

# CONTRACT COVERSHEET

NOTE: Shaded areas are for County Executive review.

*Res 241  
Significant*

<b>DEPARTMENT</b> Public Works, Highway & Transportation	<b>CONTRACT/ADDENDUM #:</b> <span style="font-size: 1.5em;">12538</span>																											
1. This contract, grant or addendum: <input checked="" type="checkbox"/> AWARDS <input type="checkbox"/> ACCEPTS	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">Contract</td> <td style="width: 34%; text-align: center;">If Addendum, please include original contract number</td> <td style="width: 33%; text-align: center;">Addendum</td> </tr> <tr> <td style="text-align: center;">↓</td> <td></td> <td style="text-align: center;">↓</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td style="text-align: center;">POS</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Co Lessee</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Co Lessor</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Intergovernmental</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Purchase of Property</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Property Sale</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td style="text-align: center;">Other:</td> <td style="text-align: center;"><input type="checkbox"/></td> </tr> </table>	Contract	If Addendum, please include original contract number	Addendum	↓		↓	<input checked="" type="checkbox"/>	POS	<input type="checkbox"/>	<input type="checkbox"/>	Co Lessee	<input type="checkbox"/>	<input type="checkbox"/>	Co Lessor	<input type="checkbox"/>	<input type="checkbox"/>	Intergovernmental	<input type="checkbox"/>	<input type="checkbox"/>	Purchase of Property	<input type="checkbox"/>	<input type="checkbox"/>	Property Sale	<input type="checkbox"/>	<input type="checkbox"/>	Other:	<input type="checkbox"/>
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<input type="checkbox"/>	Other:	<input type="checkbox"/>																										
2. This contract is discretionary <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO																												
3. Term of Contract or Addendum: From: <u>09/11/15</u> To: <u>12/31/19</u>																												
4. Amount of Contract or Addendum <b>\$352,000.00</b>																												
5. Purpose: Award of Energy Savings Performance Contract for the Northport Office																												
6. Vendor or Funding Source: <del>Dane County</del> <b>H + H Energy Services</b>																												
7. MUNIS Vendor Code: <b>20924</b>																												
8. Bid/RFP Number: <b>315027</b>																												
9. If grant: Funds Positions? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO    Will require on-going or matching funds? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO																												
10. Are funds included in the budget? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO																												
11. Account No. & Amount, Org. & Obj. <u>CPADMIN-57950</u> Amount \$ <u>352,000.00</u> Account No. & Amount, Org. & Obj. _____    Amount \$ _____ Account No. & Amount, Org. & Obj. _____    Amount \$ _____																												
12. Is a resolution needed: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO    If "YES," please attach a copy of the Resolution. If Resolution has already been approved by the County Board, Resolution No. & date of adoption _____																												
13. Does Domestic Partner equal benefits requirement apply? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO																												
14. Director's Approval: <i>[Signature]</i>																												

### CONTRACT REVIEW/APPROVALS

Initials	Ftnt	Date In	Date Out
<i>mg</i> Received	_____	<u>9-14-15</u>	_____
<i>af</i> Controller	_____	_____	<u>9/15/15</u>
<i>kg</i> Corporation Counsel	_____	<u>9/17/15</u>	<u>9/17/15</u>
<i>ra</i> Risk Management	_____	<u>9/15/15</u>	<u>9/16/15</u>
<i>ca</i> ADA Coordinator	_____	<u>9/15/15</u>	<u>9/16/15</u>
<i>cw</i> Purchasing Agent	_____	<u>9/21/15</u>	<u>9/21/15</u>
_____ County Executive	_____	_____	_____

### VENDOR

<b>Vendor Name &amp; Address</b> H&H Energy Services Inc. 3201 Latham Drive Madison, WI 53713
<b>Contact Person</b> Josh Kaurich
<b>Phone No.</b> 608/268-4315
<b>E-mail Address</b> jkaurich@hhenergyservices.com

**Footnotes:**


1. \_\_\_\_\_
2. \_\_\_\_\_

<b>Return To:</b> Name/Title: <u>Jan Neitzel-Knox / PI&amp;EO</u> Dept.: <u>Public Works - Engineering Division</u> Phone: <u>(608) 266-4029</u> Mail Address: <u>1919 Alliant Energy Center Way</u> E-mail: <u>neitzel-knox@countyofdane.com</u> <u>Madison, WI 53713</u>
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**CERTIFICATION**

The attached contract: *(Check as many as apply)*

- conforms to Dane County's standard Purchase of Services Agreement form in all respects
- conforms to Dane County's standard Purchase of Services Agreement form with modifications and is accompanied by a revision copy<sup>1</sup>
- is a non-standard contract which has been reviewed or developed by corporation counsel which has not been changed since that review/development
- is a non-standard contract previously reviewed or developed by corporation counsel which has been changed since that review/development; it is accompanied by a revision copy<sup>1</sup>
- is a non-standard contract not previously reviewed by corporation counsel; it is accompanied by a revision copy
- contains non-standard/indemnification language which has been reviewed or developed by risk management and which has not been changed since that review/development
- contains non-standard insurance/indemnification language which has been changed since review/development or which has not been previously seen by risk management; it is accompanied by a revision copy
- contains non-standard affirmative action/equal opportunity language which has been reviewed or developed by contract compliance and which has not been changed since that review/development
- contains non-standard affirmative action/equal opportunity language which has been changed since the earlier review/development by contract compliance or which has not been previously seen by contract compliance; it is accompanied by a revision copy<sup>1</sup>

Date: 09/14/15 Signed:   
 Telephone Number: 608/266-4179 Print Name: Scott Carlson

**MAJOR CONTRACTS REVIEW (DCO Sect. 25.20)** This review applies only to contracts which both exceed \$100,000 in disbursements or receipts and which require county board review and approval.

**EXECUTIVE SUMMARY** *(Attach additional pages, if needed).*

1. **Department Head**  Contract is in the best interest of the County.  
 Describe any deviations from the standard contracting process and any changes to the standard Purchase of Services Form Agreement.

Date: 09/14/15 Signature: 

2. **Director of Administration**  Contract is in the best interest of the County.  
 Comments:

Date: 9/24/15 Signature: 

3. **Corporation Counsel**  Contract is in the best interest of the County.  
 Comments:

Date: 9/17/15 Signature: 

<sup>1</sup>A revision copy is a copy of the contract which shows the changes from the standard contract or previously revised/developed contract my means of overstrikes (indicating deletions from the standard language) and underlining (showing additions to the standard language).

**COUNTY OF DANE**  
**ENERGY SERVICE COMPANY PROFESSIONAL SERVICES AGREEMENT**  
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COUNTY OF DANE

ENERGY SERVICE COMPANY PROFESSIONAL SERVICES AGREEMENT

SIGNATURE PAGE

Date: September 11, 2015
Project No.: 315027
Agreement No.: 12538

THIS AGREEMENT is between the County of Dane, by its Department of Public Works, hereinafter referred to as "COUNTY", and H&H Energy Services, Inc., 3201 Latham Dr., Madison, WI 53713, hereinafter called the "ESCO".

WITNESSETH

WHEREAS, COUNTY proposes securing Energy Service Company services for a project described as follows:

Energy Savings Performance Contract for the Northport Office

WHEREAS, COUNTY deems it advisable to engage the services of the ESCO to furnish professional services in connection with this project, and

WHEREAS, COUNTY has authority to engage such services, and

WHEREAS, the ESCO represents that it is in compliance with the applicable Wisconsin Statutes relating to the registration of architects and professional engineers and designers, and has agreed to furnish professional services for COUNTY,

NOW, THEREFORE, in consideration of the premises and to their mutual and dependent agreements, the parties hereto agree as set forth in the following pages, which are annexed hereto and made a part hereof.

