

RESOLUTION NO. 2255

**A RESOLUTION OF THE GOLDEN CITY COUNCIL  
AUTHORIZING EXPENDITURES FOR AN ENERGY AUDIT  
AND PROJECT PROPOSAL RELATED TO A MUNICIPAL  
SOLAR ELECTRIC PROJECT**

WHEREAS, the City of Golden has established renewable energy goals for the City organization through Resolution No. 1793, enacted on August 23, 2007; and

WHEREAS, the City Council wishes to evaluate the potential for achievement of a portion of such goal by means of a system of photovoltaic solar electric arrays on municipal facilities; and

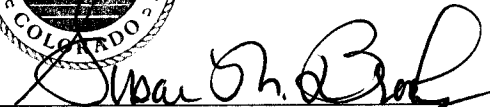
WHEREAS, City Council has stated its policy position that it intends to proceed with a resulting project proposal that meets fiscal and community responsibility and feasibility with a fiscal payback of no more than 20 years.

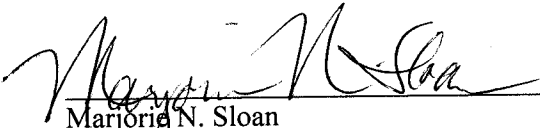
THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN COLORADO:

City staff is authorized to expend up to \$50,000 on an Energy Audit and Project Proposal. If the project does not proceed to a subsequent implementation phase, Council will make a supplemental appropriation of funds within the General Fund to cover the expense, if necessary. Nothing in this approval shall bind the City to proceed with the resulting proposal.

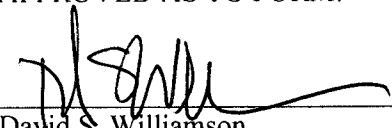
Adopted this 9<sup>th</sup> day of May, 2013.



  
Susan M. Brooks, MMC  
City Clerk

  
Marjorie N. Sloan  
Mayor

APPROVED AS TO FORM:

  
David S. Williamson  
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a rescheduled regular business meeting thereof held on the 9<sup>th</sup> day of May, 2013.



ATTEST:

A handwritten signature in cursive script, reading "Susan M. Brooks", is written over a horizontal line.

Susan M. Brooks, City Clerk of the City of  
Golden, Colorado

## **Contract for Technical Energy Audit and Project Proposal**

This Contract, dated May , 2013, is entered into by and between McKinstry Essention, Inc. LLC (hereinafter called "Contractor"), and the City of Golden, a Colorado home rule municipality, (hereinafter called the "Owner" or "City").

WHEREAS, the State of Colorado, Colorado Energy Office coordinates a program under § 24-30-2001, Colorado Revised Statutes ("C.R.S."), under which approved entities may contract with local governments for Technical Energy Audits and Project Proposals; and

WHEREAS, the purpose of a Technical Energy Audit and Project Proposal is to identify energy conservation measures which, if implemented, will over a period of time justify the cost of the Technical Energy Audit and Project Proposal; and

WHEREAS, the parties wish to establish the terms and conditions under which Contractor will perform a Technical Energy Audit and Project Proposal, to identify locations upon or within City properties for the construction and operation of solar photovoltaic systems; and

WHEREAS compensation for such work will either be paid through an Energy Performance Contract to be later negotiated or, if no such Energy Performance Contract is entered into, such compensation will be paid directly to Contractor upon completion of the Technical Energy Audit and Project Proposal.

NOW, THEREFORE, in consideration of the promises and covenants set forth herein the parties agree as follows:

### **1. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.**

This Contract shall not be effective or enforceable until it is approved and signed by the Owner or its designee (hereinafter called the "Effective Date"), but shall be effective and enforceable thereafter in accordance with its provisions. The Owner shall not be liable to pay or reimburse Contractor for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

### **2. RECITALS**

#### **A. Authority, Appropriation, and Approval**

Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment and the required approval, clearance and coordination have been accomplished from and with appropriate elected and appointed City officials.

#### **B. Purpose and State's Role**

This Contract is for political subdivisions to use to obtain a technical energy audit of their specified facilities from a State of Colorado, Colorado Energy Office ("CEO") pre-approved private Energy Service Company ("ESCO"). The purpose of the audit is to perform the Work set forth in §6, below.

### **3. DEFINITIONS**

The following terms as used herein shall be construed and interpreted as follows:

#### **A. Contract**

"Contract" means this Contract, its provisions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated pursuant to Owner's Fiscal Rules and Policies.

#### **B. Work**

Work consists of the tasks Contractor is to perform in order to fulfill its obligations under this Contract.

#### **C. Goods**

"Goods" means any physical item used, produced, or manufactured either separately or in conjunction with the Work performed and Services rendered hereunder.

#### **D. Services**

"Services" means services performed or tangible material produced either separately or in conjunction with the Work performed and Goods provided hereunder.

#### **E. Subcontractor**

Third-party vendors of goods and/or services, if any, are hereinafter referred to as "subcontractors."

#### **F. Parties**

"Party" or "Parties" means one or both of the Owner and Contractor.

### **4. TERM and EARLY TERMINATION**

#### **A. Initial Term -Work Commencement**

The initial term of this Contract shall commence on the later of either the Effective Date or 5/15/2013, and terminate on 12/31/13 or upon completion of Work, unless sooner terminated as provided for below, herein. Performance of the Parties' respective obligations under this Contract shall begin as soon as practicable following commencement of the initial term.

## **B. Temporary Extension**

At its sole discretion, the Owner, upon written notice to Contractor, may unilaterally extend the term of this Contract for a period not to exceed two months if the Parties are negotiating a replacement contract (and not merely seeking a term extension) at or near the end of any initial term or an extension thereof. The provisions of the Contract in effect when said notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during said two month extension. However, the two-month extension shall immediately terminate when and if a replacement contract becomes effective following the Owner's approval and signature.

## **C. Early Termination**

This Contract is subject to early termination in accordance with the provisions of the Remedies section below herein.

