

**ITEM #6**

**ADDITIONAL MATERIAL**

**Regular Meeting**

**JUNE 11, 2019**

**SUBMITTED AT THE REQUEST OF**

**PUBLIC WORKS DEPARTMENT**

**TERM SHEET FOR AGREEMENT BETWEEN  
BROWARD COUNTY AND ENGIE SERVICES U.S. INC.,  
F/K/A OPTERRA ENERGY SERVICES, INC., FOR ENERGY AUDIT AND  
PERFORMANCE CONSULTANT SERVICES PART TWO - ENERGY  
SAVINGS PERFORMANCE AGREEMENT  
RFP NO. R1243101P1 (“Agreement”)**

**1. Parties:**

- Broward County (“County”), a political subdivision of the State of Florida.
- ENGIE Services U.S. Inc., f/k/a OpTerra Energy Services, Inc. (“Consultant”), a Delaware corporation.
- County and Consultant are collectively referred to herein as the “Parties.”

**2. Background/Recitals:**

- On or about June 10, 2014, County’s Board of County Commissioners approved Request for Proposals No. R1243101P1 (the “RFP”), which sought qualified firms to submit proposals for conducting an investment grade technical energy audit of selected County facilities for application of energy conservation measures (“ECMs”) and thereafter install selected ECMs based on the results of said audit in accordance with Section 489.145, Florida Statutes.
- The RFP contemplated two phases of work. The first phase (“Phase 1”) was to consist of the selected consultant conducting the investment grade technical energy audit of the facilities under consideration for the application of ECMs and alternative energy sources. The second phase (“Phase 2”) was to consist of the development and implementation of a guaranteed energy performance savings agreement based upon the findings of the Phase 1 energy audit.
- County ultimately decided to accept two proposals that were submitted in response to the RFP: one from Consultant and one from Siemens Industry, Inc (“Siemens”).
- On or about May 23, 2017, County entered into agreements with both Consultant and Siemens for audit and performance consultant services for the County’s Facilities Management Division, relating only to the above-referenced Phase 1 services.
- Pursuant to its agreement for Phase 1 services, Consultant has provided County with an investment grade audit report (the “Energy Audit Report”), which County will have approved prior to entering into the Agreement. County owns and operates properties and buildings (“Project Sites”), which the Energy Audit Report finds would benefit from certain “[e]nergy, water, and wastewater efficiency and conservation measures” (as defined in Section 489.145(3)(b), Florida Statutes) and/or other services designed to save energy. The Energy Audit Report describes the cost associated with certain ECMs at identified Project Sites, and provides an estimate of the amount of energy cost savings which would result therefrom.

- Consultant has represented to County that it has developed and has knowledge regarding certain procedures for controlling energy and water consumption and reducing operating costs through services it has provided and equipment it has installed and maintained at project sites similar in scope and scale to the Project Sites.
- Based on the recommendations in the Energy Audit Report and in reliance on ENGIE's representations, County finds that the amount it would spend on the ECMs undertaken pursuant to the Agreement will not exceed the amount of the energy cost savings for sixteen (16) years from the date of installation, based on the life cycle cost calculation provided in Section 255.255, Florida Statutes.
- County wishes to contract with Consultant to implement the ECMs described in the Agreement and to provide for other services and strategies outlined in the Agreement for the purpose of achieving energy, water, and operating cost reductions within the Project Sites, to be more fully described in the Agreement ("the Project"), and Consultant agrees to undertake same and provide a written guarantee that "[e]nergy, water, or wastewater cost savings" (as defined in Section 489.145(3)(c), Florida Statutes) will meet or exceed the costs of the selected ECMs (the "Guarantee").
- Consultant was selected in compliance with Section 489.145(4)(d), Florida Statutes, to conduct the energy use audit of the Project Sites.
- County has complied with the requirement for publication of notice in Section 489.145(4)(e), Florida Statutes.
- Consultant represents that it is a "[g]uaranteed energy, water, and wastewater performance savings contractor" (as defined in Section 489.145(3)(e), Florida Statutes).

