

ENERGY AND WATER SAVINGS PERFORMANCE CONTRACT

This Energy [and Water] Savings Performance Contract (together with its attached Schedules and Exhibits, the “**Contract**”) is made and entered into as of this _____ day of _____, 2026 (the “**Effective Date**”), between Willdan Energy Solutions, a California corporation with California state contractor’s license number 1065713 (“**WES**”), and City of Orange, a municipal corporation (“**Customer**”). Each of WES and Customer may be referred to in this Contract as a “**Party**” and collectively as the “**Parties**.”

The purpose of this Contract is for WES to perform an investment grade audit (an “**IGA**”) of the Customer’s property and buildings (the “**Premises**”) [and Customer-owned and/or operated water distribution infrastructure (the “**Infrastructure**”)]; the IGA will form the basis for recommendations, which WES will present to Customer, for the implementation of energy-[and water-]savings efficiency measures, or other operating cost saving measures and equipment, as well as energy generation measures[, and/or fee-producing infrastructure facilities], as described in Schedule A (Scope of Work), with respect to the Premises [and the Infrastructure], and also for estimated program costs and overall potential energy [and water] consumption savings. The Contract will also set forth the terms and conditions under which WES will implement recommendations agreed to by Customer, and any other services agreed by WES and Customer, all of which will be designed to save energy[, water,] or other operating costs at the Premises[and/or with respect to the Infrastructure] (collectively, the “**Project**”).

RECITALS

WHEREAS, Customer owns and operates the Premises and the Infrastructure, and is in need of energy and watersaving equipment and services designed to reduce energy and water consumption and costs for the Premises and the Infrastructure, as well as improve energy quality and reliability for the Premises and the Infrastructure;

WHEREAS, WES has made a preliminary assessment of the energy and water consumption characteristics of the Infrastructure, the Premises, and the existing equipment;

WHEREAS, Customer now desires to retain WES to identify and develop energy efficiency measures as well as energy generation measures, and/or fee-producing infrastructure facilities, and in compliance with California Government Code §§4217.10 through 4217.18 and/or California Government Code §5956, to perform design and engineering work in order to deliver a proposal (the “**Proposal**”) identifying energy improvements and operational changes (collectively, “**ECMs**”) to be installed or implemented at the Customer’s facilities, and including a pro forma analysis showing that the anticipated cost to Customer to implement the identified ECMs will be less than the anticipated cost to Customer for thermal, electrical, and other energy, together with anticipated operational, maintenance and other costs, that would have been consumed by Customer in the absence of the identified ECMs; and

WHEREAS, if the Proposal is presented, on an arms’ length basis, to personnel of Customer with requisite technical training and experience, for those personnel to make judgments and determinations as to the desirability of the Proposal, and if the Proposal is deemed satisfactory by the Customer, it is the intent of the Customer to work with WES to negotiate and approve a Performance Contract Amendment hereto in the manner provided in California Government Code §4217.10 et seq. in order to procure, construct, install, and commission such ECMs, as well as to provide other services for the purpose of achieving energy, [water,] and operational savings for the Premises [and the Infrastructure], as more fully set forth herein; and

WHEREAS, Customer is authorized under the laws of the State of California to enter into this Contract for the purposes set forth herein.

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

SECTION 1 ESPC DOCUMENTS

Section 1.1. The ESPC Documents (hereinafter, “**ESPC Documents**”) consist of the City of Orange Professional Services Agreement (PSA) incorporated herein by reference, this Contract; other documents listed in this Contract; and Modifications issued after execution of this Contract. A “**Modification**” is a written amendment to the Contract (including the Performance Contract Amendment defined below, and any supplemental Scope of Work and Energy Savings Guarantee subject to this Contract), signed by both Parties. A change order is a Modification. The order of precedence for the ESPC Documents shall be:

- (a) City of Orange Professional Services Agreement
- (b) this Contract
- (c) other documents listed in this Contract
- (d) Modifications

Section 1.2. The ESPC Documents represent the entire and integrated agreement between the Parties and supersede prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The ESPC Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Customer and WES.

Section 1.3. In accordance with California Government Code §1097.6(c)(1), WES’s duties and services under this Contract shall not include preparing or assisting Customer with any portion of Customer’s preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with Customer. Customer shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this Project. WES’s participation in the planning, discussions, or drawing of project plans or specifications for any subsequent or additional contract shall be limited to conceptual, preliminary, or initial plans or specifications. WES shall cooperate with Customer to ensure that bidders (if Customer elects to utilize a bidding process) for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by WES pursuant to this Contract.

Section 1.4. Schedules and Exhibits. WES has prepared, and Customer has approved and accepted, the Exhibits and Schedules set forth below, copies of which are attached hereto and made part of this Contract by reference.

SCHEDULES

- Schedule A Scope of Work
- Schedule B Compensation to WES

EXHIBITS

Exhibit 1 Form of Performance Contract Amendment, including the following Schedules (the “**Performance Contract Amendment**”):

- Schedule 1-A Additional Responsibilities
- Schedule 1-B Certificate of Substantial Completion
- Schedule 1-C Certificate of Acceptance – Final Completion

Exhibit 2 Form of Energy and Water Savings Guarantee, including the following Schedules (the “**Energy [and Water] Savings Guarantee**”):

- Schedule 2-A Baseline Energy and Water Consumption



Schedule 2-B Savings Measurement & Calculation Formulae; Methodology to Adjust Baseline

Exhibit 3 Form of Assured Performance Guarantee – Utility Meters

SECTION 2 THE WORK

Section 2.1. The term “*Work*” means the investigation, design, engineering, construction, installation, commissioning and related services required to fulfill WES’s obligations under the ESPC Documents, whether completed or partially completed, and includes all labor, materials, equipment, and services provided or to be provided by WES.

Section 2.2. WES will fully execute the Work described in the ESPC Documents, except to the extent specifically indicated in the ESPC Documents to be the responsibility of others.

Section 2.3. WES will perform all Work through sub-contractors or through WES’s own forces.

Section 2.4. WES will perform the Work in accordance with sound engineering and safety practices, in compliance with any and all reasonable rules of Customer relative to the Premises, and in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities in effect on the Effective Date or the date of a Modification, as applicable. If WES performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, WES will assume responsibility for such Work and will bear the costs attributable to correction.

SECTION 3 PHASES OF THE WORK

Section 3.1. The Work will be performed in phases, including: the IGA Phase, the Construction Phase (and construction of any additional phases pursuant to a supplemental Scope of Work or Modification), and the corresponding Energy and Water Savings Guarantee Phase, each as outlined in the applicable Scope of Work or Modification.

(a) The IGA Phase will commence on the Effective Date.

(b) The Construction Phase will commence upon the issuance of a formal Notice to Proceed (NTP) following the execution of a Performance Contract Amendment in the form of Exhibit 1, following the conclusion of the IGA Phase.

(c) The Guarantee Phase for any Scope of Work or Modification will commence upon the execution of an Energy and Water Savings Guarantee in the form of Exhibit 2, and an Assured Performance Guarantee in the form of Exhibit 3 for such Scope of Work or Modification, following the execution of the Certificate of Acceptance – Final Completion in the form of Schedule 1-C corresponding to such Scope of Work or Modification.

Section 3.2. The Scope of Work for each phase of the Work will be defined in the applicable Schedule A (Scope of Work) (the “*Scope of Work*”). The fee for each phase of the Work will be defined in the applicable Schedule B (Compensation to WES) (the “*Compensation Schedule*”).

SECTION 4 FEES FOR THE WORK; PAYMENTS

Section 4.1. Customer will pay WES for the performance of the Work in accordance with the Compensation Schedule.

Section 4.2. Billing Information Procedure. Payments due to WES will be calculated each month and paid in accordance with the Compensation Schedule.

Section 4.3. Payment. Customer shall pay WES within thirty (30) days of receipt of WES's application for payment. Amounts unpaid thirty (30) days after the invoice date shall bear interest at 1.5% per month.

SECTION 5 FISCAL FUNDING

Section 5.1. Non-appropriation of Funds. In the event no Customer funds (or other funds), or insufficient Customer funds (or other funds), are appropriated and budgeted for any future fiscal period in which payment will be due to WES under this Contract, and funds are otherwise unavailable by any means whatsoever in such future fiscal period, then the Customer will, not less than thirty (30) days prior to the beginning of such future fiscal period, notify WES in writing of such occurrence, and this Contract will terminate on the last day of the fiscal period for which appropriations were made, without penalty or expense to the Customer of any kind whatsoever, except as to the portions of payments herein agreed, for which Customer funds and/or other funds will have been appropriated and budgeted or are otherwise available.

SECTION 6 ENERGY AND WATER USAGE RECORDS AND DATA

Section 6.1. Customer has furnished or will furnish (or cause its energy and water suppliers to furnish) to WES, upon its request, all of Customer's records and complete data concerning energy and water usage and energy and water related maintenance for the Premises, including the following data for the most current twenty-six (26) month period: utility records; occupancy information; descriptions of any changes in the building structure or its heating, cooling, lighting, water, or other systems or energy and water requirements; descriptions of all energy and water consuming or saving equipment used in the Premises; bills and records relating to maintenance of energy and water related equipment, and a description of energy and water management procedures presently utilized. If requested, Customer will also provide any prior energy and water audits of the Premises, and copies of Customer's financial statements and records related to energy and water usage and operations for the most current twenty-six (26) month period at the Premises and will make agents and employees familiar with such records available for consultations and discussions with WES.

SECTION 7 REPRESENTATIONS AND WARRANTIES

Section 7.1. 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 organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and 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; and
- (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 8 ADDITIONAL REPRESENTATIONS OF THE PARTIES

Section 8.1. Customer hereby warrants, represents and promises that it has provided, or will provide timely, to WES all records relating to energy and water usage and energy and water related maintenance of the Premises requested by WES 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.

Section 8.2. WES hereby warrants, represents and promises that:

(a) it is properly qualified, licensed and equipped to supply and perform the Work in the State of California;

(b) it will make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;

(c) it will use qualified subcontractors and delegates, appropriately registered, licensed and bonded in this state, to perform the Work so subcontracted or delegated pursuant to the terms hereof;

(d) 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.

SECTION 9 PERFORMANCE BY WES

Section 9.1. WES will perform all tasks/phases under the Contract, including the IGA Phase and the Construction Phase, in such a manner so as not to harm the structural integrity of the buildings or their operating systems. WES will repair and restore to its original condition any area of damage caused by WES's performance under this Contract. Customer reserves the right to review the Work performed by WES and to direct WES to take certain corrective action if, in the reasonable opinion of the Customer, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by WES's performance of the Work will be borne by WES.

Section 9.2. WES will remain responsible for the professional and technical accuracy of all Work performed, whether by WES or its subcontractors or others on its behalf, throughout the term of this Contract.

Section 9.3. Prior to commencing Work under this Contract, WES will furnish a performance bond, in an amount equal to one hundred percent (100%) of the Construction Phase Contract Sum, and a payment bond to guarantee payment of all claims for labor and materials furnished, in an amount equal to one hundred percent (100%) of the Construction Phase Contract Sum (collectively, the "**Contract Bonds**"). The Contract Bonds are not being furnished to cover the performance of any energy guaranty or guaranteed savings under this Contract, nor to cover any equipment and/or material manufacturer's warranty or other third-party warranty being assigned to Customer. No Construction Phase Work shall commence until the City has received and approved all required performance and payment bonds.

Section 9.4. WES and each of its Subcontractors shall, at no additional cost to Customer, comply with all applicable provisions of the California Labor Code and the regulations promulgated thereunder (collectively, the "**Labor Laws**"). To the extent required by California Labor Code §1771 or other applicable law, all employees of WES and WES's subcontractors performing Work at the Premises will be paid the per diem prevailing wages for the employee's job classification in the locality in which the Work is performed. In accordance with California Labor Code §§1773 and 1773.2, Customer will obtain from the Director of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, in the locality in which the Work is to be performed, for each craft, classification or type of worker needed to execute the Work at the Premises, and will cause copies of such determinations to be kept on file at its principal office. WES must post a copy at the Premises. Customer will promptly notify WES of any changes to any such prevailing wage determination.

Section 9.5. WES will assist Customer in the preparation and submission to the applicable agencies of applications and documentation necessary for mutually agreed energy efficiency rebate, incentive, and/or loan program(s). WES makes no guarantee that Customer will receive funding from any energy efficiency rebate, incentive, and/or loan program(s) (collectively, "**Incentive Funds**"), or any portion

thereof; WES expressly disclaims any liability for Customer's failure to receive any portion of the Incentive Funds, and Customer acknowledges and agrees that WES will have no liability for any failure to receive all or any portion of the Incentive Funds. Procurement, or lack thereof, of the Incentive Funds will not alter the Contract Price of this Contract or the payment timeline associated with payment of the Contract Price. Any and all rebate deposits paid by WES will be immediately returned to WES when received by Customer.

SECTION 10 OWNERSHIP

Section 10.1. Ownership of Certain Proprietary Property Rights. All reports, studies, designs, plans, specifications, drawings, calculations, data, models, and other work product prepared or produced by WES under this Contract, including all Instruments of Service, shall be the property of the City. The City may use, reproduce, modify, and reuse such materials for any City purpose without restriction. WES retains a non-exclusive license to reuse its standard details, know-how, and professional methodologies that do not disclose City confidential information. Any indemnification or release of WES arising from the City's use of the Instruments of Service is expressly deleted. If Customer uses the Instruments of Service for implementation purposes, including additions to or completion of the Project, without the written permission of WES, Customer agrees to waive and release, and indemnify and hold harmless, WES, its subcontractors, and their directors, employees, subcontractors, and agents from any and all claims, losses, and other liabilities associated with or resulting from such use.

SECTION 11 INDEMNIFICATION

Section 11.1. WES shall defend, indemnify, and hold harmless the City of Orange, its officers, officials, employees, and agents from and against any and all claims, demands, actions, damages, losses, liabilities, costs, and expenses, including attorneys' fees, arising out of, pertaining to, or relating to the performance of the Work under this Contract, except to the extent caused by the sole negligence or willful misconduct of the City. This obligation is intended to comply with California Civil Code sections 2778 and 2782 and shall survive termination of the Contract. The liability of a defaulting Party will be limited to direct, actual damages. Neither Party shall be liable to the other Party for any special, indirect, incidental or consequential damages whatsoever, whether in contract, tort (including negligence) or strict liability, including, but not limited to, operational losses in the performance of business such as lost profits or revenues or any increase in operating expense.

SECTION 12 CONDITIONS BEYOND CONTROL OF THE PARTIES

Section 12.1. WES shall notify Customer in writing immediately of any delay or anticipated delay in WES's performance of this Contract due to causes or circumstances beyond the reasonable control of WES. Notice shall include the reason for and anticipated length of the delay, and the date of performance shall be extended for a period equal to the time lost by reason of the delay. Any extension of time or increase in Contract Price pursuant to this Section 12.1 shall be documented by a Modification signed by the Parties. Examples of such possibly excusable delays are natural calamities, strikes and boycotts, war or civil unrest, delay or inability to secure products, parts, materials, fuel, supplies, equipment or power at reasonable prices or in sufficient amounts through usual sources of supply, or governmental actions, a change in Applicable Law, the implementation or proposed implementation of new tariffs or modification of existing tariffs that increase WES's cost of materials and equipment, regional labor escalation or shortages other events that are commonly deemed force majeure events. These are events that could not have been reasonably foreseen and estimated at the establishment of the Contract Price—provided that such events occur after the establishment of the Contract Price, are not within WES's reasonable control, and could not have been avoided or mitigated through the exercise of reasonable skill and care. Force majeure events may justify an extension of Contract Time only. No increase in the Contract Sum is permitted absent a written Modification approved by the City in accordance with applicable law.

Section 12.2. EVENTS OF DEFAULT



Section 12.3. Events of Default by Customer. Each of the following events or conditions will constitute a “*Customer Event of Default*”:

(a) any failure by Customer to pay any undisputed amount within thirty (30) days after written notice and an opportunity to cure ; or

(b) any other material failure by Customer 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 (30) days after notice to Customer demanding that such failures to perform be cured, or if such cure cannot be effected in thirty (30) days, Customer will not be in default if Customer commences a cure within such thirty (30) day period and diligently pursues completion thereof; or

(c) any representation or warranty furnished by Customer in this Contract was false or misleading in any material respect when made.

