CITY of OAKLAND PARK, FL - GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACT

Energy Systems Group, LLC

Table of Contents

GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACT

THIS AGREEMENT (herein sometimes "Agreement" and sometimes "Contract"), made this 15th day of November, 2017, by and between the City of Oakland Park, Oakland Park, Florida, (hereinafter called "City" or "Owner") and Energy Systems Group, LLC, an Indiana limited liability company (hereinafter called "Contractor" or "ESG"),

WITNESSETH, That:

WHEREAS, In response to the City's Request for Proposals (RFP# 071816) (the "RFP"), the Contractor submitted to Owner a proposal pursuant to Florida Statute § 489.145 for the construction and/or installation of energy related upgrades at facilities owned by Owner and located in Broward County, Florida (herein the "Facilities"); and

WHEREAS, Owner selected Contractor to perform the work and services contemplated within the RFP, and on or about November 2, 2016, approved the Contractor's performance of a certain Performance Based Contract Project Development Agreement (Contract No. R-2016-120) (the "PDA"), whereby ESG devoted resources to evaluating, assessing and auditing the City's Facilities for the purpose of developing and refining its proposal to perform an initial phase of work described within Exhibit A Scope of Work, which the City has approved ESG to perform (hereinafter the "Project"); and

WHEREAS, Owner and Contractor now desire to enter into this Agreement to memorialize their respective agreements and undertakings with respect to the Project.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto agree as follows:

1. Contract Documents. The parties hereby incorporate by reference, as if fully set forth herein, the following documents and instruments, all of which together with this Agreement are herein referred to as the "Contract Documents":

Exhibit A - Scope of Work
Exhibit B - Performance Guarantee and Measurement and Verification Plan
Exhibit C - Support Services Agreement
Exhibit D - Opinion of Owner's Counsel
Exhibit E - State Specific Statutory Requirements

The Contract Documents also shall include any permissible change orders issued pursuant to this Agreement.

If there is a conflict between the provisions of this Agreement and any other Contract Document, the provisions of this Agreement shall control with respect to the subject matter hereof.

2. Scope of Project. For purposes hereof, the term "Project" shall mean and include the installation of the energy conservation measures and related upgrades ("ECMs" or "Measures") at Owner's Facilities, which are defined in Exhibit A, Scope of Work, and annual support services as outlined in Exhibit C, Support Services Agreement.

2.1 Dodd-Frank Municipal Advisor Rule Statement: ESG is retained by Owner as an engineering and energy services firm to design and deliver energy-related and other infrastructure solutions described in the Scope of Work. Owner acknowledges that ESG is not a financial advisor or municipal advisor as contemplated under the U.S. securities laws, is not providing recommendations regarding any municipal financial product or the issuance of municipal securities, and does not owe a fiduciary duty to Owner under section 15B of the Securities Exchange Act, or otherwise. Owner acknowledges that as a commercial entity ESG is influenced by its own interests, which will not always be the same as Owner's. Owner has had the opportunity to retain and consult with such financial, municipal, legal or other advisors as it may deem appropriate regarding this project.

2.2 Development of Subsequent Project Phases. Pursuant to the parties' PDA, ESG has taken a phased approach to its evaluation of the City's facilities, infrastructure, and systems. The Owner hereby reserves the right to initiate and to accept a subsequent phase of work and services ESG proposed in response to the RFP through an amendment to the PDA and, if applicable, an amendment to this Agreement or a separate guaranteed energy savings performance contract.

3. General Obligations and Rights of Contractor. Contractor shall do all acts and provide all things necessary to perform and complete the Project properly, in a good and workmanlike manner, and in compliance with all laws and regulations. Contractor shall apply for, secure, and obtain all necessary permits and licenses which may be required in connection with the Project.

3.1 Warranty. Contractor hereby warrants to Owner that all materials furnished by Contractor, if any, and all workmanship performed by Contractor in connection with the Project, shall be in accordance with the general industry standards of the construction industry; shall be performed in a competent, good and workmanlike manner and in compliance with the Contract Documents, and all pertinent laws, rules and regulations; and shall be free from any and all faults or defects in material and workmanship. Contractor shall promptly remedy any and all defective materials or workmanship furnished by Contractor or any subcontractor upon receipt of written notice thereof from Owner. If required by Owner, Contractor shall furnish satisfactory evidence as to kind and quality of materials and equipment used in connection with the Project.

The warranty set forth herein shall continue to be effective for a period of one year following Owner's acceptance or beneficial use of each ECM, acceptance of a particular Facility, or acceptance of the Project, whichever comes first. Owner shall give Contractor written notice of all defective work, specifically detailing the deficiencies to be corrected, and Contractor shall repair or otherwise remedy such defective work in an expeditious manner.

CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. To the extent possible, Contractor shall assign to Owner all warranties that Contractor receives from its vendors and/or subcontractors for any materials or equipment, which are or are to become permanent features of the Project, which shall be in addition to the other warranties provided herein.

3.2 Approvals. Upon completion of the Project, Contractor shall obtain all approvals of the installation of the Measures constituting the Project.

3.3 Indemnification.

3.3.1. Contractor will indemnify and save harmless the City and Broward County, its officers, agents and employees, from or because of any injuries or damages received or sustained by any person or person during or because of any operations connected with the design, planning, investigation or construction of this Project; or, by or in consequence of any intentional act, negligence (excluding negligence of City), concerning the same; or by use of any improper materials, design, work, construction by or due to any act or omission of the Contractor or its subcontractor, agents, servants or employees. The Contractor agrees to indemnify and save harmless the City from all such claims and fees, and from any and all suits and actions of every name and description that may be brought against the City due to any claims, fees, royalties or costs for any invention, copyright, or patent, and from any and all suits and actions that may be brought against the City for the infringement of any and all patents and rights claimed by any person, firm or corporation.

The indemnification provided within this Section 3.1 will obligate the Contractor to defend, at its own expense, or to provide such defense, at the City's option, any and all claims of liability and all suits and actions of every name and description that may be brought against the City that may result from the operations and activities under this Contract whether the activities are performed by the Contractor, subcontractors or by anyone directly or indirectly employed by any of them.

3.3.2. Solely to the extent permitted by Florida law, Owner shall indemnify, defend and hold harmless Contractor, and the agents, officers, shareholders, directors, and employees of Contractor and any assignee of Contractor (herein the "Indemnified Contractor Parties") against all liability and loss including reasonable attorney's fees and expenses to the extent resulting from the negligence or willful misconduct in connection with the Project by Owner and agents, employees or representatives of Owner, including any injury (including death) sustained by or any damage to the property of, any person; provided, however, that Owner shall not be responsible for any injury (including death), damage or loss (including reasonable attorneys fees and expenses) which is caused by the sole negligence of an Indemnified Contractor Party, nor shall Owner be held responsible for the concurrent negligence of an Indemnified Contractor Party

As a condition precedent to the Owner's duties to indemnify above, the Indemnified Contractor Party must provide prompt notice to the indemnitor of a claim or matter for which Indemnification is sought, must allow the indemnitor to select counsel and control the defense, must cooperate with indemnitor at indemnitor's expense, and must allow the indemnitor to settle the matter at its expense.

3.3.3 **<u>Sovereign Immunity</u>**. The parties agree that the City is a political subdivision of the State of Florida and therefore is entitled to sovereign immunity. Nothing in this Agreement shall be construed to require the City to indemnify Energy Systems Group, LLC, or insure Energy Systems Group, LLC for its negligence or to assume any liability for Energy Systems Group, LLC. Further, any provision in this Agreement that requires the City to indemnify, hold harmless or defend Energy Systems Group, LLC from liability for any other reason shall not alter the City's waiver of sovereign immunity or extend the City's liability beyond the limits established in Section 768.28 of the Florida Statutes, as amended.

3.4 <u>Bonds.</u> Before entering upon the performance of this Agreement, Contractor shall execute for the benefit of Owner, a good and sufficient Performance Bond and Payment Bond, in form acceptable to Owner. Each bond shall be in an amount equal to the Contract Price (as defined below in Section 5 of this Agreement).

The Performance Bond shall also be a guarantee for the repair or replacement of any portion of the Project that is defective to and including the date of Owner's Final Acceptance of the Project. The Payment Bond shall be a guarantee for the payment for labor, materials and equipment furnished for use in the performance of Contractor's obligations hereunder. The Performance and Payment Bond will cease effective the date of Owner's Final Acceptance of the Project. Effective immediately after, a Maintenance Bond will be provided for the one-year period commencing on the date of Owner's Final Acceptance of the Project in the amount of 10% of the total Contract Price. The surety which executes the Performance Bond and Payment Bond will waive any right to independent notice under this Agreement if Contractor receives such notice, and consents to any extensions of time, modification, waiver, forbearance, or change which may be made in any of the terms and conditions of the Agreement by the parties or by their successors or assigns. Notwithstanding any other provision of this Agreement or the bonds, in no event and in no manner shall coverage under the Performance Bond and Payment Bond extend to Section 3.5, Energy Savings Guarantee, as set forth in Exhibit B Energy Savings Guarantee and Measurement and Verification Plan, or any related provisions.

3.5 <u>Guaranteed Savings</u>. The Project will result in meter accuracy benefits in the total amount of $11,907,609, and operational savings and capital cost avoidance in the total amount of

$3,609,691, as outlined in Exhibit B - Performance Guarantee and Measurement and Verification Plan, during the first 15 year period following Final Acceptance of the Project (herein the "Total Guaranteed Savings"). Contractor represents and warrants that such Total Guaranteed Savings exceeds Owner's total cost of the Project. Contractor represents and warrants that term of the contract, 15 years from Owner's Final Acceptance of all Measures, is less than the average life expectancy of the Measures.

If Owner does not achieve actual savings equal to or greater than the guaranteed energy savings then Contractor hereby agrees to annually reimburse Owner the difference between the annual guaranteed energy savings in the amount indicated on Table 3A in Exhibit B – Performance Guarantee and Measurement and Verification Plan and the actual annual energy savings realized by Owner in that year, as calculated in accordance with Exhibit B – Performance Guarantee and Measurement and Verification Plan. The Savings Guarantee shall extend for a 15 year period following Owner's Final Acceptance of the Project. The parties agree that Exhibit B Performance Guarantee and Measurement and Verification Plan shall control the rights and responsibilities of each party with respect to the Savings Guarantee. In the event of any conflict between this Section 3.5 and Exhibit B, Exhibit B shall control.

It is agreed that the Contractor's obligation to deliver the operational savings described in Table 3A of Exhibit B will be fully satisfied upon Owner's Final Acceptance of the Project based on the documentation and data approved by Owner and included herein. Contractor represents and warrants the requirements set forth in Exhibit E, State Law Requirements, will be met.

3.6 Limitation of Liability. The total liability of Contractor on all claims, whether in contract, warranty, tort, strict liability, indemnity, or otherwise, arising out of the performance of this Agreement, shall not exceed the Contract Price. NOTWITHSTANDING ANY OTHER PROVISION HEREIN TO THE CONTRARY, IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, SPECULATIVE, PUNITIVE, OR REMOTE DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, AND DOWN TIME COST.

3.7 Insurance.

3.7.1 Obtaining Proper Insurance. Contractor shall not commence performance hereunder until (i) it has obtained and Owner has approved all insurance coverage required by this Section 3.7; and (ii) Owner has been furnished with a certificate of insurance properly evidencing and confirming that Owner is an additional insured on Contractor's public liability and automobile liability policies. In the event that subcontractors are not covered by Contractor's policies of insurance, each subcontractor shall secure policies of insurance which meet the requirements of this Section 3.7, taking into consideration the nature of the subcontracted Work and the amount of the relevant subcontract; provided, however, that all subcontractors must provide statutorily compliant insurance in accordance with section 3.7.2(A), below.

3.7.2 Amount of Insurance. Contractor shall take out and maintain, at its sole cost and expense, the following insurance coverage during the term of this Agreement and all other times during which Contractor, its employees, agents, or subcontractors shall be present at the Facilities, whether performing or correcting any portion of the Project:

(A) Worker's Compensation, Employer's Liability, and Occupational Disease Insurance. Statutorily required worker's compensation insurance, including employer's liability and occupational disease coverage, to the extent mandated by applicable Florida state law, on all of Contractor's employees engaged in the Project;

(B) Public Liability. Commercial general liability insurance (including contractual, independent contractors, explosion, and product/completed operations coverages) against damage because of bodily injury, including death, or damage to property of others, such insurance to afford protection to the limit of not less than One Million Dollars ($1,000,000.00) in one occurrence, and to the limit of not less than Two Million Dollars ($2,000,000.00) annual aggregate;

(C) Business Automobile Liability. Business automobile liability insurance against damage because of bodily injury, including death, or damage to property of others as the result of the operation of any automobile owned or hired by Contractor, with such insurance to afford protection to the limit of not less than Five Hundred Thousand Dollars ($500,000.00) for any one person, not less than One Million Dollars ($1,000,000.00) in respect to any one accident, and not less than One Hundred Thousand Dollars ($100,000.00) for property damage.

4. All Risk Insurance. Prior to Contractor's commencement of performance, Owner shall provide Contractor a certificate of insurance evidencing that Owner has in place an "All Risk" insurance policy on all its Facilities that will provide coverage for all installed Measures. If any of the Measures are damaged or destroyed after they are installed to Owner's Facilities, but prior to Final Acceptance of the Project, the proceeds of such insurance shall be provided to Contractor, and Contractor shall repair or replace such equipment, materials or Measures. If the proceeds of such insurance are insufficient to fully pay Contractor for its costs incurred to repair or replace such equipment, materials, or Measures, Owner shall promptly pay to Contractor such shortfall.

In addition, if any of the Measures are damaged or destroyed after Final Acceptance of the Project and during the Savings Guarantee period, Owner shall be obligated to promptly repair or replace the damaged or destroyed Measures.

Owner agrees to maintain in full force and effect the All Risk policy during the entire term of this Agreement.

