
Exhibit A

Energy-Savings Performance Project Statement of Work

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ARTICLE 1. DEFINITIONS, ACCEPTANCE OF DOCUMENTS

Section 1.1 Definitions

Any capitalized terms not defined in this SOW shall have the same meaning as those terms have in the Contract.

Certificate of Acceptance of All Installed Equipment: A certificate signed by the Department, acknowledging acceptance of all installed equipment, to be attached as Exhibit A1.

Commencement Date: The date described in **Section 2.2 (Commencement Date)**.

Energy-Savings Measures (ESMs): Any improvement to facilities or other energy-consuming systems designed to reduce energy or water consumption and operating costs and increase the operating efficiency of facilities or systems for their appointed functions. For the purposes of this SOW, Energy-Savings Measures for this project are those listed in **Schedule A (Energy Cost Savings Guarantee)**.

Energy Cost Savings Guarantee: The guarantee that is achieved as a result of the installation and operation of the Equipment and provision of services provided for in this SOW and in accordance with the Savings Calculation Formula as set forth in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements)**. Energy Cost Savings includes both the Operation and Maintenance Cost Savings and Utility Cost Savings, as defined in the Act.

Equipment: Goods which the QESP is to install in accordance with and as set forth in **Schedule R (Equipment to be Installed by QESP)**.

Energy Use Intensity (EUI): A unit of measurement that describes a building's energy use and represents the energy consumed by a building relative to its size.

Environmental Laws: any Federal, State or local statute, law, ordinance, code, rule, regulation, order, or decree regulating or relating to the protection of human health or the environment, or imposing liability or standards of conduct concerning any hazardous, toxic or waste, substance, element, compound, mixture or material, as now or at any time hereafter in effect including, without limitation, the Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sec. 9601 *et seq.*, the Superfund Amendments and Reauthorization Act, 42 U.S.C. Secs. 9601 *et seq.*, the Federal Oil Pollution Act of 1990, §§ 2701, *et seq.*, the Federal Toxic Substance Control Act, 15 U.S.C. §§ 6901 *et seq.*, the Federal Hazardous Material Transportation Act, 49 U.S.C. §§ 1801 *et seq.*, the Federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, the River and Harbors Act of 1899, 33 U.S.C. §§ 401 *et seq.*, and all rules and regulations of the Environmental Protection Agency, or any other state or federal department, board, or agency, or

any other agency or governmental board or entity having jurisdiction over environmental or health and safety matters, as such have been amended.

Goods: All things which are movable, including, but not limited to, supplies, materials, equipment, hardware, software, specially manufactured things, a component incorporated into another thing and things that are attached to real property and that may be severed from the real property without material harm to the things, together and with any and all additions, modifications, attachments, replacements and parts.

Interim Period: The period from SOW execution until the Commencement Date.

Material Change: Any change in or to the Project Site(s), whether structural, operational or otherwise in nature which reasonably could be expected, in the sole judgment of the Department, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)** and **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Report Requirements)** by at least % after adjustments for climatic variations. Those changes may include, but are not limited to, any one of the following:

- (i) manner of use of the Project Site(s) by the Department;
- (ii) hours of operation for the Project Site(s) or for any Equipment or energy using systems operating at the Project Site(s);
- (iii) permanent changes in the comfort and service parameters set forth in **Schedule U (Standards of Comfort)**;
- (iv) occupancy of the Project Site(s);
- (v) structure of the Project Site(s), including total square footage of the buildings;
- (vi) types and quantities of Equipment used at the Project Site(s)
- (vii) modification, renovation or construction at the Project Site(s);
- (viii) the Department's failure to provide maintenance of and repairs to the Equipment in accordance with **Schedule CC (Department's Maintenance Responsibilities)**;
- (ix) the replacement, addition or removal of energy and water consuming devices whether plug-in or fixed assets;
- (x) casualty or condemnation of the Project Site(s) or Equipment;
- (xi) changes in utility provider or utility rate classification or number of days in utility billing cycle;
- (xii) modifications, alterations or overrides of the energy management system schedules or hours of operation, set back/start up or holiday schedules; or
- (xiii) any other conditions other than weather affecting energy or water use or energy costs at the Project Site(s).

Project Site(s): The facilities of the Department in need of energy and water saving equipment and services designed to reduce consumption and associated costs, as identified in Schedule Q.

SOW: This Energy-Savings Performance Project Statement of Work and all Schedules and Exhibits attached.

SOW Sum: The dollar value sum of all materials, labor, auditing, design, engineering, project construction management fees, overhead, profit, contingency and subcontracted services related to the project, as set forth in **Schedule H, Final Project Cost and Project Cash Flow Analysis**.

Substantial Completion of ESM: The stage in the progress of the Work where the installation of an ESM is sufficiently complete in accordance with the SOW documents so that the Department can utilize and take beneficial use of the subject ESM for its intended use or purpose. Substantial Completion of ESM shall not be deemed to have occurred until the ESM has been commissioned, accepted, and the Department executes the Notice of Substantial Completion of ESM.

Work: The Equipment or Services or both to be Performed under the SOW.

