

**RFT - ANNEX E**

**MODEL OF ENERGY MANAGEMENT SERVICE CONTRACT**

***SHARED SAVINGS WITH VARIABLE TERM CONTRACT***

**Date:**

## ENERGY MANAGEMENT SERVICE CONTRACT

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**ANNEXURES**

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ENERGY MANAGEMENT SERVICE CONTRACT

THIS CONTRACT

made in duplicate as of the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

BETWEEN

[MC to fill name] MUNICIPAL CORPORATION as represented by the \_\_\_\_\_ of

\_\_\_\_\_

(hereinafter called "The City")

AND

\_\_\_\_\_

(hereinafter called the "Energy Management Firm")

**WHEREAS** The City wishes to engage the Energy Management Firm to undertake the design, implementation and monitoring of energy efficiency improvements to the facilities known as:

Part of [MC to fill name] Street lighting systems

Part of [MC to fill name] low tension pumping systems

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[hereinafter called "Facilities"]

Now therefore the **City** and the **Energy Management Firm** agree as follows:

**1.0 Definitions**

- 1.1 **Baseline Energy Consumption and Demand** means the total annual energy consumption and monthly energy demand of Facilities before the Improvements have been made. The assessment of the total annual consumption prescribed in the Measurement and Verification protocol is described in Annexure "A".
- 1.2 **Base Year** means the year for which the Baseline Energy Consumption and Demand is calculated.
- 1.3 **Commencement Date** means the date the commissioning of all Improvements is completed, marking the commencement of the Payback Period.
- 1.4 **Contract** means this document, the Appendices attached hereto, the Energy Feasibility Study and Concept Report, the Request for Proposals, the Proposal Brief, the Final Design Documents and the Working Documents.
- 1.5 **City Representative** means a person specially authorized by the City to perform on its behalf any function under this Contract.
- 1.6 **Energy** means electricity.
- 1.7 **Energy Costs** means the total amount of money paid by the City to one or more utilities or other energy suppliers for the energy consumption and demand of Facilities but excludes late payment charges or any other charge that is unrelated to the actual energy consumption or demand.
- 1.8 **Investment Grade Energy Feasibility Study and Concept Report** means the Energy Management Firm's written report, the content of which is based on:
- (a) the information contained in the Request for Proposals;
  - (b) additional on-site field measurements campaign performed by the EMF; and
  - (c) interviews with the City's operating personnel;
- and which shall include:
- (d) a thorough and professional examination and review of the Facilities' existing energy systems;
  - (e) a description of the Facilities' existing lux level (street lighting), water flow, head and water table height (waterworks pumping systems);
  - (f) a full description of the Improvements;
  - (g) detailed analyses and data in support of the Improvements; and
  - (h) a justification of the Baseline Energy Consumption and Demand.
- 1.9 **Energy Management Firm Representative** means the employee of the Energy Management Firm who is designated by the Energy Management Firm to manage and oversee the design and installation of the Improvements for the purpose of this Contract.

1.10 **Energy Savings** means the Energy Costs saved (calculated following the method set out in Annexure A) as a result of reduced energy consumption or demand of the Facilities over a period of time agreed upon by the parties.

1.11 **Final Design Documents** means the final design documentation (including **operating** instructions and warranty details on equipment and labor) related to the installation and operation of the Improvements and developed from the Energy Feasibility Study and Concept Report.

1.12 **Force Majeure** means an event:

- (a) that was unforeseen by the parties;
- (b) that was not controllable by the parties;
- (c) that could not have reasonably been foreseen by the Parties; and
- (d) against which the Parties could not have taken precaution;

and includes:

- (e) acts of God;
- (f) strikes;
- (g) lockouts;
- (h) fires;
- (i) riots;
- (j) arson;
- (k) intervention by civil or military authorities;
- (l) governmental regulations or orders; and
- (m) acts of war (declared or non-declared).

1.13 **Indemnified Claim** means a claim or demand arising out of or attributable to:

- (a) bodily injury;
- (b) sickness;
- (c) disease;
- (d) death;
- (e) injury; or
- (f) destruction of tangible property caused by negligent acts or omissions of one of the parties to this Contract

Made in writing within a period of one (1) year following the event or events giving rise to such claim.

1.14 **Improvements** means energy efficiency measures detailed in the Energy Feasibility Study and Concept Report and consist of the equipment, materials

and systems to be installed in Facilities and the services to be provided by the Energy Management Firm.

- 1.15 **Notice of Irregularity** means a notice from the Energy Management Firm to the City advising of a situation where the equipment or systems in the Facilities are not being operated or maintained in accordance with the requirements of this Contract and indicating the action that should be taken by the City to improve the performance of the Improvements.
- 1.16 **Payback Period** means the period of years stipulated in section 33.1.
- 1.17 **Project Balance** means the Total Project Costs incurred less the total payments made by the City to the Energy Management Firm.
- 1.18 **Proposal Brief** means the written proposal based on the information provided in the RFP and the preliminary findings of the Energy Management Firm submitted to the City in response to the Request for Proposals.
- 1.19 **Request for Proposals** means the document that was issued by the City to initiate the process wherein it selected the Energy Management Firm.
- 1.20 **Subcontractor** means any party to whom the Energy Management Firm has subcontracted the installation or provision of the whole or any part of the Improvements.
- 1.21 **Total Project Costs** means all eligible costs, overhead and profit as estimated in Annexure B.
- 1.22 **Warranty Period** means a period of \_\_\_\_\_( ) months following the Commencement Date where the provided work and equipment are fully warranted by the Energy Management Firm. During this period, any equipment installed that prematurely fails will be replaced on site by the Energy Management Firm at no cost to the City.
- 1.23 **Working Documents** means the detailed plans and specifications for the installation of the Improvements developed in accordance with the Investment Grade Energy Feasibility Study and Concept Report and the approved Final Design Documents.