4.1. Title and Risk of Loss. Risk of Loss for all equipment and materials provided by Contractor or any subcontractor shall transfer to Owner upon installation of such equipment and materials to Owner's Facilities. Title to a Measure shall vest with Owner upon installation and payment to Contractor. It is the intent of all parties that any transfer of title to Owner pursuant to this Agreement shall occur automatically without the necessity of any bill of sale, certificate of title, or other instrument of conveyance.

Owner shall be responsible for operating and maintaining all Measures that are installed. Owner shall also be responsible for any real or personal property taxes related to the Measures.

4.2 Waiver of Subrogation. Owner and Contractor hereby release each other and each other's employees, agents, and subcontractors from any and all liability for any loss of or damage or injury to person or property arising during the Project by reason of fire or other casualty or any other risk or cause which is or which is required to be insured against under this Agreement, regardless of cause, including the negligence of Owner or Contractor and their respective employees, agents, and subcontractors, and agree that all insurance carried by either of them shall contain a clause whereby the insurer waives its right of subrogation against the other party. Because the provisions of this paragraph are intended to preclude the assignment of any claim mentioned herein by way of subrogation or otherwise to an insurer or any other person, each party to this Agreement shall give to each insurance company which has issued to it one or more policies of insurance required by this Agreement notice of the provisions of this paragraph and have such insurance policies properly endorsed, if necessary, to prevent the invalidation of such insurance by reason of the provisions of this paragraph.

5. Contract Price and Payments.

5.1 Contract Price. In consideration of Contractor's performance of the work necessary for the completion of the Project, Owner shall pay Contractor the sum of Six Million Four Hundred Sixty-Five Thousand Two Hundred Ninety-Six Dollars ($6,465,296) (herein the "Contract Price"), in accordance with the provisions of this Section 5.

5.2 Concerning Payment of the Contract Price. The following provisions shall apply to payment of the Contract Price:

5.2.1 Applications for Payment. Payment of the Contract Price shall be made in monthly installments based upon Contractor's progress in completing the installation of the Project, except that Contractor shall be paid an initial amount which is intended to reflect the work and services performed by Contractor prior to execution of this Agreement, including the work and services Contractor performed pursuant to the PDA, which amount shall equal 10% of the Contract Price (the "Initial Payment"). Contractor's request for the Initial Payment shall be submitted to Owner upon the execution and delivery of this Agreement. With respect to monthly progress payments, Contractor shall submit to Owner each month, an application for payment on a form mutually agreeable to Contractor and Owner. Owner shall pay or cause to be paid invoice for such payments within 30 days of receipt. For payments not timely made, interest shall accrue at 10% per annum.

5.2.2 Completion and Inspection; Acceptance. When Contractor reasonably believes that an ECM, a Facility or the entire Project is complete, it shall notify Owner that such ECM, Facility or the entire Project is ready for inspection and acceptance. Within five business days following such notification, Owner shall commence to conduct such inspections as it deems necessary or appropriate in order to determine that the ECM, Facility, or the entire Project, as the case may be, is free from defects and that the installation of the ECM, Facility, or the entire Project, as the case may be, has been completed in conformity with the Contract Documents. If any aspect of the ECM, Facility, or the entire Project, as the case may be, shall be incomplete as of the date of such inspection, Owner shall notify Contractor in writing as to the items that render the ECM, Facility, or the entire Project, as the case may be, incomplete (such writing herein referred to as the "Punch List").

Contractor shall, at its expense and without further cost to Owner, undertake to perform such work as will complete the Punch List in compliance with the Contract Documents as soon as practicable. Contractor retains the right to dispute that an item or items on the Punch List is required by the Contract Documents. If Contractor does not satisfactorily complete the Punch List by a date 30 days following Owner's submission of the Punch List (herein the "Completion Date"), Owner shall have the right to order Contractor to stop any further work in respect of the particular ECM, Facility, or the entire Project, as the case may be, and Owner shall be entitled to complete the Punch List. In such event, Contractor shall be responsible for all costs incurred by Owner in completing the Punch List and Owner shall have the right to deduct all costs from any payment then or thereafter due to Contractor. If such cost exceeds the balance of the Contract Price then or thereafter due Contractor, Contractor shall pay such excess to Owner within 10 days following Owner's demand therefor.

Owner will give Contractor prompt written notice of acceptance of a particular ECM, Facility or the entire Project, as the case may be, in the form of Schedule 1 (herein the "Final Acceptance"), when the following conditions have been met:

A. Contractor shall have completed the Punch List to Owner's reasonable satisfaction and Contractor shall have corrected any other non-conforming items or condition, if any, reported to it by Owner;

B. Contractor shall have furnished to Owner's reasonable satisfaction, evidence that all equipment and labor costs incurred or accrued in connection with a particular ECM or Facility have been paid; and

C. Contractor shall have delivered to Owner all drawings and documents required to be furnished by Contractor pursuant to the Contract Documents.

If Owner is required to complete the Punch List, the date of Final Acceptance shall be extended to the date upon which the Project is completed by Owner, or any person retained by Owner, in accordance with the Contract Documents.

5.2.3 Final Payment. Any sums due and owing in respect of the Contract Price shall be payable to Contractor within 10 calendar days after the date Owner gives written notice of its Final Acceptance of the entire Project.

6. Independent Contractor. It is understood and agreed by the parties hereto that Contractor shall perform the Project according to its own means and methods and shall for all purposes be an independent contractor. All persons employed by Contractor in connection with the Project shall be paid directly by Contractor, and shall be subject to Contractor's orders and supervision.

7. Inspection; Defective Work. Contractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the work by Owner. It shall, within forty-eight hours after receiving written notice from Owner to that effect, proceed to remove from the Facilities all materials that fail to conform to the Contract Documents.

8. Termination.

8.1 Owner's Right to Terminate.

8.1.1. Termination for Cause. Any misrepresentation by the Contractor of its ability to perform the Work described in Exhibit A places the Contractor in default and shall be just cause for termination of the Contract. In such case, the City may award the remaining, unperformed portions of the Contract to the next lowest responsible Contractor who can demonstrate the ability to perform the Work, for the remainder of the Contract period, or may rebid as the City may decide. In the event of such default and termination, any completed services performed by the Contractor under the Agreement shall, at the option of the City become the City's property and the Contractor shall be entitled to receive equitable compensation for any Work completed to the reasonable satisfaction of the City. In such instance, the Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purposes of set-off until such time as the amount of damage due to the City from the Contractor can be determined.

8.1.2. Termination for Convenience. The City may terminate the Contract, in whole or in part at any time for any reason by giving 30 days prior written notice, when it is in the best interest of the City. If the Contract is terminated by the City, as provided herein, the Contractor will be paid for the Work completed as of the date of termination. Upon receipt of the notice of termination issued under this section, the Contractor shall discontinue all work, cease any deliveries, shipment or carriage of goods, and make available to City's Project Manager any and all reports, data, specifications, photos, estimates, summaries, and information as are required by the Contract.

8.2 Contractor's Right to Terminate or Stop Work. Should Owner fail to perform any material term or condition of the Contract Documents, Contractor shall be at liberty, after 30 days written notice to Owner and Owner's failure to remedy the problem within that time period, to terminate this Agreement or stop work. If Contractor elects to stop work, Contractor shall not be required to recommence work until such time as Owner has completely remedied its breach.

8.3 Contingency. This Agreement is expressly contingent upon the Owner successfully securing financing that, in its reasonable commercial judgment, is sufficient to fund the Project. The Owner shall use its best reasonable efforts to secure such financing. The Agreement may be terminated by Contractor upon written notice to the Owner in the event that this contingency is not satisfied within sixty (60) days of the date of this Agreement, and in such event the Parties shall have no further obligations hereunder, nor shall either party be liable for any damages alleged to have occurred as a result of the termination of this Agreement; provided, however, in the event Owner does not secure financing, it shall none the less be obligated to Contractor in the amount of the December 2016 PDA Fee.

9. Delays. Should Contractor be obstructed or delayed in the prosecution or completion of the Project by the act, negligence, delay, or default of Owner or by any other damage, act or cause beyond the reasonable control of Contractor or any subcontractor, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of such event. If Contractor is delayed by actions or inactions of Owner or its agents or employees, Owner shall be required to reimburse Contractor for its additional costs incurred as a result of such delay.

10. Contractor to Furnish Required Statements. Contractor shall provide all statements, affidavits, waivers, and other instruments required by state or federal law or regulation or by local ordinances or rules, at such times and in the form required by said laws, regulations, ordinances, or rules, and Contractor hereby acknowledges receipt of notice from Owner to furnish same.

11. Nondiscrimination Equal Employment Opportunity and Americans with Disabilities Act. Contractor shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (or, the "ADA") in the course of providing any services funded by this Agreement, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship) and accessibility.

Contractor's decisions regarding the delivery of Work and services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation (Broward County Code, Chapter 16 1/2), gender identity, gender expression, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully used as a basis for service delivery.

12. Domestic Partner Benefits Requirement. Contractor shall comply with City Ordinance No. O-2012-028, § 2, 11-7-2012 (the "Domestic Partner Benefits Ordinance"), by providing benefits to domestic partners on the same basis as it provides benefits to its employees' spouses and the children of spouses, with certain exceptions as provided by the Ordinance to domestic partners. For purposes of this provision, the term "domestic partners" shall mean any two (2) adults of the same or opposite sex, who have registered as domestic partners with Broward County pursuant to state or local law authorizing such registration, or with an internal registry maintained by the employer of at least one (1) of the domestic partners."

By entering into this Agreement, Contractor agrees to incorporate the following terms associated with the Domestic Partner Benefits Ordinance:

12.1. The Contractor certifies and represents that it will comply with this section during the entire term of this Contract;

12.2. The failure of the Contractor to comply with this section shall be deemed to be a material breach of the Contract, entitling the City to pursue any remedy stated below or any remedy provided under applicable law;

12.3. The City may terminate this Contact if the Contractor fails to comply with this section.

12.4. The City may retain all monies due tor to become due until the Contractor complies with this section.

12.5. The Contractor may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in Chapter 21 of the Broward County Administrative Code.

13. Miscellaneous Provisions.

13.1. Governing Law; Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this Agreement is fixed in Broward County, Florida.

13.2. Notices. Unless otherwise specifically provided herein, any notice, consent, request, demand, report or statement (herein "Notice"), which is required or permitted to be given to or served upon either party hereto by the other party hereto under any of the provisions of this Agreement shall be in writing and deemed to be duly delivered when (i) personally delivered to Contractor, or personally delivered to Owner in the case of a Notice to be given to Owner, or (ii) deposited in the United States mail, registered or certified, postage prepaid, and properly addressed as follows:

If to Owner: Albert Carbon, Public Works Director
City of Oakland Park
3650 Northeast Avenue
Oakland Park, Florida 33334

If to Contractor: Gregory F. Collins, President
Energy Systems Group LLC
4655 Rosebud Lane
Newburgh, Indiana 47630

Either party may change its address or its designated representative for receipt of notices by submitting a notice in compliance with this Section.

If Owner has questions about billing, invoices or any other accounting or related administrative issues, it can make contact (which will not constitute Notice) with:

Drew Bailey, Vice President, Finance & Accounting
Energy Systems Group, LLC
4655 Rosebud Lane
Newburgh, IN 47630
(812) 492-3754
dbailey@energysystemsgroup.com

13.3. Claims for Damages. Any claims by either party hereto for bodily injury or damage to personal property caused by any act or omission of the other party hereto or by any of such party's employees or agents or others for whose acts it is legally liable shall be made in writing to such other party within a reasonable time after the occurrence or first knowledge of such injury or damage.

13.4. Assignment. Neither party shall assign, transfer, pledge, or grant any security interest in, or otherwise dispose of, this Agreement or the equipment or any interest in this Agreement or the Equipment without first obtaining the other party's written consent. Subject to the foregoing, this Agreement shall inure to the benefit of and is binding upon the heirs, executors, administrators, successors, and assigns of the parties hereto.

13.5. Waivers. The failure of either party hereto to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provision or the relinquishment of any such rights unless such waiver is in writing and signed by both parties.

13.6. Remedies Cumulative. Each remedy provided for by the Contract shall be cumulative and in addition to every other remedy provided for herein, by law or in equity. Upon the occurrence of a default, hereunder, either party, or its assignee, may, at its option, exercise any right, remedy, or privilege which may be available to it under applicable law, including the right to (i) proceed by appropriate court action to enforce the terms of this Agreement, and (ii) recover damage for breach of this Agreement. Notwithstanding the exercise of any right, remedy or privilege, the parties shall remain liable for all covenants and indemnities under this Agreement.

13.7. Tests. If the Contract Documents or the laws, ordinances, rules, or regulations of any public authority having appropriate jurisdiction require inspection, testing, or approval of any of the work, Contractor shall give Owner timely notice of Contractor's readiness for such inspection, testing, or approval and of the date thereof so that Owner may be present to observe such inspection, testing, or approval by such public authority. Contractor shall be responsible for and pay all costs for any such inspection, testing, or approval unless otherwise provided for herein. All required licenses, permits, or certificates applicable to any such inspection, testing, or approval shall be obtained by Contractor and promptly delivered to Owner.

13.8 Hazardous Materials. If during the performance of the services related to the Project, the presence of Hazardous Materials is discovered or reasonably suspected, Contractor shall notify Owner of such discovery or suspicion and shall be permitted to immediately cease all work that may require contact with or exposure to such hazardous materials until Owner has inspected the same and Owner has made arrangements for the removal of the same at its expense. Contractor shall be entitled to an extension of the time fixed for the completion of the work equivalent to the time required to remediate such Hazardous Material. "Hazardous Materials" includes all hazardous or toxic substances or materials as may be so designated by federal, state or local governmental entities. Including without limitation, asbestos, mold, lead paint and soil or water contamination of any kind, unless expressly included within the Scope of Work.