Section 1.2. Acceptance of Investment-Grade Energy Audit Report and Other Documents

Prior to this SOW being negotiated and executed as a Final Exhibit, QESP shall have prepared and delivered to the Department the IGEA Report. Upon acceptance of the IGEA Report, the IGEA Report is made a part of the SOW in accordance with Section 123(f) of the Act. Acceptance of the IGEA Report shall be effected and evidenced by the Department signing the signature page in Exhibit C.

For purposes of Performance and synergy between or among documents, the provisions of this SOW and its schedules and exhibits shall take precedence and govern over those in the IGEA Report.

PAYMENTS AND SCHEDULES

ARTICLE 2. PURCHASE AND SALE; COMMENCEMENT DATE AND TERMS; INTERIM PERIOD

Section 2.1. Purchase and Sale

QESP shall provide the Equipment and Services as provided in **Schedule R (Equipment to be Installed by QESP)** and **Schedule J (Compensation to QESP for Annual Services)** in accordance with the terms and conditions set forth in **Schedule I (Financing Agreement and Payment Schedule)**.

The SOW Sum for the Work is a Guaranteed Maximum Price of \$ as set forth in **Schedule H (Final Project Cost & Project Cash Flow Analysis)**. Payment terms are described in **Schedule I (Financing Agreement and Payment Schedule)**.

QESP shall Perform the Work, or cause the Work to be Performed, and all related Services identified in **Schedule R (Equipment to be Installed by QESP)** and the Services detailed in **Schedule BB (QESP's Maintenance Responsibilities)** and **Schedule J (Compensation to QESP for Annual Services)**. QESP shall supervise and direct the Work and shall be responsible for all construction means, methods, techniques, sequences, and procedures and for

coordinating all portions of the Work under this SOW. QESP shall pay for all Equipment, Services and transportation necessary or appropriate for the timely and proper Performance of the Work in accordance with all applicable Schedules.

QESP shall be paid the SOW Sum in accordance with **Schedule I (Financing Agreement and Payment Schedule)**. Payments will be made on a progress basis in accordance with **Schedule I (Financing Agreement and Payment Schedule)**, for Work completed and authorized by Department during the Interim Period. Retainage of % will be withheld until the Commencement Date.

Section 2.2. Commencement Date

The Commencement Date shall be the first day of the month after the month in which the last unsatisfied condition of the following conditions shall have been satisfied: (1) QESP shall have installed and commenced operating all of the Equipment specified in **Schedule R (Equipment to be Installed by QESP)** and in accordance with the provisions of **ARTICLE 8 (Construction Schedule and Equipment Installation; Approval)**, **Schedule S (Construction and Installation Schedule)** and **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**; (2) QESP shall have delivered to Department a notice that it has installed all of the Equipment and that the Equipment is operating properly, all in accordance with this Section; and (3) Department has inspected and accepted said installation and operation as evidenced by executing and delivering to QESP the **Exhibit A1 Certificate of Acceptance of All Installed Equipment**.

Department shall have days after receiving the installation notification by the QESP to inspect the Equipment. If Department does not reject any of the Equipment, then they shall execute and forward the **Certificate of Acceptance of All Installed Equipment** to the QESP within seven (7) calendar days after concluding the inspection. Department may reject some or all of the Equipment if either the Equipment or its installation fails to meet reasonably accepted standards of workmanship, does not comply with applicable building codes, or is otherwise not in compliance with the Contract or this SOW. Department shall not deliver to QESP the **Certificate of Acceptance of All Installed Equipment** and QESP shall not be paid in full, including retainage, until after any punch list is completed and QESP has satisfied any and all claims for labor and materials, including, but not limited to, providing Lien waiver certificates. The **Certificate of Acceptance of All Installed Equipment** will not be unreasonably withheld by the Department.

Compensation payments due to QESP for on-going Services and maintenance under this SOW as set forth in **Schedule J (Compensation to QESP for Annual Services)** shall begin no earlier than from the Commencement Date.

Section 2.3. Term of SOW; Interim Period

The term of this SOW, including all extensions, shall end on _____, which date shall not exceed 20 years measured beginning from the Commencement Date. The SOW shall be

effective and binding upon the parties upon its execution by the parties. All energy savings achieved during the Interim Period shall be fully credited to Department.

ARTICLE 3. ENERGY COST SAVINGS GUARANTEE; ANNUAL RECONCILIATION; PAYMENTS TO QESP

Section 3.1. Rebates and Incentives

As specified in Schedule K, QESP shall identify and describe dollar amounts for any eligible rebate and incentive funds from the CT Energy Efficiency Fund, CT Clean Energy Finance and Investment Authority, and other incentive and grant programs, to reduce overall project costs.

Section 3.2. Energy Cost Savings Guarantee

Subject to the adjustments provided for in **ARTICLE 15 (Material Changes)**, QESP guarantees that the annual level of Energy Cost Savings shall be in accordance with the measurement and verification of the Energy-Savings Measures as set forth in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements)**. The Energy Cost Savings Guarantee is set forth in annual increments for the term of the SOW as specified in **Schedule A (Energy Cost Savings Guarantee)** and QESP guarantees that it is sufficient to cover any and all annual payments required to be made by the Department as set forth in **Schedule J (Compensation to QESP for Annual Services)** and **Schedule I (Financing Agreement and Payment Schedule)**.