# **5. STATEMENT OF WORK**

## **A. Work**

Contractor shall perform a Technical Energy Audit at the location(s) listed in Exhibit C, attached hereto and incorporated by reference in accordance with the Scope of Work described in Exhibit A, also attached hereto and incorporated by reference herein. The parties acknowledge that Exhibit C may be modified to include and exclude locations, but all such modifications shall be in writing and executed by both parties before such modifications are deemed effective. The audit shall determine the feasibility and cost of implementing energy saving measures for the Owner and, based on such determination, Contractor shall submit a Project Proposal setting forth a plan for implementing such measures through an Energy Performance Contract. Owner shall acknowledge acceptance of the Technical Energy Audit Report in a form substantially similar to Exhibit B attached hereto. Acceptance of the Technical Energy Audit Report shall not be construed as acceptance of the Project Proposal, but is simply acknowledgement that the Technical Energy Audit Report has been received and accepted by Owner. Owner shall ensure that the Notice of Acceptance of Technical Energy Audit Report (Exhibit B) is received by Contractor within thirty (30) days of Owner's receipt of the Technical Energy Audit Report.

Nothing in this Contract shall be construed to require Owner to enter into an Energy Performance Contract with Contractor. However, should Owner in its sole and absolute discretion choose to enter into an Energy Performance Contract based on Contractor's Project Proposal, such a contract shall be executed within sixty (60) days of Owner's delivery of the Notice of Acceptance of Technical Energy Audit Report (Exhibit B) to Contractor. The deadline for execution of the Energy Performance Contract may be extended upon request by Owner to allow Owner to secure third-party funding necessary for implementation of the energy savings set forth within Contractor's Project Proposal.

Any Energy Performance Contract entered into between the Parties shall comply with § 24-30-2001, C.R.S.

## **B. Time of Performance**

The Work shall be completed during the initial term or any extension thereof.

### **C. Goods and Services**

Contractor shall procure goods and services necessary to complete the Work provided for herein.

### **D. Employees**

All persons employed hereunder shall be considered Contractor's or subcontractors' employee(s) for all purposes and shall not be employees of the Owner for any purpose.

## **6. CONTRACTOR COMPENSATION**

### **A. Compensation Basis and Amount**

The amount of Contractor's compensation for the Technical Energy Audit ("TEA") and Project Proposal is set forth in the "TEA Pricing" Section in Exhibit A, which shall be applied only to locations assessed by Contractor. The Owner shall not be liable to pay or reimburse Contractor for any performance hereunder prior to the Effective Date.

### **B. Payment Through Energy Performance Contract Funding Mechanisms**

Should Owner and Contractor enter into an Energy Performance Contract as contemplated under Section 5 (A) above, any compensation owed to Contractor attributable to completion of the Technical Energy Audit and Project Proposal shall be paid exclusively through the funding mechanisms set forth in the Energy Performance Contract.

### **C. Payment in the Absence of Energy Performance Contract**

Should Owner and Contractor not enter into an Energy Performance Contract as provided under Section 5 (A) above, Owner shall remit payment to Contractor for the full amount of all compensation owed to Contractor attributable to the completion of the Technical Energy Audit and Project Proposal, with any such compensation due under this sub-section to be paid within one hundred twenty (120) days of Owner's delivery of Exhibit B. Provided, however, that if the deadline for entering into the Energy Performance Contract is extended as allowed in sub-section 5 (A) above, the deadline for payment of compensation under this sub-section shall likewise be extended.

### **D. Project With Insufficient Savings**

The parties acknowledge that the purpose of the Technical Energy Audit is to enable the Contractor to identify potential energy savings and which, if implemented, will provide Owner with funding options sufficient to pay the costs of implementing such savings. Should the Contractor determine at any time during the Technical Energy Audit that savings cannot be attained to meet Owner's terms as required by C.R.S. §24-30-2001, the Technical Energy Audit shall be terminated by written notice by the Contractor to Owner. In this event this Contract shall be terminated and the Owner shall not

be liable to pay Contractor, in whole or part, the Compensation to Contractor specified in this Section 6.

#### **E. Available Funds-Contingency-Remedies**

The Owner is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. Therefore, Contractor's compensation is contingent upon the continuing availability of Owner appropriations as provided in §2 of the Colorado Special Provisions, set forth below herein. If federal appropriations or Contracts fund this Contract in whole or in part, the Owner's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Contract shall only be made from available funds encumbered for this Contract, and the Owner's liability for such payments shall be limited to the amount remaining of such encumbered funds. If Owner funds are not appropriated, or otherwise become unavailable to fund this Contract, the Owner may immediately terminate the Contract in whole or in part without further liability in accordance with the Termination for Cause subsection of the Remedies section of this Contract. All payments are subject to the general Remedies section of this Contract.

#### **F. Return of Funds**

Any funds paid to Contractor hereunder which are not expended in connection herewith shall be refunded by Contractor within 30 days of termination hereof. Any funds not required to complete Contractor's obligations hereunder shall be de-obligated by the Owner. If Contractor receives overpayments, Contractor shall refund all excess funds to the Owner within 30 days of the later of

- (1) The receipt of such funds, or
- (2) The determination of such overpayment. Under no circumstances shall unexpended or excess funds received by Contractor under this Contract be refunded or paid to any party other than the Owner.

#### **G. Erroneous Payments-Remedies**

Payments made to Contractor in error for any reason, including, but not limited to overpayments or improper payments may, at the Owner's sole discretion, be recovered from Contractor by deduction from subsequent payment under this Contract or other contracts between the Owner and Contractor, or by other appropriate methods.

### **7. REPORTING-NOTIFICATION**

Reports and analysis required under this section shall be in accordance with procedures and in such form as prescribed by the CEO.

#### **A. Litigation**

Within 15 days after being served with any pleading or process filed in a legal or administrative proceeding in any court or administrative agency related to this Contract, Contractor shall notify

the Owner of such action and deliver copies of such pleadings to the Owner's principal representative in accordance with the Notice section of this Contract.

#### **B. Remedies**

Contractor's failure to provide reports and notify the Owner in a timely manner in accordance with this section may result in the delay of payment of funds and/or termination under Section 16 of this Contract.

### **8. CONTRACTOR RECORDS**

Contractor shall make, keep, maintain and allow inspection and monitoring of the following records:

#### **A. Maintenance**

Contractor shall maintain a complete file of all records, documents, communications, notes and other written materials, electronic media files or communications, pertaining in any manner to the Work. Contractor shall maintain such records for (i) a period of three years after the date this Contract is completed or terminated or final payment hereunder, whichever is later, or (ii) for such further period as may be necessary to resolve any pending matters, or (iii) until an audit has been completed and its findings have been resolved.

#### **B. Inspection**

Contractor shall permit the Owner or any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Contractor's records related to this Contract and for a period of three years following termination hereof or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Contractor's performance hereunder.

#### **C. Monitoring**

Contractor also shall permit the Owner or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by Contractor pursuant to this Contract using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, and formal audit examinations.