## **PART I - PRE-CONSTRUCTION PERIOD**

### **2.0 Investment grade Energy Feasibility Study and Concept Report**

- 2.1 Before detailed design and construction begin, the Energy Management Firm will prepare an Investment Grade Energy Feasibility Study (herewith referred as the Energy Feasibility Study) and Concept Report to confirm the scope of the project, final costs, resulting Energy Savings and revised Payback Period. The revised Payback Period should be calculated as per Annexure B by taking into consideration the revised Total Project Cost, the financial charges and the estimated energy savings. Annexure B should be revised and signed by the City and the Energy Management Firm and will become an integral part of the Contract.
- 2.2 Subject to section 2.13, the Improvements described in the Energy Feasibility Study and Concept Report may differ from those described in the Proposal Brief.
- 2.3 The Energy Feasibility Study and Concept Report shall set out the overall concept and purpose of the Improvements.

- 2.4 The Energy Feasibility Study and Concept Report shall develop the retrofit concept for each Improvement to a sufficient level of detail to enable the City to fully understand the retrofit and operational implications of the Improvements and to enable the Energy Management Firm to establish the cost of the Improvements and the Energy Savings to be derived from the Improvements.
- 2.5 For each proposed Improvement, the Energy Feasibility Study and Concept Report shall set out:
- (a) a description of the existing equipment or system, its present condition and operation methods;
  - (b) the Baseline Energy Consumption and Demand and the operating conditions of Facilities;
  - (c) a description of the Improvements with the exact reference of the product and equipment to be used and technical specifications ;
  - (d) the fixed cost for the Improvements;
  - (e) the purpose of the proposed modifications to the equipment or system and/or to its operation methods;
  - (f) an outline of any expected change in the capacity of the existing equipment;
  - (g) an estimate of the annual Energy Savings that will result from the Improvements;
  - (h) the proposed implementation process and schedule including the location, timing and duration of on-site work;
  - (i) any new operating or maintenance requirements resulting from the implementation of the Improvements;
  - (j) a description and estimate of the cost of any work that the Energy Management Firm recommends the City complete either before or during the completion of the Improvements in order to permit the implementation of the Improvements.
  - (k) a description of the Facilities' existing operating conditions (lux level, flow of water and head) and an outline of any impact that the Improvements may have on these conditions;
  - (l) the expected lifetime of all new equipment and the impact on the lifetime of existing equipment;
  - (m) the proposed method of monitoring energy use.
- 2.6 Subject to section 2.8, the City shall use its best efforts to approve the Energy Feasibility Study and Concept Report as soon as possible after its delivery.
- 2.7 The City Representative will inform the Energy Management Firm in writing of any concerns or questions he may have with respect to the Energy Feasibility Study and Concept Report within twenty (20) days from the date of its delivery and if no such questions or concerns are made within this time period, the Energy Feasibility Study and Concept Report shall be deemed to



have been approved by the City, if no extension had been requested by the City.

- 2.8 If the City Representative raises questions or concerns related to the Energy Feasibility Study and Concept Report, the City need not approve the aforementioned document until such questions or concerns are resolved.
- 2.9 The City may request Improvements in addition to those proposed in the Energy Feasibility Study and Concept Report.
- 2.10 The City may request enhancements to or deletion of Improvements proposed in the Energy Feasibility Study and Concept Report.
- 2.11 In the cases described in sections 2.9 and 2.10, the Energy Management Firm shall set out the impact of the proposed request on the Total Project Cost and on the Payback Period and the Parties shall negotiate either an increase or a decrease in the Baseline Energy Consumption and Demand or an increase or a decrease in the length of the Payback Period to take into consideration the change requested by the city.
- 2.12 Any increase in the Payback Period negotiated under section 2.11 shall not exceed \_\_\_\_ ( ) months and the resultant term of the Contract cannot exceed 7 years.
- 2.13 If the proposed Energy Savings set out in the Energy Feasibility Study and Concept Report are less than 90% of the Energy Savings estimated in the Proposal Brief or if the cost of the project increases by more than 15% compared to the cost presented in the Proposal Brief or if the Improvements proposed in the Energy Feasibility Study and Concept Report are significantly different in nature from the Improvements set out in the Proposal Brief, and the City does not accept the Energy Management Firm's explanation for such discrepancy, the City may at its sole discretion terminate this Contract.
- 2.14 If the Energy Management Firm determines during the course of preparing the Energy Feasibility Study and Concept Report, that the sum of the Energy Savings will not be sufficient to repay the Total Project Costs within the Payback Period, the Energy Management Firm, at its sole discretion, may terminate this Contract.
- 2.15 If this Contract is terminated under section 2.13 or 2.14, the City will not reimburse the Energy Management Firm for the Energy Feasibility Study and Concept Report or any other work undertaken by the Energy Management Firm in relation to the Improvements.