Section 3.3. Annual Review and Reimbursement/Reconciliation

QESP shall measure and calculate Energy Cost Savings as specified in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting)** and **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)** and shall prepare and deliver to Department an annual reconciliation report no later than forty-five (45) days following each (1) twelve-month anniversary of the Commencement Date, or (2) the date that QESP shall have received the last of the energy usage records and data referenced in Articles 3 and 5 of this SOW, whichever is later, for the entire term of this SOW, including the final report due on or before [REDACTED].

If the reconciliation reveals a shortfall in annual Energy Cost Savings in any one year during the guarantee period, QESP shall make payment to the Department in the amount of the shortfall no later than [REDACTED] days after the Department receives the reconciliation report. If the reconciliation reveals an excess in annual Energy Cost Savings, the excess savings shall remain with the Department, and shall not be used to cover potential Energy Cost Savings shortages in subsequent years or actual Energy Cost Savings shortages in previous years.

Section 3.4. QESP Compensation and Fees

QESP has structured the Energy Cost Savings Guarantee referred to in 3.1 above such that it will be at least equal to any and all annual payments, combined, required to be made by the Department in connection with **Schedule I (Financing Agreement and Payment Schedule)**

Schedule J (Compensation to QESP) and Schedule BB (QESP's Maintenance Responsibilities).

Section 3.5. Billing Information Procedure

Payments due to QESP under this Section 3 shall be calculated each year in the following manner:

- (i) By the [REDACTED] day after receipt, Department shall provide QESP with copies of all energy bills for the Project Site(s) which it shall have received for the preceding month;
- (ii) Upon receipt of the required information, QESP shall calculate the savings in accordance with the agreed-upon calculation formulae in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Reporting Requirements)**.
- (iii) Based upon paragraphs (i) and (ii) above, QESP shall prepare and send to Department an annual invoice which shall set forth for each year the amounts of the Energy Cost Savings calculated in accordance with **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Report Requirements)** and for the services as provided for in **Schedule J (Compensation to QESP for Annual Services)**. The invoice will set forth the total annual payment due from Department.

Section 3.6. Effective Date of Payment Obligation

Notwithstanding the above provisions in Section 3, Department shall not be required to begin any payments to QESP under this SOW unless and until all Equipment installation is completed by QESP in accordance with the provisions of **Article 8 (Construction and Equipment Installation; Approval)** and **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**, and accepted by Department as evidenced by the signed Certificate of Acceptance as set forth in **Exhibit A1 (Certificate of Acceptance of All Installed Equipment)**, and unless and until said Equipment is fully and properly functioning.

Section 3.7. Pricing Transparency

The QESP shall fully disclose all costs of the Work purchased and subcontracted and a list of hourly rates and position descriptions for labor or services. Deviations from budgeted hours shall require prior written approval by the Department or shall not be paid. QESP will maintain cost accounting records on authorized Work performed under actual costs for labor and material, or other basis requiring accounting records. QESP will afford Department access to these records and preserve them for a period of three (3) years after final payment. Costs will be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices. The pricing methodology and individual cost markups disclosed during preliminary SOW negotiations will be expected to be applied, providing the scope and size of the project remain the same as assumed when markups were disclosed.

ARTICLE 4. NON-APPROPRIATION OF FUNDS

In accordance with the Act, the work in the SOW and corresponding payments may extend beyond the Department's fiscal year in which the SOW became effective, but subject to appropriation of moneys for costs incurred in future fiscal years. In the event insufficient funds are appropriated and budgeted, or no Department or other funds are appropriated and budgeted, in any fiscal period for which payments are due QESP under this SOW, then the Department will, not less than [REDACTED] days after it is notified of the unavailability of appropriated and budgeted funds, in writing, notify the QESP of such occurrence. Based on such notice, this SOW shall terminate on the last day of the fiscal period for which appropriations were made without penalty or expense to the Department of any kind whatsoever, except as to the portions of payments for which funds shall have been appropriated and budgeted or are otherwise available.

DESIGN AND CONSTRUCTION PHASE

ARTICLE 5. ENERGY USAGE RECORDS AND DATA

Department has furnished and shall continue to furnish (or authorize its energy suppliers to furnish) during the term of this SOW to QESP or its designee, upon its request, all of its records and complete data concerning energy and water usage and related maintenance for the Project Site(s).

ARTICLE 6. LOCATION AND ACCESS

QESP represents and warrants that there exists sufficient space on the Project Site(s) for the installation and operation of the Equipment for the entire useful life of the Equipment. Department shall take reasonable steps to protect such Equipment from harm, theft and misuse during the term of this SOW. Department shall provide access to the Project Site(s) for QESP to perform any function related to this SOW during regular business hours, or such other reasonable hours as may be requested by QESP and acceptable to the Department. QESP shall be granted access to make emergency repairs or corrections as it may, in its discretion, determine are needed. The QESP's access to Project Site(s) to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by the Department. QESP shall immediately notify the Department when emergency action is taken and follow up with written notice within three (3) business days specifying the action taken, the reasons for the action, and the impact upon the Project Site(s), if any.

ARTICLE 7. PERMITS AND APPROVALS; COORDINATION

Section 7.1. Permits and Approvals

The QESP shall be responsible for developing all required documentation and obtaining all necessary permits and approvals for the Work and installation of the Equipment. The Equipment and the operation of the Equipment by QESP shall at all times comply with all federal, state and local code requirements. Furthermore, all Work shall comply with the Connecticut State

Building Code. The QESP shall be responsible for providing all drawings and documentation necessary to demonstrate compliance. The QESP shall coordinate all required inspections with the authority having jurisdiction.