### **9. CONFIDENTIAL INFORMATION-OWNER RECORDS**

Contractor acknowledges that it may become privy to confidential information in connection with its performance hereunder, including, but not limited to Owner records, personnel records, and information concerning individuals.

#### **A. Confidentiality**



It shall be Contractor's responsibility to keep all Owner records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information to the same extent applicable to the Owner. Any request or demand for information in the possession of Contractor made by any third party shall be immediately forwarded to the Owner's principal representative.

#### **B. Notification**

Contractor shall notify its agent, employees, sub-contractors and assigns who may come into contact with confidential information that they are subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access information.

#### **C. Use, Security, and Retention**

No confidential information of any kind shall be distributed or sold to any third party or used by Contractor or its agents in any way, except as authorized by the Contract and as approved by the Owner. Contractor shall provide and maintain a secure environment that ensures confidentiality of all Owner records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Contractor or its agents, except as set forth in this Contract and approved by the Owner.

#### **D. Disclosure-Liability**

Disclosure of Owner records or other confidential information for any reason may be cause for legal action against Contractor or its agents by third parties, and defense of any such action shall be Contractor's sole responsibility.

#### **E. PUBLIC RECORDS LAW DISCLOSURES**

Contractor acknowledges that, as a governmental entity, Owner may be required to disclose public records pursuant to the Colorado Open Records Act (§24-72-201, C.R.S. *et. seq.*). Contractor agrees that, should any public records in its possession be requested for production by Owner pursuant to a *bona fide* request under the Colorado Open Records Act, Contractor will provide such documents without charge to Owner.

### **10. CONFLICT OF INTEREST**

#### **A. Definition and Appearance**

Contractor shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Contractor's obligations hereunder. Contractor acknowledges that with respect to this Contract, even the appearance of a conflict of interest is harmful to the Owner's interests. Absent the Owner's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations to the Owner hereunder.

## **B. Specific Prohibitions**

Contractor's and sub-Contractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from Contractor, potential contractors, or parties to sub-agreements. Contractor's employees, officers, and agents or any permitted sub-Contractor shall not participate in the selection, award, or administration of this Contract or sub-Contract if a conflict of interest or the appearance thereof would occur. Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award, to-wit:

- i. An employee, officer or agent;
- ii. Any member of the employee's immediate family;
- iii. An employee's partner; or
- iv. An organization, which employs, or is about to employ, any of the aforementioned.

## **C. Determination by Owner-Default**

If Contractor is uncertain whether the appearance of a conflict of interest exists, Contractor shall submit to the Owner a disclosure statement setting forth the relevant details for the Owner's consideration. Failure to promptly submit a disclosure statement or to follow the Owner's direction in regard to the apparent conflict shall be considered a material default of this Contract.

## **D. Code of Performance**

Contractor and sub-contractors, if any, shall maintain a written code of standards governing the performance of their respective employees, agents, and contractors engaged in the award and administration of this Contract. Contractor shall provide a copy of such code to the Owner within 15 days of the Owner's written request therefore.

# **11. WARRANTIES**

## **A. Services and Goods**

During the term of this Contract, Contractor, as part of Contractor's obligations hereunder and at no additional cost to the Owner, warrants, as follows:

### **i. Specifications**

All Services performed and all Goods delivered shall meet the specifications set forth in this Contract and are acceptable to the Owner.

### **ii. Suits, Claims, and Actions**

There are not nor will there be any pending or threatened suits, claims, or actions of any type with respect to the Services or Goods provided.

### **iii. Liens and Encumbrances**

All Services performed and Goods provided are and shall remain free and clear of any liens, encumbrances, or claims arising by or through Contractor or any party related to Contractor.

### **B. Standard And Manner Of Performance**

Contractor shall perform the Work in accordance with the highest standard of care, skill and diligence provided by a professional person or company in performance of similar Work.

### **C. Inspection and Verification**

The Owner reserves the right to inspect all Services and Goods provided hereunder at all reasonable times and places to verify that they conform to the requirements of the Statement of Work section of this Contract.

### **D. Remedies**

If the Contractor breaches any of its warranties, the Owner may require Contractor to promptly perform the Services or provide Goods again in conformity with Contract requirements, at no additional cost to the Owner. If such breaches cannot be, or are not cured, the Owner may, in addition to any other remedies provided by law or in this Contract, require Contractor to take necessary action to ensure that future performance conforms to the provisions of this Contract; and equitably reduce the payment due to Contractor to reflect the reduced value of the Services performed or Goods provided. Any reduction, delay or denial of payment under this provision shall not constitute a breach of Contract or default by the Owner.

## **12. REPRESENTATIONS**

### **A. Licenses, Permits, Etc.**

Contractor warrants that as of the Effective Date it has, and that all times during the term of the Contract it will have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorizations required by law to perform the Services and/or deliver the Goods specified herein. Additionally, all employees of Contractor performing services under this Contract shall hold the required licenses or certification, if any, to perform their duties. Contractor, if a foreign corporation or other entity transacting business in the State of Colorado, further certifies that it currently has obtained and shall maintain any applicable certificate of authority to do business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Contractor to properly perform this Contract, shall be deemed to be a default by Contractor and grounds for termination for cause of this Contract.

## **B. Legal Authority**

Contractor warrants it is an authorized entity in accordance with C.R.S. 24-30-2002 and that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract and to bind Contractor to its terms. The person signing and executing this Contract on behalf of Contractor hereby represents, warrants, and, guarantees that they have full authorization to perform such tasks.

## **C. Tax Exempt Status**

The Owner represents that as a Colorado home rule municipal corporation it is not liable for any sales, use, excise, property or other taxes imposed by any federal, state or local governmental authority, nor for any Contractor franchise or income related tax. No taxes of any kind shall be charged to the State. The Owner's Federal Employer Identification Number is 84-6000728 and its municipal tax exempt number is 98-03476.

## **13. INSURANCE (Comply with local government requirements)**

Contractor shall obtain and maintain insurance as specified below herein at all times prior to the termination or expiration of this Contract:

### **A. Worker's Compensation**

Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the Contractor's employees acting within the course and scope of their employment.

### **B. General Liability**

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the Contractor shall immediately obtain additional insurance to restore the full aggregate limit and

furnish to the Owner a certificate or other document satisfactory to the Owner showing compliance with this provision.