IN WITNESS WHEREOF, COUNTY and the ESCO have executed this Agreement as of the above date.

H&H ENERGY SERVICES

COUNTY OF DANE

Signature: [Handwritten Signature] Date: 9/11/15

Joseph T. Parisi, County Executive Date

Printed Name: Josh Kaupich

Scott McDonell, County Clerk Date

Title: Vice President

Federal Employer Identification Number (FEIN): 35-2520111

## **1. ARTICLE 1: SCOPE OF AGREEMENT**

- 1.A. This Agreement between COUNTY and the person or firm, duly licensed under the laws and in accordance with the regulations of the State of Wisconsin, hereinafter referred to as the "ESCO" shall be governed by the following Terms and Conditions.
- 1.B. The ESCO shall provide technical and professional services under this Agreement. The Terms and Conditions of this Agreement shall apply to modifications made to this Agreement and shall apply to both the services rendered in the creation of the design and to the additional services called for in carrying out the design.
- 1.C. The ESCO shall serve as the professional technical advisor and consultant to COUNTY in matters arising out of or incidental to the performance of this Agreement and in that capacity, the ESCO shall not have a contractual duty or responsibility to any other person or party or individual regarding the services under this Agreement, except as that duty may arise under the laws of the State of Wisconsin. The ESCO is not an agent of the COUNTY within the meaning of s. 893.80 or 895.46, Wis. Stats.
- 1.D. Professional services performed or furnished under this Agreement shall be based on the care and skill ordinarily used by members of the profession involved, who practice under the authority of and who are governed by the license issued under the Wisconsin Statutes and the Wisconsin Administrative Code. The standard of care for architectural and engineering services under this Agreement shall include designing buildings, structures and / or related infrastructural systems that comply with all applicable building and safety codes.
- 1.E. By accepting this Agreement, the ESCO represents possession of the necessary skill and other qualifications to perform work under this Agreement and is familiar with the practices in the locality where such services and work shall be performed.
- 1.F. The ESCO shall review and become familiar with the current Division 00 & 01 requirements utilized by COUNTY in construction contracts and shall provide services and work, consistent with such requirements, so that the Contractor's schedule is not negatively impacted.
- 1.G. The ESCO shall be professionally responsible for work performed under this Agreement. Upon written approval of COUNTY, the ESCO may subcontract work to an approved consultant under this Agreement, to the specific extent authorized by COUNTY. The authorization to subcontract shall not relieve the ESCO of professional or contractual responsibility for any work performed or delivered under this Agreement. The authorization to subcontract shall not be construed to create any contractual relationship between COUNTY and such consultant.
- 1.H. Subcontracts for services under this Agreement shall provide that work performed under such subcontract, shall be subject to provisions of this Agreement and shall also provide that any professional duty or responsibility pertaining thereto shall be accomplished to the benefit of COUNTY. Upon request, an electronic copy of each such subcontract for which COUNTY approval is granted shall be furnished to COUNTY.
- 1.I. The ESCO may substitute consultants or professional staff under this Agreement only to the specific extent authorized by COUNTY in writing.
- 1.J. In the performance of this Agreement, the ESCO shall become familiar with and perform such services in accordance with the specifications set forth in the Request for Proposals document. The COUNTY reserves the right to update County Master Specifications

Division 00 and Division 01 at any time, including after the signing date of this Agreement. The ESCO shall use and conform to the most current County Master Specifications Division 00 and Division 01 available at the time of Final Review Documents and the ESCO shall not be eligible for a change order based upon alterations to said County Master Specifications Division 00 and Division 01 occurring after the date of Agreement signing.

## **2. ARTICLE 2: SCOPE OF THE SERVICES TO BE PROVIDED**

### **2.A. General:**

2.A.1) Services are to be provided by the ESCO in each of the following phases:

Facility Investment Grade Energy Audit & Energy Assessment Report Phase  
Engineering & Design Phase  
Construction & Implementation Phase

2.A.2) An assigned COUNTY Public Works Project Manager will be the ESCO's contact in securing COUNTY direction and for arranging the necessary meetings with COUNTY or other County Departments and obtaining the approvals required by COUNTY.

2.A.3) The ESCO shall create a log of all COUNTY and ESCO generated design changes resulting from meetings and communications from COUNTY. This log shall be kept throughout the entire design process and submitted to COUNTY every two (2) months.

2.A.4) The ESCO shall facilitate a site investigation for the purpose of identifying conditions at the site which might adversely affect the achievement of the proposed design.

2.A.5) The term "written" or "in writing" may be either electronic or hard copy documentation, unless otherwise stated or directed by COUNTY.

2.A.6) Tasks performed under the Measurement & Verification (M&V) Phase shall be done under a separate agreement.

### **2.B. Facility Investment Grade Energy Audit & Energy Assessment Report Phase:**

2.B.1) ESCO shall perform an Investment Grade Audit and develop an Energy Assessment Report in accordance with the Dane County Request for Proposals, Scope of Work described below and the State of Wisconsin "Guidelines for Energy Saving Performance Contracts". ESCO shall complete the Investment Grade Audit and present to the Customer with the final Energy Assessment Report within 75 calendar days from the execution of this Agreement.

2.B.2) Analyze savings and costs for each energy and water saving measure.

2.B.2) a. Evaluate technologies in a comprehensive approach including, but not limited to: lighting systems, heating, ventilating & air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems or other special equipment, irrigation, water saving devices.

- 2.B.2) b. Follow analytical methodology established by ASHRAE, the Department of Energy Federal Energy Management Program, or another nationally-recognized authority.
- 2.B.2) c. Utilize assumptions, projections and baselines that best represent the value of future energy or operational savings. Include accurate marginal costs for each unit of savings at the time the audit is performed, adjustments to the baseline to reflect current conditions at the facility, calculations which account for the interactive effects of the recommended measures.
- 2.B.2) d. Use best industry practices regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use.
- 2.B.2) e. Use markups and fees stated in Proposal where applicable in all cost estimates.
- 2.B.3) ESCO shall offer an Energy Savings Performance Guarantee based on a recommended package of energy and water saving measures selected by the ESCO.
- 2.B.4) The ESCO shall obtain from COUNTY information and materials necessary to ascertain scope of the Project and shall verify with COUNTY program and functional requirements of the Project. This shall include gathering information from building users subject to approval by the COUNTY Public Works Project Manager.
- 2.B.5) Based on information, materials and requirements as verified by COUNTY, ESCO shall prepare a Report consisting of text, drawings and other documents illustrating scale and relationship of the Project components. Draft version of Report shall be submitted to COUNTY for review, modifications and written approval before submitting Final version.
- 2.B.6) The ESCO shall submit to COUNTY in the Report, a construction cost estimate based on information provided by COUNTY and gathered by ESCO for Final version of Report.
- 2.B.7) Report Phase deliverables shall be:
  - 2.B.7) a. Draft Report:
    - (1) Electronic copy in Word 2010 (or earlier version);
    - (2) Electronic copy of any other files (e.g., AutoCAD 2014, Excel 2010, PowerPoint 2010, etc. (or earlier versions)) included in Report; and
    - (3) Electronic copy in Adobe Acrobat 11 (or earlier version) (PDFs converted from Word, AutoCAD, or other programs; minimize pdf file size by converting files rather than scanning printouts).
  - 2.B.7) b. Final Report:
    - (1) Original unbound paper copy in 8½ x 11 and / or 11 x 17 format prints;
    - (2) Four (4) bound copies in 8½ x 11 and / or 11 x 17 format;
    - (3) Electronic copy in Word 2010 (or earlier version);
    - (4) Electronic copy of any other files (e.g., AutoCAD 2014, Excel 2010, PowerPoint 2010, etc. (or earlier versions)) included in Report; and

- (5) Electronic copy in Adobe Acrobat 11 (or earlier version) (PDFs converted from Word, AutoCAD, or other programs; minimize pdf file size by converting files rather than scanning printouts).