QESP shall furnish copies of any permit or license which is required to perform the Work to the Department before the QESP commences the portion of the Work requiring such permit or license. In no event shall Department be responsible for payment of any permit or similar fees.

Section 7.2. Coordination During Installation

The Department and QESP shall coordinate the activities of QESP's Equipment installers with those of the Department, its employees, and agents. QESP shall cooperate with Department when performing Work to minimize conflicts and facilitate usage of Project Site(s). QESP shall not commit or permit any act which will interfere with the performance of business activities conducted by the Department or its employees without prior written approval of the Department.

In addition, QESP shall provide adequate building and fire code egress from the Project Site(s) while performing the Work and, if required, shall be responsible for preparing egress plans for Department and State Fire Marshal approval.

ARTICLE 8. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL

Section 8.1. Construction Schedule; Equipment Installation

Construction and Equipment installation shall proceed in accordance with the construction schedule approved by Department and attached as **Schedule S (Construction and Equipment Installation Schedule)**.

Section 8.2. Systems Startup and Equipment Commissioning

The QESP shall conduct thorough and systematic performance tests of each element and total system of the installed Equipment in accordance with the procedures specified in **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)** prior to delivering to the Department the installation notification indicating that the Equipment is ready for inspection by the Department. Testing shall be designed to determine if the Equipment is functioning in accordance with both its published specifications and the Schedules to this SOW, and to determine if modified building systems, subsystems or components are functioning properly within the new integrated environment. The QESP shall provide sufficient notice to the Department and any third-party technical support entity, as requested by DEEP or the Department, of the scheduled test(s). The Department shall have the right to be present, and to invite any third party to be present, at any or all such tests conducted by QESP and/or manufacturers of the Equipment. The QESP shall correct and/or adjust all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures as specified in **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**. Prior to Department executing the **Exhibit A1,**

Certificate of Acceptance of All Installed Equipment, QESP shall provide Department with documentary evidence that the Equipment installed is the Equipment specified in **Schedule R (Equipment to be Installed by QESP)**.

ARTICLE 9. EQUIPMENT WARRANTIES

QESP represents and warrants that all Equipment installed as part of this SOW shall be new, materially free from defects in materials or workmanship, installed properly in a good and workmanlike manner, and shall function properly for a period of one (1) year from the date of the Notice of Substantial Completion of ESM if operated and maintained in accordance with the procedures established for the Project Site(s).

After the warranty period, QESP shall have no responsibility for performing maintenance, repairs, or making manufacturer warranty claims relating to the Equipment, except as provided in **Schedule BB (QESP's Maintenance Responsibilities)**.

QESP shall cause all available manufacturers' warranties relating to the Equipment to be issued in the name of and delivered to Department. No later than two (2) business days after the Department delivers the Notice of Substantial Completion of ESM to the QESP, the QESP shall deliver the warranties applicable to the subject Equipment to the Department, At the Department's request, the QESP shall act as the Department's agent and representative to pursue on the Department's behalf any available rights and remedies which the Department may have against the manufacturers under the warranties. QESP shall, during the warranty period, notify the Department whenever defects in Equipment parts or performance occur which may give rise to such rights and remedies. During this period, if the QESP fails to notify the Department of Equipment defects or any warranty issues, QESP shall bear the full cost and expenses of any risk of damage or damage to the Equipment and its performance, including damage to property and Equipment of the Department or the Project Site(s).

The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction.

Notwithstanding the above, nothing in this section shall be construed to alleviate/relieve the QESP from complying with its obligations to perform under all terms and conditions of this SOW and as set forth in all attached Schedules.

ARTICLE 10. STANDARDS OF COMFORT

QESP will maintain and operate the Equipment in a manner which will provide the standards of heating, cooling, ventilation, hot water supply, and lighting quality and levels as described in **Schedule U (Standards of Comfort)**. During the term of this SOW, QESP and Department will maintain, respectively according to **Schedule BB (QESP's Maintenance Responsibilities)** and **Schedule CC (Department's Maintenance Responsibilities)**, and operate the Equipment in a manner that will provide the standards of comfort and levels of operation as described in **Schedule U (Standards of Comfort)**.

ARTICLE 11: ENVIRONMENTAL REQUIREMENTS

Section 11.1. Excluded Material and Activities

Department recognizes that in connection with the installation and/or service or maintenance of Equipment at a Project Site(s), QESP may encounter (i) asbestos or materials containing asbestos, (ii) fungus (any type of form of fungi, including mold or mildew, and myotoxins, spores, scents or by-products produced or released by fungi), (iii) incomplete or damaged work or systems or code violations that may be discovered during or prior to the Work of this SOW, or (iv) pollutants, hazardous wastes, hazardous materials or other contaminants regulated by the Environmental Laws (collectively “Hazardous Materials”). If QESP discovers Hazardous Materials, QESP shall immediately cease Work, remove all QESP personnel and Contractor Parties from the Project Site(s), and notify the Department. QESP shall undertake no further Work on the Project Site(s), except as authorized by the Department in writing, as the Department will perform or arrange for the performance of any remediation of Hazardous Materials. Notwithstanding any other provision in this SOW, any such event of discovery or remediation by the Department shall not constitute a Material Breach or Other Breach by the Department. If Department notifies QESP to cease Work pursuant to this Section, then the time for completion of Work will be automatically extended by the amount of time of the Work stoppage. The parties shall negotiate in good faith any increased costs associated with the Work stoppage and shall modify all appropriate exhibits and schedules accordingly.