#### **C. Automobile Liability**

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

#### **D. Additional Insured**

The Owner shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

#### **E. Primacy**

Coverage required of the Contract shall be primary over any insurance or self-insurance program carried by the Owner.

#### **F. Cancellation**

The Insurance shall include provisions preventing cancellation or non-renewal without at least 30 days prior notice to the Owner by certified mail.

#### **G. Subrogation Waiver**

All insurance policies in any way related to the Contract and secured and maintained by the Contractor as required herein shall include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the Owner, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

#### **H. Satisfactory Insurers**

All insurance policies and coverages required hereunder shall be issued by reputable insurance companies satisfactory to the Owner.

#### **I. Certificates**

Contractor shall provide certificates evidencing insurance coverage required hereunder to the Owner within 10 business days of the Effective Date or before commencement of Contractor's performance hereunder, whichever occurs first. No later than 15 days prior to the expiration date of any such coverage, Contractor shall deliver the Owner certificates of insurance evidencing renewals thereof. At any time during the term hereof, the Owner may request in writing, and the Contractor shall thereupon within 15 days supply to the Owner, evidence satisfactory to the Owner of compliance with the provisions of this section.

## **14. DEFAULT-BREACH**

### **A. Defined**

In addition to any breaches or defaults specified in other sections of this Contract, including, but not limited to the Colorado Special Provisions, the failure of either Party to perform any of its obligations hereunder entirely, partially, or in satisfactory manner, including, but not limited to, performing them in a timely manner, constitutes a default or breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar legislation, by or against the Contractor, or the appointment of a receiver or similar officer for the Contractor or any of its property, and such proceedings or appointments are not vacated or fully stayed within 20 days after the institution or occurrence thereof; shall also constitute a default.

### **B. Notice and Cure Period**

In the event of a default or breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in the Notice section of this Contract. If such default or breach is not cured within 30 days of receipt of written notice or cure of the default or breach has not begun within said period or has not been pursued with due diligence, the aggrieved Party may terminate this Contract by providing written notice thereof, given in the manner provided for in the Notice section of this Contract, effective 15 days from the date the notice of termination was received.

## **15. REMEDIES**

If Contractor is in default under any provision of this Contract including, but not limited to the Special Provisions, the Owner shall have all of the remedies listed in this section in addition to all other remedies set forth in other sections of this Contract and as available at law or in equity. The Owner may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

### **A. Early Termination in the Public Interest**

The Owner is entering into this Contract for the purpose of carrying out the public policy of the Owner, as determined by its elected and appointed officials. If this Contract ceases to further the public policy of the Owner, the Owner, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the Owner of this right shall not be deemed a breach of the Owner's obligations hereunder. This subsection shall not apply to a termination of this Contract by the Owner for cause or default by Contractor, which shall be governed by the Termination for Cause and/or Default subsection of this Remedies section.

#### **i. Method and Content.**

The Owner shall give written notice of termination to Contractor in accordance with the Notice provisions of §15, above, and §17, below, specifying the effective date of termination and whether it affects all or a portion of this Contract.

## **ii. Obligations and Rights.**

To the extent specified in the termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall also terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the Owner all Services and Goods not terminated by the termination notice and may incur obligations as are necessary to do so within the Contract terms. In the sole discretion of the Owner, Contractor shall assign to the Owner all of Contractor's right, title, and interest under such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the Owner has an interest. All finished or unfinished documents, data, studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by Contractor under this Contract or materials owned by the Owner in the possession of Contractor shall, at the option of the Owner, be delivered by Contractor to the Owner and shall become the Owner's property. Contractor shall complete and deliver to the Owner all Services and Goods not terminated by the termination notice and may incur obligations as are necessary to do so within the Contract terms.

## **iii. Payments.**

If this Contract is terminated by the Owner for any reason other than for Cause as described in sub-section B of this Section 16, Contractor shall be paid an amount which bears the same ratio to the total compensation as the Services satisfactorily performed or the Goods satisfactorily delivered or installed bear to the total Services and Goods covered by this Contract, less payments previously made. Additionally, if the Contract is less than 60% completed, the Owner may reimburse Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) Contractor incurred that are directly attributable to the uncompleted portion of Contractor's obligations hereunder; provided that reimbursement shall not exceed the maximum amount payable to Contractor.

## **B. Termination for Cause and/or Default**

If Contractor fails to perform any of its obligations hereunder with such diligence as is required to ensure their completion in a timely manner and such non-performance continues following notice, the Owner may notify Contractor in writing of such non-performance which specifies a cure period. If Contractor thereafter fails to promptly cure such non-performance within such time, the Owner, may, at its option, terminate this entire Contract or such part of this Contract as to which there has been delay or a failure to properly perform. Exercise by the Owner of this right shall not be deemed a breach of its obligations hereunder.

### **i. Method and Content**

The Owner shall give written notice of termination to Contractor in accordance with the Notice provisions hereof specifying the effective date of termination and whether it affects all or a portion of this Contract.

## **ii. Obligations and Rights**

To the extent specified in the termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall also terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the Owner all Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within the Contract terms. In the sole discretion of the Owner, Contractor shall assign to the Owner all of Contractor's right, title, and interest under such terminated orders or subcontracts. Upon termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the Owner has an interest. In the sole discretion of the Owner, Contractor shall assign to the Owner all of Contractor's right, title, and interest under such terminated orders or subcontracts. All finished or unfinished documents, data, studies, research, surveys, drawings, maps, models, photographs, and reports or other materials prepared by Contractor under this Contract shall, at the option of the Owner, be delivered by Contractor to the Owner and shall become the Owner's property.

## **iii. Payments**

The Owner shall only reimburse Contractor for accepted Services and Goods received up to the date of termination and, if after termination, it is determined that Contractor was not in default or that Contractor's action/inaction was excusable, such termination shall be treated as a termination for other than cause and the rights and obligations of the Parties shall be the same as if this Contract had not been terminated for cause, as described above herein.

## **iv. Damages and Withholding**

Notwithstanding any other remedial action by the Owner, Contractor also shall remain liable to the Owner for any damages sustained by the Owner by virtue of any default under this section by Contractor and the Owner may withhold any payment to Contractor for the purpose of mitigating the Owner's damages, until such time as the exact amount of damages due to the Owner from Contractor is determined. Further, the Owner may withhold amounts due to Contractor as the Owner deems necessary to protect the Owner against loss because of outstanding liens or claims of former lien holders and to reimburse the Owner for the excess costs incurred in procuring similar goods or services. Contractor shall be liable for excess costs incurred by the Owner in procuring from third parties replacement Services or substitute Goods as cover.