13.9. Amendments. No amendment, supplement, or modification hereof shall be effective for any purpose unless the same is in writing and signed by both parties hereto.

13.10. Headings. The headings of sections and subsections of this Agreement are for convenience of reference only and shall not affect the meaning or construction of any provision hereof.

13.11. Public Records Compliance. Contractor shall comply with Florida's Public Records Law provided in Chapter 119, Florida Statutes. In particular, Contractor shall, in the performance of this Agreement:

13.11.1. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service;

13.11.2. Provide the public with access to such public records on the same terms and conditions that the City would provide the records and at a cost that does not exceed that provided in chapter 119, Florida Statues, or as otherwise provided by law;

13.11.3. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law; and

13.11.4. Meet all requirements for retaining public records and transfer to the City, at no cost, all public records in possession of the Contractor upon termination of the Contract and return or destroy any duplicate public records that are exempt or confidential and exempt. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the requesting agency.

13.11.5

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT

Renee M. Shrout, CMC
City Clerk
City of Oakland Park
3650 NE 12th Avenue
Oakland Park, FL 33334
954-630-4298
renees@oaklandparkfl.gov

13.12. Scrutinized Companies Prohibited from Performing Work. Contractor shall not, in accordance with Florida Statute § 287.135, as amended, engage, enter into a subcontract with or otherwise hire subcontractors to perform Work or to provide goods or services pursuant to this Agreement in an amount equal to or greater than $1 million that: (a) are on the boycott Israel List; (b) are on the Scrutinized Companies with activities on the Sudan List; are on the Scrutinized Companies with activities in Iran Petroleum Energy Sector List; (c) or are engaged in business operations in Syria or Cuba.

13.13. Non-Appropriation. This Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefor shall be incurred beyond the amount of such monies. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the Agreement.

13.14 Taxes. The Contractor will pay all applicable sales, consumer use and other similar taxes required by law. The Contractor is responsible for reviewing the pertinent State statutes involving the sales tax and complying with all requirements.

13.15 Entire Agreement. This Agreement, together with the Contract Documents, represents the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, representations and agreements whether written or oral.

[Remainder of page intentionally left blank; signature page to follow.]

13.16 Authority to Execute Contract. This Contract is executed by Owner pursuant to a resolution of Owner duly adopted at its regular meeting called and held on the 15th day of November, 2017.

CITY OF OAKLAND PARK, FLORIDA

By________________________________
Tim Lonergan

Its City Mayor

ATTEST:

By________________________________

Its City Clerk

ENERGY SYSTEMS GROUP, LLC

By________________________________
Gregory F. Collins

Its President

ATTEST:

By________________________________
Angela L. Rawlinson

Its Contracts Manager

SCHEDULE 1
ACCEPTANCE CERTIFICATE OR FINAL ACCEPTANCE CERTIFICATE

(This is a sample form and will be modified, completed and signed after installation of an ECM, Facility or the entire Project, as the case may be)

Energy Systems Group, LLC
4655 Rosebud Lane
Newburgh, IN 47630

Re: Guaranteed Energy Savings Performance Contract, dated as of November 15, 2017 (the "Agreement"), between Energy Systems Group, LLC (the "Contractor") and the City of Oakland Park, Florida (the "Owner").

Ladies and Gentleman:

In accordance with the Agreement, Owner hereby certifies and represents to, and agrees with, Energy Systems Group, LLC as follows:

The ECM (or ECMs), Facility (or Facilities), or the entire Project, as the case may be, (as defined in the Agreement) have been delivered, installed, and accepted as of November 15, 2017 (the "Acceptance Date").

Owner has conducted such inspection and/or testing of the ECM (or ECMs), Facility or the entire Project, as the case may be, as it deems necessary and appropriate and hereby acknowledges that it accepts the ECM (or ECMs), Facility, or the entire Project, as the case may be, for all purposes.

No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

Sincerely,

CITY OF OAKLAND PARK, FLORIDA

By: [signature]

Its: Mayor

Date: November 15, 2017

SCHEDULE 2
ANTICIPATED PAYMENT REQUEST DRAW SCHEDULE

Start Date	Amount
Contract Approval	10%
Monthly Progress Payments	On Going Monthly
Job Final	5%

EXHIBIT A
SCOPE OF WORK

The project is broken out into two separate funds that pertain to City operations:

- **Enterprise Fund (EF)**
- **General Fund (GF)**

*The Scope of Work herein relates solely to the EF and is currently included as a part of the parties' November 15, 2017 Agreement. City acknowledges and reserves the right to direct ESG to take a phased approach (first phase being the EF items included currently, and subsequent phases that may include additional EF and GF items) in implementation of ESG's proposed Measures. This Scope of Work document, therefore, may be utilized for subsequent project phases that are developed. The acceptance of any subsequent phased implementation stage will be handled as an amendment to this Contract; provided, however, that implementation of a subsequent phase shall not delay the City's acceptance of Work previously performed and completed or the initiation of ESG's Performance Guarantee. Furthermore, the City reserves the right to implement future Work or services proposed by ESG following the City's Final Acceptance of Work performed pursuant to this Contract through a subsequent guaranteed energy savings performance contract(s).

<u>EF includes the following Departments and Facilities and Measures that pertain to them</u>:
EF Departments and Facilities:

- EF-A Water/Sewer Utility Department

EF Measures:

- EF-1 – Water Meter Upgrade

The following indicates the measure that applies:

EF-1 – Water Meter Upgrade that pertain to the EF-A Water/Sewer Utility Department

Enterprise Fund (EF)

EF-1 Water Meter Upgrade

ESG will complete the documented scope of work at the following facility:

- EF-A Water/Sewer Utility Department

This measure is to install a fully functional cellular based Automated Water Meter (Badger E-Series Meters) installation to improve accuracy of the system and provide real time meter use data for billing and water leak purposes.

The following table identifies the quantities and sizes of pre-existing water meters to be replaced with new Badger E-Series Ultrasonic meters with cellular radio.

Meter Quantity by Size	
Meter Size	Quantity
5/8"	6,422
3/4"	137
1"	1,483
1.5"	297
2"	420
Total	8,862

Retrofit the following E-series meters that were exchanged during the testing phase, with cellular radios – (41) 5/8x3/4", (41) 1", (19) 1.5", and (2) 2".

ESG has included in the above list, a total of 100 meters (100 – 5/8" x 3/4") with integral shutoff valves for remote operation of valve. City to provide ESG with addresses during installation phase regarding the services that these will need to be installed at.

The following table identifies the quantities and sizes of pre-existing water meters to be replaced with new Badger compound meters (CSM Series) with cellular radio.

Meter Quantity by Size	
Meter Size	Quantity
3"	2
4"	6
6"	8
Total	16

IN addition to the above listed meters, ESG will include an additional total of fifty (50) meters to serve as stock for the City. The stock meters included is as follows – (30) – 5/8", (3) – ¾", (7) – 1", (5) – 1.5", and (5) – 2".

Based on City's direction, ESG will include in scope replacing (14) Interconnect Master Meters that are part of the water supply from neighboring City/County Utilities with Badger M5000 Mag meters with cellular radios. (8) 6" meters plus (6) 8" meters, total of (14), based on City's input. (12) of these meters are owned by Ft. Lauderdale Water Utility, and (2) are owned by Broward County Water Utility. Location information of these meters is included in Appendix-A1 Master Meter Locations of this exhibit based on information provided by the City and information available on the City website. These are currently not included in scope and price. The City will arrange for permission to replace these meters from the respective utilities that currently own these, and arrange for access.

The new system shall include the following:

- Software Engagement for hosted solution via Badger's Beacon system.
- The City will require to enter into a 10 yr cellular service agreement for hosted meter read/data. This includes wireless transmission and software.
- During the pre-deployment phase, ESG conducts a data analysis to ensure we have all of the existing system information. ESG will also work closely with the City's utility billing vendor to define a mass meter change out interface, used to send change out data back into the billing system.
- Network data collection - Interface with City's Tyler Munis system for electronic billing data interface and validation. Meter reading for the new meters will be collected via the Badger's Beacon System via the cellular transmission, and transmitted to the City's Tyler Munis system.
- Account data is uploaded into the handheld devices utilized by installation field crews. Installation teams proceed in route sequence order, verifying current data, collecting old meter data, and recording data for the new meter and transmitter.
- New meter and transmitter data will be evaluated by data analysts twice a week for upload to the billing system.
- Mass Meter Export to update Tyler Billing system.
- Field Order Management – Capture old meter final reading, and new meter serial/transmitter/ID numbers.

ESG also includes:

- Installation of a total of 8,124 double check valves on the 5/8", 3/4", and 1" services. Double check valves will be provided by the City to ESG, and scope includes only the installation of the double check valves.
- Composite meter lids on existing meter boxes for the 8,878 services.
- GPS location log of the 8,878 meters and photographs that indicate installation

ESG will return all existing meters and lids that are removed by ESG or its subcontractors to the City. Removed equipment will be placed on pallets. Details will be worked out between ESG and Oakland Park stake holders during installation regarding location of delivery. ESG assumes that the City will be responsible for the proper disposal of all meter-related equipment, lids, and materials returned from the field

ESG will coordinate route installations working closely with the city's billing department to execute the project in a planned and organized manner. ESG will provide additional training for City personnel, over and above manufacturers training, to develop skill, expertise, and comfort with the new system.

Project Assumptions

- ESG assumes that all residential meters will be released in route read order. ESG further assumes that the utility will provide a meter-reading/black out schedule prior to the project start date.
- Space to park trailer or storage unit will be provided by City to ESG at the Utility Facility
- ESG assumes old meters, lids or materials will be returned to the utility facility for disposal or relocation by the Utility.
- ESG assumes it will not be responsible for sorting, palletizing, labeling or packaging of old meters.
- ESG includes door hangers (will be left on door knobs of customers) for customer notification of both completed installations and uncompleted attempts requiring customer contact.
- ESG assumes a seamless flow of work. ESG further assumes there will be no work stoppages other than designated holidays and weather days.
- The price proposal is based on a five-day work week; however, ESG requests the right to work Saturdays and evenings as necessary in the event of delays or to meet customer appointment needs.
- ESG assumes that if tampering or an unsafe condition is found requiring the technician to wait for a utility employee to arrive, the response time will not exceed 30 minutes.
- ESG assumes all meters are located outside and are readily accessible by technician and work vehicle. ESG further assumes that the City will provide keys where meters are located behind locked gates. In case of hard to access meters, ESG will notify City and City will make arrangements for access. Rescheduling of appointment for the hard to access meters is included once and within 5 days of proving notification to the City. The meters for which the exchange cannot be accomplished within this timeframe will be turned over to City for installation at a later date.
- Guarantee of network performance to transmit meter readings to Badgers Beacon system based on manufacturer's warranty, which ESG hereby assigns to the City, is included.

Water Meter Installation

- Water meter installation will involve either complete exchange of existing meter with new meter, encoder register, and endpoint or retrofit of the existing meter register with new endpoint.
- ESG assumes meters are not located in a confined space as defined by OSHA.
- ESG assumes that the Utility will provide assistance with unsafe meter installations or other special circumstances.
- ESG assumes that water meter exchanges are like for like, same lay and length, and no major plumbing is required.
- ESG assumes it will not be responsible for the disposal of lead seals or other hazardous waste.

- ESG will not be responsible for the repair of pre-existing conditions such as excessive corrosion, plumbing irregularities, and code violations.
- ESG assumes that it will only be responsible for the repair of damages caused directly by ESG and its subcontractor services.
- ESG will not be held responsible for damages occurring more than 18" on either side of the water meter, unless directly attributable to the negligence of a ESG or its subcontractors installation technician.
- ESG assumes that water meters are on setters or equipped with standard meter connections that can be reused during installation activities.
- Scope does not include additional labor or groundwork needed to access meters (including but not limited to excessive digging and the cutting, removal, and replacement of asphalt or concrete).
- ESG assumes curb stops and valves are in good working condition.
- ESG assumes it will return all removed material including water meters, rubber washers, etc. to a single location for sorting and removal by the Utility.
- The cellular endpoints will be attached and installed through the new lids, and the top of the end point will be located on the upper surface (outside surface) of the lid.
- Scope does not include testing of new or removed meters
- Pricing does not include repair or replacement of meter boxes or meter vaults.

The following list of additional work that may be required and is beyond the scope of this project.

- Piping repair beyond what is included in scope
- Replacement, relocation, or height adjustment of meter box/vault
- Double check valve/backflow prevention on service sizes 1" and above
- Tarmac and Concrete related work
- Remote location and wiring of cellular radio/endpoints
- Meter setters

Training

ESG will interface between the manufacturers software system (Badgers Beacon) and City during commissioning and setup stages. Technology training is included. Daily verification and exceptions of installation, and troubleshooting software issues is included. A total of 20 hours of training spread over multiple days, is included on the Badgers Beacon system.