QESP shall be responsible in all respects for any Hazardous Materials and any other materials regulated by the Environmental Laws, including, without limitation, those listed in this section that it may bring to the Project Site(s). This responsibility includes, but is not limited to, storage, handling, use, transportation, treatment, disposal, discharge, leakage, detection, removal, containment, remediation and all costs and expenses associated with such.

Section 11.2. Polychlorinated Biphenyl (PCB) Ballasts; Mercury Lamps

QESP shall enter into an agreement with a waste transporter that is permitted by DEEP to transport PCB ballasts. The agreement between QESP and the transporter shall require that the transporter (1) transport and dispose of the PCB Ballasts in accordance with all applicable Environmental Laws, (2) provide an informational packet, packing receptacles and instructions, labels and shipping materials, (3) provide transportation, and incineration or disposal services for PCB ballasts, (4) remove all capacitors and asphalt potting compound materials from Department’s PCB ballasts, (5) incinerate or dispose of them at a federally-approved facility, (6) provide to Department a Certificate of destruction issued by the federally-approved disposal facility and (7) comply with all applicable Environmental Laws.

QESP shall enter into an agreement with an authorized lamp recycling company, pursuant to which the recycling company shall provide all necessary or appropriate goods and services, including but not limited to, approved containers, materials required to label, transportation and recycling, for all manner of handling of mercury lamps and their removal from the Project Site(s), all in accordance with the Environmental Laws. The QESP shall verify and ensure that the lamp recycling company Performs the work or Work only pursuant to and during the term of

a validly existing agreement with the QESP. The agreement shall require the recycling company to provide a copy of the required manifest or other shipping documents to QESP and to forward a copy to the Department. The QESP shall verify and ensure that the lamp recycling company maintains current, throughout the term of that agreement, all appropriate permits from all applicable jurisdictions to Perform any such work or Work.

To the extent required by the Environmental Laws, the Department shall sign manifests for all PCB ballasts and manifests or other shipping documents for mercury lamps removed from the Project Site(s).

ARTICLE 12. TRAINING BY QESP

The QESP shall conduct the training program described in **Schedule V (QESP's Training Responsibilities)**. The Department shall not commence the inspection of the Equipment in preparation for executing the Certificate of Acceptance of All Installed Equipment until QESP completes the training specified in **Schedule V (QESP's Training Responsibilities)**. The QESP shall provide ongoing training whenever needed or appropriate with respect to updated or altered Equipment, including upgraded software. QESP shall provide the training at no charge to the Department and this training shall have no effect on the prior Certificate of Acceptance of All Installed Equipment.

POST-CONSTRUCTION PHASE

ARTICLE 13. EQUIPMENT SERVICE

Section 13.1. Actions by QESP

QESP shall provide all service, repairs, and adjustments to the Equipment installed under terms of this SOW pursuant to **Schedule BB (QESP's Maintenance Responsibilities)**. Department shall have no responsibility for any costs or expenses for Equipment service, repairs, and adjustments, except as set forth in **Schedule J (Compensation to QESP for Annual Services)**, provided, however, that when the need for maintenance or repairs principally arises due to damage caused by the Department or any employee or other agent of Department, and QESP can demonstrate a causal connection between the damage and the Department actions, QESP may charge Department for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

Section 13.2. Malfunctions and Emergencies

Department shall use its best efforts to notify the QESP or its designated sub-contractors within 24 hours after the Department's actual knowledge and occurrence of: (i) any malfunction, alteration or modification in the operation of the Equipment or any preexisting energy related equipment that has a material impact upon the Energy Cost Savings Guarantee or (ii) any interruption or alteration to the energy supply to the Project Site(s).

Where Department exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration, it shall be deemed to be not at fault in failing to correctly identify such conditions as having a material impact upon the Energy Cost Savings Guarantee. Department shall notify QESP within twenty-four (24) hours upon its having actual knowledge of any such condition affecting the Equipment. QESP shall respond or cause its designee(s) to respond within [REDACTED] hours and shall proceed immediately with corrective measures. Any telephonic notice of such conditions by Department shall be followed within three business days by written notice to QESP from Department. If Department unreasonably delays in so notifying QESP of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, QESP may charge Department for its loss, due to the delay, associated with the Energy Cost Savings Guarantee under this SOW for the particular time period, provided that QESP is able to show the direct causal connection between the delay and the loss.

The QESP will provide a written record of all Service performed. This record will indicate the reason for the service, description of the problem and the corrective action performed.

Section 13.3. Actions by Department

Department shall not move, remove, modify, alter, or change in any way any part of or all of the Equipment without the prior written approval of QESP except as set forth in **Schedule CC (Department's Maintenance Responsibilities)**. Notwithstanding the foregoing, Department may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify QESP before taking any such actions. In the event of such an emergency, Department shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency action provided in advance by QESP. Department agrees to maintain the Project Site(s) in good repair and to protect and preserve all portions which may in any way affect the operation or maintenance of the Equipment.