### **3.0 Cooperation**

3.1 The City shall:

- (a) provide the Energy Management Firm in a timely manner with:
  - (i) access to Facilities,
  - (ii) all information, data and documents necessary for installation of the Improvements, and
  - (iii) all reasonable assistance that the Energy Management Firm may require in connection with its obligations under this Contract; and
- (b) keep the Energy Management Firm informed in a timely manner of all matters directly or indirectly related to the Improvements.

### **4.0 City Representative**

4.1 The City shall appoint a City Representative.

4.2 The City Representative shall accept delivery of equipment and materials.

4.3 The City Representative will be responsible for receiving from the Energy Management Firm all instructions pertaining to the optimal operation of existing and new equipment and systems.

4.4 The City Representative will be responsible for ensuring that the Energy Management Firm's instructions are completely followed by the City.

### **5.0 Operation Conditions**

5.1 The City acknowledges that the modifications proposed by the Energy Management Firm will be undertaken with the objective of saving energy and will not necessarily improve the Facilities' operating conditions namely the lux level for street lighting systems or water flow and pressure output for pumping systems.

5.2 The Energy Management Firm warrants that the Improvements will not under any circumstance cause a deterioration of any of the existing operating conditions namely the lux level for street lighting systems or water flow and pressure output for pumping systems in Facilities. The Energy Management Firm that wants to modify these parameters during period of the day where the service is not required should be approved by the City and must be clearly identified in the Energy Feasibility Study with a quantitative evaluation of the proposed reduction.

### **6.0 Baseline Energy Consumption and Demand and Operating Conditions**

6.1 The Energy Management Firm shall deliver a written statement to the City setting out the proposed Baseline Energy Consumption and Demand, corresponding operating conditions and containing supporting measurement data, hypotheses or calculations in support thereof. The Baseline Energy Consumption and Demand shall be expressed in numbers of kilowatthours/month for the entire contract period. Annexure A provides the

procedures for the establishment of the Baseline Energy Consumption and Demand.

- 6.2 If the City is not satisfied with the written statement described in section 6.1, it shall deliver written notice to the Energy Management Firm within fifteen (15) working days from the date of the delivery of the statement, which notice shall set out, in sufficient detail, the City's objections to the statement.
- 6.3 The Energy Management Firm shall include in the Energy Feasibility Study and Concept Report, the Baseline Energy Consumption and Demand and the operating conditions of Facilities.

## **7.0 Detailed Design**

- 7.1 Following the City's approval of the Energy Feasibility Study and Concept Report for each Improvement, the Energy Management Firm will, in consultation with the City, proceed with the Final Design Documents for the Improvements and the preparation of the corresponding Working Documents.
- 7.2 The City may request modifications to the Working Documents which will be dealt with in the manner set out in section 2.11.
- 7.3 The detailed design document should comply with the electrical inspection & safety regulation.

## **8.0 Licenses and Permits**

- 8.1 The Energy Management Firm shall obtain all licenses and permits that are necessary for the installation of the Improvements and shall verify that the Final Design Documents and Working Documents are in compliance with all applicable laws, ordinances, rules, regulations and codes. The staff assigned to the project should possess the necessary State accreditation and have received training on safety rules.

## **PART II - CONSTRUCTION PERIOD**

### **9.0 Obligations of the Energy Management Firm**

- 9.1 During the construction period, the Energy Management Firm will:
  - (a) purchase equipment and store it as per storage rules acceptable to the City's representative.
  - (b) hire subcontractors with the approval of the City, if any, but EMF shall be responsible for all.
  - (c) verify shop drawings, manufacturer drawings and correspondence relating to the completion of the Improvements;
  - (d) approve substitutions of methods and materials after consultation and approval by the City Representative;
  - (e) develop a project schedule;

- (f) supervise work at the construction site to ensure that the progress of the Improvements and the quality of materials and workmanship are in conformity with the requirements of the Final Design Documents and Working Documents.
- (g) organize the work at Facilities so as to ensure minimum interference with the City's business;
- (h) prepare project manuals and as-built drawings of mechanical and electrical systems related to the Improvements;
- (i) provide the City with five (5) copies of the manuals and drawings described in paragraph (h);
- (j) perform a final inspection of the installation of the Improvements;
- (k) subject to section 25.0, transfer to the City the title to material and equipment purchased by the Energy Management Firm;
- (m) assign a person to manage and oversee the Improvements;
- (n) supervise work by any sub-contractor(s) to ensure that the work is completed in accordance with all municipal, provincial and national safety laws and all safety regulations published by the City or by the Energy Management Firm;
- (o) be responsible for the work of the sub-contractor(s);
- (p) be responsible for the start-up and commissioning of the Improvements;
- (q) be responsible for the training of Facilities managers and operators;
- (r) implement an information workshop for departmental employees to inform them of the benefits of the Improvements and their effects on the energy usage;
- (s) provide the City with an annual update on the status of this Contract.
- (t) rectify and make good any damage to Facilities caused by the Energy Management Firm in the course of implementing the Improvements; and
- (u) in the event that it wishes to perform work on week-ends or holidays, submit a written request to the City Representative \_\_\_( ) working days in advance.