## **C. Remedies Not Involving Termination**

The Owner, in its sole discretion may exercise the following remedies in addition to its other remedies, to-wit:

### **i. Suspend Performance**

Suspend Contractor's performance pending necessary corrective action as specified by the Owner without entitling Contractor to adjustment in price/cost or schedule; and/or



**ii. Withhold Payment**

Withhold payment to the Contractor until corrections in services are satisfactorily completed and /or acceptable goods are provided; and/or

**iii. Deny Payment**

Deny payment for those services not performed and/or not provided and which due to circumstances caused by the Contractor cannot be performed, or if performed, would be of no value to the Owner; provided that any denial of payment must be reasonably related to the value of work or performance lost to the Owner; and/or

**iv. Removal**

Demand removal of Contractor's employees, agents, or subcontractors whom the Owner deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or not in the Owner's best interest, all such cases being within the sole discretion of Owner.

**16. NOTICE and REPRESENTATIVES**

**A. Notice**

All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**B. Representatives**

The individuals listed below are the principal representatives of the respective Parties. With respect to the Owner's representative(s), they have authority to inspect and reject goods and services, approve invoices for payment, and act otherwise for the Owner, except with respect to the execution of modifications to or termination of this Contract. For the purposes of this Contract, the official representative(s) and addresses of the Parties are:

**i. Owner:**

Name:	Theresa Worsham
Title/Position:	Sustainability Manager
Address:	1445 Street
Address:	Golden, CO 80401
Tel	(303) 384-8117
Fax	(303) 384-8161
Mobile	(303) 884-8403
E-Mail	tworsham@cityofgolden.net

**ii. Contractor:**

Contractor Name:	McKinstry
Contractor Rep. Name:	Phillip Saieg
Title/Position:	Account Executive
Address:	112 N. Rubey Drive
Address:	Golden, CO 80401
Tel	303.415.4040
Fax	303.215.4041
Mobile	303.929.8902
E-Mail	phillipsa@mckinstry.com

## **17. GOVERNMENTAL IMMUNITY**

Notwithstanding any other provision to the contrary, nothing herein constitutes a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, §C.R.S. 24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the Owner, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Colorado Governmental Immunity Act.

## **18. MISCELLANEOUS**

### **A. Binding Effect**

Unless otherwise provided herein, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

### **B. Modification**

This Contract is subject to such modifications as may be required by changes in Federal or Colorado law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Contract on the effective date of such change, as if fully set forth herein. Except as specifically provided herein, no modification of this Contract shall be effective unless agreed to in writing by both Parties in an amendment to this Contract, properly executed and approved in accordance with Owner's home rule charter, municipal code and fiscal rules.

### **C. Entire Understanding**

This Contract represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein.

#### **D. Severability**

Provided this Contract can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

#### **E. Counterparts**

This Contract may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

#### **F. Waiver**

Waiver by either Party of any breach of a term, provision, or requirement of this Contract any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

#### **G. Assignment-Novation**

Except as otherwise specifically provided in **Exhibit A**, Contractor's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted, and novations shall not occur, without the prior, written consent of the Owner. Any attempt at assignment, transfer, subcontracting, or novations without such consent shall be void. All subcontracts/subcontractors approved by Contractor or the Owner shall be subject to the provisions hereof. Contractor shall be solely responsible for all aspects of subcontracting arrangements and performance. Contractor shall be solely responsible for all subcontracting arrangements, directions, and performance, including, but not limited to, delivery of Goods and performance of Services. Contractor shall require and ensure that each subcontractor assents in writing to all of the provisions hereof, including indemnifying the Owner as required under the Colorado Special Provisions, below herein.

#### **H. Third Party Beneficiaries**

Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

#### **I. Survival of Certain Contract Terms**

Notwithstanding anything herein to the contrary, provisions of this Contract requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the Owner if Contractor fails to perform or comply as required.

#### **J. Jurisdiction and Venue**

All suits, actions, or proceedings related to this Contract shall be held in the State of Colorado and the Parties hereby agree that venue shall be proper in the County of Jefferson.

#### **K. Captions**

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

#### **L. Rule of Contraction**

While the Contractor drafted this Contract, the Parties agree that this Contract shall not be strictly construed against the drafter.

#### **M. Order of Precedence**

The provisions of this Contract shall govern the relationship of the Owner and Contractor. In the event of conflicts or inconsistencies between this Contract and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

##### **v. Colorado Special Provisions**

##### **vi. Exhibit A, then**

##### **vii. Exhibit B, then**

##### **viii. Exhibit C, then**

##### **ix. Exhibit D.**

### **19. COLORADO SPECIAL PROVISIONS**

The Special Provisions apply to all Contracts except where noted in italics.

#### **20.1.**

**OWNER'S APPROVAL.** This contract shall not be deemed valid until it has been approved by the Owner or designee.

**20.2. FUND AVAILABILITY.** Financial obligations of the Owner payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**20.3. INDEMNIFICATION.** Contractor shall indemnify, save, and hold harmless the Owner, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Contract.

**20.4. INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither contractor nor any agent or employee of contractor shall be or shall be deemed to be an agent or employee of the Owner. Contractor shall pay when due all required employment taxes and income taxes and local head taxes on any monies paid by the Owner pursuant to this contract. Contractor acknowledges that contractor and its employees are not entitled to unemployment insurance benefits unless Contractor or a third party provides such coverage and that the Owner does not pay for or otherwise provide such coverage. Contractor shall have no authorization, express or implied, to bind the Owner to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall provide and keep in force workers' compensation (and provide proof of such insurance when requested by the Owner) and unemployment compensation insurance in the amounts required by law and shall be solely responsible for its acts and those of its employees and agents.

**20.5. NON-DISCRIMINATION.** Contractor agrees to comply with the letter and the spirit of all applicable Owner, State and federal laws respecting discrimination and unfair employment practices.

**20.6. CHOICE OF LAW.** The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision of this contract, whether or not incorporated herein by reference, which provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules, and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract, to the extent that this contract is capable of execution. At all times during the performance of this contract, Contractor shall strictly adhere to all applicable federal and State laws, rules, and regulations that have been or may hereafter be established.