### **3. Term of Agreement:**

- The Agreement will be effective upon its execution by the Parties ("Agreement Execution"); however, the term of the Agreement (the "Term") will begin when the Guarantee goes into effect (the "Guarantee Period Start Date"), with such date to be specified in the Agreement, and will expire at the end of each County fiscal year, and shall be automatically renewed (without further action required of County or Consultant) annually up to a term of sixteen (16) years, subject to County's continued realized energy and cost savings from the Project and the County's right to cancel annual measurement and verification services as set forth below in Section 5. The period from Agreement Execution until the Guarantee Period Start Date shall be known as the "Construction Period."
- Consultant shall perform the services relating to implementation of ECMs within time periods specified in a project schedule to be mutually agreed upon by County and Consultant, with such time period to commence from the date of a Notice to Proceed for such services, as further described below.
- Consultant shall be instructed to commence its work by written instruction in the form of a Purchase Order issued by the County's Director of Purchasing and two or more Notices to Proceed issued by the Contract Administrator. The first Notice to Proceed and Purchase Order will not be issued until Consultant's submission to County of all required documents

and after execution of the Agreement by the Parties. Preliminary work, including submission of a project schedule, schedule of values, submittals, submittal schedule, and other documents required for permitting, and performance of work that does not require permits, shall be commenced within ten (10) calendar days after the date of the first Notice to Proceed. Consultant shall have ten (10) days after approval by County of signed and sealed contract drawings to apply for construction permits to the applicable permitting authority. Issuance of all permits by the permitting authority shall be a condition precedent to the issuance of a second Notice to Proceed for all other work. Except for the reimbursement of permit application fees as may be provided in the Contract Documents, Consultant shall not be entitled to compensation of any kind during the permitting process. The work to be performed pursuant to the second Notice to Proceed shall be commenced within ten (10) calendar days of the Project Initiation Date specified in the second Notice to Proceed.

- Time is of the essence throughout the Agreement. Consultant must obtain Substantial Completion of the work within three hundred and sixty-five (365) calendar days from the Project Initiation Date specified in the second Notice to Proceed, and Final Completion within ninety (90) calendar days from the date of Substantial Completion. Consultant's annual Measurement and Verification responsibilities (as set forth in Section 4 of this Term Sheet) shall continue beyond the Final Completion date throughout the Term of the Agreement as set forth herein.

**4. Services:**

- Consultant's Scope of Services under the Agreement shall consist of all design and construction services relating to the Project. Consultant's responsibilities shall include civil, structural, mechanical, and electrical engineering, architectural services, other professional design services, and all construction services during the Construction Period. Consultant shall supervise and direct the design and construction services and shall be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the design and construction under the Agreement. Consultant shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the work relating to the Project, including all necessary, incidental, and related activities and services required by the Scope of Services and contemplated in Consultant's level of effort.
- At the time of executing the Agreement, Consultant will provide the County with its written Guarantee relating to the cost savings associated with the Project. The savings to be realized by the Project are reflected in the attached Exhibit "A."
  - **Energy and Cost Savings Guarantee. The Guarantee will be structured in such a manner that the total savings resulting therefrom will exceed all of County's costs associated with this Agreement, including the total Construction Period services fee and all annual measurement and verification services fees required pursuant to the Agreement to be made by County to Consultant.** Consultant has formulated and, subject to certain adjustments to be provided for in the Agreement, has guaranteed annual levels of "[e]nergy, water, or wastewater cost savings" (as defined in Section 489.145(3)(c),

Florida Statutes) to be achieved as a result of the installation and operation of equipment and provision of services provided for in the Agreement in accordance with the methods of savings measurement and verification to be described therein. The Guarantee will be set forth in annual increments for the Term of the Agreement as specified therein.

- **Measurement of Cost Savings: The cost savings which are the subject of the Guarantee shall be measured and analyzed in compliance with Section 255.255, Florida Statutes.**
- Consultant's Scope of Services includes annual measurement and verification services in order to ensure compliance with the Guarantee.
  - **Annual Review and Reimbursement/Reconciliation. All energy-related cost savings shall be measured and/or calculated annually as specified in the Agreement. Based on measured and/or calculated energy-related cost savings, Consultant shall provide a written report to the County on an annual basis and within a timeframe to be set forth in the Agreement.**
- The specific details of the Scope of Services will be set forth in separate Exhibits attached to the Agreement and made a part thereof.

**5. Compensation:**

**A. Construction Period Services**

- County shall pay to Consultant for the performance of work and services related to the Project during the Construction Period, i.e., implementation of the ECMs and all related design and construction services, a lump sum price of \$6,658,735 summarized in the table below.