Appendix A1 – Master Meter Locations

City of Oakland Park

3/15/16

Fort Lauderdale Meters

Meter #1 Stations 4300 ne 12 terr

1. B-2 (B2-A, 12 grinder pump stations)
2. **B-3**
3. Ls#1
4. Ls#2
5. LS#3

Meter #2 Stations Ne 12 Ave & 38 St

1. C-1 (Milteand. C-3, farmstore.C-4)
2. B-1
3. C-2
4. D-3 (D-5)

Meter #5 Stations Ne 38 St & 20 Ave

1. Ls#5
2. Ls#9 (LS#7)
3. LS#4
4. A-2

Meter #11 Nw 9 Terr & Commercial Blvd

1. D-12

Meter#12 Nw 19 Ave & 27 St

1. Rock Island

Broward County Meter 441 & Nw 35 st

1. D-11 (D-6)
2. D-13
3. D-4
4. D-1
5. D-7 (D-8, D-9, D-10)
6. D-2

No Meter

D4-A

D-14 Repump in Parenthesis

Oakland Park (OKP) Master Meter Connections
With Fort Lauderdale (FTL)

OKP Meter #	FTL ID #	FTL Account #	Meter Size	Location of Master Meters
1	7200284	370-3800-7002	6"	1001 East Oakland Park Blvd
2	635595	370-40003007	6"	2054 East Oakland Park Blvd
3	70685360	370-4500-2004	6"	1601 NE 45 Street
4	700961700	370-5000-2006	8"	4500 NW 31 Avenue
5	70632140	370-5250-3001	8"	3500 NW 31 Avenue
6	4210594000	370-6200-7001	6"	1690 West Prospect Road
7	10722622	370-6300-5004	6"	1600 NW 41 Street
8	6906501	370-6500-0003	6"	499 West Prospect Road
9	802680100	370-7000-0006	6"	2 NE 38 Street
10	72230820	370-7800-3002	8"	2604 NW 21 Avenue
11	72359770	370-8000-9005	6"	2610 NW 26 Avenue
12	49504078	370-3700-9009	8"	1300 NE 38 Street

The City has many interconnections with the City of Fort Lauderdale and two interconnections with Broward County. The interconnections with Broward County are located near the addresses below:

- N.W. 29th Street, near N.W. 30th Avenue off Oakland Park Boulevard
- South of Oakland Park Blvd. between N.W. 29th Avenue and N.W. 31st Avenue

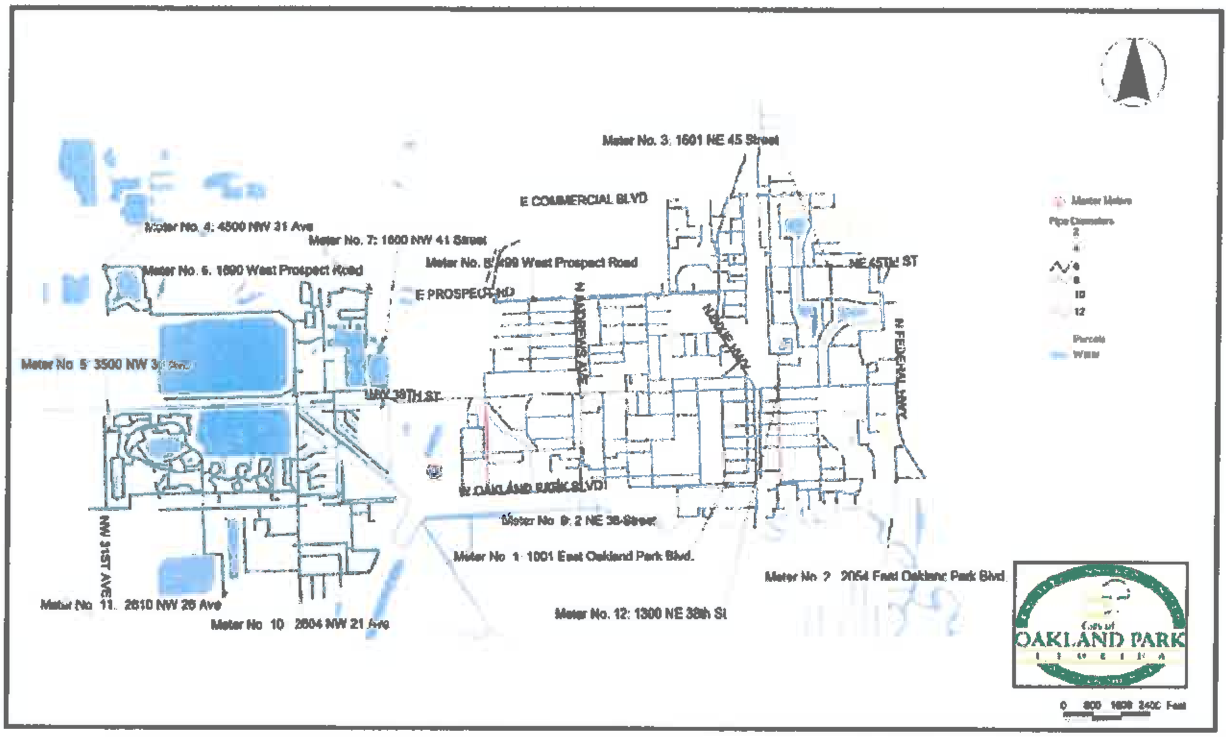

Figure 3-2 Transmission and Distribution System Including Fort Lauderdale Interconnection Locations

EXHIBIT B
PERFORMANCE GUARANTEE AND MEASUREMENT AND VERIFICATION PLAN

Measurement and Verification (M&V) is required to verify the achievement of energy savings and meter accuracy benefits as required for the project. Properly applied M&V accurately assesses energy savings, allocates risks to the appropriate parties, reduces uncertainties to reasonable levels, monitors equipment performance, finds additional savings, improves operations and maintenance, verifies that the savings are met, and allows for future adjustments as needed.

This M&V plan is prepared by ESG to help both parties agree on the methodologies to justify savings for energy conservation measures covered in the project. This M&V plan specifies the approach to monitor the actual energy savings associated with the project, provides sample energy savings calculation documents, and describes the methodology, measurement, and monitoring format of actual energy savings.

1.0 DEFINITIONS

When used in this Agreement, the following words in bold font shall have the meanings ascribed to them below:

"Acceptance of Installation" means an authorized representative of the CITY has inspected and accepted that ESG installed Improvement Measures are operational and comply with contract performance requirements and specifications. The CITY'S acceptance shall not relieve ESG from responsibility for continued compliance with contract requirements during the contract term. The Acceptance of Installation shall occur after Substantial Completion.

"Annual Project Benefits" is defined as the portion of the Guaranteed Measured Project Benefits to be achieved in any one Guarantee Year of the performance Guarantee Term.

"Annual Project Benefits Realized" are the Project Benefits actually realized for any one year of the Performance Guarantee Term.

"Annual Project Benefits Shortfall" are the amount by which the Annual Project Benefits exceed the Annual Project Benefits Realized in any one year of the Performance Guarantee Term.

"Annual Project Benefits Surplus" are the amount by which the Annual Project Benefits Realized exceed the Annual Project Benefits in any one year of the Performance Guarantee Term.

"Approval" means the CITY has completed review of submittals, deliverables or administrative documents (e.g., insurance certificates, installation schedules, planned CITY interruptions, etc.) and has determined that the documents conform to contract requirements. The CITY's approval shall not relieve ESG from responsibility for complying with contract requirements.

"Baseline" is the mutually agreed upon data and/or water usage amounts that reflect conditions prior to the installation of the Improvement Measures comprising the Project as detailed in this contract.

"Baseline Period" The Baseline for the Water Meter portion of the project is the calendar year 2016.

"Construction Period" is the period of time beginning with commencement of ESG's performance of the Work and ending the day prior to the first day of the First Guarantee Year.

"Energy Baseline" shall be the energy consumption and costs prior to the installation of the energy conservation measures at the facilities. The baseline will consist of all base year energy bills applicable to the meters in the project. It may also consist of any estimated usage for unmetered energy consumption.

"Energy Conservation Measure (ECM)" is defined as the installation of new equipment/facilities, modification and/or alteration of existing equipment/facilities or rate structures or revised operations and maintenance procedures intended to reduce energy consumption of facilities/energy systems, improve equipment efficiency or provide equipment that complies with existing standards.

"Energy and Operational Savings" or **"Energy and Operational Cost Savings"** is the sum of the Energy Savings and Operational Savings as defined herein. Such term(s) shall be read consistently with the term "Energy, water, or wastewater cost savings," as defined within FLA ST § 489.145(3)(c).

"Energy Costs" shall mean charges for fuel adjustments, base services, transmission, tariffs, and distributions. The Energy Costs will normally be derived or imputed from the facility's utility bills. This method allows for updating savings calculations with changing rate schedules. In the event of a utility rate decrease, the utility rate(s) used to assign dollar cost will not drop below that of the escalated Baseline Period.

"Energy Savings" means a measurable reduction in Energy Costs and includes, but is not limited to, water meter accuracy benefits.

"Facilities" shall mean those buildings, utility systems, and mechanical equipment from which the water meter accuracy and other savings will be realized.

"Final Acceptance Date" shall mean the date all Improvement Measures comprising the Project (as defined in the Agreement) have been delivered, installed, and accepted by the CITY.

"First Guarantee Year" is defined as the period beginning on the first (1st) day of the month following the Final Acceptance Date and ending on the day prior to the first (1st) anniversary thereof.

"Guarantee Period" or **"Guarantee Term"** is defined as the period beginning on the first (1st) day of the First Guarantee Year and ending on the last day of the Term.

"Guarantee Year" is defined as each of the successive twelve (12) month periods commencing on the anniversary of the commencement of the First Guarantee Year throughout the Term of this Agreement.

"Guaranteed Savings" or ESG's **"Performance Guarantee"** is defined as the sum of all Energy and Operational Cost Savings.

"Improvement Measure" is defined as the installation of new equipment/facilities/water meters/technology, modification and/or alteration of existing equipment, facilities or rate structures or revised operations and maintenance procedures intended to improve water meter accuracy, or provide new equipment that complies with existing standards.

"Measured Project Benefits" are certain water meter accuracy benefits calculated in accordance with the methodologies detailed in the Performance Guarantee sections 4.0.

"Non-Measured Project Benefits" have been "mutually agreed to" by City and will be deemed achieved in accordance with the Sum of Project Benefits Table 3A. The City and ESG agree that the Non-Measured Project

Benefits may include, but are not limited to large water meter accuracy benefits, operational savings, and avoided future capital costs as a result of the project implementation. The Non-Measured Project Benefits shall not be measured by ESG at any time during the Support Services and Guarantee Term, but rather ESG's duty to deliver such benefits shall be considered fully satisfied upon the City's Final Acceptance of the Project.

"Operational Costs" shall include the "mutually agreed to" costs associated with operating and maintaining the facilities or servicing water meters. Operational Cost Savings shall not be measured or monitored by ESG at any time during the Support Services and Guarantee Term, but rather shall be considered fully satisfied upon the City's Final Acceptance of the Project. Examples include the cost of inside and outside labor to repair and maintain systems and equipment, the cost of replacement parts, the cost of deferred maintenance, the cost of lamp and ballast disposal, and the cost of new capital equipment.

"Operational Savings" means a measurable reduction in Operational Costs, including identified capital savings. Operational Savings are stipulated based upon information supplied by the City and/or its utility service provider and parties' discussions with respect to reasonable predictions of future costs during the Guarantee Term.

"Project Benefits" are the Measured Project Benefits plus the Non-Measured Project Benefits to be achieved during the term of this agreement.

"Performance Guarantee Term" or **"Guarantee Term"** shall commence on the first day of the first month following the Final Acceptance Date and continue for fifteen (15) years.

"Retrofit Isolation Method" (if applicable to this Project) refers to energy audit methodologies that require pre-retrofit and post-retrofit measurements to isolate energy consumption and costs of specific facility equipment and systems impacted exclusively by this Agreement.

"Support Services Agreement Term" shall commence on the one-year anniversary of the Final Acceptance Date and continue annually until terminated by the City as outlined in the Support Services Agreement (Exhibit C).

"Term" shall be **15** years.

"Total Guarantee Year Savings" is defined as the amount of Energy and Operational Savings realized by Facilities in each Guarantee Year as a result of the Work.

"Total Project Benefits" is defined as the total amount of Measured Project Benefits (Meter Accuracy Benefits) plus the Non-Measured Project Benefits (Operational Savings and Avoided Future Cost Savings) realized over the 15-year term by the City as a result of the project implementation.

"Water Meter Accuracy Baseline" has been initially established by physical removal and certified independent testing of existing water meters, and incorporates normal wear and tear criteria. City and ESG stipulate and agree the test results provided by a third party are accurate and were in accordance with AWWA water meter testing standards and further agree to the baseline used to calculate increased billable water usage to be achieved by City.

"Water Meter Accuracy Benefits" are defined as the increased billable water usage/volume attributable to the implementation of the new, more accurate, water meters.

Water Meter Upgrade Section

SECTIONS 2 THROUGH 5 PERTAIN TO MEASURE - EF-1 – Water Meter Upgrade

2.0 PERFORMANCE GUARANTEE TERM AND TERMINATION

The Term of this Performance Guarantee shall commence on the first (1st) day of the first month following the Final Acceptance Date of the Work installed pursuant to this Agreement. The Performance Guarantee Term is fifteen (15) years, with support services provided annually unless terminated by the City as outlined in the Support Services Agreement (Exhibit C).

3.0 PERFORMANCE GUARANTEE

ESG guarantees to the City Measured Project Benefits will be realized in each Guarantee Year as shown in Table 3A - Sum of Project Benefits. Non-Measured Project Benefits will be considered fully satisfied at Final Acceptance of the Project.

Table 3A - Sum of the Project Benefits

	METER ACCURACY BENEFITS		NON MEASURED PROJECT BENEFITS		
PERIOD	MEASURED (a)	NON-MEASURED (b)	OPERATIONS EFFICIENCIES (c)	CAPITAL COST AVOIDANCE (d)	TOTAL
CONSTRUCTION	$ -		$ -	$ -	$ -
1	$ 615,221	$ 19,682	$ 114,433	$ 77,784	$ 827,120
2	$ 635,215	$ 20,322	$ 128,100	$ 80,118	$ 863,755
3	$ 655,860	$ 20,982	$ 161,402	$ 82,521	$ 920,765
4	$ 677,175	$ 21,664	$ 125,044	$ 84,997	$ 908,880
5	$ 699,184	$ 22,368	$ 128,795	$ 87,547	$ 937,894
6	$ 720,159	$ 23,039	$ 132,659	$ 90,173	$ 966,030
7	$ 741,764	$ 23,730	$ 136,639	$ 92,878	$ 995,011
8	$ 764,017	$ 24,442	$ 153,325	$ 95,665	$ 1,037,448
9	$ 786,937	$ 25,175	$ 192,722	$ 98,534	$ 1,103,370
10	$ 810,545	$ 25,931	$ 149,309	$ 101,490	$ 1,087,276
11	$ 834,862	$ 26,709	$ 153,788	$ 94,082	$ 1,109,441
12	$ 859,908	$ 27,510	$ 158,402	$ 87,214	$ 1,133,033
13	$ 885,705	$ 28,335	$ 163,154	$ 80,847	$ 1,158,041
14	$ 912,276	$ 29,185	$ 168,049	$ 74,945	$ 1,184,455
15	$ 939,644	$ 30,061	$ 245,601	$ 69,474	$ 1,284,780
TOTALS	$ 11,538,473	$ 369,136	$ 2,311,423	$ 1,298,268	$ 15,517,300

(a) Column A: These values are calculated utilizing the mutually agreed upon Measured Water Meter Accuracy Baseline for the 5/8", 3/4", 1", 1.5", and 2" meters. See Section 4.0. Additional explanation found below.