**20.7. SOFTWARE PIRACY PROHIBITION.** Governor's Executive Order D 002 00. No Owner or other public funds payable under this contract shall be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies that, for the term of this contract and any extensions, Contractor has in place appropriate systems and controls to prevent such improper use of public funds. If the Owner determines that Contractor is in violation of this paragraph, the Owner may exercise any remedy available at law or equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**20.8. EMPLOYEE FINANCIAL INTEREST. C.R.S. §24-18-201 and §24-50-507.**

The signatories aver that to their knowledge, no employee of the Owner has any personal or beneficial interest whatsoever in the service or property described in this Contract.

**20.9. PUBLIC CONTRACTS FOR SERVICES. C.R.S. §8-17.5-101.**

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to C.R.S. §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor (a) shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the subcontractor and the Owner within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the Owner or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or C.R.S. §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

**20.10. PUBLIC CONTRACTS WITH NATURAL PERSONS. C.R.S. §24-76.5-101.**

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of C.R.S. §24-76.5-101 et seq., and (c) has produced one form of identification required by C.R.S. §24-76.5-103 prior to the effective date of this contract.

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**THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT**

**\* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the Owner is relying on their representations to that effect.**

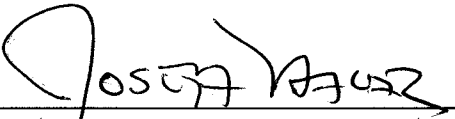
**CONTRACTOR: McKinstry Essention, Inc. OWNER: City of Golden**

Name: Joseph Hagar

Name: Mike Bestor

Title: Director of Finance

Title: Golden City Manager

  
Signature  
5/22/13

  
Signature  
5/31/13

## **Exhibit A to Technical Energy Audit & Project Proposal Contract**

### **Scope of Work**

**ESCOs: Use checkboxes to indicate entire section is complete.**

The intent of the scope of work is to identify locations within or upon City of Golden properties for deployment of Solar Photo voltaic systems, ("Solar PV"). This includes the appropriate engineered size of the technology, utility rate condition of the host site, weather and other site conditions of the host site, and overall economics of the most opportune host site.

☐

**a. Solar PV:**

- a. Technical and financial evaluation of Solar PV systems for medium-tier (10 Kw-500 Kw) solar systems within or upon the following City facilities, including, but not limited to:
  - a. Maintenance Shops: 20041 Golden Gate Canyon Rd.
  - b. Tony Grampas Gym: 4471 Salvia Street
  - c. Public Works Office: 1445 Street
  - d. Splash Water Park: 3153 Illinois Street
  - e. South Parking Garage: 1250 Jackson Street
- b. Technical and financial evaluation of Solar PV systems for multiple small-tier (>9.9 Kw) solar systems within or upon the following City facilities, including, but not limited to:
  - a. Fire station #4
  - b. Pump Station at Heritage Dells
  - c. 11630 Hwy 40 Pump Station
  - d. 2 Restrooms at Fossil Trace
  - e. Tony Grampas Field Lighting
  - f. Ulysses concession building
  - g. Ulysses Field Lighting
  - h. City of Golden RV Park

☐

**b. Identify Potential Measures**

- a. Measures to be evaluated are those Solar PV system sites identified above

☐

**c. Base-Year Consumption.**

- a. Establish base-year consumption
- b. Establish appropriate base year consumption by examining utility bills for the past three years for electricity, gas, propane, steam, and any other applicable utilities. Present base year consumption in terms of energy units (kWh, kW, ccf, Therms, gallons, or other units used in billing statements), in terms of energy units per square foot, in terms of dollars, and in terms of dollars per square foot. Describe the process used to determine the base year (averaging, selecting most representative contiguous 12 months, removal of anomalies, or other statistical or weather-normalized method). Consult with facility personnel to account for any anomalous schedule or operating conditions on billings that could skew the base year representation. Contractor shall account for periods of time when equipment was broken or malfunctioning in calculating the base year.



☐ **d. Preliminary Analysis.**

- a. List all potential opportunities, whether cost-effective or not. Consider technologies in a comprehensive approach for the indicated Solar PV systems.
- b. Identify measures which appear likely to be cost effective and therefore warrant detailed analysis.
- c. For each measure, prepare a preliminary estimate of energy cost savings including description of analysis methodology, supporting calculations and assumptions used to estimate savings.

☐ **e. Preliminary Meeting.** Meet with Owner to present preliminary analysis prior to complete analysis. Describe how the projected project economics meet the Owner's terms for completing the Technical Energy Audit and Proposal Contract. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an energy performance contract. Develop a list of recommended measures for further analysis. The Owner shall at its discretion, have the option to reject any presented calculations of savings, potential savings allowed, or project recommendations.

☐ **f. Savings and Cost Analysis.** Analyze savings and costs for each mutually agreed to energy measure and any mutually agreed to capital improvement measures.

- a. 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 the location, calculations which account for the interactive effects of the recommended measures.
- b. Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use.
- c. Adhere to percentage ranges of project costs stated in contract in all cost estimates.
- d. Develop a preliminary measurement and verification plan for each measure.
- e. Follow additional guidelines for analysis and report preparation given below.

☐ **g. Draft Audit Report.** Prepare a draft Technical Energy Audit Report. The report provides an engineering and economic basis for negotiating a potential Energy Performance Contract between the Owner and the Contractor. The report shall include:

- a. Overview.
  - a. Contact information.
  - b. Brief executive summary identifying at a minimum any project phases, building names, total project cost, total energy, and financial summary.
  - c. Summary table of recommended energy, by location, with itemization for each measure of total design and construction cost, rebates, all capital contributions, annual maintenance costs, the first year cost avoidance (in dollars and energy units), emissions reductions, simple payback and new equipment service life.
  - d. Summary by location of annual energy by fuel type and costs of existing or base year condition.
  - e. Summary table of recommended energy saving measures, with itemization for each measure of total design and construction cost, annual maintenance costs, the first year cost avoidance (in dollars and energy units), simple payback and equipment service life.
  - f. Summary of annual energy use by fuel type and costs of existing or base year condition.