2.C. Engineering & Design Phase:

- 2.C.1) The ESCO shall obtain from COUNTY information and materials necessary to ascertain scope of the Project and shall verify with COUNTY program and functional requirements of the Project. This shall include gathering information from building users subject to approval of COUNTY Public Works Project Manager.
- 2.C.2) To the extent necessary, the ESCO shall facilitate investigation of the site for existing conditions which differ from those indicated in the record drawings or which could have a detrimental impact on the achievement of the work called for under the project.
- 2.C.3) The ESCO shall document the results of design meetings, including design factors agreed to, with any instructions furnished by COUNTY to carry out such factors, including, but not limited to:

- Program clarification
- Scheduling concerns
- Existing site conditions
- Project cost estimates
- Cost-value trade offs
- Quality requirements
- Special material requirements
- Communications requirements
- Engineering requirements

- 2.C.4) The ESCO shall furnish a copy of the documentation produced under this Paragraph to each participant attending a design concept meeting.
- 2.C.5) In agreements which involve renovation or remodeling of or additions to existing facilities, the ESCO shall evaluate the suitability of existing building elements, materials and equipment for reuse in the renovated project. Reasonably accessible areas shall also be observed by the ESCO or its consultants to evaluate existing major mechanical, plumbing and electrical systems. Any of the foregoing considered to be economically reusable shall be reported to COUNTY and may be reused unless directed otherwise by COUNTY.
- 2.C.6) The ESCO shall provide sufficient, alternative design solutions on major design features to allow COUNTY to ascertain that the recommended design achieves a practical programmatic and economic solution, within the limitations of the authorized program, schedule and budget. Include staffing and occupancy considerations provided by COUNTY.
- 2.C.7) The major design features and systems that must be evaluated include, but are not limited to:

- Site & civil related work (e.g., utilities, stormwater management, erosion control)
- Structural systems
- Building wall and roofing systems



Building configuration  
Heating, ventilating and air conditioning  
Plumbing  
Electrical  
Lighting systems  
Life safety systems

- 2.C.8) The ESCO shall provide a working analysis of each major design feature included in the selected design concept, with constraints and dependencies that is sufficiently complete to allow commencement of the Construction Documents.
- 2.C.9) Based on information, materials and requirements as verified by COUNTY, the ESCO shall prepare Design Development (DD) level documents & Construction Documents (CD) consisting of drawings and other documents illustrating scale and relationship of the Project components. DDs & CDs shall be submitted to COUNTY for written Approval.
- 2.C.10) The ESCO shall submit to COUNTY construction cost estimates based on information provided by COUNTY and approved DDs & CDs.
- 2.C.11) The ESCO shall prepare drawings, specifications and other data tailored to the project that fix and describe the size and character of the entire project as to major design features and systems and such other essentials outlined by COUNTY.
- 2.C.11) a. The drawings shall include plans, elevations, sections and details at a scale which is sufficient to fully illustrate the design concepts, materials and finishes to be employed. Drawings shall be in format as approved by COUNTY.
- 2.C.11) b. The outline specifications shall include relevant specific information for Division 01 - Bidding and Contract Requirements and a list of the applicable technical divisions.
- 2.C.12) COUNTY will issue a list of recommended changes / corrections to be incorporated into the documents. Within seven (7) days of receipt, the ESCO shall transmit written replies to review comments issued by COUNTY. Directions by COUNTY shall be incorporated into the design, unless the ESCO shall have explained objections to COUNTY and obtained prior written approval of noncompliance from COUNTY before proceeding with related work.
- 2.C.13) Approval of these documents by COUNTY will complete the Design Development documents, whereupon COUNTY will issue written instruction to the ESCO to proceed to Construction Documents.
- 2.C.14) Design Development documents deliverables shall be:
- 2.C.14) a. Four (4) bound copies; and
- 2.C.14) b. Electronic version of all documents:
- (1) Word 2010, AutoCAD 2014 (or earlier versions); and
  - (2) Adobe Acrobat 11 (or earlier version) (PDFs converted from Word, AutoCAD, or other programs; minimize pdf file size by converting files rather than scanning printouts).

2.C.15) During the Construction Documents phase, the ESCO shall develop and provide documents for the systems designed under this Agreement which will achieve a biddable and constructible project, compliant with all applicable building and safety codes and within the assumption of professional responsibility set forth in this Agreement. These services shall include, but not be limited to:

2.C.15) a. Coordination, to protect the integrity of the design and facilitate construction with:

- (1) Manufacturers: Ensure that manufactured items called for in the documents are currently available and will fit, interface and perform as required to achieve design intent.
- (2) Occupying Agency: Ensure that program-required furniture, finishes and equipment layout is suitable so as to be compatible but not interfere with access to, placement or operation of the mechanical, electrical or plumbing appurtenances.
- (3) Governmental authorities having jurisdiction over the work:
  - a) The ESCO shall submit documents for approval to public agencies having jurisdiction over the project and after obtaining such approval of those agencies, the ESCO shall file two (2) copies of such approval with COUNTY.
- (4) Such other agencies, boards, associations or individuals whose activities could impact or interfere with the successful completion of the project.

2.C.15) b. Inclusion in the Construction Documents of:

- (1) Plans, elevations and sections at a scale which is sufficient to give a full and complete understanding of the construction, dimensions thereof, materials to be employed, location of utilities and any other pertinent data.
- (2) Details, diagrams, schedules, photo reproductions and other graphic methods appropriate to define work required to be performed to accomplish the purposes of the project.
- (3) Description of existing conditions of site and / or structures with sufficient clarity to permit their use without ambiguity in the bidding and construction process.

2.C.15) c. Inclusion in the specifications documents of bidding and contract requirements, special provisions and / or appendices, and technical sections. Unless otherwise agreed to by COUNTY in writing, the format shall generally follow the divisions of the Construction Specifications Institute. If approved by COUNTY in writing, short form specifications for limited scope work may be included on the drawings in lieu of Construction Specifications Institute format specification sections.

- (1) The technical sections of the specifications shall completely and concisely describe the materials and services to be employed or installed by the construction contractor(s) in the work. These

specifications shall describe the work to be done and shall be arranged by work or material in appropriate divisions with suitable cross-references for clarity and continuity.

- (2) The technical sections of the specifications shall be carefully worded to allow a clear understanding of the work required by each of the construction contractors and their subcontractors, and to describe the responsibility for the work required to be performed by such contractor(s), individually and collectively, for the performance of work required to deliver the project complete, without ambiguity as to which technical sections of the specifications cover each element of work.
- (3) The technical sections of the specifications shall clearly state the minimum grade, quality, and type of materials and workmanship required. These specifications shall not restrict competition, where it is available, but shall state a level of quality, which can be objectively determined by persons normally engaged in the type of trade or practice described.
- (4) When two (2) or more manufacturers offer on the open market materials, equipment or devices of equal quality and usability needed for the project, each such known manufactured product shall be specified for potential use on the project.
- (5) The professional judgment of the ESCO or the direction of the COUNTY may limit competition to a brand name, process, or technique of manufacture.
- (6) The ESCO shall compile and include in the construction contract documents a summary listing of all submittals required for the project from the construction contractor(s). Included shall be shop drawings, samples, cuts, catalogs, models, mockups and other preliminary information needed from the contractors to describe how they will fulfill their responsibilities under their contracts.

