COMMONWEALTH of VIRGINIA

MEMORANDUM OF UNDERSTANDING for TECHNICAL ENERGY AND WATER SAVINGS AUDIT

OWNER:
Virginia Tech Polytechnic Institute and State University, Blacksburg, Virginia

ENERGY PERFORMANCE CONTRACTOR:
Pepco Energy Services
1300 North 11th Street, Suite 1600, Arlington, VA 22209

TITLE OF PROJECT:
VT- Phase I Technical audit

PROJECT CODE:
Phase 1 and Master agreement

DATE OF MOU:
July 1, 2009

ABBREVIATIONS:
OWNER = Virginia Tech
ESCO = Energy Performance Contractor
VUSBC = Virginia Uniform Statewide Building Code
ECM = Energy Conservation Measure

The ESCO agrees to provide the following services under the terms set forth in the Commonwealth of Virginia contract SRM20080328 for the above-identified project:

1. ESCO SERVICES:

The ESCO will perform a Technical Energy and Water Savings Audit and determine the feasibility of entering into an Energy Performance Contract to provide for installation and implementation of energy and water savings measures at the Owner's facilities.

The ESCO agrees to perform a Technical Energy and Water Savings Audit in accordance with the Technical Energy and Water Savings Audit Instructions, ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

The ESCO agrees that this Technical Energy and Water Savings Audit shall be completed and delivered to the Agency within 16 weeks of the signing of this Agreement by both parties.

Within 30 business days of receipt of the Technical Energy and Water Savings Audit, the Owner may request in writing additional information about any proposed measures. In such event the ESCO agrees to provide, at no additional cost to the Agency, detailed engineering and financial calculations and to identify all assumptions and inputs underlying the recommended energy conservation measures and services. The ESCO will submit the requested information within 15 business days of receipt of the request from the Agency. Upon receipt of the information from the ESCO, the Owner may, within 15 business days of receipt of the initial response from the ESCO,
2. **THE ESCO FEE AND PAYMENT**

The Owner shall have no payment obligations at the time of execution of this MOU, but acknowledges that the fee indicated below, except for the metering costs, shall not be incorporated into the ESCO's project costs in this or any future phase of the project, in the event the ESCO and the Owner execute an Energy Performance Contract.

Should the ESCO determine any time during the Technical Energy and Water Savings Audit that savings cannot be attained to meet the Owner's terms as set forth, the Technical Energy and Water Savings Audit will be terminated by written notice of the ESCO to the Owner. In this event this MOU shall be cancelled and the Owner shall have no obligation to pay, except metering costs agreed upon in advance, the amount specified. In this event, the Agency shall return to the ESCO all information and data generated by the ESCO under the audit.

Should the recommendations contained in the Technical Energy and Water Savings Audit meet or exceed the Owner's objectives and all contract requirements and the Owner, for any reason, does not proceed with the implementation phase, then the ESCO shall be paid the agreed upon amount for the Technical Energy and Water Savings Audit as well as the metering cost described in the Additional Services.

The ESCO agrees that the recommendations included in the Technical Energy and Water Savings Audit shall have:

(a) Total projected energy savings that are at least 100 percent of the estimated energy savings quoted in the proposal for the Project based on the ECMs in the original BOE; and

(b) Total project costs that are no more than 100 percent of the estimated costs quoted in the proposal for the Project based on the ECMs in the BOE.

In the event the Technical Energy and Water Savings Audit contains recommendations inconsistent with (a) or (b), the Agency can either (1) terminate this agreement without cost or penalty, other than the metering costs listed below, or (2) renegotiate this Agreement with the ESCO, or (3) begin negotiations with another ESCO.

The negotiated fee for the Technical Energy and Water Savings Audit, Phase 1, including reimbursables, is One hundred three thousand seven hundred and sixty-two dollars and 00/100 ($103,762.00) to be proportioned as follows:

**A. Audit Services VT phase 1**

Phase 1 to include Hahn Hall, McBryde Hall, Dietrick Hall, Pritchard Hall, Cassell Coliseum/Jamerson Athletic Center and the Power House

Audit Services VT phase 1 = 772,406 sq ft @ $0.05 sqft. = $38,620

**B. Additional Services** (Special services outside of those required to complete the Technical Energy and Water Savings Audit)

Additional Services and the negotiated fees for each are as follows: (List additional services to be provided by the ESCO and the negotiated fee for each)

Total Additional Services Fees Metering (phase 1 costs) = $65,142
specifics shall be obtained by the ESCO from the equipment manufacturer if the client is not in possession of this information already. If it has not already done so, the Agency shall furnish, or cause its energy suppliers to furnish, the available data concerning energy usage for the facilities for the most recent 36 month period.