<b>Project Cost Summary</b>	<b>Fee Amount</b>
Energy Audit Fees	\$ <u>366,867</u>
Project Cost	\$ <u>6,216,755</u>
Measurement and Verification Setup Fee	\$ <u>75,113</u>
<b>Total Construction Period Services Fee</b>	<b>\$ <u>6,658,735</u></b>

- The total Construction Period services fee provided above shall be full compensation for all costs, including overhead and profit, associated with completion of all the work relating to the Project, excluding annual measurement and verification services, in full conformity with the requirements as stated or shown, or both, in the Contract Documents. The cost of any item of work not covered by a definite lump sum, excluding the annual measurement and verification services, shall be considered included in the lump sum price to which the item is most applicable.
- The Construction Period services fee shall be made in progress payments to be described in the Agreement.

B. Measurement and Verification

- In addition to the Construction Period services fee described above, Consultant shall be compensated on an annual basis for annual measurement and verification services in the amount of \$18,168.00 for the first year of such services, with compensation to be adjusted by three percent (3%) each year thereafter during the Term of the Agreement, for a total amount not to exceed of \$366,207.00.
- County shall not be required to begin any payments to Consultant for measurement and verification services under the Agreement unless and until all ECM implementation is completed by Consultant in accordance with the Agreement and accepted by County as evidenced by a signed Letter of Acceptance.
- **In the event the actual energy and cost savings achieved any year during the Guarantee Period are less than the savings set forth in the Guarantee for that year, Consultant shall pay the County an amount equal to the deficiency within a time period to be set forth in the Agreement.**
- The annual measurement and verification services and related fees may be cancelled at the sole discretion of the County, but only upon written notification by the County sixty (60) calendar days in advance of the start of the next year during which such change or cancellation will take effect. Such cancellation will have the effect of cancelling all further obligations of the Parties under the Agreement and/or the Guarantee.

6. Liquidated Damages:

- Upon failure of Consultant to obtain Substantial Completion within the agreed upon deadline, plus any approved time extensions, Consultant shall pay to the County the sum of Two Hundred Fifty Dollars (\$250.00) for each calendar day after the deadline for Substantial Completion, plus any approved time extensions, until Substantial Completion is obtained. After Substantial Completion, should Consultant fail to complete the remaining work related to the Project within the deadline for Final Completion, plus any approved time extensions thereof, Consultant shall pay to the County the sum of Two Hundred Fifty Dollars (\$250.00) for each calendar day after the deadline for Final Completion, until Final Completion is obtained. These amounts are not penalties but are liquidated damages to County for its inability to obtain full beneficial use of the ECMs implemented. Liquidated damages are hereby fixed and agreed upon between the Parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by County as a consequence of such delay, and both Parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of Consultant to complete the ECMs to be implemented.
7. **CBE:** The Agreement shall be subject to the County's CBE requirements of 10%. Liquidated damages shall apply to Consultant's failure to comply with this requirement in a manner set forth in the Agreement.
8. **Remaining Terms:** Subject to review and approval by the Office of the County Attorney, the remaining terms to be included in the Agreement shall be comprised of language from the BCF-170, the BCF-202, and other government contracts deemed applicable by the Office of the County Attorney.

9. **Section 489.185, Florida Statutes:** The Agreement shall be in compliance with Section 489.185, Florida Statutes, and shall not contain any requirements inconsistent therewith.

## Exhibit A Final Project Cost & Project Cash Flow Analysis

Category	Amount (\$)
Implementation Cost	\$6,216,755
Audit Development Fee	\$366,867
Measurement & Verification Cost	\$75,113
<b>Total Project Fee</b>	<b>\$6,658,735</b>

