

CITY OF BUENA PARK
AGREEMENT FOR PROGRESSIVE DESIGN-BUILD SERVICES
Energy Conservation and Performance Contract

This Agreement for Progressive Design-Build Services (“*Agreement*”) is dated as of August __, 2024 (“*Effective Date*”), and is between City of Buena Park, a California charter city (“*CITY*”), and NORESKO, LLC, a Delaware limited liability company (“*NORESCO*”). CITY and NORESKO are at times referred to herein jointly as “Parties” and individually as a “Party.”

1. TERM. The term of this Agreement shall commence on the Effective Date and, unless terminated pursuant to Section 16.2 (Termination by CITY for Cause) or Section 16.3 (Termination for Convenience), shall remain in full force and effect until the first of the following to occur: (a) if, after the City Council accepts the Final IGA Report, the Parties amend this Agreement with NORESKO to contract for NORESKO to perform the remaining design, preconstruction, and construction activities (hereinafter the “Construction Work”) sufficient to complete and close out an energy conservation and performance improvement project that is described in the Final IGA Report (a “Project”), then the term of this Agreement shall expire on the date the Project is accepted as complete by CITY; or alternatively, (b) this Agreement shall expire on the date that is 12 months after the date on which CITY accepts the Final IGA Report as complete if the Parties have not amended this Agreement to authorize NORESKO to perform Construction Work for a Project before that date (with such amendment hereinafter referred to as a “Construction Contract”).

2. SERVICES. Subject to the terms and conditions in this Agreement, NORESKO shall provide to CITY those assessment, design, and preconstruction services that are specifically described in Exhibit “A” (the “Scope of Services” or simply the “Services”) in furtherance of CITY exploring the viability of implementation of certain energy and water conservation, energy efficiency, energy generation and related energy capital improvements at specified CITY owned facilities. CITY may request changes to the Services and in such cases the changes and any resulting increase or decrease in the Compensation to be paid NORESKO, or to the Schedule of Performance (defined below), shall be documented in a written amendment to this Agreement. Increases or decreases in Compensation resulting from any change to the Services shall be based on the rates specified in the Compensation Schedule set forth in Exhibit A-1 (“Compensation Schedule”), or if not specified in the Compensation Schedule at then-applicable prevailing market rate charged by NORESKO to other public agencies located in the State of California for the same service. If, following NORESKO’s completion of the Services, the Parties amend this Agreement to authorize NORESKO to perform Construction Work, then NORESKO shall perform the Construction Work as described in and pursuant to the terms and conditions of the Construction Contract agreed to by the Parties.

3. SCHEDULE OF PERFORMANCE. NORESKO shall commence providing the Services on the Effective Date and shall continue and complete performance in accordance with the benchmarks and deadlines described in the Scope of Services in Exhibit A. If a deadline is not established for a specific action or task that is needed to complete the Services, performance by NORESKO shall be completed in a timely and diligent manner reasonably acceptable to CITY.

4. COMPENSATION. As full and complete compensation for NORESKO’s provision of the Services, including any reimbursable expenses if any, CITY shall pay NORESKO an amount determined as follows (“Compensation”):

4.1 If CITY, at any time prior to authorizing NORESKO to proceed with the 90% IGA Phase, terminates this Agreement pursuant to Section 16.2 or Section 16.3, then no compensation, payment, reimbursement, penalty, or consideration of any kind shall be due or payable by CITY; and if NORESKO, at any time prior to CITY authorizing NORESKO to proceed with the 90% IGA Phase, terminates this Agreement pursuant to Section 16.3, then no compensation, payment, reimbursement, penalty, or consideration of any kind shall be due or payable by CITY.

4.2 If CITY, at any time after authorizing NORESKO to proceed with the 90% IGA Phase as described in the Scope of Services in Exhibit A, terminates this Agreement pursuant to Sections 16.2 or 16.3, then CITY shall pay NORESKO for the reasonable value of design and predevelopment Services, but not the assessment portion of the Services, rendered prior to the effective date of termination based on the hourly rates set forth in the Compensation Schedule; provided that the total maximum Compensation paid NORESKO in this event shall NOT EXCEED the sum of \$189,000.00.

4.3 If CITY, following NORESKO's submission and CITY's acceptance of the Final IGA Report, in its sole and absolute discretion, amends this Agreement with NORESKO to authorize it to perform Construction Work for a Project that is described in the Final IGA Report, then CITY shall pay NORESKO for the design and predevelopment portion of the Services provided in completing the Final IGA Report, but not the assessment portion of the Services, based on the hourly rates set forth in the Compensation Schedule; provided that the total maximum Compensation paid NORESKO in this event shall NOT EXCEED the sum of \$189,000.00.

4.4 If CITY, following NORESKO's submission and CITY's acceptance of the Final IGA Report, does not, within a reasonable period of time not to exceed 12 months, amend this Agreement to authorize NORESKO to complete Construction Work for any portion of a Project that is described in the Final IGA Report, then CITY shall pay NORESKO for the design and predevelopment portion of the Services provided in completing the Final IGA Report, but not the assessment portion of the Services, based on the hourly rates set forth in the Compensation Schedule; provided that the total maximum Compensation paid NORESKO in this event shall NOT EXCEED the sum of \$189,000.00.

4.5 If CITY, following NORESKO's submission and CITY's acceptance of the Final IGA Report, formally solicits proposals from other design-build entities and affirmatively awards a Construction Contract to a third-party contractor other than NORESKO for a Project that is described in the Final IGA Report, then CITY shall pay NORESKO for all Services provided in completing the Final IGA Report based on the hourly rates set forth in the Compensation Schedule; provided that the total maximum Compensation paid NORESKO in this event shall NOT EXCEED the sum of \$450,000.00.

5. INVOICES AND PAYMENT.

5.1 Tracking Invoices. Each month, NORESKO shall submit invoices to CITY for the Services performed and any authorized reimbursable expenses incurred during the immediately preceding calendar month ("Tracking Invoices"). The Tracking Invoices shall describe in detail the Services rendered during each day of the period, and shall show the days worked, personnel performing the Services, number of hours worked, the hourly rates charged, milestone achievements, and, if applicable, reimbursable expenses incurred. NORESKO shall remit the Tracking Invoices to CITY Representative, and CITY shall review all Tracking Invoices and notify NORESKO in writing within ten (10) business days of any disputed amounts. The Parties shall

keep and maintain copies of the Tracking Invoices to evidence any Compensation that may become due and payable NORESKO under the terms of this Agreement.

5.2 Final Invoices. Within 30 days of Compensation becoming due and payable by CITY to NORESKO under the provisions of Section 4.2 through Section 4.5, inclusive, NORESKO may shall submit a final invoice to CITY Representative for the Services or reimbursable expenses for which NORESKO demands payment ("Final Invoice"). The Final Invoice shall: state whether payment is being requested under Section 4.2, 4.3, 4.4, or 4.5; state the total amount claimed by NORESKO as due and payable; and include the relevant Tracking Invoices as attachments to support the total compensation requested.

5.3 Payment. CITY shall pay all undisputed portions of Final Invoices within thirty (30) calendar days after receipt, up to the maximum Compensation amount set forth in Section 4 of this Agreement. Notwithstanding the foregoing, if a Final Invoice seeks payment under Section 4.3, NORESKO shall advance and charge the undisputed Final Invoice to the Project, which shall be paid by CITY at the same time and from the same sources as costs for Construction Services relating to the Project. CITY shall not withhold federal or state payroll or other taxes, or make deductions, from payments made to NORESKO.

6. STANDARD OF SKILL. NORESKO shall perform all Services in the manner and according to the standards currently observed by a competent practitioner of NORESKO's profession in California, and shall at all times, meet or exceed any applicable professional standards of care, workmanship, or conduct. All products of whatsoever nature that NORESKO delivers to CITY pursuant to this Agreement shall be prepared in a professional manner and conform to the standards of quality normally observed by a person currently practicing in NORESKO's profession. The acceptance of the Services by CITY shall not operate as a release of NORESKO from such standards of care, workmanship, or conduct. NORESKO warrants that any design and engineering services provided under this Agreement shall comply with good engineering practices.

7. INDEPENDENT CONTRACTOR. NORESKO is and shall at all times remain as to CITY a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of NORESKO or any of NORESKO's employees or agents, except as herein set forth. NORESKO shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of CITY. NORESKO shall have no power to incur any debt, obligation, or liability on behalf of CITY or otherwise act on behalf of CITY as an agent.

7.1 NORESKO shall not have the status of an employee of CITY under this Agreement, or be entitled to participate in any insurance, medical care, vacation, sick leave or other benefits provided for CITY's officers or employees.

7.2 In the event that NORESKO, or any of its employees, agents, or subcontractors providing Services under this Agreement, claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System ("*PERS*") to be eligible for enrollment in PERS as an employee of CITY, NORESKO shall indemnify, defend, and hold CITY harmless for the payment of any employee and/or employer contributions for PERS benefits on behalf of NORESKO or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of CITY.

7.3 NORESKO represents that it has, or will secure at its own expense, all personnel required to perform the Services under this Agreement. All of the Services shall be performed by NORESKO or under its direct supervision, and all personnel engaged in the work shall be qualified to perform it. NORESKO reserves the right to determine the assignment of its own employees to the performance of the Services under this Agreement, but CITY reserves the right, for good cause, to require NORESKO to exclude any employee from performing Services on CITY's premises.

8. ADMINISTRATION.

8.1 CITY's Representative. CITY Representative shall be the Director of Public Works, who has the authority to administer this Agreement and oversee NORESKO's performance of the Services, provided that an individual's authority to amend this Agreement shall be governed by applicable provisions of the Buena Park Municipal Code. All activities performed by NORESKO shall be coordinated through CITY Representative. CITY may change the identity of CITY Representative upon written notice to NORESKO.

8.2 NORESKO's Representative. NORESKO's Representative shall be designated by NORESKO in writing, who shall have the authority to administer this Agreement on behalf of NORESKO and to act, bind, and approve all matters relating to this Agreement on behalf of NORESKO. NORESKO's Representative shall not be replaced without the advance consent of CITY, which consent shall not be unreasonably withheld.

8.3 Third Party Representative. CITY may, at its sole cost and expense, retain an independent third-party representative ("Third-Party Representative") to provide an independent review and recommendations to CITY in connection with the Project and NORESKO's performance of the Services. At the sole discretion of CITY, the costs incurred for the Third-Party Representative shall be included as a Project cost in the Project cash flow model and will be paid for by CITY from Project funding sources.

9. SAFETY REQUIREMENTS. All work performed under this Agreement shall be performed in such a manner as to provide safety to the public and to meet or exceed the safety standards outlined by CAL OSHA. CITY may issue restraint or cease and desist orders to NORESKO when unsafe or harmful acts are observed or reported relative to the performance of the Services. NORESKO shall maintain the work sites free of hazards to persons and property resulting from its operations. NORESKO shall immediately report to CITY any hazardous condition noted by NORESKO.

10. INDEMNIFICATION AND HOLD HARMLESS.

10.1 Indemnification for Design Services. Consistent with California Civil Code Section 2782.8, to the extent the Services are design professional services to be performed by a design professional, as that term is defined under said Section 2782.8, NORESKO shall, to the fullest extent permitted by law, indemnify, protect, defend, and hold CITY, its officers, employees, and agents ("CITY Indemnitees") harmless for all claims, demands, costs, or liability that arise out of, pertain, or relate to the negligence, recklessness, or willful misconduct of NORESKO, its officers, employees, or agents in said performance of the Services, excepting only liability arising from the sole negligence, active negligence, or intentional misconduct of CITY or CITY Indemnitees.