(b) Column B: These values are calculated utilizing the mutually agreed upon Water Meter Accuracy Baseline for the 3", 4", and 6" meters. See Section 4.0. Additional explanation found below.

(c) Column C: These Operational Cost Savings values are based on additional Non-Measured Project Benefits associated with Meter Reading fully discussed and agreed upon between City and ESG. See Section 5.2.

(d) Column D: These Operational Cost Savings values (specifically, stipulated capital savings) are based on additional Non-Measured Project Benefits fully discussed and agreed upon between City and ESG. See Section 5.2.

* Columns A and B assume an annualized inflation escalation rate of 3%, plus meter degradation factored in as described in section 4.1.3 and table 4F . Column C includes an annual inflation escalation rate of 3%, with a 10% decrease year over year for Guarantee Years 11 through 15. Inflation escalation rates were discussed by and between the parties and are based their mutual agreement.

** Water Meter Accuracy benefits will result in increased billable water usage/volume which logically yields some level of additional billable water revenue. There are many variables beyond ESG's control which may impact the results. Many of these variables are under the control of the City. Others, such as weather and demographics, are mutually uncontrollable variables. Within the context of the benefits projection, any variables not expressly assumed herein may warrant an adjustment to the Baseline.

3.1 Additional Project Savings and Benefits.

ESG may identify additional Project Benefits or Savings opportunities during the Construction Period or during any Performance Guarantee Year. Additional Savings and Benefits that can be demonstrated as a result of ESG efforts that result in no additional costs to the City beyond the costs identified in this Agreement may be credited towards achievement of the Performance Guarantee.

3.2 Project Savings and Benefits Prior during Construction Period

All Additional Savings and Benefits realized by the City that result from activities undertaken by ESG during the Construction Period as a direct result of the installed improvement Measures provided by ESG will be applied toward the overall Performance Guarantee.

3.3 Performance Guarantee.

The performance guarantee will be provided per the descriptions found in the following sections:

4.0 WATER METER ACCURACY BENEFITS

Support Services for Water Meter Accuracy Benefits will be provided as a component of the Support Services Agreement (Refer to Exhibit C). These Support Services will include:

- Executive Overview of the Project's Performance and Measured Project Benefits achieved to date.
- Testing of a Mutually Agreed Upon Representative Sample of Water Meters.
- Summary of the Measured Project Benefits accounting and calculations.

Within ninety (90) days following the anniversary of beginning of the First Guarantee Year, ESG will conduct Support Services for the post-retrofit Water Meter Accuracy Benefits associated with this Project. Such services shall continue on an annual basis throughout Guarantee Term unless terminated by the City as outlined in the Support Services Agreement (Exhibit C).

Water Meter Accuracy Benefits will begin to accrue following Final Acceptance of the water meter replacement portion of the performance based project. There is no expected substantial meter accuracy degradation of new meters installed by ESG for the first twenty (20) years the meters are in service. The meter manufacturer, however, only provides a 98.5% accuracy guarantee of new meters. The 5/8", 3/4" and 1" meters have an accuracy guarantee by the City's selected manufacturer for 20 years. The 1.5" and 2" meters have accuracy guarantee for 5 years. As a result, ESG bases its Measured Water Meter Accuracy Benefits and guarantee calculations on the new meter accuracy based on these conditions.

The City will cooperate with ESG in providing Support Services by authorizing ESG access to the City's relevant accounting records and facilities to monitor any installed equipment relating to such Measured Water Meter Accuracy Benefits pertaining to the Performance Guarantee. In the event that ESG is not provided immediate access to the relevant data from the City, ESG will contact a representative from the City to obtain this information. If there is a delay in receiving the information the ninety (90) day period will be reasonably extended to gain necessary access.

4.1 Water Meter Accuracy Benefits Methodology.

Water/sewer revenue is billed by metered water usage. Any applicable sewer charges are based on water consumption. If a water meter is not 100% accurate, all of the delivered water is not billed to the consumer by the City. As meters age over time, they become less accurate, thus creating an increasing percentage of unbilled water volume. By replacing the meters with new, more accurate models, the volume of water is more precisely measured, and consequently, billing is more precise. Additional operational savings and enhanced customer service capabilities are realized by utilizing automated reading features.

Based upon ESG's and City's investigation of the existing condition of certain City's water meters, City has concluded that a significant percentage of such water meters do not accurately measure billable consumption, and the City is losing potential billable consumption revenue due to this inaccuracy. By replacing inaccurate water meters with more accurate meters, it is expected that City will increase the volume of water registered by such meters and thereby increase measured billable consumption, assuming the same consumption levels prior to and after the Work has been performed. City recognizes, however, that actual revenues may differ from billable revenues and that the amount of actual revenues achieved in future periods will depend on other factors besides improved meter accuracy such as, by way of example, collections ratio, consumption, and utility rates, among others.

The pre-retrofit accuracy of the 5/8" X 3/4", 1", 1.5", and 2" meter sizes has been calculated by testing a representative sample of the population and establishing the average accuracy of the meter population set forth in the Scope of Work. This calculated pre-retrofit accuracy has been applied to the larger meters (3", 4", and 6").

4.1.1 Baseline. The rates used for calculating increased billable water volume are the established Baseline Water/Sewer Rates, shown below in Table 4B-A, plus the agreed upon escalation rate of 3% annually. This rate will be used throughout the project savings guarantee term to calculate the benefit from the new more efficient meters.

Table 4B - Baseline Water / Sewer Usage Rates

Rate	$/kGal (1000 Gal) **(Weighted Average over all Service Sizes)**
Water	$7.2182
Sewer	$5.14

Table 4B-A Water/Sewer Usage Rates over the term of the Guarantee

Rates Used in Benefits Calculation/Baseline Usage Rate	
Usage Rate Water ($/1000 Gal)	$ 7.22
Usage Rate Sewer ($/1000 Gal)	$ 5.14

Usage Rates during Measurement and Verification Gaurantee Term			
	Projected Rate Increase	$/1000 Gal - Water	$/1000 Gal - Sewer
Implementation Phase	NA	$ 7.22	$ 5.14
Yr-1	3%	$ 7.43	$ 5.29
Yr-2	3%	$ 7.66	$ 5.45
Yr-3	3%	$ 7.89	$ 5.62
Yr-4	3%	$ 8.12	$ 5.79
Yr-5	3%	$ 8.37	$ 5.96
Yr-6	3%	$ 8.62	$ 6.14
Yr-7	3%	$ 8.88	$ 6.32
Yr-8	3%	$ 9.14	$ 6.51
Yr-9	3%	$ 9.42	$ 6.71
Yr-10	3%	$ 9.70	$ 6.91
Yr-11	3%	$ 9.99	$ 7.11
Yr-12	3%	$ 10.29	$ 7.33
Yr-13	3%	$ 10.60	$ 7.55
Yr-14	3%	$ 10.92	$ 7.77
Yr-15	3%	$ 11.25	$ 8.01

The following baseline of billable water usage was established based on information provided by the City to ESG. The City and ESG fully discussed and agreed to the following baseline of billable water usage. This data is shown below in Tables 4C - Baseline of Billable Water and Sewer Usage.

Table 4C - Baseline of Billable Water and Sewer Usage

	2016
Water (kGal Billed)	1,101,246
Sewer (kGal Billed)	916,956

4.1.2 Adjustments. Many factors determine actual water usage, such as; weather, local economy, population shifts, etc. ESG and the City have agreed on a Baseline Water Usage to calculate the financial benefit to the City.

4.1.3 Water Meter Test Results: The water accuracy model includes pre-replacement accuracy results for 5/8" x 3/4", 1", 1.5", and 2" size meters and is applied to the entire meter replacement population. Larger meters (3", 4" and 6") have not been included in testing due to the small number of larger size meters (16 total) that are present in the meter population, and also since these meters represent a very small percentage of the total water billed in the system.

The following table reflects the individual meter accuracy test results of our randomly selected and customer approved test batch.

Table 4D - AWWA Standard Test Results

0.625" x 0.75" Positive Displacement Meter

Ref #	Manufacturer	Serial #	Reading (kgal)	Minimum Flow		Intermediate Flow		High Flow		Weighted Average Accuracy (%)
				Rate (gpm)	Accuracy (%)	Rate (gpm)	Accuracy (%)	Rate (gpm)	Accuracy (%)	
1	Badger	16273759	399223.9	0.25	99.40%	2	100.50%	15	99.23%	100.1%
2	Badger	35610180	1020355	0.25	99.40%	2	101.49%	15	100.23%	101.0%
3	Badger	36404279	600350.6	0.25	97.39%	2	101.49%	15	99.83%	100.6%
4	Badger	32717905	105256.1	0.25	97.39%	2	100.50%	15	99.73%	99.9%
5	Badger	35842725	524626.7	0.25	99.40%	2	99.50%	15	99.63%	99.5%
6	Badger	36217153	352328.7	0.25	99.40%	2	100.50%	15	99.93%	100.2%
7	Badger	29012895	1488339.9	0.25	93.37%	2	98.51%	15	96.63%	97.5%
8	Badger	19178341	739815.2	0.25	99.40%	2	100.50%	15	99.63%	100.2%
9	Badger	16630316	1000506.5	0.25	99.40%	2	100.50%	15	99.33%	100.2%
10	Badger	99849965	1844051.1	0.25	99.40%	2	100.50%	15	99.53%	100.2%
11	Badger	16225945	637347.7	0.25	98.39%	2	100.50%	15	99.39%	100.0%
12	Badger	15932834	1.2	0.25	0.00%	2	0.00%	15	0.00%	0.0%
13	Badger	32717863	454059.8	0.25	99.40%	2	100.50%	15	99.79%	100.2%
14	Badger	14691757	61456.8	0.25	0.00%	2	100.50%	15	99.79%	85.3%
15	Badger	15676638	1079284.2	0.25	98.39%	2	100.50%	15	99.59%	100.0%
16	Badger	32074260	1010040.9	0.25	98.39%	2	101.49%	15	99.69%	100.8%
17	Badger	32762253	1002359.4	0.25	90.36%	2	100.50%	15	100.09%	98.9%
18	Badger	16630376	1009780.8	0.25	99.40%	2	101.49%	15	100.09%	101.0%
19	Badger	16479388	1004877.2	0.25	1.00%	2	1.99%	15	99.99%	16.5%
20	Badger	99143639	1004979.3	0.25	1.00%	2	100.50%	15	98.89%	85.3%
21	Badger	15676705	2631601	0.25	0.00%	2	0.00%	15	3.90%	0.6%
22	Badger	10417741	311805.7	0.25	96.58%	2	100.60%	15	99.33%	99.8%
23	Badger	32718095	481382.4	0.25	97.59%	2	101.59%	15	100.13%	100.8%
24	Badger	97553371	999434.2	0.25	99.60%	2	100.60%	15	100.53%	100.4%
25	Badger	32385571	1159812.2	0.25	95.57%	2	99.60%	15	98.93%	98.9%
26	Badger	40413999	442189.2	0.25	97.59%	2	100.60%	15	99.53%	100.0%
27	Badger	32213812	1021747.1	0.25	96.58%	2	99.60%	15	99.33%	99.1%
28	Badger	18807805	999407.4	0.25	97.59%	2	100.60%	15	99.63%	100.0%
29	Badger	29426217	660583.9	0.25	0.00%	2	100.60%	15	99.93%	85.4%
30	Badger	12539202	217857.2	0.25	96.58%	2	100.60%	15	99.93%	99.9%
31	Badger	13685362	246828.3	0.25	100.50%	2	101.49%	15	99.60%	101.1%
32	Badger	18052898	680614.6	0.25	95.48%	2	98.51%	15	97.20%	97.9%
33	Badger	36626031	326808.9	0.25	99.50%	2	100.50%	15	100.00%	100.3%
34	Badger	29699379	561577.4	0.25	99.50%	2	101.49%	15	100.30%	101.0%
35	Badger	1274658	310954.2	0.25	97.49%	2	99.50%	15	98.60%	99.1%
36	Badger	1251881	1518690.7	0.25	100.50%	2	100.50%	15	100.20%	100.5%
37	Badger	201702161	3630468	0.25	0.00%	2	1.00%	15	88.60%	14.0%
38	Badger	201702162	5764467.3	0.25	59.30%	2	94.53%	15	96.70%	89.6%