1	2	3	4	5	6	7	8	9
Year	Utility Savings	Stipulated non-Energy Savings	Guaranteed Savings	Agreement Price	M&V (Energy Efficiency) Fee	Total Program Costs	Net Savings	Cumulative Savings
0				\$6,658,735		\$6,658,735	-\$6,658,735	-\$6,658,735
1	\$308,739	\$50,633	\$359,372	\$0	\$18,168	\$18,168	\$341,204	-\$6,317,531
2	\$317,683	\$52,152	\$369,835	\$0	\$18,713	\$18,713	\$351,122	-\$5,966,409
3	\$326,889	\$53,717	\$380,606	\$0	\$19,274	\$19,274	\$361,332	-\$5,605,077
4	\$336,364	\$55,329	\$391,693	\$0	\$19,853	\$19,853	\$371,840	-\$5,233,237
5	\$346,115	\$56,989	\$403,104	\$0	\$20,448	\$20,448	\$382,656	-\$4,850,581
6	\$356,151	\$58,699	\$414,850	\$0	\$21,062	\$21,062	\$393,788	-\$4,456,793
7	\$366,480	\$60,460	\$426,940	\$0	\$21,694	\$21,694	\$405,246	-\$4,051,547
8	\$377,112	\$62,274	\$439,386	\$0	\$22,344	\$22,344	\$417,042	-\$3,634,505
9	\$388,054	\$64,142	\$452,196	\$0	\$23,015	\$23,015	\$429,181	-\$3,205,324
10	\$399,315	\$66,066	\$465,381	\$0	\$23,705	\$23,705	\$441,676	-\$2,763,648
11	\$410,904	\$68,048	\$478,952	\$0	\$24,416	\$24,416	\$454,536	-\$2,309,112
12	\$422,834	\$70,089	\$492,923	\$0	\$25,149	\$25,149	\$467,774	-\$1,841,338
13	\$435,113	\$72,192	\$507,305	\$0	\$25,903	\$25,903	\$481,402	-\$1,359,936
14	\$447,750	\$74,358	\$522,108	\$0	\$26,680	\$26,680	\$495,428	-\$864,508
15	\$460,757	\$76,589	\$537,346	\$0	\$27,481	\$27,481	\$509,865	-\$354,643
16	\$474,145	\$78,887	\$553,032	\$0	\$28,302	\$28,302	\$524,730	\$170,102
<b>Totals</b>	<b>\$6,174,405</b>	<b>\$1,020,624</b>	<b>\$7,195,029</b>	<b>\$0</b>	<b>\$366,207</b>	<b>\$7,024,942</b>	<b>\$170,087</b>	

### Notes By Column

- (1) Years after implementation retrofit changes
- (2) Solar unit savings are reduced 0.7% annually to account for degradation of the solar system. Utility rates utilized to calculate the Utility savings are escalated by 3% annually to account for inflation.
- (3) Operational and Maintenance savings are stipulated. Values are escalated by 3% to account for inflation.
- (4) Guaranteed Savings are the sum of columns (2) and (3)
- (5)
- (6) Measurement and Verification services are escalated by 3% to account for inflation
- (7) Total Program cost are the sum of Columns (5) and (6)
- (8) Net savings equals Total Program Savings Less Total Program Costs Columns (4) - (7)



**TERM SHEET FOR  
AGREEMENT  
BETWEEN  
BROWARD COUNTY  
AND  
SIEMENS INDUSTRY, INC.,  
BUILDING TECHNOLOGIES DIVISION  
FOR  
FOR ENERGY AUDIT AND PERFORMANCE CONSULTANT SERVICES  
PART TWO - ENERGY SAVINGS PERFORMANCE AGREEMENT  
RFP NO. R1243101P1 (“Agreement”)**

**1. Parties:**

- Broward County (“County”), a political subdivision of the State of Florida
- Siemens Industry, Inc., Building Technologies Division, (“Consultant”), a Delaware corporation
- County and Consultant are collectively referred to herein as the “Parties.”

**2. Background/Recitals:**

- On or about June 10, 2014, County’s Board of County Commissioners approved Request for Proposals No. R1243101P1 (the “RFP”), which sought qualified firms to submit proposals for conducting an investment grade technical energy audit of selected County facilities for application of energy conservation measures (“ECMs”) and thereafter install selected ECMs based on the results of said audit in accordance with Section 489.145, Florida Statutes.
- The RFP contemplated two phases of work. The first phase (“Phase 1”) was to consist of the selected consultant conducting the investment grade technical energy audit of the facilities under consideration for the application of ECMs and alternative energy sources. The second phase (“Phase 2”) was to consist of the development and implementation of a guaranteed energy performance savings agreement based upon the findings of the Phase 1 energy audit.
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- Pursuant to its agreement for Phase 1 services, Consultant has provided County with an investment grade audit report (the “Energy Audit Report”), which County will have approved prior to entering into the Agreement. The Energy Audit Report describes the

cost associated with certain ECMs at identified County facilities, and provides an estimate of the amount of energy cost savings which would result therefrom.

