

COURT ORDER

ORDER NO: 2011 2137

DATE: December 13, 2011

STATE OF TEXAS |

COUNTY OF DALLAS |

16

BE IT REMEMBERED, at a regular meeting of Commissioners Court of Dallas County, Texas, held on the 13th day of December, 2011, on a motion made by John Wiley Price, Commissioner of District No. 3, and seconded by Dr. Elba Garcia, Commissioner of District No. 4, the following Court Order was adopted:

WHEREAS, on June 7, 2011 through Court Order 2011-1010, Dallas County Commissioners Court authorized staff to enter into contract negotiations with Schneider Electric Buildings Americas, Inc. (Schneider) as the susceptible firm for award consideration and final contract negotiations with respect to RFQ No. 2010-089-5231 Request for Qualifications Proposal of Energy Service Companies for Performance Contracting; and

WHEREAS, on September 20, 2011 through Court Order 1022-1590 Commissioners Court awarded the RFQ to Schneider and approved the investment grade audit (IGA) agreement necessary for work to begin to define the Statements of Work (SOW); and

WHEREAS, staff has successfully negotiated the attached contract for energy performance services; and

WHEREAS, Commissioners Court will be briefed as each Statement of Work (SOW) is completed and the savings are verified by an independent third party to authorize the SOW to be added to the contract for energy performance services; and

WHEREAS, this program complies with Strategic Plan Objective 5.3 which calls for improving services, program and the appearance of Dallas County facilities

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Dallas County Commissioners Court hereby authorizes the attached contract between Dallas County and Schneider Electric Buildings Americas, Inc. for energy performance services and authorizes the County Judge to execute the contract on behalf of Dallas County.

DONE IN OPEN COURT this the 13th day of December, 2011.

Clay Lewis Jenkins, County Judge

Maurine Dickey, District #1

Mike Cantrell, District #2

John Wiley Price, District #3

Dr. Elba Garcia, District #4

Recommended by: Shannon S. Brown
Shannon S. Brown, Assistant Administrator

STATE OF TEXAS §

COUNTY OF DALLAS §

CONTRACT
Between
DALLAS COUNTY, TEXAS (“County”),
On Behalf Of DALLAS COUNTY FACILITIES MANAGEMENT DEPT.,
And
SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC. (“Contractor”)
For
ENERGY PERFORMANCE SERVICES

1. PARTIES

Whereas, County is a governmental entity with its principal place of business located at 411 Elm St., 2nd Floor, Dallas, Texas 75202; and

Whereas, Contractor is a corporation with a place of business located in Carrollton, Texas, and is legally authorized to do business in the State of Texas; and

Whereas, all references to Contractor shall include “Contractor Personnel”, which shall mean, without limitation, employees, agents, officers, subcontractors, and consultants, all of whom have been authorized by Contractor to perform under this Contract; and

Whereas, “County Personnel” shall mean, without limitation, its elected or appointed officials, officers, employees, agents and representatives; and

Whereas, the County wishes to enhance and upgrade the current energy environment and operations in a seamless manner with the latest and most efficient energy cost savings equipment and plan of operations; and

Whereas, Contractor is the successful bidder to County’s Request for Qualifications No. 2010-089-5231, which includes, without limitation, related documents, addendum and general information sheets (collectively, “RFQ 2010-089-5231”), for services relating to the development, implementation and guarantee of a successful and efficient energy cost savings and conservation plan to cover at a minimum all County costs of related improvements, including, without limitation, costs relating to implementation, mobilization, construction and PASS (“Project”), and for the use and benefits of expert and experienced staff who have produced excellent results for Contractor’s clients in developing, designing and implementing similar Project (collectively, “Services”).

Therefore this Master Contract is entered into by and between County and Contractor for Contractor to provide Services that are described in the Contract and the Contract Documents, including, without limitations, the Statement of Work (“SOW”), RFQ 2010-089-5231; the Investment Grade Audit (“IGA”) Agreement, the incorporated IGA Agreement Documents, which includes, without limitation, IGA Exhibits, comprehensive IGA Reports, Scope of Work for each Phase, and any related mutually executed Amendments (collectively, “IGA Agreement”); and Contractor’s Proposal, which includes, without limitation, the Contractor’s response to RFQ 2010-089-5231, Contractor’s Best and Final Offer (“BAFO”), and related and mutually executed Amendments (collectively, “Contract”) pursuant to the authorities granted by Chapter 262 of the Texas Local Government Code and/or Chapter 2254 of the

Texas Government Code, and the Dallas County Commissioners Court approval.

2. TERM, SUSPENSION AND TERMINATION

- 2.1 **Term / Contract Time.** Unless otherwise stated in this Contract, this Contract is for a Term or Contract Time with the Initial Term period starting from the Effective Date, December 13, 2011, through December 12, 2021, unless amended based on Substantial Completion Dates approved in Scopes of Work (SOW) as described in Paragraph 3.1(b). The Initial Term may be mutually adjusted, renewed or extended for Subsequent Term(s). Any adjustment, extension or renewal of the Terms must be in writing and signed by both parties.
- 2.2 **Suspension.** Should County desire to suspend the Services, but not terminate the Contract, County shall issue a written order to stop Services. The written order shall set out the terms of the suspension. Contractor shall stop all Services as set forth in this Contract and will cease to incur costs to County during the term of the suspension. Contractor and County shall agree on a date to resume Services, which shall be set forth in a written authorization to proceed. If a change in the terms and conditions for Services of this Contract is necessary because of a suspension, including but not limited to an extension of time for Contractor's performance, a mutually agreed Contract amendment will be executed in accordance with this Contract.
- 2.3 **Termination.** Either party may, at its option and without prejudice to any other remedy to which it may be entitled to at law or in equity, or elsewhere under this Contract, terminate this Contract, in whole or part, by giving notice thereof to the other party, as specified further below, and all Services being performed under this Contract shall cease upon the date specified in such notice. County shall compensate the Contractor in accordance with the terms of this Contract for the Services performed prior to the date specified in such notice. In the event of cancellation, Contractor shall cease any and all Services under this Contract on the date of termination and to the extent specified in the notice of termination. Upon receipt of such notice, Contractor shall not incur any new obligations or perform any additional Services and shall cancel any outstanding obligations or Services to be provided. To the extent funds are available and reimbursement is permitted, County will reimburse Contractor for non-canceled obligations that were incurred prior to the termination date. Upon termination of this Contract as herein above provided, any and all unspent funds that were paid by County to Contractor under this Contract and any and all County data, documents and information in Contractor's possession shall be returned to County within five (5) business days of the date of termination. In no event shall County's termination of this Contract, for any reason, subject County to liability.
- (a) Without Cause. This Contract may be terminated, in whole or in part, without cause, by either party upon prior written thirty (30) calendar days, or upon such other mutually agreed time period, notice to the other party.
- (b) With Cause. County reserves the right to terminate this Contract immediately, in whole or in part, at its sole discretion, for the following reasons, without limitation:
- 1) Lack of, or reduction in, funding or resources;
 - 2) Non-Performance. Contractor's non-performance of this Contract or non-compliance with the terms of this Contract shall be a basis for termination of the Contract by the County. County shall not pay for equipment, Services or supplies that are unsatisfactory or unauthorized. Contractor shall be given a reasonable opportunity prior to termination to correct any deficiency in the Services performed under this Contract, which shall not be less than five (5) business days to cure any deficiencies with Contractor's performance after notice thereof from County, such deficiencies being determined by County.

Nothing herein, however, shall be construed as negating the basis for termination for non-performance or shall in no way limit or waive County's right to terminate this Contract under any other provisions herein.

- 3) Contractor's submission of invoices, data, statements and/or reports that are incorrect, incomplete and/or false in any way, provided that Contractor shall be given notice and a reasonable time to correct any incorrect or incomplete submissions;
- 4) In County's sole discretion, if termination is necessary to protect the health and safety of individuals;
- 5) If Contractor becomes or is declared insolvent or bankrupt, or is the subject of any proceedings relating to its liquidation or insolvency or for the appointment of a receiver or similar officer for it, has a receiver of its assets or property appointed or makes an assignment for the benefit of all or substantially all of its creditors, institutes or causes to be instituted any proceeding in bankruptcy or reorganization or rearrangement of its affairs, enters into an agreement for the composition, extension, or adjustment of all or substantially all of its obligations, or has a material change in its key Personnel; and/or
- 6) Contractor's inability to perform under this Contract due to judicial order, injunction or any other court proceeding.

2.4 **Force Majeure.** Notwithstanding anything to the contrary herein, Contractor shall not be liable for any damages as a result of delays due to causes beyond Contractor's control, including, without limitation, an act of God, act of County or Contractor's supplier, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, flood, fuel or energy shortage, sabotage, war, riot, delay in transportation and inability to obtain necessary labor, materials or manufacturing facilities from usual sources, In the event of any such delay, the date of delivery shall be extended for the period of time reasonably necessary to overcome the effect of such delay.

3. SCOPE OF SERVICES

3.1 Contractor shall perform Services as described in this Contract, including, without limitation:

- (a) IGA Agreement. Contractor and County shall execute an IGA Agreement to identify the Services for each Phase as stated in the IGA Agreement;
- (b) Upon County's review of the final IGA Report and approval of the final Scope of Work for the identified Phase, County and Contractor will execute a written Amendment to incorporate such Scope of Work, IGA Report, and any other documents to this Contract's SOW: Schedule A for the identified Phase, so that Contractor can perform the Services stated in the Amendment.

3.2 Contractor and County shall mutually agree on a schedule of performance of Services for each Phase as stated in the IGA Agreement that will enable the Project to proceed continuously according to such schedule. Unless caused by events beyond Contractor's control as set forth in the Force Majeure section hereof, unexcused failure of Contractor to maintain progress in accordance with the agreed schedules will be ground for declaring Contractor in default.

Contractor shall confer with County during the progress of the Services on a regular basis. Contractor shall prepare and present such information and studies as may be pertinent and necessary or as may be requested by County in order to evaluate the progress of the Services.

- 3.3 Contractor shall provide regular monitoring of the Project's time schedule as the Project progresses, and Contractor shall identify potential variances between the scheduled timetable and the probable completion dates. Contractor shall also anticipate potential problems, review the Project's pending, incomplete, and future development, operation, and implementation schedule, and recommend adjustments in the Project's timetable to meet the completion dates.
- 3.4 Contractor shall provide summary reports of each monitoring and document all changes in the Project's time schedule.
- 3.5 **Performance Progress Review Meetings and Reports to Identify Problems and Savings.** During the Term hereof and any Subsequent Term, and as requested by the Managers (as defined in this Contract), the parties shall periodically meet at a mutually agreed location or conduct a telephone conference call to discuss the progress of the Project and Services. In order to facilitate proper management of the Services of this Contract, Contractor shall, at each such meeting, provide County with a written notice, in accordance with the notice Section of this Contract, in which Contractor identifies any problem or circumstance, or cost saving method encountered by Contractor, or which Contractor gained knowledge of during the period since the last such status report (including, without limitation, the failure of either party to perform, any delay of either party in performing, or the inadequacy in the performance of either party) which (i) may prevent or tend to prevent Contractor from completing any of its obligations hereunder, or (ii) may lower County's cost in this Project, or (iii) may cause or tend to cause County to generate fees, costs or other charges under this Contract. Before performing any Service that will result in a charge to County or unnecessary cost to County, Contractor shall identify the amount of charges, if any, and the cause of any identified problem or circumstance and steps taken or proposed to be taken by Contractor or County to remedy same.
- (a) To the extent a cost saving method is available to lower Contractor's fee, the charges payable by County under this Contract shall be equitably adjusted to reflect such projected cost savings.
- (b) For any problem or circumstance included in any of Contractor's status reports that Contractor claims was the result of County's failure or delay in discharging County's obligations under this Contract, County shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If County agrees as to the cause of such problem or circumstance, then the performance time shall be considered extended for a period of time equivalent to the time lost because of such delay. Other than such extension of time, County shall not be liable to Contractor for delay to Contractor's services by the act, neglect, or default of County, or County Personnel, or any cause beyond County's control.
- 3.6 Contractor will use best efforts to make Manager or designated representative in charge of executing the Services available for a period of not less than five (5) years following completion of this Contract for testimony in any administrative or judicial proceedings, as directed by County.
- 3.7 Contractor understands that time is of the essence, and Contractor shall be fully responsible for its delays or its failure to comply with the terms of this Contract, except in the event of a Force Majeure event. Contractor agrees to undertake all necessary efforts, including, without limitation, deploying sufficiently qualified Contractor Personnel necessary, to expedite the performance and completion of Services so that the Project can be substantially (not less than 90%) completed by the Substantial Completion Date, and within the Project Cost.
- 3.8 Contractor covenants it will furnish its best skill and judgment and cooperate with County and

County Personnel on the Project. Contractor shall endeavor to use its best ability and expertise to complete the Project consistent with the requirements of this Contract.