ARTICLE 14. MODIFICATION, UPGRADE OR ALTERATION OF THE EQUIPMENT

Section 14.1. Modification or Other Handling of Equipment

During the term of this SOW, Department shall not move, remove, modify, alter, or change in any way any part of or all of the Equipment without the prior written approval of QESP except as set forth in **Schedule CC (Department's Maintenance Responsibilities)**.

Section 14.2. Upgrade or Alteration of Equipment

QESP shall at all times have the right, subject to Department's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other ESMs in the Project Site(s), provided that: (i) the QESP complies with the standards of comfort and services set forth in **Schedule U (Standards of Comfort)**; (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the QESP to achieve the Energy Cost Savings Guarantee at the Project Site(s) and; (iii) any cost incurred

relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the QESP.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental schedule(s) to be provided to the Department for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall, unless otherwise agreed, be new Equipment and have equal or better potential to reduce energy consumption at the Project Site(s) than the Equipment being replaced. The QESP shall have the right to update any and all software to be used in connection with the Equipment in accordance with the provisions of **Section 17.1 (Ownership of Certain Proprietary Rights)** and **Schedule BB (QESP's Maintenance Responsibilities)**. All replacements of and alterations or additions to the Equipment shall become part the Equipment described in **Schedule R (Equipment to be Installed by QESP)** and shall be covered by the provisions and terms of **Article 8 (Construction Schedule and Equipment Installation; Approval)**.

ARTICLE 15. MATERIAL CHANGES

Section 15.1. Reported Material Changes; Notice by Department

The Department shall use its best efforts to deliver to the QESP a written notice describing all proposed Material Changes in the Project Site(s) or in the operations of the Project Site(s) at least days before any proposed Material Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the QESP of Material Changes which result from a bona fide emergency or other situation which precludes advance notification shall be deemed to be sufficient notice under this section if given by the Department within hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Department to have occurred.

Section 15.2. Other Adjustments

Both parties have a vested interest in meeting the Energy Cost Savings Guarantee of the SOW. As such, at the request of the Department the QESP shall cooperate as necessary or appropriate to investigate, identify and correct any changes that prevent the Energy Cost Savings Guarantee from being realized. As a result of such investigation, QESP and Department shall determine what, if any, adjustments to the baseline will be made in accordance with the provisions set forth in **Schedule C (Savings Measurement and Verification Plan; Post-Retrofit M&V Plan; Annual M&V Report Requirements)** and **Schedule B (Baseline Energy Consumption; Methodology to Adjust Baseline)**.

ARTICLE 16. PERFORMANCE BY QESP

Section 16.1. Corrective Action; Accuracy of the Services

QESP shall perform all Work in such a manner so as not to damage the structural integrity of the Project Site(s) or their operating systems and so as to conform to the standards set forth in

Schedule U (Standards of Comfort) and the construction schedule specified in **Schedule S (Construction and Installation Schedule)**. QESP shall repair and restore to its original condition any area which it damages or otherwise disturbs in the course of performing Work under this SOW. The Department reserves the right to review the Work performed by QESP as the Work progresses and to direct QESP to take certain corrective action if, in the opinion of the Department, the structural integrity of the Project Site(s) or its operating system is or will be damaged. All costs associated with such corrective action to damage caused by QESP's performance of the Work shall be borne by QESP.

QESP shall remain responsible for the professional and technical accuracy of all services performed, whether by the QESP or its subcontractors or others on its behalf, throughout the term of this SOW.

Section 16.2. Annual Reporting Requirements; Annual ENERGY STAR Rating

At the end of each year, as defined in **Schedule A (Energy Cost Savings Guarantee)**, during the guarantee period and no later than ninety (90) days thereafter, the QESP shall complete and submit the data required in **Schedule C (C.4 Annual M&V Reporting Requirements)**.

ADMINISTRATION

ARTICLE 17. OWNERSHIP OF CERTAIN PROPRIETARY RIGHTS; EXISTING EQUIPMENT

Section 17.1. Ownership of Certain Proprietary Property Rights

Department shall not, by virtue of this SOW, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. The QESP shall either grant to the Department or cause the Department to be granted, as applicable, a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Department to continue to operate, maintain, and repair the Equipment in a manner that will yield Energy Cost Savings Guarantee for the specified SOW term. QESP shall not be liable for providing new versions of software or other enhancements if or unless such new versions or enhancements are necessary to achieve the Energy Cost Savings Guarantee.

Section 17.2. Ownership and Removal of Existing Goods

The Department holds all Title to the Goods located at the Project Site(s) at the time of execution of this SOW. The Department shall retain Title to the Goods even if the Goods are replaced or their operation made unnecessary by Work pursuant to this SOW. If applicable, QESP shall advise the Department in writing of all Goods to be replaced at the Project Site(s) and the Department shall, within [REDACTED] days, designate in writing to the QESP which Goods the Department agrees are to be replaced and which the QESP shall remove to a location which the

Department selects. The Department shall be responsible for and designate the storage site for any Goods that shall remain on the Project Site(s).

ARTICLE 18. MATERIAL BREACH

Section 18.1. Events of Material Breach by Department

Any failure by Department to pay QESP any sum due and owing for more than [redacted] days after written notification by QESP that Department is delinquent in making payment, shall constitute a Material Breach, provided that QESP is not itself in default in its performance under the terms of this SOW.

