awarded under the award, or recover misspent funds following an audit. This provision is in addition to all other remedies provided to the State of Missouri for recovery of misspent funds available under all applicable state and federal laws.

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Article XXV – National Incident-Based Reporting System (NIBRS), formerly Uniform Crime Reporting (UCR)

The recipient assures, where the project agency is a law enforcement agency, its law enforcement agency is in compliance with the state provisions of Section 43.505 RSMo which states each law enforcement agency is required to submit crime incident reports to the department of public safety on forms or in the format prescribed by the department, and submit any other crime incident information which may be required by the department of public safety.

Article XXVI – Vehicle Stops

The Recipient assures, where the project agency is a law enforcement agency, its law enforcement agency is in compliance with the state provisions of Section 590.650 RSMo relating to vehicle stop reporting and will remain in full compliance for the duration of the project period.

Article XXVII – Police Use of Force Transparency Act of 2021

The recipient assures, where the project agency is a law enforcement agency, its law enforcement agency is in compliance with the state provisions of Section 590.1268 RSMo relating to use of force incidents reporting standards and procedures, and publication of report data, analysis report.

Article XXVIII - Federal Equitable Sharing Funds

The Recipient assures, where the project agency is a law enforcement agency, its law enforcement agency is in compliance with the state provisions of Section 513.653 RSMo relating to participation in the federal forfeiture system and the reporting of proceeds therefrom to the Missouri State Auditor.

Article XXIX - Custodial Interrogations

The Recipient assures, where the project agency is a law enforcement agency, its law enforcement agency is in compliance with the state provisions of Section 590.700 RSMo relating to custodial interrogations and has adopted a written policy to record custodial interrogations of persons suspected of committing or attempting to commit the felony crimes described in subsection 2 of this section.

Article XXX - DWI Law - Law Enforcement

The Recipient assures, where the project agency is a law enforcement agency, its law enforcement agency is in compliance with the state provisions of Section 43.544 RSMo relating to the "DWI Law" and has adopted a written policy to forward arrest information for all intoxication-related traffic offenses to the central repository as required by Section 43.503 RSMo.

Article XXXI - DWI Law - Prosecutors: The Recipient assures, where the project agency is a county prosecutor's office or municipal prosecutor's office, its county prosecutor's office or municipal prosecutor's office is in compliance with Section 43.544 RSMo relating to the "DWI Law" and has adopted a written policy to forward all charge information for intoxication-related traffic offenses to the central repository as required by Section 43.503 RSMo.

Article XXXII - Data Reporting Requirements

The recipient agrees to complete and submit any data or statistical reports required for this program as outlined in the "OSET Notice of Funding Opportunity". Failure to submit reports by the deadline dates may result in delay for reimbursement requests and/or cancellation of the award.

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Article XXXIII - Body Armor

The Recipient understands, if monies are requested and awarded for the purchase of body armor, that JAG funds may be used to purchase body armor but may not be used as the 50% match for purposes of BJA's Bulletproof Vest Partnership (BVP) Program. Further, the Recipient understands that body armor purchased with JAG funds may be purchased at any threat level, designation, make, or model from any distributor or manufacturer, as long as the body armor has been tested and found to comply with the latest applicable National Institute of Justice (NIJ) ballistic or stab standards. Further, body armor or armor vests must also be "uniquely fitted vests". In addition, body armor purchased with JAG funds must be made in the United States.

Article XXXIV - Body Armor Policy

The Recipient understands, if monies are requested and awarded for the purchase of body armor, that the law enforcement agency must have a written "mandatory wear" policy in effect. Per the Bureau of Justice Assistance (BJA), there are no requirements regarding the nature of the policy other than it being a mandatory wear policy for all uniformed officers while on duty. The Recipient will be required to forward a copy of such policy to the Missouri Department of Public Safety at the time of acceptance of the award.

Article XXXV - Body-Worn Cameras

The Recipient understands, if monies are requested and awarded for the purchase of body-worn cameras, that JAG funds may be used to purchase body-worn cameras but may not be used as the 50% match for purposes of BJA's Body-Wom Camera Policy and Implementation Program (BWC Program).

Article XXXVI - Body-Worn Camera Policy

The Recipient understands, if monies are requested and awarded for the purchase of body-worn cameras, the law enforcement agency must have written policies and procedures in place related to equipment usage, data storage and access, privacy considerations, training, etc. [The Bureau of Justice Assistance (BJA) Body-Worn Camera (BWC) Toolkit, which can be found online at https://bja.ojp.gov/program/body-worn-cameras-bwcs/overview, provides model BWC policies and best practices to assist departments in implementing BWC programs.] The Recipient will be required to forward a copy of such policy(s) to the Missouri Department of Public Safety at the time of acceptance of the award.