Occupancy and usage information

Descriptions of any changes in the building or structure or its heating, cooling, lighting, or other systems or their energy requirements

Descriptions of all energy-consuming or energy saving equipment used on the premises

Descriptions of energy management and other relevant, operational or maintenance procedures utilized on the premises

Summary of expenditures for out-sourced maintenance, repairs or replacements on the premises

Copies of representative tenant leases, if applicable

Prior energy audits or studies of the premises, if any

6. **SCOPE OF SERVICES:** (In this section, define the building and/or buildings to be audited and any exceptions or changes to the audit format defined in the Technical Energy and Water Savings Audit)

**Phase 1** to include Hahn Hall, McBryde Hall, Dietrick Hall, Pritchard Hall, Cassell Coliseum/Jamerson Athletic Center and the Power House.

**Metering - General Scope clarification** - ESCO will conduct a detailed audit of each utility in each building to determine appropriate location and proper size of each meter. This will be the first step of the Technical Audit. From this utility audit, a detailed scope of work will be developed detailing the size and location. Pepco Energy will select the meters and provide submittals to Virginia Tech for review and approval. Any deviations from the proposed metering selections in this MOU shall not result in an increase to the Additional Services Fee for metering. Pepco Energy will install the meters at the beginning of the Technical audit phase so baseline energy consumption data by building can be collected and used to calibrate the analysis models. The construction phase will include connecting the meters for remote data recording; but until then, Pepco Energy will manually read each meter. During the Technical Audit, Pepco Energy will investigate energy reporting options for the metered data. Options will include utilizing the Building Automation System, internet and other energy reporting software options.

**ECM cost calculations** - ESCO agrees to identify areas during the technical audit where reduction in our costs for smaller project phases can be accomplished; specifically for a Phase I project size. An example would be the 5-year warranty for T-8 lamps and ballasts agreed upon by the manufacturer as requested by ESCO. The following chart will be used in calculating cost attributed to the ECMs for the technical audit:
The following percentage breakdowns will be applied as close as possible in addition to the above listed economies of scale in determining cost during the technical audit for each phase of the project.

<table>
<thead>
<tr>
<th>ESCO PROPOSALS 5/15/09</th>
<th>772386 SQFT</th>
<th>Pepco Energy</th>
</tr>
</thead>
<tbody>
<tr>
<td>DIRECT CONSTRUCTION COST (DCC) MATERIALS/LABOR/SUBS/EQUIPMENT</td>
<td>$8,160,831</td>
<td></td>
</tr>
<tr>
<td>DESIGN/ENGINEERING % OF DCC</td>
<td>2.80%</td>
<td>$228,389</td>
</tr>
<tr>
<td>CONSTRUCTION MANAGEMENT % OF DCC</td>
<td>4.98%</td>
<td>$406,680</td>
</tr>
<tr>
<td>COMMISSIONING % OF DCC</td>
<td>0.74%</td>
<td>$60,000</td>
</tr>
<tr>
<td>TRAINING &amp; DEVELOPMENT % OF DCC</td>
<td>INC IN OH</td>
<td></td>
</tr>
<tr>
<td>MONITORING &amp; VERIFICATION % OF DCC</td>
<td>0.99%</td>
<td>$80,720</td>
</tr>
<tr>
<td>CONTRACT ADMINISTRATION % OF DCC</td>
<td>INC IN OH</td>
<td></td>
</tr>
<tr>
<td>BONDS/GUARANTEE % OF DCC</td>
<td>0.84%</td>
<td>$68,402</td>
</tr>
<tr>
<td>OVERHEAD</td>
<td>15.50%</td>
<td>$1,395,778</td>
</tr>
<tr>
<td>SUBTOTAL</td>
<td></td>
<td>$10,400,800</td>
</tr>
<tr>
<td>PROFIT 10.00%</td>
<td>$1,040,080</td>
<td></td>
</tr>
<tr>
<td>SUBTOTAL PROJECT COST</td>
<td></td>
<td>$11,440,880</td>
</tr>
</tbody>
</table>