Section 18.2. Events of Material Breach by QESP

Each of the following events or conditions shall constitute a Material Breach of the Contract by QESP:

- (i) the standards of comfort and service set forth in **Schedule U (Standards of Comfort)** are not met due to failure of QESP to properly design, install, maintain, repair or adjust the Equipment, except that such failure, if corrected or cured within [redacted] days after written notice by Department to QESP demanding that such failure be cured, shall be deemed to be cured for purposes of this SOW;
- (ii) failure to furnish and install the Equipment and make it ready for use within the time specified by this SOW as set forth in **Schedule R (Equipment to be Installed by QESP)** and **Schedule S (Construction and Installation Schedule)**; and
- (iii) failure by the QESP to pay any amount due the Department as set forth in **Schedule A (Energy Cost Savings Guarantee)**.

ARTICLE 19. ASSIGNMENT

The QESP acknowledges that the Department is induced to enter into this SOW by, among other things, the professional qualifications of the QESP. Accordingly, no part of this SOW or any rights or obligations which it may create may be assigned in whole or in part to any other person or entity, without the prior written approval of the Department. If QESP makes an unapproved assignment, then the Department, at its sole option, may unilaterally deem that purported assignment to be, and it shall be, void and unenforceable *ab initio* without regard to Department's acts or course of conduct after becoming aware of the QESP's purported assignment, and declare the QESP to be in Material Breach.

Section 19.1. Assignment by QESP

If Department consents to an assignment, the consent shall be on the express condition precedent that the assignee agree to be bound to all of the terms and conditions of the Contract and this SOW. Accordingly, the assignment shall provide that upon the assignment and assumption, the

assignee shall be (a) vested with the rights and privileges previously belonging to the QESP; (b) bound by all of the duties and obligations of the QESP; and (c) responsible for any and all Claims arising out of the Contract and SOW as if the assignee had executed and delivered the Contract and had been the QESP from the effective date of the Contract. Further, the assignment shall also include a provision prohibiting the assignee from further assigning, or sub-subcontracting, any of its obligations without the prior written consent of the QESP, which the QESP shall not grant without the prior written approval of the Department.

Section 19.2. Assignment by Department

Department may transfer or assign all or part of the Project Site(s) to another party. Upon and after such a transfer or assignment all obligations and liabilities of the Department shall terminate and such obligations and liabilities shall be the responsibility of the transferee or assignee to the extent of the Project Site(s) being transferred or assigned, except such as may have arisen from a breach by Department of any terms, covenants or conditions of the Contract during the period that the Department was the owner of and in possession of the Project Site(s).

ARTICLE 20. ADDITIONAL REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Section 20.1. Department Warranty

Department represents and warrants that:

- (i) it has provided or shall provide timely to QESP, all records relating to energy usage and energy-related maintenance of Project Site(s) requested by QESP; and
- (ii) it has not entered into any other agreement or SOWs with other persons or entities concerning ESMS or the provision of energy management or Equipment maintenance services for the Project Site(s). Department shall provide QESP with copies of any successor or additional leases of energy efficiency equipment or contracts for management or servicing of preexisting equipment at Project Site(s), which may be executed from time to time within days after their execution.

Section 20.2. QESP Warranty

QESP represents and warrants that:

- (i) it shall ensure that any subcontractors that it uses shall be qualified subcontractors who are licensed and bonded in the State of Connecticut to perform the Work subcontracted to them under this SOW;
- (ii) the Equipment will meet or exceed the provisions set forth in **Section 8.2 (Systems Start Up and Equipment Commissioning)** and in **Schedule T (Systems Start-Up and Commissioning; Operating Parameters of Installed Equipment)**; and

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- (iii) the Equipment is or will be compatible with all mechanical and electrical systems, subsystems, or components with which the Equipment interacts, and that, as installed, neither the Equipment nor such other systems, subsystems, or components will materially adversely affect each other as a direct or indirect result of Equipment installation, operation or maintenance.

ARTICLE 21. MICELLANEOUS DOCUMENTATION PROVISIONS

Section 21.1. Waiver of Liens, Construction Performance and Payment Bonds, Labor and Material Payment Bonds

The QESP shall not begin any Performance until the QESP shall have delivered to the Department such performance and labor and material bonds as the Department may require.

Section 21.2 Department's Responsibilities

(a) Department's Maintenance Responsibilities

Department agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth in **Schedule CC (Department's Maintenance Responsibilities)** after Department delivers to the QESP a Notice of Substantial Completion of ESM.

(b) Inspection of Project Site(s)

QESP shall have the right once a month, with prior notice, to inspect Project Site(s) to determine if Department is complying, and shall have complied with its obligations as set forth in this **Section**. For the purpose of determining Department's compliance, the checklist set forth in **Schedule DD (Facility Maintenance Checklist)**, shall be used to measure and record determination of Department's said compliance. Department shall make the Project Site(s) available to QESP for and during each monthly inspection, and shall have the right to witness each inspection alongside QESP and QESP's recordation on the checklist. Department may complete its own checklist at the same time. QESP shall not interfere with the Department's operations during any monthly inspection.