10.2 Indemnification for Other Services. Other than in the performance of design professional services by a design professional, as covered by Section 10.1 above, to the fullest extent permitted by law NORESKO shall defend, indemnify, and hold harmless CITY and CITY

Indemnitees from and against all claims arising out of, pertaining to, or relating to the acts or omissions, negligence, recklessness or willful misconduct of NORESCO, NORESCO's officers, employees, consultants, or subcontractors in performing or failing to perform any work, services, or functions provided for, referred to, or in any way connected with any work, services, or functions to be performed under this Agreement. Under no circumstances shall NORESCO be liable for claims to the extent such claims are due to the sole negligence or willful misconduct of CITY or CITY Indemnitees. For purposes of this Section 10.2 only, "claims" means any and all claims, demands, actions and suits brought by a party other than CITY for any and all losses, liabilities, costs, expenses, damages and obligations, and the defense obligation shall include but not be limited to payment of CITY's reasonable attorneys' fees, experts' fees, and litigation costs incurred in defense of a claim. Notwithstanding the foregoing, to the extent required by California Civil Code section 2782, NORESCO's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of CITY or CITY Indemnitees.

10.3 Taxes, Assessments, Workers Compensation. NORESCO shall pay all required taxes on amounts paid to NORESCO under this Agreement and indemnify and hold CITY harmless from any and all taxes, assessments, penalties and interest asserted against CITY by reason of the independent contractor relationship created by this Agreement. NORESCO shall fully comply with applicable workers' compensation laws regarding NORESCO and subcontractors shall indemnify and hold CITY harmless from any failure of NORESCO to comply with applicable workers' compensation laws.

10.4 Obligations Not Limited by Insurance. The obligations and covenants of NORESCO in this Section 10 are independent and separate from any requirement or covenant to carry insurance. The obligations of NORESCO under this Section 10 shall not be limited by the limits of any policies of insurance by this Agreement or otherwise maintained by NORESCO, nor shall NORESCO's obligations be limited by the provisions of any workers' compensation act or similar act. NORESCO expressly waives any statutory immunity under such statutes or laws as to CITY or CITY Indemnitees.

10.5 Survival; Enforcement. NORESCO's obligations and covenants under this Section shall survive the expiration or termination of this Agreement and shall continue in full force and effect for a time at least equal to the statute of limitations that is applicable to the underlying Claim, demand, cost or liability. NORESCO's failure to promptly pay CITY any obligation for reimbursement or indemnification arising under this Section 10 shall be a material breach of NORESCO's obligations to CITY under this Agreement.

11. INSURANCE. At all times during the term of this Agreement NORESCO shall maintain insurance coverage in the types, and amounts that are set forth in this Section 11, and upon CITY's request NORESCO shall provide evidence of such coverage to the satisfaction of CITY's Director of Risk Management, which may include copies of endorsements signed by an authorized representative of the underwriting company, or certificates of insurance.

11.1 Scope of Insurance. NORESCO shall maintain policies with coverage at least as broad as:

.1 Commercial General Liability insurance which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.

.2 Business Automobile insurance which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1-Any Auto).

.3 Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.

.4 Professional Liability insurance appropriate to NORESCO's profession. If such insurance policy is written on a claims-made form, the retroactive date must be shown and must be before the effective date of the Agreement or the commencement of Services by NORESCO.

11.2 Limits of Insurance. NORESCO shall maintain insurance coverage limits as set forth below:

.1 Commercial General Liability: \$2,000,000 per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to the Project or the general aggregate limit shall be \$4,000,000 and contain specific language creating a duty to defend against any suit seeking damages which arise out of, pertain to, or relate to NORESCO's obligations under this Agreement.

.2 Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

.3 Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

.4 Professional liability: \$2,000,000 per claim, with an extended reporting period of not less than two years.

11.3 Umbrella or Excess Insurance. In the event NORESCO purchases an umbrella or excess insurance policy(ies) to meet the "Limits of Insurance," this insurance policy(ies) shall afford no less coverage than the primary insurance policy(ies) required by this Section 11.

11.4 Deductibles and Self-insured Retentions. NORESCO shall be responsible for payment of any deductibles contained in any insurance policy(ies) required hereunder and NORESCO shall also be responsible for payment of any self-insured retentions.

11.5 Required Endorsements. Each insurance policy shall be endorsed as follows:

.1 Except with respect to Workers Compensation or Professional Liability/E&O policies required by this Section 11, CITY and CITY Indemnitees shall be named as additional insureds (collectively "*Additional Insureds*"). Additional Insured endorsements shall not: (a) be limited to "Ongoing Operations"; (b) exclude "Contractual Operations" (c) restrict coverage to the "Sole" liability of NORESCO; or (d) contain any other exclusion contrary to this Agreement.

.2 For any claims related to NORESCO's obligations under this Agreement, NORESCO's insurance coverage shall be primary to any other similar insurance carried by Additional Insureds. Any insurance or self-insurance maintained by Additional Insureds shall be in excess of NORESCO's insurance and shall not be called upon to contribute with it.

.3 All insurance coverage shall contain a provision that provides thirty (30) calendar days' prior written notice from insurer to CITY for cancellation, modification, or lapse.

The notice shall be provided via certified mail, return receipt requested. NORESO shall require its insurer to modify the applicable policy and all certificates of insurance to delete the word "endeavor" with regard to any notice provisions.

.4 Each policy shall be endorsed to state that the insurer waives the right of subrogation against CITY and CITY Additional Insureds.

11.6 Duration of Insurance. The requirements of this Section 11 shall survive expiration or termination of the Agreement. Insurance must be maintained, and evidence of insurance must be provided for at least 2 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 2-year discovery period.

11.7 Acceptability of Insurers. All insurance coverage required by this Agreement shall be written by insurers authorized to conduct business in the State of California by the Department of Insurance and rated "A:VIII" or above in the most recent A.M. Best's Insurance Rating Guide.

11.8 Verification of Coverage. NORESO shall furnish CITY with evidence of the insurance required by this Agreement to the satisfaction of CITY. Such evidence shall consist of original certificates of insurance and amendatory endorsements, including an additional insured endorsement. The endorsements shall conform to CITY's requirements. NORESO shall file all certificates of insurance and fully executed endorsements with CITY before commencing performance of the Services. Where and at the times applicable, NORESO shall also provide proof that the policies of insurance required under this Agreement and expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. NORESO shall furnish such proof to CITY prior to the expiration of the original policies. CITY may require blanket policy endorsements affecting the coverage required by these specifications in the event of a Claim.

11.9 Other Insurance Provisions.

.1 All insurance coverage and limits required in this Agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to CITY or its operations limits the application of the insurance coverage.

.2 All insurance coverage shall cover NORESO's operations pursuant to the terms of this Agreement.

.3 Any actual or alleged failure on the part of CITY or CITY's Additional Insureds under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of CITY or any additional insured, in this or any other regard.

.4 NORESO shall provide immediate notice to CITY of any claim or loss against NORESO that includes CITY or any of the CITY's Additional Insureds as a defendant. CITY assumes no obligation or liability from the notice. CITY shall have the right, but not the duty, to monitor the handling of the claim or claims if they are likely to involve CITY.

11.10 Subcontractors. NORESO shall require subcontractors or any other party involved in the Services by NORESO to carry the same insurance as required in this Section 11. NORESO shall obtain certificates evidencing the coverage and make reasonable efforts to ensure that the coverage is provided as required in this Section. NORESO shall require that no

contract used by any subcontractor, or contract NORESO enters into on behalf of CITY, shall reserve the right to charge back to CITY the cost of insurance required by this Agreement. NORESO shall, upon request, submit to CITY for review, all certificates of insurance obtained in compliance with Section 11.8. CITY's failure to request copies of the documents shall not impose any liability on CITY, or its employees, or be deemed a waiver of any of CITY's rights.

12. WORK PRODUCT.

12.1 Limits on Applicability. This Section 12 shall be applicable to the Parties unless CITY terminates this Agreement under the circumstances described in Section 4.1 in which case NORESO shall keep and maintain ownership of all Work Product.

12.2 Deliverables. NORESO shall, in such time and in such form as CITY may require, furnish reports concerning the status of Services required under this Agreement. NORESO shall, upon request by CITY and upon completion or termination of this Agreement, deliver or return to CITY all material furnished to NORESO by CITY.

12.3 Ownership.

.1 All draft and final reports, documents and other written material, and any and all images, ideas, concepts, designs including website designs, source code, object code, electronic data and files or other media whatsoever, created or developed by NORESO in the performance of this Agreement (collectively, "*Work Product*") shall be considered to be "works made for hire" for the benefit of CITY. All Work Product and any and all intellectual property rights arising from their creation, including all copyrights and other proprietary rights, shall be and remain the property of CITY without restriction or limitation upon their use, duplication or dissemination by CITY upon final payment being made. NORESO shall not obtain or attempt to obtain copyright protection as to any of the Work Product.

.2 NORESO hereby assigns to CITY all rights of ownership to the Work Product, including any and all related intellectual property and proprietary rights that are not otherwise vested in CITY pursuant to subsection .1 above.

.3 NORESO warrants and represents that it has secured all necessary licenses, consents or approvals necessary to the production of the Work Product, and that upon final payment, CITY shall have full legal title to the Work Product, and full legal authority and the right to use and reproduce the Work Product for any purpose. NORESO shall defend, indemnify and hold CITY and CITY Indemnitees harmless from any loss, claim or liability in any way related to a claim that CITY's use of any of the Work Product is violating federal, state or local laws, or any contractual provisions, or any rights or laws relating to trade names, licenses, franchises, copyrights, patents or other means of protecting intellectual property rights or interests in products, ideas or inventions. NORESO shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked documents, materials, equipment, devices or processes in connection with its provision of the Work Product produced under this Agreement. In the event any the use of any of the Work Product or other deliverables hereunder by CITY is held to constitute an infringement and the use of any of the same is enjoined, NORESO, at its expense, shall: (a) secure for CITY the right to continue using the Work Product and other deliverables by suspension of any injunction, or by procuring a license or licenses for CITY; or (b) modify the Work Product and other deliverables so that they become non-infringing while remaining in compliance with the requirements of this Agreement. NORESO's covenants under this Section 12.3 shall survive the expiration or termination of this Agreement.

13. CONFIDENTIALITY. During performance of this Agreement, NORESKO may gain access to and use CITY information regarding inventions, machinery, products, prices, apparatus, costs, discounts, future plans, business affairs, governmental affairs, processes, trade secrets, technical matters, systems, facilities, CITY lists, product design, copyright, data, and other vital information (hereafter collectively referred to as "*CITY Information*") that are valuable, special and unique assets of CITY. NORESKO agrees to protect all CITY Information and treat it as strictly confidential, and further agrees that NORESKO shall not at any time, either directly or indirectly, divulge, disclose or communicate in any manner any CITY Information to any third party without the prior written consent of CITY. In addition, NORESKO shall comply with all CITY policies governing the use of CITY network and technology systems. A violation by NORESKO of this Section shall be a material violation of this Agreement and shall justify legal and/or equitable relief.