2.C.16) Upon determination by the ESCO that the final project design is represented by completed Construction Documents, those documents shall be submitted to COUNTY for review and concurrence prior to release for bidding.

2.C.16) a. The ESCO shall provide COUNTY with up to four (4) sets of final drawings and specifications for final review in a format and standard specified by the COUNTY.

2.C.16) b. COUNTY will issue a list of recommended changes / corrections to be incorporated in the final documents. The ESCO shall within seven (7) days transmit written replies from the ESCO and its sub-consultants to review comments issued by COUNTY or for which clarification requests were identified or for which changes were authorized at the final design review meeting and communicated to the ESCO. Directions by COUNTY shall be incorporated into the documents.

2.C.17) Prior to submission of the final documents, the ESCO shall call for a final review meeting with COUNTY, if needed, to finalize and prepare for publication of the final bidding documents, with any conditions required by COUNTY.

2.C.18) At the time of delivery of the final documents, the ESCO shall report to COUNTY, in writing with updated estimates of project costs, life cycle cost when requested, and schedules.

2.C.19) COUNTY will print and distribute drawings and specifications for bidding purposes without cost to the ESCO. The ESCO shall provide the original drawings, original specifications and an electronic copy of both the drawings and original specifications for printing by COUNTY, in a format as approved by COUNTY. If the ESCO is directed by COUNTY to acquire the necessary printing services, these services shall be a reimbursable expense as provided in Article 4.C. hereof.

2.C.20) Constructions Documents deliverables shall be:

2.C.20) a. 90% Construction Documents:

- (1) Four (4) bound copies of Drawings & Specifications; and
- (2) Electronic version of all documents:
  - a) Drawings in Adobe Acrobat 11 (or earlier version; PDFs); and
  - b) Project Manual in Word 2010 (or earlier version).

2.C.20) b. Final Construction Documents:

- (1) Original unbound copy of Drawings and Project Manual in full size, paper format;
- (2) Four (4) bound copies of Drawings and Project Manual;
- (3) One (1) bound copy of Drawings and Project Manual to be submitted by ESCO to State of Wisconsin and / or City of Madison for stamped approval; and
- (4) Electronic version of all documents on CD, USB flash drive or sent via email:
  - a) Drawings in AutoCAD 2014 (or earlier version):
    1. Each digital sheet shall be complete with x-refs or base plan sheets included and attached;
    2. All external data from non-AutoCAD programs (e.g., Excel or Word) shall be included and attached; and
    3. Include copy of Plot Style Table (ctp file) used to print drawings.
  - b) Drawings in Adobe Acrobat 11 (or earlier version; minimize pdf file size by converting files from AutoCAD or other programs);
  - c) Project Manual in Word 2010 (or earlier version); and
  - d) Project Manual in Adobe Acrobat 11 (or earlier version; minimize pdf file size by converting files from Word or other programs, rather than scanning printouts).

2.C.21) ESCO will distribute Construction Documents and any necessary addenda to prospective bidders and conduct the bid opening for the project.

2.D. Construction & Implementation Phase:

2.D.1) An assigned COUNTY Project Manager will be responsible for arranging and conducting construction-related meetings as required and act as the point of contact for the construction contractors. A COUNTY approved ESCO representative shall attend, take notes, publish and distribute COUNTY approved minutes of job meetings.

- 2.D.2) After the award of the construction contract(s), the ESCO shall become an on-site technical and professional advisor to COUNTY. In this capacity the ESCO will have continuous access to the site. The ESCO, through COUNTY's Project Representative, will have access to data in the construction contractor(s) files or offices pertaining to the quality or time requirements of the construction contract(s), in the same mode, manner and extent that such data would be available to COUNTY.
- 2.D.2) a. When requested and specifically contracted for by COUNTY, the ESCO shall provide a full-time, on-site representative who shall be qualified in construction administration and subject to the approval of COUNTY. The ESCO shall keep COUNTY informed of the progress and quality of the work based on on-site observations and shall endeavor to protect COUNTY against defects and deficiencies in the work.
- 2.D.3) Immediately following the pre-construction meeting and prior to the start of construction, the ESCO shall review the proposed schedule for submittals from the construction contractor(s). The ESCO shall assess the timing feasibility of such submittals relative to the construction schedule and review needed, and advise COUNTY in writing accordingly.
- 2.D.3) a. The ESCO shall be responsible for the professional review and approval or rejection of shop drawings, samples and other submittals from the construction contractor(s) to determine conformance with the specific portions of the Construction Documents under which the submittal was made. Deviation from the Construction Documents as noted by the contractor on submittals or otherwise observed by the ESCO shall be brought to the attention of COUNTY's Project Representative and concurrence received from COUNTY before any approval is given to a contractor. Review of the submittals which have priority status as determined by COUNTY's Project Representative, must be completed within five (5) working days of receipt. Review of other submittals shall be completed within ten (10) working days of receipt, or in accordance with the submittal schedule prepared by the General Contractor and as approved by COUNTY and ESCO at the start of construction. The ESCO is responsible for submittal activity conducted by its consultants in the same manner as if such review were made by the ESCO.
- 2.D.3) b. The ESCO shall also review the results of all testing conducted during or after construction and report to COUNTY whether these results meet the design intent and the requirements of the Construction Documents.
- 2.D.4) The ESCO's site representative shall observe the construction process to evaluate the adequacy and completeness of the construction contractor(s) compliance with the Construction Documents, and shall immediately report any noncompliance to the COUNTY Project Manager in writing.
- 2.D.4) a. The ESCO shall be responsible for the coordination and performance of on-site services performed by consultants employed by the ESCO and shall review reports and other data submitted by such consultants. The ESCO and each consultant engaged under Article 1.G. and ATTACHMENT A - ESCO / CONSULTANT AGREEMENT shall visit the job site regularly. The ESCO shall provide in each consultant agreement, a requirement for consultant visits to the site and a schedule for such visits for professional

evaluation of the work monitored by each consultant and a reporting system to inform COUNTY. Site visits shall coincide with crucial times of the construction for the specialty area involved.