Section 12.4. Events of Default by WES. Each of the following events or conditions will constitute a “*WES Event of Default*”:

(a) any failure by WES to meet the standards of comfort and service set forth in Schedule 1-A-3 due to failure by WES to properly design, install, maintain, repair or adjust the Equipment; *provided* that such failure continues for thirty (30) days after notice to WES demanding that such standards be met, or if such failure cannot be cured within thirty (30) days, WES will not be in default if WES commences a cure within such thirty (30) day period and diligently pursues completion thereof.

(b) any other material failure by WES 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 (30) days after notice to WES demanding that such failures to perform be cured, or if such cure cannot be effected in thirty (30) days, WES will not be in default if WES commences a cure within such thirty (30) day period and diligently pursues completion thereof;

(c) any representation or warranty furnished by WES in this Contract was false or misleading in any material respect when made; or

(d) the filing of a bankruptcy petition, whether by WES or its creditors against WES, which proceeding has not been dismissed within sixty (60) days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of WES.

SECTION 13 CLAIMS AND DISPUTE RESOLUTION.

Section 13.1. Informal Process. All disputes will first be submitted to the individuals listed in Section 21 for resolution.

Section 13.2. Claims Process Under Public Contract Code. In the event that a remedy acceptable to both Customer and WES cannot be found pursuant to Section 13.1, WES may commence the dispute resolution process set forth in California Public Contract Code §9204 et seq., which can be summarized as follows (the following is a summary only and is not intended to modify in any way the requirements and timeframes set forth in the statute):

(a) A “claim” means a separate demand by a contractor for one or more of the following: (i) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project; (ii) payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled; and (iii) payment of an amount that is disputed by the public entity. The claimant shall furnish reasonable documentation to support the claim.

(b) Upon receipt of a claim, the public entity shall conduct a reasonable review of the claim and shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim within the time prescribed by statute, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute.

(c) Following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made in accordance with the statute. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally.

(d) Cure periods applicable to WES shall be no shorter than those applicable to Customer, and shall be extended where cure is being diligently pursued.

Section 13.3. Notwithstanding the foregoing, upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of binding arbitration, as set forth in Section 13.3. Arbitration. Customer and WES agree that if the claim or dispute cannot be resolved by the process set forth in Public Contract Code §9204 et seq. and summarized in Section 13.2, the exclusive means to resolve the claim or dispute will be arbitration pursuant to Public Contract Code §10240 et seq., and the provisions of Public Contract Code §20104 et seq. shall not apply. Notwithstanding any other provision of law, arbitrators appointed for purposes of this Section 13.3 shall be experienced in construction law and shall be paid necessary and reasonable hourly rates not to exceed their customary rate. Such fees and expenses shall be paid equally by the parties, except where the arbitrator, for good cause, determines a different division.

Section 13.4. Multiparty Proceeding. Either Party may join third parties whose joinder would facilitate complete resolution of the dispute and matters arising from the resolution of the dispute.

SECTION 14 LIENS

Section 14.1. WES will promptly pay, when due, all amounts payable for labor and materials furnished in the performance of this Contract and will endeavor to prevent any lien or other claim from arising against any Customer property, against WES's rights to payments hereunder, or against Customer.

SECTION 15 INDEPENDENT CAPACITY OF THE CONTRACTOR

Section 15.1. The Parties hereto agree that WES, and any agents and employees of WES, is acting in an independent capacity in the performance of this Contract, and not as a public official, officer, employee, consultant, or agent of Customer for purposes of conflict of interest laws or any other applicable law.

SECTION 16 NO WAIVER

Section 16.1. The failure of WES or Customer 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 WES or Customer.

SECTION 17 SEVERABILITY

Section 17.1. In the event that any clause or provision of this Contract or any part thereof is 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 18 COMPLETE AGREEMENT

Section 18.1. This Contract, when executed, together with all Exhibits and Schedules attached hereto or to be attached hereto, as provided for by this Contract, shall constitute the entire agreement between the Parties and this Contract may not be amended, modified, or terminated except by a written Modification signed by the Parties hereto. The Parties may terminate this Contract for convenience upon written notice. In the event of such termination, WES shall be compensated only for Work satisfactorily performed to the effective date of termination, as determined by the City, and shall have no entitlement to lost profits or unperformed work.

SECTION 19 FURTHER ASSURANCES

Section 19.1. 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 20 APPLICABLE LAW

Section 20.1. This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of California.

SECTION 21 NOTICE

Section 21.1. Any notice required or permitted hereunder will be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, 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 WES:

Willdan Energy Solutions
Attention: Colton Gorman
2401 East Katella Avenue, Suite 300
Anaheim, CA 92806

TO CUSTOMER:

City of Orange
Attention: Jack Morgan
300 E. Chapman Avenue
Orange, CA 92866

SECTION 22 HEADINGS

Section 22.1. Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle will modify or be used to interpret the text of any section.

SECTION 23 INSURANCE

Section 23.1. WES shall procure and maintain in effect insurance coverage in amounts not less than the following.

(a) Workers' Compensation and Employer's Liability Insurance with limits of not less than \$1,000,000 per occurrence.

(b) Commercial General Liability Insurance for personal and bodily injury, including death, and property damage with limits not less than \$1,000,000 combined single limit each occurrence and \$2,000,000 general aggregate.

(c) Automobile Liability Insurance for personal and bodily injury, including death and property damage in the amount of not less than \$1,000,000 per occurrence.

(d) Professional Liability Insurance for damages incurred by reason of any negligent act, error or omission committed by WES in performing professional services with limits of not less than \$1,000,000 per claim and \$2,000,000 annual aggregate.

(e) Builders All-Risk Insurance: WES, at Customer's expense, shall maintain "All Risk Insurance" for all Equipment, and property obtained by or for WES which is to become a part of the work while such Equipment and property is stored at the job site, at temporary locations, or while in transit to the Project from such temporary locations. WES shall also be responsible for insuring Subcontractors' owned, rented, or borrowed equipment.

(f) WES will require each Subcontractor to maintain such levels and types of insurance coverage as are appropriate for the Work to be performed by such Subcontractor.

Section 23.2. WES will provide Customer with certificates of insurance evidencing coverage required above. Each certificate will provide that the coverage may not be canceled except with at least thirty (30) days prior written notice to Customer, ten (10) days' notice if cancellation is due to nonpayment of premium. Should this occur, WES will procure and furnish to Customer, prior to such effective date, new certificates conforming to the above coverage requirement.

Section 23.3. Additional Insured. Commercial General Liability and Automobile Liability policies shall name the City of Orange, its City Council, officers, officials, employees, agents, and volunteers as additional insureds for ongoing and completed operations using ISO CG 20 10 (or equivalent), CG 20 37 (or equivalent), and CA 20 48 (or equivalent).

Section 23.4. Primary and Non-Contributory. All insurance required of WES shall be primary to, and shall not seek contribution from, any insurance or self-insurance maintained by the City.

Section 23.5. Waiver of Subrogation. All required policies shall include a waiver of subrogation in favor of the City to the extent permitted by law.

Section 23.6. Insurer Qualifications. All insurers shall be admitted in the State of California and rated not less than A-:VII by A.M. Best.

Section 23.7. Endorsements. Certificates of insurance are for informational purposes only and do not modify coverage. Upon request, WES shall provide the City with copies of the required additional insured endorsements and endorsements evidencing primary and non-contributory coverage.

SECTION 24 EPACT 179D

Section 24.1. To encourage the implementation of a more energy-efficient system, Section 179D of the Internal Revenue Code provides for the allocation of a tax deduction based on the efficiency of the design. Since a public entity is exempt from paying taxes, the Internal Revenue Code permits this allocation to be passed along to the designer of the system as an additional incentive to incorporate the most efficient system affordable. Accordingly, once the building/system is placed into service, it is understood and agreed that the tax deduction granted pursuant to Section 179D of the Internal Revenue Code will be allocated to WES, in consideration of which WES intends to maximize the energy efficiency of the design being contracted.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers as of the Effective Date.

WES

CUSTOMER

Signed _____

Signed _____

Name _____

Name Daniel R. Slater

Title _____

Title Mayor

ATTEST:

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

Nathalie Adourian, City Attorney √

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers as of the Effective Date.

WES


Signed **box** SIGN 4KYPVPZ8-4ZWQ6LLL

Name Sharath Acharya
Title VP of Engineering

CUSTOMER

Signed _____
Name Daniel R. Slater
Title Mayor

ATTEST:

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

Nathalie Adourian, City Attorney √

SCHEDULE A

SCOPE OF WORK

California State Contractor's License Number 1065713

California Public Works Contractor Registration Number [●]

This scope of work ("**Scope of Work**") is attached to, and forms an integral part of, the Energy [and Water] Savings Performance Contract (together with its Schedules and Exhibits, the "**Contract**") between Willdan Energy Solutions ("**WES**") and Customer. Capitalized terms used and not defined in this Scope of Work have the meanings given them in the Contract.

The purpose of this Contract is for WES to perform an investment grade audit (an "**IGA**") of the Customer's property and buildings (the "**Premises**") and Customer-owned and/or operated water distribution infrastructure (the "**Infrastructure**"); the IGA will form the basis for recommendations, which WES will present to Customer, for the implementation of energy and watersavings efficiency measures, or other operating cost saving measures and equipment, as well as energy generation measures, and/or fee-producing infrastructure facilities, as described in Schedule A (Scope of Work), with respect to the Premises and the Infrastructure, and also for estimated program costs and overall potential energy and water consumption savings. The Contract will also set forth the terms and conditions under which WES will implement recommendations agreed to by Customer, and any other services agreed by WES and Customer, all of which will be designed to save energy, water, or other operating costs at the Premises and/or with respect to the Infrastructure (collectively, the "**Project**").

Schedule A-1. IGA PHASE SERVICES

(a) General.

(1) WES will advise the Customer on all proposed Scopes of Work, selection of materials, building systems and equipment, financing options, and utility incentives. WES will also provide the Customer with recommendations, consistent with the Customer's stated criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

(b) Engineering and Design. During the IGA Phase, WES will perform:

(1) Design required to develop the scope and solutions that meet the Performance Contract Program Requirements identified in Schedule A-4 and obtain permits.

(2) Develop design in enough detail to procure subcontractors and materials and develop the Contract Sum included (and defined) in the Performance Contract Amendment.

(A) Perform a survey of the spaces and existing systems throughout the Premises to document existing conditions.

(B) Work with the Customer to establish goals and criteria for the Project.

(C) Prepare design documents and/or criteria for subcontractor pricing procurement to install modifications to HVAC, electrical, and plumbing systems.

(c) Pre-Construction Services. During the IGA Phase:

(1) WES will assemble all design documents necessary for pricing procurement.

(2) WES will engage subcontractors; familiarize them with the Project, site and bidding information; and procure pricing for the purposes of establishing WES's cost proposal in the Performance Contract Amendment.

(3) WES will coordinate with the Customer, sub-consultants, financiers, utilities and other stakeholders throughout the IGA Phase.

(d) Energy-Related Services.

(1) WES will walk through facility to become familiar with existing systems and the building's operations. WES will also gather as-built plans and O&M data on existing HVAC systems from Customer.

(2) WES will quantify energy savings for each recommended Scope of Work through a calibrated computer energy model or other industry standard energy calculation procedure.

(3) WES will quantify and summarize the economics of a Scope of Work throughout each phase of design, including:

- (A) Projected costs;
- (B) Energy savings;
- (C) Maintenance and other costs savings;
- (D) Utility incentives; and
- (E) Financing terms and debt service payment terms.

(e) Preparation of the Performance Contract Amendment.

(1) When the Drawings and Specifications are sufficiently complete, WES will prepare a Performance Contract Amendment. The Performance Contract Amendment will include:

- (A) Contract Sum;
- (B) Contract Time;
- (C) Construction Schedule;
- (D) Energy and other cost savings;
- (E) Grants, financing, and incentive opportunities;
- (F) Project Cashflow;
- (G) Information upon which the Performance Contract Amendment is based, including:
 - (i) Scope of Work;
 - (ii) Drawings;
 - (iii) Specifications;
 - (iv) Supplementary and other Conditions of the Contract; and
 - (v) Deviations from the Performance Contract Program Requirements as identified in Schedule A-4.
- (H) WES's Personnel, Contractors and Suppliers.

(f) **For GC 5956 Projects: CEQA.** In accordance with California Government Code §5956.6(b)(1), prior to any construction Work being performed, Customer, with the assistance of WES, will take all actions necessary to comply with the California Environmental Quality Act.

Schedule A-2. CONSTRUCTION PHASE SERVICES

(a) Construction Documents. As the Drawings and Specifications may not be finished at the time the Performance Contract Amendment is prepared, the Performance Contract Amendment will provide for further development of the Drawings and Specifications for construction. Such further development does not include such things as changes in scope, systems, or kinds and quality of materials, finishes or equipment, all of which, if required, will be incorporated by Change Order.

(b) WES's Construction Phase Responsibility.

(1) WES will supervise and direct the Work, using WES's best skill and attention. WES will be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the ESPC Documents give other specific instructions concerning these matters.

(2) WES will schedule Work and coordinate Subcontractors and any other persons on the site of the Project.

(3) WES will inspect the Work of each subcontractor for defective work, manage resolution of the defective work, and notify applicable subcontractor(s) to correct such defective work in a manner approved by the design team and Customer.

(4) WES will record the progress of the Project and provide reports to the Customer. Such reports will include, without limitation, information about variations between actual and budgeted or estimated costs and information on each subcontractor's work, as well as completion status on the entire Project, showing percentages of completion.

(5) With the cooperation of the Subcontractors, WES will prepare and maintain the Construction Schedule.

(6) WES will schedule and conduct preconstruction, progress, quality control and special meetings with the Customer, designers, the subcontractors and any other parties involved in the Project to discuss such matters as procedures, progress, problems and scheduling.

(7) WES will receive, review for completeness and responsiveness the subcontractors' submittals such as shop drawings, product data and samples and deliver them to the Customer for review and approval.

(8) WES will manage the Punch List, coordinate final inspections, and prepare the certificates of Substantial Completion and Final Completion. Upon Final completion, WES will receive, review for conformity with the requirements of the ESPC Documents, transmit to the Customer any affidavits, and turn over to the Customer any manuals and the originals of any guarantees, warranties, releases, bonds and waivers.

(c) Enhanced Commissioning. WES will develop the commissioning plan, review construction documents, develop functional test procedures, coordinate commissioning activities, verify startup tests, perform functional performance tests, and generate final commissioning report.

(d) Labor and Materials.

(1) Unless otherwise provided in the ESPC Documents, WES will provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of

the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

(2) WES will enforce strict discipline and good order among WES's employees, Subcontractors, and other persons carrying out the Work. WES will not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

Schedule A-3. GUARANTEE PHASE SERVICES

(a) Facility Personnel Assistance.

(1) WES's commissioning group will assist Customer personnel in achieving the most efficient operation of Customer's facility. The commissioning group will remotely monitor the facility and will help identify potential problems with the HVAC as well as work with the facility staff to enhance and implement energy conservation programs.

(2) Customer will be responsible for the maintenance of all energy systems, including lighting, mechanical, electrical, and building automation control systems per Schedule 1-A-5.

(b) Savings Tracking and Reporting.

(1) WES will be responsible for the monthly tracking and monitoring of the Project and will provide ongoing assistance to Customer's staff.

(2) WES will provide a quarterly savings report. This report will detail current monthly savings, year to date savings, and guaranteed savings. This report will also show the actual savings in units of energy.

(c) Utility Rate Negotiation. If, during the term of this Contract, deregulation of the electric and gas utilities should occur, WES will have the right to negotiate on behalf of the Customer, in whole or in part, other utility services beyond the current providers of those services. WES will represent the Customer as long as the services being negotiated are cost competitive for the Customer. WES will seek the most cost competitive providers of those services who can provide equal or better-quality service. In the event that the Customer is able to locate a more cost competitive provider, with equal quality, WES will agree to use that provider. The purpose of this paragraph is to minimize utility costs for the Customer.

(d) Cancellation.

(1) Customer may cancel the Guarantee Phase services on any anniversary of the commencement of Guarantee Services, or at the end of Customer's fiscal year.

(2) If Customer cancels these services, WES reserves the right to cancel the Energy and Water Savings Guarantee as outlined in Exhibit 2 and the Assured Performance Guarantee as outlined in Exhibit 3.

Schedule A-4. ENERGY [AND WATER] PERFORMANCE CONTRACT PROGRAM REQUIREMENTS:

(a) Financial Criteria.

(b) General Scope and Intent.