14. RECORDS. NORESKO shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information relating to the Work, as required by CITY. NORESKO shall maintain adequate records on services provided in sufficient detail to permit an evaluation of the Work. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. At all times during regular business hours, NORESKO shall provide access to such books and records to CITY, and shall give CITY the right to examine and audit such books and records and to make transcripts as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement.

15. ASSIGNMENT AND SUBCONTRACTING. This Agreement is personal to NORESKO and CITY has entered this Agreement in reliance on NORESKO's skill, competence and experience. NORESKO shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without CITY's prior written consent, by and through CITY Representative. CITY's consent to an assignment of rights under this Agreement shall not release NORESKO from any of its obligations or alter any of its obligations to be performed under this Agreement. Any attempt at assignment or delegation by NORESKO in violation of this Section shall be void and of no effect and shall entitle CITY to immediately terminate this Agreement for cause. As used in this Section, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs. NORESKO may use subcontractors to carry out portions of the Services, but only to the extent disclosed by NORESKO and approved by CITY, and provided that all subcontractors shall be bound by all applicable requirements of this Agreement.

16. SUSPENSION AND TERMINATION.

16.1 Right to Suspend. CITY shall have the right at any time to temporarily suspend NORESKO's performance hereunder, in whole or in part, by giving a written notice of suspension to NORESKO. If CITY gives such notice of suspension, NORESKO shall immediately suspend its activities under this Agreement as specified in such notice.

16.2 Termination for Cause by CITY. CITY may terminate this Agreement for cause if NORESKO refuses or fails to timely perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified herein. CITY shall notify NORESKO in writing of the non-performance, and if not promptly corrected within fifteen (15) days (or commenced with correction and diligently continued with the work if the correction cannot

be completed within fifteen (15) days), CITY may terminate NORESKO's right to proceed with this Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. If CITY terminates this Agreement under this Section 16.2:

.1 NORESKO shall, not later than five days after such notice of termination, deliver to CITY copies of all Work Product or other information prepared pursuant to this Agreement.

.2 CITY shall pay NORESKO the reasonable value of Services rendered by NORESKO prior to termination; provided, however, CITY shall not in any manner be liable for lost profits that might have been made by NORESKO had the Agreement not been terminated or had NORESKO completed the Services required by this Agreement. In this regard, NORESKO shall furnish to CITY such information as in the judgment of CITY is necessary for CITY to determine the reasonable value of the Services rendered by NORESKO. The foregoing is cumulative and does not affect any right or remedy that CITY may have in law or equity.

16.3 Termination for Convenience. Either Party may terminate this Agreement for convenience prior to CITY issuing NORESKO a notice to proceed for the 90% IGA Phase, as described in Section 4.1, upon fifteen (15) days written notice. Following the issuance of a notice to proceed to NORESKO for the 90% IGA Phase, if CITY terminates this Agreement under this Section 16.3, then CITY shall pay to NORESKO the amounts set forth in Sections 4.1, 4.2, or 4.4, as applicable.

17. Conflicts of Interest. NORESKO shall comply with all applicable federal, state and local conflict of interest laws, including the Political Reform Act (Cal. Gov. Code § 81000 *et seq.*), the Levine Act (Cal. Gov. Code § 84308), and California Government Code Section 1090. NORESKO covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, that would conflict in any manner with the interests of CITY or that would in any way hinder NORESKO's performance of Services under this Agreement. NORESKO further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor, without the written consent of CITY. NORESKO agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY at all times during the performance of this Agreement.

18. NOTICES. All notices and other communication under this Agreement (other than regularly scheduled payments) shall be deemed properly given upon receipt if delivered in person or sent by electronic facsimile with regular mail follow-up or sent by overnight delivery service or sent by registered mail, return receipt requested and postage prepaid, addressed as follows:

To: CITY of Buena Park, CA
CITY of Buena Park
6650 Beach Boulevard,
Buena Park, California 90620
Attention: Aaron France, CITY Manager

To NORESKO:
One Research Drive
Suite 400C
Westborough, MA 01581
Attention: Pablo Hernandez, CFO

The individuals referenced above shall be the designated points of contact and representatives of each Party for purposes of this Agreement, and either Party may change the identify of such representative or such address for notices from time to time by written notice to the other Party.

19. REPRESENTATIONS AND WARRANTIES.

19.1 Mutual Representations. Each Party warrants and represents to the other that:

.1 It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, or the ability to enter into contracts with appropriately licensed parties, to execute and deliver this Agreement and perform its obligations hereunder;

.2 Its execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, as to NORESCO, its organic instruments and, as to CITY, by all requisite municipal, board, or other action and are not in breach of any applicable law, code or regulation; this Agreement has been duly executed and delivered by the signatories so authorized, and constitutes each Party's legal, valid and binding obligation;

.3 Its execution, delivery, and performance of this Agreement shall not result in a breach or violation of, or constitute a default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected;

.4 It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially adversely affect its ability to perform hereunder; and

.5 The persons executing this Agreement are fully authorized by law to do so.

19.2 City Representations. In addition to the representations in Section 19.1, CITY warrants and represents to NORESCO that:

.1 CITY has obtained or shall obtain all necessary governmental, legal, administrative and any other approval necessary for it to enter into this Agreement;

.2 CITY will provide NORESCO with all records in its possession and requested by NORESCO and all information provided shall be, true and accurate in all material respects except as may be disclosed by CITY in writing; and

.3 CITY has not entered into any contracts or agreements for the Facilities with persons or entities other than NORESCO regarding the provision of the Services referenced herein.

19.3. Acknowledgement of Limited Scope. CITY acknowledges and agrees that NORESCO has not acted as a municipal financial advisor to CITY and that CITY has not relied on NORESCO for any matters relating to the financing of the Construction Work, including issuance of any bonds or financing instruments that may be entered into by CITY to pay for the Construction Work.

19.4. NORESCO Representations. In addition to the representations in Section 19.1, NORESKO, warrants and represents to CITY that it possesses the skill, experience, qualifications, capacity (financial or otherwise), and/or professional expertise necessary to perform the Work. NORESKO acknowledges that CITY relies upon the skill of NORESKO, and that of NORESKO's staff, personnel, contractors or subcontractors, if any, to do and perform the Services in a skillful, competent, and professional manner, and NORESKO and NORESKO's staff, personnel, contractors or subcontractors (if applicable) shall perform the Services in such manner. NORESKO shall, at all times, meet or exceed any and all applicable professional standards of care or workmanship in performing the Work.

20. MISCELLANEOUS TERMS.

20.1 Publicity. CITY hereby grants to NORESKO and its directors, officers, employees, and affiliates (its "Authorized Representatives") authorization to include CITY's name in NORESKO's client list.

20.2 Protecting Personal Data. NORESKO processes personal data as described in our privacy notices at noresko.com. The Parties will comply with applicable data privacy laws governing personal data processed in connection with this Agreement, including the California Consumer Privacy Act (CCPA), and take all reasonable commercial and legal steps to protect personal data. If CITY provides NORESKO with personal data, CITY will ensure that it has the legal right to do so, including notifying the individuals whose personal data is shared. If a party collects or processes personal data from California residents under this Agreement, such party is a "Service Provider" under the CCPA, and will not sell or exchange such personal data for anything of value.

20.3 Privileged and Proprietary Information. NORESKO's systems, means, cost, and methodologies of evaluating, implementing, accomplishing and determining energy savings and the Scope of Work shall be considered privileged and proprietary information. CITY shall use the same level of effort to protect and safeguard such information as it employs to safeguard its own confidential information. CITY shall not disclose such proprietary information without the express written consent of an officer of NORESKO unless required to do so by statute or regulation. When any request for disclosure of such information is made under any applicable freedom of information law ("FOIL"), CITY will provide prompt verbal and written notice to NORESKO such that NORESKO will have the opportunity to timely object under FOIL should it desire to object to such disclosure of that information in whole or in part. In the event that CITY is required to make a filing with any agency or other governmental body, which includes such information, CITY shall notify NORESKO and cooperate with NORESKO in the event NORESKO seeks confidential treatment of such information included within any such filing or, if all such information cannot be protected from disclosure, to request that CITY be permitted to redact portions of such information, as NORESKO may designate and if permitted by law, from that portion of said filing which is to be made available to the public.

20.4 Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement by this reference. In the event of any inconsistency between the express provisions of this Agreement and any provision of an exhibit, the provisions of this Agreement shall prevail. The following exhibits are attached to this Agreement:

- Exhibit A – Scope of Services
- Exhibit A-1 – Compensation Schedule
- Exhibit A-2 – Guidelines for Measurement & Verification Plan

Exhibit A-3 – Minimum Savings Guarantee

20.5 Time of the Essence. Time is of the essence in respect to all major milestones of this Agreement that specify a time for performance.

20.6 Nuisance; Compliance with Laws. NORESO shall not maintain, commit or permit the maintenance or commission of any nuisance in connection with performing the Services. In performing the Services, NORESO shall abide by and conform with and to any and all applicable laws of the United States and the State of California, and the applicable local laws, regulations, and policies of City of Buena Park.

20.7 Permits and Licenses. NORESO, at its sole expense, shall obtain and maintain during the term of this Agreement all appropriate permits, licenses, and certificates that may be required in connection with performing the Services. Should NORESO require assistance and/or coordination with CITY to obtain such permits, CITY shall assist NORESO to the extent reasonably necessary.

20.8 Covenant against Discrimination. In performing this Agreement, NORESO shall not engage in, nor shall it permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the California Government Code.

20.9 Governing Law; Venue. The terms of this Agreement, and any dispute arising from the relationship between the Parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, without regard for its conflicts of laws principles, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. The venue for resolving any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be a court with jurisdiction that is located in the County of Orange, California.

20.10 Cost of Litigation. If any legal action is necessary to enforce any provision of this Agreement or for damages by reason of an alleged breach of any provisions of this Agreement (whether in contract, tort, and/or equity), the prevailing Party shall be entitled to receive from the losing Party all attorneys' fees, costs and expenses in such amount as the courts may determine to be reasonable.

20.11 Waiver. No delay or omission to exercise any right, power or remedy accruing to CITY under this Agreement shall impair any right, power or remedy of CITY, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver by CITY of any breach, any failure of a condition, or any right or remedy under this Agreement shall be: (1) effective unless it is in writing and signed by the Party making the waiver; (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy; or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

20.12 Efficient Performance. NORESO shall commence, carry on and complete its assignments with all practicable dispatch, in a sound, economical, and efficient manner in accordance with all applicable laws and generally accepted industry and applicable professional standards.

20.13 No Third Party Beneficiaries. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

20.14 When Rights and Remedies Not Waived. In no event shall the making by CITY of any payment to NORESCO constitute or be construed as a waiver by CITY of any breach of covenant, or any default that may then exist, on the part of NORESCO, and the making of any such payment by CITY while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to CITY with regard to such breach or default.

20.15 Severability. If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining portions or provisions shall not be affected by such holding.

20.16 Captions. The titles of the sections, subsections and paragraphs set forth in this Agreement are inserted for convenience and reference only and shall be disregarded in construing or interpreting any of the provisions of this Agreement and the rights or obligations of the Parties to this Agreement.

20.17 Word Usage. Unless the context clearly requires otherwise, (a) the word “shall” is mandatory and “may” is permissive; (b) “or” is not exclusive; and (c) “includes” or “including” are not limiting.