- 2.D.4) b. Following construction site visits, the ESCO shall make routine, written status reports detailing observations and activities on the project, at such intervals as is elsewhere herein established and in a format approved by COUNTY. The ESCO shall submit the reports within three (3) days of the site visit by the ESCO's representative. Reporting requirements for full-time, on-site representation shall be established by each Agreement for such professional services.
- 2.D.4) c. The ESCO's site representative will receive copies of reports submitted by the General Contractor and shall provide site observation to evaluate the reports. Discovered construction variances shall immediately be reported to COUNTY.
- 2.D.4) d. If it becomes necessary during construction, to interpret, construe, clarify or to otherwise determine the reasonable meaning, application or implementation of the Construction Documents, the ESCO acting in good faith, based upon the facts made known to it at the time, shall recommend to COUNTY in writing, a reasonable course of conduct in connection with the issues involved. Such recommendation(s) may be considered for further contractual action by COUNTY.
- 2.D.4) e. Should the ESCO become aware that the work of any contractor or subcontractor in place or underway does not conform to the work or quality required by the Construction Documents, the COUNTY Project Manager shall be immediately notified in writing. It is appropriate for the ESCO to also immediately advise the contractors of substantial deficiencies, and that notification of these deficiencies will be made to COUNTY. The ESCO shall furnish such data as necessary to inform COUNTY of the degree of the noncompliance with the Construction Documents, the cause thereof, the impact on schedule and cost, if known, and a recommended course of conduct. COUNTY shall be solely responsible for implementation of the ESCO's recommendation. This assumption of responsibility by COUNTY shall not relieve the ESCO or its consultants for negligence in the discovery of the condition, which was or should have been discovered.
- 2.D.4) f. If the ESCO considers suspension of construction work appropriate, the ESCO shall notify COUNTY in writing and state the reasons, which, in the professional opinion of the ESCO, justify such action.
- 2.D.5) Necessary professional services or construction required to repair or overcome problems caused by errors, omissions, ambiguities or changes not authorized by COUNTY in the preparation of the documents or design shall be the responsibility of the ESCO or its consultants, without additional cost to COUNTY.
- 2.D.6) The ESCO shall review requests for information (RFIs) and shall respond within five (5) working days.
- 2.D.7) The ESCO shall develop and issue appropriate construction bulletins (CBs) at the direction of the COUNTY Project Manager. The ESCO shall then evaluate the CB proposals received from the construction contractors and provide COUNTY

with a written recommendation regarding the appropriateness of the proposals. The evaluation and recommendation shall be completed within five (5) working days of receipt, or in accordance with another schedule approved by COUNTY. The evaluation shall consider the necessity for such change, the reasonableness of the proposed change, and an analysis of the cost proposed for effecting the change.

2.D.8) The ESCO shall assist in the preparation of applications for energy incentive programs, when applicable.

2.D.9) Upon contractor's written notification and the COUNTY Project Manager's confirmation that Substantial Completion has taken place, the ESCO shall observe the construction and provide a written punchlist to the COUNTY Project Manager. The COUNTY Project Manager will schedule the punchlist inspection in conjunction with the User and contractors involved. The punchlist shall contain items found not to be complete, in need of correction, replacement or otherwise not in accordance with the Construction Documents. As part of the Substantial Completion verification, the ESCO shall perform or witness and document functional testing and review the testing and balance report prepared by others for all plumbing, HVAC, fire protection and electrical systems to verify installation and operation meet the intent of their design. The ESCO shall forward the results of the functional testing and provide written recommendations for corrective measures where systems do not meet the intent of their design. The ESCO shall prepare and distribute the Certificate of Substantial Completion when appropriate.

2.D.10) ESCO will provide a set of Construction Documents to General Contractor on which daily records of changes and deviations shall be recorded. At completion of the project, General Contractor will submit its marked-up as-built documents to the ESCO who shall, based on these marked up as-built documents, revise the original documents, including the electronic files, showing changes in the work made during the construction process to produce a set of Record Documents. Electronic documents shall be in a format and on a medium required by COUNTY. This work shall be completed and submitted to COUNTY within thirty (30) days of receipt of the last marked up prints. The consequences of addenda, change orders and other circumstances known by the ESCO to have caused change shall be included in the production of the Record Documents. The marked-up as-built documents shall be turned over to the COUNTY at the same time as the Record Documents.

2.D.10) a. Record Documents deliverables shall be:

- (1) Original unbound copy of Drawings and Project Manual in full size, paper format;
- (2) Three (3) bound copies of Drawings and Project Manual; and
- (3) Electronic version of all documents on CD, USB flash drive or sent via email:
  - a) Drawings in AutoCAD 2014 (or earlier version);
    1. Each digital sheet shall be complete with x-refs or base plan sheets included and attached;
    2. All external data from non-AutoCAD programs (e.g., Excel or Word) shall be included and attached; and
    3. Include copy of Plot Style Table (ctb file) used to print drawings.

- b) Drawings in Adobe Acrobat 11 (or earlier version; minimize pdf file size by converting files from AutoCAD or other programs);
- c) Project Manual in Word 2010 (or earlier version); and
- d) Project Manual in Adobe Acrobat 11 (or earlier version; minimize pdf file size by converting files from Word or other programs, rather than scanning printouts).

2.D.11) The ESCO shall obtain from the General Contractor, and review for compliance with design intent, an Operating and Maintenance Manual for building systems and operable mechanical and electrical equipment on the project, both powered and manual. Two (2) copies of the Manuals shall be provided to COUNTY's Project Representative. These manuals shall include:

2.D.11) a. Manufacturer's Instruction for Maintenance and Operation of Equipment and Systems, including a Spare Parts List; and

2.D.11) b. Temperature Control Record Drawings and Equipment Data Sheets including recommended maintenance procedures.

2.D.12) It is the intent of the Agreement to impose upon the ESCO the duty of the faithful fulfillment, in accordance with the standard of care ordinary to the profession, of the performance of the duties specifically enumerated herein and for the close monitoring of the work of its consultants as if the work were performed by the ESCO. As such, this shall not preclude the entitlement to COUNTY of reasonable expectation that systems as designed by the ESCO or their consultants will operate as anticipated by COUNTY upon faithful completion of construction.

2.E. Measurement & Verification Phase:

2.E.1) Tasks performed under this Phase shall be done under a separate agreement.

2.E.2) ESCO shall work with third party consultant hired by COUNTY for M&V throughout the course of the project.

2.E.3) M&V consultant will be the authority reporting to the COUNTY on actual energy & water savings achieved & compare them to what the ESCO has guaranteed.

### **3. ARTICLE 3: COUNTY'S RESPONSIBILITIES**

3.A. COUNTY will determine the project scope for which the professional design services are required and will fully cooperate in achieving completion of that work.

3.B. COUNTY will establish an internal operating procedure for timely and proper performance of any COUNTY duty required to fulfill the needs of the project.

3.C. COUNTY will provide available information regarding the requirements for the project, which set forth COUNTY's objectives for program, schedule and overall budget. COUNTY will make available to the ESCO data known to COUNTY or requested by the ESCO, which may be needed for the fulfillment of the professional responsibility of the ESCO. This data may include, but is not limited to, prints of existing buildings or record drawings and COUNTY standards and guides. Such documents will be the most recent and accurate available. The use of any such data by the ESCO shall be without contractual or legal significance unless otherwise established elsewhere in this Agreement. However,



providing of documents by COUNTY shall not relieve the ESCO from the responsibility for conducting a field survey to verify existing conditions as specified herein.

- 3.D. COUNTY will communicate to the ESCO the format of the documents required to be submitted.
- 3.E. COUNTY will examine documents submitted by the ESCO and will render decisions regarding them promptly, to avoid unreasonable delay in the progress and sequence of the ESCO's work. COUNTY will coordinate review comments from the User agency and COUNTY staff prior to issuance to the ESCO.
- 3.F. COUNTY will prepare and process the Agreements between COUNTY and ESCO, and between COUNTY and construction contractor(s).
- 3.G. Unless otherwise specified in this Agreement, COUNTY will arrange for services of a testing laboratory to furnish structural, chemical, mechanical and other laboratory tests, inspections and reports as required by law or deemed necessary by COUNTY.