- g. Calculation of cost savings expected if all recommended measures are implemented and total percentage savings of total facility energy cost.
  - h. Summary description of measures, including estimated costs and savings for each as detailed above.
  - i. Discussion of measures considered but not investigated in detail.
  - j. Conclusions and recommendations.
- b. Base year energy use.
- a. Description and itemization of current billing rates, including schedules and riders.
  - b. Identification and definition of base year consumption and description of how established.
- c. Full description of each energy measure including:
- a. Written description of:
    - A. Existing conditions.
    - B. Description of equipment to be installed and how it shall function.
    - C. Include discussion of facility operations and maintenance procedures that shall be affected by installation/implementation.
    - D. Present the plan for installing or implementing the recommendation.
  - b. Savings calculations:
    - A. Base year energy use and cost.
    - B. Post-retrofit energy use and cost.
    - C. Savings estimates including analysis methodology, supporting calculations and assumptions used.
    - D. Annual savings estimates. The cost savings for all energy saving measures must be determined 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).
    - E. Savings must be limited to savings allowed by the Owner as described above.
    - F. Percent cost-avoidance projected.
    - G. Description and calculations for any proposed rate changes.
    - H. Explanation of how savings interactions between retrofit options are accounted for in calculations.
    - I. 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.
    - J. Future capital cost avoidances, because they are not explicitly cost savings and are instead reallocated Owner capital funds, must be clearly noted and include an explanation as such for edification of the Owner.
    - K. If computer simulation is used, include a short description and state key input data. If requested by Owner, access shall 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 Technical Energy Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts.
    - L. If manual calculations are employed, formulas, assumptions and key data shall be stated.

M. Conclusions, observations, caveats.

- c. Cost estimate – Include all information required under C.R.S. §24-30-2002 as well as a detailed scope of the construction work suitable for cost estimating. Include all anticipated costs associated with installation and implementation. Provide preliminary specifications for major mechanical components as well as detailed lighting fixture counts. The following shall also be included:

- A. Engineering/design costs.
- B. ESCO or Contractor/vendor estimates showing breakdown for labor, materials, and equipment; include special provisions, overtime, and all other appropriate items, as needed to accomplish the work with minimum disruption to the operations of the facilities.
- C. Permit costs.
- D. Construction management fees.
- E. Environmental costs or benefits (disposal, avoided emissions, handling of hazardous materials, and any other related costs).
- F. ESCO shall engage all appropriate utility companies and reasonably apply all available rebates and incentives available from the utility to reduce the overall cost of the project.
- G. ESCO shall state whether applicable rebates pursuant to the federal Energy Policy Act of 2005 were pursued in each area of lighting, HVAC, and envelope measures, including supporting details for how they are being pursued. If they are not being pursued, please explain why.
- H. Note that all project percentages stated in **Exhibit D** to the Technical Energy Audit and Project Proposal Contract ("TEAPP"), to which this Exhibit A is attached, shall be used in the cost estimates, unless otherwise documented and justified due to change in scope or size of project or other unforeseen circumstances.
- I. Conclusions, observations, caveats.
- J. Other cost categories as defined above under "Project Percentages" in Contract.

d. Miscellaneous:

- a. Estimate of average useful service life of equipment.
- b. Preliminary commissioning plan. Preliminary commissioning plan shall follow the *Commissioning Guidelines for Energy Saving Performance Contracts in State of Colorado Facilities*<sup>1</sup>.
- c. Preliminary measurement and verification plan, following *Measurement and Verification Guidelines for Energy Saving Performance Contracts in State of Colorado* ., explaining how savings from each measure is to be measured and verified.
- d. Discussion of impacts that facility would incur after contract ends. Consider operation and maintenance impacts, staffing impacts, budget impacts, etc., and identify who is responsible for maintenance.
- e. Compatibility with existing systems.

- ☐ h. **Post-Audit Meeting.** Meet with Owner to review the recommendations, savings calculations and impact of the measures on the operations of the sites. Describe how the projected project

☐ <sup>1</sup> Located on CEO's website at <http://www.colorado.gov/cs/Satellite/GovEnergyOffice/CBON/1251599983018>

economics meet the Owner's terms for completing the Technical Energy Audit and Performance Contract Proposal. Discuss the willingness and capability of Owner to make capital contributions to the project to improve the economics of the overall project. Revise Audit as directed by Owner.

- i. **Complete and Present Final Technical Energy Audit Report.** Deliver final audit report to Owner for approval. Execute Exhibit B to the TEAPP.



- j. **Proposal.** Prepare an Energy Performance Contract Proposal using the State of Colorado's Energy Performance Contract documents. In anticipation of Contractor and Owner entering into an Energy Performance Contract to design, install, and monitor the energy saving measures proposed in the Technical Energy Audit Report, Contractor shall prepare a proposal to be incorporated in an Energy Performance Contract that includes the following:

- a. Project Cost is the maximum not to exceed amount Owner shall pay for the project and Contractor's services. Costs must be consistent with mutually agreed to project percentages established in **Exhibit D** to the TEAPP. Costs shall include: engineering, design, procurement, installation (from Technical Energy Audit Report results); performance/payment bond costs; construction management costs; commission costs; maintenance costs; monitoring and verification costs; training costs; and overhead and profit. ESCO may present other project-related costs if reviewed and approved by CEO, and previously disclosed in ESCO's proposal and presented in the TEAPP.
- b. Include a List of Services that shall be provided as related to each cost.
- c. Expected term of the Energy Performance Contract.
- d. Expected utility rate forecast (escalation or decline) based on historical trends, utility provider rate forecasts, and economic forces of supply and demand (global, national, local or regional), natural resource availability, technology, utility capital investment, and environmental requirements. (CEO and/or the Owner shall be consulted on the appropriate fuel price escalation factors for all projects.)
- e. Description of how the project shall be financed including available interest rates and financing terms, based on interest rates likely available to Owner at this time, and based on a 60-day and 90-day lock option.
- f. Explanation of how the savings shall be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors. Monitoring and verification methods must be consistent with the most current version of *Measurement and Verification Guidelines for Energy Saving Performance Contracts in State of Colorado Facilities*.
- g. Analysis of annual cash flow for Owner during the contract term.

**Exhibit B to Technical Energy Audit & Project Proposal Contract**  
**Notice of Acceptance of Technical Energy Audit Report**

**City of Golden, Colorado**

Notice of Acceptance

Date of Notice \_\_\_\_\_

Subject to the Parties entering into a new contract under §6(A) of the Contract for Technical Energy Audit and Project Proposal, which was signed by the Owner on \_\_\_\_\_, notice is hereby given that the Owner accepts the Contractor's Technical Energy Audit and Project Proposal.