Schedule A-5. IMPLEMENTATION SCOPE OF WORK

(a) Scope of Work. Final, detailed scope of work will be included in the Performance Contract Amendment.

Schedule A-6. TIME.

(a) Construction and installation of energy-saving and/or energy-generating equipment ("**Equipment**") by WES will proceed throughout the Construction Period described in the detailed schedule

of construction, which will be submitted to Customer following commencement of the Construction Phase. This schedule will be updated throughout construction to reflect ongoing progress on the Project. WES will endeavor to minimize disruption to Customer operations while allowing for completion of Scope of Work in a timely fashion.

(b) Weather disruptions, availability of necessary equipment, remediation of hazardous materials, and other delays beyond the control of WES will not count toward the Construction Period. The completion dates will be modified by Change Order for these events.

SCHEDULE B

COMPENSATION TO WES

This compensation schedule (“**Compensation Schedule**”) is attached to, and forms an integral part of, the Energy and Water Savings Performance Contract (together with its Schedules and Exhibits, the “**Contract**”) between Willdan Energy Solutions (“**WES**”) and Customer. Capitalized terms used and not defined in this Compensation Schedule have the meanings given them in the Contract.

The Customer will compensate and make payments to WES for the IGA Phase services, the Construction Phase services and the Guarantee Phase services as follows:

Schedule B-1. INVESTMENT GRADE AUDIT PHASE SERVICES

The Customer will compensate and make payments to WES for the IGA Phase services as follows:

(a) If the Performance Contract Amendment is executed within ninety (90) days of the date it is submitted to Customer, the fee for IGA services will be incorporated into the Performance Contract Amendment; otherwise,

(b) Customer will pay WES the stipulated sum of \$70,000.00.

Schedule B-2. CONSTRUCTION PHASE

For WES’s performance of the Construction, the Customer will pay WES the Construction Phase Contract Sum in current funds for WES’s performance of the Contract after the execution of the Performance Contract Amendment. The Contract Sum will be identified in the Performance Contract Amendment.

Schedule B-3. CONSTRUCTION PHASE

For WES’s performance of the Construction, the Customer will pay WES [a Stipulated Sum] in current funds for WES’s performance of the Contract after the execution of the Performance Contract Amendment equal to Cost of the Work plus WES’s Fee [at the time of the proposal of the Performance Contract Amendment]. The Construction Phase Contract Sum with itemization of the Cost of Work and WES’s Fee will be identified in the Performance Contract Amendment. WES’s Fee and the Cost of the Work plus will be determined as follows:

(a) WES’s Fee.

(1) Project Development Services (includes IGA Services): Time & Materials
(see Hourly Rate Schedule)

(2) Construction Management: Time & Materials (see Hourly Rate Schedule)

(3) Enhanced Commissioning: Time & Materials (see Hourly Rate Schedule)

(4) WES’s Overhead and Profit: Not to exceed **XX%** of the Cost of the Work

(b) The Cost of the Work (“**COW**”) is as defined as:

(1) Subcontract Costs: Payments made by WES to its Subcontractor to carry out the Work.

(2) Construction Contingency available for WES’s exclusive use to cover costs for unanticipated items of the Work.

(3) Allowance held by the Customer for additional Work to be incorporated in the Project.

(4) Costs, including transportation, of materials and equipment incorporated in the completed construction.

items. (5) Costs of other materials and equipment, temporary facilities and related

and bonds. (6) That portion directly attributable to this Contract of premiums for insurance

except those related to nonconforming Work. (7) Fees of testing laboratories for tests required by the ESPC Documents,

(8) Data processing costs related to the Work.

(9) Legal costs, other than those arising from disputes between the Customer and WES, reasonably incurred by WES in the performance of the Work and with the Customer's written permission, which permission may not be unreasonably withheld.

(10) Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Customer.

(11) Emergencies and repairs to damaged or nonconforming Work

(12) The Cost of Work will also include costs which are incurred by WES in taking action to prevent threatened damage, injury or loss in case of emergency affecting the safety of persons and property.

(13) The Cost of Work will also include costs which are incurred by WES in repairing or correcting damaged or nonconforming Work executed by WES or WES's Subcontractors or suppliers, *provided* that such damaged or nonconforming Work was not caused by the negligence or failure by WES or WES's personnel (a) to fulfill a specific responsibility to the Customer set forth in this Contract or (b) to supervise adequately the Work of the Subcontractor or suppliers, and then only to the extent that the cost of the repair or correction is not recoverable by WES from insurance, Subcontractors or suppliers.

(14) Hourly Rate Schedule used in determining professional services costs:

Rate Category		Rate (\$/hr)
Project Development and Engineering Services		
1	Technical Drafter	\$TBD
2	Designer	\$TBD
3	Senior Designer	\$TBD
4	Engineer I	\$TBD
5	Engineer II	\$TBD
6	Senior Engineer	\$TBD
7	Principal Engineer	\$TBD
Energy Modeling		
8	Energy Engineer	\$TBD
9	Senior Energy Engineer	\$TBD
Commissioning		
10	Commissioning Engineer	\$TBD
11	Senior Commissioning Engineer	\$TBD
Project and Construction Management		
12	Account Executive	\$TBD
13	Project Manager	\$TBD
14	Construction Manager	\$TBD
15	Site Superintendent	\$TBD

Rate Category		Rate (\$/hr)
16	Field Engineer	\$TBD
17	Cost Estimator	\$TBD

Schedule B-4. GUARANTEE PHASE

For WES’s performance of any Energy and Water Savings Guarantee [and the Assured Performance Guarantee], the Customer will pay WES in current funds for WES’s performance of the applicable Guarantee Phase services following Final Completion of the corresponding portion of the Project, and issue to WES the “Certificate of Acceptance - Final Completion” as defined in Schedule 1-C for such portion of the Project. The Guarantee Phase Contract Sum will be identified in the corresponding Energy and Water Savings Guarantee [and the Assured Performance Guarantee].

Schedule B-5. PAYMENT PROCEDURES

(a) Investment Grade Audit Phase Payments. WES will provide an Application for Payment to Customer for IGA Phase services completed in accordance with Schedule A-1 above. The Customer will make payment in the manner and within the time provided in Section 4.3 of the Contract

(b) Construction Phase Payments.

(1) Project Mobilization. The initial Application for Payment will include all remaining pre-construction-phase services amounts as well as ten percent (10%) of the remaining total compensation to allow for mobilization of WES and subcontractors.

(2) Progress Payments. WES will provide a monthly Application for Payment to Customer for work completed during the previous month. The Customer will make payment in the manner and within the time provided in Section 4.3 of the Contract. Until a specific Scope of Work is complete, as identified as a line item in the Schedule of Values, Customer will pay one hundred percent (100%) of the amount due to WES on account of progress payments. WES will provide a Retainage Bond that represents ten percent (10%) of the total Contract value.

(3) Schedule of Values. WES will prepare and submit a complete schedule of values along with the initial Application for Payment. Portions of the Scope of Work listed as line items in the Schedule of Values will be treated as individual Scopes of Work for the purposes of Progress Payments, Substantial Completion, Final Completion, and withholding of retention amounts.

(4) Substantial Completion. Substantial Completion is the stage in the progress of a specific Scope of Work when such Scope of Work or designated portion thereof is sufficiently complete in accordance with the ESPC Documents so that the Customer can utilize such portion of the Work for its beneficial use.

When WES considers that an individual Scope of Work is Substantially Complete, WES will prepare and submit to the Customer a comprehensive list of items to be completed or corrected prior to final payment (the “**Punch List**”). Upon receipt of WES’s Punch List, the Customer will, within seven (7) days, inspect the Work to determine whether the Work or designated portion thereof is Substantially Complete. If the Customer’s inspection discloses any item, whether or not included on the Punch List, which is not sufficiently complete in accordance with the ESPC Documents so that the Customer can utilize the Work or designated portion thereof for its intended use, WES will, before issuance of the Certificate of Acceptance - Final Completion, complete or correct such item upon notification by the Customer. In such case, WES will then submit a request for another inspection by the Customer to determine Substantial Completion.

When the Work or designated portion thereof is Substantially Complete, WES will prepare a Certificate of Substantial Completion which will establish the date of Substantial Completion, will establish

responsibilities of the Customer and WES for security, maintenance, heat, utilities, damage to the Work and insurance, and will fix the time within which WES will finish all items on the Punch List accompanying the Certificate. Warranties required by the ESPC Documents will commence on the date of Substantial Completion of the Scope of Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion will be submitted to the Customer for their written acceptance of responsibilities assigned to them in such Certificate.

(5) Substantial Completion Payment. Upon Substantial Completion acceptance, the Customer will make payment of retainage applying to such Work or designated portion thereof within the time provided in Section 4.3 of the Contract. Such payment will be reasonably adjusted to reflect the dollar value of Work that is incomplete or not in accordance with the requirements of the ESPC Documents.

(6) Final Completion and Payment. After WES's completion of all Punch List items, closeout requirements, and upon receipt of written notice that the Work or designated portion thereof is ready for final inspection and acceptance and upon receipt of a Final Application for Payment, the Customer will make such inspection within seven (7) days and, when the Customer finds the Work acceptable under the ESPC Documents and the Contract fully performed, the Customer will execute and issue the Certificate of Acceptance within two (2) days from the final inspection and pay the entire balance found to be due to WES as stated in the Final Application for Payment within the time provided in Section 4.3 of the Contract.

{Use this section if payments are to be made during the Energy [and Water] Savings Guarantee [or Assured Performance Guarantee]. Otherwise, omit this section.}

(c) Guarantee Phase Payments. WES will provide annual Applications for Payment to Customer for Guarantee Phase services to be completed in the subsequent year. The Customer will make payment in the manner and within the time provided in Section 4.3 of the Contract.

(d) Failure of Payment. If the Customer does not pay WES within five (5) days after the date established in Section 4.3 of the Contract, then WES may, upon written notice to the Customer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of WES's reasonable costs of shut-down, delay and start-up, plus interest.

EXHIBIT 1

FORM OF PERFORMANCE CONTRACT AMENDMENT

This Performance Contract Amendment (“*Amendment*”), dated as of the [XX] day of [XX] in the year [202X] (the “*Amendment Date*”) is incorporated into the accompanying Energy Savings Performance Contract dated the [XX] day of [XX] in the year [202X] (together with its Exhibits and Schedules, the “*Contract*”) for the following:

PROJECT: {Name and Location or Address}

THE CUSTOMER: City of Orange, a municipal corporation, 300 E. Chapman Ave., Orange, CA 92866

THE CONTRACTOR: Willdan Energy Solutions, Inc. (“*WES*”)

WHEREAS, Customer and WES previously executed the Contract, pursuant to which WES performed an investment grade audit (“*IGA*”) of the Customer’s Premises and Infrastructure and presented Customer with recommendations (the “*Recommendations*”) for the implementation of certain energy, water or other operating cost saving measures and equipment and/or fee-producing infrastructure facilities, including estimated program costs and overall potential energy consumption savings;

WHEREAS, WES delivered the Recommendations, on an arms’ length basis, to personnel of Customer with requisite technical training and experience, for those personnel to make judgments and determinations as to the desired scope of work;

For GC 5956 Water Meter Projects: WHEREAS, California Government Code §5956 permits Customer to enter into agreement with private entities for the development, design, and construction of fee-producing infrastructure projects, including energy and water supply, treatment and distribution projects;

WHEREAS, pursuant to the provisions set forth in California Government Code §5956, Customer intends to utilize a combination of Customer funds and private investment capital to design, construct and finance improvements to the water-distribution Infrastructure described in the Preliminary Assessment;

WHEREAS, Customer has accepted the Recommendations and anticipates that existing end-user fees and water rates are fair and reasonable to the end-users, and will be sufficient to pay WES’s costs permitted under California Government Code §5956.6(b)(4), but to the extent that Customer increases its end-user fees and water rates to pay for the fee-producing infrastructure projects procured under this Amendment, such increase will be subject to approval prior to its imposition at a public hearing and will be imposed pursuant to the requirements of California Government Code §5956.6(b)(5) or other applicable law;

For GC 4217.10 Energy Savings Projects: WHEREAS, in the Recommendations, WES identified potential energy and operational savings opportunities at Customer’s Facilities and estimated program costs to implement energy-efficiency- and energy-generation-measures and presented an overall potential energy cost and consumption savings for implementing those recommendations;

WHEREAS, Customer has accepted the Recommendations and has determined that the anticipated cost to Customer to implement the energy-savings Project will be less than the anticipated cost to Customer for thermal, electrical, and other energy, together with anticipated operational, maintenance and other costs, that would have been consumed by Customer in the absence of the energy-savings Project, in compliance with California Government Code §§4217.10 through 4217.18;

WHEREAS, pursuant to California Government Code §4217.12, Customer held a regularly scheduled public hearing on [●], of which two weeks advance public notice was given regarding this Amendment and its subject matter;

WHEREAS, Customer has determined that entering into this Amendment to implement the Project is in the best interests of Customer and that California Government Code §4217.10 *et seq.* allows Customer to enter into this Amendment

For GC 5956 Projects: WHEREAS, Customer has selected WES pursuant to a competitive negotiation process in which WES demonstrated its competence and qualifications for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, and operation of the Project;

For GC 5956 Projects: WHEREAS, Customer’s process also specifically prohibited practices that could result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and specifically prohibited its employees from participating in the selection process when those employees have a relationship with WES that would subject those employees to the prohibition of California Government Code §87100;

WHEREAS, WES is duly licensed by the State of California to provide or enter into this Amendment to provide such services, and is willing and financially able to perform such services for Customer, all as more fully set forth herein;

WHEREAS, by adoption of Resolution No. [●] at the above-referenced meeting, Customer approved this Amendment and authorized its execution.

NOW THEREFORE, the Customer and WES hereby amend the Contract as follows.

TABLE OF SCHEDULES (the following Schedules are added by this Performance Contract Amendment):

Schedule 1-A Additional Responsibilities

Schedule 1-B Certificate of Substantial Completion

Schedule 1-C Certificate of Acceptance – Final Completion

Exhibit 1-1. CONSTRUCTION PHASE CONTRACT SUM

{Use this section for Stipulated Sum}

(a) Stipulated Sum.

(1) The Stipulated Sum will be (\$), subject to authorized adjustments as provided in the ESPC Documents. A detailed description of the components of this compensation is provided below.

{Insert Project Financial Table reflecting the proposed schedule of values}

(2) The Stipulated Sum is based upon the following alternates, if any, which are described in the ESPC Documents and are hereby accepted by the Customer:

Exhibit 1-2. CHANGES IN THE CONSTRUCTION PHASE CONTRACT SUM:

Changes to the Contract Sum are warranted for, but are not limited to: Hazardous Substances, additions or modifications to the Scope of Work, and Differing Site Conditions, each as defined in this Performance Contract Amendment. All additional costs associated with these items will be the responsibility of Customer.

Exhibit 1-3. CONTRACT TIME

(a) The date of commencement of construction is the date of this agreement.

(b) The date of final completion is [XXX] calendar days from the date of commencement of construction.

(c) The anticipated Energy Savings Guarantee Commencement Date is the date of Final Completion.

(d) Weather disruptions, availability of necessary equipment, remediation of hazardous materials, and other delays beyond the control of WES will not count toward the construction timeframe in this Exhibit 1-3.

Exhibit 1-4. SCHEDULE OF VALUES

WES will prepare and submit a complete schedule of values along with initial Application for Payment. Portions of the Scope of Work listed as line items in the Schedule of Values will be treated as individual Scopes of Work for the purposes of Progress Payments, Substantial Completion, Final Completion, and withholding of retention amounts.

Exhibit 1-5. CONSTRUCTION SCHEDULE

{Insert Construction Schedule}

Exhibit 1-6. INFORMATION UPON WHICH AMENDMENT IS BASED

The Contract Sum and Contract Time set forth in the Performance Contract Amendment are based on the following:

(a) Scope of Work. The finalized scope of work to be performed under the original Contract is revised and clarified as set forth in this Performance Contract Amendment as follows:

(1) ECM #: Building HVAC Work

(A) This work is to be performed at the following buildings:

(i) Building A

(ii) Building B

(2) ECM #: Building Automation Controls System

(A) This work is to be performed at the following buildings:

(i) Building A

(ii) Building B

(3) ECM #: Lighting Improvements

(A) This work is to be performed at the following buildings:

(i) Building A

(ii) Building B

(4) Work Excluded.

(A) General.