- 3.9 Contractor agrees to work with County's other consultants and contractors through all phases relating to Project, including design through final completion of the Project, which includes any inspection and resolution of all outstanding Project related claims or disputes.
- 3.10 Contractor has become familiar with the Project site, and local conditions under which the Project is to be developed, designed, implemented and operated.
- 3.11 Contractor shall provide County with quarterly Services progress reports.
- 3.12 Contractor must have and be able to provide at its sole cost and expense throughout the Term of this Contract sufficient Contractor Personnel, transportation, machinery, tools, equipment, materials, supplies, and any and all other goods and services for the performance and completion of Services required under this Contract.
- 3.13 Contractor represents that the transportation, machinery, tools, equipment, materials, supplies, and any and all other goods used or furnished by Contractor are of good quality and condition.
- 3.14 Contractor will provide the Services in coordination with Contractor's approved subcontractor(s), but Contractor will continue to solely maintain and assume the responsibilities for the performance and completion of Services under this Contract. Contractor is responsible for the management and coordination of all the details and procedures necessary for the performance and completion of Services under this Contract, including any portion of the Services that is subcontracted. Contractor assumes full responsibility and accountability to the County for any acts or omissions of its Contractor Personnel.
- 3.15 Contractor shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by Services under the Contract. At completion of the Services or work, Contractor shall remove Project waste materials, rubbish, Contractor's tools, equipment, machinery and surplus material.
- 3.16 Contractor shall provide County access to the work in preparation and progress wherever located.
- 3.17 **Independent Obligation of Contractor to Continue Performance.** Contractor assumes an independent obligation to continue performance of its Services, and/or to mitigate any damages or cost to County regardless of any dispute that may arise between County and Contractor in connection with any claims by Contractor that County has materially breached its obligations hereunder. Such independent obligation shall continue for ninety (90) days from the date upon which County receives written notice of any alleged breach from Contractor. Contractor undertakes this independent obligation without prejudice to any rights or remedies it may otherwise have in connection with any dispute between Contractor and County.
- 3.18 **Additional Services.** During the Term of this Contract or any Subsequent Term, County may desire to obtain services from Contractor that are not within the scope of Contractor's obligations hereunder (hereinafter, "Additional Services"). If Contractor agrees, Contractor shall submit to County Contractor's proposal for the provision of Additional Services, including Contractor's proposed charges for the Additional Services. Contractor shall not charge County for professional rates in excess of Contractor's rates previously established for Contractor's Services hereunder. Notwithstanding any other provision of this Contract, County may, in County's sole discretion, obtain Additional Services from professionals or professional

firms other than Contractor.

3.19 **Personnel.**

- (a) Personnel Qualifications. Contractor warrants that Contractor and all Contractor Personnel are fully qualified persons and entities who can successfully perform and complete the assigned tasks and Services covered by this Contract, and who are in compliance with all applicable immigration laws. Contractor shall identify to County all third party contractors and subcontractors, and their roles and responsibilities, upon request. Contractor shall be solely responsible for payment of all wages, benefits, worker's compensation, disability benefits, unemployment insurance, as well as for withholding any required taxes for all Contractor Personnel in accordance with applicable federal, state, and local law. Contractor agrees to provide County with information regarding individual Contractor Personnel or proposed Contractor Personnel as County may reasonably request.
- (b) Personnel Cooperation. Each party recognizes the importance of cooperation among their respective Personnel, and each party will use commercially reasonable efforts to ensure positive working relationships between the parties so as to ensure timely completion of their respective tasks.
- (c) Replacement or Removal of Contractor Personnel
 - a. County Initiated Request for Removal of Contractor Personnel. County may, upon written notice to the Contractor Manager, require Contractor to remove an individual immediately from providing Services for the following reasons: violation of the terms and conditions of this Contract; violation of County's work rules and regulations; criminal activity; violation of state, federal, or municipal statutes; and engagement by said individual in activities that could be detrimental to County or County Personnel. Contractor shall replace the removed individual with another similarly qualified Contractor Personnel.
 - b. Replacement of Contractor Personnel. Contractor shall have the right to make reasonable and necessary changes to Contractor Personnel in order to accomplish the purposes of this Contract with prior written notice to the County Manager. Any changes in the Contractor Personnel shall be made utilizing persons of similar background, experience and credentials and shall be for the benefit of County. Contractor shall not be required to obtain County's prior approval of temporary changes due to vacation or illness of Contractor Personnel, but must provide immediate written notice to the County Manager. If the temporary change in Contractor Personnel is for a period to exceed thirty (30) business days, Contractor shall be obligated to seek the County's approval, which will not be unreasonably withheld.

- 3.20 **Services/Project Managers.** Contractor and County at the start of this Contract shall each assign a respective Services/Project Manager ("Manager"), who can address all administrative, technical, and contractual issues effectively and efficiently. The Managers, as specified in Schedule E of the SOW, will be responsible for the management and implementation of this Contract and to serve as the primary contact for each party throughout the Term of this Contract. Each party represents that its Manager is and will be fully qualified and authorized to perform the tasks assigned to him/her; provided, however, that any significant deviation from the intent of this Contract, any increase in cost to the County, or any extension to the deliverable due dates will not be effective unless signed by the authorized signatories for both parties via a formal Amendment to the Contract.

- (a) Removal of Manager. Upon at least fourteen (14) days advance written notice, and with the written consent of the other party, which consent shall not be unreasonably withheld or delayed, either party may replace its Manager.
- (b) County Manager (“County Manager”). The County Manager or the County Manager’s designated representative will be responsible for coordinating all aspects of service relating to this Contract. Contractor will work with the County Manager or his designated representative throughout the Term of the Contract.

The County Manager shall decide all questions that may arise as to the quality and acceptability of any Services performed under this Contract and in accordance to the SOW. If in the opinion of the County Manager, reasonably exercised, the performance was unsatisfactory, the County shall notify the Contractor of such and the Contractor shall promptly make such performance acceptable to County at no additional cost to County.

- (c) Contractor Manager. Contractor shall assign or designate, without additional cost to County, a Contractor Manager for the performance of Services by Contractor, who shall, without limitation:
 - 1) Be reasonably accessible;
 - 2) Assume group coordination, management, monitoring, administrative, and leadership responsibilities for Contractor Personnel that perform the Services;
 - 3) Have the ability to respond efficiently and effectively to County’s immediate concerns during the performance of the Services, including the ability to lead and direct Contractor Personnel while they are performing the Services.

3.21 **Change Order Procedure.**

- (a) Change Order Request. During the Term of this Contract or any Subsequent Term, County or Contractor may propose and request written changes to modify the SOW, and make other adjustments to the Services hereunder respectively either as “County Change Order Request” or “Contractor Change Order Request.” The requesting party shall deliver such Change Order Request to the other party’s Manager describing the proposed changes and establishing a reasonable period for the other party to respond.
- (b) Change Order Response. The responding party shall deliver to the requesting party within the time stated a written County/Contractor Change Order Response indicating:
 - 1) the effect of the Change Order Request, if any, on the amounts payable by or entitled to by the requesting party under this Contract and the manner in which such effect was calculated;
 - 2) the effect of the Change Order Request, if any, on responding party’s performance of its obligations under this Contract, including the effect on required service levels;
 - 3) the anticipated time schedule for implementing the Final Change Order; and
 - 4) any other information as requested in the Change Order Request or reasonably necessary for the requesting party to make an informed decision regarding the Change Order Response, including the effect of the Final Change Order on the requesting party’s costs and expenses relating to the Services provided herein.

(c) Final Change Order. A Change Order Request or Change Order Response is considered a Final Change Order upon mutual agreement as indicated by both parties' signatures; and this Contract shall be effectively amended according to the Final Change Order. Under no circumstances shall Contractor be entitled to payment for any Services rendered under a Change Order that has not been properly approved.

1) Managers' Signatures. County Manager and the Contractor Manager shall have authority to sign the Final Change Order that does not result in any significant deviation from the intent of this Contract, increased cost to the County or extend deliverable due dates.

2) Approval by Appropriate Signatories. Except as otherwise stated in this Final Change Order section, no Final Change Order shall become effective without the prior written and signed approval by the County Commissioners Court and by the Contractor's duly authorized signatory depending on level of authorization required.

4. PAYMENTS

4.1 Contract Cost.

(a) Implementation Payments. The total of all Implementation Payments will be ("Project Cost") the total of the SOW: Schedule A. These payments shall be made in accordance with this Payment section and the SOW: Schedule A.

(b) Project Mobilization Payment. Within sixty (60) days of the execution of a written Amendment to incorporate the accepted Scope of Work, IGA Report, and any other documents to this Contract's SOW: Schedule A for the identified Phase, County shall make payment to Contractor in the amount of ten percent (10%) of the cost identified in the appropriate Amendment.

(c) Performance Assurance Support Services ("PASS") Payments. County shall pay annual payments for PASS, as identified in Schedule B of the SOW, in the amounts listed below:

Year One	Total of the amounts to be mutually agreed upon by both parties and incorporated into the SOW: Schedule A.
Year Two	Total of the amounts to be mutually agreed upon by both parties and incorporated into the SOW: Schedule A.
Year Three	Year Two price modified by the change in CPI since the beginning of the Year Two.
Year Four and beyond	Prior year modified by the last twelve (12) months change in CPI.

(d) Expenses. Unless prior written approval by County is obtained, Contractor shall be responsible for all mileage, parking fees, technology, research, labor, materials, tools, equipment, machinery and/or other expenses related to the fulfillment of the requirements of the Contract. Upon County's prior written approval for travel, living and out of pocket expense, County shall reimburse Contractor for such expenses related to the fulfillment of the

requirements of the Contract to the extent that such expenses are reasonably consistent with County policies for such reimbursements and expenses.

4.2 **Payment Procedures.**

- (a) Services payments shall be made to Contractor monthly based on the percentage completion of items delineated on a Schedule of Values during the prior month. The Schedule of Values, as specified in Schedule G of the SOW will be developed by Contractor and provided to County at the beginning of Project Implementation. The Schedule of Values will be based upon the Project Cost less the Project Mobilization Payment.
- (b) Contractor agrees to submit to the County complete, fully documented and accurate itemized invoices with appropriate/applicable attachments, statistical and programmatic documentation reports, as required by County for the performed Services no later than the fifteenth (15th) day of the calendar month following the prior month's Services.
- (c) Each invoice shall be in a form acceptable to the Dallas County Auditor, and shall include details of the Services rendered as may be requested by the Auditor for verification purposes. The invoice shall, at a minimum, include a description of the Services, the day(s) and the amount of time during the day(s) that Contractor performed the Services, and the total amount billed for Services rendered.
- (d) After receipt of the invoice, the County shall review the invoice and approve it with any modifications deemed appropriate and thereafter forward the statement with any modifications to the County Auditor for payment. **In the event of any discrepancy between the amount submitted for payment and the actual payment finally approved by the County, only the final amount approved by the County should be adjusted against the SOW value and not the amount invoiced by Contractor.**
- (e) Upon receipt of the invoice, County agrees to compensate Contractor within thirty (30) calendar days for such Services. Any payments by County to Contractor may be withheld if the Contractor fails to comply with the provisions of this Contract, including failure to provide deliverables, or other requirements relating to Contractor's performance of Services under this Contract. County shall pay Contractor only for those costs that are allowable under applicable laws, including, without limitation, the federal rules, regulations, cost principles, and those stated in this Contract. County shall have the right to withhold all or part of any payments to the Contractor to offset any payment or reimbursement made to Contractor for ineligible expenditures, and undocumented units of service billed.
- (f) Contractor agrees that a temporary delay in making payments due to the County's accounting and disbursement procedures shall not place the County in default of this Contract and shall not render the County liable for interest or penalties, provided such delay shall not exceed thirty (30) calendar days after its due date. Any payment not made within thirty (30) calendar days of its due date shall bear interest in accordance with Chapter 2251 of the Texas Government Code.
- (g) Prior Debts. County shall not be liable for costs incurred or Services rendered by Contractor before or after the Contract Term; for expenses not billed to County within the applicable time frames set forth in this Contract; or for any payment for services not provided pursuant to the terms of this Contract; provided, that the foregoing shall not apply to invoices that have been returned to Contractor for resubmission or correction or to invoices that are the subject of a bona fide dispute between the parties.