- County owns and operates properties and buildings ("Project Sites"), which the Energy Audit Report finds would benefit from certain "[e]nergy, water, and wastewater efficiency and conservation measures" (as defined in Section 489.145(3)(b), Florida Statutes) and/or other services designed to save energy.
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- Consultant was selected in compliance with Section 489.145(4)(d), Florida Statutes, to conduct the energy use audit of the Project Sites.
- County has complied with the requirement for publication of notice in Section 489.145(4)(e), Florida Statutes.
- Consultant represents that it is a "[g]uaranteed energy, water, and wastewater performance savings contractor" (as defined in Section 489.145(3)(e), Florida Statutes).

**3. Term of Agreement:**

- The Agreement will be effective upon its execution by both Parties ("Agreement Execution"); however, the term of the Agreement (the "Term") will begin when the Guarantee goes into effect (the "Guarantee Period Start Date"), with such date to be specified in the Agreement, and will expire at the end of each County fiscal year, and shall be automatically renewed (without further action required of County or Consultant) annually up to a term of sixteen (16) years, subject to County making sufficient annual appropriations based upon continued realized energy and cost savings. The period from Agreement Execution until the Guarantee Period Start Date shall be known as the "Construction Period."
- Consultant shall perform the services relating to implementation of ECMs within time periods specified in a project schedule to be mutually agreed upon by County and Consultant, with such time period to commence from the date of a Notice to Proceed for

such services, as further described below.

- Consultant shall be instructed to commence its work by written instruction in the form of a Purchase Order issued by the County's Director of Purchasing and two or more Notices to Proceed issued by the Contract Administrator. The first Notice to Proceed and Purchase Order will not be issued until Consultant's submission to County of all required documents and after execution of the Agreement by the Parties. Preliminary work, including submission of a project schedule, schedule of values, submittals, submittal schedule, and other documents required for permitting, and performance of work that does not require permits, shall be commenced within ten (10) calendar days after the date of the first Notice to Proceed. Consultant shall have ten (10) days after approval by County of signed and sealed contract drawings to apply for construction permits to the applicable permitting authority. Issuance of all permits by the permitting authority shall be a condition precedent to the issuance of a second Notice to Proceed for all other work. Except for the reimbursement of permit application fees as may be provided in the Contract Documents, Consultant shall not be entitled to compensation of any kind during the permitting process. The work to be performed pursuant to the second Notice to Proceed shall be commenced within ten (10) calendar days of the Project Initiation Date specified in the second Notice to Proceed.
- Time is of the essence throughout the Agreement. Consultant must obtain Substantial Completion of the work within three hundred and sixty-five (365) calendar days from the Project Initiation Date specified in the second Notice to Proceed, and Final Completion within ninety (90) calendar days from the date of Substantial Completion. Consultant's annual Measurement and Verification responsibilities (as set forth in Section 4 of this Term Sheet) shall continue beyond the Final Completion date throughout the Term of the Agreement as set forth herein.

#### **4. Services:**

- Consultant's Scope of Services under the Agreement shall consist of all design and construction services relating to the Project. Consultant's responsibilities shall include civil, structural, mechanical, and electrical engineering, architectural services, other professional design services, and all construction services during the Construction Period. Consultant shall supervise and direct the design and construction services and shall be responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the design and construction under the Agreement. Consultant shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and services necessary for the proper execution and completion of the work relating to the Project, including all necessary, incidental, and related activities and services required by the Scope of Services and contemplated in Consultant's level of effort.
- At the time of executing the Agreement, Consultant will provide the County with its written Guarantee relating to the cost savings associated with the Project.
- Consultant's Scope of Services includes annual measurement and verification services in order to ensure compliance with the Guarantee.