#### **4. ARTICLE 4: COMPENSATION**

- 4.A. ESCO fees for basic services will be compensated by COUNTY in accordance with the Terms and Conditions of this Agreement as follows:
  - 4.A.1) COUNTY shall have no payment obligations at the time of execution of this Agreement, but acknowledge that the fee for the Investment Grade Energy Audit and Energy Assessment Report shall be incorporated into ESCO's project costs.
    - 4.A.1) a. If within 30 business days of a COUNTY decision not to enter into go beyond the Investment Grade Audit, the COUNTY shall compensate the ESCO at the rate of \$0.075 per square foot of the building audited.
    - 4.A.1) b. Should the ESCO determine during the Investment Grade Audit that savings cannot be attained to meet the COUNTY's terms as set forth in the RFP, the Investment Grade Audit may be terminated upon the COUNTY's receipt of written notice from the ESCO. In this event, the COUNTY shall have the option to terminate the Agreement and the COUNTY shall only pay for the Investment Grade Audit and shall have no obligation to pay, in whole or in part, for the remainder of the Agreement.
    - 4.A.1) c. The COUNTY shall have no payment obligations under this Agreement in the event that ESCO's final Investment Grade Audit and Energy Assessment Report does not contain a package of energy and water saving measures which, if implemented, shall provide the COUNTY with guaranteed cash savings to meet the following terms:
      - (1) Savings sufficient to fund the COUNTY's payments for all costs associated with the Energy Saving Performance Contract, including debt service on 5.25% State bond financing for a maximum twenty-year term.
  - 4.A.2) Fixed fee of 22% of total construction cost.
    - 4.A.2) a. Initial payments will be made based on cost estimates developed for the Project's current Phase.

- 4.A.2) b. Final payments will be made based on actual total construction cost plus / minus all OWNER initiated change orders.
- 4.A.2) c. If COUNTY reduces scope after ENGINEER has completed services, fees will be reduced for future services, not for services already completed.
- 4.A.2) d. The ESCO fee for professional services shall be in accordance with the terms of this Agreement and based on the scope of services contained in the Request for Proposals, dated May 21, 2015, including any subsequent Addenda.
- 4.A.2) e. The ESCO is authorized to proceed through completion of the Construction & Implementation Phase. The ESCO Fee is limited to \$352,000.00, until written instructions to proceed are provided by COUNTY.
- 4.A.2) f. The total budget for this project is estimated at \$1,500,000.00. This amount excludes all construction costs of contingency and unless stated otherwise in this Agreement, hazardous materials abatement or remediation.
- 4.A.3) No change in fee shall result from change orders to construction contracts unless such change is described as an Additional Service under Article 4.D. of this Agreement and approved by COUNTY. When the ESCO's Design Report estimate indicates a revised project cost and such revision is approved by COUNTY, the amount of the lump sum fee may be renegotiated.
- 4.A.4) In the event the lowest acceptable construction bids exceed the fixed limit of construction, as shown above plus any COUNTY increases approved before bidding, COUNTY will do one or more of the following:
  - 4.A.4) a. Cooperate in revising the project scope and quality as required to reduce the project cost;
  - 4.A.4) b. Authorize the rebidding of the project within a reasonable time; and / or
  - 4.A.4) c. Give written approval of an increase in such fixed limit.
- 4.A.5) In the case of 4.A.3.a. above, the ESCO shall revise the drawings and specifications as necessary to bring the construction cost within the fixed limit. These revisions shall be completed by the ESCO without additional compensation.
- 4.A.6) In the case of 4.A.3.a. or 4.A.3.b. above, no additional fees will be allowed for rebidding or for an increase in allocated funds.
- 4.B. The ESCO's Compensation for Additional Services, as described in Article 4.D., will be computed as follows:
  - 4.B.1) Principals' time at a fixed rate of \$85.00 per hour, unless separate amounts are provided for each Principal. For the purposes of this Agreement, the Principal is:
    - Josh Kaurich
  - 4.B.2) Other design staff shall be billed at these fixed rates:
    - Assistant project manager: \$60.00 per hour

<u>Administrative assistant:</u>	<u>\$50.00 per hour</u>
<u>Cost estimator:</u>	<u>\$65.00 per hour</u>
<u>Engineering:</u>	<u>\$95.00 per hour</u>
<u>CAD / Drafting:</u>	<u>\$60.00 per hour</u>
<u>Safety director:</u>	<u>\$70.00 per hour</u>
<u>Foreman:</u>	<u>\$82.58 per hour</u>
<u>Journeyman:</u>	<u>\$76.28 per hour</u>
<u>Apprentice:</u>	<u>\$59.80 per hour</u>

4.B.3) Employee's time shall be computed using the employee's basic hourly salary and include overhead costs for clerical support and mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays and vacations, pensions and similar benefits for persons in consultation, research and design in producing drawings, specifications and other documents pertaining to the project and for services during construction at the site.

4.C. Reimbursable Expenses:

4.C.1) Reimbursable Expenses are actual, incidental expenses incurred by the ESCO, its employees or consultants, in the interest of the project and are not included in overhead costs for the Fees for Basic Services (4.A.) and Additional Services (4.D.). Reimbursable Expenses shall be incurred or contracted for only with PRIOR written approval from COUNTY. Such approval shall be based on a written proposal delineating the nature of the services, the time involved, the estimated cost thereof, and the individuals or firms involved. Payment Requests from consultants and construction contractors providing these Reimbursable Expenses shall be reviewed by the ESCO to check the accuracy of and entitlement to the sums requested. Reimbursable Expenses may include, but are not limited to, the following incidental expenses:

4.C.1) a. Expense of reproduction of drawings and specifications, excluding the review sets required in Article 2.

4.C.1) b. Expense of a site survey when needed.

4.C.1) c. Expense of a geotechnical investigation and soils and material testing when required.

4.C.1) d. Expense of State Review fees.

4.C.2) Expenses not eligible for reimbursement shall include, but are not limited to, indirect project overhead costs associated with the Fees for Basic Services (4.A.) and Additional Services (4.D.) such as mileage, travel, lodging, replication of drawings for the design development meetings and subsequent design meetings, preliminary and final review document printing, handling and postage, cost of

correspondence transmittals, telephone expenses, and CAD / electronic graphic services. Such expenses shall be included as part of the Lump Sum fee.

4.D. Additional Services:

4.D.1) The following services are in addition to but are not covered in Article 4.A. These services may be identified as part of the ESCO's fee proposal and included with the lump sum fee as such. Compensation for these additional services or other services must be requested by the ESCO, and subsequently approved by COUNTY PRIOR to proceeding with the work. If the additional services are requested after the Agreement has been issued, such authorization shall be based on a written proposal delineating the nature of the services, the time involved, the estimated cost thereof, the effect on the project schedule and the individuals or firms involved. When authorized, an Agreement Change Order will be used to modify the ESCO's Agreement.

4.D.1) a. Providing planning surveys, program revision, site feasibility, or comparative studies of prospective sites.

4.D.1) b. Revising previously approved drawings, specifications or other documents after written approval of Design Development Phase, to accomplish changes not initiated by the ESCO other than record documents and revisions normally to be expected or required to correct deficiencies in the approved drawings and specifications.

4.D.1) c. Preparing detailed models, perspective or renderings.

4.D.1) d. Preparing documents for alternate bids or petitions for waiver when requested by COUNTY and, requiring significant additional time and expense on the part of the ESCO or its consultants.

4.D.1) e. Obtaining or participating in third party Value Engineering / Enhancement of the project when directed by COUNTY.

4.D.1) f. Providing services other than corrective design work and record documents, after final payment to the construction contractor(s).