## **10.0 Obligations of the City**

10.1 During the construction period, the City will:

- (a) subject to its approval of the Energy Feasibility Study and Concept Report and Working Documents submitted by the Energy Management Firm, permit the implementation of the Improvements;
- (b) provide the Energy Management Firm with satisfactory evidence of his title to Facilities or an authorization, using the form provided by the Energy Management Firm for this purpose, from the owner of Facilities for the performance of the work; and

- (c) accept the inconveniences caused by the carrying out of the Improvements and, without limiting the generality of the foregoing,
  - (i) provide the Energy Management Firm and any sub-contractor(s) responsible for the work with a storage room of reasonable dimensions, and/or allow the temporary installation of a trailer on the site, as agreed with the City's representative,
  - (ii) permit the work to be performed during daylight working hours except in circumstances requested by the City Representative where the work shall be performed outside of these hours,
  - (iii) accept the existence at times of a temporary reduction in services of the Facilities during the construction period,
  - (iv) provide, at his expense, the electrical energy required for performance of the work, and
  - (v) authorize delivery of equipment to Facilities;
- (d) replace or repair existing equipment, if necessary, to make the Improvements operational, when the need for such repair or replacement could not have been identified during the pre-construction phase and is not the result of the improper actions of the Energy Management Firm or its sub-contractor(s); and

10.2 The City may request the Energy Management Firm to effect the repair or replacement referred to in paragraph 10.1(d) and include the cost of the repairs or new equipment in the Total Project Costs, subject to the right of the Energy Management Firm to adjust the Baseline Energy Consumption and Demand and/or the Payback Period according to section 2.11.

**11.0 Completion of Improvements**

11.1 Upon completion of improvement(s), the Energy Management Firm shall ensure that the new installation will be approved by the Electrical Inspection and Safety Regulation Board and that a written notification will be provided to the City Representative.

11.2 If no extension had been requested by the City, within ten (10) working days from the date of delivery of the notification described in section 11.1, the City Representative shall deliver written notice of any objection thereto.

**12.0 Commencement Date**

12.1 Upon commissioning of all of the Improvements and the establishment of the resultant Energy Savings, the Energy Management Firm shall deliver a written notification of the Commencement Date to the City Representative.

12.2 If no extension had been requested by the City, within ten (10) working days from the date of the delivery of the notification described in section 12.1, the City Representative shall deliver written notice of any objection thereto.

12.3 The Commencement Date shall be no later than one month from the City's acceptance of the Energy Feasibility Study and Concept Report.

## **PART III - POST-CONSTRUCTION**

### **13.0 Obligations of the Energy Management Firm**

13.1 During the Post-Construction Period, the Energy Management Firm will:

- (a) provide managers and operators of Facilities with the instructions and training necessary to ensure the proper operation and maintenance of the Improvements;
- (b) make regular visits to Facilities to ensure that its instructions have been followed;
- (c) report to the City Representative any irregularities discovered during the visits described in paragraph (b);
- (d) provide the City Representative with a report at the beginning of each year of the Payback Period. This report should summarize the amount of Energy Savings according to Annexure A procedures for Monitoring and Verification;
- (e) in the event that the performance of the Improvements falls short of projections, investigate the cause;
- (f) if it determines, as the result of an investigation performed pursuant to paragraph (e), that the shortfall in savings is the result of the equipment or system(s) not being operated or maintained in accordance with the requirements of this Contract, deliver a Notice of Irregularity to the City; and
- (g) if it has been informed, pursuant to subparagraph 14.1(d)(ii) that the City cannot identify equipment that may have caused an irregularity, make the necessary investigation, identify the cause of the irregularity and notify the City thereof.
- (h) perform maintenance of the equipment installed for the project including burned lamps replacement, burned ballast replacement, control components, fixtures lenses when applicable, etc. The EMF should provide material and workmanship for these services.

### **14.0 Obligations of the City**

14.1 During the post-construction period, the City will:

- (a) operate the Improvements in the manner prescribed by the Energy Management Firm;
- (b) perform regular maintenance upon all equipment and systems within the Facilities that is not included in the EMF maintenance contract;
- (c) repair or replace without delay any equipment that may break down [This clause will need to be adjusted to reflect the warranty offered by the Energy Management Firm];
- (d) when it has been issued with a Notice of Irregularity pursuant to paragraph 13.1(f):
  - (i) if it discovers any defective equipment, have such equipment replaced or repaired as soon as possible, and

- (ii) if it cannot identify equipment that may have caused the irregularity, so inform the Energy Management Firm within ten (10) working days of the receipt of the Notice of Irregularity;
- (e) correct any irregularity the cause of which has been brought to its attention by the Energy Management Firm pursuant to paragraph 13.1(g);
- (f) promptly notify the Energy Management Firm of any events or circumstances that could materially affect the Total Project Costs or the Energy Savings, or of any other change that could affect the Energy Management Firm's services and obligations under this Contract;
- (g) work with the Energy Management Firm to ensure the cooperation of:
  - (i) the operation and maintenance staff of the Facilities, and
  - (ii) all other departmental employees working in the Facilities in the implementation of the Improvements.

#### **15.0 Energy Management Firm Labor**

- 15.1 Time spent by the Energy Management Firm on the Energy Feasibility Study and Concept Report, engineering, design, Final Design Document, Working Documents, construction supervision project management, inspection, installation, commissioning, post-construction monitoring and verification, training (if required by the City) and administration will be included in the Total Project Costs on a fixed cost to be identified in the Proposal Brief and later revised after the investment grade feasibility study and included in the Annexure "B" of this Contract.
- 15.2 The hourly rates of the Energy Management Firm's personnel that are in effect at the date of this Contract are set out in Annexure "C". These rates should be used for any additional work requested by City and not covered in article 15.1.