- (h) Administrative Controls. Contractor shall establish, document and maintain adequate administrative and internal controls to ensure that only allowable and valid costs are billed to County for Services intended under this Contract. Contractor must refund any expenditures or payments that are not within the scope of this Contract.

4.3 **Reporting and Accountability.**

- (a) Contractor agrees to submit all required documentation and reports on a timely basis and in accordance with the specified time frames. Contractor shall account for and maintain complete records of its activities and all inventories pursuant to this Contract.
- (b) Contractor agrees that all information, data and supporting documentation provided by County that relates to the Services under this Contract shall remain the property of the County.
- (c) Access to Records. Should County determine it reasonably necessary, Contractor shall make all of its records and books reasonably related to this Contract available upon reasonable prior request and during business hours to authorized County Personnel to fulfill inspection or auditing deadlines and purposes or to substantiate the provision of Services under this Contract. Required documents may include, but are not limited to, documents pertaining to Services provided for purposes of programming, creation and modification of data fields, and records of telephone hours of support provided. Contractor shall provide such representatives any assistance and work space that they may reasonably require to conduct an audit.
- (d) Audits. Audits may be conducted at any time during the Term of this Contract and will cover the County fiscal year at the time of the audit. The County fiscal year runs from October 1 of each year through September 30 of the following year. Audits will be conducted at County's expense. However, Contractor shall not charge County for copies of its records or for use of its work space, equipment, computer system, or other items. For purposes of this paragraph, County will determine its expenses in the conduct of the audit. Additionally, all costs incurred by County in conducting any such audit shall be reimbursed by Contractor in the event such audit reveals an aggregate discrepancy in any invoice or cumulative invoices not previously audited by County of more than five percent (5%) of the correct amount.
- (e) Results. If an audit by County reveals any errors by County or Contractor, County and Contractor shall work together to resolve such errors. If an audit reveals underpayments to Contractor, County shall pay Contractor the full amount owed Contractor as revealed by the audit, within thirty (30) days of the audit findings. If an audit reveals an overpayment to Contractor, Contractor shall refund to County the full amount of the overpayment, within thirty (30) days of the audit findings.
- (f) Maintenance of Records. All documents shall be maintained and kept by Contractor for a minimum of four (4) years and ninety (90) calendar days after the end of the final Term. If any litigation, claim or audit involving these records begins before the specified period expires, Contractor must keep the records and documents until the later occurrence of either the end of an additional four (4) years and ninety (90) calendar days from the date of court filings/audit findings, or until all litigation, claims or audit findings are resolved.

5. **INSURANCE**

- 5.1 Contractor agrees that at all times during the Term of this Contract it will maintain for itself, and its Contractor Personnel, or require its Contractor Personnel to maintain, as the case may be, in full force and effect insurance as provided herein.

5.2 Such insurance shall provide, at a minimum, the following coverages:

- (a) Statutory Workers' Compensation Insurance that meets the requirements of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, or, if self-insured, then Contractor must provide to County evidence of a certificate issued by the Workers' Compensation Commission approving such self-insurance. If Contractor has no employee (as defined by the Texas Workers' Compensation Act), Contractor shall provide County with a sworn Affidavit stating that there is no employee in lieu of a Certificate of Insurance. In the event that any Services is subcontracted, Contractor shall require the Contractor Personnel to similarly provide Workers' Compensation Insurance for all of the Contractor Personnel's employees, unless such employees are afforded protection by the Contractor. Contractor shall assure that all of Contractor Personnel have workers' compensation coverage required by this paragraph. Contractor also represents that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with an appropriate insurance carrier, or in the case of self insurance, with the Texas Workers' Compensation Commission. Providing false or misleading information may subject Contractor to administrative penalties, criminal penalties, civil penalties or other civil actions.

<u>Types of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation	Statutory
Employer's Liability	
Bodily injury by Accident	\$500,000.00 Each Accident
Bodily injury by Disease	\$500,000.00 Each Employee
Bodily injury by Disease	\$500,000.00 Policy Limit

- (b) Professional Liability Insurance. Contractor shall secure, pay for and maintain in full force and effect during the Term of this Contract and any Subsequent Terms and thereafter for an additional five (5) years from the effective date of cancellation, termination or expiration of this Contract or any Subsequent Terms, professional liability insurance in a minimum amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) per occurrence with certificates of insurance evidencing such coverage to be provided to the County.
- (c) Commercial General Liability Insurance. Contractor shall maintain Commercial General Liability Insurance coverage, including Contractual Liability Insurance, for the following: (a) Premises Operations; (b) Independent contractors or consultants; (c) Products/Completed operations; (d) Personal injury; (e) Contractual liability; (f) Explosion, collapse and underground; (g) Broad form property damage, to include fire legal liability. Such insurance shall carry a limit not less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for bodily injury, property damage, and blanket contractual coverage per occurrence with a general aggregate of One Million and 00/100 Dollars (\$1,000,000.00) and products and completed operations aggregate of One Million and 00/100 Dollars (\$1,000,000.00). There shall not be any policy exclusion or limitations for personal injury, advertising liability, medical payments, fire damage, coverage for legal defense costs, broad form property damage, including any mutually agreed upon additional coverage or increase in limits of such insurance.
- (d) Commercial Automobile Liability Insurance: Contractor shall maintain Automobile Liability insurance with an individual single limit for bodily injury and property damage of no less than Five Hundred Thousand and 00/100 Dollars (\$500,000.00) for each occurrence with respect to Contractor's vehicles, whether owned, hired, non-owned, and which are used in connection with the performance of this Contract.

(e) Excess Coverage Insurance. Contractor shall maintain Excess Insurance with a limit not less than Ten Million and 00/100 Dollars (\$10,000,000.00) for each occurrence, and that shall follow the form of Commercial General Liability Insurance and Automobile Liability Insurance.

5.3 Contractor agrees that, with respect to the above referenced insurance, all insurance policies will contain the following required provisions or endorsements:

(a) Additional Insureds. Name County and County Personnel as additional insureds for all Services under this Contract (as the interest of each insured may appear), but only with respect to liability arising out of operations of Contractor on behalf of County, where required by written contract with respect to the Commercial General Liability and Commercial Automobile liability policies.

(b) The Certificate of Insurance shall state: Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions, pursuant to ISO ACORD Form 25 (09/2009).

(c) Provide for an endorsement that the "other insurance" clause shall not apply to the County where the County is an additional insured on the policy with the coverage on this policy to be primary and non-contributory to the extent required by this Contract.

(d) Provide notice in accordance with this Contract to the following person and address:

*Dallas County Director of Purchasing
Records Building, 6th Floor
509 Main Street, Room 623
Dallas, Texas 75202-5799*

(e) Contractor agrees to waive subrogation, and each applicable policy of insurance shall state a waiver of subrogation, against County and County Personnel.

5.4 Contractor shall be solely responsible for all cost of any insurance as required here, any and all deductible amount and in the event that an insurance company should deny coverage.

5.5 It is the intent of these requirements and provisions that Contractor's insurance covers Contractor's liability set forth in this Section 7 of this Contract, to the extent of the policy terms and conditions.

5.6 **Insurance certificates.** The certificates of insurance shall list County as the certificate holder. Any and all copies of Certificates of Insurance shall reference this Contract for which the insurance is being supplied, shall list the policies meeting all conditions in this Contract and be issued by an insurance company which is rated at least A-VII by A.M. Best Company and authorized to do business in the State of Texas. Coverage dates shall be inclusive of the Contract Term and each Subsequent Term, if any. Such certificates shall be delivered to the *Dallas County Director of Purchasing* located at the *Dallas County Records Building, 509 Main Street, 6th Floor, Dallas, Texas 75202* within ten (10) calendar days of the Effective Date and/or any Subsequent Term and upon renewals and/or reduction in coverage of such policies, but not less than fifteen (15) calendar days prior to the expiration of the term of such coverage, or such non-delivery shall constitute a default of this Contract subject to immediate termination at County's sole discretion if Contractor fails to provide such certificates within five (5) business days after notice thereof from County.

- 5.7 All insurance coverage shall be on a per occurrence basis or a per claim basis if Contractor provides for five (5) year tail coverage, unless specifically approved in writing and executed by the County's Director of Purchasing and Risk Manager.
- 5.8 All insurance required to be carried by Contractor and/or subcontractors under this Contract shall be acceptable to the County in form and content, in its sole discretion. Acceptance of or the verification of insurance shall not relieve or decrease the liability of the Contractor.
- 5.9 Minimum insurance is a condition precedent to any Services performed under this Contract and for the entire Term of this Contract, including any renewals or extensions. In addition to any and all other remedies County may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, or such insurance lapses, is reduced below minimum requirements or is prematurely terminated for any reason, upon failure of Contractor to remedy such condition within five (5) business days following notice from County thereof, County shall have the right to:
- (a) Order Contractor to stop Services hereunder, which shall not constitute a Suspension as set forth in Section 2.2;
 - (b) Withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof;
 - (c) At its sole discretion, declare a material breach of this Contract, which, at County's discretion, may result in:
 - 1) termination of this Contract;
 - 2) demand on any bond, as applicable;
 - 3) the right of the County to complete this Contract by contracting with the "next low proposal." Contractor will be fully liable for the difference between the original Contract price and the actual price paid, which amount is payable to County by Contractor on demand; or
 - 4) any combination of the above.
 - (d) Neither Contractor nor any third party shall have any recourse against the County for payment of any premiums or assessment for any deductibles, or payment of any amount that would have been payable by any such insurance, as all such liability, cost, expense, premiums and deductibles are the sole responsibility and risk of the Contractor; and
 - (e) Any combination of the above.
- 5.10 Contractor shall promptly advise County in writing of any claim or demand, against County or Contractor, known to Contractor related to or arising out of Contractor's activities under this Contract.
- 5.11 Nothing contained in this Section 5, including approval, disapproval or failure to act by the County regarding any insurance supplied by Contractor shall relieve Contractor or Contractor Personnel of liability as set forth in Section 7 of this Contract. Neither shall bankruptcy, insolvency or denial of coverage by any insurance company exonerate the Contractor from liability under this Contract.

- 5.12 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or Contractor Personnel's performance of the Services covered under this Contract.
- 5.13 Survival. The provisions of this Section shall survive completion, suspension, cancellation, termination or expiration of this Contract or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.
- 5.14 **Insurance Lapse**. Pursuant to Section 94.73 of the Dallas County Code, if the Contractor fails to maintain the insurance required under the Contract continuously at all times during the period stated in the Contract, or otherwise has a lapse in any of the required insurance coverage, including workers' compensation coverage the Contractor shall reimburse the County for any and all costs, including attorney's fees incurred by the County in curing said default. In the event of any insurance lapse, the County shall retain five percent (5%) of the value of the total Contract Sum for a period of six (6) months from the date of the cure of the insurance lapse or the date the Contract has ended, whichever is later, to cover the County's potential exposure to liability during the period of the insurance lapse.

Contractor further agrees to indemnify County for any penalties, fines, jury awards, court costs, litigation expenses, and attorneys' fees incurred by County due to Contractor's failure to maintain the required insurance at all times during the Term of the Contract. Contractor, at its own expense with Counsel selected by Contractor and reasonably acceptable to County, will defend and hold County harmless in any claim or action against County that occurred due to Contractor's failure to maintain insurance at all times during the Term of the Contract. Without waiving any rights under Sovereign Immunity, the County shall cooperate with and may monitor Contractor in the defense of any claim, action, or proceeding and will, if appropriate, make employees available as Contractor may reasonably request with regard to such defense, subject to the reimbursement by Contractor of all costs and expenses occasioned by the County's cooperation in such defense. Contractor agrees not to settle any such claim without the County's consent, which consent will not be unreasonably withheld or delayed.