4.D.1) g. Providing services requested by COUNTY for or in connection with the selection of specific movable furniture, fixtures and equipment (FFE) by the occupying agency during the Construction Phase.

4.D.1) h. Providing services as expert witness in connection with any public hearings, arbitration proceeding, or the proceedings of a court of record except when the ESCO is party thereto.

4.D.1) i. Providing historical preservation research or documentation.

4.D.1) j. Providing specialized design services, including, but not limited to Sustainability design or LEED certification, vibration, wind or acoustical analysis, energy modeling.

4.D.1) k. Preparing multiple bid packages.

4.E. Payments to the ESCO:

4.E.1) Payments of the ESCO's lump sum fee will be made monthly, in proportion to services performed as confirmed by COUNTY, to increase the compensation to the following percentages of the lump sum fee at the completion of each phase of the work.

Audit & Report Phase	15%
Engineering & Design Phase	50%
Construction Phase	75%
M&V Phase (over 3 years)	100%

4.E.2) When COUNTY confirms that development of punch lists, review of Operating & Maintenance Manuals, submittal of record documents, has been satisfactorily completed by the ESCO, COUNTY will determine how and when the remaining lump sum fee is disbursed.

4.E.3) Payments for COUNTY-approved Reimbursable Expenses as defined in Article 4.C. and Additional Services of the ESCO as defined in Article 4.D., will be made monthly upon request.

4.E.4) An ESCO whose work is found deficient or fails to conform to the requirements set forth in the Agreement, is not entitled to further payments, until corrected to the satisfaction of COUNTY.

4.E.4) a. Payments to the ESCO may be withheld for damages sustained by COUNTY due to error, omission, unauthorized changes or negligence on the part of the ESCO. COUNTY will notify the ESCO in writing of the alleged, specific damages and amounts involved, on a timely basis.

4.E.5) Payments to the ESCO will not be withheld due to disputes between construction contractor(s) and COUNTY.

**5. ARTICLE 5: ACCOUNTING RECORDS**

5.A. Records of the ESCO's direct personnel, consultants, and reimbursable expenses pertaining to the project shall be kept in accordance with Generally Accepted Accounting Principles (GAAP) and shall be available to COUNTY or an authorized representative throughout the term of this Agreement and for at least three (3) years after final payment to the ESCO.

**6. ARTICLE 6: TERMINATION OF AGREEMENT**

6.A. This Agreement may be terminated by COUNTY without cause upon ten (10) calendar days written notice to the ESCO. In the event of termination, the ESCO will be paid fees for services performed to termination date, reimbursable expenses then due, and termination expenses as approved by COUNTY. Work performed prior to the date of termination shall be in accordance with the terms and conditions of this Agreement. Upon termination, the results of such work shall immediately be turned over to the COUNTY Project Manager and is a condition precedent to further payment by COUNTY.

6.B. In the event the Agreement between the ESCO and any consultant on this project is terminated, the results of work by that consultant shall immediately be turned over to the ESCO.

## **7. ARTICLE 7: OWNERSHIP OF DOCUMENTS**

- 7.A. All drawings and specifications, renderings, models, scale details, approved copies of shop drawings and other such documents prepared by the ESCO or any consultant pursuant to this Agreement shall become the property of COUNTY on completion and acceptance of any of the ESCO's work, or upon termination of the Agreement, and shall be delivered to COUNTY upon request.
- 7.B. Documents prepared under this Agreement may be used by COUNTY for informational purposes without additional compensation to the ESCO.
- 7.C. Specifications and isolated, detail drawings inherent to the architectural / engineering design of the project, whether provided by the COUNTY or generated by the ESCO, shall be available for future use by the parties to this Agreement and other parties, each at their own risk.

## **8. ARTICLE 8: LIABILITY- HOLD HARMLESS AND INDEMNIFICATION**

- 8.A. ESCO shall indemnify, hold harmless and defend COUNTY, its boards, commissions, agencies, officers, employees and representatives against any and all liability, loss (including, but not limited to, property damage, bodily injury and loss of life), damages, costs or expenses which COUNTY, its officers, employees, agencies, boards, commissions and representatives may sustain, incur or be required to pay by reason of ESCO furnishing the services required to be provided under this Agreement, provided, however, that the provisions of this paragraph shall not apply to liabilities, losses, charges, costs, or expenses caused or resulting from the acts or omissions of COUNTY, its agencies, boards, commissions, officers, employees or representatives. The obligations of ESCO under this paragraph shall survive the expiration or termination of this Agreement.

## **9. ARTICLE 9: PROFESSIONAL LIABILITY INSURANCE**

- 9.A. The ESCO and its consultants retained under the terms of this Agreement shall procure and maintain professional liability insurance providing for payment of the insured's liability for errors, omissions or negligent acts arising out of the performance of the professional services required under this Agreement. The ESCO shall provide up-to-date, accurate professional liability information on the ESCO's Data Record, including amount of insurance, deductible, carrier and expiration date of coverage. Upon request by COUNTY, the ESCO shall furnish COUNTY with a Certificate of Insurance showing the type, amount, deductible, effective date and date of expiration of such policy. Such certificate shall also contain substantially the following statement: "The insurance covered by this certificate shall not be canceled, the coverage changed or reduced by endorsement, by the insurance company, except after thirty (30) calendar days written notice has been received by COUNTY." The ESCO shall not cancel or materially alter this coverage without prior written approval by COUNTY. The ESCO shall be responsible for consultants maintaining professional liability insurance during the life of their Agreement.

## **10. ARTICLE 10: OTHER INSURANCE**

- 10.A. The ESCO and its consultants retained under terms of this Agreement shall:

- 10.A.1) Maintain Worker's Compensation Insurance:

- 10.A.1) a. Procure and maintain Worker's Compensation Insurance as required by State of Wisconsin Statutes for all of the ESCO's and consultant's

employees engaged in work associated with the project under this Agreement.

10.A.1) b. Maintain Employer's Liability Insurance with a policy limit of not less than 100,000/500,000/100,000 per occurrence.

10.A.2) Procure and maintain during the life of this Agreement, and until one year after the completion of this Agreement, Commercial General Liability Insurance, including Products and Completed Operations for all claims that might occur in carrying out the Agreement. Minimum coverage shall be \$1,000,000 per occurrence, \$1,000,000 general aggregate, combined single limit for bodily injury, personal injury, and property damage. Such coverage shall be of the "occurrence" type form and shall include the employees of the ESCO as insureds.

10.A.3) Procure and maintain Commercial Automobile Liability Insurance for all owned, non-owned, and hired vehicles that are used in carrying out the Agreement. Minimum coverage shall be \$1,000,000 per occurrence combined single limit for bodily injury and property damage.

10.A.4) Provide an insurance certificate indicating the above Commercial Liability Insurance and property damage coverage, countersigned by an insurer licensed to do business in Wisconsin, covering and maintained for the period of the Agreement. Upon request by COUNTY, the insurance certificate is to be presented on or before execution of the Agreement.

## **11. ARTICLE 11: MISCELLANEOUS PROVISIONS**

11.A. ESCO warrants that it has complied with all necessary requirements to do business in the State of Wisconsin, that the persons executing this Agreement on its behalf are authorized to do so.

11.B. Legal Relations. The ESCO shall comply with and observe federal and state laws and regulations and local zoning ordinances applicable to this project and in effect on the date of this Agreement.

11.C. Approvals or Inspections. None of the approvals or inspections performed by COUNTY shall be construed or implied to relieve the ESCO from any duty or responsibility it has for its professional performance, unless COUNTY formally assumes such responsibility in writing from COUNTY so stating that the responsibility has been assumed.