AGREED TO ON THE DATE INDICATED ABOVE BY:

ESCO

By: David Weiss (Signature in ink) 8/3/09 (Date)
Name: David Weiss
Title: President & COO, Energy Services

OWNER

By: W.T. Kalousek (Signature in ink) 8/28/2009 (Date)
Name: W.T. Kalousek
Title: Director of Materials Mgmt

ATTEST

By: Marg James (Signature in ink) 8/3/09 (Date)
Title:
CONTRACT

December 20, 2011

Virginia Tech
201 Burrus Hall
Blacksburg, VA 24061

Pepco Energy Services
1300 North 17th St.
Suite 1600
Arlington, VA 22209
PepcoEnergy.com
Frazier, Miriam

From: Frazier, Miriam [mailto:fmiriam@vt.edu]
Sent: Thursday, December 22, 2011 12:41 PM
To: Daryl Bishop
Subject: Energy Performance Contract

Mr. Bishop,

My email got returned undeliverable because of the attachment size (which is only the contract portion). Do you have an alternate email address I can try? In the meantime, I'll optimize the contract and try again.

Miriam Frazier
Administrative Assistant
University Legal Counsel
Virginia Polytechnic Institute and State University
236 Burruss Hall
Blacksburg, Virginia 24061
Telephone: (540) 231-6293
Facsimile: (540) 231-6474

This electronic message and any attachment contains information from University Legal Counsel at Virginia Tech that may be confidential and/or protected by an attorney-client, work product or other confidentiality privilege. If you are not the intended recipient, please do not disclose, copy or distribute this information. Also, please notify the sender immediately by return electronic e-mail or by telephone at 540-231-6293 and destroy the message and its attachments. Thank you.
Virginia Polytechnic Institute and State University

ENERGY PERFORMANCE CONTRACT

This Energy Performance Contract (the "Contract") is entered into this 20th day of December, 2011 between Pepco Energy Services, Inc. hereinafter called the "ESCO" or "Contractor" and Virginia Polytechnic Institute and State University hereinafter called "Agency" or "Owner".

WITNESSETH that the Contractor and the Agency, in consideration of the mutual covenants, promises and agreements herein contained and the Department of General Services Contract SRM20080328, agree as follows:

ESCO shall design and install the equipment and perform the services described in Schedule B attached, at the identified locations listed in Schedule B (collectively herein the "Premises"). The Owner agrees to pay and the ESCO agrees to accept as just and adequate compensation for the performance of the work in accordance with the contract documents the sum of $5,334,266 in accordance with Schedule A. In addition, Owner agrees to pay ESCO those fees set forth in Schedule P for ESCO's performance of the annual services.

SCOPE OF CONTRACT: The ESCO shall provide the goods/services to the Agency as set forth in the contract documents, defined herein below. In addition, Owner reserves the right to contract with ESCO for other energy projects as mutually agreed upon.

PERIOD OF PERFORMANCE: The period of performance shall include the Interim Period, defined in Section 3.2, and the ten (10) year performance period after the Commencement Date, defined in Section 3.1

DEFINE THE NUMBER OF YEARS INVOLVED

The "Contract Documents" shall consist of:

(1) This signed form, including all Schedules, Exhibits and Attachments;


(3) The following negotiated items:

SECTION 1. ENERGY MANAGEMENT PLAN

Section 1.1 Plan Details. ESCO has prepared the complete Technical Energy and Water Savings Audit set forth in Attachment 4, and dated January 29, 2010 ("Technical Energy Audit" or "Audit"), which has been approved and accepted by Agency. The Audit includes all energy conservation measures agreed upon by the parties.

Section 1.2 Schedules. ESCO has prepared and Agency has approved and accepted the Schedules, Exhibits and Attachments, as set forth below, copies of which are attached hereto and made a part of this Contract by reference.

Schedules:
   Schedule A: Payment Schedule (Interim Period)
Within ten (10) days after execution of this Contract, Agency shall furnish (or cause its energy suppliers to furnish) to ESCO, upon its request, all of its records and complete data concerning energy and water usage and energy-related maintenance for the Premises described in Schedule B, including the following data for the most current thirty-six (36) month period; utility records; occupancy information; descriptions of any changes in the building structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Premises; bills and records relating to maintenance of energy-related equipment, and a description of energy management procedures presently utilized, if not provided under the Technical Energy and Water Savings Audit. If requested, Agency shall also provide any prior energy audits of the Premises, and copies of Agency's financial statements and records related to energy usage and operations for said thirty-six (36) month period at said Premises, and shall make agents and employees familiar with such records available for consultations and discussions with ESCO.