6. PERFORMANCE BOND

- 6.1 Contractor is required to execute to Dallas County a good and sufficient bond:
- (a) In an amount equal to one hundred percent (100%) of the approximate total amount of the Contract, or
 - (b) In the total amount specified in the appropriate Amendment for each of the Phases identified in the IGA Agreement prior to the beginning of the Services for each Phase, or
 - (c) Otherwise guaranteeing the full and faithful execution of the performance of the Contract, and
 - (d) In accordance with the Contract and Contract Documents, including any extensions thereof, for the protection of Dallas County.
 - (e) The bond shall identify the Principal and Surety with the Owner. The Principal and Surety shall be identified by their full legal names, addresses, full telephone numbers, and legal status of the parties (i.e., sole proprietorship, general partnership, joint venture, unincorporated association, limited partnership, corporation (general or professional), etc.). The identification of the Owner will be for informational purposes only. The Contract shall

be described by the RFP Number for which services are being provided, date, amount and by official name and identification of the Project. The amount of the Contract and the dollar amount of the performance bond shall be in both written and numerical form. The date of the performance bond shall not be earlier than the Effective Date of the Contract, which is adopted by reference. The bonds must be executed by a corporate surety authorized to do business in the State of Texas in accordance with Article 7.19-1 of the Texas Insurance Code. Each bond must be separately signed by the Principal and the Surety. The parties executing (signing) the bond should indicate their companies, print their names and titles, and impress the corporate seals, if any.

- (f) Where appropriate, Contractor shall attach a copy of the resolution by law authorizing the individual to act on behalf of the firm or entity. Evidence of authority to sign on behalf of each party should be obtained. As to the Surety, this usually takes the form of a power of attorney issued by the Surety Company to the agent who signs on its behalf. The bonds must be payable to Dallas County, Texas.
- (g) County will disburse no payment for goods, materials or services provided by Contractor unless a good and sufficient bond written to equal one hundred percent (100%) of the approximate Contract amount is on file with the County within thirty (30) calendar days after execution of this Contract.

- 6.2 The performance bond must clearly and prominently display on the bond or on an attachment to the bond the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent, or the toll-free telephone number maintained by the Texas Department of Insurance under Article 1.35D of the Texas Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.
- 6.3 Should the parties extend the Contract for any Subsequent Terms as provided for herein, it will be Contractor's responsibility to have the Surety company provide to County confirmation of the existing bond or provide a new bond, if applicable.
- 6.4 Bonds shall be executed by a duly authorized Surety listed in Circular 570 "Surety Companies Acceptable on Federal Bonds published in the Federal Register, U.S. Department of the Treasury."
- 6.5 No surety will be accepted by County who is now in default or delinquent on any bonds or who is interested in any litigation against the County.
- 6.6 Each bond shall be executed by Contractor and Surety. Each Surety shall designate an agent resident in the State of Texas to whom any requisite notices may be delivered and on whom service of process may be had in matters arising out of such surety.
- 6.7 Premature Termination by Contractor. In the event the Contract, or any part of the Contract, is prematurely terminated due to non-performance or withdrawal by Contractor, or unilaterally prematurely terminated by Contractor, County reserves the right to seek monetary restitution from the Contractor, which will include, without limitation, acting on the performance bond, and/or withholding of monies owed to Contractor, to cover costs for interim services and/or to cover the difference between the cost with Contractor under this Contract and the new higher cost to County with other sources for completing the intended performance by Contractor under this Contract. In the event civil suit is filed to enforce this provision, County will seek its reasonable attorney's fees and cost of suit from Contractor.

- 6.8 All bonds shall be delivered to the *Dallas County Director of Purchasing* located at the *Dallas County Records Building, 509 Main Street, 6th Floor, Dallas, Texas 75202*, within thirty (30) calendar days after execution of this Contract, or such non-delivery shall constitute a default of this Contract subject to immediate termination at County's sole discretion.
- 6.9 In the event Contractor does not secure and deliver a performance bond acceptable to County and in accordance with the provisions of this Section, County, at its sole discretion, may immediately terminate this Contract.
- 6.10 Notwithstanding any provision to the contrary, any payment and performance bonds associated with this Contract guarantee only the performance of the installation portion of the Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, (2) any support or maintenance service agreement, or (3) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of the Contract.

7. INDEMNIFICATION

To the fullest extent authorized by law, Contractor shall forever waive, release, indemnify and hold harmless County and County Personnel (collectively, "County") from and against any and all Contractor or third party losses, damages, injuries (including death), causes of action, claims, demands, liabilities, judgments, suits, losses, damages, fines, assessments, penalties, adverse awards and expenses (whether based upon tort, breach of contract, United States patent, trademark or copyright infringement, failure to pay employee taxes or withholdings, failure to obtain worker's compensation insurance, or otherwise), whether known or unknown, including, without limitation, reasonable legal and related legal fees and expenses, arising out of or on account of, or resulting from (1) any actual or alleged intentional or negligent act or omission of, or default in the performance of, attempted performance of, or failure to perform, its obligations pursuant to this Contract by Contractor, and (2) any injury to individuals present during Contractor's provision of the Services required under this Contract or damage to property (whether real, personal or inchoate), including intentional acts such as assault; and wrongful imprisonment or other intentional torts or as a result of incorrect and/or scrambled information downloaded from any Contractor Software, and (3) the selection, provision, misuse, use or failure to use, by Contractor of any tools, supplies, materials, equipment or vehicles (whether owned or supplied by County, or any other person or entity) in connection with the provision of the Services;

AND FURTHER, Contractor agrees to defend at its sole cost and expense against any claim, demand, action or suit for which indemnification is provided herein. An indemnified party shall provide Contractor with prompt written notice of any such claims or losses, and all information and cooperation reasonably requested by Contractor to carry out its obligations under this provision, and sole authority to defend and/or settle each claim or loss.

Approval and acceptance of Contractor's Services by County shall not constitute nor be deemed a release of the responsibility and liability of Contractor for the accuracy and competency of the Services; nor shall such approval and acceptance be deemed to be an assumption of such responsibility by the County for any defect, error or omission in the services performed by Contractor in this regard.

No Indemnification by County. Contractor acknowledges and agrees that Dallas County does not have the ability under Article XI, Section 7 of the Texas Constitution to indemnify Contractor or any other third party for damages arising under this Contract.

Limitation of Liability. Notwithstanding anything to the contrary contained herein, CONTRACTOR AND CONTRACTOR PERSONNEL OF ANY TIER SHALL NOT BE LIABLE IN CONTRACT, IN TORT, (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR LOST TIME, LOST PROFITS OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND WHATSOEVER. The remedies of County set forth herein are exclusive and the total cumulative liability of Contractor and Contractor Personnel of any tier pursuant to this Contract, whether in contract, in tort (including negligence or strict liability) or otherwise shall not exceed the price of the Project Cost or the portion thereof upon which such liability is based.

Survival. These provisions shall survive completion, suspension, termination, expiration and/or cancellation of this Contract, or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.

8. OTHER ASSURANCES

8.1 **Notice.** Unless the parties expressly mutually agreed otherwise, any notice to be given under this Contract shall be deemed to have been delivered if reduced to writing and delivered in person by a reputable courier service, or mailed by certified, or registered mail, postage pre-paid, return receipt requested, and properly addressed to the contact person shown at the respective addresses set forth below, or to such other persons or addresses as shall be specified by written notice delivered in accordance herewith. Such notice shall be deemed to have been given, if by courier, at the time of delivery, or if by mail, three (3) business days subsequent to the deposit of the notice in the United States mail. The names and addresses of the parties to whom notice is to be sent are as follows:

John Clark, Lead Project Manager
Engineering & Project Management
George Allen Courts Bldg, 9th Fl.
600 Commerce St, Suite 900
Dallas, TX 75202

Greg Knudson, Regional Team Leader
Schneider Electric Buildings Americas, Inc.
1650 West Crosby Rd
Carrollton, TX 75006

8.2 **Severability.** If any provision of this Contract is construed to be illegal or invalid, this will not affect the legality or validity of any of the other provisions in this Contract. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

8.3 **Sovereign Immunity.** This Contract is expressly made subject to County's Sovereign Immunity, Title 5 of the Texas Civil Practices and Remedies Code, and all applicable federal and State laws. The parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver of any immunities from suit or from liability, or a waiver of any tort limitation that the County has by operation of law or otherwise. Nothing in this Contract is intended to benefit any third party beneficiary.

8.4 **Compliance with Laws and Venue.** In providing Services required by this Contract, Contractor must observe and comply with all applicable federal, State, and local statutes, ordinances, rules, regulations, grant requirements, licenses, legal certifications, or inspections required for the Services, facilities, equipment, or materials. This Contract shall be governed by Texas law and exclusive venue shall lie in Dallas County, Texas.

8.5 **Amendments and Changes in the Law.** No modification, amendment, novation, renewal or other alteration of this Contract shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition or deletion to the terms of this Contract

which are required by changes in federal or State law are automatically incorporated herein without written amendment to this Contract and shall be effective on the date designated by said law.

- 8.6 **Entire Agreement.** This Contract constitutes the entire agreement between the parties hereto and supersedes any other agreement concerning the subject matter of this transaction, whether oral or written.
- 8.7 **Binding Effect.** This Contract and the respective rights and obligations of the parties hereto shall inure to the benefit and be binding upon the successors and assigns of the parties hereto, as well as the parties themselves.
- 8.8 **Government Funded Project.** If Contract is funded in part by either the State of Texas or the federal government, the Contractor agrees to timely comply without additional cost or expense to County, unless otherwise specified herein, to any statute, rule, regulation, grant, contract provision or other State or federal law, rule, regulation, or other similar restriction that imposes additional or greater requirements than stated herein and that is directly applicable to the Services rendered under the terms of this Contract.
- 8.9 **Default/ Cumulative Rights/ Mitigation.** It is not a waiver of default if the non-defaulting party fails to immediately declare a default or delays in taking any action. The rights and remedies provided by this Contract are cumulative, and either party's use of any right or remedy will not preclude or waive its right to use any other remedy. These rights and remedies are in addition to any other rights the parties may have by law, statute, ordinance or otherwise. Contractor and County each have a duty to mitigate damages.
- 8.10 **Fiscal Funding Clause.** Notwithstanding any provisions contained herein, the obligations of the County under this Contract are expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the Contract and any extensions thereto. Contractor shall have no right of action against County in the event County is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Contract or failure to budget or authorize funding for this Contract during the current or future fiscal years. In the event that County is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Contract by written notice to Contractor at the earliest possible time prior to the end of its fiscal year.
- 8.11 **Counterparts, Number, Gender and Headings.** This Contract may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Contract shall be held and construed to include any other gender any words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Contract.
- 8.12 **Prevention of Fraud and Abuse.** Contractor shall establish, maintain and utilize internal management procedures sufficient to provide for the proper, effective management of all activities funded under this Contract. Any known or suspected incident of fraud or program abuse involving Contractor Personnel shall be reported immediately by the County to the Office of the Inspector General for appropriate action. Contractor and County agree that every Contractor Personnel, who, as part of his or her employment, receives, disburses, handles or has access to funds collected pursuant to this Contract does not participate in accounting or operating functions that would permit them to conceal accounting records and the misuse of said funds. Contractor

shall, upon notice by County, refund expenditures of the Contractor that are contrary to this Contract.