Section 21.3. Liens and Waiver of Liens

- (i) If any part of the Work shall become subject to any vendor's, mechanic's, laborer's, materialman's or other lien or encumbrance (collectively, "Liens") based upon the delivery of the Work, the QESP shall cause any or all of the Liens to be discharged of record at its sole cost and expense prior to the Commencement Date or, if not of record at that time, then within one hundred twenty (120) calendar days after it receives notice of the Liens.
- (ii) Lien waiver certificates, in a form and substance satisfactory to the Department, shall be submitted by the QESP with all payment requests certifying that the Work is free and

clear of all Liens and any other encumbrance for any part of the Work completed. QESP shall also provide Lien waivers at the time of the Commencement Date in a form and substance satisfactory to the Department that, upon completion and acceptance of the Work, the Work is free and clear of all Liens. If any person or entity refuses to furnish a release or waiver, the QESP shall, at the request of the Department, furnish a bond satisfactory to the Department to indemnify the Department against any potential Lien. If a Lien remains unsatisfied after payments are made, then the QESP shall refund to the Department all moneys that they may be compelled to pay in discharging the Lien, including all costs and reasonable attorney's fees, no later than thirty (30) days after receiving a written refund request from the Department. The Department may withhold amounts due to the QESP as it deems to be necessary or appropriate to protect the Department against any losses arising out of the outstanding Liens or claims of former Lien holders and to reimburse the Department for any costs and expenses incurred in the satisfaction and discharge of the Liens and, in required, the procuring of similar Work.

- (iii) Notwithstanding the provisions of this Liens and Waiver of Liens Section, a Municipality may execute and deliver financing documents and instruments in connection with a Municipality's SOW that allow the filing of Liens for purposes of securing the interests of the financing institution involved in that Municipal transaction. If so, then this Section shall be read and interpreted to allow the filing of Liens in accordance with the provisions of the financing-related documents and instruments, but only as applicable to and for purposes of the Municipality's SOW.

ARTICLE 22. TERMINATION

- (i) Notwithstanding any provisions in this SOW, the Department, through a duly authorized employee, may Terminate the SOW whenever the Department makes a written determination that such Termination is in the best interests of the Department. The Department shall notify the Contractor in writing of Termination pursuant to this Article, which notice shall specify the effective date of Termination and the extent to which the Contractor must complete its Performance prior to such date.
- (ii) Notwithstanding any provisions in this SOW, the Department, through a duly authorized employee, may Terminate the SOW for a Material Breach, but only after making a written determination that the Contractor is in Material Breach under the Material Breach Article of this SOW.
- (iii) The Department shall send the notice of Termination via certified mail, return receipt requested, to the Contractor at the most current address which the Contractor has furnished to the Department for purposes of correspondence, or by hand delivery. Upon receiving the notice from the Department, the Contractor shall immediately discontinue all services affected in accordance with the notice, undertake all commercially reasonable efforts to mitigate any losses or damages, and deliver to the appropriate Department all Records. The Records are deemed to be the property of the Department and the Contractor shall deliver them to the Department no later than thirty (30) days after the Termination of the SOW or fifteen (15) days after the Contractor receives a written request from the Department for the Records. The Contractor shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or .TXT.

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- (iv) Upon receipt of a written notice of Termination from the Department, the Contractor shall cease operations as the Department directs in the notice, and take all actions that are necessary or appropriate, or that the Department may reasonably direct, for the protection, and preservation of the Equipment and any other property. Except for any work which the Department directs the Contractor to Perform in the notice prior to the effective date of Termination, and except as otherwise provided in the notice, the Contractor shall terminate or conclude all existing subcontracts and purchase orders and shall not enter into any further subcontracts, purchase orders or commitments.
 - (v) The Department shall, within forty-five (45) days of the effective date of Termination, and if appropriate in accordance with Exhibit D, Cost and Pricing, reimburse the Contractor for its Performance to the extent rendered and accepted by the Department and that is appropriate in accordance with the applicable Final Exhibits. However, the Contractor is not entitled to receive and the Department is not obligated to tender to the Contractor any payments for anticipated or lost profits or for any anticipated Performance. Upon request by the Department, the Contractor shall assign to the Department, or any replacement contractor which the Department designates, all subcontracts, purchase orders and other commitments, deliver to the Department all Records and other information pertaining to its Performance, and remove from Department premises, whether leased or owned, all of Contractor's property, equipment, waste material and rubbish related to its Performance, all as the Department may request.
 - (vi) Upon Termination of the SOW, all rights and obligations shall be null and void, so that no party shall have any further rights or obligations to any other party, except with respect to the sections which may survive Termination. All representations, warranties, agreements and rights of the parties under the SOW shall survive such Termination to the extent not otherwise limited in the Contract or SOW and without each one of them having to be specifically mentioned in the Contract or SOW.
 - (vii) Termination of the SOW pursuant to this Article shall not be deemed to be a breach of contract by the Department.

ARTICLE 23. COMPLETE SOW

This SOW, when executed, together with all Schedules attached or to be attached, as provided for by this SOW shall constitute the entire SOW between both parties and this SOW may not be amended, modified, or terminated except in writing and signed by the parties.

The parties are signing this SOW Final Exhibit A, which is and shall remain subject to the Contract, on the date below their respective signatures.

[QESP NAME]

[DEPARTMENT NAME]

By: _____

By: _____

Print Name

Print Name

Title: _____

Title: _____

Date: _____

Date: _____