Section 2.2 Owner shall make available for review by ESCO, any and all of Owner working drawings, surveys, as-built drawings and specifications concerning the Premises including utility location information and any hazardous material surveys.

SECTION 3. COMMENCEMENT DATE AND TERMS; INTERIM PERIOD
Section 3.1 Commencement Date. The Commencement Date shall be the first day of the month after the month in which all schedules are in final form and accepted by the Agency. ESCO has delivered a Notice to the Agency that it has installed and commenced operating all of the Equipment specified in Schedule B and in accordance with all the provisions of Section 6; and Agency has inspected and accepted said installation and operation as evidenced by the Certificate of Acceptance, a form of which is attached hereto as Schedule B.2. The term of the contract shall be one year form the Commencement Date and annually renewable for no more than 10 years.

Section 3.2 Term of Contract; Interim Period. Subject to the following sentence, the term of this Interim Period shall be no more than 400 days measured beginning with the the Effective Date. Nonetheless, the Contract shall be effective and binding upon the parties immediately upon the “Effective Date.” The Effective Date is the date this Contract is sent to the ESCO after it has been fully executed by Agency and ESCO and all approvals required by Commonwealth contracting procedures have been obtained. The period from Contract execution until the Commencement Date shall be known as the “Interim Period”. All energy savings achieved during the interim period will be fully credited to Agency.

Section 3.3 Beneficial Use. Beneficial Use means that the Energy Conservation Measures (ECMs) have been installed and are functional and shall be evidenced by the issuance of a Certificate of Substantial Completion, in the form attached hereto as Schedule B.1. A separate Certificate of Substantial Completion shall be issued for each ECM. The foregoing may be changed upon mutual agreement of the Parties.

Section 3.4 Acceptance. Owner shall execute and issue a Certificate of Acceptance within five (5) days of receipt of ESCO’s written notice to Owner that (i) ESCO has completed the installation of all of the energy conservation measures specified in Schedule B as evidenced by Certificates of Substantial Completion excluding those requirements that do not affect the ability of such measures to generate energy savings; (ii) all energy conservation measures are operational and capable of generating energy use reductions appropriate for the season and prevailing conditions; (iii) a written punch list of items has been completed; (iv) no known Event of Default under Section 17 exists; and (v) the Energy Savings Guaranty set forth in Schedule E is in full force and effect; and Owner has inspected and accepted said installation and operation.

SECTION 4. ENERGY SAVINGS, CONSIDERATION & PAYMENTS TO ESCO

Section 4.1 Energy Savings Guarantee. ESCO has formulated and, subject to the adjustments provided for, has guaranteed the annual level of energy and operations savings to be achieved as a result of the installation and operation of the Equipment and provision of services provided for in this Contract as specified in Schedule B and in accordance with the Savings Calculation Formula as set for in Schedule E. The Energy Savings Guarantee is set forth in annual increments (“Annual Guarantee”) for the term of the Contract as specified in Schedule E and has been structured by the ESCO so as to be sufficient to cover any and all annual payments required to be made by the Agency as set forth in Schedule P.

Section 4.2 Annual Review and Reimbursement/Reconciliation. If at the end of any year during the guarantee period as specified in Schedule E, the ESCO has failed to achieve the annual Energy Savings Guarantee specified in Schedule E, upon written request by the Agency, which shall be given no earlier than the end of such year and no later than thirty (30) days thereafter, the ESCO will pay the Agency the difference between the annual amount guaranteed and the amount of actual energy and operations savings achieved at the Premises in accordance with the provisions of Schedule E. The ESCO shall remit such payments to the Agency within sixty (60) days of written notice by the Agency of such monies due. When the total energy savings in any one year during the guarantee period exceed the Energy Savings Guarantee as set forth in Schedule E and are in addition to those monies due the ESCO for compensation for services as set forth in Schedule P, such excess savings shall first be applied to reimburse ESCO for any payment ESCO made to Agency to meet ESCO’s guarantee for previous years in which the energy savings fell short of ESCO’s Energy Savings Guarantee under the terms as set forth in Schedule E. In no event shall credit for excess savings be used to satisfy performance guarantees in future years of the contract. The Agency may terminate on the anniversary date if the savings are not being generated.
Section 4.3 ESCO Compensation and Fees: In consideration of ESCO's performance of its obligations under this Contract, Owner shall pay ESCO the following fees:

(a) Services Fees: In consideration for performance of the Services by ESCO, Owner shall pay ESCO those fees set forth in Schedule A, in accordance with the payment terms set forth in this Section 4.
(b) Maintenance Fees: In consideration for ESCO's performance of the Maintenance, Owner shall pay ESCO those fees set forth in Schedule P, in accordance with the terms set forth in this Section 4 and Schedule P.
(c) Reserved
(d) Monitoring and Verification Fees ("M&V Fees"): In consideration of ESCO's performance of those services set forth in Schedule H, Owner shall pay ESCO those M&V Fees set forth in Schedule P.
(e) Guarantee Cost: Annual Savings Bond Fee in accordance with the terms of Schedule P.

Section 4.4 Billing Information Procedure:

(a) Payments due to ESCO under Schedule A shall be calculated each month in the following manner:

(i) Before submittal of the first partial payment request under the Contract, the Contractor shall prepare for review and approval of the Owner, a schedule of the estimated values listed by trades or by Energy Conservation Measures (ECM), totaling the Contract price. Where the total project has multiple parts or phases, the Contractor shall prepare appropriate schedule of values to facilitate reviews and justification for payment.

(ii) All requests for payment shall be made on a Schedule of Values and Certificate for Payment.

(iii) Owner shall pay ESCO within thirty (30) days of receipt of ESCO's invoice for the work completed and accepted by Owner. Payments shall equal the value of the work completed and accepted less any sums retained or deducted by the Owner under the terms of the Contract Documents.

(b) Payments due to ESCO under Schedule P shall be invoiced annually as set forth in Schedule P.

Section 4.5 Installment Payments. Agency agrees to make installment payments to ESCO, or its assignee, for the Equipment in accordance with the terms and conditions of this Contract and Schedule A. Agency's obligation to make the Installment Payments in Schedule A shall be absolute and unconditional in all events except as expressly set forth in Sections 5 and 16. After acceptance of the Equipment, Agency covenants that it will not assert any right to setoff, counterclaim, abatement, or recoupment of the Installment Payments.

Section 4.6 Effective Date of Payment Obligation. Notwithstanding the above provisions in Section 4, Agency shall not be required to begin any payments to ESCO under Schedule P unless and until all equipment installation is completed by ESCO in accordance with the provisions of Section 6, and accepted by Agency as evidenced by the signed Certificate of Acceptance, and unless and until said equipment is fully and properly functioning.

Section 4.7 Offset Provision. Except as provided in Section 4.5, ESCO agrees that Agency may set off the amount of any state tax liability or other obligation of ESCO or its subsidiaries to the Commonwealth of Virginia against any payments due ESCO under any contract with the Commonwealth of Virginia.

SECTION 5. NONAPPROPRIATION OF FUNDS
In the event no Agency funds or insufficient Agency funds are appropriated and budgeted in any Commonwealth of Virginia Fiscal Year for payments due under this Contract, then Agency will immediately notify ESCO or its assignee of such occurrence and this Contract shall terminate on the last day of Commonwealth's Fiscal Year for which appropriations were received without penalty or expense to Agency of any kind whatsoever. In the event of such termination, Agency agrees to peaceably surrender possession of all the Equipment in good operating condition, subject to normal wear and tear to ESCO or its assignee on the date of such termination. ESCO or its assignee will have all legal and equitable rights and remedies to take possession of the Equipment. Upon such termination, title to the Equipment will revert to ESCO or its assignee.

If, on the thirtieth (30th) day after the commencement of any Fiscal Year, sufficient funds have not been appropriated for the purpose of making all of the payments scheduled to be paid in such Fiscal Year, Agency shall cause to be delivered written notice thereof (a "notice of non-appropriation") to ESCO within ten (10) calendar days after such thirtieth (30th) day. Upon ESCO’s receipt of a notice of non-appropriation, this Contract shall terminate, as of the end of the Fiscal Year just ended; provided, however, such termination shall not become effective as of the end of such Fiscal Year just ended if, within ten (10) calendar days of the thirtieth (30) day after the end of such Fiscal Year just completed, Agency shall cause to be delivered to ESCO a written statement to the effect that it reasonably expects sufficient funds for the then-current Fiscal Year to be appropriated therefore, and in such event the term shall continue into the then-current Fiscal Year so long, but only so long, as an appropriation becomes available from which to make the payments.