- 8.13 **Contra Proferentum.** The doctrine of contra proferentum shall not apply to this Contract. If an ambiguity exists in this Contract, the Contract shall not be construed against the party who drafted the Contract and such party shall not be responsible for the language used.
- 8.14 **Independent Contractor.** Contractor, including its Contractor Personnel, is an independent contractor and not an agent, servant, joint enterpriser, joint venturer or employee of the County, and is responsible for its own acts, forbearance, negligence and deeds in conjunction with the performance of Services covered under this Contract.
- 8.15 **Assignment.** Contractor will not transfer or assign its interest in this Contract without the prior written consent of the County. Contractor understands that in the event that all or substantially all of Contractor's assets are acquired by another entity, Contractor is still obligated to fulfill the terms and conditions of this Contract. County approval to transfer or assign Contractor's interest in this Contract to an entity that acquires all or substantially all of Contractor's assets is subject to formal approval by the Dallas County Commissioners Court. In the event of the assignment or sale of Contractor assets, the County, at its option, may terminate this Contract and at no cost to the County retain the use of any of the equipment, software and other items provided under this Contract to the extent paid for by County.
- 8.16 **Subcontracting.** Contractor may not enter into agreements with subcontractors for delivery of the Services in this Contract without prior written consent of the County, which consent shall not be unreasonably withheld. The costs of all subcontracted services are included in the fees paid herein. Subcontracts, if any, entered into by the Contractor will be in writing and subject to all requirements herein. Contractor agrees that Contractor is solely responsible to County for the performance of this Contract. Contractor shall pay all subcontractors in a timely manner. County shall have the right to prohibit Contractor from using any subcontractor.
- 8.17 **Confidential Information and Ownership**
- (a) Ownership of County Data. Contractor acknowledges and agrees that all information supplied by County to Contractor or created for County (collectively, "County Data") shall remain the property of County. The County Data shall not be otherwise used, disclosed sold, assigned, leased or provided, or commercially exploited by or on behalf of Contractor and Contractor Personnel, to any third party in any respect without County's written consent. Contractor shall not delete or destroy any County Data or media on which County Data resides without prior written authorization of County (acting through the County Commissioners Court). At no cost to County, Contractor shall upon request promptly return to County, in the format and on the media in use as of the date of the request, any and all requested portion of any County Data it may possess or control;
- (b) Confidential Information. Confidential Information refers to the following items one party to this Contract (the "Disclosing Party") discloses to the other (the "Receiving Party"): (1) any information which would be recognized as confidential by a reasonable person from its nature and the circumstances surrounding its disclosure; (2) any document the Disclosing Party marks "confidential"; (3) recognized by statute as confidential; or (4) any information the Disclosing Party orally designates as "Confidential" at the time of disclosure, **provided the Disclosing Party confirms such designation in writing within 14 business days.** Notwithstanding the foregoing, Confidential Information does not include information that: (A) is in the Receiving Party's possession at the time of disclosure; (B) is independently developed by the Receiving Party without use of or reference to Confidential Information;

(C) becomes known publicly, before or after disclosure, other than as a result of the Receiving Party's improper action or inaction; or (D) is approved for release in writing by the Disclosing Party;

- (c) Nondisclosure. The Receiving Party will not use Confidential Information for any purpose other than to facilitate the transactions contemplated by this Contract (the "Purpose"). The Receiving Party: (i) will not disclose Confidential Information to any employee or contractor of the Receiving Party unless such person needs access in order to perform the Services and such person is informed of and in agreement with the confidentiality obligations of this Section; and (ii) will not disclose Confidential Information to any other third party without the Disclosing Party's prior written consent. Without limiting the generality of the foregoing, the Receiving Party will protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. The Receiving Party will promptly notify the Disclosing Party of any misuse or misappropriation of Confidential Information that comes to the Receiving Party's attention. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. The Receiving Party will give the Disclosing Party prompt notice of any such legal or governmental demand and reasonably cooperate with the Disclosing Party in any effort to seek a protective order or otherwise to contest such required disclosure, at the Disclosing Party's expense;
- (d) Care. Should the protection of such Confidential Information requires more than the same care that the Receiving Party takes to protect its information of a similar nature, but in no event less than reasonable care, and such protection will restrict the Receiving Party's business, then prior to disclosure, the Disclosing Party will provide to the Receiving Party with a non-confidential written summary of any data intended to be Confidential Information. Within five (5) business days or receipt of such a summary, the Receiving Party may reject the information in writing. Information disclosed without such a summary, or after such rejection, will not be considered Confidential Information;
- (e) Termination of Contractor's Right to Possess Confidential Information. Upon the earlier occurrence of Project completion, or termination of this Contract for any reason, or Disclosing Party's request, Contractor's rights to possession and use of any of the County's Confidential Information in connection with the performance of its obligations hereunder or otherwise shall terminate and Contractor shall immediately deliver to County all County Confidential Information and all copies of any portion thereof. Contractor shall, if requested, certify in writing to County that it has fulfilled its obligations under this Section;
- (f) County Software. County shall identify the County Software, if any, that Contractor is authorized to use to perform the services pursuant to this Contract and specify the rights of Contractor to use the County Software for the benefit of the County;
- (g) Contractor Software. Contractor shall identify any Contractor Software that will be used to provide the services under this Contract. Without the written consent of the County (acting through the County Commissioners Court, County Commissioners Court Administrator, or County Contract Manager), Contractor shall not use in performing the Services pursuant to this Contract any Contractor Software that is not commercially available to County. Contractor shall install, at its own expense, any Contractor Software needed to provide the Services pursuant to this Contract. Contractor hereby grants to County, its contractors and subcontractors, to the extent necessary or desirable for County or such contractors and subcontractors to perform the Services pursuant to this Contract, a worldwide, perpetual, royalty-free, nonexclusive license to use Contractor Software for the benefit of County.

Except for the foregoing license, Contractor or as applicable, the third party owner thereof, shall retain all right, title and interest in and to the Contractor Software;

- (h) Use of Concepts. Nothing in this Contract shall restrict a party from the use of any ideas, concepts, know-how, methods or techniques relating to information technology services that such party, individually or jointly, develops or discloses under this Contract or obtains from third parties, except to the extent that such use infringes the other party's patent rights, copyrights or other intellectual property rights or involves a disclosure or use of the other party's Confidential Information;
- (i) Security. Contractor will comply with the security procedures that are in effect during the Term of this Contract for the security of County's facilities and County Data and provided to Contractor in writing. In the event that Contractor Personnel may have the ability to defeat systems security provisions on devices containing related and unrelated confidential information or data, Contractor covenants that it shall not access such County data or information or assert waiver of these confidentiality requirements by virtue of Contractor's access;
- (j) County Ownership of Work Product and/or Intellectual Property. To the extent that an invention, patent, discovery, technology, trade secret, know-how, development, improvement, idea or other intellectual property (collectively, "Intellectual Property") is (i) conceived, discovered, invented, created, developed and/or reduced to practice exclusively by County; (ii) created in connection with the Services provided pursuant to this Contract and will only work exclusively with the proprietary system of County (which shall be considered a "work made for hire"); or (iii) under a specific agreement for the joint development of Intellectual Property, such Intellectual Property will be owned exclusively by County.

Except for Intellectual Property owned by county as provided above, County acknowledges that Contractor is the exclusive owner of all right, title and interest in and any other deliverables produced and or provided under this Contractor, including, without limitation, its intellectual property, including patents, trademarks, trade secrets, and copyrights, methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge and experience (collectively, the "Contractor Intellectual Property") possessed by Contractor prior to, or acquired by Contractor during the performance of this Contract and the same shall not be deemed to be work product or "work made for hire" and Contractor shall not be restricted in any way with respect thereto. Contractor grants to county a perpetual, paid-up, worldwide license to make or use Contractor's Intellectual Property, including software that relates in any way to the operation, maintenance and improvement of the Services.

- (k) Survival. The provisions of this Section shall survive completion, suspension, cancellation, termination and/or expiration of this Contract or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.

8.18 **Contractor's Warranties.**

- (a) No Actions, Suits, or Proceedings. Contractor warrants that there are no actions, suits, or proceedings, pending or threatened, that will have a material adverse effect on Contractor's ability to fulfill its obligations under this Contract. Contractor further warrants that it will notify County immediately if Contractor becomes aware of any action, suit, or proceeding, pending or threatened, which will have a material adverse effect of Contractor's ability to fulfill the obligations under this Contract.

- (b) Professional Quality. Contractor warrants to County that all materials and services will be of professional quality conforming to generally accepted practices, and that all Services provided under this Contract will be performed in a manner consistent with that degree of care, qualification and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. If there are no applicable or recognized professional standards in the applicable area or areas of expertise required to perform such services, then Contractor will perform all services in a good and professional manner that meets the requirements stated in this Contract. Any Services that is determined by County to not conform to the Contract requirements will be corrected without charge. This warranty extends for ninety (90) business days past termination or expiration of this Contract. This warranty is limited to rework of the unsatisfactory product or Services without change to the original specifications and without regard to the amount of the effort expended on the original work product. THE WARRANTIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESSED OR IMPLIED WARRANTIES (EXCEPT WARRANTIES OF TITLE) INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. This warranty shall not apply to (a) equipment not manufactured by Contractor, (b) equipment that has been repaired or altered by other than Contractor so as, in its judgment, to affect the same adversely, or (c) equipment that has been subject to negligence, accident or damage by circumstances beyond Contractor's control, or improper operation, maintenance or storage, or other than normal use and service. With respect to equipment not manufactured by Contractor, the warranty obligations of Contractor shall in all respects conform to and be limited to the warranty actually extended to Contractor by its supplier.
- (c) Non-Infringement. Contractor and the Contractor Personnel shall perform their obligations under this Contract in a manner that does not infringe, or constitute an infringement or misappropriation of, any United States patent, copyright or trademark rights of any third party or contain the confidential information of any third party. Contractor represents that, to its knowledge, as advised by counsel, the Contractor Software and the Services performed by Contractor under this Contract, do not, and will not, infringe any United States patent, copyright or trademark owned by any other person or third party. If any claim is made by a third party asserting or involving a United States patent, copyright or trademark involving any product or Services provided by Contractor hereunder, then Contractor will defend, at its expense, and will indemnify the County against any loss, cost, expense, or liability arising out of such claim, whether or not such claim is successful, to the extent and subject to the limitations set forth in Section 7. Notwithstanding anything to the contrary herein, in no event shall Contractor be liable for the following: (i) any claim of infringement based on the use of Contractor material for a purpose other than that for which it was sold by Contractor, or (ii) products supplied according to a design other than that of Contractor and which is required by the County, or (iii) combination of a product with another product not furnished hereunder. Material manufactured to County's designs or specifications are sold with no warranty against infringement. The foregoing states the exclusive remedy for intellectual property infringement hereunder.
- (d) Third Party Software. Contractor warrants that the use of any Third Party Software to assist in the Services under this Contract is a use within the scope of the license(s) provided in the agreement(s) between Contractor and the third party software licensor(s). Notwithstanding the foregoing, Contractor shall: (i) install, operate and maintain, at its own expense, any software necessary to provide the services pursuant to this Contract; (ii) maintain and upgrade as necessary licenses and maintenance agreements for any third party software necessary to provide the services pursuant to this Contract; (iii) obtain licensed authorization for use and disclosure of Third Party Software by and to Contractor and Contractor Personnel; (iv) install fixes, modifications, releases or versions of any such third party software which are identified

by the licensor of the third party software as required to otherwise function as intended; and (v) provide without additional cost to County compatible, functionally-equivalent, non-infringing third party software to allow for the continuous performance of the Licensed Software in accordance with the terms of this Contract should County loses its ability to use the Third Party Software as a result of any reason, including agreement termination, expiration, cancellation between Contractor and the third party licensor(s) or Contractor and County.