#### **16.0 Energy Management Firm Mark-Up for Overhead and Profit and Performance Premium**

- 16.1 The Energy Management Firm will mark up the costs of labor, supplies and materials by \_\_%. The final figures included in Annexure "B" to this Contract should include the overhead and profit.
- 16.2 The Energy Management Firm may also charge the City a performance premium that should be identified in Annexure B. This performance premium will increase the Payback Period and maximum contract term and will constitute the allowance for risk of the Energy Management Firm.

#### **17.0 Financial Support**

- 17.1 The Energy Management Firm will apply any financial support received from relevant organisations to reduce the Total Project Costs accordingly.

#### **18.0 Financing Charges**

- 18.1 The Energy Management Firm will finance the Total Project Costs either directly from its own internal fund, or by obtaining a loan with a third party financial institution to provide the financing.

- 18.2 If the Energy Management Firm finances the Total Project Costs directly, the Energy Management Firm shall indicate as a part of the Total Project Costs the financing charges calculated on the unamortized balance of the Total Project Costs at a rate equal to the cost of funds for the Energy Management Firm.
- 18.3 The cost of funds of the Energy Management Firm shall be as set out in Annex "D" to the Proposal Brief and the same should be reflected in Annexure "B" to the present Contract.
- 18.4 If the Energy Management Firm obtains a loan from a third party financial institution to finance the Total Project Costs, the interest charge component of the Total Project Costs shall be the interest charges proposed by the financial institution, as set out in the Proposal Brief, Annex "D".

**19.0 Payments by the City**

- 19.1 The City will continue to pay the Energy Costs directly to the utility(ies) and/or other energy suppliers.
- 19.2 The City shall pay each month to the Energy Management Firm a sum equal to one twelfth of the calculated annual Energy Savings described in section 13 (d) multiplied by a factor of 80% representing its share of savings. This payment shall start from the Commencement Date until the Total Project Costs have been fully paid or until the Payback Period ends, whichever occurs first.
- 19.3 Any outstanding balance of the Total Project Costs at the end of the Payback Period must be absorbed by the Energy Management Firm.

**20.0 Direction of Payments**

**[Note: This clause shall be adjusted during the negotiation phase according to the type of financing provided by the Energy Management Firm]**

- 20.1 The Energy Management Firm hereby authorizes and directs the Cities to remit and deliver all payments due to the Energy Management Firm pursuant to section 19.2 to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(include name, address and account number)

- 20.2 For purposes of this Contract, any payment made in accordance with section 20.1 constitutes a payment to the Energy Management Firm pursuant to section 19.2.



**21.0 Guarantee of Payment by the City**

21.1 [To be completed during the negotiation phase]

**22.0 Dispute**

22.1 The City may dispute the amount of Savings submitted in the report described in section 13 (d) within seven (7) working days of receipt of the Monitoring and Verification Report for the year.

22.2 The City Representative and the Energy Management Firm will cooperate fully with each other to resolve any dispute as quickly as possible.

22.3 The City and the Energy Management Firm agree to continue to pay invoices and reimbursements during the period of any dispute.

22.4 Any amount payable as a result of the resolution of such dispute will be added to or deducted from the next following invoice(s) or reimbursement(s).

**23.0 Project Balance**

23.1 Each month, the Energy Management Firm shall issue to the City a statement indicating the Project Balance and the financing charges incurred to date.

**PART IV - GENERAL PROVISIONS**

**24.0 Adjustment of Values for the Baseline Year Energy Consumption and Demand**

24.1 In the calculation of Energy Savings pursuant to Annexure "A", the Baseline Energy Consumption and Demand shall, subject to the provisions of this Contract, remain constant for the duration of this Contract, except in circumstances where there is:

- (a) a change in the use of all or part of the Facilities;
- (b) a modification or addition to equipment in the Facilities; or
- (c) implementation of new standards and/or any kind of regulation governing lighting, water flow or pressure in the Facilities;

that results in an increase or decrease in the amount of energy used within Facilities or where there is:

24.2 After consultation with the City Representative, the Energy Management Firm may, if it deems it necessary, increase the Baseline Energy Consumption and Demand as a result of any of the changes referred to in section 24.1.

24.3 If the Baseline Energy Consumption and Demand is increased under section 24.2, the Energy Management Firm shall forthwith provide the City Representative with written notice of the new values.

24.4 Any increase in the Baseline Energy Consumption and Demand under section 24.2 shall be deemed to have been approved by the City Representative unless the City Representative advises the Energy Management Firm in writing within fifteen (15) working days following receipt

of the notice described in section 24.3 of its reasons for contesting such values.

- 24.5 If the City Representative advises the Energy Management Firm in accordance with section 24.4 that it does not approve the increased Baseline Energy Consumption and Demand, all payments to be made by the City will continue to be calculated on the basis of the values that existed immediately prior to the increase.

## **25.0 Equipment Ownership**

- 25.1 The Energy Management Firm or a financial institution that has provided financing to the Energy Management Firm for the Improvements may retain title to any equipment purchased and installed as part of the Improvements as security for the financing.
- 25.2 The ownership of all equipment purchased by the Energy Management Firm pursuant to this Contract and all transferable manufacturers' warranties applicable thereto shall, once the project balance is paid in full under the terms of this Contract, be transferred to the City.