20.18 Integrated Agreement and Modification of Agreement. This Agreement, and all exhibits referred to in this Agreement, constitutes the final, complete and exclusive statement of the terms of the agreement between CITY and NORESCO with respect to the subject matter of this Agreement. This Agreement supersedes all prior or contemporaneous oral or written negotiations, representations or agreements of the Parties. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may be modified only by a writing signed by both Parties.

20.19 Authority to Bind Parties. Each of the undersigned hereby represents that he or she has the authority to execute this Agreement on behalf of his or her contracting Party.

20.20 Force Majeure. Neither Party shall be deemed in default and performance shall be excused, where delays or defaults are caused unavoidably and beyond the reasonable control of the Party seeking the delay by a “Force Majeure Event”. An extension of time for any such cause shall be for the period of the delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within sixty (60) days of the commencement of the cause. If notice is sent after such sixty (60) day period, then the extension shall commence to run no sooner than sixty (60) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the mutual agreement of the Party Representatives. For purposes of this Section 20.20, “Force Majeure” means: Acts of God; unusually severe weather; wars; terrorist acts; fire; floods; earthquakes; casualties; a local, state, or federal declaration of emergency based on an epidemic or pandemic including any quarantine or other health-related orders, directives, regulations, laws or other requirements implemented in response to such epidemic or pandemic; strikes, walkouts lockouts, and other labor difficulties; regional and enduring breakdown in communication facilities,

electrical service, or wireless service; failure or inability to secure materials or labor by reason of priority or similar regulations or order of any governmental or regulatory body; or mediation, arbitration, litigation, or other administrative or judicial proceeding involving this Agreement.

In recognition of the obligations stated in this Agreement, the Parties have executed this Agreement on the date indicated above by and through their duly authorized representatives.

CITY OF BUENA PARK
a California municipal corporation

NORESCO, LLC

Signature

Signature

Name:

Name:

Title:

Title:

***If NORESCO is a corporation, then pursuant to California Corporations Code Section 313 this Agreement must be executed by either: (1) the chairperson of the board; (2) the president; or (3) the vice president plus any one of the following: the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer.**

Signature

Name:

Title:

ATTEST:

BY: _____
Adria M. Jimenez, CITY Clerk

APPROVED AS TO FORM:

BY: _____
Christopher Cardinale, CITY Attorney

EXHIBIT A

SCOPE OF SERVICES

1. DEFINITIONS. All capitalized terms not defined in this Scope of Services shall have the definition set forth in the body of that certain Agreement for Progressive Design-Build Services between the Parties dated August __, 2024 ("Agreement").

2. GENERAL SCOPE. The Services to be provided by NORESKO shall include those comprehensive assessment, preliminary design, and preconstruction services that are described in this Scope of Services (the "Services") in connection with CITY exploring the feasibility of completing certain energy and water conservation, energy efficiency, energy generation and related energy capital improvements projects at designated CITY-owned facilities.

3. IDENTIFICATION OF FACILITIES. NORESKO shall provide Services for the following "Facilities" owned and operated by CITY:

3.1 City Yard: 6955 Aragon Cir, Buena Park, CA 90620.

3.2 City Hall: 6650 Beach Blvd, Buena Park, CA 90621.

3.3 Police Department: 6640 Beach Blvd, Buena Park, CA 90622.

3.4 Community Center: 6688 Beach Blvd, Buena Park, CA 90621.

3.5 Ehlers Events Center: 8150 Knott Ave, Buena Park, CA 90620.

3.6 William Peak Park: 7225 El Dorado Dr, Buena Park, CA 90620.

3.7 Boisseranc Park: 7520 Dale St, Buena Park, CA 90620.

3.8 Brenner Park: 7401-7413 Ridgeway Dr, Buena Park, CA 90620.

4. PROJECT. NORESKO shall provide Services for the following energy conservation, energy efficiency, energy generation and related energy capital improvements, and water conservation measures (each an "ECM"), at the Facilities as specified:

4.1 Interior and Exterior LED Lighting: Upgrade or replace LED lighting for the interior and exterior of Facilities, with the exception of exterior lighting at the Ehlers Events Center (already complete).

4.2 HVAC Replacements: City Hall, Police Department, William Peak Park, Boisseranc Park, and Brenner Park.

4.3 HVAC Controls: All Facilities.

4.4 EV Charging Stations: City Hall, Police Department, Community Center, Ehlers Events Center, and City Yard. Conduits or charging stations should be planned for fleet charging as well as public interface charging.

4.5 Solar PV Installation: Carport solar PV installations in specified areas of the parking lots at Ehlers Events Center, City Hall, the Community Center, and City Yard, and rooftop solar PV installations at City Hall, Police Department, and City Yard. A timely NEM 2.0 Application to Southern California Edison has been submitted previously on CITY's behalf and NORESKO shall comply with all requirements necessary to maintain CITY's grandfathered NEM 2.0 status. Additionally, NORESKO will explore the addition of battery energy storage systems for incorporation into existing building electrical systems and proposed PV systems.

4.6 Water Conservation Measures: Water conservation measures at the Facilities and in particular William Peak Park, Boisseranc Park, and Brenner Park.

4.7 Other ECMs: NORESO may investigate any other energy conservation measures or improvements at the Facilities believed to be cost effective and consistent with the "Project Goals" defined in Section 4.8, such as mechanical pool equipment upgrades at the Park facilities.

4.8 Project Goals. NORESO will design a Project achieving the following goals and objectives:

.1 Project costs will not exceed \$20,000,000 and be paid from a guaranteed reduction in utility costs, procurement of utility incentives, tax credits or incentives, and/or energy grants, with estimated savings in ongoing utility costs to include assumptions for ongoing maintenance, repairs, and replacement costs over the term of the financing.

.2 Reduce existing energy consumption and peak energy demands at the Facilities.

.3 Reduce existing maintenance and other operational costs of the Facilities.

.4 Upgrade, retrofit, or replace obsolete and/or inefficient systems existing at the Facilities.

.5 Maintain a safe and consistent environment at Facilities that offers reasonable levels of comfort to occupants.

.6 Ensure functionality and compatibility of Project features with existing equipment at Facilities.

.7 Utilize technology to achieve optimum system performance and cost savings at Facilities.

.8 Minimizes financial and technical risks of the Project and Facilities to CITY.

5. ASSESSEMENT, DESIGN, AND PRECONSTRUCTION SERVICES

5.1 General Scope. NORESO shall perform an Investment Grade Audit ("IGA") that includes the following information and activities, the results of which will be presented to CITY in the Final Investment Grade Audit Report ("Final IGA Report") described in Article 5.3.2 of this Scope of Work:

.1 An on-site survey of each Facility and all potential ECMs to be installed at each.

.2 A summary of the historical energy and water use of each Facility. Energy or water use anomalies or high costs per square foot will be evaluated and recommendations will be made.

.3 A thorough description of each recommended ECMs for each Facility, including the following for each ECM: (a) a clear description of the current circumstances and practices; (b) estimates of design and installation costs; (c) efficiency or performance levels and equipment characteristics; d estimates of annual maintenance and replacement costs; (e) estimates of annual energy and cost savings accounting for interaction between different ECMs, and; (f) the useful life of the ECM and any related disposal or extraordinary decommissioning or replacement costs.

.4 A thorough description for how each ECM will be developed, designed, and implemented in a manner that does not compromise space conditions of the Facilities, including for each ECM: (a) how the ECM will modify existing building systems; (b) the ECM's compatibility with existing systems; (c) proper operation & maintenance procedures required to maximize the ECM's savings potential;

and (d) additional or modified Facility operation requirements, if any, necessitated by implementing the ECM. Federal, state, and local laws, regulations and standards will be consulted and incorporated into the design and target levels, and evidence of compliance with applicable laws, regulations and standards will be provided where appropriate.

.5 The Final IGA Report delivered to CITY within 180 calendar days of the date of the Agreement's Effective Date.

5.2 **Detailed Scope:** NORESO shall follow the detailed task list for completing the Final IGA Report, except as an alternative process is otherwise expressly approved in writing and in the sole and absolute discretion of CITY.

.1 **Detailed Task List.** The IGA will be completed in intervals with review milestones at the "50% IGA Phase," "90% IGA Phase," and "Final IGA Report" levels of completion each as described in more detail below.

(a) *50% IGA Phase – Preliminary Review of Facilities and ECMs.*

i. **Collect General Facility Information.** NORESO shall coordinate all Facility visits and work with CITY Representative in advance so as to not interfere with normal CITY operations. NORESO shall collect data and background information from CITY concerning operation and energy and water use for each Facility, including any changes to operation and energy use anticipated within the next five years. NORESO will work diligently to verify accuracy of information provided and to confirm or correct as needed. Where information is not readily available from CITY, NORESO will make a diligent effort to collect such information through inspections, staff interviews, and utility providers. CITY will work diligently to furnish NORESO, upon request, accurate and complete data and information, as available, about the Facilities. CITY will allow NORESO reasonable access to CITY staff to ensure understanding of existing systems and opportunities. Without limiting the foregoing, the following information will be provided by CITY to NORESO, to the extent reasonable feasible, for the 36-month period immediately preceding the Effective Date, with any estimations and/or assumptions made during IGA to be mutually agreed upon to by the Parties:

a. **General Facility Information:** building list with square footage and age (including age of major remodels or additions); Construction data for buildings and major additions including building envelope, window specifications/performance and roof/wall assembly; and general use of facility.

b. **Utility Information:** utility company invoices; most recent energy supply contracts to determine baseline cost analysis.

c. **Sub Meter Information:** historical thermal and electrical sub meter data, if available.

d. **Equipment and Facility Information:** equipment descriptions (all major energy consuming or saving equipment); facility descriptions (any structural or building use changes); past changes (record of any improvements or modifications related to energy or operational efficiencies that have been installed during the past three years); future plans (current or future plans regarding building or equipment modifications; drawings and specifications (drawings, as reasonably available, may include mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, modifications and remodels); original construction submittals and factory data (specifications, pump curves, etc., as reasonably available); floor plans; hazardous materials (inspection, abatement and/or removal records, as applicable).

e. **Facility Operation Information:** occupancy schedules; facility usage information; current energy management procedures; current operational practices; operating engineer logs, maintenance work orders, etc., as available; records of maintenance expenditures on energy-using

equipment, including service contracts; existing issues with comfort levels, controls or equipment reliability; use data loggers and conduct interviews with facility operation and maintenance staff.

ii. *Inventory Existing Systems and Equipment.* For each Facility, NORESKO will conduct a physical inspection and compile an inventory of existing systems and equipment related to the proposed ECMs, and address the following considerations:

a. The loads, proper sizing, efficiencies or hours of operation for each system (where measurement costs, facility operating or climatic conditions necessitate, engineering estimates may be used, but for large fluctuating loads with high potential savings, appropriate measurements are required unless waived by CITY).

b. Current operating condition for each system;

c. Remaining useful life of each system;

d. Feasible replacement systems; and

e. Hazardous materials and other environmental concerns.

iii. *Establish Baselines:*

a. *Estimate Baseline Loads*

(i) Estimate loads, usage and/or hours of operation for applicable major end uses of total facility consumption including: lighting, heating, cooling, motors (fans and pumps), plug loads, kitchen equipment, and other major energy using equipment.

(ii) Where loading or usage are highly uncertain (including variable loads such as cooling), NORESKO will use its best judgment, use of existing emergency management control system capabilities for trend data, or measurements from data loggers. NORESKO should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

b. *Estimate Baseline Usage*

(i) Examine utility supply contracts and utility rate structure applicable to each building.