- **Energy and Cost Savings Guarantee.** The Guarantee will be structured in such a manner that the total savings resulting therefrom will exceed all of County's costs associated with this Agreement, including the total Construction Period services fee and all annual measurement and verification services fees required pursuant to the Agreement to be made by County to Consultant. Consultant has formulated and, subject to certain adjustments to be provided for in the Agreement, has guaranteed annual levels of "[e]nergy, water, or wastewater cost savings" (as defined in Section 489.145(3)(c), Florida Statutes) to be achieved as a result of the installation and operation of equipment and provision of services provided for in the Agreement in accordance with the methods of savings measurement and verification to be described therein. The Guarantee will be set forth in annual increments for the Term of the Agreement as specified therein and will be structured by Consultant to be sufficient to cover any and all payments required to be made to Consultant by County under the Agreement.
  - **Annual Review and Reimbursement/Reconciliation.** All energy-related cost savings shall be measured and/or calculated annually as specified in the Agreement. Based on measured and/or calculated energy-related cost savings, Consultant shall provide a written report to the County on an annual basis and within a timeframe to be set forth in the Agreement.
- Consultant's Scope of Services includes annual measurement and verification services in order to ensure compliance with the Guarantee.
    - **Measurement of Cost Savings:** The cost savings which are the subject of the Guarantee shall be measured and analyzed in compliance with Section 255.255, Florida Statutes.
  - The specific details of the Scope of Services will be set forth in separate Exhibits attached to the Agreement and made a part thereof.

**5. Compensation:**

- Consultant has structured the Guarantee in such a manner that the total savings resulting therefrom will exceed all costs associated with this Agreement, including the total Construction Period Services fee and all payments for annual measurement and verification services required pursuant to the Agreement to be made by County to Consultant.

**A. Construction Period Services**

- County shall pay to Consultant for the performance of work and services related to the Project during the Construction Period, i.e., implementation of the ECMs and all related design and construction services, a lump sum price of \$6,658,736 summarized in the table below.

<b>Project Cost Summary</b>	<b>Fee Amount</b>
Energy Audit Fees	<b>\$ 281,128</b>

Project Cost	\$ 7,454,115
Measurement and Verification Setup Fee	\$ 50,760
<b>Total Construction Period Services Fee</b>	<b>\$ 7,786,004</b>

- The total Construction Period Services Fee provided above shall be full compensation for all costs, including overhead and profit, associated with completion of all the work relating to the Project, excluding annual measurement and verification services, in full conformity with the requirements as stated or shown, or both, in the Contract Documents. The cost of any item of work not covered by a definite lump sum, excluding the annual measurement and verification services, shall be considered included in the lump sum price to which the item is most applicable.
- The Construction Period Services Fee shall be made in progress payments to be described in the Agreement.

**B. Measurement and Verification**

- In addition to the Construction Period services fee described above, Consultant shall be compensated on an annual basis for annual measurement and verification services in the amount of \$48,537.00 for the first year of such services, with compensation to be adjusted by three percent (3%) each year thereafter during the Term of the Agreement, for a total amount not to exceed of \$978,356.00.
- County shall not be required to begin any payments to Consultant for measurement and verification services under the Agreement unless and until all ECM implementation is completed by Consultant in accordance with the Agreement and accepted by County as evidenced by a signed Letter of Acceptance.
- **In the event the actual energy and cost savings achieved any year during the Guarantee Period are less than the savings set forth in the Guarantee for that year, Consultant shall pay the County an amount equal to the deficiency.**
- The annual measurement and verification services and related cost may be changed or cancelled at the sole discretion of the County Contract Administrator to remove all or some ECMs, but only upon written notification by the County Contract Administrator sixty (60) calendar days in advance of the start of the next year during which such change or cancellation will take effect.

**6. Liquidated Damages:**

- Upon failure of Consultant to obtain Substantial Completion within the agreed upon deadline, plus any approved time extensions, Consultant shall pay to the County the sum of Two Hundred Fifty Dollars (\$250.00) for each calendar day after the deadline for Substantial Completion, plus any approved time extensions, until Substantial Completion is obtained. After Substantial Completion, should Consultant fail to complete the remaining work related to the Project within the deadline for Final Completion, plus any approved time extensions thereof, Consultant shall pay to the County the sum of Two Hundred Fifty Dollars (\$250.00) for each calendar day after the deadline for Final Completion, until Final Completion is obtained. These amounts are not penalties but are liquidated damages to County for its inability to obtain full beneficial use of the ECMs

implemented. Liquidated damages are hereby fixed and agreed upon between the Parties, recognizing the impossibility of precisely ascertaining the amount of damages that will be sustained by County as a consequence of such delay, and both Parties desiring to obviate any question of dispute concerning the amount of said damages and the cost and effect of the failure of Consultant to complete the ECMs to be implemented.