1" Positive Displacement Meter

1	Badger	35844500	1475485.7	0.75	98.00%	4	101.09%	40	99.49%	100.4%
2	Badger	32719482	739770.9	0.75	96.00%	4	101.09%	40	99.89%	100.1%
3	Badger	98094392	1478143.6	0.75	94.00%	4	101.09%	40	99.69%	99.8%
4	Badger	35844498	355888.6	0.75	99.00%	4	100.10%	40	99.49%	99.8%
5	Badger	19043543	1662141.2	0.75	99.00%	4	100.10%	40	99.49%	99.8%
6	Badger	19263102	1530562.2	0.75	85.00%	4	99.11%	40	99.49%	97.1%
7	Badger	32362411	1109817.5	0.75	99.00%	4	99.11%	40	99.89%	99.2%
8	Badger	99865001	1467062	0.75	95.10%	4	100.60%	40	99.33%	99.6%
9	Badger	17358383	1492304.4	0.75	10.01%	4	100.60%	40	100.33%	87.0%
10	Badger	201702171	2779959	0.75	0.00%	4	97.61%	40	99.73%	83.3%
11	Badger	35726870	868885.4	0.75	92.09%	4	100.60%	40	99.03%	99.1%
12	Badger	16787661	21405.6	0.75	97.10%	4	100.60%	40	99.73%	99.9%
13	Badger	36217114	266063.2	0.75	96.10%	4	100.60%	40	99.63%	99.8%
14	Neptune	35855093	2687756.6	0.75	100.10%	4	101.59%	40	100.83%	101.3%
15	Badger	15170734	60434.8	0.75	98.90%	4	99.90%	40	99.83%	99.7%
16	Badger	19263113	1319157.4	0.75	99.90%	4	100.90%	40	99.23%	100.5%
17	Badger	17104713	1521743.7	0.75	98.90%	4	101.90%	40	99.93%	101.2%
18	Badger	19535956	2027654.1	0.75	98.90%	4	100.90%	40	99.23%	100.3%
19	Badger	15170708	227283.7	0.75	98.90%	4	99.90%	40	99.73%	99.7%
20	Badger	12095964	1572535.9	0.75	96.90%	4	99.90%	40	99.63%	99.4%
21	Neptune	31440132	4608528	0.75	96.90%	4	99.90%	40	97.13%	99.0%
22	Badger	15170716	480737.1	0.75	99.00%	4	100.00%	40	99.73%	99.8%
23	Badger	16307133	12888.7	0.75	99.00%	4	101.00%	40	99.53%	100.5%
24	Badger	18807950	3803615.4	0.75	96.00%	4	101.00%	40	99.43%	100.0%
25	Badger	15771442	114858.4	0.75	99.00%	4	101.00%	40	99.83%	100.5%
26	Badger	32719535	75533.1	0.75	97.00%	4	101.00%	40	100.03%	100.3%
27	Badger	10580131	531189.8	0.75	97.00%	4	100.00%	40	99.53%	99.5%
28	Badger	32719515	1969225.7	0.75	96.00%	4	101.00%	40	99.93%	100.1%
29	Badger	29431342	1488239.4	0.75	95.90%	4	102.00%	40	100.00%	100.8%
30	Badger	29431347	2222797.5	0.75	98.90%	4	102.00%	40	99.70%	101.2%
31	Badger	29113380	1456645.2	0.75	96.90%	4	101.00%	40	99.10%	100.1%
32	Badger	10560145	454935.8	0.75	99.90%	4	101.00%	40	99.30%	100.6%
33	Badger	19240211	2388280.1	0.75	93.91%	4	101.00%	40	99.50%	99.7%
34	Badger	19263083	928956.8	0.75	95.90%	4	103.00%	40	99.30%	101.4%
35	Neptune	30536810	1763521.8	0.75	94.91%	4	102.00%	40	99.50%	100.6%
36	Badger	97195835	6399998.9	0.75	0.00%	4	0.00%	40	0.00%	0.0%
37	Badger	83488906	1491561.8	0.75	97.00%	4	100.90%	40	99.26%	100.1%
38	Badger	32763232	1489118.9	0.75	96.00%	4	101.90%	40	99.56%	100.7%
39	Badger	32362070	224334	0.75	96.00%	4	100.90%	40	99.96%	100.0%
40	Badger	32214135	5906684.6	0.75	94.00%	4	99.90%	40	99.66%	99.0%
41	Badger	15377055	31140.2	0.75	99.00%	4	100.90%	40	99.56%	100.4%

1.5" Positive Displacement Meter

1	Badger	35736072	9527989	1.5	100.10%	8	101.06%	50	101.30%	101.0%
2	Badger	14901640	340660	1.5	100.10%	8	101.56%	50	100.80%	101.2%
3	Badger	34054517	3886709	1.5	101.05%	8	102.36%	50	99.69%	101.8%
4	Badger	43060847	2251752	1.5	100.05%	8	101.35%	50	100.69%	101.1%
5	Badger	89431508	28840722	1.5	81.06%	8	95.28%	50	96.78%	93.4%
6	Badger	89431517	24219630	1.5	86.06%	8	98.29%	50	97.78%	96.4%
7	Badger	34051790	2346969	1.5	98.99%	8	101.29%	50	101.68%	101.0%
8	Badger	35756123	574170	1.5	100.99%	8	101.80%	50	101.19%	101.6%
9	Neptune	31807993	1206682	1.5	101.02%	8	99.31%	50	100.71%	99.8%
10	Badger	30062084	4192494	1.5	100.02%	8	100.31%	50	100.71%	100.3%
11	Neptune	31589559	6685250	1.5	93.01%	8	99.30%	50	96.72%	98.0%
12	Badger	14496695	241606	1.5	100.01%	8	100.70%	50	100.71%	100.6%
13	Badger	34057569	4846585	1.5	103.99%	8	101.31%	50	100.72%	101.6%
14	Badger	34060202	1869920	1.5	102.99%	8	101.31%	50	100.72%	101.5%
15	Neptune	20472464	12531652	1.5	93.37%	8	102.81%	50	100.96%	101.1%
16	Badger	97334777	26031066	1.5	99.40%	8	100.80%	50	98.96%	100.3%
17	Badger	17843819	27978311	1.5	0.00%	8	0.00%	50	0.00%	0.0%

2" Positive Displacement Meter

1	Badger	19089559	25367489	2	97.01%	15	99.60%	100	98.50%	99.0%
2	Badger	35726537	66564	2	0.00%	15	88.65%	100	89.54%	75.5%
3	Badger	29116278	1370651	2	98.01%	15	99.79%	100	99.73%	99.5%
4	Badger	14901709	1168790	2	99.01%	15	100.79%	100	100.73%	100.5%
5	Badger	14287681	469441	2	100.01%	15	100.79%	100	100.73%	100.7%
6	Badger	35747287	9372944	2	100.01%	15	99.79%	100	100.73%	100.0%
7	Badger	18886696	41182928	2	95.02%	15	99.92%	100	98.86%	99.0%
8	Badger	97223147	64190793	2	93.02%	15	99.92%	100	98.86%	98.7%
9	Badger	14814436	5513074	2	99.02%	15	100.92%	100	99.86%	100.5%
10	Badger	94194650	39083379	2	95.02%	15	99.92%	100	99.86%	99.2%
11	Badger	34060191	43158174	2	79.98%	15	98.93%	100	96.90%	95.8%
12	Badger	32344157	13632543	2	100.98%	15	100.93%	100	99.90%	100.8%
13	Badger	99676202	8695239	2	102.98%	15	101.93%	100	101.90%	102.1%
14	Badger	29116277	1703106	2	99.98%	15	100.93%	100	99.90%	100.6%
15	Neptune	31591933	9079815	2	20.00%	15	92.96%	100	98.95%	82.9%
16	Badger	13040577	6302577	2	98.00%	15	100.96%	100	99.95%	100.4%
17	Badger	35728679	9594048	2	99.00%	15	100.96%	100	100.95%	100.7%
18	Badger	19091435	9111701	2	96.00%	15	100.96%	100	99.95%	100.1%
19	Neptune	26117329	44764165	2	99.01%	15	99.99%	100	99.99%	99.8%

The Water Meter Accuracy Benefits have been calculated utilizing the accuracy analysis data provided by an independent 3rd party firm using AWWA (American Water Works Association) recommended testing procedures.

A first year baseline is mutually agreed upon and was established following the analysis of existing meters. That data is shown below in Table 4E - Summary of AWWA Standard Test Results. For the meters identified in Table 4E, the pre-retrofit water meter tests were performed on meters selected at random by ESG and approved by the City.

Table 4E - Summary of AWWA Standard Test Results

Meter Quantity by Size			
A	B	C	D
Meter Size	Quantity Tested	% Water of Annual Total that Flows via this size	First Year Accuracy %
5/8" and 3/4"	38	35.2%	**88.80%**
1"	41	16.0%	**96.90%**
1.5"	17	11.0%	**94.10%**
2"	19	34.7%	97.70%
Weighted Average Accuracy			**93.93%**

For each meter size, the measured accuracies indicated in Table 4D have been averaged and included under column D.

The Weighted Average Accuracy has been calculated as follows from Table 4E:

Weighted Average Accuracy = Sumproduct (column C and column D)/Sum (column C)

The first year baseline accuracy for 5/8" x 3/4", 1", 1.5", and 2" size meters can be seen in Table 4E above. At subsequent years of operation, the baseline meter accuracy is assumed to degrade at a rate of 0.25% annually. For the proposed system meter accuracy, the accuracy remains at 98.5% for the first five years and then degrades by 0.25% annually to take into account manufacturer accuracy warranty of five years on the 1.5" and 2" meters. The 5/8", 3/4" and 1" meters have accuracy guarantee from the manufacturer for 20 years. This is indicated in Table 4F - Baseline System Water Meter Accuracy Degradation and Table 4G - Post-Retrofit Guaranteed Weighted Average Meter Accuracy

Table 4F - Baseline System Water Meter Accuracy Degradation

Year	Baseline Accuracy
	All Sizes
1	93.9%
2	93.7%
3	93.4%
4	93.2%
5	92.9%
6	92.7%
7	92.4%
8	92.2%
9	91.9%
10	91.7%
11	91.4%
12	91.2%
13	90.9%
14	90.7%
15	90.4%

4.2 Performance Guarantee Approach

4.2.1 Water Meter Accuracy Benefits.

Increased Water Meter Accuracy Benefits do not include water being conserved or saved in a physical sense. The meter accuracy benefit is "Increased Billable Water Volume/Usage" as a result of the water meter replacement.

Post-retrofit water meter accuracy will be determined by an independent, third-party firm using American Water Works Association (AWWA) recommended analysis. The testing will be performed in accordance with AWWA guidelines and will include a mutually agreed upon representative sample of water meters. This sample size will be a minimum 25 meters comprising of a combination of 5/8", 3/4", 1", 1.5", and 2" meters. Testing of larger meters (3", 4" and 6") is not included, and accuracy measurement from the sample of smaller meters tested will be applied on the larger meters.

- City will be responsible with supplying ESG with replacement meters for the meters that are pulled for sampling, and safe storage of meters tested and subsequently returned to the City and kept in safe storage annually to be used as the replacement meters for the next year's performance verification testing.

Only the actual accuracy of the water meter is guaranteed as outlined in Table 4G – Post-Retrofit Guaranteed Weighted Average Meter Accuracy below, as all other relevant factors are variables outside of the control of ESG. This testing will be performed once per year following the Final Acceptance Date of the project, unless terminated by the City as outlined in the Support Services Agreement (Exhibit C).

Table 4G – Post-Retrofit Guaranteed Weighted Average Meter Accuracy

Year	Guaranteed Accuracy
	All Sizes
1	98.5%
2	98.5%
3	98.5%
4	98.5%
5	98.5%
6	98.3%
7	98.0%
8	97.8%
9	97.5%
10	97.3%
11	97.0%
12	96.8%
13	96.5%
14	96.3%
15	96.0%

The following table indicates the accuracy testing sample size and the calculation methodology, for post retrofit water meter accuracy:

Table 4G – A Meter Testing

Meter Testing Quantity by Size			
A	B	C	D
Meter Size	Quantity Tested	% Water of Annual Total that Flows via this size	First Year Accuracy %
5/8" and 3/4"	9	35.2%	x
1"	9	16.0%	x
1.5"	3	11.0%	x
2"	4	34.7%	x
Weighted Average Accuracy			x

For each meter size, the measured accuracies will be averaged and included under column D.

The Weighted Average Accuracy has been calculated as follows:

Weighted Average Accuracy = Sumproduct (column C and column D)/Sum (column C)

This accuracy applies to the following baseline consumption and increased revenue as detailed in Table 4H below.

Table 4H - Year 1 Increased Volume and Revenue

Meter Size	Qty	Increased Billable Volume Water kGal	Increased Billable Volume Sewer kGal	Increased Water Revenue ($)	Increased Sewer Revenue ($)
All	8,878	53,610	44,639	$398,577	$236,326

The water and sewer billable volume increase and revenue increase are calculated as follows:

Increased Billable Volume (Water kGal) = Baseline Water Billed (kGal) x (Actual Post-Retrofit Measured Weighted Average Accuracy / Baseline Water Meter Accuracy)- Baseline Water Billed (kGal)

Increased Billable Volume (Sewer kGal) = Baseline Sewer Billed (kGal) x (Actual Post-Retrofit Measured Weighted Average Accuracy / Baseline Water Meter Accuracy)- Baseline Sewer Billed (kGal)

Increased Water Revenue = Increased Billable Volume (Water kGal) x Baseline Water Usage Rate ($/kGal)

Increased Sewer Revenue = Increased Billable Volume (Sewer kGal) x Baseline Sewer Usage Rate ($/kGal)

During the term of the contract, if the meter accuracy measurements (based on annual testing) fall below the guaranteed meter accuracy as indicated in table 4G, losses will be calculated for both water and sewer as follows, and this will be the amount of shortfall that ESG will owe the City :

Losses (Water) = (Expected Increased Billable Volume
*- Actual Increased Billable Volume) * Usage Rate ($/kGaL)*

Losses (Sewer) = (Expected Increased Billable Volume
*- Actual Increased Billable Volume) * Usage Rate ($/kGaL)*

Total Losses = Losses (Water) + Losses (Sewer)

Throughout the Term the Usage Rate will be the rate defined in Table 4B-A both water and sewer.