Accepted by

Name: Mike C. Bestor

Title: Golden City Manager

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **Exhibit C – Technical Energy Audit & Project Proposal Contract - Buildings Included in Scope of Work**

Customer Name: City of Golden

The following is a list of sites included in the Technical Energy Audit (TEA) Scope of Work:

- a. Technical and financial evaluation of Solar PV systems for the following medium-tier (10 Kw-500 Kw) solar systems including, but not limited to
  - a. Maintenance Shops: 20041 Golden Gate Canyon Rd.
  - b. Tony Grampsas Gym: 4471 Salvia Street
  - c. Public Works Office: 1445 Street
  - d. Splash Water Park: 3153 Illinois Street
  - e. South Parking Garage: 1250 Jackson Street
- b. Technical and financial evaluation of solar PV systems for the multiple small-tier (>9.9 Kw) solar systems within or upon the following City-owned facilities including, but not limited to:
  - a. Fire station #4
  - b. Pump Station at Heritage Dells
  - c. 11630 Hwy 40 Pump Station
  - d. 2 Restrooms at Fossil Trace
  - e. Tony Grampsas Field Lighting
  - f. Ulysses concession building
  - g. Ulysses Field Lighting
  - h. City of Golden RV Park

## Exhibit D – Technical Energy Audit & Project Proposal Contract

### Project Cost and Pricing Elements

#### COST AND PRICING

Maximum rates were established for ESCOs participating in the CEO/EPC program. Below are percentages of the total project cost that are agreed to for this specific project that are equal to or less than the maximum established percentages, based on the sizes, scope and locations of this specific project.

#### PROJECT PERCENTAGES

Percentages of the total project for each line item shall be calculated and shall not exceed what is stated for the duration of the project. Use only the categories shown. Supplying ranges for the percentages is acceptable.

		Project Budget	Estimated Percents of Total Project Price*	Actual Percent of Total Project Price	Price/ Cost	How is range applied/final value derived
		<b>Base Construction Costs</b>				
	a	Subcontractor Costs (Contractor Costs to ESCO)	N/A	N/A		N/A
	b	Other Direct Purchases of Equipment & Materials, (Supplier Costs to ESCO)	N/A	N/A		N/A
	c	Design	2-4%			Based on the size of project and complexity of the design
	d	Project Management	4-8%			Highly dependent upon the size of the project and complexity of the installation
	e	Permits	0%			Actual direct project costs and included in subcontractor costs
	f	Performance Bond	.5-1%			Included as actual costs of bonding with no markup
	g	Commissioning	1.5-2.5%			Highly dependent upon the size of the project and complexity of the systems to be installed
	h	Training	.5-1%			Highly dependent upon the size of the project and complexity of the systems installed
	i	Construction Measurement and Verification	.5-1%			Highly dependent upon the size of the project and complexity of the systems installed
Sum (a:i)	j	<b>Sum Project Direct Costs</b>	Based on sum of actual %s			N/A
	k	Overhead Percent	10%			
	l	Profit Percent	8%			
Sum (j:l)	m	<b>PROJECT PRICE SUB TOTAL w/OH &amp;P</b>	Based on sum of actual %s			N/A
	n	Technical Energy Audit and Project Proposal	N/A	N/A	\$50,000	N/A
	o	Contingency	3-5%			Highly dependent upon the size of the project and complexity of the systems installed
Sum (m:o)	p	<b>TOTAL PROJECT PRICE</b>	Based on sum of actual			N/A

			%s			
--	--	--	----	--	--	--

NOTES: \* For CEO base agreement and Request For Proposal responses, a range is acceptable if justified.

### **Annual Costs**

Use only the categories shown. Proper cost determination and expected length of service shall be noted for all services.

<b><i>CATEGORY OF ANNUAL COST</i></b>	<b><i>HOW PRICE IS DETERMINED</i></b>	<b><i>YEARS APPLIED (ONE-TIME, ANNUAL, ETC.)</i></b>
Warranty	Actual cost percentage and/or price is highly dependent upon the Facility Improvement Measures("FIMs") installed as part of the final project	One year on the entire project with the option to extend at the City's discretion. Manufacturer's equipment warranties are extended to the City. For example, Solar PV Systems typically provide 20-25 year warranties, respectively. These warranties are included in the project and will be extended to the City.
Measurement and Verification	Actual cost percentage and/or price is highly dependent upon the final installations as part of the project. However, percentage is typically 5-8% of the total savings amount	The first three (3) years are required under the CEO program with the option to extend at the City's discretion
Maintenance	Actual cost percentage and/or price is highly dependent upon the final installations as part of the project	Maintenance issues will be addressed under the Energy Performance Contract.



## **Exhibit E – Record of Reviews**

Below is a log of the Colorado Energy Performance Contract Program ("CEPCP") reviews for the Technical Energy Audit ("TEA") contract, the Technical Energy Audit Report, and the Energy Performance Contract ("EPC") contract, and the goals of these reviews. It shall be noted that these reviews are not part of the legal review of the documents and do not replace the due diligence needed by the clients. This process is required for all energy performance contract work with any state agencies or local jurisdictions participating in the CEPCP

**TEA Agreement** (this review should be completed prior to the ESCO signing the contract)

CEPCP Reviewer:

Date Completed:

Reviewers Comments:

The TEA agreement review includes:

- Confirmation that the CEPCP provided TEA contract is being used
- ESCO cost and pricing elements are within the boundaries of their EPC base agreement contract with the CEPCP.
- No additions, subtractions, or changes have been made to the contract without notifying and receiving approval from the client and the CEPCP reviewer.

**TEA Report** (this review is completed just prior to finalizing the EPC contract)

CEPCP Reviewer:

Date Completed:

Reviewers Comments:

TEA report review includes:

- TEA has met the minimum requirements as outlined in the CEPCP TEA Scope of Work.
- Confirm adherence to all state legislation.
- Confirm that adequate technical details to follow methodology and assumptions used to calculate savings for each ECM.
- Review existing operational assumptions and add note as necessary to ESCO making sure they are confirmed by the Owner (client).
- Confirm costs document engineering/design costs, contractor/vendor estimates, markups, etc.
- Confirm commissioning and Measurement & Verification plans are in line with State EPC program.

**Energy Performance Contract** (this review is completed prior to the ESCO signing the contract)

CEPCP Reviewer:

Date Completed:

Reviewers Comments:

The EPC review includes:

- Confirmation that the CEPCP provided EPC contract is being used
- ESCO cost and pricing elements are within the boundaries of their EPC base agreement contract with the CEPCP.
- No additions, subtractions, or changes have been made to the contract without notifying and receiving approval from the client and the CEPCP reviewer.
- Confirm the proforma schedule includes all know Owner funds, utility rebates, other grants funds, and all potential cost through the length of the loan.