11.D. Successors, Subrogees and Assigns. COUNTY and ESCO each bind themselves, their partners, successors, subrogees, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, subrogees, assigns and legal representatives of such other party with respect to covenants of this Agreement.

11.E. Claims. The ESCO's project manager will meet with COUNTY's Project Manager to attempt to resolve claims, disputes and other matters in question arising out of, or relating to, this Agreement or the breach thereof. Issues not settled are to be presented in writing to the COUNTY Assistant Public Works Director for review and resolution. The decision of the Assistant Public Works Director shall be final. Work shall progress during the period of any dispute or claim. Unless specifically agreed between the parties, venue will be in Dane County, Wisconsin.

- 11.F. Amendment of Agreement. This Agreement may be amended in writing by both COUNTY and ESCO.
- 11.G. It is expressly understood and agreed to by the parties hereto that in the event of any disagreement or controversy between the parties, Wisconsin law shall be controlling. Venue for any legal proceedings shall be in the Dane County Circuit Court.
- 11.H. This Agreement is intended to be an agreement solely between the parties hereto and for their benefit only. No part of this Agreement shall be construed to add to, supplement, amend, abridge or repeal existing duties, rights, benefits or privileges of any third party or parties, including but not limited to employees of either of the parties.
- 11.I. The entire agreement of the parties is contained herein and this Agreement supersedes any and all oral agreements and negotiations between the parties relating to the subject matter hereof. The parties expressly agree that this Agreement shall not be amended in any fashion except in writing, executed by both parties.

## **12. ARTICLE 12: NONDISCRIMINATION IN EMPLOYMENT**

12.A. During the term of this Agreement, ESCO agrees not to discriminate on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record or conviction record, military participation or membership in the national guard, state defense force or any other reserve component of the military forces of the United States, or political beliefs against any person, whether a recipient of services (actual or potential) or an employee or applicant for employment. Such equal opportunity shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff, termination, training, rates of pay, and any other form of compensation or level of service(s). ESCO agrees to post in conspicuous places, available to all employees, service recipients and applicants for employment and services, notices setting forth the provisions of this paragraph. The listing of prohibited bases for discrimination shall not be construed to amend in any fashion state or federal law setting forth additional bases and exceptions shall be permitted only to the extent allowable in state or federal law.

### **12.B. Civil Rights Compliance:**

12.B.1) If ESCO has twenty (20) or more employees and receives \$20,000 in annual contracts with COUNTY, the ESCO shall submit to COUNTY a current Civil Rights Compliance Plan (CRC) for Meeting Equal Opportunity Requirements under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title VI and XVI of the Public Service Health Act, the Age Discrimination Act of 1975, the Omnibus Budget Reconciliation Act of 1981 and Americans with Disabilities Act (ADA) of 1990. ESCO shall also file an Affirmative Action (AA) Plan with COUNTY in accordance with the requirements of Chapter 19 of the Dane County Code of Ordinances. ESCO shall submit a copy of its discrimination complaint form with its CRC/AA Plan. The CRC/AA Plan must be submitted prior to the effective date of this Agreement and failure to do so by said date shall constitute grounds for immediate termination of this Agreement by COUNTY. If an approved plan has been received during the previous calendar year, a plan update is acceptable. The plan may cover a two-year period. If ESCO has less than twenty (20) employees, but receives more than \$20,000 from the COUNTY in annual contracts, it may be required to submit a CRC Action Plan to correct any problems discovered as the result of a complaint investigation or other Civil Rights Compliance monitoring



efforts set forth herein below. If ESCO submits a CRC/AA Plan to a Department of Workforce Development Division or to a Department of Health and Family Services Division that covers the services purchased by COUNTY, a verification of acceptance by the State of ESCO's Plan is sufficient.

12.B.2) ESCO agrees to comply with the COUNTY's civil rights compliance policies and procedures. ESCO agrees to comply with civil rights monitoring reviews performed by the COUNTY, including the examination of records and relevant files maintained by the ESCO. ESCO agrees to furnish all information and reports required by the COUNTY as they relate to affirmative action and non-discrimination. ESCO further agrees to cooperate with COUNTY in developing, implementing, and monitoring corrective action plans that result from any reviews.

12.B.3) ESCO shall post the Equal Opportunity Policy, the name of ESCO's designated Equal Opportunity Coordinator and the discrimination complaint process in conspicuous places available to applicants and clients of services, applicants for employment and employees. The complaint process will be according to COUNTY's policies and procedures and made available in languages and formats understandable to applicants, clients and employees. ESCO shall supply to COUNTY's Contract Compliance Officer upon request a summary document of all client complaints related to perceived discrimination in service delivery. These documents shall include names of the involved persons, nature of the complaints, and a description of any attempts made to achieve complaint resolution.

12.B.4) ESCO shall provide copies of all announcements of new employment opportunities to COUNTY's Contract Compliance Officer when such announcements are issued.

#### 12.C. Domestic Partner Equal Benefits:

12.C.1) ESCO agrees to provide the same economic benefits to all of its employees with domestic partners as it does to employees with spouses or the cash equivalent if such a benefit cannot reasonably be provided. The ESCO agrees to make available for County inspection the ESCO's payroll records relating to employees providing services on or under this Agreement or subcontract. If any payroll records of ESCO contain any false, misleading or fraudulent information, or if a ESCO fails to comply with the provisions of s. 25.016, D. C. Ordinances, the Contract Compliance Officer may withhold payments on the Agreement; terminate, cancel or suspend the Agreement in whole or in part; or, after a due process hearing, deny the contractor the right to participate in bidding on future County contracts for a period of one (1) year after the first violation is found and for a period of three (3) years after a second or subsequent violation is found.

**ATTACHMENT A**

**ENERGY SERVICE COMPANY PROFESSIONAL SERVICES AGREEMENT**

**ESCO / CONSULTANT AGREEMENT**

Date: September 11, 2015

Project No.: 315027

Agreement No.: [No.]

**THIS AGREEMENT** is between H&H Energy Services, hereinafter called "ESCO", executing this Agreement, and [Consultant Name] hereinafter called the "Consultant".

**WITNESSETH**

**WHEREAS**, the ESCO has entered into an Agreement with COUNTY to furnish professional services with a project, hereinafter named "Project", which is described as follows:

Energy Savings Performance Contract for the Northport Office

**WHEREAS**, the ESCO deems it advisable to engage the services of a Consultant to furnish professional services in connection with this project, and

**WHEREAS**, the ESCO and Consultant agree that the terms of the Agreement between COUNTY and the ESCO also apply to this Agreement as though fully set forth and binding upon the Consultant, and

**WHEREAS**, the Consultant agrees that in the event of conflict between the ESCO's Agreement with COUNTY and the ESCO's Agreement with the Consultant, the ESCO's Agreement with COUNTY shall take precedence, and

**WHEREAS**, the Consultant has signified willingness to furnish services for the ESCO;

**NOW, THEREFORE**, in consideration of the premises and to their mutual and dependent agreements, the parties hereto agree as set forth in the Agreement between COUNTY and the ESCO which are annexed hereto and made a part hereof.

**IN WITNESS WHEREOF**, the ESCO and the Consultant have executed this Agreement.

**[Consultant Firm Name]** \_\_\_\_\_ **H&H Energy Services** \_\_\_\_\_

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Providing the following services:

**[Describe services]** \_\_\_\_\_