Article XXXVII - Criminal Intelligence Systems

The Recipient agrees that any information technology system funded or supported by OJP funds will comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation.

Article XXXVIII - Duplication of Networks

The Recipient assures that all equipment/software requested and purchased under this award must be compatible with the statewide system. All software, if applicable, must be compatible with the statewide criminal records system. All communication devices, if applicable, must be capable of operating in accordance with the guidelines established by the Missouri Homeland Security Advisory Council.

Article XL - Mitigation Plan

The Recipient agrees to fully comply with the Missouri Department of Public Safety's *Mitigation Plan for Clandestine Methamphetamine Laboratory Enforcement Operations*, where such grant-funded project is for

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a drug task force. No monies from this award may be obligated to support methamphetamine lab operations unless the Recipient agrees to this special condition and fully participates in implementation of the *Mitigation Plan*.

Article XXXIX - Criminal Justice/Law Enforcement Unit (CJ/LE), Specific By accepting this award, the Recipient agrees:

- To participate in quarterly Status Report submissions, if applicable.
 - o Quarter 1 November 1, 2021 January 31, 2022, due February 10, 2022
 - o Quarter 2 February 1, 2022 April 30, 2022, due May 10, 2022
 - o Final Status Report and Claim due May 31, 2022
- Equipment means tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost, which equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or \$1,000. Expenditures for equipment shall be in accordance with the approved budget. The Recipient shall use and manage equipment in accordance with its procedures as long as the equipment is used for its intended purposes. When original or replacement equipment acquired under this award is no longer needed for the original project or program or for other activities currently or previously supported by the Department of Public Safety, you must request instructions from DPS to make proper disposition of the equipment following the DPS Administrative Guide.
- Expenditures for equipment and supplies and operating expenses shall be in accordance
 with the approved budget and documentation in the form of paid bills and vouchers shall
 support each expenditure. Care shall be given to assure that all items purchased directly
 relate to the specific project objectives for which the contract was approved.
- DPS reserves the right to terminate any contract entered into as a result of this grant award
 at its sole discretion and without penalty or recourse by giving a thirty (30) day written notice
 to the Recipient of the effective date of termination. In the event of termination pursuant to
 this paragraph, all documents, data, and reports prepared by the Recipient under the
 contract shall, at the option of the DPS, become property of the State of Missouri. The
 Recipient shall be entitled to receive just and equitable compensation for that work
 completed prior to the effective date of termination.
- It is understood and agreed upon that in the event funds from state and/or federal sources
 are not appropriated and continued at an aggregate level sufficient to cover the contract
 costs, or in the event of a change in federal or state laws relevant to these costs, the
 obligations of each party hereunder shall thereupon be terminated immediately upon receipt
 of written notice.
- To follow the grant program guidelines as stated in the DPS Administrative Guide for CJ/LE
 Grants, as well as, Information Bulletins released by the CJ/LE Unit to provide important
 updates, clarifications and policy statements related to the Criminal Justice/law Enforcement
 Unit grant programs.

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- In the event DPS determines that changes are necessary to the award document after an award has been made, including changes to period of performance or Articles of Agreement, the Recipient will be notified of the changes in writing. Once notification has been made, any subsequent request for funds will indicate Recipient acceptance of the changes to the award.
- Prior written approval from CJ/LE is required prior to making any changes to the approved budget for this award.

BOARD OF ALDERMEN AGENDA NOVEMBER 23, 2021 6:00 P. M.

1. <u>ITEM IX:</u> <u>CLOSED SESSION</u>

2. <u>SUBJECT</u>: Pursuant to Section 610.021(12) of the Revised State Statutes of the State of Missouri pertaining to sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected.

3. DISCUSSION:

BOARD OF ALDERMEN AGENDA NOVEMBER 23, 2021 6:00 P.M.

1. <u>ITEM X</u>:

ADJOURNMENT

2. <u>SUBJECT</u>:

Adjournment of Meeting

- 3. **DISCUSSION**:
 - (a) Recommend Board Adjourn.
 - (b) Recognize motion and second.
 - (c) Roll vote:

Alderman Greg PARKER Alderman Shawn BOLERJACK Alderwoman Kala SISCO Alderman Kevin JAMES

(d) Board Adjourned.