(i) Sales taxes are excluded from the Project. Customer will assist WES in securing Project exemption certificate.

(ii) Abatement of asbestos and other hazardous materials are not included in the Scope of Work. This work is to be performed under a separate contract by the Customer in a timely manner.

(iii) Temporary conditioning of occupied spaces is excluded. Existing HVAC equipment is intended to be kept in operation to provide conditioning of spaces where possible.

(iv) Specific areas of the building not included in Project scope.

(v) Painting and patching behind [XXXX] equipment. Painting touch-up to be performed by the Customer.

(vi) Landscaping beyond reseeding of damaged or disturbed earth.

(vii) Integration of modification of security access controls and surveillance system. (Especially relevant when modifying entrances)

(B) Mechanical/Controls.

(i) Electrical power wiring and connections over 24V. (Only applicable if a separate Electrical Contractor is involved in the Project)

(ii) Building Automation Controls installation (Only applicable if a separate Controls Contractor is involved in the Project)

(iii) IT infrastructure and IT support:

(iv) Option 1 - Customer to provide IT support to assist in connection of controls remote access interface.

(v) Option 2 – Project to use existing data architecture in place, Customer to provide IT support to assist in connection of controls remote access interface.

(vi) New concrete pads for [XXXX] equipment. Existing concrete house-keeping pads will be re-used for this equipment.

(vii) Replacement, patching, and painting of all grilles and registers in [XXXX] area of the building. This work is to be performed by Customer at their discretion independent of the Project.

(viii) Repair or replacement of existing HVAC equipment and components. (Only relevant for controls only Projects)

(ix) Expansion of fire panel to accommodate added points.

(C) Lighting.

(i) Exterior Lighting (except 4', 8', and U-tube T12 fluorescents)

(ii) Incandescent fixtures on dimmers

(iii) Incandescent fixtures in decorative applications

(iv) Incandescent fixtures where heat, fixture size, or photometrics prevent compact fluorescent application

(v) Circline fluorescents

(vi) 1', 3', and 6' fluorescents

(vii) Task lighting on modular furniture

(viii) Black light and aquarium lighting

(ix) Abandoned fixtures

(x) Fluorescent, Edge-Lit, and LED Exit Signs and Exit Signs that will not accommodate a LED retrofit

(xi) Area lighting provided by electrical provider owned lights

(D) Roofing.

(i) Replacement of any defective roofing items which are hidden conditions, including wood nailer, insulation, and metal deck. Repair of these items will be billed to the Customer through Change Orders and paid for out of the Project contingency budget.

(E) Water Meters.

(F) Additional Project Specific Exclusions.

(i) Exclusion #1

(ii) Exclusion #2

(b) Drawings.

(1) The Scope of Work defined in Exhibit 1-6(a) supersedes any scope defined in the Drawings and Specifications. The Drawings and Specifications are provided to provide layout, quantities and general quality of equipment and materials to be incorporated in the Project.

Number	Title	Date

(c) Specifications.

(1) The Scope of Work defined in Exhibit 1-6(a) supersedes any scope defined in the Drawings and Specifications. The Drawings and Specifications are provided to provide layout, quantities and general quality of equipment and materials to be incorporated in the Project.

Number	Title	Date

(d) Allowances and Contingencies.

(1) Allowances.

(A) Customer's Allowance: \$XXX,XXX

(2) Contingencies.

(A) Customer's Contingency: *Not Applicable*

(B) WES's Contingency: \$XXX,XXX

(i) WES's Contingency exists to mitigate Project-related risks for which WES is responsible. This Contingency is intended to cover costs due to the

negligence or failure of WES, WES's subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract. WES's Contingency is understood by WES and Customer to be "spent" money.

Exhibit 1-7. COST OF THE WORK

Exhibit 1-8. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL

(a) Construction Schedule. Construction and installation of Equipment by WES will proceed throughout the Construction Period described in the detailed schedule of construction, which will be submitted to Customer following commencement of the Performance Contract Amendment. This schedule, set forth in Exhibit 1-5, will be updated throughout construction to reflect ongoing progress on the Project.

(b) Systems Startup and Equipment Commissioning. WES will conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified in Schedule 1-A-1, and prior to acceptance of the Scope of Work by Customer. WES will provide notice to the Customer of the scheduled test(s) and the Customer and/or its designees will have the right to be present at any or all such tests conducted by WES and/or manufacturers of the Equipment. WES will be responsible for correcting and/or adjusting all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures.

Exhibit 1-9. EQUIPMENT WARRANTIES

EXCEPT FOR THE WARRANTIES PROVIDED IN THIS Exhibit 1-9, WES MAKES NO WARRANTIES IN CONNECTION WITH THE WORK PROVIDED UNDER THIS CONTRACT, WHETHER EXPRESS OR IMPLIED IN LAW, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES AGAINST INTELLECTUAL PROPERTY INFRINGEMENT. CUSTOMER WILL HAVE NO REMEDIES AGAINST EITHER WES OR ANY WES SUBCONTRACTOR OR VENDOR FOR ANY DEFECTIVE MATERIALS OR EQUIPMENT INSTALLED, EXCEPT FOR THE REPAIR OR REPLACEMENT OF SUCH MATERIALS OR EQUIPMENT IN ACCORDANCE WITH THE WARRANTIES INDICATED BELOW.

(a) WES covenants and agrees that all material and Equipment installed as part of this Contract will be new, in good and proper working condition and protected by appropriate written warranties covering the performance of parts and Equipment, which will be transferred to Customer upon Substantial Completion. WES further warrants that its workmanship provided hereunder, including its subcontractors' workmanship, will be free of material defects for a period of one (1) year from the date of Substantial Completion as indicated on the executed Certificate of Substantial Completion ("**WES Warranty**"). Notwithstanding the preceding sentence, the date the WES Warranty commences with respect to a specific piece or pieces of Equipment may be further defined in Schedule 1-B.

(b) Equipment and material warranties that exceed the WES Warranty period will be provided directly by the equipment and/or material manufacturers and such warranties will be assigned directly to Customer, after the one (1) year period. During the WES Warranty period, WES will be Customer's agent in working with the equipment and material manufacturers in resolving any equipment or material warranty issues. If any material defects are discovered within the WES Warranty period, WES, or WES's subcontractors, will correct its defects, and/or WES will work with the equipment or material manufacturer as Customer's agent to facilitate the manufacturer's correction of the equipment or material defect. Such warranty services will be performed in a timely manner and at the reasonable convenience of Customer. If a warranty issue arises on any equipment or material installed after the WES Warranty period, and the equipment or material has a warranty period that exceeds one (1) year, Customer will contact the manufacturer directly to resolve such warranty issues and Customer acknowledges that the manufacturer will have sole responsibility for such issues.

(c) The warranties in this Exhibit 1-9 expressly exclude any remedy for damage or defect caused by improper or inadequate maintenance of the installed equipment by service providers other than WES or its subcontractors, corrosion, erosion, deterioration, abuse, modifications or repairs not performed by an authorized WES subcontractor, improper use or operation, or normal wear and tear under normal usage. WES will not be responsible for the cost of correcting a breach of warranty or defect to the extent that the manufacturer of the equipment that is the subject of a warranty hereunder does not honor its equipment warranty as a result of its termination of operations, insolvency, liquidation, bankruptcy or similar occurrence. Unless otherwise specified, all warranties hereunder, including without limitation those for defects, whether latent or patent, in design, engineering, or construction, will terminate one (1) year from the date of Substantial Completion; and thereafter, WES will have no liability for breach of any warranty or for any latent or patent defect of any kind pursuant to California Code of Civil Procedure §§337.1 and 337.15.

(d) Customer and WES have discussed the risks and rewards associated with this Project, as well as the Contract Sum to be paid to WES for performance of the Work. Customer and WES agree to allocate certain of the risks so that, to the fullest extent permitted by applicable law, WES's total aggregate liability to Customer and all third parties is limited to the Contract Sum for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Contract from any cause or causes. Such causes include, but are not limited to, negligence, errors, omissions, strict liability, breach of contract, or breach of warranty.

Exhibit 1-10. TRAINING BY WES

WES will conduct the training program described in Schedule 1-A-10 hereto. Such training must be completed prior to acceptance of the Equipment installation. WES will provide ongoing training whenever requested by Customer with respect to updated or altered Equipment, including upgraded software. Such training will be provided at no charge to the Customer.

Exhibit 1-11. PERMITS AND APPROVALS; COORDINATION

(a) Permits and Approvals. The Equipment and the operation of the Equipment by WES will at all times conform to all applicable federal, state and local code requirements. Customer must cooperate fully with WES in obtaining all necessary permits and approvals for installation of the Equipment. WES is responsible for obtaining and paying for all permits, except those permits to be issued by Customer itself. Customer will be responsible for obtaining and paying for annual operating permits and any approvals or exemptions required by CEQA. WES will furnish copies of each permit or license which is required to perform the Work to the Customer before WES commences the portion of the Work requiring such permit or license. Customer is responsible for hiring and paying inspectors, and for fees associated with plan checks (including expedited plan checks), inspections, certifications, and utility interconnection(s), including any additional Work that may be required by the electric utilities as part of interconnection.

(b) Coordination During Installation. The Customer and WES will coordinate the activities of WES's Equipment installers with those of the Customer, its employees, and agents. WES may not commit or permit any act which will unreasonably interfere with the performance of business activities conducted by the Customer or its employees without prior written approval of the Customer.

Exhibit 1-12. LOCATION AND ACCESS

Customer will provide sufficient space on the Premises for the installation and operation of the Equipment and will take reasonable steps to protect such Equipment from harm, theft and misuse. Customer will provide access to the Premises for WES to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by WES and reasonably acceptable to the Customer. WES's access to Premises to make emergency repairs or corrections as it may determine are needed may not be unreasonably restricted by the Customer.

Exhibit 1-13. EQUIPMENT SERVICE

(a) Actions by WES. WES will provide all service, repairs, and adjustments to the Equipment installed under terms of this Contract pursuant to Schedule 1-A-4. Customer will incur no cost for Equipment service, repairs, and adjustments, except as set forth in the Compensation Schedule, *provided, however*, that if WES determines that the need for maintenance or repairs principally arises due to the negligence or willful misconduct of the Customer or any employee or other agent of Customer, WES may charge Customer for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

(b) Malfunctions and Emergencies. Customer will use its best efforts to notify WES or its designee(s) within twenty-four (24) hours after the Customer's actual knowledge of the occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy-related equipment that might materially impact upon any energy savings guaranteed by WES, (ii) any interruption or alteration to the energy supply to the Premises, or (iii) any alteration or modification in any energy-related Equipment or its operation.

(c) Where Customer exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it will be deemed not at fault in failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings. Customer will notify WES within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. WES or its designee(s) will respond within twenty-four (24) hours to promptly proceed with corrective measures. Any telephonic notice of such conditions by Customer will be followed within three (3) business days by written notice to WES from Customer. If Customer unreasonably delays in so notifying WES of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, such conditions will be treated as a Material Change (as defined herein) and the applicable provisions of Schedule 2-B will be applied.

(d) Actions by Customer. Customer may not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of WES except as set forth in Schedule 1-A-5. Notwithstanding the foregoing, Customer may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify WES before taking any such actions. In the event of such an emergency, Customer will take reasonable steps to protect the Equipment from damage or injury and will follow instructions for emergency action provided in advance by WES. Customer agrees to maintain the Premises in good repair and to protect and preserve all portions thereof, which may in any way affect the operation or maintenance of the Equipment.

Exhibit 1-14. STANDARDS OF COMFORT

WES will install and commission the Equipment in a manner that will enable the Customer to maintain the standards of heating, cooling, hot water, and lighting, as described in Schedule 1-A-3.

Exhibit 1-15. BONDS

Any and all performance and payment bonds obtained by WES for the Project shall specifically exclude coverage for those portions of the Contract or the Work pertaining to design services and any other part of this Contract and the ESPC Documents which do not relate specifically to construction management and supervision of Work for purchasing and installing of Equipment, or for work to be accomplished by the Customer.

Exhibit 1-16. OWNERSHIP

(a) Ownership of Existing Equipment. Ownership of the equipment and materials presently existing at the Premises at the time of execution of this Contract will remain the property of the Customer even if they are replaced or their operation made unnecessary by Work performed by WES pursuant to this Contract. If applicable, WES will advise the Customer in writing of all equipment and materials to be replaced at the Premises and the Customer will within thirty (30) days designate in writing to WES which

equipment and materials (other than Hazardous Substances (as defined herein), which will be the responsibility of Customer) should not be disposed of off-site by WES. It is understood and agreed by both Parties that the Customer will be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. WES will be responsible for the disposal of all equipment and materials (other than Hazardous Substances) designated by the Customer as disposable off-site in accordance with all applicable laws and regulations regarding such disposal. WES will not be responsible for the removal and/or disposal of any Hazardous Substances except as specified in the Scope of Work.

(b) New Equipment. All new Equipment or materials supplied to the Customer will become the property of the Customer upon installation and payment therefor. WES will grant to the Customer a perpetual, irrevocable royalty-free license for any WES software or other WES intellectual property rights necessary for the Customer to continue to operate, maintain, and repair the Equipment in a manner that will yield maximal energy consumption reductions.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Performance Contract Amendment by their duly authorized officers as of the Amendment Date.

WES

CUSTOMER

Signed _____

Signed _____

Name _____

Name Daniel R. Slater

Title _____

Title Mayor

ATTEST:

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

Nathalie Adourian, City Attorney √

SCHEDULE 1-A

ADDITIONAL RESPONSIBILITIES

{NOTE: this schedule is added by the Performance Contract Amendment. Retain the paragraph immediately below at the time originally issuing this contract (when entering into the IGA). All other content to be defined at the time of the Performance Contract Amendment}

[This Schedule is added as part of the Performance Contract Amendment]

Schedule 1-A-1. System Start-up & Commissioning. WES will perform start-up and commissioning services for all equipment installed.

Schedule 1-A-2. Operating parameters of installed equipment. WES will provide operating parameters in the Operation and Maintenance Manuals. These manuals will be provided to Customer prior to Final Completion.

Schedule 1-A-3. Standards of Comfort.

(a) Customer will maintain the following standards of comfort, which were used to evaluate the energy conservation measures for this Scope of Work. Significant deviation from these standards will represent a change in operation that must be accounted for, in accordance with Exhibit 2-4, in order to accurately verify the Energy Savings Guarantee.

(b) Occupied temperature set points: 70°F or below in heating and 74°F or above in cooling.

(c) Unoccupied temperature set points: 50°F in heating and 100°F or above in cooling.

Schedule 1-A-4. WES Maintenance Responsibilities. WES is not responsible for performance of any maintenance of equipment on the Premises.

Schedule 1-A-5. Customer Maintenance Responsibilities. Customer is required to perform all necessary maintenance as recommended by the manufacturer in the Operation and Maintenance manuals (to be provided upon Final Completion) for equipment installed as part of this Contract, as well as all additional equipment that will continue to operate in Customer facilities.

Schedule 1-A-6. Facility Maintenance Checklist. WES will provide Customer with a complete facility maintenance checklist prior to the Acceptance of Final Completion.

Schedule 1-A-7. Customer Information Technology Responsibilities.

(a) Customer is responsible for providing a working WAN infrastructure connecting multiple buildings and configuring it for connecting new internet-based building control system, accessible via standard web-browser from inside and outside the Customer's network.

(b) Customer is responsible for providing network connection(s) (cables and switches), open ports and IP addresses for connection of building control system's web server to Customer's network for internet accessibility.

(c) Customer will engage their IT representative familiar with the Customer's network to work with WES and its subcontractors to establish IP addresses and communications to assure proper operation of the building control system with the Customer's wide area network.

Schedule 1-A-8. Differing Site Conditions. The conditions at the site are the responsibility of the Customer regardless of whether or not they could be identified by an investigation or exploration conducted according to the professional standard of care. A "***Differing Site Condition***" is a subsurface, hidden, latent, or physical condition at a Project site/building not revealed by the site exploration, site investigation, or other information provided by the Customer and which cannot be reasonably anticipated. Special risks occur whenever engineering is applied to identifying site/building conditions. Even a

comprehensive investigation, according to the professional standard of care, may not detect all subsurface or site/building conditions. WES will not be liable for site/building conditions that could not be identified by such an investigation or exploration. Accordingly, the Customer agrees to indemnify, including all costs and fees, and hold WES harmless from all claims for Differing Site Conditions.

Schedule 1-A-9. Hazardous Substances.