## **26.0 Energy Efficiency Measures Warranty**

- 26.1 The Energy Management Firm hereby warrants each Improvement for deficiencies in design, material, workmanship and commissioning during a Warranty Period of \_\_ months after the beginning of the Commencement date.
- 26.2 To the extent permitted by each manufacturer, the City is entitled to the benefit of all manufacturers' warranties on equipment installed as part of the Improvements and the Energy Management Firm will work with the City to obtain extended manufacturers' warranties on major pieces of equipment. Offered Warranties should be determined during the Energy Feasibility Study and included in the Final Design Document remitted to the City. The cost of these extended warranties should be added to the Total Project Cost and submitted to the City for approval in the Final Design Document.

## **27.0 Provision of Services Unrelated to the Improvements**

- 27.1 To enhance the environmental conditions of the Facilities, the City may request the Energy Management Firm to perform additional work such as:
- (a) investigate and correct a deficiency in the Facility(ies);
  - (b) provide additional training;
  - (c) replace equipment; or
  - (d) perform any other work not directly associated with the Improvements.
- 27.2 If the Energy Management Firm agrees to perform the work described in section 27.1, the City may pay the Energy Management Firm directly for the work or may indicate that the work is to be incorporated into the Total Project Costs, in which case the Energy Management Firm may, subject to the

provisions of section 24.1, require an adjustment to the Baseline Energy Consumption and Demand or an extension of the Payback Period.

### **29.0 Extension to the Mandate Scope**

The City reserves the right to request a proposal from the Energy Management Firm to extend the scope of its contract to other facilities using similar unitary costs provided in the base proposal and that should be reflected in the present Contract in Annexure "B". Additional saving calculation should follow similar procedures as the measure initially included in the present Contract. Additional Appendices "A" to "C" will be filled and signed by both Parties for the additional work and annexed to the present Contract.

### **30.0 Delay, Non-Compliance or Default by the Energy Management Firm**

30.1 If the Energy Management Firm fails to comply with any reasonable direction of the City Representative or is in default in any other manner under this Contract, the City Representative may take all reasonable action necessary to remedy the Energy Management Firm's default and payments to the Energy Management Firm shall be reduced by an amount equal to all costs, expenses and damages incurred or sustained by the City, as a result of the Energy Management Firm's default.

### **31.0 Taking the Work Out of the Energy Management Firm's Hands**

31.1 In any of the following cases, the City may take all or any portion of the Improvements out of the Energy Management Firm's hands and may employ such means as it may see fit to complete the Improvements:

- (a) (i) the Energy Management Firm
  - (A) has substantially delayed in commencing or in executing the Improvements or any portion thereof, or
  - (B) is in default in any other manner under this Contract,
- (ii) the City Representative has given written notice to the Energy Management Firm and has by such notice required the Energy Management Firm to put an end to the default or delay described in subparagraph (i),
- (iii) the default or delay described in subparagraph (i) continues for more than \_\_\_\_\_ ( ) working days after the Energy Management Firm's receipt of the notice described in subparagraph (ii), and
- (iv) the default or delay described in subparagraph (i) is not a result of an event of Force Majeure;
- (b) (i) the Energy Management Firm has not completed the Improvements, or any portion thereof within the established time limit for such completion, and
  - (ii) the failure to meet the established time limit is not a result of Force Majeure;
- (c) the Energy Management Firm has become insolvent;

- (d) the Energy Management Firm has committed an act of bankruptcy;
- (e) the Energy Management Firm has abandoned the Improvements; or
- (f) the Energy Management Firm has made an assignment of this Contract without the consent of the City.

31.2 Where the Improvements or any portion thereof are taken out of the Energy Management Firm's hands under section 31.1:

- (a) the amount of all loss and damage suffered by the City by reason of the non-completion of such Improvements, including the costs of having the work completed by a third party, shall be deducted from the Energy Savings that would otherwise be paid to the Energy Management Firm; and
- (b) the Energy Management Firm shall not be relieved of any legal or contractual obligations other than the completion of that portion of the Improvements that has been taken out of the Energy Management Firm's hands.
- (c) The City may impose a penalty of 10% on the amount of the running bill.

### **32.0 Default by the City**

32.1 Notwithstanding section 34.1, if any of the following events transpires, the Energy Management Firm, in addition to any other available remedies, may require that the City pay to the Energy Management Firm the Project Balance, all outstanding costs and commitments and a reasonable amount in respect of its lost profits:

- (a) the City sells, leases or otherwise transfers the Facilities without the written consent of the Energy Management Firm, such consent not being unreasonable withheld;
- (c) the City closes the Facilities or ceases to operate the Facilities for any reason;
- (d) the City fails to pay the Energy Management Firm the amounts set out herein within ninety (90) working days after the account is due hereunder;
- (e) the City has knowingly furnished a false or misleading representation or warranty to the Energy Management Firm;
- (f) the Energy Management Firm is unable to continue financing the Improvements because of actions of the City; or
- (g) the City has through its own action or inaction rendered the equipment installed by the Energy Management Firm incapable of functioning.

### **33.0 Contract Term**

33.1 This Contract shall commence on the date of execution hereof and continue to the end of the Payback Period or until the balance of the project cost had been completely repaid by the energy saving generated.

33.2 The Payback Period shall be calculated according to section 2.1 and shall begin on the Commencement Date.

### **34.0 Force Majeure**

34.1 Subject to section 32.1, the failure of either party to meet any of the terms and conditions of this Contract will not give rise to a claim by one party against the other, nor will it be viewed as a breach of this Contract, where this failure flows from Force Majeure.

### **35.0 Arbitration**

35.1 Both parties shall make all reasonable efforts to resolve any dispute, controversy or claim arising out or in any way connected with this Contract through discussions and good faith negotiations.