Notwithstanding the foregoing, Agency agrees that (i) it will not cancel this Contract under the provisions of this paragraph if any funds are appropriated to it, or by it, for the acquisition, retention or operation of the Equipment or other equipment performing functions similar to the Equipment for the Fiscal Year in which such termination occurs and (ii) it will not, during the term of the Contract, give priority in the application of funds to any other functionally similar equipment or purchase of services such as outsourcing.

SECTION 6. CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL

Section 6.1 ESCO shall be responsible for the professional and technical accuracy, of all construction and services performed in accordance with the State Construction and Professional Services Manual Version, Revision 1, dated October 1, 2004, whether by ESCO or its subcontractors or others on its behalf, throughout the term of this Contract.

Section 6.2 ESCO shall provide overall coordination, management, and responsibility, and shall assure that all work is completed in a good and workmanlike manner. ESCO's services shall include the following:

a. Engineering Design: A survey of the Premises for purposes of designing the Program.

b. Procurement, Installation, Start-Up: Subject to other provisions of this Contract, ESCO will act as a turn-key general contractor assuming total responsibility for the procurement of labor and material for installation and start-up of the Equipment, including: selecting subcontractors and suppliers in concert with the Agency; awarding subcontracts; receiving and evaluating submitted drawings on the equipment; progress inspections during installation; developing and presenting subcontractor punch lists after each inspection; receiving and evaluating record drawings; and operation and maintenance manuals from subcontractors; providing for training of Agency personnel on proper operation of the newly installed Equipment; and final inspection and recommendation for approval to the Agency for acceptance of the equipment. The Agency reserves the right to review the bids solicited by the ESCO for equipment and labor.

Section 6.3 Construction and Equipment installation shall proceed in accordance with the construction schedule approved by Agency and attached hereto as Schedule I.

Section 6.4 Systems Startup and Equipment Commissioning: The ESCO shall conduct a thorough and systematic commissioning of ECMs of the installed Equipment in accordance with the procedures specified in Schedule B and prior to acceptance of the project by Agency. The ESCO shall provide notice to the Agency of the scheduled test(s) and the Agency and/or its designees shall have the right to be present at any or all such
tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO shall be responsible for correcting and/or adjusting all deficiencies in such Equipment operations that may be observed during commissioning procedures so that such ECM is compliant with the applicable standards set forth in Schedule B.

Section 6.5 In order for ESCO to receive payments during the design/build stages of the Contract, the Agency shall authorize disbursements from any escrow account established and maintained pursuant to any escrow Contract entered into between Agency and any third-party financing company, in accordance with Schedule A and on a percent complete basis.

Section 6.6 Statutory Requirements. In the installation of the Equipment, ESCO shall be required, and shall require its contractors and subcontractors to comply with all Terms and Conditions under contract SRM20080328, unless noted and agreed to as an exception.

Section 6.7 In the event that ESCO discovers any materials or substances that ESCO suspects are classified as toxic or hazardous either (a) on or within the walls, floors, ceilings or other structural components of the Work area, or (b) otherwise located in the Work area, and any asbestos or presumed asbestos-containing materials, formaldehyde, containers or pipelines containing petroleum products or hazardous substances, etc., then ESCO promptly shall notify the Agency in writing of such discovery, describing in reasonable detail the materials or substances so discovered. The Agency shall have the right, in its sole discretion, to take any of the following actions: (a) remove such materials or substances from the Work area at its own cost and expense prior to the commencement of the Work at that location; or (b) omit from this Contract the portion of the Work affected by such materials or substances. If any such materials or substances are in fact discovered by ESCO or others, and provide an unsafe condition for the performance of the services, the discovery of such material or substance shall constitute a cause beyond ESCO's reasonable control and ESCO shall have the right to cease or not commence the Work affected thereby until the area has been made safe by the Agency or Agency's representative, at Agency's expense. To the extent such hazardous waste is removed and disposed, such actions shall be consistent with the Agency's hazardous waste removal protocol then in effect and with all applicable laws and regulations.