(a) WES contemplates that it will not encounter any Hazardous Substances at the Premises, except as has been disclosed as a pre-existing condition by Customer prior to the Amendment Date. However, any disclosure of Hazardous Substances that will affect the performance of the Work after the Amendment Date will constitute a valid basis for a Change Order.

(b) “**Hazardous Substances**” means (i) any hazardous, toxic, or dangerous wastes, substances, chemicals, constituents, contaminants, pollutants, and materials and any other carcinogenic, liquids, corrosive, ignitable, radioactive, reactive, toxic, or otherwise hazardous substances or mixtures (whether solids, liquids, gases) now or at any time subject to regulation, control, remediation, or otherwise addressed under Applicable Laws; (ii) any “hazardous substance” as defined by the Resource, Conservation and Recovery Act of 1976 (42 U.S.C. §6901 et seq.), as amended, and regulations promulgated thereunder; (iii) any “hazardous, toxic or dangerous waste, substance or material” specifically defined as such in 42 U.S.C. §9601 et seq., as amended and regulations promulgated thereunder; and (iv) any hazardous, toxic or dangerous waste, substance, or material as defined in any so-called “superfund” or “superlien” law.

Schedule 1-A-10. Training Requirements. WES will provide [●] hours of dedicated training prior to Final Completion to ensure proper understanding of installed systems. Additional training will be provided at no additional cost until Final Completion as deemed necessary by Customer and WES.

Schedule 1-A-11. Trenching. Pursuant to California Labor Code §6705, if the Work is a public work involving an estimated expenditure in excess of \$25,000 and includes the excavation of any trench or trenches five (5) feet or more in depth, WES will, in advance of excavation, submit to Customer and/or a registered civil or structural engineer, employed by Customer, to whom authority to accept has been delegated, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, which provisions will be no less effective than the current and applicable CAL-OSHA Construction Safety Orders. No excavation of such trench or trenches may be commenced until this detailed plan has been accepted by Customer or by the person to whom authority to accept has been delegated by Customer. Pursuant to California Labor Code §6705, nothing in this Schedule 1-A-11 imposes tort liability on Customer or any of its employees.

Schedule 1-A-12. Subsurface Conditions. Pursuant to California Public Contract Code §7104, if the Work is a public work involving digging trenches or other excavations that extend deeper than four (4) feet below the surface of the ground:

(a) WES will promptly, and before the following conditions are disturbed, notify Customer, in writing, of any:

(1) Material that WES believes may be material that is hazardous waste, as defined in California Health and Safety Code §25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to WES before the Amendment Date;

(3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

(b) Customer will promptly investigate the conditions and, if it finds that the conditions do materially so differ or do involve hazardous waste, and cause a decrease or increase in WES's cost of, or the time required for, performance of any part of the Work will issue a Change Order under the procedures described in this Contract.

(c) If a dispute arises between Customer and WES, whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in WES's cost of, or time required for, performance of any part of the Work, WES will not be excused from any scheduled completion date provided for by this Contract but will proceed with all Work to be performed under this Contract. WES will retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the Parties.

SCHEDULE 1-B

CERTIFICATE OF SUBSTANTIAL COMPLETION

Project		Project Number:	
From: WES		To (Customer):	City of Orange, a municipal corporation
[WES Address]			300 E. Chapman Ave.
[WES Address]			Orange, CA 92866

WORK OR PORTION OF THE WORK DESIGNATED FOR PARTIAL OCCUPANCY OR USE WILL INCLUDE:

Scope of Work A {Identify the Work, or portion thereof per the schedule of values, that is Substantially Complete}

The Work performed under this Contract has been reviewed and found, to the best of the Customer’s knowledge, information, and belief, to be Substantially Complete. Substantial Completion is the stage in the progress of the Work when the Work or designated portion is sufficiently complete in accordance with the ESPC Documents so that the Customer can occupy or utilize the work for its intended use. The date of Substantial Completion of the Work or portion designated above is the date of issuance established by this Certificate, which is also the date of commencement of applicable warranties required by the ESPC Documents, except as stated below:

{Identify warranties that do not commence on the date of Substantial Completion, if any, and indicate their date of commencement}

Warranty		Date	of
		Commencement	
[Equipment A, if any]			

CUSTOMER’S
REPRESENTATIVE

BY (Signature)

DATE OF ISSUANCE

A list of items to be completed or corrected is attached hereto. The failure to include any items on such a list does not alter the responsibility of WES to complete all Work in accordance with the ESPC Documents. Unless otherwise agreed to in writing, the date of commencement of warranties for items on the attached list will be the date of issuance of the final Certificate of Payment or the date of final payment.

The estimated cost of work that is incomplete or defective: \$ 0.00

WES will complete or correct the Work on the list of items attached hereto within [] days from the above date of Substantial Completion:

WES BY (Signature) DATE

The Customer accepts the Work or designated portion as Substantially Complete and will assume full possession thereof on the above date of Substantial Completion. Customer assumes responsibility for security, maintenance, heat, utilities, damage to the Work and insurance.

CUSTOMER BY (Signature) DATE

SCHEDULE 1-C

CERTIFICATE OF ACCEPTANCE – FINAL COMPLETION

Scope of Work A {Identify the Work, or portion thereof per the schedule of values, that is Finally Complete}

This is to certify that a final inspection of the Scope of Work identified above has been conducted jointly by WES and City of Orange, and that the Parties have determined that such Scope of Work has been fully completed in accordance with the ESPC Documents. All guarantees and warranties that have not commenced previously will commence as of the date of completion below.

Customer accepts the applicable Scope of Work as being fully completed and assumes all responsibility for the corresponding Premises. Customer will promptly record a notice of completion or notice of acceptance in the office of the county recorder in accordance with California Civil Code §9204. WES remains responsible for correcting errors and omissions discovered subsequent to the execution of this document and to respond to claims made under applicable warranties.

WES

CUSTOMER

Signed _____

Signed _____

Name _____

Name Daniel R. Slater

Title _____

Title Mayor

ATTEST:

Pamela Coleman, City Clerk

APPROVED AS TO FORM:

Nathalie Adourian, City Attorney √

EXHIBIT 2

FORM OF ENERGY AND WATER SAVINGS GUARANTEE¹

{NOTE: this schedule is added by the Energy Savings Guarantee. Retain the paragraph immediately below at the time originally issuing this Contract (when entering into the IGA). All other content to be defined at the time of the Energy Savings Guarantee}

[This Schedule is added as part of the Energy Savings Guarantee]

Exhibit 2-1. GUARANTEE PHASE CONTRACT SUM

(a) Customer will pay WES annual payments for Guarantee Phase services for the corresponding Scope of Work in the amounts listed below, subject to Schedule B and any other applicable terms of this Energy [and Water] Savings Guarantee:

Year One:	\$0.00 (included in Construction Phase Contract Sum)
Year Two:	\$XX,XXX
Year Three:	Year two price modified by the change, up or down, in CPI since the beginning of the year two agreement.
Year Four and Beyond:	Prior year modified by the last 12 months change, up or down, in CPI.

(b) Customer may cancel the applicable Guarantee Phase services on any anniversary of the commencement of such Guarantee Services, or at the end of Customer’s fiscal year. If Customer cancels these services, WES reserves the right to cancel the corresponding Energy [and Water] Savings Guarantee as outlined in this Exhibit 2.

Exhibit 2-2. CUSTOMER’S COMPLIANCE WITH FACILITIES MAINTENANCE CHECKLIST

(a) The Parties acknowledge and agree that WES has entered into this Contract in reliance upon the prospect of earning compensation, as set forth on Exhibit B and Exhibit 2-1.

(b) The Parties further acknowledge and agree that any guaranteed energy [and water] savings would not likely be obtained unless certain procedures and methods of operation designed for energy [and water] savings conservation will be implemented and followed by Customer on a regular and continuous basis.

(c) Customer agrees that it will adhere to, follow and implement the energy [and water] conservation procedures and methods of operation to be set forth in Schedule 1-A-5.

(d) Customer agrees that WES will have the right once a month, with prior notice, to inspect the Premises to determine if Customer is complying, and has complied, with its obligations as set forth above in Exhibit 2-2(c). For the purpose of determining Customer’s compliance, the checklist to be set forth on Schedule 1-A-6, as completed and recorded by WES during its monthly inspections, will be used to measure and record Customer’s compliance. Customer will make the Premises available to WES for and during each monthly inspection and will have the right to witness each inspection and the recordations on the checklist.

¹ NTD: Use only for savings guarantees for a building or facility. For water meter infrastructure guarantees, use Exhibit 3.

Exhibit 2-3. UPGRADING OR ALTERING CUSTOMER'S EQUIPMENT

(a) Subject to Customer's prior written approval, which shall not be unreasonably withheld, WES will at all times have the right (but not the obligation) to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy [and water] saving actions for the Premises, *provided* that:

- (1) WES complies with the standards of comfort and services set forth in Schedule 1-A-3;
- (2) such modifications or additions to, or replacement of, the Equipment, and any operational changes or new procedures, are necessary to enable WES to achieve the energy [and water] savings for the Premises; and
- (3) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures will be the responsibility of WES.

(b) All modifications, additions or replacements of the Equipment or revisions to operating or other procedures will be described in a supplemental Schedule(s) to be provided to the Customer for approval, which shall not be unreasonably withheld, *provided* that any replacement of the Equipment will be new and have equal or better potential to reduce energy [and water] consumption for the Premises than the Equipment being replaced. WES will update any and all software to be used in connection with the Equipment in accordance with the provisions of Section 10.1. All replacements of and alterations or additions to the Equipment will become part of the Equipment described in the Scope of Work and will be covered by the provisions and terms of Exhibit 1-9.

Exhibit 2-4. MATERIAL CHANGES

(a) Material Changes Defined. A Material Change will include any change in or to the Premises, whether structural, operational or otherwise in nature which reasonably could be expected, in the reasonable judgment of WES, to increase or decrease annual energy [and water] consumption in accordance with the provisions and procedures set forth in Schedule 2-B, by at least 0.5% after adjustments for climatic variations. Actions by the Customer which may result in Material Change include but are not limited to the following:

- (1) manner of use of Premises by the Customer; or
- (2) hours of operation for the Premises or for any equipment or energy-[and water-]using systems operating at the Premises; or
- (3) permanent changes in the comfort and service parameters set forth in Schedule 1-A-3; or
- (4) occupancy of the Premises; or
- (5) structure of the Premises; or
- (6) types and quantity of equipment used at the Premises; or
- (7) modification, renovation or construction at the Premises; or
- (8) the Customer's failure to provide maintenance of or repairs to the Equipment in accordance with Schedule 1-A-5; or
- (9) any other conditions, other than climate, affecting energy [and water] use at the Premises.

(b) Reported Material Changes; Notice by Customer. The Customer will use its best efforts to deliver to WES a written notice describing all actual or proposed Material Changes in the Premises or in the

operation of the Premises at least thirty (30) days before any actual or proposed Material Change is implemented or as soon as is practicable after an emergency or unplanned event. Notice to WES of Material Changes caused by a bona fide emergency or other situation which precludes advance notification will be deemed sufficient if given by the Customer within thirty (30) hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Customer to have occurred.

(c) Unreported Material Change. In the absence of any Material Changes in the Premises or in their operations, the baseline energy [and water] consumption as set forth in Schedule 2-A should not change more than two percent (2%) during any month from the projected energy [and water] use for that month, after adjustments for changes in climate conditions. Therefore, if energy [and water] consumption for any month as set forth in Schedule 2-A deviates by more than two percent (2%) from the energy [and water] consumption of the same month of the preceding year after adjustments for changes to climatic conditions, then such deviation will be timely reviewed by WES to ascertain the cause of deviation. WES will report its findings to the Customer in a timely manner and WES will determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in Schedule 2-B.

Exhibit 2-5. GUARANTEED ENERGY [AND WATER] SAVINGS

(a) WES guarantees that Customer will save [●] kWh, [●] therms, and [●] gallons of water annually during a [●]-year Guarantee Term {for projects without PV installations- delete if PV scope is included}.

(b) WES guarantees that Customer will save or produce [●] kWh, [●] therms, and [●] gallons of water in Year 1. The PV generation is expected to degrade by 2.0% in the first year of operation, and then 0.5% per year after that. The total guaranteed savings/production accounting for this degradation are shown below:

Insert annual savings table from DER tool here

{for projects without PV installations – delete if PV isn't included}

{Use this section if Option A savings is to be used}

(1) International Performance Measurement and Verification Protocol Option A – Partially Measured Retrofit Isolation will be utilized to verify Energy [and Water] Savings of [●] kWh within the facilities. Energy [and water] consumption in Customer's Premises following the completion of the Scope of Work will be compared to baseline energy [and water] consumption in Customer's Premises as described in Schedule 2-B.

{End of selection}

{Use this section if Option B savings is to be used}

(2) International Performance Measurement and Verification Protocol Option B – Fully Measured Retrofit Isolation will be utilized to verify annual electric production of [●] kWh from the Solar PV measure following the completion of the Scope of Work in Year 1. This guarantee comprises 95% of the total estimated generation from the PV measure, as well as a 2.0% degradation rate for the module's first year. The guaranteed savings for subsequent years will be derated by 0.5% annually to account for normal degradation of the PV system. Post installation energy consumption will be compared to baseline energy consumption as described in Schedule 2-B. Guaranteed solar PV production is shown in the following table:

Insert Solar Production Table here:

{End of selection}

{Use this section if Option C savings is to be used}

(3) International Performance Measurement and Verification Protocol Option C – Whole Facility will be utilized to verify annual savings of \$[●]. Energy [and water] consumption in Customer’s Premises following the completion of the Scope of Work will be compared to baseline energy [and water] consumption in Customer’s Premises as described in Schedule 2-B.

{End of selection}

{Use this section if Option D savings is to be used}

(4) International Performance Measurement and Verification Protocol Option D – Calibrated Simulation will be utilized to verify annual savings of \$[●]. Modeled energy [and water] consumption in Customer’s Premises following the completion of the Scope of Work and during the baseline period will be compared using a calibrated energy [and water] savings model taking into account, among other things, building parameters, including building geometry, envelope, HVAC systems as described in Schedule 2-B.

{End of selection}

(5) Customer and WES agree that an additional energy [and water] savings of \$[●] annually is achieved as guaranteed at [specific facility name if used]. No further tracking or monitoring of this savings will take place.

(6) Customer and WES agree that annual maintenance savings of \$[●] is achieved as guaranteed. No further tracking or monitoring of this savings will take place

Exhibit 2-6. Savings Reporting and Reconciliation. No more than eighteen (18) months following Final Completion, WES will provide to Customer a savings report identifying the Actual energy [and water] savings achieved during the installation period as well as a period of twelve (12) consecutive months during this period following Final Completion. The total Actual energy [and water] savings and Energy [and Water] Savings Guarantee are defined as:

(a) Actual Energy [or Water] Savings = Construction Period Savings + Performance Period Savings x Guarantee Term

Where: Performance Period savings is savings from a period of twelve (12) consecutive months during the period following Final Completion

(b) Energy [or Water] Savings Guarantee = Annual Guarantee Amount x Guarantee Term

{Use this section if shared savings is not to be used}

(c) In the event that the Actual Energy [or Water] Savings is in excess of the energy [and water] Savings Guarantee, the energy [and water] Savings Guarantee will be deemed satisfied. No further tracking will be conducted by WES, nor will any additional services be performed.

{End of selection}

{Use this section if shared savings is to be used}

(d) In the event that the Actual energy [and water] savings is in excess of the energy [and water] Savings Guarantee, WES will have the following options:

(1) The energy [and water] Savings Guarantee will be deemed satisfied. No further tracking will be conducted by WES, nor will any additional services be performed.

(2) In the event that the Actual energy [and water] Savings is in excess of the Projected Savings amount of \$[●], Customer will pay WES [●] percent ([●]%) of the full amount of the

difference between the Actual energy [and water] savings and the Projected Savings for the 12-month guarantee period, as described in Schedule 2-B. In addition, WES will, at its discretion, either:

(A) Continue to track savings for the twelve (12) months immediately following the previous 12-month guarantee period. In this case, at this 12-month period's conclusion, WES will have the options described in Exhibit 2-6(d)(1) or Exhibit 2-6(d)(2) above; or

(B) Discontinue tracking of the energy and water savings. In this case, the Energy [and Water] Savings Guarantee will be deemed satisfied and no additional services will be provided.