(ii) If building-specific utility data is not available or useful, provide other means (for example sub meters and/or data loggers) to establish baseline consumption. Establish base year and/or baseline consumption.

(iii) Present base year and/or baseline consumption in terms of energy units (kWh, kW, ccf, Therms, or other units used in bills), in terms of dollars, and in terms of dollars per square foot.

(iv) Describe the process used to determine the base year and/or baseline consumption and demand (averaging, selecting most representative contiguous 12 months, or sampling; sampling may include temporary sub meters or data loggers where needed).

(v) Consult with facility personnel to account for any anomalous schedule or operating conditions on billings or equipment conditions that could skew the base year and/or baseline representation.

(vi) NORESKO will (as best as possible) account for periods of time when equipment was broken or malfunctioning in calculating the base year or baseline definition period.

c. *Reconcile Estimates*: Reconcile annual end-use estimated consumption and demand with the metered data collected during the IGA phase and extrapolated to reflect the annual base year consumption. The purpose of this analysis is to place reasonable “real world” limits on potential savings.

d. *Baseline Adjustments*: Propose adjustments to the baseline for energy saving measures that will be implemented in the future, provided that baseline adjustments must be disclosed and may be made only with advance approval by CITY.

iv. *Evaluate Proposed ECMs*.

a. *Interviews*: Interview the facility manager and a sampling of maintenance staff, subcontractors and occupants of each building regarding: facility operation, including energy management and operating procedures; equipment maintenance problems; comfort problems and requirements; equipment reliability; projected equipment needs; occupancy and use schedules for the facility and specific equipment; facility improvements – past, planned and desired; other project sustainability goals, metrics or standards (i.e. LEED, ENERGY STAR, Net Zero Energy, etc.)

b. *Surveys*: Survey major energy-using equipment necessary to develop the ECMs listed in Article 4 and any other ECMs deemed cost effective following analysis.

c. *Considerations*: Consider the following for each ECM:

- (i) Comfort and maintenance problems;
- (ii) Energy use, loads, proper sizing, efficiencies and hours of operation;
- (i) How the measures work together (i.e. lighting upgrades can introduce less heat which requires less space cooling);
- (ii) Current operating condition;
- (iii) Remaining useful life;
- (iv) Feasibility of system replacement and replacement costs;
- (v) Future plans for equipment replacement or building renovations;
- (vi) Facility operation and maintenance procedures that could be affected; and
- (vii) Capability to monitor equipment or system performance and verify savings.

d. *List ECMs*: Develop a preliminary list of all potential ECMs to be considered for inclusion in the Project. Consider technologies in a comprehensive approach including, but not limited to those measures listed in Article 4 of this Scope of Work.

e. *Evaluate ECMs*:

(i) Estimate the cost, savings, and life expectancy of each proposed ECM and the aggregate Project. CITY acknowledges that preliminary cost estimates are budgetary and are subject to change pending further, more detailed analysis.

(ii) Conduct a preliminary analysis of potential ECMs using life cycle cost analysis and examining the value of non-energy benefits of specific measures.

f. *Present 50% IGA Phase Findings*: Submit the preliminary findings and list of ECMs to CITY as follows:

(i) Discuss how the Project's cost, economics, savings, and financials will meet the Project Goals listed in Article 4.8.

(ii) Discuss assessment of energy use, savings potential, and ECM opportunities.

(iii) CITY shall have the option to reject calculations of savings, potential savings allowed, ECM recommendations, or the entire Project, or to request recalculations of savings, potential savings allowed, or related to project recommendations.

(iv) NORESKO and CITY shall work together cooperatively and in good faith to reach an agreement upon a list of recommended ECM's before proceeding to the 90% Phase.

g. *Construction Contract*: During preparation of the 50% IGA Report, the Parties shall negotiate in good faith the terms and conditions that will be included in a Construction Contract should CITY exercise discretion to authorize NORESKO to perform Construction Work after completing of the Final IGA Report. The terms and conditions to be included in the Construction Contract shall, in addition to any other terms that may be negotiated by the Parties, be consistent with this Agreement, comply with requirements of California law, and include provisions relating to compliance with the City's Community Workforce Agreement.

iv. *Deadline to Complete 50% IGA Phase*. NORESKO will complete the 50% IGA Phase within 90 calendar days of the Effective Date, and thereafter present the associated findings and recommendations to the City Council during a public meeting.

v. *City Council Review and Authorization to Proceed with 90% IGA Phase*. After reviewing the presentation and findings of the 50% IGA Phase, the City Council will, in its sole and absolute discretion, take one of the following actions: (1) continue the matter to a future date certain for continued discussion, deliberation, and action; (2) authorize NORESKO to proceed with the 90% IGA Phase; or (3) decline to pursue the Project and terminate the Agreement pursuant to Section 16.3, in which case no Compensation will be due NORESKO pursuant to Section 4.1.

(b) *90% IGA Phase – Refined Review of Facilities and ECMs*: NORESKO will estimate the cost, savings and life expectancy of each of the recommended ECMs mutually agreed upon by NORESKO and CITY.

i. *Savings Analysis*

a. Follow the methodology of ASHRAE or other nationally-recognized authority following the engineering principle(s) identified for each ECM.

b. Utilize assumptions, projections and baselines which best represent the true value of future energy or operational savings. Include accurate marginal costs for each unit of savings at the time the audit is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at each Facility, calculations which account for the interactive effects of the recommended ECMs.

c. Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use.

d. Provide analysis methodology, supporting calculations and assumptions used to estimate savings.

e. Manual calculations should disclose essential data, assumptions, formulas, etc. so that a reviewer could replicate the calculations based on the data provided.

f. For savings estimates using computer simulations, NORESCO shall provide program files and all inputs and assumptions used, if requested by CITY.

g. Provide detailed calculations for any utility rate savings proposals.

h. Provide detailed supporting calculations for any proposed maintenance savings.

i. Estimate any environmental costs or benefits of the proposed ECMs (e.g. disposal costs, avoided emissions, water conservation, etc.).

j. Specify facility operations and maintenance procedures which will be affected by the installation/implementation of the proposed ECMs.

k. Establish standards of comfort for each building which will be discussed and agreed to by both Parties and included in the IGA report.

ii. *Inflation & Escalation Rates:* Any general inflation rates and/or escalation rates and the calculator used to determine those rates will be pre-approved by CITY. Escalation rates shall be justified and at a minimum based on Department of Energy's Energy Escalation Rate Calculator (EERC). The EERC can be found at the following website: <https://pages.nist.gov/eerc/>. CITY may authorize NORESCO to utilize additional resources to further vet escalation values.

iii. *Cost Estimates:* Provide detailed estimates of costs associated with the design, installation, implementation and commissioning of each ECM proposed in the IGA including breakouts for labor, materials, and equipment. Cost estimates will assume compliance with the terms and conditions of the Construction Contract, and markups and fees of NORESCO must be consistent with the "Compensation Schedule" in Exhibit A-1 ("*Compensation Schedule*"). Provide estimates of monthly and/or costs associated with sustaining the project performance including breakouts for maintenance fees, measurement and monitoring fees, and training fees.

iv. *Financing Plan:* Provide a preliminary financing plan to pay for the Project, which will be completely financed through a guaranteed reduction in utility costs, operational costs and the procurement of utility incentives and/or grants. The Project (equipment, installation, maintenance, monitoring, and related costs) are expected to be financed through a separate contract with a third-party financier that will generally incur no initial capital costs, with the option for CITY to provide capital if desired, and achieving significant long-term cost savings. Ongoing cost and savings assumptions shall assume costs for maintenance, repair, and replacement of the Project elements. CITY recognizes the Services expressly exclude municipal financial advisor services, and CITY expressly reserves the right to independently review, solicit, and obtain financing for the Project.

v. *Measurement and Verification Plan:* Develop a "Measurement and Verification Plan" that is consistent with the requirements of the "Guidelines for Measurement & Verification Plan" that are set forth in Exhibit "A-3" for each ECM. NORESCO will use best industry standards for Measurement and Verification Plan development. At a minimum, international performance measurement and verification protocol (IPMVP) shall be used, and additional standards including Federal Energy Management Program measurement and verification guidelines should be considered.

v. *Commissioning Plan*: Provide a preliminary commissioning plan for each ECM that outlines the design intent, objectives, organization, schedule, documentation requirements, and testing procedures used to commission each ECM.

vi. *Operations and Maintenance Plan*: Develop a preliminary operations and maintenance plan for each ECM. The plan should assume that following the construction phase, NORESO will monitor project savings, including but not limited to providing an energy savings guarantee following the International Performance Measurement and Verification Protocol (IPMVP). Prior to entering into a contract to construct the Project, NORESO will present recommendations and annual costs in accordance with the IPMVP to measure and verify the guaranteed savings. CITY shall have sole ability to determine the approach to measurement and verification.

vii. *Training Plan*: Develop a preliminary training plan for the proposed ECMs. The plan should assume that as part of the construction close-out of the Projects, NORESO will provide training to CITY personnel in the operation and maintenance of the equipment installed; operating and maintenance manuals for all equipment installed or provided; and turn over all warranty information to CITY in CITY's name. At CITY's sole discretion, it may negotiate on-going service maintenance, repair, or replacement contracts for the Project elements with NORESO or other qualified vendors.

viii. *Deadline to Complete*. NORESO will complete the 90% IGA Phase within 60 calendar days after CITY's authorization to proceed, and the associated findings and recommendations will be presented to CITY Representative.

ix. *City Review and Authorization to Proceed with Final IGA Phase*. CITY shall have at least 30 calendar days to review and generate comments and questions to NORESO, and when the 90% IGA Phase is complete to the reasonable satisfaction of CITY, CITY Representative will issue written authorization for NORESO to proceed with the Final IGA Report.

.2 *Investment Grade Audit Report*: The final Investment Grade Audit Report ("Final IGA Report") will include the following:

(a) *Overview*

i. Contact Information

ii. Executive Summary

iii. Description of the Facilities, ECMs considered, and the analysis, methodology, and results.

iv. Summary table presenting the installation cost and savings estimates for each recommended ECM, as well as the Project as a whole.

v. Summary table of recommended ECMs that shows, itemized for each individual ECM and for the total Project, costs for design and construction, annual maintenance, first-year cost avoidance (in dollars and energy units), simple payback, and equipment service life.

vi. Any cost savings due to changes to utility rates or commodity costs due to changes in metering, commodity procurement, etc.

vii. Summary of annual energy use and costs by fuel type and costs of existing or base year condition.

viii. Calculation of energy and cost savings expected if all recommended ECMs are implemented, and total percentage savings of total facility energy cost for each Facility.

ix. Description of the existing Facilities and their mechanical and electrical systems, but limited to the ECMs selected during the 50% IGA Phase.

x. Summary description of the recommended ECMs, including estimated costs and savings for each as detailed above.

xi. Summary of recommended CITY related actions (i.e. internal occupant energy reduction programs or competitions, plug load reduction measures, etc.)

xii. Discussion of ECMs considered but not investigated in detail.

xiii. Summary of Project benefits beyond energy cost savings (i.e. improvement to building environment, greenhouse gas reduction, etc.). Qualitative at a minimum, quantitative would be best.

xiv. Conclusions and recommendations.