35.2 In the event of an unresolved disagreement between the City and the Energy Management firm relating to:

- (a) the formation, validity, interpretation application or enforceability of the Contract;
- (b) the performance, breach, termination or other discharge of the Contract;
- (c) the rights, duties, obligations or remedies of the parties created by or pursuant to the Contract; or
- (d) any other issue that may arise between the parties relative to the performance of the Contract

these issues will be submitted to arbitration in accordance with the following provisions:

- (a) either party may refer a dispute to arbitration by serving upon the other party a written notice specifying the issue;
- (b) the arbitration proceedings will be presided by three (3) arbitrators;
- (b) within\_\_\_\_( ) working days following serving of a written notice, each party shall appoint an impartial and independent arbitrator. The two (2) arbitrators shall appoint a third impartial and independent arbitrator within \_\_\_\_ ( ) working days;
- (c) the arbitrators shall be at arm's length from both parties and shall not be composed of members of any company, firm or agency doing business with either party;
- (d) the arbitrators shall meet with the parties within\_\_\_\_( ) working days to discuss proceedings, to establish the procedure to be followed and the time of the meeting;
- (e) within\_\_\_\_( ) working days after the arbitrators have been appointed, the claimant shall state, in writing, the facts supporting its claim, the points at issue and the relief or remedy sought and shall submit a copy of the statement to the respondent;
- (f) the arbitrators have the power to determine the admissibility, relevance, materiality and weight of any evidence;
- (g) within\_\_\_\_( ) working days after receipt of the statement of claim, the respondent shall state, in writing, its defense and shall submit a copy of the statement to the claimant;

- (h) the arbitrators may require or permit the presentation of further written statement from the parties and shall fix the periods of time for submitting those statements;
  - (i) the arbitrators may meet at any place they consider appropriate for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property. The arbitrators will conduct on-site inspections at the request of either party. Any on-site inspections shall be made in the presence of both parties and their representatives. The proceedings of any on-site inspection shall be recorded as part of the hearing itself;
  - (j) the arbitrators shall render a decision within\_\_\_\_\_( ) working days following receipt of the statement of claims.
- 35.3 the scope of the arbitration proceeding shall be limited to the resolution of the dispute submitted to arbitration.
- 35.4 the parties agree that the determination and award of the arbitrators shall be final and binding of both parties.
- 35.5 the costs associated with the arbitration process shall be shared equally by the Energy Management Firm and the City.
- 35.6 works under this Contract must, as far as is reasonable, continue during any arbitration and no amount payable to the Energy Management Firm shall be withheld during the period of arbitration.

### **36.0 Interpretation**

- 36.1 Each word in the singular includes the plural and vice versa.
- 36.2 Reference to either party includes, where the context permits, such party's employees, agents, sub-contractors and workers.
- 36.3 Headings are only included in order to facilitate the reading of this Contract and have no bearing upon its interpretation.
- 36.4 Herein, hereby, hereof, hereunder and similar expressions refer to this Contract as a whole and not to any particular subdivision or part thereof.

### **37.0 Governing Laws**

- 37.1 This Contract is made pursuant to and shall be governed by and construed in accordance with the laws of the State of Madhya Pradesh and the Municipal Corporation Act 1956, with up to date amendment.

### **38.0 Severable Covenants**

- 38.1 If any provisions of this Contract or the application thereof to any circumstances are held to be invalid or unenforceable, the remaining provisions of this Contract or the application thereof to other circumstances are not affected thereby and are valid and enforceable to the fullest extent permitted by law.

**39.0 Partnership**

39.1 It is understood and agreed that nothing contained neither in this Contract nor in any acts of the parties hereto shall be deemed to create a partnership with respect to the matters set out herein or any relationship between the parties hereto.

**40.0 Waiver**

40.1 Waiver of any performance or breach of this Contract shall not constitute a waiver of any subsequent performance or breach of a requirement under this Contract.

**41.0 Entire Contract**

41.1 This Contract constitutes the entire contract between the parties with respect to the subject matter of this Contract and supersedes all documents, letters, contracts, proposals, letters of intent, and other contracts relating to it unless they are incorporated by reference into this Contract.

**42.0 Further Assurances**

42.1 The parties will sign and deliver all further covenants, assurances, transfers, assignments, consents and other documentation as may be reasonably required to complete the Improvements.

**43.0 Amendment**

43.1 No amendment, change or waiver in any terms and conditions of this Contract shall have any force or effect until it is effected by a written amendment to this Contract and duly executed by each of the Parties to this Contract.

**44.0 Assignment**

44.1 Other than for purpose of financing the Improvements, this Contract may not be assigned by the Energy Management Firm, either in whole or in part, without the written consent of the City, such consent not to be unreasonably withheld.

**45.0 Subcontracting**

45.1 With respect to all subcontracts required for the implementation of the Improvements, the Energy Management Firm shall be responsible for complete negotiation, management, supervision, coordination and administration, including:

- (a) the verification of qualifications and expertise of each sub-contractor;
- (b) the establishment of a price for each subcontractor; and
- (c) the award of all subcontract(s).