{End of selection}

(e) In the event that Actual energy [and water] savings falls short of the Energy [and Water] Savings Guarantee, WES will reimburse Customer for the full amount of the difference between the Actual Energy [and Water] and the Energy [and Water] Savings Guarantee, as described in Schedule 2-B, for the consecutive 12-month period identified. In addition, WES will, at its discretion, perform one of the following actions:

(1) Reimburse Customer for all remaining 12-month periods remaining in the Guarantee Term. The reimbursement for the remaining 12-month periods in the Guarantee Term will use an annual five percent (5%) discount rate to account for the present value of the funds being reimbursed.

(2) Continue to track savings for the 12 months immediately following the previous 12-month guarantee period. At the conclusion of this 12-month term Guarantee Term, WES will provide to Customer a savings report identifying the Actual Energy [and Water] Savings achieved during the Term.

(A) In the event that the most recent Actual Energy [and Water] Savings is in excess of the Energy [and Water] Savings Guarantee, the Energy [and Water] Savings Guarantee will be deemed satisfied. No further tracking will be conducted by WES, nor will any additional services be performed.

(B) In the event that additional savings above guarantee are achieved in any year during the guarantee period, these savings can be used to offset shortfalls in savings in other years. If WES has written a savings shortfall check to the Customer, and later Total Dollar Savings exceed the annual guarantee amount, Customer will reimburse WES up to the amount of WES's shortfall check, to the extent that the shortfall is made up by savings in excess of the guarantee.

(C) In the event that the most recent Actual Energy [and Water] Savings falls short of the Energy [and Water] Savings Guarantee, WES will reimburse Customer for the full amount of the difference between the Actual Energy [and Water] and the Energy [and Water] Savings Guarantee for the consecutive 12-month period identified. In addition, WES will, at its discretion, perform one of the actions described in Exhibit 2-6(e)(1) or Exhibit 2-6(e)(2) above.

Exhibit 2-7. Utility Rates Used to Calculate Savings. The utility rates listed in the table below will be used to determine:

(a) The amount of dollar savings achieved each year for purposes of measuring the program's performance relative to the Energy [and Water] Savings Guarantee and

(b) The dollar amount that WES will compensate the Customer in the event that there is an Energy [and Water] shortfall

Table 1 - Utility Rates used for determining Actual Energy [and Water]

Program Year	Electric Rate	Natural Gas	[Water]
0	\$[•] / kWh (all months) \$[•] / billed kW	\$[•] / Therm	[\$[•] / kGal]
Future Years	Year zero rate adjusted for current year's CPI or future year's actual rate, whichever is greater.		

Notes:

Exhibit 2-8. Requirements of Customer: To facilitate successful achievement of the Energy [and Water] Savings Guarantee, Customer agrees to:

(a) Provide utility data for the meters listed in Schedule 2-A to WES within thirty (30) days of receiving such information from utility providers. Failure to provide data within this timeframe will void the Energy [and Water] Savings Guarantee.

(b) Provide WES access to all buildings covered under the Guarantee; all temperature control and energy management systems which control part or all of the buildings covered under the Guarantee; personnel with responsibility for operating and/or managing any of the above buildings; and construction documents, equipment inventories, and other documents that may be helpful in evaluating a cause for adjustment.

SCHEDULE 2-A

BASELINE ENERGY AND WATER CONSUMPTION

{NOTE: this schedule is added by the Energy Savings Guarantee. Retain the paragraph immediately below at the time originally issuing this contract (when entering into the IGA). All other content to be defined at the time of the Energy Savings Guarantee}

[This Schedule is added as part of the Energy Savings Guarantee]

An accurate measurement of Baseline is necessary to facilitate accurate measurement and verification of the Energy and Water Savings Guarantee. Baseline conditions generally include physical, operational, and energy and water use data on the facility and systems. This Schedule identifies baseline performance and operating factors that influence energy and water consumption, and how their values will be determined through observations and measurements. The Schedule also demonstrates the calculated Baseline for the Customer's Premises. This Baseline will be used to determine whether Actual Energy and Water exceeds or falls short of the Energy and Water Savings Guarantee.

{Use this section if Option A is to be used}

Schedule 2-A-1. Lighting Retrofits: Retrofit existing fluorescent, incandescent, and HID lighting fixtures with more efficient LED lamps and fixtures. Savings will result from reduced fixture power consumption. Operating hours are not affected by this ECM.

(a) M&V Option: IPMVP Option A – Partially Measured Retrofit Isolation

(b) Applicable Interior Lighting ECMs. The following facilities will utilize this M&V methodology for the purposes of measuring interior lighting energy savings.

(c) Applicable Outdoor Lighting ECMs. The following facilities will utilize this M&V methodology for the purposes of measuring outdoor lighting energy savings.

(d) Definition of Baseline. The baseline is that set of parameters that describes the lighting energy and power during the baseline year for the lighting fixtures being retrofitted and/or replaced.

(e) Energy Baseline Development. During the IGA Phase, which took place during [●], a series of comprehensive lighting audits were completed. Room-by-room inventories of fixture counts, types, and circuits were made. These inventories of all existing lighting equipment are provided in the Lighting Inventory & Savings document located in the appendix. In all cases, burned out fixtures and lamps are noted in the room-by-room inventory. During the survey, [●]% of fixtures had one or more burned out lamps or ballasts. This was accounted for in the baseline and in the savings calculations by not accounting for energy use for these burned out lamps. Additional measurements will be performed during construction prior to installing new lighting systems. The data includes:

- (1) Lamp types
- (2) Light levels (foot candles) measured at desk height in the approximate center of the space, where measurement was feasible (appendix)
- (3) Sampling of electricity demand (kW) spot measurements for each electrically significant fixture configuration in accordance with the IPMVP M&V Guidelines to provide 80% confidence and 20% precision (Appendix)
- (4) Burn hours based on building operating hours and space types (Appendix)
- (5) Areas where upgrades were not needed (Appendix)
- (6) Areas that were grossly over-lit or under-lit (Appendix)

(f) Baseline Energy consumption. Samples of the most common fixture types will be measured to determine the fixture power consumption under actual operating conditions.

(1) Fixture Energy consumption:

$$LCB = \sum \text{Pre-Retrofit System Consumption}$$

Where,

$$\sum \text{Pre-Retrofit System Consumption} = \sum (\text{Measured Fixture Watts} \times \text{Annual Operating Hours})$$

LCB = Lighting Baseline Electrical Consumption (Lighting specific, Includes interior and exterior lighting)

(2) Fixture Power Demand:

$$LDB = \sum \text{Pre-Retrofit System Power} \times 12 \text{ months}$$

Where,

$$\sum \text{Pre-Retrofit System Power} = \sum (\text{Measured Fixture Watts} \times \text{Diversity Factor})$$

LDB = Annual Lighting Baseline Electrical Demand (Lighting specific, Includes interior and exterior lighting)

Diversity Factor = Percentage of time the fixtures are on when the peak demand is set (stipulated)

(3) Air Conditioning Consumption: Electrical consumption associated with the cooling load generated from lighting.

$$ACB (kWh) = \frac{LCB}{COP}$$

Where,

ACB = Baseline air conditioning electrical consumption associated with lighting

COP = Coefficient of Performance of the cooling system (assumed)

(4) Air Conditioning Demand: Electrical demand associated with the cooling load generated from lighting.

$$ADB (kW) = \frac{LDB \times \text{No. Cooling Months}}{12 \frac{\text{months}}{\text{yr}} \times COP}$$

Where,

ADB = Annual baseline air conditioning electrical demand associated with lighting

COP = Coefficient of Performance of the cooling system (assumed)

(5) Heating Fuel Baseline: Heating fuel consumption offset by the heat contributed to the space from lighting.

$$HCB (\text{therms}) = \frac{LCB \times \text{No. Heating Months} \times 3412 \text{ Btu/kWh}}{12 \frac{\text{months}}{\text{yr}} \times 100,000 \frac{\text{Btu}}{\text{Therm}} \times \text{Heating Efficiency}}$$

Where,

HCB = Baseline lighting contribution space heat that offsets heating system load

Heating Efficiency = Efficiency of the heating system (assumed)

(6) Stipulated Variables.

(A) Annual Operating Hours – Run hours for light fixtures will not be measured; operating hours are based on typical hours of occupancy for each space type. See next section for details.

(B) Demand Factor – Demand Factor is stipulated based on typical probabilities that a given room type will be illuminated when the building's peak demand is set for each month.

(C) Coefficient of Performance of the cooling system – Published efficiency data is used for cooling systems in each building. Impact of this variable does not justify the cost to measure.

(D) Heating System Efficiency – Published efficiency data is used for heating systems in each building. Impact of this variable does not justify the cost to measure

(E) Run hours for light fixtures will not be measured; operating hours are based on typical hours of occupancy for each space type.

(g) Baseline Measurements and Sample Sizes. Baseline power (Watt) measurements will be performed during the Construction and Installation Period prior to modifying, retrofitting or replacing the lighting systems being measured. Quantities and locations of measurements will be determined utilizing the IPMVP Guidelines for Partially Measured Retrofit Isolation. Sample sizes will meet a confidence of at least 80% and a precision of 20%.

Schedule 2-A-2. Plumbing Retrofits: Retrofit and replace existing water closets, urinals, faucet moderators, showerheads, xxxxxxx and xxxxxxx with low flow fixtures. Savings will result from reduced water consumption.

(a) M&V Option: IPMVP Option A – Partially Measured Retrofit Isolation Definition of Baseline

(b) Definition of Baseline: The baseline is that set of parameters that describes the water consumed during the baseline year by the plumbing fixtures being retrofitted and/or replaced.

(c) Water Baseline Development: During the IGA Phase, which took place during [●], a series of comprehensive plumbing fixture audits were completed. Room-by-room inventories of fixture counts and types were made. These inventories of all existing plumbing fixtures are provided in the Plumbing Fixture Inventory & Savings document located in the appendix.

(d) Fixture Water Consumption: Samples of the most common fixture types will be measured to determine the fixture water consumption under actual operating conditions.

$$WB = \sum \text{Pre-Retrofit System Consumption}$$

Where,

$$\sum \text{Pre-Retrofit System Consumption} = \sum (\text{Measured Fixture Consumption} \times \text{Annual Utilization})$$

WB = Baseline Water Consumption (Plumbing Fixture specific, Includes fixtures proposed to be retrofitted or replaced)

(e) Stipulated Variables; Annual Utilization. Usage frequency for water closets and urinals and use frequency and per-use duration for faucets and showerheads will not be measured; utilization is based on typical values for each building function and use.

(f) Baseline Measurements and Sample Sizes. Baseline measurements of fixture consumption that includes flush volume for water closets and urinals and flow rates for faucets and showerheads will be performed during the Construction and Installation Period prior to modifying, retrofitting or replacing the plumbing fixtures being measured. Quantities and locations of measurements will be determined utilizing the IPMVP Guidelines for Partially Measured Retrofit Isolation. Sample sizes will meet a confidence of at least 80% and a precision of 20%.

{End of Selection}

{Use this section if Option B is to be used}

Schedule 2-A-3. Solar PV: Install Solar PV at one site.

(a) M&V Option: IPMVP Option B – Fully Measured Retrofit Isolation

(b) Applicable Locations. The following facilities will utilize this M&V methodology for the purposes of measuring PV generation.

- (1) Building 1
- (2) Building 2
- (3) Building 3

(c) Definition of Baseline. The baseline is that set of parameters that describes the PV generation during the baseline year.

Energy and Water Baseline Development. The baseline consumption of any new PV installation is defined as the energy performance of the facility prior to the installation of this ECM. Sites with no prior PV installations have a baseline of zero production.

{End of Selection}

{Use this section if Option C savings is to be used}

Schedule 2-A-4. Facility-Wide Energy and Water Improvements. Energy [and Water] savings for all energy conservation measures, and their interactive effects, in the buildings listed below will be measured at the buildings’ main [water,] electric and gas meters (“*Guarantee Meters*”). These Guarantee Meters account for all energy [and water] use of these facilities.

Table 2 – Buildings Covered by Guarantee Meters

Building	Area	Comments

(a) M&V Option: IPMVP Option C – Whole Facility Measurement. Option C was selected because multiple energy and water conservation measures (ECMs or WCMs) are included in the Project, and may have interactive effects.

(b) Definition of Baseline.

(1) The baseline is that set of parameters that describes both the energy [and water] consumed in the Baseline Year and the conditions that caused that consumption to occur. This set of parameters includes utility consumption, facility use information, weather data and other information as may be necessary to describe the base year conditions. Customer agrees to accept modifications to this baseline, as outlined in Schedule 2-B, that are necessary to account for changes in the facilities and their use which may have occurred prior to the execution of this Contract but come to the attention of WES after the execution of this Contract or,

(2) The Baseline Year is the time period of time that establishes the pre-retrofit conditions used as the point of reference for determining guaranteed savings. The guarantee period is any one or more billing periods during the term of the guarantee during which guaranteed savings are measured.

(c) Energy [and Water] Baseline Development: A detailed energy, water and facility survey was performed for each building during [●]. Baseline parameters, including utility consumption, facility use information, equipment inventory and weather data were obtained. Baseline parameters related to utilities and building operation are outlined below. **Inventories of all existing energy and water consuming equipment are provided in the Energy-Consuming Equipment Inventory document located in the appendix.**

(1) Guarantee Meters: The following meters will be used to measure actual energy [and water] consumption for both the Baseline Year and guarantee periods:

Meter Name	Meter Number	Account Number	Utility Co.	Rate	Units

*** Note:**

(2) Baseline Period: The baseline period is any consecutive 12-month period within the 24-month period immediately preceding the Construction Period. This period will be selected by WES and presented to the Customer with the first savings report or within 180 days of Final Completion, whichever comes first.

(3) Weather Source: Data used for weather conditions will be Daily High-Low Temperatures obtained from the National Weather Service Station at [●]. In the event the specified weather station is de-activated, weather data will be collected from the nearest weather station with suitable observations. If the data source becomes unavailable or a superior source is identified, WES may select an alternative data source with Customer’s approval.

(d) Baseline Building Operation: The following provides documentation of the use and operational parameters of each building during the Baseline Year. These descriptions are intended to provide a basic description of some, not all, of the conditions that caused that Baseline Consumption to occur. Material Changes in these conditions, along with others, can be used as causes for adjustment to the baseline as described in Schedule 2-B.

(1) Annual Calendar

Building	Week Days	Saturdays	Sundays	Holidays/ Exceptions

Annual Day Definitions:

Weekday: Monday through Friday except Holidays

Saturdays: Saturdays except Holidays

Sundays: Sundays except Holidays

Exceptions/Holidays: Martin Luther King, Jr. Day, President’s Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Thanksgiving, Day After Thanksgiving, Christmas, New Year’s Day, or other day scheduled closed

(2) Occupancy Schedules for each building

Building/Space Types	Work Day	Saturday	Sunday	Holiday

(3) Energy and Water Consuming Equipment Use: HVAC systems generally come on one hour before the space served is occupied. The equipment is scheduled off at the end of the occupied period. Other energy consuming equipment follow occupancy schedules.

(e) Baseline Energy and Water Consumption (or Demand):

(1) Baseline Energy and Water Consumption = \sum Tracked Utility Meters’ Consumption \pm Baseline Adjustments

(f) Basis for Adjustment: Savings are to be reported as “cost avoidance,” under reporting period conditions. Baseline period energy and water will be adjusted to reporting period conditions, using the following IPMVP equation:

(1) Baseline Adjustment = $\sum \pm$ Routine Adjustment to reporting period conditions \pm Non-Routine Adjustments to reporting-period conditions

Where:

Routine Adjustments include, but are not limited to, weather and billing period length

Non-Routine Adjustments include changes in key conditions from the baseline period to the reporting period, including, but not limited to, occupancy; hours of operation; changes to building function and use; changes to operation, capacity or quantity of equipment or systems within the facility; and additions to the building.

(g) Baseline Measurements: Monthly utility consumption and demand will be obtained from the utility bills for the Guarantee Meters.

{End of Selection}

{Use this section if Option D savings is to be used}

Schedule 2-A-5. Facility-Wide Energy and Water Improvements: Energy [and Water] savings for all ECMs and WCMs, and their interactive effects in the buildings listed below, will be determined using calibrated computer simulation models. Computer simulation is a powerful tool that allows an experienced user to model the building and mechanical systems in order to predict building energy [and water] use both before and after the installation of energy conservation measures.