- 8.19 Contractor agrees to establish safeguards to prohibit Contractor Personnel from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.
- 8.20 Contractor assures that neither it nor the Contractor Personnel shall receive personal benefits, commission, consideration, or gains in performance of the Services outlined in this Contract. Furthermore, Contractor agrees to disclose prior to commencement of the Services any material/financial interests that it may have in the Services required under this Contract.
- 8.21 **No-Discrimination.** This Contract is subject to applicable federal and state laws and executive orders, including the Fair Labor Standards Act of 1938, relating to equal opportunity and nondiscrimination in employment. Neither Contractor nor the Contractor Personnel shall discriminate in their employment practices against any person by reason of disability, age, race, creed, national origin, color, religion, sex, political affiliation, or veteran status. In addition Contractor assures that no person will, on the grounds of disability, age, race, creed, national origin, color, religion, sex, political affiliation, or veteran status, be excluded from, be denied the benefit of or be subjected to discrimination under any program or activity funded in whole or in part under this Contract. Contractor agrees to comply, and to cause Contractor Personnel to comply, with the provisions of said laws and orders to the extent any such laws and orders are applicable in the performance of this Contract.
- 8.22 Contractor, by acceptance of funds provided under this Contract, agrees and ensures that Contractor Personnel paid from these funds are duly licensed and/or qualified to perform the required Services. Contractor further agrees and ensures that all program and/or facility licenses necessary to perform the required Services are current and that County will be notified immediately if such licenses become invalid during the term of this Contract.
- 8.23 Contractor assures that funds received pursuant to this Contract will not be used for lobbying the Texas legislature or any governmental agency in connection with a particular contract.
- 8.24 County shall have no liability to any subcontractors in the event Contractor does not pay or delays payment to any subcontractors. At termination or expiration of this Contract, Contractor shall deliver to County an affidavit of all bills paid. Final payment shall be contingent upon receipt of such affidavits as resolution of all accounting for which County is or may be liable under this Contract.
- 8.25 Under Section 231.006, Texas Family Code, Contractor certifies to County that the owner(s) of at least a 25% interest in the organization is not delinquent in any child support obligation that renders him/her ineligible to receive payment under the terms of this Contract. Contractor hereby acknowledges that this Contract may be terminated and payment may be withheld if this Certification is inaccurate.
- 8.26 Contractor certifies that neither it nor any of its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Contract by any local, county, State or Federal department or agency.

- 8.27 Failure to comply with any of these assurances or any other requirements specified within this Contract will put Contractor in default and/or breach of this Contract and may result, at the sole discretion of County, in the disallowance of funds and the withholding of future awards, in addition to any other remedies permitted by law.
- 8.28 **Governmental Consent.** Contractor warrants that no consent, approval, or withholding of objection is required from any governmental authority with respect to the entering into or the performance of this Contract.
- 8.29 **Corporate Good Standing.** Contractor represents and warrants that it: (1) is a corporation duly incorporated, validly existing and in good standing; (2) has all requisite corporate power and authority to execute, deliver and perform its obligations hereunder; (3) is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it except when the failure to be so licensed, authorized or qualified would not have a material adverse effect on Contractor's ability to fulfill its obligations hereunder.
- 8.30 **Transition Services Required of Contractor.** Upon termination and/or expiration of this Contract, Contractor agrees to transition the Services provided herein in a cooperative manner and provide anything reasonably requested from the County at an additional cost to be mutually agreed by the parties, including, but not limited to the following: (i) All Contract and Services documentation identified in a complete, neat and orderly manner; and (ii) Good faith pledge to cooperate with County upon transition of Services to another contractor or County department providing the same or similar Services; and (iii) Final accounting of all income from the Contract; and (iv) Downloading and removal of all County information from the Contractor's equipment and software; and (v) Removal of Contractor Services without affecting the integrity of County's systems; and (vi) return of all County Data and property. This provision shall survive completion, suspension, cancellation, termination or expiration of this Contract or any determination that this Contract or any portion hereof is void, voidable, invalid or unenforceable.
- 8.31 **Incorporated Documents.** All Contract Documents are incorporated herein by reference for all purposes including, without limitation, the following Contract Documents:
- (a) SOW;
 - (b) RFQ 2010-089-5231;
 - (c) Contractor's Proposal; and
 - (d) IGA Agreement.
- 8.32 **Order of Precedence.** In the event of a conflict or ambiguity within, between or among the provisions of this Contract and/or any of the Contract Documents, all parties agree that the provisions of this Contract shall take precedence and be supported by any provisions in the referenced or incorporated documents that are favorable to the County's position.
- 8.33 **Tax.**

Dallas County, as a county of the State of Texas, is exempted from the payment of Texas state and local sales, excise, and use taxes pursuant to Tex. Loc. Gov't Code § 151.309, and shall

therefore not be liable or responsible to the Contractor for the payment of such taxes under this Contract.

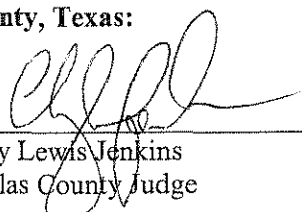
The fees paid to Contractor pursuant to this Contract are inclusive of any applicable sales, use, personal property or other taxes attributable to periods on or after the Effective Date of this Contract and based upon or measured by Contractor's cost in acquiring or providing products and/or Services and related materials and supplies furnished or used by Contractor in performing its obligations hereunder, including all personal property and use taxes, if any, due on equipment or software owned by Contractor.

8.34 **Minority Participation.** Contractor agrees to comply with the provisions of Minority/Women Business Enterprise (MWBE) Specifications as submitted and filed by Contractor with the Dallas County MWBE office as part of its response to RFQ 2010-089-5231. The Contractor's MWBE response is fully incorporated herein by reference for all purposes.

8.35 **Signatory Warranty.** The undersigned signatories for the parties hereby represent and warrant that they are officers of their respective organizations for which they have executed this Contract and that they have full and complete authorities to enter into this Contract on behalf of their respective organizations and that the executions thereof are the acts of the parties involved and have been delivered and constitute legal, valid and binding obligations of the respective parties.

COUNTY
Dallas County, Texas:

CONTRACTOR
Schneider Electric Buildings Americas, Inc.:

X 
BY: Clay Lewis Jenkins
Dallas County Judge

BY: Tammy Fulop
Title: Vice President

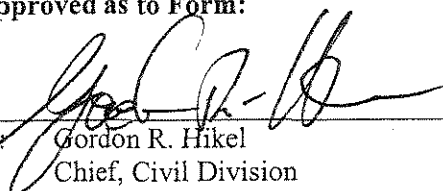
DATE: December 13, 2011

DATE: _____

Recommended:

BY: John Clark
Lead Project Manager

***Approved as to Form:**


BY: Gordon R. Hikel
Chief, Civil Division
Assistant District Attorney

*By law, the District Attorney's Office may only advise or approve contracts or agreements or legal documents on behalf of its clients. It may not advise or approve a contract or agreement or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval by their own respective attorney(s).

**STATEMENT OF WORK (“SOW”)
SCHEDULE A: Scope of Work for PHASE 1**

(MAY BE ADDED UPON MUTUAL WRITTEN AND EXECUTED AMENDMENT TO CONTRACT: SHOULD ALSO INCLUDE IGA REPORT ALONG WITH SCOPE OF WORK FOR IDENTIFIED PHASE)

**STATEMENT OF WORK (“SOW”)
SCHEDULE A: Scope of Work for PHASE 2**

(MAY BE ADDED UPON MUTUAL WRITTEN AND EXECUTED AMENDMENT TO CONTRACT; SHOULD ALSO INCLUDE IGA REPORT ALONG WITH SCOPE OF WORK FOR IDENTIFIED PHASE)

**STATEMENT OF WORK (“SOW”)
SCHEDULE A: Scope of Work for PHASE 3**

(MAY BE ADDED UPON MUTUAL WRITTEN AND EXECUTED AMENDMENT TO CONTRACT: SHOULD ALSO INCLUDE IGA REPORT ALONG WITH SCOPE OF WORK FOR IDENTIFIED PHASE)

**STATEMENT OF WORK (“SOW”)
SCHEDULE A: Scope of Work for PHASE 4**

(MAY BE ADDED UPON MUTUAL WRITTEN AND EXECUTED AMENDMENT TO CONTRACT: SHOULD ALSO INCLUDE IGA REPORT ALONG WITH SCOPE OF WORK FOR IDENTIFIED PHASE)

**STATEMENT OF WORK (“SOW”)
SCHEDULE A: Scope of Work for PHASE (?)**

(MAY BE ADDED UPON MUTUAL WRITTEN AND EXECUTED AMENDMENT TO CONTRACT; SHOULD ALSO INCLUDE IGA REPORT ALONG WITH SCOPE OF WORK FOR IDENTIFIED PHASE)

STATEMENT OF WORK ("SOW")

SCHEDULE B: Performance Assurance Support Services ("PASS")

Contractor's Performance Assurance Support Services (PASS) group will assist County in achieving efficient energy operation of County's facilities on a yearly basis beginning on the Savings Guarantee Commencement Date. County may cancel the PASS on any anniversary date or at the end of County's fiscal year. Upon County cancellation of the PASS, Contractor reserves the right to cancel the Contract.

This effort has two primary objectives: achieving the guaranteed energy savings and assisting County in maintaining functionality of the County buildings and systems. Achieving these objectives will require a partnership and communication as described in the Contract and Contract Documents (collectively "Contract") between County's staff and Contractor's staff, including Contractor's subcontractors. These objectives will be achieved via several means:

A Designated PASS Consultant

To provide support and achieve the best possible savings results, Contractor will assign an individual PASS consultant, as identified in Schedule E of the SOW, to County. The PASS consultant provides County with a point of contact for support and guarantee management that is involved in their Project before construction is completed. The designated PASS consultant will be familiar with the Project scope and M&V plans along with any unique performance goals or benchmarking efforts included in the Project. A partnership between the PASS consultant and County's staff is vital to helping the Project be successful over the long term.

Performance Assurance Functions:

- **Monitoring**

The PASS group will monitor County's facilities, their systems, and their vital signs through a combination of remote and on-site efforts. These efforts will be combined with training County's staff during and at the conclusion of Project implementation on efficient facility operation and how to use building systems to gather data on building performance characteristics and benchmarking parameters. These parameters can then be used to help identify potential problems with the mechanical, electrical, air-distribution, and other systems critical to achieving the desired building performance and guaranteed savings as well as work with the facility staff to enhance and implement energy conservation programs.

- **Utility Accounting**

By tracking the measurements and data defined in Schedule D, PASS will measure the performance of the Project's conservation measures in accordance with the M&V approach defined in Schedule D.

- **Reporting**

County will receive performance-tracking reports via Contractor's eSavings online energy management dashboard. This report will detail current monthly savings, year to date savings, and guaranteed savings in both dollars and utility units. The reporting will also encompass environmental benefits associated with the Project's performance.

Support Services Functions:

- **Real-Time Technical Support**

The PASS group will provide County with technical support, troubleshooting assistance, and operational consultation to help ensure proper performance of the Project scope as defined in Schedule A and ensure that savings are achieved. Contractor and County agree that achieving the goals and guarantees set forth for this Project will require clear, consistent communication by both parties. County can maintain communication and access support from their PASS consultant or other members of the PASS group in multiple ways.

- Contractor's PASS Line (800-274-5551 + 4 or 972-323-5300) offers support for urgent issues that

arise. Live PASS representatives answer this line during business hours (central time). In the event all representatives are busy, County may leave a message and expect a response within 1 hour during business hours (central time). After-hours calls will be responded to within 4 hours by an on-call PASS consultant.

- PASS@buildings.schneider-electric.com is a centralized email communication portal to which all PASS consultants have access. This tool is a vehicle to obtain answers to general questions or non-urgent items.
- Contractor's eSavings energy management dashboard also provides email communication with County's designated PASS consultant.

In a further effort to provide responsiveness and accountability to County's needs, Contractor's PASS group has developed a County Assistance Tracking System to log County calls and track the development of solutions to issues with building performance or savings achievement. CATS or another system will be used for these purposes.

- **ECM consulting**

Should County experience further facility improvements, additions, new construction, or other building modification at some point in the Term of this Contract, Contractor's PASS group will be available to provide guidance and recommendations on a wide variety of building attributes from system types to operational strategies and building construction types for an additional fee. Design oversight and consultation are available as well as utility master planning and capital improvement master planning. Any necessary fees for consulting beyond standard PASS agreement levels will be negotiated between County and Contractor prior to commencement of any Services.

- **Site Visits**

As part of ensuring that County's staff is trained to operate the systems in a manner consistent to achieve the savings guarantee and functionality of buildings and systems, the PASS Consultant will visit the facilities as they deem appropriate. Site visits to assist in troubleshooting issues pertinent to warranty or other service will also be conducted as deemed appropriate.