7. **CBE:** The Agreement shall be subject to the County's CBE requirements of 10%. Liquidated damages shall apply to Consultant's failure to comply with this requirement in a manner set forth in the Agreement.
  
8. **Remaining Terms:** Subject to review and approval by the Office of the County Attorney, the remaining terms to be included in the Agreement shall be comprised of language from the BCF-170, the BCF-202, and other government contracts deemed applicable by the Office of the County Attorney.

## Exhibit A Final Project Cost & Project Cash Flow Analysis

**Price:** The total cost of this project as full consideration of the services by Siemens equals a Contract Sum of \$7,786,004. This cost is not inclusive of any post implementation services such as Measurement and Verification Service Plan detailed in the following section.

### Payment for services provided by SIEMENS

**Price:** As full consideration of the Measurement and Verification Service Program (MVSP), which includes Measurement & Verification (M&V) Services described in Exhibit C and the maintenance services set forth in Exhibit I, the COUNTY shall pay to SIEMENS the amounts identified in Table J.1 plus taxes, if applicable, on the dates identified therein.

**Term:** The term of the Measurement & Verification (M&V) Plan shall commence on the Guarantee Date. This first M&V report will be for the number of months after Final Acceptance through the end of the fiscal year ending September 30<sup>th</sup>. The report will be due 60 days after September 30<sup>th</sup>. Subsequent annual reports will be completed for each fiscal year of the guarantee term. The M&V term shall extend for each Annual Period.

**Automatic Renewal:** The M&V Plan shall automatically renew for successive annual periods consistent with the Agreement.

**Termination:** See Article 5.9 of the Contract Terms and Conditions.

1	2	3	4	5	6	7	8	9
Year	Utility Savings	Stipulated non-Energy Savings	Guaranteed Savings	Agreement Price	M&V (Energy Efficiency) Fee	Total Program Costs	Net Savings	Cumulative Savings
0				\$7,786,004		\$7,786,004	-\$7,786,004	-\$7,786,004
1	\$410,845	\$42,283	\$453,128	\$0	\$48,537	\$48,537	\$404,591	-\$7,381,413
2	\$422,892	\$43,552	\$466,444	\$0	\$49,993	\$49,993	\$416,451	-\$6,964,962
3	\$435,293	\$44,859	\$480,152	\$0	\$51,493	\$51,493	\$428,659	-\$6,536,303
4	\$448,060	\$46,204	\$494,264	\$0	\$53,038	\$53,038	\$441,226	-\$6,095,077
5	\$461,202	\$47,590	\$508,792	\$0	\$54,629	\$54,629	\$454,163	-\$5,640,914
6	\$474,731	\$49,018	\$523,749	\$0	\$56,268	\$56,268	\$467,481	-\$5,173,433
7	\$488,658	\$50,489	\$539,147	\$0	\$57,956	\$57,956	\$481,191	-\$4,692,242
8	\$502,996	\$52,003	\$554,999	\$0	\$59,694	\$59,694	\$495,305	-\$4,196,937
9	\$517,755	\$53,563	\$571,318	\$0	\$61,485	\$61,485	\$509,833	-\$3,687,104
10	\$532,949	\$55,170	\$588,119	\$0	\$63,330	\$63,330	\$524,789	-\$3,162,315
11	\$548,590	\$56,825	\$605,415	\$0	\$65,230	\$65,230	\$540,185	-\$2,622,130
12	\$564,692	\$58,530	\$623,222	\$0	\$67,187	\$67,187	\$556,035	-\$2,066,095
13	\$581,269	\$60,286	\$641,555	\$0	\$69,202	\$69,202	\$572,353	-\$1,493,742
14	\$598,333	\$62,095	\$660,428	\$0	\$71,278	\$71,278	\$589,150	-\$904,592
15	\$615,900	\$63,957	\$679,857	\$0	\$73,417	\$73,417	\$606,440	-\$298,152
16	\$633,994	\$658,76	\$699,870	\$0F	\$75,619	\$75,619	\$624,251	\$326,099
<b>Totals</b>	<b>\$8,238,159</b>	<b>\$852,300</b>	<b>\$9,090,459</b>	<b>\$7,786,004</b>	<b>\$978,356</b>	<b>\$8,764,260</b>	<b>-\$298,152</b>	