- 45.2 The Energy Management Firm shall notify the City Representative in writing of its intention to subcontract the whole or any part of this Contract and at least seven (7) working days before entering into a subcontract, will notify the City Representative in writing of the name of the proposed subcontractor.
- 45.3 If the City has had a poor working experience with the subcontractor described in section 46.2, the City Representative may object to the intended subcontracting by notifying the Energy Management Firm in writing within seven (7) working days of receipt by the City of the subcontractor's name.
- 45.4 The Energy Management Firm shall not enter into an intended subcontract if the City Representative objects thereto under section 46.3.
- 45.5 The Energy Management Firm shall not change a subcontractor without the written consent of the City Representative.
- 45.6 Each subcontract will be signed by the Energy Management Firm in its own right and not as agent for the City.
- 45.7 The Energy Management Firm is not excluded from any obligation under this Contract nor is any liability imposed upon the City as a result of the Energy Management Firm having entered into a subcontract.

**46.0 Notices, Orders, etc.**

- 46.1 Any notice, order, decision, direction or communication given or required to be given by either party under this Contract shall be given in writing and it shall be deemed to have been received by the other party on the day it was delivered in person or, if mailed, on the sixth day following the day on which it was mailed or, if sent by telex or facsimile, 24 hours after transmission.
- 46.2 The name and address of the main contact person for each party is as follows:

For the City

For the Energy Management Firm

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**47.0 Indemnity**

- 47.1 The Energy Management Firm shall indemnify and save harmless the City from and against all claims, losses, damages, costs, actions and other proceedings, made, sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to any injury, infringement or damage arising from any negligent act or omission of the Energy Management Firm, its servants or agents or persons from whom it assumed responsibility for the performance of services under this Contract.
- 47.2 The City shall indemnify and save harmless the Energy Management Firm from and against all claims, losses, damages, costs, actions and other proceedings, made sustained, brought or prosecuted in any manner based upon, occasioned by or attributable to any injury, infringement or damage arising from any negligent act or omission of the City, its servants, or agents or persons from whom it had assumed responsibilities under this Contract.



#### **48.0 Contract Security**

48.1 The Energy Management Firm shall, upon completion of the Final Design Documents and until satisfactory completion of the Improvements, provide the City with a:

- a) performance bond and a labor and materials payment bond each in the amount of at least 50 per cent of the Total Project Costs and in a form satisfactory to the City; or
- b) Performance security deposit: the amount shall be equal to 5% of the value of the contract (inclusive of earnest money amount). This sum shall have to be deposited by the EMF within 15 days of the receipt of the communication of acceptance of tender failing which the earnest money amount shall be forfeited and acceptance cancelled. The amount could be provided by the EMF as a bank guarantee or cash deposit. Please refer to Annex I for examples of Guarantee Bond texts.

48.2 The security deposit and performance bond referred to in section 48.1 will be retained by the City until satisfactory completion of the Improvements. The performance bond will be released by the City after that while the first portion of the performance security will be returned to the Energy Management Firm in the form of fixed deposit for security provided in this form. The second portion of the performance security deposit deducted from the running bills, referred to in section 48.1 b), will be paid to the Energy Management Firm without any interest after successful expiry of the guarantee period.

#### **49.0 Old equipment**

49.1 During the execution of the Improvements and upon their completion, the Energy Management Firm shall clear and clean each work site in accordance with any directions of the City Representative, so as to render it tidy and free from accumulation of waste material and debris, and shall dispose of all hazardous wastes in accordance with relevant standards and guidelines. If the Project includes disposal of electric ballasts or other equipment containing hazardous material, they must be disposed according to the environmental regulation in force. Unless otherwise specified, all fixtures removed from the street lighting system should be dismantled and the components (lamps, ballasts, casings) should be remitted to the City that will use them as spare parts for older street lighting systems.

**50.0 Unsuitable Workers**

50.1 The Energy Management Firm shall, upon the request of the City Representative, remove from a work site any person employed by it for purpose of this Contract who, in the opinion of the City Representative, is incompetent or has conducted himself improperly and the Energy Management Firm shall not permit a person who has been removed to return to any of the City's work sites.

**51.0 Parties Bound by and Benefiting from this Contract**

51.1 This Contract shall insure the benefit of and be binding upon the parties hereto and their executors, administrators, successors and assigns.

**52.0 Errors and Omissions**

52.1 Notwithstanding any other provision of this Contract, no payments shall be made by the City in respect of the cost incurred by the Energy Management Firm in remedying errors and omissions in drawings, calculations, designs, plans, specifications, reports and other data, information and material produced or work performed by the Energy Management Firm pursuant to this Contract.

**53.0 Public Ceremonies, Signs and Publicity**

53.1 Without the prior consent of the City Representative, the Energy Management firm shall not:

- (a) permit any public ceremony in connection with the Improvements;
- (b) erect or permit the erection of any sign or advertising on the work site;
- (c) disclose any information obtained by reason of the work nor use such information for any other work; or
- (d) use photographs or description of the work in any of their promotional or advertising material.

**54.0 Municipal Jurisdiction**

54.1 Under all circumstances area of jurisdiction shall be within the Municipal limit of the Municipal Corporation.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of  
the \_\_\_ day of \_\_\_\_\_ 20\_\_.

FOR

**THE ENERGY MANAGEMENT FIRM  
SEALED, ATTESTED TO AND  
DELIVERED on behalf  
of \_\_\_\_\_**

\_\_\_\_\_  
Signature of authorized signing officer

\_\_\_\_\_  
(Print name of officer)

\_\_\_\_\_  
(Print title of officer)

**EXECUTED OF BEHALF OF THE  
City by**

\_\_\_\_\_  
Signature of an authorized officer

\_\_\_\_\_  
(Print name of officer)

\_\_\_\_\_  
(Print title of officer)