- **Ongoing training**

Savings guarantees are not achievable unless County maintains, repairs, and operates the buildings and systems in an efficient and effective manner. Training for County's staff by Contractor's Project installation and PASS personnel will occur during Project installation and during the guarantee period as mutually agreed upon by Contractor and County. Training requirements beyond the scope of Contractor's standard construction and PASS training is available with additional fees to be negotiated between County and Contractor.

STATEMENT OF WORK ("SOW")

SCHEDULE C: Performance Guarantee

Contractor guarantees that County will save a total of \$GUARANTEED SAVINGS MULTIPLIED BY CONTRACT TERM over the TERM year Term of the Contract. This equates to an annual savings amount of \$GUARANTEED SAVINGS in Total Dollar Savings, which consists of tracked savings of \$XX and \$XX in stipulated savings, calculated as shown herein. In the event the annual savings are less than the amount stated above, Contractor will pay County the difference between the guaranteed amount and the cumulative achieved amount. Contractor will make payments for any savings shortfall to County within thirty (30) days of that year's Savings Reconciliation.

The procedure used to calculate savings is described in Schedule D Section I - Performance Tracking Methodology.

GUARANTEED SAVINGS RECONCILIATION

The savings Guarantee Term will commence on the first day of the first utility billing period following the month in which Contractor delivers to County the Project Warranty Letter. This date is referred to as the **Savings Guarantee Commencement Date**.

Within sixty (60) days of receiving pertinent utility bills after the Savings Guarantee Commencement Date and each anniversary of the Savings Guarantee Commencement Date, and within sixty (60) days of receiving pertinent utility bills after the end of the guarantee term, Contractor will determine the Total Dollar Savings for the immediately preceding period.

The savings generated during the period from the Contract "Effective Date" to the Savings Guarantee Commencement Date will be called "Implementation Period Savings". Implementation Period Savings will be added to the Savings Calculation made on the first anniversary of the Savings Guarantee Commencement Date for reconciliation purposes.

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 Contractor has written a savings shortfall check to County, and later Total Dollar Savings exceed the annual guarantee amount, County will reimburse Contractor up to the amount of Contractor's shortfall check, to the extent that the shortfall is made up by savings in excess of the guarantee.

STATEMENT OF WORK ("SOW")

SCHEDULE D: Methodology and Baseline

SECTION I - PERFORMANCE TRACKING METHODOLOGY

- A. Description
- B. Baseline Definition
- C. Determination of Adjusted Baseline
- D. Other Savings
- E. Determination of Energy Units Saved
- F. Determination of Energy Dollars Saved

A. Description

The method of determining energy savings described in this section uses "Option C – Main Meter Measurement" as described in the International Measurement and Verification Protocol (IPMVP). In brief, the energy savings resulting from this Project will be measured as follows:

Energy savings will be measured by comparing the guarantee period's total energy consumption and demand to the total energy consumption and demand for the same area in the base year period. Base year energy and demand will be adjusted for differences in weather, facility operation and facility modifications to estimate how much energy would have been used in the guarantee period if the energy conservation measures had not been implemented. The energy saved is the difference between the adjusted base year consumption and the guarantee period consumption. The demand saved is the difference between the adjusted base year demand and the guarantee period demand. Energy cost savings is the difference between the cost of the base year consumption and demand and the guarantee period consumption and demand. This process will be followed for each fuel type involved in the guarantee.

B. Baseline Definition

The base year is the period of time, as agreed to in this document, which 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.

The baseline is that set of parameters that describes both the energy consumed in the base 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. In addition, the baseline includes certain mathematical values, calculated by a model, that are used to correlate the base year energy consumption with the factors that caused that consumption. The baseline to be used for this Project is fully defined in Schedule D Section II, paragraphs A through I. County agrees to accept modifications to this baseline 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 Contractor after the execution of this Contract.

C. Determination of Adjusted Baseline

Base year consumption is adjusted to estimate what the current guarantee period consumption would have been if no energy conservation measures had been implemented. This is accomplished by adjusting for these factors:

- Changes in the number of days between the base year and guarantee year billing periods
- Changes in weather between the base year and guarantee year billing periods
- Changes in facility use between the base year and guarantee year billing periods
- Modifications to the facility between the base year and guarantee year periods

Adjusted base year consumption is calculated as follows for each fuel type:

$$Q = C_D * (T_i - T_{i-1}) + C_H * HDD_i + C_C * CDD_i + O_i + M_i, \text{ or}$$

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

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

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

$$D = D_D * (T_i - T_{i-1}) + D_H * (HDD_i / (T_i - T_{i-1})) + D_C * (CDD_i / (T_i - T_{i-1})) + O_i + M_i, \text{ or}$$

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

Where:

D = 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

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, $C_D * (T_i - T_{i-1})$, 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 .

Weather Dependent Consumption

Change in weather between the base year and guarantee year periods is accounted for with the term, $C_H * HDD_i + C_C * CDD_i$. Weather Dependent Consumption is consumption per degree-day times the number of degree-days in the guarantee year billing period. A cooling degree-day is the difference between the average daily temperature and the balance point temperature ($AvgTemp - BalanceTemp$). A heating degree-day is the difference between the balance point temperature and the average daily temperature ($BalanceTemp - AvgTemp$). Degree-days are either positive numbers or zero. If the degree-day calculation yields a negative number, the period is considered to have zero degree-days of that type. The balance point temperature is different for each building and for each fuel type. The balance point temperatures used for this Project are defined in Schedule D Section II-A. The weather station used to determine daily temperatures is specified in Schedule D Section II-D.

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.

Offset

Offset is that portion of the energy 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. Offset for the base year is defined in Schedule D Section II-A. 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

Other Adjustments

Additional adjustments to the base year may be made to compensate for modifications and additions to a facility or to compensate for changes in how a facility is used. A list of known Causes for Adjustment is shown in Schedule D Section II-F along with means to determine the magnitude of these adjustments.

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. Upon request, Contractor will provide an explanation of the derivation of these adjustments to County.

If additional changes occur, other than those listed in Schedule D Section II-F, Contractor will document to County how adjustments will be determined for said changes. Any such adjustment will be added to the term M_i in the equation above.

D. Other Savings

Other Energy Savings

Both County and Contractor agree to add Stipulated Savings and Other Energy Savings to any measured savings according to the Other Energy Savings Schedule in Schedule D Section III-B.

Maintenance\Other Savings

As a result of implementing Energy Conservation Measures, additional non-energy savings may accrue towards this contract's guaranteed savings. These savings will be measured as follows:

$$\$O = \$O_b - \$O_g$$

Where;

$\$O_b$ = Base year maintenance\other cost

$\$O_g$ = Guarantee period maintenance\other cost

Any base year maintenance\other costs to be used for this purpose are defined in Schedule D Section III-A. Guarantee period maintenance\other costs will be determined from County's records that reflect savings that occur due to the implementation of the Energy Conservation Measures.

E. Determination of Energy Units Saved

Energy and demand units saved will be determined by the following equation:

$$E = E_B - E_G$$

Where;

- E = Energy (or demand) Units Saved
- E_B = Adjusted Base Year Consumption
- E_G = Guarantee Period Consumption

F. Determination of Energy Dollars Saved

For the purposes of this contract's guarantee, energy dollars saved will be determined as follows:

$$\$ = (\$B - \$G) + \$S + \$O + \$M$$

Where:

- $\$$ = Energy Dollars Saved
- $\$B$ = Cost of Adjusted Base Year Energy, for All Fuel Types
- $\$G$ = Cost of Guarantee Period Energy, for All Fuel Types
- $\$S$ = Stipulated Energy Savings
- $\$O$ = Other Energy Savings
- $\$M$ = Maintenance\Other Savings

The cost of energy in any period will be determined by applying the energy rates, as defined in schedule D section II-E, or the actual energy rates during the period, as mutually agreed upon by Contractor and County, to the energy used in a given period for each fuel type.

SECTION II - BASELINE & SUPPORTING INFORMATION

- A. Meter Tuning Contract**
- B. Meter List**
- C. Building List**
- D. Weather Source**
- E. Energy Rates**
- F. Causes for Adjustment**
- G. Calendar and Schedules**
- H. Standards of Service and Comfort**
- I. Other Information**

A. Meter Tuning Contract

The purpose of meter tuning is to establish a relationship between the weather and the consumption and demand measured by a particular meter. Tuning consists of identifying relationships between "historic" utility performance and weather (heating degree days and/or cooling degree days). The end result is a set of coefficients, which will be used in modeling the energy use of a facility to calculate the energy savings or penalty associated with weather normalizing the baseline energy usage.

During the Project installation, the PASS department will select the twelve (12) month baseline period (12 months prior to the beginning of installation typically) for each guarantee meter and determine the meter tuning coefficients. These coefficients will be submitted to County for review prior to the start of the guarantee period.

The meter tuning effects will be calculated using Metrix utility simulation software. Metrix is a software package product of Silicon Energy. This software package has been accepted as meeting the requirements of the (IPMVP) International Performance Measurement and Verification Protocol.

B. Meter List

Guarantee Meters

The following meters will be used to measure actual energy consumption for both the base year and guarantee periods.

Electric Meters

Meter Name	Account Number	Utility Co.	Rate	Units

Gas Meters

Meter Name	Account Number	Utility Co.	Rate	Units

Supplemental Sub-Meters

The consumption measured by these meters is not guaranteed. Information from these meters may be used to determine baseline adjustments due to modifications to buildings or changes in operation.

Meter Name	Account Number	Utility Co.	Rate	Units

C. Building List

The following table(s) lists the buildings that were served by guarantee meters during the base year period.

Bldg No.	Building Name	Area (ft ²)	Comments

D. Weather Source

Weather Data Source

Data for weather compensation adjustments will be Daily High-Low Temperatures obtained from the National Weather Service Station at WEATHER STATION NAME. 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, Contractor may select an alternative data source with County's approval.

E. Energy Rates

Electricity

Name of Utility: Rate Schedule:			
	Charge	Unit	Comments
County Charge:		Per Billing Period Per Billing Period	
Demand Charges:		Per Billed kW Per Billed kW	
Consumption Charges:		Per kWh Per kWh Per kWh	
Other Charges:		Per kWh Per kWh Per kWh	
Determination of Billed Demand:		kW kW	
Other Rate Details:			

Natural Gas

Name of Utility: Rate Schedule:			
	Charge	Unit	Comments
County Charge:		Per Billing Period Per Billing Period	
Consumption Charges:		Per MCF Per MCF Per MCF	
Other Charges:		Per MCF Per MCF Per MCF	
Other Rate Details:			

F. Causes for Adjustment

Cause	Action	Responsibility
Addition of New Building, or Renovation/Addition to Existing Building w/ Independent Utility Metering and HVAC Service	1. None required. Building is independently metered. No effect on savings tracking of other buildings.	1. N/A
Addition of New Building	1. County will notify Contractor when additions are	1. County

<p>or New Energy User on Existing Utility or HVAC Service **</p>	<p>planned.</p> <ol style="list-style-type: none"> 2. Contractor will review the addition plans and determine if the addition is likely to increase energy use above the threshold limits. * 3. If the addition is expected to exceed any of the threshold limits then all incoming utilities (consumption and demand) and HVAC service will be sub-metered. 4. If the addition is below all of the threshold limits, the addition's energy consumption will be estimated from computerized building simulation, manual calculations or as a ratio of the main building's energy consumption, obtained either from sub-meter data and/or energy simulations. 	<ol style="list-style-type: none"> 2. Contractor 3. County 4. Contractor
<p>Addition to Existing Building on Existing Utility or HVAC Service **</p>	<ol style="list-style-type: none"> 1. County will notify Contractor when additions are planned. 2. Contractor will review the addition plans and determine if the addition is likely to increase energy use above the threshold limits. * 3. If the addition is expected to exceed any of the threshold limits, sub-meter the addition, just as for a new building. 4. If the addition is below all of the threshold limits, the addition's energy consumption will be estimated from computerized building simulations, manual calculations or as a ratio of the main building's energy consumption, obtained either from sub-meter data and/or energy simulations. 	<ol style="list-style-type: none"> 1. County 2. Contractor 3. County 4. Contractor
<p>Renovation / Modification of an Existing Building on Existing Utility or HVAC Service **</p>	<ol style="list-style-type: none"> 1. County will notify Contractor when building renovations are planned. 2. Contractor will review the renovation plans and determine if the renovations are likely to cause a change in energy use that would exceed the threshold limits. * 3. If the renovations are expected to raise or lower energy consumption more than the threshold limits, the renovation will be sub-metered for both pre and post renovation periods until the effect on energy has been determined. 4. If the expected changes are less than the threshold limits, the effect on energy may be estimated, or, at Contractor's option, ignored. 	<ol style="list-style-type: none"> 1. County 2. Contractor 3. County 4. Contractor
<p>Demolition / Abandonment of an Existing Building on Existing Utility or HVAC Service **</p>	<ol style="list-style-type: none"> 1. County will notify Contractor when a demolition or abandonment is planned. 2. Contractor will determine if the demolition/abandonment is likely to decrease energy use more than the threshold limits. * 3. If the expected decrease is more than the threshold limits, the building will be sub-metered for both pre and post demolition periods until the effect on energy has been determined. 4. If the expected changes are less than the threshold limits, the effect on energy may be estimated, or, at County's option, ignored. 	<ol style="list-style-type: none"> 1. County 2. Contractor 3. County 4. Contractor