(b) *Baseline and/or base year energy use*

i. Description and itemization of current billing rates, including schedules and riders.

ii. Summary of all utility bills for all fuel types and water.

iii. Identification and definition of base year consumption and description of how established.

iv. Provide detail on baseline adjustments, if any, as approved by CITY.

v. Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc.) with base year (include discussion of any unusual findings)

(c) *Written Description of Each ECM Selected:* To include the following:

i. Existing conditions

ii. Description of equipment to be installed and how it would function.

iii. Detailed descriptions for each ECM including analysis method, supporting calculations (submitted in appendices), results, proposed equipment and implementation issues, including a discussion of facility operations and maintenance procedures that will be affected by installation/implementation.

iv. Plan for installing or implementing the recommendation.

v. Discussion of the conclusions, observations and caveats regarding cost and savings calculations.

(d) *Savings calculations*

i. Base year energy use and cost

ii. Post-Project energy use and cost

- iii. Utility rates to be used in savings calculations and guaranteed savings verification reports
- iv. Savings calculations including analysis methodology, supporting calculations and assumptions used.
- v. Annual savings calculations. The cost savings for all ECMs must be estimated for each year during the contract period. Savings must be able to be achieved each year (cannot report average annual savings over the term of the contract).
- vi. Savings calculations must be limited to savings allowed by CITY as described above.
- vii. Percent cost-avoidance projected.
- viii. Description and calculations for any proposed rate changes.
- ix. Explanation of how savings interactions between retrofit options is accounted for in calculations.
- x. Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment.
- xi. If computer simulation is used, include a short description and state key input data and software used. If requested by CITY, access will be provided to the program and all assumptions and inputs used, and/or printouts shall be provided of all input files and important output files and included in the IGA Report report with documentation that explains how the final savings figures are derived from the simulation program output printouts.
- xii. If manual calculations are employed, formulas, assumptions and key data shall be stated.
- xiii. Conclusions, observations, caveats

(e) *Guaranteed Maximum Price.* A narrative of the construction scope of work and open book pricing model that builds up the cost to a total guaranteed maximum price ("GMAX Price" to complete design and construction of the Project in accordance with the terms and conditions of the Design-Build Construction Contract ("Construction Work"). The GMAX Price shall be the total, not to exceed compensation that will be paid to NORESKO in connection with the Project, including without limitation: all anticipated costs associated with design, procurement of equipment or materials, installation, and construction of the Project; equipment and installation summaries for major mechanical components; detailed lighting fixture counts; subcontractor and material supplier costs, all markups and fees. The GMAX Price shall include and comply with the following:

- i. *Allocation of Work.* The GMAX Price shall be consistent with the markup structure and format presented in the "Compensation Schedule" in Exhibit A-1, and shall clearly designate the portion of the Construction Work (including materials or equipment) that will be self-performed or provided by NORESKO, and those portions that will be completed with the use of subcontractors, suppliers, or other third-party contractors or consultants. All subcontractors, suppliers, or subconsultants shall be

designated, together with the scope and cost of the work to be performed by each, on the standard bid forms provided by CITY.

ii. *Subcontractors.* In awarding construction subcontracts with a value exceeding one-half of 1 percent of the GMAX Price allocable to construction work for the Project, NORESO shall comply with Public Contracts Code section 22185.6(b) which requires:

(a) Public notice of availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process of the local agency, including a fixed date and time on which qualifications statements, bids, or proposals will be due;

(c) Establishing reasonable qualification criteria and standards;

(c) Awarding the subcontract on a best value basis. The process may include prequalification or short-listing;

(d) Subcontractors awarded construction subcontracts must be afforded all the protections of Chapter 4 (commencing with Section 4100) of Part 1 of the California Public Contracts Code; and

(e) A construction subcontractor licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code that provides design services used on the Project shall not be subject to any liability arising from their design if the construction subcontract for that design is not performed by that subcontractor.

iii. *Open Book Pricing.* CITY shall have the right to review all solicitations or request for bids or quotes issued by or to NORESO, together with all bids or price quotes received from subcontractors or material suppliers, and any other documents or materials in NORESO's possession relating to the process outlined in this Article, which shall be considered an "open book pricing & procurement."

iv. *Review of Subcontractors.* CITY has the right to request a review and/or replacement of any proposed contractor or materials supplier in certain limited circumstances, including in cases of a conflict of interest with CITY, or where CITY has had documented defaults or noncompliance from a particular contractor or supplier, in which case the GMAX Price shall be adjusted to account for the substitute provider.

c. *Updated Project-Related Plans.* To the extent necessary or appropriate, provide updated versions of each of the following based on the and Project described in the Final IGA Report: Financing Plan; Commissioning Plan; Measurement and Verification Plan; Operations and Maintenance Plan; Training Plan.

d. *Guaranteed cost savings.* NORESO shall guarantee to CITY that the Project described in the Final IGA Report will result in energy savings in the amount and for the period of time set forth in the Measurement and Verification Plan. In the event the Energy and Cost Savings achieved during any guarantee year are less than the guaranteed energy and cost savings as defined in the written savings guarantee, which shall be substantially in the form set forth in Exhibit A-4 ("Savings Guarantee"), NORESO shall pay to CITY an amount equal to the shortfall, subject to CITY's compliance with applicable terms and conditions set forth in the Savings Guarantee. If applicable, NORESO shall remit such payments to CITY within forty-five (45) days of CITY's written notice to NORESO requesting payment. NORESO shall also be obligated to remedy the ECM deficiencies causing the shortfall, to the extent reasonably possible, at no cost to CITY. The exception to this are shortfalls that are caused by CITY non-

compliance to practices and standards developed/outlined in the IGA and not followed and Force Majeure Events.

e. *Project Timelines and Narrative.* Provide a narrative or statement indicating the duration of the energy performance contract, duration of any financing contracts, timetables for completing engineering and construction work, and a detailed description of services to be provided during remaining design and construction.

f. Other

i. Discussion of circumstances that Facilities will incur after performance contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc., and identify maintenance responsibilities.

ii. Compatibility with existing energy management control and/or building automation systems.

iii. Complete appendices that document the data used to prepare the analyses. Describe how data were collected.

g. *Deadline to Complete Final IGA Report.* NORESO will complete and submit the Final IGA Report within 60 calendar days after City Representative's written authorization to proceed, and as soon thereafter as the matter may be scheduled NORESO will present the Final IGA Report to the City Council during a public meeting.

5.3 Good Faith Negotiating Period. The GMAX Price shall be valid for at least 90 calendar days after presentation to CITY Council, during which time CITY and NORESO shall negotiate exclusively and in good faith in efforts to reach an agreement on the GMAX Price and ECMs to be included in the Project ("Negotiating Period"). At any time during the Negotiating Period, the Parties may amend this Agreement to authorize NORESO to proceed with completing the remaining turnkey design, preconstruction construction, and implementation activities of a Project for the GMAX Price subject to the terms and conditions in the Construction Contract.

5.4 Options After Negotiating Period. After expiration of the Negotiating Period, the Parties may continue negotiations but the GMAX Price may be increased by NORESO to pass through actual documented cost increases in the Project, and City, in its sole and absolute discretion, may solicit proposals from other design-build entities and award a contract to a responding entity for the Project on a best value basis. In such event, the design professionals responsible for the Services on behalf of NORESO shall have sole liability for their design errors and omissions if CITY elects to use their complete and stamped designs with subsequent design build entities or licensed contractors.

EXHIBIT A-1: COMPENSATION SCHEDULE

		MAXIMUM MARKUPS <i>*To be completed before execution of Master Agreement</i>	FINAL PROJECT MARKUPS & TOTAL COSTS <i>*To be completed with Final IGA</i>	
	Project Budget	Percent of Total Project Price	Percent of Total Project Price	Price/Cost
A	Subcontractor Costs (Contractor Costs to ESCO)	N/A		
B	Other Direct Purchases of Equipment, Material, Supplies (Supplier Costs to ESCO)			
C	Total of Hard Costs	N/A	$c = a + b$	
D	Project Development	8%		
E	Design/Engineering	8.25%		
F	Project Management	8.5%		
G	Permits	2%		
H	Performance Bond	1%		
I	Payment Bond/Insurance	1.25%		
J	Commissioning	1.5%		
K	Measurement & Verification	1.5%		
L	Training	2.5%		
M	Contingency	5%		
N	Warranty Service	3.5%		
o	Total of ESCO Fees		$o = \text{sum}(d:n)$	
p	Overhead	14.5%		
q	Profit	5%		
r	PROJECT PRICE SUB TOTAL w/OH &P		$r = C + o + p + q$	

Assumptions for Cost Markup Table Above:

Rows D - N are calculated as a percent of Row C

Row P is calculated as a percent of the sum of Rows C & O

Row Q is calculated as a percent of the Sum of Rows C, O, and P.

NORESCO COMPENSATION STRUCTURE Hourly Rate Table – 2024	
Classification	Rate / Hour
Proposal Administrator	\$103
CAD Technician	\$110
Construction Coordinator	\$103
Associate Engineer, Associate Project Manager	\$117
Energy Engineer, Project Manager, Project Developer	\$140
Energy Engineer 2, Project Manager 2, Project Developer 2	\$157
Commissioning	\$173

M&V Specialist	\$129
Sr. Energy Engineer, Sr. Project Manager, Sr. Project Developer	\$197
Mgr/Dir Construction, Mgr/Dir Engineering, Mgr/Dir Prj Development	\$239
Executive time - VP Construction, VP Project Development, Exec VP	\$295

Annual Fees for Maintenance, Measurement & Verification

<i>First Year Annual Service Fees</i>	<i>Maximum Percent of Annual Savings *completed prior to signing Construction Work Order</i>	<i>Final Annual Service Fee *Determined in the IGA</i>
Measurement & Verification	<i>TBD</i>	
On-going Training	<i>TBD</i>	
Operations & Maintenance	<i>TBD</i>	

EXHIBIT A-2

GUIDELINES FOR MEASUREMENT & VERIFICATION PLAN

A. Plan and Report. A Measurement and Verification ("M&V Plan") will be developed by NORESKO per the most current International Performance Measurement and Verification Protocol ("IPMVP") guidelines for M&V of annual guaranteed savings. The M&V Plan and Report shall be thoroughly reviewed by CITY and its 3rd Party Representative. Energy-related cost savings shall be measured and/or calculated as specified in the savings M&V Plan. Upon acceptance of the Project as complete by CITY, an annual M&V Report shall be provided to CITY for the previous performance year to provide verification of savings. The M&V Report shall be submitted within sixty (60) days of the anniversary of the performance period commencement date.

B. Contents of M&V Plan. The M&V Plan shall include the processes, tables and information set forth in this section in substantially the form provided:

1. Index of Processes and Tables:

- Risk, Responsibility and Performance Matrix.
- M&V Plan and Savings Calculation Methods
- Proposed Annual Savings Overview
- Site Use and Savings Overview
- M&V Plan Summary
- Schedule of Verification Reporting Activities
- Contractual utility rates to be used to calculate annual cost savings
- Proposed Annual Savings For ECM
- Expected Year 1 Savings for ECM

2. Risk, Responsibility and Performance Matrix. NORESKO shall complete and include the following matrix in the M&V Plan to summarize the allocation of responsibility for key items related to M&V:

RISK, RESPONSIBILITY AND PERFORMANCE MATRIX

RESPONSIBILITY/DESCRIPTION	NORESKO PROPOSED APPROACH
1. Financial	
a. Interest rates: Neither NORESKO nor CITY has significant control over prevailing interest rates. Higher interest rates will increase project cost, financing/project term, or both. The timing of the TO signing may impact the available interest rate and project cost.	
b. Construction costs: NORESKO is responsible for determining construction costs and defining a budget. If construction estimates are significantly greater than originally assumed, NORESKO may find that the project or measure is no longer viable and drop it before TO award. In any design/build contract, CITY loses some design control. Clarify design standards and the design approval process (including changes) and how costs will be reviewed.	
c. M&V confidence: CITY shall determine the confidence it requires for the M&V program and energy savings determinations. The desired confidence will be reflected in the resources required for the M&V program, and NORESKO must consider the requirement prior to submission of the final proposal. Clarify how project savings are being verified (e.g., equipment performance, operational factors, energy use) and the impact on M&V costs.	