ESG's performance guarantee relating to water meters is limited solely to the accuracy of the meters as listed in Table 4G, operating under normal conditions, which have been replaced pursuant to this Contract. No guarantee, expressed or implied, is provided with respect to any other matters, including and without limitation to the following items (and the effects thereof that are outside ESG's reasonable control):

- Water system revenue
- Water usage/consumption trends
- Water rationing programs
- Demographic and/or population shifts
- Changes in the industrial or commercial base
- Regulatory changes
- Droughts, floods, rainfall, or other weather or climactic conditions
- Water system pressure variations
- Non-metered water usage
- Failure to collect amounts due for billable consumption
- Changes to water and sewer rate schedules
- Water quality
- Failure of the water system to meet governmental requirements
- Improper maintenance or unsound or neglectful usage of any equipment.
- Battery life of equipment or water meters
- Performance of new water meters and associated automatic meter reading equipment (warranty provided by manufacture).

4.2.2 Performance Guarantee • Project Benefits Shortfalls or Surpluses.

1. **Project Benefits Shortfalls**. If an Annual Project Benefits Shortfall occurs for any one Guarantee Year of the Performance Guarantee Term, ESG shall, at its discretion and in any combination, (1) offset the amount of such shortfall against any unpaid balance City then owes to ESG, (2) consistent with Section

3.2, above, offset the amount of such shortfall against documented Construction Period savings identified by ESG, (3) pay to City the amount of such shortfall or, with the consent of the City, or (4) increase the next year's amount of Annual Project Benefits Guarantee Amount by the amount of such current shortfall.

2. **Additional Project Improvement Measures**. When an Annual Benefits Shortfall has occurred, ESG may, subject to City's approval (which approval shall not be unreasonably withheld, conditioned, or delayed), implement additional Improvement Measures, at no cost to City, which may generate additional Project Benefits in future years of the Performance Guarantee Term.

3. **Rate Schedules** – City agrees to the rates used for the accuracy benefits, and to the rates escalated over the term of the guarantee. City further agrees that changes to the actual rates which are different from an equivalent rate schedule as indicated in this exhibit, will produce meter accuracy benefits that are different from those stated in this exhibit. Any reduction in monthly base charges, monthly allowable minimum base consumption, or monthly volume charges may reduce the anticipated project benefits to be recovered from improving meter accuracy. ESG understands that the City purchases water from sends sewer to neighboring Utilities (located in neighboring City/County), and there are factors outside of City's control that can affect the usage rates. Meter accuracy benefits calculations are based on rates indicated in Table 4B-A. Losses calculations are based on rates indicated in Table 4B-A, and not on actual future usage rates.

4.2.3 City Responsibilities with Respect to Water Meter Accuracy Benefits.

The City acknowledges and agrees to the following responsibilities in order for full Water Meter Accuracy Benefits and associated project benefits to be realized. ESG assumes no liability, and Water Meter Accuracy Benefits Guarantee is void, if the following items are not strictly adhered to.

1. **Systems Maintenance** - Ongoing care and maintenance of the **utility** system, including all meters, AMR equipment and systems, meter boxes, and meter vaults at or above manufacturers' specifications and recommendations beginning at route acceptance.

2. **Credits** - Any credits to water bills are the full responsibility of the City. Should the City choose to provide credits in the form of forgiveness or reduction of water bills as a service to its citizens, the City accepts responsibility for the decreased billable water volume. ESG will not be responsible for any type of monetary payment to the City based on credits.

3. **Rationing Programs** - The City acknowledges that the implementation of any water rationing programs will serve to decrease consumption and therefore decrease water revenue.

4. **Access** - The City is responsible for providing access to designated ESG employees for the purpose of verifying, adjusting and/or maintaining the facility improvement measures employed at the various Facilities.

5. **Damage** - The City assumes responsibility for any damage to the water meters by foreign objects as well as any intentional damage to the water meters by parties other than ESG personnel or their subcontractors.

6. **Non-metered Usage** - The City assumes responsibility for authorizing any non-metered water usage.

7. **Water Quality** - The City assumes responsibility for maintaining water quality. Any water quality issues that affect the water meter manufacturers' warranty are the responsibility of the City.

8. **System Pressure** - The City assumes responsibility for maintaining the average system pressure that was present during the baseline consumption period. A decrease in system pressure may cause subsequent decreases in both billed consumption and water revenue.

9. **Weather** - The City acknowledges that weather may effect water consumption. Changes in the number of degree-days and/or annual rainfall amounts may serve to either increase or decrease billed consumption and its associated water revenue.

10. **Demographics** - The City acknowledges that demographic shifts (population growth or shrinkage) and changes in commercial business, industrial business and wholesale accounts may affect water consumption and its associated water revenue.

11. **Vandalism** - The City assumes responsibility for any damage resulting from acts of vandalism.

5.0 OTHER PROJECT BENEFITS (NON-MEASURED)

Additional Non-Measured Meter Accuracy Savings identified in Section 3, Table 3A, have been identified and have been reviewed thoroughly with the City and are incorporated in the 15 year financial "modeling" of the overall project. These additional meter accuracy benefits have been identified, are agreed on by the parties and shall be considered fully satisfied upon Final Acceptance of the Project.

5.1 Large Commercial and Industrial Water Meter Savings

Large commercial and industrial water meters 3" or greater in size were not tested for accuracy during project engineering & development as there are too few meters to determine and establish an average aggregate accuracy of the large water meter population. Additionally, the meters would have to be tested in-ground which would have significantly increased the development costs incurred by the City. Subsequently, the City and ESG have agreed to assign a baseline accuracy for the larger meters of **93.93%** accuracy to be used in calculating large water meter accuracy savings in year 1, and calculation methodology similar as stated in Section 4.1.3 and Table 4F, for the term of the project. This accuracy figure is equivalent to the average accuracy of the meters smaller than 3" that were tested. By applying accuracy increases to the agreed on consumption usage for the larger water meters, it is expected that the impact of increased billable water usage will result in significant meter accuracy benefits.

Table 5A - Large Water Meter Accuracy Benefits shows non-measured meter accuracy benefits for the larger commercial and industrial water meters that will be replaced as part of the performance based contract.

Table 5A - Large Water Meter Accuracy Benefits

Large Water Meter Accuracy Benefits (Non-Measured)		
Meter Size	"Agreed Upon" Baseline Accuracy %	Guaranteed Weighted Average Accuracy %
3", 4", 6"	93.93%	98.5%

It must be noted that the post-retrofit measured weighted average accuracy of the 2" and smaller meters will be utilized to calculate savings associated with the 3", 4", and 6" meters during the Guarantee Term. For purposes of clarity, the 3", 4" and 6" meters will not be measured specific, and, therefore, are considered Non-Measured Benefits for purposes of ESG's Performance Guarantee.

5.2 Operational & Avoided Future Cost Savings

Operational and Avoided Future Meter Cost Project Savings have been identified throughout project and scope development, have been reviewed thoroughly with the City, have been vetted and accepted by the City, and have been incorporated in the financial "modeling" of the overall project.

The total Operational Savings values are included in Table 3A -Sum of Project Benefits. A 3% inflation escalation rate is applied to each Performance Guarantee Year for all columns, and a 10% decrease year over year for years 11 thru year 15 for Material column, in Table 5B below. A breakout of these benefits is shown below in Table 5B - Operational & Avoided Future Cost Avoidance Savings.

The City and ESG stipulate and agree that all Operational Savings and Future Cost Avoidance Savings, shall be considered fully satisfied upon Final Acceptance of the Project.

Table 5B - Operational Avoided Future and Replacement Cost Savings

	Existing Meter Readers Cost Avoidance			Meter Repair & Replacement Cost Reduction	New Handheld Devices	
Contract Year	Labor Efficiency (Operations Efficiency)	Vehicle Maintenance (Operations Efficiency)	Truck Replacement (Operations Efficiency)	Material (Capital Cost Avoidance)	New / Replacement Cost (Operations Efficiency)	Total Operational Savings
Install	$ -	$ -	$ -	$ -	$ -	$ -
1	$ 98,056	$ 16,377	$ -	$ 77,784	$ -	**$ 192,217**
2	$ 100,998	$ 16,868	$ -	$ 80,118	$ 10,234	**$ 208,218**
3	$ 104,028	$ 17,374	$ 40,000	$ 82,521	$ -	**$ 243,923**
4	$ 107,148	$ 17,896	$ -	$ 84,997	$ -	**$ 210,041**
5	$ 110,363	$ 18,432	$ -	$ 87,547	$ -	**$ 216,342**
6	$ 113,674	$ 18,985	$ -	$ 90,173	$ -	**$ 222,832**
7	$ 117,084	$ 19,555	$ -	$ 92,878	$ -	**$ 229,517**
8	$ 120,597	$ 20,142	$ -	$ 95,665	$ 12,587	**$ 248,989**
9	$ 124,214	$ 20,746	$ 47,762	$ 98,534	$ -	**$ 291,257**
10	$ 127,941	$ 21,368	$ -	$ 101,490	$ -	**$ 250,800**
11	$ 131,779	$ 22,009	$ -	$ 94,082	$ -	**$ 247,870**
12	$ 135,732	$ 22,670	$ -	$ 87,214	$ -	**$ 245,616**
13	$ 139,804	$ 23,350	$ -	$ 80,847	$ -	**$ 244,001**
14	$ 143,999	$ 24,050	$ -	$ 74,945	$ -	**$ 242,994**
15	$ 148,318	$ 24,772	$ 57,030	$ 69,474	$ 15,480	**$ 315,075**
TOTAL	**$ 1,823,735**	**$ 304,594**	**$ 144,793**	**$ 1,298,268**	**$ 38,301**	**$3,609,691**

Note: Basis for values in Table 5B: Please refer to the information in Appendix B2

End of Water Meter Accuracy Benefits Section

6.0 GLOBAL ASSUMPTIONS

6.1. Schedule of Verification Reporting Activities.

Item	Time for Submission	Owner's Review & Acceptance Period
Annual Report	Annual Report 90 days following the end of the First Guarantee Year	* 30 days

* Owner's Acceptance becomes automatic if not provided by the end of the Owner's Review & Acceptance Period.

7.0 DOCUMENTATION FOR SECTION 179D TAX DEDUCTION

As a result of ESG's design and implementation of this Project, a federal income tax deduction under Section 179D of the Internal Revenue Code ("IRC 179D") may become available to ESG as the party primarily responsible for designing energy efficiency improvements implemented at Customer's Facilities. Congress provided in IRC 179D(d)(4) for government owners, which do not pay income tax and are thus ineligible to use this deduction, to allocate the deduction to the party primarily responsible for designing the energy efficiency improvements, here ESG. Owner hereby agrees to allocate to ESG such deduction and any similar deduction enacted by Congress to replace IRC 179D. Owner agrees to cooperate with ESG by executing annually during the construction of the Measures, and promptly returning to ESG, a written allocation and declaration required by IRC 179D. ESG will prepare and is responsible for the accuracy of any allocation documents and all accompanying documentation supplied for Customer's signature. Notwithstanding anything to the contrary herein, Customer makes no representation concerning the availability or applicability of any such tax deduction benefits or of their ability to be allocated to or claimed by ESG. ESG assumes all risk related to such allocation and deduction.

8.0 ASSIGNMENT OF ENVIRONMENTAL ATTRIBUTES

As a result of the implementation of this Project, certain Environmental Attributes may be available, either now or in the future. This section specifies the process whereby the Owner will assign such Environmental Attributes to ESG.

"Environmental Attributes" means any and all credits, deductions, benefits, emission reductions, incentives, offsets, and allowances, howsoever entitled, attributable to and arising from the implementation of this Project, whether such Environmental Attributes now exist or are developed in the future. Environmental Attributes include but are not limited to: (1) Any avoided emissions of pollutants to the air, soil, or water; (2) Any avoided emissions of carbon dioxide (CO_2), methane (CH_4) and other greenhouse gases (GHGs); (3) Section 45 credits; (4) green tags; (5) renewable energy credits; and (6) The reporting rights to these avoided emissions such as White Tag Reporting Rights. Environmental Attributes also include any energy, capacity, reliability, or other energy reduction attributes that result from the implementation of this Project.

All Environmental Attributes arising from the implementation of this Project shall be owned by ESG. Owner agrees to execute all required documentation to assign all Environmental Attributes to ESG. If any filings are required with the Internal Revenue Service or some other governmental entity to obtain the benefits of the Environmental Attributes, Owner hereby instructs ESG to prepare and file such documents.

9.0 PROJECT INFORMATION:

ESCO Name: Energy Systems Group (ESG)
ESG Contact Person for M&V: Donna Wicks

Street Address: 4655 Rosebud Lane, Newburgh, IN 47630

Phone: (812) 492-3714 Fax: (812) 492-8461
E-mail: Dwicks@EnergySystemsGroup.com

Customer Contact for M&V:

Customer Name: City of Oakland Park, FL
Customer Contact for M&V: Albert Carbon, Public Works Director

Address of Customer: 3801 NE 5th Ave., Oakland Park, FL -33334

Phone: (954-630-4458) Fax: () E-mail: albertc@oaklandparkfl.gov

10.0 DISPUTE RESOLUTION

The M&V plan has been reviewed and accepted by Owner. It is the primary document for the M&V process. If a dispute arises under this M&V agreement, the parties shall promptly attempt in good faith to resolve the dispute by negotiation. If not settled by negotiation, this M&V plan will be referred to as the means to solve related disputes.

11.0 POST-INSTALLATION DATA COLLECTED

Owner will provide access to site locations at reasonable times to perform on-site tests to verify performance, changes in use, and to verify modification of facilities as necessary. ESG will not unreasonably interfere with Owner's operation at the Facilities.

ESG will collect the appropriate utility billing data from Customer or appropriate Utility Providers for all ECMs being measured.

12.0 COST OF M&V ACTIVITIES

For Customer's project, the M&V plan is intended to continue throughout the term of financing. Customer, at its discretion may choose to discontinue the M&V plan. Proper notification procedures must be followed if such action is considered. Please refer to Exhibit C details regarding Owner's cancellation option.