<p>Change in Occupancy, Occupancy Hours, Calendar or Set-points Reference Schedule D Section II-G and Section II-H for baseline conditions.</p>	<ol style="list-style-type: none"> 1. County will maintain records of occupancy levels, operating hours and operating calendar and apprise Contractor of the latest figures at least annually. 2. If at any point during the guarantee term any of these values change more than 5% of its baseline value, Contractor may estimate the impact of this change and adjust the baseline accordingly. 	<ol style="list-style-type: none"> 1. County 2. Contractor
<p>Re-commissioning of Out-of-Service Buildings **</p>	<ol style="list-style-type: none"> 1. When a building is scheduled to be re-commissioned, sub-metering equipment will be installed to measure; a) the building's energy use in its out-of-service condition, and b) the building's energy use after re-commissioning. 2. Contractor will use the metered values to adjust the base year for the increased energy consumption. 	<ol style="list-style-type: none"> 1. County 2. Contractor
<p>County Initiated ECM's</p>	<ol style="list-style-type: none"> 1. If a County initiated ECM is estimated to save less than 5% of this contract's annual guaranteed energy savings, no adjustment will be made to the savings measured under this Contract. 2. To measure savings from a County initiated ECM, County will develop a separate M&V plan to track the ECM's savings. Pending agreement from Contractor, the resulting savings from County initiated ECM will be subtracted from this contract's savings. 3. In no event will the original M&V plan's current year measured savings be reduced below the immediately preceding year's savings due to a County initiated ECM. 	<ol style="list-style-type: none"> 1. N/A 2. County 3. N/A
<p>Missing bills</p>	<ol style="list-style-type: none"> 1. County agrees to send complete and accurate copies of utility invoices for meters ** included in this Contract to Contractor within 10 days of receipt of such invoices or authorize Contractor to access the utility information directly from the utility provider to ensure prompt measurement of Project savings. 2. If utility invoices are not received by Contractor within 60 days of the end of the service period, Contractor will estimate the savings based on guaranteed savings or previously achieved savings at the discretion of Contractor prorated for the utility billing period to which the bill relates and for subsequent billing periods that are affected by an increase in energy and/or demand that could have been avoided or detected earlier had Contractor been provided with the utility data in accordance with these County responsibilities in item #1. 3. In the event Contractor receives the utility bill and/or utility data subsequent to the above action, Contractor will incorporate the utility data into the savings analysis. If such data produces savings results greater than savings calculated as set forth in item #2, the greater amount will be used in determining achieved savings. 	<ol style="list-style-type: none"> 1. County 2. Contractor 3. Contractor
<p>Other Causes</p>	<p>Other causes for adjustment may occur due to changes in certain baseline conditions. These causes include,</p>	<ol style="list-style-type: none"> 1. Contractor

	but are not limited to, those described in Schedule D Section II-I.	
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*** Threshold Limits:**

Area – 1% of base year area as shown in Schedule D Section II-C
 Electricity – 1% of highest annual peak demand resulting from the Meter Tuning Contract discussed in Schedule D Section II-A

Natural Gas – 1% of installed base year gas-heating capacity
 Other Fuel – 1% of installed base year maximum capacity
 Air Conditioning – 1% of installed base year air-conditioning capacity

** Reference Schedule D Section II-B and Section II-C for the associated meters and facilities included in the baseline.

G. Calendar and Schedules

Calendar

Date(s)	Event	Date(s)	Event

Schedules

Facility Type	Schedule Type	Daily Schedule
	Weekday	
	Weekday	
	Weekend	Off
	Holiday	Off

Start Times	1 hour prior to scheduled event for area in question
Stop Times	After scheduled event for area in question
Special Requirements	As demanded for given area in question, adjustment required, unless demanded in base year.

Occupancy

Time Period	Occupancy Schedule
Weekdays	
Weekends	No normal occupied hours

Holidays	No normal occupied hours

H. Standards of Service and Comfort

County agrees to operate the conditioned spaces in the facilities listed in Schedule D Section II-C within the temperature ranges scheduled in the Temperature Control Table below. Contractor reserves the right to adjust the baseline for operating conditions outside the range specified in this table.

In the event that an adjustment to the baseline is made, Contractor shall submit the baseline adjustments to County and describe the reasons for the adjustment.

Temperature Control Table

	Heating Set-point Range	Cooling Set-point Range
Occupied	68°F - 71°F	72°F - 75°F
Unoccupied	50°F	Off

I. Other Information

Other Key Baseline Conditions

Following are key baseline conditions and calculation assumptions. Significant deviation from any or all of these conditions constitutes a cause for adjustment. In the event a cause for adjustment occurs, Contractor will use an appropriate means to estimate the effect of the change and add or subtract the adjustment for the current billing period. All calculations will be made available to County upon request.

- The guaranteed savings assume that no significant increase or decrease, in quantity or capacity, will occur in installed equipment and plug loads such as fans, pumps, lighting, copiers, computers, printers, ovens, etc. Contractor reserves the right to adjust for changes in quantity and/or capacity of any of these items. County agrees to provide to Contractor access to County's premises and/or records for purposes of determining the occurrence and/or magnitude of any such changes.

SECTION III – SAVINGS

- A. Baseline Maintenance\Other Costs
- B. Other Energy Savings

A. Baseline Maintenance\Other Costs

Facility	Annual Amount	Explanation

Explanation:

B. Other Energy Savings

Stipulated Savings

Facility	Annual	Explanation

	Amount	

Other Measured Energy Savings

Other Measured Energy Savings will be determined as follows:

$$\$_O = E_O * \$/\text{Unit}$$

$$E_O = E_{MB} - E_{MG}$$

Where:

$\$_O$ = Other Measured Energy Savings

$\$/\text{Unit}$ = Cost of Energy per Unit Measured

E_O = Other Measured Energy Units Saved

E_{MB} = Measured Base Year Consumption

E_{MG} = Measured Guarantee Year Consumption

The total Other Measured Energy Savings for any guarantee period will be the sum of the Other Measured Energy Savings for all sites and fuel types.

Explanation of Methodology

ECM/Site Name: _____

IPMVP Method: Option A Option B

Brief Description of Rationale: _____

Pre-retrofit Values

Item	Value	Source	Frequency of Measurement	Measurement Method
Name/Description				
Quantity				
Size/Capacity				
Operating Hours				
Assumptions				

Post-retrofit Values

Item	Value	Source	Frequency of Measurement	Measurement Method
Name/Description				
Quantity				
Size/Capacity				
Operating Hours				
Assumptions				

STATEMENT OF WORK ("SOW")
SCHEDULE E: Managers and PASS Consultant

CONTRACTOR:

Name of Contractor Manager: Dan Duncan, Construction Manager
Office Phone: 972-323-1111
Cell Phone: 214-763-7905
Email: dan.duncan@schneider-electric.com

Name of Contractor PASS Consultant: Jeff Bowen
Office Phone: 972-323-4794
Cell Phone: 817-821-7454
Email: jeff.a.bowen@schneider-electric.com

COUNTY:

Name of County Manager: John Clark, Dallas County Engineering & Project Management
Office Phone: 214-653-6719
Cell Phone:
Email: john.clark@dallascounty.org

STATEMENT OF WORK ("SOW")

SCHEDULE F: County Responsibilities

County agrees to maintain the Energy Conservation Measures in original condition with allowance for normal wear and tear. If an Energy Conservation Measure becomes non-operational, County agrees to repair the measure promptly. If County chooses not to repair the failed measure, Contractor reserves the right to adjust the amount of guaranteed savings associated with that measure in the yearly savings guarantee.

County must maintain all parts of the Project Site(s). If County has no preventative maintenance program in place, County must comply with the general maintenance requirements specified by equipment manufacturers and/or the Maintenance Tasking guidelines that follow.

If County has an existing preventative maintenance program currently in force at time of Contract execution, that program must be continued throughout the Term of the Contract. Equipment must be maintained in proper working condition in all cases where the performance of said equipment affects or could affect the guarantee. Should County refuse to perform the required maintenance as per Schedule F, Contractor and County shall agree to one of the following means of recourse: a) Contractor will adjust the guaranteed savings associated with that equipment, or b) Contractor may terminate the Contract upon seven (7) days written notice.

General Responsibilities

County agrees to: a) provide, or cause its suppliers to provide, periodic utility invoices to Contractor in a timely manner; b) execute all County responsibilities as scheduled in Schedule D Section II-F; c) provide to Contractor reasonable access to all County facilities and information necessary for Contractor to perform its responsibilities. Access will include, but is not limited to, the following items:

- All buildings listed in Schedule D Section II-C.
- All buildings served by the meters listed in Schedule D Section II-B.
- All mechanical equipment rooms in the above buildings
- All temperature control and energy management systems which control part or all of any of the above buildings
- Personnel with responsibility for operating and/or managing any of the above buildings
- Monthly utility invoices and billing history for all of the meters listed in Schedule D Section II-B.
- Construction documents, equipment inventories, and other documents that may be helpful in evaluating a cause for adjustment as listed in Schedule D Section II-F.
- Any data from meters or sub-meters relevant to M&V associated with this Contract.

Telephone/Network Communications:

County will be responsible for providing communications and or network interface to all buildings for operation and PASS support.

Installation Material Storage:

Contractor will be responsible for providing off-site storage for installation materials at each work site.

Maintenance Tasking For Mechanical Equipment

As part of this Contract, County and Contractor concur that proper maintenance is an essential part of a complete energy conservation program. Therefore; County agrees to maintain all new and existing mechanical equipment involved with the Performance Contract to insure maximum operating efficiencies. Standard preventative maintenance procedures should be followed to improve equipment performance

and extend equipment life.

As the Contract progresses with time, County will be responsible to provide to Contractor annual documentation that proper maintenance of equipment has been performed. This condition will be in effect throughout the duration of this Contract. In the event, Contractor finds that the mechanical systems are not being maintained, Contractor retains the right to adjust the performance assurance report to recapture any lost energy savings from a lack of mechanical maintenance.

For the duration of this Contract, County will replace pneumatic control air compressors as they reach the end of their useful life to help ensure that clean, oil free air is delivered to the various pneumatic control air systems in their buildings.

Maintenance Tasking For Energy Management System and Automatic Temperature Control System

County will perform all general maintenance of the energy management system and automatic temperature control systems to insure proper performance and energy savings at each facility of County, for the full term of the performance guarantee. Standard preventative maintenance procedures and repairs should be followed.

County will perform daily facilities monitoring and review alarm summaries.

Following Project completion, County will be responsible to provide to Contractor evidence that proper maintenance of equipment has been performed. This documentation will be provided annually to Contractor for the duration of this Contract.

Contractor will make periodic spot checks, during the Term of the Contract, to ensure that the energy management system and automatic temperature control systems have been maintained and are fully functional. In the event Contractor finds that the systems have been modified or non-functional, Contractor retains the right to adjust the performance assurance report to recapture any lost energy savings from the changes, and to continue making these adjustments until the changes are corrected.

STATEMENT OF WORK ("SOW")
SCHEDULE G: Schedule of Values