<p>d. <u>Energy Related Cost Savings:</u> CITY and NORESKO may agree that the project will include savings from <i>recurring</i> and/or <i>one-time</i> costs. This may include one-time savings from avoided expenditures for projects that were appropriated but will no longer be necessary. Recurring savings generally result from reduced Operations & Maintenance (O&M) expenses or reduced water consumption. These O&M and water savings must be based on actual spending reductions. Clarify sources of non-energy cost savings and how they will be verified.</p>	
<p>e. <u>Delays:</u> Failure to implement a viable project in a timely manner costs CITY in the form of lost savings, and can add cost to the project (e.g., construction interest, re-mobilization). Clarify schedule and how delays will be handled.</p>	
<p>f. <u>Major changes in facility:</u> CITY controls major changes in facility use, including closure. Clarify responsibilities in the event of a premature facility closure, loss of funding, or other major change.</p>	
<p>2. Operational</p>	
<p>a. <u>Operating hours:</u> CITY generally has control over operating hours. Increases and decreases in operating hours can present as increases or decreases in "savings" depending on the M&V method (e.g., operating hours multiplied by improved efficiency of equipment vs. whole building/utility bill analysis). Clarify whether operating hours are to be measured or stipulated and what the impact will be if they change. If the operating hours are stipulated, the baseline should be carefully documented and agreed to by both parties.</p>	
<p>b. <u>Load:</u> Equipment loads can change over time. CITY generally has control over hours of operation, conditioned floor area, intensity of use (e.g., changes in occupancy or level of automation). Changes in load can present as increases or decreases in "savings" depending on the M&V method. Clarify whether equipment loads are to be measured or stipulated and what the impact will be if they change. If the equipment loads are stipulated, the baseline should be carefully documented and agreed to by both parties.</p>	
<p>c. <u>Weather or Force Majeure Events:</u> A number of energy efficiency measures are affected by weather, or in extreme causes, a force majeure event like an earthquake or natural disaster. Neither NORESKO nor CITY has control over the weather or force majeure events. Should CITY agree to accept risk for weather fluctuations Clearly specify how weather corrections will be performed.</p>	
<p>d. <u>User participation:</u> Many energy conservation measures require user participation to generate savings (e.g., control settings). The savings can vary and NORESKO may be unwilling to invest in these measures. Clarify what degree of user participation is needed and utilize monitoring and training to mitigate risk. If performance is stipulated, document and review assumptions carefully and consider M&V to confirm the capaCITY to save (e.g., confirm that the controls are functioning properly).</p>	
<p>3. Performance</p>	
<p>a. <u>Equipment performance:</u> NORESKO has control over the selection of equipment and is responsible for its proper installation, commissioning, and ultimate performance. NORESKO has the responsibility to demonstrate that new improvements meet expected performance levels including specified equipment capacity, standards of service, and efficiency. Clarify who is responsible for initial and long-term performance, how it will be verified, and what will be done if performance does not meet expectations.</p>	
<p>b. <u>Operations:</u> Performance of the day-to-day operations activities (e.g. turning lights on, occupying the facilities, etc.) is negotiable and can impact performance. Clarify which party will perform equipment operations, the implications of equipment control, how changes in operating procedures will be handled, and how proper operations will be assured.</p>	

<p>c. Preventive Maintenance: Performance of required maintenance activities including day-day, monthly, and annual activities is negotiable and can impact performance. Clarify how maintenance will be assured, especially if the party responsible for long-term performance is not responsible for maintenance (e.g., contractor provides maintenance checklist and reporting frequency). Clarify who is responsible for performing preventive maintenance to maintain operational performance throughout the contract term. Clarify what will be done if inadequate preventive maintenance impacts performance.</p>	
<p>d. Equipment Diagnosis, Repair, and Replacement: Performance of diagnosis, repairs, and replacement of NORESO-installed equipment is negotiable between the parties. Clarify who is responsible for performing replacement of failed components or equipment replacement throughout the term of the contract. Specifically address potential impacts on performance due to equipment failure. Specify expected equipment life and warranties for all installed equipment. Discuss replacement responsibility when equipment life is shorter than the term of the contract.</p>	

3. M&V Plan and Savings Calculation Methods Outline. NORESO shall fill in the following tables – “Proposed Annual Savings Overview,” “Site Use and Savings Overview,” “M&V Plan Summary,” “Schedule of Verification and Reporting Activities,” “Proposed Annual Savings for Each ECM” – or provide equivalent information, with the final agreed upon values being included in the M&V Plan:

PROPOSED YEAR 1 ANNUAL SAVINGS OVERVIEW

[Include all applicable fuels/commodities for project, e.g., electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

ECM	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)*	Total energy and water cost savings, Year 1 (\$/yr)	Other energy-related O&M cost savings, Year 1 (\$/yr)	Total cost savings, Year 1 (\$/yr)
Total savings									
First Year Guaranteed Cost Savings: \$									
<p>Notes *Annual electric demand savings (kW/yr) is the sum of the monthly demand savings. MBtu=10⁶ Btu. **If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).</p>									

SITE USE AND SAVINGS OVERVIEW

	Total energy savings (MBtu/yr)	Electric energy savings (kWh/yr)	Electric demand savings (kW/yr)*	Natural gas savings (MBtu/yr)**	Water savings (gallons/yr)	Other energy savings (MBtu/yr)**
Total proposed project savings						
Usage for entire site**						
% Total site usage saved						
Project square footage (KSF)						

Total site square footage (KSF)					
% Total site area affected					
Notes MBtu=10 ⁶ Btu *Annual electric demand savings (kW/yr) is the sum of the monthly demand savings. **If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh). ***Define usage period. KSF = 10 ³ square feet.					

M&V PLAN SUMMARY

ECM No.	ECM Description	M&V Option Used*	Summary of M&V Plan

*M&V options include A, B, C, and D of the International Performance Measurement and Verification Protocol (IPMVP).

SCHEDULE OF VERIFICATION REPORTING ACTIVITIES

Item	Recommended time of submission	^a CITY's review and acceptance period
Post-Installation Report	30 to 60 days after acceptance	30 days
Annual Report	30 to 60 days after annual performance period	30 days

^aTimes are recommended based on industry practice; modify as needed.

PROPOSED YEAR 1 ANNUAL SAVINGS FOR EACH ECM

[Include all applicable fuels/commodities for project, such as: electric energy, electric demand, natural gas, fuel oil, coal, water, etc.]

	Total energy use (MBtu/yr)	Electric energy use (kWh/yr)	Electric energy cost, Year 1 (\$/yr)	Electric demand* (kW/yr)	Electric demand cost, Year 1 (\$/yr)	Natural gas use (MBtu/yr)**	Natural gas cost, Year 1 (\$/yr)	Water use (gallons/yr)	Water cost, Year 1 (\$/yr)	Other energy use (MBtu/yr)**	Other energy cost, Year 1 (\$/yr)	Other energy-related O&M costs, Year 1 (\$/yr)	Total costs, Year 1 (\$/yr)
Baseline use													
Post-installation use													
Savings													

(1) Notes

*Annual electric demand savings (kW/yr) is the sum of the monthly demand savings.

MBtu = 10⁶ Btu.

**If energy is reported in units other than MBtu, provide a conversion factor to MBtu for link to cost schedules (e.g., 0.003413 MBtu/kWh).

D. ECM-Specific M&V Plan and Savings Calculation Methods:

1. NORESO shall develop this section for each ECM:

- Summarize the scope of work, location, and how cost savings are generated. Describe source of all savings including energy, water, O&M, and other (if applicable).

- Specify the M&V guideline and option used from the International Performance Measurement and Verification Protocol (IPMVP).
 - Provide an overview of M&V Activities for ECM. Explain intent of M&V Plan, including what is being verified.
 - Provide an overview of savings calculations methods for ECM. Provide a general description of analysis methods used for savings calculations.
- 2. Proposed Energy Savings Calculations and Methodology**
- Provide detailed description of analysis methodology used. Describe any data manipulation or analysis that was conducted prior to applying savings calculations.
 - Detail all assumptions and sources of data, including all stipulated values used in calculations.
 - Include equations and technical details of all calculations made. (Use appendix and electronic format as necessary.) Include description of data format (headings, units, etc.).
 - Details of any savings or baseline adjustments that may be required.
 - Detail energy rates used to calculate cost savings. Provide post-acceptance performance period energy and water rate adjustment factors based on agreed upon escalation factors.
 - Detail proposed savings for this energy conservation measure for post-acceptance performance period. Include table outlining the Proposed Annual Savings for Each ECM.
- 3. Operations and Maintenance Cost Savings**
- Provide justification for O&M cost savings, inclusive of calculations, analysis, and sources of data. Describe how savings are generated. Detail cost savings calculations.
 - Provide post-acceptance performance period other cost savings adjustment factors.
- 4. Details of other savings (if applicable)**
- Provide justification for cost savings, inclusive of calculations, analysis, and sources of data. Describe how savings are generated. Detail cost savings calculations.
 - Provide post-acceptance performance period other cost savings adjustment factors.
- 5. Post-Installation M&V Activities** - Describe the intent of post-installation verification activities, including what will be verified.
- Describe variables affecting post-installation energy or water use. Include variables such as weather, operating hours, set point changes, etc. Describe how each variable will be quantified, (i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.)
 - Define key system performance factors characterizing the post-installation conditions such as lighting intensities, temperature set points, etc.
 - Define requirements for CITY witnessing of measurements if different than whole project data requirements.
 - Detail data analysis to be performed.
 - Provide details of post-installation data to be collected, including:
 - Parameters to be monitored:
 - details of equipment to be monitored (location, type, model, quantity, etc.);
 - A sampling plan, including details of usage groups and sample sizes;
 - Duration, frequency, interval, and seasonal or other requirements of measurements;
 - Monitoring equipment to be used, including installation requirements for monitoring equipment;
 - Calibration requirements/procedures;
 - Expected accuracy of measurements/monitoring equipment;
 - Quality control procedures to be used;
 - Form of data to be collected (.xls, .csv, etc.); and,
 - Sample data collection forms (optional).
- 6. Post-Acceptance Performance Period Verification Activities**

- Describe variables affecting post-acceptance performance period energy or water use. Include variables such as weather, operating hours, set point changes, etc. Describe how each variable will be quantified, i.e., measurements, monitoring, assumptions, manufacturer data, maintenance logs, engineering resources, etc.
- Define key system performance factors characterizing the post-acceptance performance period conditions. Include factors such as comfort conditions, lighting intensities, temperature set points, etc.
- Describe the intent of post-acceptance performance period verification activities – what will be verified.
- Provide detailed schedule of post-acceptance performance period verification activities and inspections.
- Define requirements for CITY witnessing of measurements if different than whole project data requirements.
- Detail data analysis to be performed.
- Provide details of post-acceptance performance period data to be collected, including:
 - Parameters to be monitored;
 - Details of equipment to be monitored (location, type, model, quantity, etc.);
 - A sampling plan, including details of usage groups and sample sizes;
 - Duration, frequency, interval, and seasonal or other requirements of measurements;
 - Monitoring equipment to be used, including installation requirements for monitoring equipment;
 - Calibration requirements/procedures;
 - Expected accuracy of measurements/monitoring equipment;
 - Quality control procedures to be used;
 - Form of data to be collected (.xls, .cvs, etc.); and,
 - Sample data collection forms (optional).
- Define O&M and repair reporting requirements. Detail verification activities and reporting responsibilities of CITY and contractor for operations and maintenance items.
- Define reporting schedule.