Table 3 - Buildings Utilizing Calibrated Simulation Models

Building	Area	Comments

(a) M&V Option: IPMVP Option D – Calibrated Simulation. Option D was selected because multiple energy and water conservation measures (ECMs and WCMs) are included in the Project, and may have interactive effects.

(b) Simulation Program: The software that will be utilized to develop a calibrated simulation of the Customer’s Premises during the baseline as well as simulating the effect of the Energy Conservation Opportunities (ECMs) implemented by WES will be eQUEST (Quick Energy Simulation Tool), a Department of Energy (DOE) supported program common in the industry.

(c) Definition of Baseline:

(1) The baseline is that set of modeled parameters that describes both the energy consumed in the Baseline Year and the conditions that caused that consumption to occur. This set of parameters includes building physical and thermal properties, energy consuming equipment and system parameters, space temperature setpoints and schedules, facility use and occupancy schedules, and other information as may be necessary to simulate base year conditions.

(2) The Baseline Year is the time period of time that establishes the pre-retrofit conditions used as the point of reference for determining guaranteed savings. The guarantee period is any one or more billing periods during the term of the guarantee during which guaranteed savings are measured.

(d) Energy [and Water] Baseline Development:

(1) A detailed energy and facility survey was performed for each building during [●]. Baseline parameters, including physical properties of the facility, equipment and system types and efficiencies, and control sequences were obtained and will be used to construct a computer energy simulation. This model, using actual weather data, will be calibrated to match actual utility usage during the baseline period. Once calibrated, the model will be run with TMY3 (Typical Meteorological Year) weather data to reflect an average year’s weather. The month-by-month energy and water use and demand output of this model will be used for the Baseline Energy and water consumption for the purposes of calculating Energy and Water. Some of the baseline parameters that will be used in the model are outlined below.

(A) Calibration Meters: The following meters will be used to calibrate the baseline model.

Building & Meter	Meter Number	Account Number	Utility Co.	Rate	Units

(B) Baseline Period: The baseline period is any consecutive 12-month period within the 24-month period immediately preceding the Construction Period. This period will be selected by WES and presented to the Customer with the savings report.

(C) Baseline Weather: Baseline weather data is input into the Calibrated Baseline Energy and Water Model for the purpose of comparing the model’s resulting baseline energy and water consumption with actual utility bills. TMY3 (Typical Meteorological Year) weather data is then used in the model to arrive at a baseline energy and water consumption that reflects and typical year’s weather.

(D) Baseline Building Operation: The following provides documentation of the use and operational parameters of each building during the Baseline Year. These descriptions are intended to provide a basic description of some, not all, of the conditions that caused that Baseline Consumption to occur.

(i) Annual Calendar

	Week Days	Saturdays	Sundays	Holidays/ Exceptions

Annual Day Definitions:

Weekday: Monday through Friday except Holidays

Saturdays: Saturdays except Holidays

Sundays: Sundays except Holidays

Exceptions/Holidays: Martin Luther King, Jr. Day, President’s Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Thanksgiving, Day After Thanksgiving, Christmas, New Year’s Day, or other day scheduled closed

(ii) Occupancy Schedules for each building

Building/Space Types	Work Day	Saturday	Sunday	Holiday

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(iii) Energy and Water Consuming Equipment Use: HVAC systems generally come on one hour before the space served is occupied. The equipment is scheduled off at the end of the occupied period. Other energy and water consuming equipment follow occupancy schedules.

(E) Baseline Calibration: Calibration of the baseline is achieved by verifying that the simulation model reasonably predicts the energy [and water] use of the facility during the Baseline Period. This is performed by comparing model results that reflect the building(s) to a set of utility bills for the Baseline Period, including consumption and demand. Main steps in the simulation and calibration process are listed below:

(i) Baseline building parameters, including building geometry, envelope, HVAC systems, etc. are input and documented.

(ii) Parameters were gathered from facility walkthroughs, interviews with facilities staff and administration, and building blueprints.

(iii) Initial simulation output is checked with standard indices for building performance to confirm model is reasonable.

(iv) Energy, water and demand results of the model are compared with baseline metered data, on a monthly basis.

(v) Input data is revised and additional simulations are performed until the simulation closely matches (less than 15% total deviation) the facility's baseline.

(vi) Once calibrated, the model will be run with TMY3 (Typical Meteorological Year) weather data to reflect an average year's weather.

(e) Baseline Energy and water consumption (or Demand): The month-by-month energy and water use and demand output of the Calibrated Baseline Model run with TMY3 weather.

(f) Baseline Measurements: Monthly utility consumption and demand will be obtained from the utility bills for the utility meters used to calibrate the baseline energy [and water model].

SCHEDULE 2-B

SAVINGS MEASUREMENT & CALCULATION FORMULAE METHODOLOGY TO ADJUST BASELINE

{NOTE: this schedule is added by the Energy Savings Guarantee. Retain the paragraph immediately below at the time originally issuing this contract (when entering into the IGA). All other content to be defined at the time of the Energy Savings Guarantee}

[This Schedule is added as part of the Energy Savings Guarantee]

{Use this section if Option A savings is to be used. Modify for appropriate system}

Schedule 2-B-1. Savings Measurement (IPMVP Option A):

(a) International Performance Measurement and Verification Protocol Option A verification techniques measure savings at a system level where key performance factors (e.g., [plumbing fixture flow rate][lighting fixture power]) or operational factors (e.g., [plumbing][lighting] fixture utilization) can be measured during the baseline and post-installation periods. Any factor not measured is estimated based on assumptions, analysis of historical data, or manufacturer's data.

(b) Quantities and locations of measurements will be determined utilizing the IPMVP Guidelines for Partially Measured Retrofit Isolation. Sample sizes will meet a confidence of at least 80% and a precision of 20%.

(1) Water Savings:

$$WS = WSB - WSP$$

Where:

WS = Water and Sewer Units Saved

WSB = Baseline Water and Sewer Consumption

WSP = Proposed Water and Sewer Consumption

For Plumbing fixtures:

$$WSP = WSPTM + WSPTF + WSPU + WSPF$$

Where:

WSPTM = OCC x WD x (1/3 x OPD) x GPFPT x (# of toilets) = Water and Sewer Proposed for Men's Toilets

WSPTF = OCC x WD x OPD x GPFPT x (# of toilets) = Water and Sewer Proposed for Women's Toilets

WSPU = OCC x WD x (2/3 x OPD) x GPFPU x (# of urinals) = Water and Sewer Proposed for Urinals

WSPF = OCC x WD x (1/6 x OPD) x GPMP x (# of faucets) = Water and Sewer Proposed for Faucets

OCC = Number of occupants – (stipulated values)

WD = Average annual days of use – (stipulated values)

OPD = Operations per day – (stipulated values)

GPFPT = Proposed gallons per flush per day for toilets (measured parameter)

GPFPU = Proposed gallons per flush per day for urinals (measured parameter)

GPMP = Proposed gallons per minute for faucets (measured parameter)

$WSB = WSBTM + WSBTF + WSBU + WSBF$

Where:

$WSBTM = OCC \times WD \times (1/3 \times OPD) \times GPFBT \times (\# \text{ of toilets}) = \text{Water and Sewer Baseline for Men's Toilets}$

$WSBTF = OCC \times WD \times OPD \times GPFBT \times (\# \text{ of toilets}) = \text{Water and Sewer Baseline for Women's Toilets}$

$WSBU = OCC \times WD \times (2/3 \times OPD) \times GPFBU \times (\# \text{ of urinals}) = \text{Water and Sewer Baseline for Urinals}$

$WSBF = OCC \times WD \times (1/6 \times OPD) \times GPMB \times (\# \text{ of faucets}) = \text{Water and Sewer Baseline for Faucets}$

OCC = Number of occupants – (stipulated values)

WD = Average annual days of use – (stipulated values)

OPD = Operations per day – (stipulated values)

GPFBT = Baseline gallons per flush per day for toilets (measured parameter)

GPFBU = Baseline gallons per flush per day for urinals (measured parameter)

GPMB = Baseline gallons per minute for faucets (measured parameter)

(2) Energy and Water Calculations Based on Reduced Domestic Hot Water Consumption (if not located in a building served by a guaranteed gas meter):

Water and sewer units saved for faucets will be determined by the following equation:

$WSF = WSBF - WSPF$

Where:

WSF = Water and Sewer Units Saved for Faucets

WSBF = Baseline Water and Sewer Consumption for Faucets

WSPF = Proposed Water and Sewer Consumption for Faucets

Water units requiring heating will be determined by the following equation: $WSFH = 0.3 \times WSF$

Energy units saved will be determined by the following equation:

$E = WSFH \times 8.34 \times \Delta T / \eta$

Where:

E = Energy Units Saved (Btu)

WSFH = Faucet Water Units Requiring Heating (gallons)

0.3 = Percentage of Faucet Water Requiring Heating

8.34 = Weight (lbs) of One Gallon of Water

ΔT = Temperature difference water heater is required to heat water (°F)

η = Efficiency of Water Heater

(3) Lighting Energy Savings:

$$LCS(kWh) = LCB - LCP$$

Where,

LCB = Baseline lighting consumption (kWh)

LCP = Proposed lighting consumption (kWh)

$$LCB = FWB \times OPHRS / 1,000$$

$$LCP = FWP \times OPHRS / 1,000$$

FWB = Baseline Fixture Watts (measured parameter)

FWP = Post-retrofit Fixture Watts (measured parameter)

OPHRS = Fixture Annual Operating Hours (stipulated values)

(4) Lighting Demand Savings:

$$LDS(kW) = LDB - LDP$$

Where,

LDB = Baseline lighting demand (kW)

LDP = Proposed lighting demand (kW)

$$LDB = FWB / 1,000$$

$$LDP = FWP / 1,000$$

FWB = Baseline Fixture Watts (measured parameter)

FWP = Post-retrofit Fixture Watts (measured parameter)

(5) AC Consumption Savings

$$ACS(kWh) = ACB - ACP$$

Where,

ACB = Baseline air conditioning consumption associated with lighting (kWh)

ACP = Proposed air conditioning consumption associated with lighting (kWh)

$$ACB (kWh) = \frac{LCB}{COP}$$

$$ACP (kWh) = \frac{LCP}{COP}$$

LCB = Baseline lighting consumption (kWh)

LCP = Proposed lighting consumption (kWh)

COP = Coefficient of Performance of the cooling system (assumed)

(6) AC Demand Savings

$$ADS(kWh) = ADB - ADP$$

Where,

ACB = Baseline air conditioning consumption associated with lighting (kWh)

ACP = Proposed air conditioning consumption associated with lighting (kWh)

$$ADB (kW) = \frac{LDB \times \text{No. Cooling Months}}{12 \frac{\text{months}}{\text{yr}} \times COP}$$

$$ADP (kWh) = \frac{LDP \times \text{No. Cooling Months}}{12 \frac{\text{months}}{\text{yr}} \times COP}$$

LDB = Baseline annual lighting demand (kW)

LDP = Proposed annual lighting demand (kW)

COP = Coefficient of Performance of the cooling system (assumed)

(7) Heating Fuel Savings

$$HCS(kWh) = HCB - HCP$$

Where,

HCB = Baseline lighting contribution space heat that offsets heating system load

HCP = Proposed lighting contribution space heat that offsets heating system load

$$HCB (therms) = \frac{LCB \times \text{No. Heating Months} \times 3412 \text{ Btu/kWh}}{12 \frac{\text{months}}{\text{yr}} \times 100,000 \frac{\text{Btu}}{\text{Therm}} \times \text{Heating Efficiency}}$$

$$HCP (therms) = \frac{LCP \times \text{No. Heating Months} \times 3412 \text{ Btu/kWh}}{12 \frac{\text{months}}{\text{yr}} \times 100,000 \frac{\text{Btu}}{\text{Therm}} \times \text{Heating Efficiency}}$$

LCB = Baseline lighting consumption (kWh)

LCP = Proposed lighting consumption (kWh)

Heating Efficiency = Efficiency of the heating system (assumed)

{End of Selection}

{Use this section if Option B savings is to be used. Modify for appropriate system}

Schedule 2-B-2. Savings Measurement (IPMVP Option B):

(a) International Performance Measurement and Verification Protocol Option B verification techniques measure savings at a system level where key performance factors load and hours of use are directly measured.

(b) Solar PV: The solar production will be tracked utilizing the system portal. Production data cost impacts will be analyzed using the outlined blended rate.

Schedule 2-B-3. Determination of Dollars Saved.

(a) Total Annual \$ Savings = \sum (Energy/Demand/Water Savings x Contractual Energy/Demand Rates)

Where:

Contractual Energy Rates = Utility rates defined in **Exhibit 2-5**.

{End of Selection}

{Use this section if Option C savings is to be used}

Schedule 2-B-4. Energy and Water Measurement (IPMVP Option C):

(a) International Performance Measurement and Verification Protocol Option C verification techniques measure savings by comparing the post-retrofit overall energy and water use in a building or facility with pre-retrofit Energy and Water Baselines.

(b) Energy and Water = Baseline Energy Usage (including any adjustments) – Guarantee Period Consumption

Where:

Guaranteed Period Consumption = \sum Tracked Utility Meters

Baseline Energy Usage = Historical energy and water consumption and demand, modified over time to account for changes to the facility, operation, and weather

Guarantee Period Consumption = Post-retrofit energy and water consumption and demand from Customer utility meters

{End of Selection}

{Use this section if Option D savings is to be used}

Schedule 2-B-5. IPMVP Option D – Calibrated Simulation:

(a) International Performance Measurement and Verification Protocol Option D verification techniques measure savings by comparing the results of an energy model that reflects baseline conditions and is calibrated to baseline utility use with a model that reflects the energy conservation measures being measured.

(b) Energy and Water = Calibrated Simulation Modeled Usage (adjusted to TMY3 weather) – Model Usage When Run with ECMs

Where:

Calibrated Simulation Modeled Usage = Modeled results of energy model that reflects baseline building that is calibrated to actual utility data during the baseline period. This calibrated model is then run with TMY3 weather data to represent an average year's baseline energy and water use.

Model Usage When Run with ECMs – The results of the Calibrated Simulation Model when run with energy conservation measures (ECMs) that were implemented. This model is also run using TMY3 weather data to reflect an average year's performance.

{End of Selection}

Schedule 2-B-6. Determination of Dollars Saved.

(a) Total Annual \$ Savings = \sum (Energy/Demand/Water Savings x Contractual Energy/Demand Rates)

Where:

Contractual Energy Rates = Utility rates defined in [●].

Schedule 2-B-7. Causes for Adjustment to the Baseline.

(a) Implicit in this measurement option is the necessity of identifying and accounting for the effects of changes to the facilities and conditions during the measurement period that are beyond the scope of the measures installed. During the measurement and verification period, all variables must have their energy impact accounted for if the true savings from the energy conservation measure is to be assessed. Following is a partial list of changes that will lead to adjusting the Baseline Energy and water consumption:

- (1) building additions
- (2) changes in operating hours
- (3) remodeling projects
- (4) changes in usage patterns
- (5) equipment replacements

(b) In the event that any change is made to the Customer's Premises that will impact energy and water consumption, Customer will notify WES in writing of such change within 30 days. WES will utilize existing building models used to calculate Baseline Energy and water consumption to update that Baseline Energy and water consumption and determine the impact that any such change will have on Actual Energy and Water and present Customer a written analysis of the effects of the changes. Changes that are long-term or permanent will be reflected in a change to the Baseline Energy and water consumption. Temporary changes that affect energy and water use will be calculated and added to the corresponding month(s) Actual Energy and Water.

(c) Any changes made by WES to the Baseline Energy and water consumption or saving calculations will be presented to Customer for approval. Customer will have 30 days to protest recommended modifications in writing, after which time change will be considered accepted. If Customer protests any recommended modifications, Customer and WES will work together to establish mutually acceptable modifications based on accurate building models showing the impact of changes to facilities.

(d) Weather normalization will be employed to ensure that the impact of actual weather conditions is eliminated from the Energy and Water Guarantee calculations. Normalization will not be utilized to the benefit of either Customer or WES, but will be used solely for the purpose of accurately accounting for the impact on Actual Energy and Water of the Scope of Work implemented in conjunction with this Contract.