Customer acknowledges and agrees that if, for any reason, it (i) cancels or terminates receipt of M&V Services, (ii) fails to pay for M&V Services, (iii) fails to fulfill any of its responsibilities necessary to enable ESG to complete the Work and provide the M&V Services, or (iv) otherwise cancels, terminates or materially breaches this Agreement, the Guarantee shall automatically terminate and ESG shall have no liability hereunder.

The amount to be paid annually by Customer for the M&V services provided by ESG is outlined in the Support Services Exhibit C of this contract. Please refer to Support Services exhibit for details on invoicing and payment procedures.

CITY OF OAKLAND PARK, FLORIDA

By ______________________
Tim Lonergan

Its City Mayor

ENERGY SYSTEMS GROUP, LLC

By ______________________
Gregory F. Collins

Its President

Appendix B1 – Automated Water Meter Operational Savings

Labor Efficiency and Vehicle Maintenance

Current Operations Costs		Description	Notes
Total Number of Meters	3	City employees	Provided by City
Cost Per Meter Read	$0.00	City employees	
Total Cost of Meter Reads Per Month	$0	Monthly cost	Provided by City
Total Cost of Meter Reads Per Year	$142,800	Yearly Cost	Provided by City
Meter Reading Contract Escalation	3%	Annual Meter Reading Service cost increase	Assumed
Efficiency Generation via Project in Labor Costs	$95,200.00	Meter reading wont be required	One reader to remain in current position for maintenance
Efficiency Generation in Meter Reader Vehicle (annual maintenance cost) Miles	$15,900.00	Gas and Maintenance costs included in contract	$0.53/mile (IRS Rate)

Truck Replacement

Trucks replaced every six years – Year 3 at $40,000 for two trucks, and escalated at 3% every year for the remainder two replacements during the term

Meter, Lid, and Double Check Valves

Monthly Meter Replacements		Notes
Annual Meter Replacements	457	From City
Annual Meter Replacement Cost	$ 75,000	From City
Estimated Reduction	95%	Assumed
Meter Replacement Cost Reduction	$ 71,250	
Monthly Meter Repair (Lid Replacements)	10	From City
Annual Meter Repair (Lid Replacement)	120	
Cost per Meter Lid Replacement	$ 17	Assumed
Annual Meter Repair Cost	$ 2,040	
Estimated Reduction	99%	Assumed
Meter Repair Cost Reduction	$ 2,020	
Monthly Meter Repair (Double Check Install)		
Annual Meter Repair (double check)	228	From City
Cost per double check Replacement	$ 20	Estimate
Annual Repair Cost	$ 4,560	
Estimated Reduction	99%	Assumed
Meter Repair Cost Reduction	$ 4,514	

Handhelds

Total Number of Existing Handheld Devices	3	From City
Handheld Device Price (Each)	$ 3,312	Assumed
Replacement Frequency	Every 6 Yrs	Assumed

Appendix B2 – <u>Water and Sewer Usage Rate</u>

Water Rates

Residential Base	15.05	
Consumption (per thousand gal)		
0 – 3,000	5.84	*first 3 gals* 17.52
4,000 – 8,000	6.62	*next 5 gals* 33.10
9,000 – 14,000	7.67	*next 6 gals* 46.02
15,000 +	8.71	
Multi-Family Base (Per Unit)	12.04	
Consumption (per thousand gal)		
0 – 3,000	5.84	*first 3 gals* 17.52
4,000 – 8,000	6.62	*next 5 gals* 33.10
9,000 – 14,000	7.67	*next 6 gals* 46.02
15,000 +	8.71	
Commercial Base		
3/4 - inch	15.05	
1 - inch	37.63	
1 1/2 - inch	75.25	
2 - inch	120.39	
3 - inch	240.79	
4 - inch	376.23	
6 - inch	752.44	
8 - inch	1,203.91	
10 - inch	1,730.62	
Hotel/Motel Base (Per Unit)	12.04	
Consumption (per thousand gal)		
Commercial / Hotel/Motel	6.16	
Irrigation Base (Per Unit)	15.05	
Consumption		
0 – 8,000	6.62	*first 8 gals* 52.96
9,000 – 14,000	7.67	*next 6 gals* 46.02
15000 +	8.71	
Fire Service Line	21.76	
Hydrant Meter	42.01	*6.16 per 1,000 gals*

Sewer Rates

Residential Base	17.83
Consumption (per thousand gal)	5.14
cap on 15,000 gallons	94.93
base bill without usage	34.39
Multi-Family Base (Per Unit)	14.26
Consumption (per thousand gal)	5.14
Commercial Base	
3/4 - inch	17.83
1 - inch	44.59
1 1/2 - inch	89.18
2 - inch	142.69
3 - inch	285.39
4 - inch	445.91
6 - inch	891.84
8 - inch	1,426.94
10 - inch	2,051.21
Hotel/Motel Base (Per Unit)	14.26
Consumption (per thousand gal)	
Commercial / Hotel/Motel	5.14

Water Deposit

Based on size of metered service

Owner	Tenant
100.00	150.00
100.00	150.00
290.00	435.00
460.00	690.00
750.00	1,125.00

Meter Installation

Meter Size	Tap	Set	Total
5/8" or 3/4	360.00	100.00	460.00
1"	360.00	150.00	510.00
11/2"	500.00	250.00	750.00
2"	500.00	350.00	850.00
Hydrant			

All taps and services larger than two (2) inches by agreement
Additional charges may apply for new meter installation

Dumpster Rates / Dumpster Deposit

Size	Frequency of Collection Per Week 1	2	3	4	5	Owner 1-2 pickups	Owner 3-5 pickups	Tenant 1-2 pickups	Tenant 3-5 pickups
2 Cubic Yards	53.43	106.86	160.30	213.73	267.16	270.00	540.00	540.00	1080.00
3 Cubic Yards	80.15	160.30	240.44	320.59	400.74	270.00	540.00	540.00	1080.00
4 Cubic Yards	106.86	213.73	320.59	427.46	534.32	270.00	540.00	540.00	1080.00
6 Cubic Yards	160.30	320.59	480.89	641.19	801.48	450.00	900.00	900.00	1800.00
8 Cubic Yards	213.73	427.46	641.19	854.92	1068.64	450.00	900.00	900.00	1800.00

Cart Rates

Residential		
Refuse service per unit per month	17.08	[illegible] Yearly
Additional cart over the maximum	8.55	
Commercial		
Refuse service per unit per month	24.50	
Additional cart over the maximum	16.00	

Cart Deposit / Additional Cart

	Cart Deposit Owner	Cart Deposit Tenant	Additional Cart Owner	Additional Cart Tenant
Residential	60.00	120.00	17.00	34.00
Commercial	60.00	200.00		
Multi-Family	60.00	120.00	17.00	34.00

Delinquent turn off	40.00
Delinquent cart fee	100.00
Delinquent dumpster fee	275.00

XDUMP

2 Cubic Yards	12.34
3 Cubic Yards	18.51
4 Cubic Yards	24.68
6 Cubic Yards	37.02
8 Cubic Yards	49.36

EXHIBIT C
SUPPORT SERVICES AGREEMENT

ENERGY SERVICES GUARANTEE AND AUTOMATED METER READ ASSURANCE REPORTING

As part of the Energy Guarantee, Energy Systems Group, LLC will provide its Energy Services Guarantee Report, which includes annual automated meter read performance assurance reporting, for the sum of $21,000 for the first Guarantee Year report, which fee shall escalate at an annual rate of 3% through the 15 year Guarantee Term. The initial annual fee will be billed upon Final Acceptance of the Project, and subsequently billed annually thereafter throughout the 15 year Guarantee Term.

During the term of the Agreement, Owner may cancel the annual Reporting by providing written notice to ESG at least 30 days prior to the beginning of the next annual guarantee period. If Owner makes such request to cancel the annual Reports, the parties agree that ESG will no longer be obligated to perform the remaining annual Reporting, and the energy savings and water meter accuracy guaranteed by ESG during the term of the Agreement shall be considered fully satisfied and the Agreement will terminate.

Additionally, if Owner fails to pay the annual Reports fee within 60 days of receipt of the Reports fee invoice, ESG has the right to terminate this Support Services Agreement. In this event, both parties agree that the energy savings and water meter accuracy guarantee provided by ESG during the term of the Agreement shall be considered fully satisfied. Both parties further agree that upon this occurrence ESG will no longer be obligated to perform the remaining annual Reports, and the guarantee contained in the Agreement will be considered satisfied in full and the Agreement will terminate. The cost of the annual fee will be escalated at three percent per year.

Agreed to by the Owner and Contractor this 15th day of November 2017.

The following table depicts the annual sum for Measurement and Verification for the term of the project:

Years	Measurement and Verification
1	$ 21,000
2	$ 21,630
3	$ 22,279
4	$ 22,947
5	$ 23,636
6	$ 24,345
7	$ 25,075
8	$ 25,827
9	$ 26,602
10	$ 27,400
11	$ 28,222
12	$ 29,069
13	$ 29,941
14	$ 30,839
15	$ 31,764

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CITY OF OAKLAND PARK, FLORIDA

By______________________________
Tim Lonergan

Its City Mayor

ENERGY SYSTEMS GROUP, LLC

By______________________________
Gregory F. Collins

Its President

EXHIBIT D
OPINION OF OWNER'S COUNSEL
(TO BE TYPED ON COUNSEL'S LETTERHEAD)

Energy Systems Group, LLC
And Its Assignee
4655 Rosebud Lane
Newburgh, IN 47630

Ladies and Gentlemen:

I am counsel for the City of Oakland Park ("Owner"). In order to render this opinion I have reviewed the Guaranteed Energy Savings Performance Contract (the "Agreement"), dated as of November 15, 2017, between Owner and Energy Systems Group, LLC ("Contractor"), and other documents and instruments related to the Agreement or otherwise necessary to render this opinion, as well as all proceedings taken by Owner in connection with the Agreement. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement. Based upon the foregoing it is my opinion that:

1. Owner is a duly organized and validly existing political subdivision of the State of Florida and is a political subdivision within the meaning of Section 103 of the Internal Revenue Code and related regulations and rulings.

2. Owner has the power and authority to execute and perform the Agreement and to purchase ECMs from Contractor thereunder.

3. The Agreement and related instruments and documents:
   (a) Have been duly authorized by appropriate resolutions;
   (b) Do not contravene and will not violate or result in a default under any charter, certificate of incorporation, by-laws, indenture, or any other agreement or instrument by which Owner or its property is bound or to which Owner is a party;
   (c) The Agreement has been duly executed by the duly authorized officers of Owner, and do and will constitute the legal, valid, and binding obligations of Owner enforceable against Owner in accordance with their respective terms.

4. No approval or consent is required from any governmental authority with respect to the entering into or performance by Owner of the Agreement and the transactions contemplated thereby or if any such approval is required it has been duly obtained.

5. No litigation or other proceedings are pending or, to the best of my knowledge, threatened against Owner which would adversely affect Owner's legal title to the ECMs or, if decided adversely to Owner, would materially affect its financial condition.

This opinion is for the benefit of the addressee and any Assignee, and you and such Assignee and any counsel engaged by you or such Assignee shall be entitled to rely hereupon, including such counsel's reliance hereupon in giving its opinion addressed to other persons.

Very truly yours,

EXHIBIT E
STATE SPECIFIC STATUTORY REQUIREMENTS
FOR FLORIDA STATE AGENCIES, CITIES AND COUNTIES

The Owner and the Contractor agree that the following statutory requirements shall be applicable to this Agreement:

1. Florida Statutes 489.145 regarding guaranteed energy, water, and wastewater performance savings contracts shall apply to this Agreement.

2. The Contractor represents and warrants (i) that the Project constitutes the installation of one or more "energy, water, and wastewater efficiency and conservation measure" as defined in Florida Statutes 489.145(3)(b), and (ii) that this Agreement is a "guaranteed energy, water, and wastewater performance savings contract" as defined in Florida Statutes 489.145(3)(d). The Contractor further represents and warrants that it is a "guaranteed energy, water, and wastewater performance savings contractor" as defined in Florida Statutes 489.145(3)(e).

3. Pursuant to Florida Statutes 489.145(3)(d), the Contractor guarantees that the actual annual savings shall meet or exceed the total annual contract payments made by the Owner under the Agreement, and the savings may include allowable cost avoidance if determined appropriate by the Chief Financial Officer.

4. The Contractor represents and warrants it has provided to Owner the report that is required pursuant to Florida Statutes 489.145(4)(b).

5. The Owner has made the necessary findings to support this Agreement as is required by Florida Statutes 489.145(4)(c).

6. Pursuant to Florida Statutes 489.145(5)(a), the Contractor guarantees to the Owner that the annual cost savings realized as a result of this Agreement will meet or exceed the amortized cost of energy, water, and wastewater efficiency and conservation measures.

7. Pursuant to Florida Statutes 489.145(5)(b), all payments under this Agreement by the Owner, except obligations on termination of the Agreement before its expiration, may be made over time, but not to exceed twenty years from the date of complete installation and acceptance by the Owner, and that the annual savings are guaranteed to the extent necessary to make annual payments to satisfy this Agreement.

8. Pursuant to Florida Statutes 489.145(5)(f), payments of not less than one-twentieth of the Contract Price are to be paid within two years of the date of the complete installation and acceptance by the Owner using straight-line amortization for the term of the loan, and the remaining costs are to be paid at least quarterly, not to exceed a twenty year term, based on life cycle cost calculations.

9. Pursuant to Florida Statutes 489.145(5)(g), the term of this Agreement may extend beyond the fiscal year in which it becomes effective; however, the term of this Agreement expires at the end of each fiscal year and may be automatically renewed annually for up to twenty years, subject to the Owner making sufficient annual appropriations based upon continued realization of energy, water, and wastewater savings.

10. Pursuant to Florida Statutes 489.145(5)(h), this Agreement does not constitute a debt, liability, or obligation of the Owner.