E. Annual Fees for Maintenance, Measurement & Verification

<i>First Year Annual Service Fees</i>	<i>Maximum Percent of Annual Savings *completed prior to signing Master Agreement</i>	<i>Final Annual Service Fee * Determined in the IGA</i>
Measurement & Verification	TBD	
On-going Training	TBD	
Operations & Maintenance	TBD	

Exhibit A-3

MIMIMUM SAVINGS GUARANTEE

1. DEFINITIONS

When used in this Guarantee, the following capitalized words shall have the meaning ascribed to them below:

“Baseline Period” is the period of time that defines the Baseline Usage and is representative of the facilities operations, consumption, and usage that is used as the benchmark for determining cost avoidance.

“Baseline Usage” is the calculated energy usage of the Facilities prior to the implementation of the ECMs.

“Baseline Demand” is the calculated energy demand of a piece of equipment or a site prior to the implementation of the ECMs. Baseline physical conditions, such as equipment counts, nameplate data, and control strategies, will typically be determined through building occupancy, energy end-use survey and plug load surveys of the Facilities.

“Cumulative Excess Verified Savings” is the total amount of Excess Verified Savings based on the results of the Measurement & Verification Plan in the Guaranteed Savings Reconciliation Report carried over to subsequent Guaranty Periods.

“Energy and Operational Cost Avoidance Guarantee Practices” are those practices identified in The Schedule of Savings, intended to achieve avoided costs in energy and/or operating expenses.

“Energy Costs” may include the cost of electricity and fuels to operate HVAC equipment, cogeneration system, facility mechanical and lighting systems, and energy management systems, and the cost of water and sewer usage, as applicable.

“ECM” the Energy Conservation Measure (ECM) is the installation of equipment or systems, or modification of equipment or systems as described in Attachment B.

“Excess Verified Savings” is the amount of Verified Savings minus Guaranteed Savings in a Guaranteed Period.

“Facilities” shall mean those described in Attachment A.

“First Guarantee Period” is defined as the period beginning on the first (1st) day of the month following the effective date of the Delivery and Acceptance Certificate (Attachment E-2) upon Final Acceptance of this Project by the CITY and ending on the day prior to the first (1st) twelve-month anniversary thereof.

“Guarantee Period” is defined as the First Guarantee Period and each of the successive twelve (12) month periods commencing on the anniversary of the commencement of the First Guarantee Period throughout the Term of this Guarantee.

“Guaranteed Cost Savings” is defined as the amount of avoided Energy and Operational Costs guaranteed to the CITY in each Guarantee Period. This does not include excess savings or the Cumulative Verified Savings.

“Guaranteed Savings Reconciliation Report” is defined as the process and report for determining the Verified Savings in each Guarantee Period and reconciling it to the Guaranteed Savings in the same Guarantee Period.

“IPMVP” shall mean the International Performance Measurement and Verification Protocol and its Measurement and Verification Guidelines for energy savings performance contract projects. The IPMVP guidelines classify measurement & verification approaches as Option A, Option B, Option C, and Option D.

“Measurement and Verification Plan” (M&V Plan) is defined as the plan providing details on how the Guarantee Savings will be verified.

“Operational Costs” shall include the cost of operating and maintaining the Facilities, such as, but not limited to, the cost of inside and outside labor to repair and maintain Covered Systems and Equipment, the cost of custodial supplies, the cost of replacement parts, the cost of deferred maintenance, the cost of lamp and ballast disposal, and the cost of new capital equipment as defined for each ECM in Section 4, Schedule of Values.

“Term” shall be one (1) calendar year from acceptance, provided that the Term shall automatically renew for successive one (1) year terms unless and until terminated by CITY.

“Verified Cost Savings” is defined as the summation of avoided Energy and Operational Costs as determined by the Measurement & Verification Plan for the Facilities in each Guarantee Period as a result of the ECMs provided by NORESO. This does not include excess savings from previous or subsequent guarantee periods.

2. TERM AND TERMINATION

2.1 Guarantee Term. The Term of this Guarantee shall commence on the first (1st) day of the month following the effective date of execution of the Final Delivery and Acceptance Certificate (Attachment E-2) upon Final Acceptance of this Project by the CITY and shall terminate at the end of [FULL FINANCING TERM] years unless terminated earlier by CITY as provided for herein.

2.2 Guarantee Termination. Should this Guarantee be terminated (including, as applicable, the Maintenance or Measurement & Verification Services) in whole or in part for any reason prior to the end of the Term, the Guaranteed Savings for the Guarantee Period in which such termination becomes effective shall be prorated as of the effective date of such termination, with a reasonable adjustment for seasonal fluctuations, if any, in Energy and Operational Costs, and the Guaranteed Savings for all subsequent Guarantee Periods shall be null and void.

3. COST SAVINGS GUARANTEE

3.1 Guaranteed Cost Savings: The following table lists the amount of Guaranteed Savings resulting from the ECMs to be installed by NORESO.

Year	Energy & Water Savings \$ Amount	Resiliency/Renewable Energy	Operation & Maintenance Savings & Smart Cities \$ Amount	Total Savings \$ amount

3.1.2 Savings Prior to Final Retrofit Acceptance. All energy and operational cost avoidance realized by CITY and as calculated through the Measurement & Verification Plan that result from activities undertaken by NORESO prior to Final Acceptance accrue to the benefit of the CITY and may not be applied to the Verified Savings for the First Guaranty Period and any subsequent Guarantee Period after.

3.1.3 Cumulation of Savings. The Guaranteed Savings in each Guarantee Period are considered satisfied if the Verified Savings for such Guarantee Period equals or exceeds the Guaranteed Savings for such Guarantee Period.

3.1.4 Savings Shortfalls. In the event that the Verified Savings in any Guarantee Period is less than the Guaranteed Savings required for that Guarantee Period, NORESO shall compensate CITY the amount of any such shortfall, limited by the value of the guarantee, within thirty (30) calendar days. At NORESO's sole discretion, NORESO shall also be obligated to (1) remedy the ECM deficiencies causing the shortfall at no cost to the CITY or (2) continue to compensate the CITY for savings shortfalls.

3.2 Savings Reconciliation Documentation. NORESO will provide CITY with a Guarantee Savings Reconciliation Report after each Guarantee Period within 60 days. CITY will assist NORESO in generating the savings reconciliation report by providing NORESO's receipt thereof, together with access to relevant records relating to such Energy and Operating Costs. CITY will also assist NORESO by permitting access to any energy billing information, maintenance records, drawings, or other data deemed necessary by NORESO to generate the said report. Data and calculations utilized by NORESO in the preparation of its Guarantee Savings Reconciliation Report will be made available to CITY, along with such explanations and clarifications as CITY may reasonably request.

3.2.1 Acceptance of Guarantee Savings Reconciliation Report. At the end of each Guarantee Period, CITY will have forty-five (45) days to review the Guarantee Savings Reconciliation Report and provide written notice to NORESO of non-acceptance of the Guarantee Savings Reconciliation Report for that Guarantee Year. Failure to provide written notice within forty-five (45) days of the receipt of the Guarantee Savings Reconciliation Report shall constitute the deemed acceptance of the Report and its findings by the CITY.

3.2.2 Guarantee Savings Reconciliation. Verified Savings will be determined in accordance with the methodology(s), operating parameters, formulas, and constants as described below and/or defined in the Measurement & Verification Plan and/or additional methodologies defined by NORESO that may be negotiated with CITY at any time. Actual savings reduction in utility bills may vary from the Verified Savings for reasons outside of NORESO's control including but not limited to: changes in energy and other utility rates and tariffs, changes in CITY operating schedules and usage patterns, changes in CITY loads due to addition or reductions in energy and water consuming devices, changes in weather, impacts due to the operations of ECMs, impacts due to the maintenance of ECMs maintained by CITY, and additions to and/or reduction in facility space usage. For the purposes of calculating any shortfalls or excesses of Verified Savings versus Guaranteed Savings, the Measurement & Verification Plan will be utilized.

3.2.3 Activities and Events Adversely Impacting Savings. CITY must promptly notify NORESO of any activities known to CITY, which adversely impacts NORESO's ability to realize the Guaranteed Savings and NORESO shall be entitled to reduce the Guaranteed Savings by the amount of any such adverse impact to the extent that such adverse impact is beyond NORESO's reasonable control.

3.2.4 Guarantee Adjustment. NORESO's Guaranteed Savings obligations under this Guarantee are contingent upon: (1) CITY following the operations and maintenance requirements for the ECMs in accordance with the Design-Build Construction Contract between the Parties; (2) no alterations or additions being made to the ECMs by the CITY without prior notice and written agreement of the Parties; (3) CITY sending all current utility bills to NORESO within two (2) weeks after receipt; and (4)

NORESCO'S ability to render services not being impaired by circumstances beyond its control. To the extent that the CITY defaults or fails to perform fully any of its obligations under this Guarantee, NORESKO may, in its sole discretion, adjust the Guaranteed Savings obligation; provided, however, that no adjustment hereunder shall be effective unless NORESKO has first provided the CITY with written notice of CITY's default(s) or failure(s) to perform and CITY has failed to cure its default(s) and failure(s) to perform within thirty (30) days after receipt of such notice.

3.2.5 Energy Rates. TO BE DETERMINED.

4. MEASUREMENT & VERIFICATION PLAN

4.1 Measurement and Verification. NORESKO and the CITY agree that the Verified Savings will be determined using the following Measurement and Verification Plan. Through this plan, the Guaranteed Savings generated by the ECMs installed in the Facilities in accordance with the Final IGA Report, as may be amended the Parties.

Measurement & Verification Plan: NORESKO and the CITY agree that the Verified Savings by ECM will be determined using the following Measurement & Verification plans further described in this section and in the Investment Grade Audit. Through this plan, the guaranteed savings generated by the ECMs installed in the Facilities will be validated. The M&V methodologies proposed for these ECMs are based on the latest version of the IPMVP. The objective of the plan is to quantify the actual electrical and fossil fuel and compare those to the specific Baseline Usage for each Facility, the difference of which is the Verified Savings.

During the term of the Guarantee, NORESKO will make adjustments to energy savings due to changes in building occupancy, weather data, and utility rate schedules, etc. The unit costs of energy will be applied to the energy savings calculated by this M&V plan. Current utility cost and rate structures will be used in the Final IGA Report as a basis for determining the utility unit costs to be used during the performance period to determine the cost savings.

4.2 M&V Descriptions: TO BE DETERMINED AND INCORPORATED FROM FINAL IGA.