Schedule 2-B-8. Measurement and Adjustments Methodology (for IPMVP Option C Savings):

(a) Adjusted Baseline Year consumption is calculated as follows for each fuel type:

Adjusted Base Year Consumption = Weather Independent Consumption + Weather Dependent Consumption + Offset + Use and Modification Adjustments

or

$$Q = C_D \times (T_i - T_{i-1}) + C_H \times HDD_i + C_C \times CDD_i + O_i \pm \sum M_i = E_b \text{ (electric usage)}$$

$$Q = C_D \times (T_i - T_{i-1}) + C_H \times HDD_i + C_C \times CDD_i + O_i \pm \sum M_i = NG_b \text{ (natural gas usage)}$$

Where:

Q = adjusted base year consumption

C_D = a constant representing units of consumption per billing period day as calculated by model

T_i = ending date of current billing period

T_{i-1} = ending date of previous billing period

C_H = a constant representing units of consumption per heating degree day as calculated by model

HDD_i = heating degree days in the current billing period

C_C = a constant representing units of consumption per cooling degree day as calculated by model

CDD_i = cooling degree days in the current billing period

O_i = offset for the current billing period

M_i = other adjustments for the current billing period

(b) Adjusted base year demand is calculated with a slightly different formula as follows:

Adjusted Base Year Demand = Weather Independent Demand + Weather Dependent Demand + Offset + Use and Modification Adjustments

or

$$D_b = D_D \times (T_i - T_{i-1}) + D_H \times HDD_i / (T_i - T_{i-1}) + D_C \times CDD_i / (T_i - T_{i-1}) + O_i \pm \sum M_i$$

Where:

D_b = adjusted base year demand

D_D = a constant representing units of demand per billing period day as calculated by model

D_H = a constant representing units of demand per heating degree day as calculated by model

D_C = a constant representing units of demand per cooling degree day as calculated by model

(1) Weather Independent Consumption: Because utility meters are not always read on the same day of the month, the number of days in a meter's billing period frequently varies. The term, $C_D \times (T_i - T_{i-1})$, in the above equation is used to account for this difference, where $T_i - T_{i-1}$, gives the number of days in the guarantee year billing period. Thus, Weather Independent Consumption is the consumption per day times the number of days in the guarantee year billing period. The approach is identical for demand, except that the term D_D is substituted for C_D .

(2) Weather Dependent Consumption: Change in weather between the base year and guarantee year periods is accounted for with the term, $C_H \times HDD_i + C_C \times CDD_i$. Weather Dependent Consumption is consumption per degree-day times the number of degree-days in the guarantee year billing period. The balance point temperatures used as the basis of degree day calculations will be those that result in the best statistical fit, or highest R^2 value. If the R^2 value is lower than 0.65, the meter will not be weather normalized.

(3) Demand is treated similarly. The exception being that degree-days per day is substituted for total degree-days. This provides a measure of average daily weather intensity.

(4) Offset: Offset is that portion of the energy and water consumption that cannot be accounted for with the Weather Independent and Weather Dependent consumption. It is mostly attributable to seasonal changes in facility use such as summer shutdown and holidays. An Offset figure is defined for each billing period in the base year. Since the guarantee period may overlap two or more base year billing periods, the guarantee period offset will be the weighted average of the base year offset for the corresponding guarantee year period. Offset for the guarantee period is determined with this equation:

$$O_i = O_1 * dG_1/dB_1 + O_2 * dG_2/dB_2 + \dots O_n * dG_n/dB_n$$

Where:

O_i = current guarantee period offset

O_1 = base year period 1 offset

O_2 = base year period 2 offset

O_n = base year period n offset

dG_1 = days in guarantee period that overlap base year period 1

dG_2 = days in guarantee period that overlap base year period 2

dG_n = days in guarantee period that overlap base year period n

dB_1 = days in base year period 1

dB_2 = days in base year period 2

dB_n = days in base year period n

n = number of base year periods overlapped by guarantee year period

(c) Other Adjustments:

Additional adjustments to the base year may be made to compensate for Material Changes defined in clause (a) above. The total adjustment for any given period will be determined with this equation:

$$M_i = Adj_1 + Adj_2 + \dots Adj_n$$

Where:

Adj_1 , Adj_2 and Adj_n are all of the adjustments determined to be necessary for the guarantee period. The sign of the adjustment will be positive when the change will cause an increase in energy and the sign of the adjustment will be negative when the change will cause a decrease in energy. WES will provide an explanation of the derivation of these adjustments to Customer.

Schedule 2-B-9. Adjustments Methodology for Material Changes.

(a) For Adjustments necessitated by Material Changes, the following procedure will be followed:

- (1) Customer will notify WES of planned changes in building use or function.
- (2) WES and Customer will review the changes planned and determine if these changes are likely to cause a change in energy and water use that would exceed the threshold limits defined in Exhibit 2-4. If the expected changes are less than the threshold, the effect will be ignored and no adjustment will be used.

(3) If the changes are expected to raise or lower energy and water consumption more than the threshold limits defined in Exhibit 2-4, the building will be sub-metered by Customer for both pre- and post-use change periods until the effect on energy has been determined.

(A) For changes to existing buildings that are metered, a linear regression will be performed to correlate heating- and cooling-degree days to the pre-change period's energy usage for the building, similar to the procedure performed to adjust the base year for weather. The post-change heating- and cooling-degree days will then be applied to the pre-change regression equation to determine what the post-change period's use would have been if no change had occurred. The difference between this use and the period's actual use will

be, whether positive or negative, used as the adjustment, shown as term “*M*” in the equations in the Measurement and Adjustments Methodology section in this Schedule.

(B) If the entire effect of the change is independently sub-metered, such as the addition of a building on an existing utility service, the sub-metered energy and water use for that building for each guarantee period will be used to determine the baseline adjustment, shown as term “*M*” in the equations in the Measurement and Adjustments Methodology section in this Schedule.

(C) If the method for determining adjustment described in the previous paragraph is agreed to be not appropriate or too complex for a specific adjustment by the Customer and WES, Customer and WES will develop a separate measurement and verification (M&V) plan to track the effect of the building change.

(4) If the changes occur at a time when the impact would affect a fraction of that year’s energy and water use for an existing building or system, the procedure described in the previous section will be performed separately for the year in which the change occurred and the subsequent year to accurately account for the effect of the change in both years. The subsequent year’s adjustment will then be used for all future years.

Schedule 2-B-10. Adjustments for Mild Weather Season During Performance Period.

(a) For performance periods with mild weather season, WES may elect to normalize both the baseline and the Guaranteed Period Consumption for a specific utility to Typical Meteorological Year (TMY3) weather data available for download from the National Renewable Energy Laboratory.

(b) A mild weather season is defined as a heating or cooling season containing fewer heating or cooling degree days than a Typical Meteorological Year, evaluated using TMY3 weather data.

(c) The TMY3 weather data set will be for the weather station defined in [●] or closest station. Methodology used to normalize consumption is defined in Schedule 2-B-9.

(d) The nearest physical weather station is the [●], which will be used to track actual solar irradiance during the performance year. The actual irradiance will be compared against the average TMY3 weather data that was sourced from solar irradiation data modeled by the National Renewable Energy Laboratory (NREL) for the 10 square km grid surrounding the project site. Weather Adjustments will follow the following equation:

$$\text{Weather Adjusted Guarantee} = \text{Simulated Guarantee} * \text{Weather Adjustment Ratio}$$

(e) *Weather Adjustment Ratio* =
$$\frac{\text{Simulated energy using measured irradiance in performance year}}{\text{Simulated energy using average irradiance in a TMY year}}$$

EXHIBIT 3

FORM OF ASSURED PERFORMANCE GUARANTEE – UTILITY METERS

Exhibit 3-1. PROJECT BENEFITS

A. Certain Definitions. For purposes of this Assured Performance Guarantee, the following terms have the meanings set forth below:

Annual Project Benefits are the portion of the projected Total Project Benefits to be achieved in any one year of the Guarantee Term.

Annual Project Benefits Realized are the Project Benefits actually realized for any one year of the Guarantee Term.

Baseline is the mutually agreed upon data and/or usage amounts that reflect conditions prior to the installation of the Improvement Measures.

Guarantee Term will commence on the first day of the month next following the execution of the Certificate of Acceptance – Final Completion, and will continue through the duration of the M&V Services, subject to earlier termination as provided in this Assured Performance Guarantee.

Improvement Measures are the measures set forth in Schedule A (Scope of Work).

Installation Period is the period beginning on WES's receipt of Customer's Notice to Proceed and ending on the commencement of the Guarantee Term.

M&V Services are the measurement and verification services set forth in Exhibit 3-4 below.

Project Benefits are the increased meter accuracy benefits calculated in accordance with the methodologies set forth in Exhibit 3-3 below.

Total Project Benefits are the projected Project Benefits to be achieved during the entire term of this Assured Performance Guarantee.

B. Project Benefits Summary. Subject to the terms and conditions of the Contract and this Assured Performance Guarantee, WES guarantees that the Improvement Measures will achieve accuracy rates in accordance with the meter manufacturer warranty on at least 90% of the meters tested.

Customer acknowledges and agrees that if, for any reason, it (i) cancels or terminates receipt of M&V Services, (ii) fails to pay for M&V Services in accordance with Schedule B of the Contract, (iii) fails to fulfill any of its responsibilities necessary to enable WES to complete the Work and provide the M&V Services, or (iv) otherwise cancels, terminates or materially breaches the Contract or this Assured Performance Guarantee, the Assured Performance Guarantee will automatically terminate, and WES will no liability hereunder.

Exhibit 3-2 MEASUREMENT AND VERIFICATION METHODOLOGY

Based upon WES's and Customer's investigation of the existing condition of certain of Customer's water meters, Customer has concluded that a significant percentage of such meters do not accurately measure billable consumption, and Customer is losing potential billable consumption revenue due to this inaccuracy. By replacing inaccurate meters with more accurate meters, it is expected that Customer will increase the volume of water registered by such meters and thereby increase measured billable consumption, assuming the same consumption levels prior to and after the Work has been performed. Customer recognizes, however, that actual revenues may differ from billable revenues and that the amount of actual revenues achieved in

future periods will depend on other factors besides improved meter accuracy, such as, by way of example, collections ratio, consumption, and water utility rates, among others.

The pre-retrofit weighted average accuracy of meter sizes smaller than 3” has been calculated by testing a representative sample of the meter population as set forth in Schedule A (Scope of Work). The pre-retrofit accuracy of meter sizes 3” and larger has been calculated by testing the accuracy of the meter population set forth in Schedule A (Scope of Work). Weighted average accuracy is based on the American Water Works Association (AWWA) guidelines as set forth in the Manual of Water Supply Practices - M6, Fourth Edition, Water Meters - Selection, Installation, Testing and Maintenance, ©1999 American Water Works Association, ISBN 1-58321-017-2, as the same may be updated or revised from time to time by AWWA. The post-retrofit accuracy of new meters will be tested using the same AWWA guidelines.

WES’s guarantee relating to meters is limited solely to the accuracy of the meters, operating under normal conditions, in accordance with the meter warranty, which have been replaced pursuant to the Contract and are set forth in the table of meter sizes and quantities in Exhibit 3-3 below. No guarantee, express or implied, is provided with respect to any other matters, including, without limitation, the following items (and the effects thereof):

- water system revenue
- water usage/consumption trends
- water rationing programs
- demographic and/or population shifts
- changes in the industrial or commercial base
- regulatory changes
- droughts, floods, rainfall, or other weather or climactic conditions
- water system pressure variations
- non-metered water usage
- failure to collect amounts due for billable consumption
- changes in monthly base charges, monthly allowable minimum base consumption, or monthly volume charges
- changes to water and sewer rate schedules
- water quality
- failure of the water system to meet governmental requirements
- improper maintenance or unsound usage of the Improvement Measures or any related equipment
- performance of automatic meter reading equipment

Exhibit 3-3 BASELINE CALCULATIONS & POST-RETROFIT INCREASED METER ACCURACY BENEFIT

Annual Water Consumption as provided by the Customer, using [YEAR] Consumption and Revenue

The Audit illustrates an annual usage of:

Current Meter Accuracy	●%	
Average Billed Water	●	kgal
Potential Production Recovered	●	kgal
Rate per kgal	\$●	

*please see the audit information for back-up documentation

The Guarantee will be based on:

Meter Accuracy	●%**	
Average Billed Water	●	kgal
Production Recovered	●*	kgal
Rate per kgal	\$●	
Revenue Generation	\$●	Annually

* Calculated billings when adding baseline figures to added accuracy figure

** Under normal flow conditions for residential meters, please see warranty information from [manufacturer] for accuracy and warranty on commercial meters, and residential meters at low, and high flow.

The unit utility costs for the Baseline period are set forth below as “Utility Rates” and will be used for all calculations made under this Assured Performance Guarantee. The Utility Rates will be escalated annually by the actual utility rate escalation, but such escalation will be no less than the mutually agreed “floor” escalation rate of percent (●%).

WES has included annual Operations and Maintenance savings of \$● due to the efficiencies gained with this system. Please see the below for a proposed annual savings overview.

PROPOSED ANNUAL SAVINGS OVERVIEW

ECM	Water savings (gallons/yr)	Total energy and water cost savings, Year 1 (\$/yr)	Other energy-related O&M cost savings, Year 1 (\$/yr)	Total cost savings, Year 1 (\$/yr)
Water Meters Installation	● kgal	\$●	\$●	\$●
Total savings				
	● kgal	\$●	\$●	\$●
First Year Guaranteed Cost Savings: \$●*				
Notes				
*This assumes the Customer is contributing \$● in operations and maintenance savings				

Exhibit 3-4 MEASUREMENT & VERIFICATION SERVICES

WES will provide the M&V Services set forth below in connection with the Assured Performance Guarantee.

A. During the Installation Period, WES will measure and track Project Benefits. WES will report the measured Project Benefits achieved during the Installation Period to Customer within sixty (60) days of the commencement of the Guarantee Term.

B. Within sixty (60) days of each anniversary of the commencement of the Guarantee Term, WES will undertake the following testing activities to verify the accuracy of the meters set forth in the table below:

1. clean meter location/setting;
2. visually inspect location/setting for indications of water leakage;
3. remove meter, and test on site
4. replace any damaged and/or inaccurate meters in the test set if damage and/or inaccuracy were caused by normal wear and tear (Customer will be responsible to replace any damaged and/or inaccurate meters not in the test set, as set forth below, as well as those in the test set, to the extent damage and/or inaccuracy is caused by factors other than normal wear and tear).

Meter Size	# of Meters to be Tested
0.625"	
Residential Meter Test 0.625" x 0.75"	
Large Meter Test	

With respect to meters smaller than 3", the average (central tendency) and variance (spread) will be calculated to estimate the population characteristics. Additional samples may be required if the variability in the sample test shows that the sample size is not sufficient to draw valid conclusions about the population. A complete retest will be conducted if the sample average is lower than the required weighted average accuracy. If these two samples are significantly different, another retest will be conducted.

C. Within sixty (60) days of each anniversary of the commencement of the Guarantee Term, WES will provide Customer with an annual report containing:

1. an executive overview of the project’s performance and Project Benefits achieved to date;
2. a summary analysis of the Project Benefits accounting; and
3. a detailed analysis of the Project Benefits calculations.

Exhibit 3-5 ASSURED PERFORMANCE GUARANTEE

WES guarantees that the meters sold and installed pursuant to the Contract will meet the guaranteed accuracy set forth in Exhibit 3-3 above. The accuracy of the meters will be determined in accordance with the warranty information provided by the meter manufacturer. If following performance of the M&V Services any meter fails to achieve the guaranteed accuracy the meter will be replaced with a new meter of the same or better quality and will be installed by WES all without cost to Customer. WES’s guaranty as set forth above is limited to those meters installed by WES and failing to meet the guaranteed meter accuracy as specified as a result of any defect in the manufacture or installation of the meter, or normal wear and tear and does not extend to any meters failing to meet the guaranteed meter accuracy as a result of other causes, including improper maintenance and service, unsound usage or damage to the meters.

Exhibit 3-6 GUARANTEE PHASE CONTRACT SUM

Customer will pay WES annual payments for Guarantee Phase services in the amounts listed below, subject to Schedule B and any other applicable terms of this Assured Performance Guarantee:

Year One:	\$0.00 (included in Construction Phase Contract Sum)
Year Two:	\$XX,XXX
Year Three:	Year two price modified by the change, up or down, in CPI since the beginning of the year two agreement.
Year Four and Beyond:	Prior year modified by the last 12 months change, up or down, in CPI.

Customer may cancel the Guarantee Phase services on any anniversary of the commencement of Guarantee Services, or at the end of Customer’s fiscal year. If Customer cancels these services, WES reserves the right to cancel the Assured Performance Guarantee as outlined in this Exhibit 3.