SECTION 7. WARRANTIES

Section 7.1 General. Should an individual item of Equipment ("Hardware") be found to be defective within one (1) year from the date of the signed Certificate of Beneficial Use by Agency for the specific ECM under which such Hardware was installed, as set forth in Schedule B, ESCO agrees to repair such Hardware or, if necessary, furnish and install, without charge, similar hardware to replace it; provided, however, that the original Hardware is returned to ESCO and inspection by the manufacturer establishes the claim. All shipping and transportation costs involved in the repair or replacement of the defective Equipment shall be paid by ESCO.

On all systems installed pursuant to this Contract, ESCO shall provide, at no charge during the warranty period, any labor required to repair or replace defective Equipment or parts. Such labor shall include adjustment of controls, air balancing, and correction of mechanical difficulties if such adjustments are due to defective equipment or improper installation.

If the Equipment fails to fulfill the performance guarantees, ESCO shall have the opportunity to make such changes as it deems necessary to fulfill such guarantees. If a demonstration is required, ESCO shall be given the opportunity to test the equipment under requisite conditions.

The warranty provisions under this Section 7.1 are in addition to and not in lieu of any warranties made by equipment or component manufacturers. After installation of all ECMs, Contractor shall deliver to the Agency all manufacturer warranty certificates, documents, operation and maintenance instructions and manuals, and similar documents.

Section 7.2 Equipment Warranties. ESCO covenants and agrees that all Equipment installed as part of this Contract is new, in good and proper working condition and protected by appropriate written warranties covering all parts and equipment performance. ESCO further agrees to (a) deliver to the Agency for
inspection and approval, all such written warranties and which shall be attached, to pursue rights and remedies against manufacturer of the Equipment under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance; and (b) notify the Agency whenever defects in Equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by ESCO. The cost of any risk of damage or damage to the Equipment and its performance, including damage to property and Equipment of the Agency or the Premises, due to ESCO’s failure to exercise its warranty rights shall be borne solely by ESCO.

All warranties shall be transferable and extend to the Agency. The warranties shall specify that only new, and not reconditioned parts, may be used and installed when repair is necessitated by malfunction.

All warranties required hereunder shall be in force for a minimum of one year from the Certificate of Beneficial Use for the specific ECM.

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

Section 7.3 LIMITATION OF LIABILITY. In no event shall either party be liable to the other for punitive damages of any kind.

SECTION 8. TRAINING BY ESCO

The ESCO shall conduct the training program described in Schedule J hereto. The training specified in Schedule J must be completed prior to acceptance of the Equipment installation and such acceptance will not be unreasonable withheld by the Agency. The ESCO shall provide ongoing training whenever needed with respect to updated or altered Equipment, including upgraded software. Additional training shall be provided for those fees set forth in Schedule P.

SECTION 9. PERFORMANCE BY ESCO

Section 9.1 ESCO shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in Schedule N and the construction schedule specified in Schedule L. The Agency reserves the right to review the work performed by ESCO and to direct ESCO to take certain corrective action if, in the opinion of the Agency, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by ESCO’s performance of the work shall be borne by ESCO.

Section 9.2 ESCO shall conform with all Terms and Conditions for Non-Capital Outlay Construction or Capital Outlay Construction as may be applicable, which is attached hereto as Attachment ___.

Section 9.3 Cooperation & Coordination During Installation. The Agency and ESCO shall cooperate and coordinate the activities of ESCO’s equipment installers with those of the Agency, its employees, and agents. ESCO shall not commit or permit any act which will interfere with the performance of business activities conducted by the Agency or its employees without prior written approval of the Agency. Agency shall provide reasonable access to the Premises to allow ESCO to perform the Services.

SECTION 10. OWNERSHIP

Section 10.1 Ownership of Certain Proprietary Property Rights. Agency shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. The ESCO shall grant to the Agency a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Agency to continue to operate, maintain, and repair the Equipment in a manner that will allow ESCO to meet its obligations under this Contract.
Section 10.2 Ownership of Existing Equipment. Ownership of the equipment and materials presently existing at the Premises at the time of execution of this Contract shall remain the property of the Agency even if it is replaced or its operation made unnecessary by work performed by ESCO pursuant to this Contract. If applicable, ESCO shall advise the Agency in writing of all equipment and materials to be replaced at the Premises and the Agency shall within 7 days designate in writing to the ESCO which equipment and materials that should not be disposed of off-site by the ESCO. It is understood and agreed to by both Parties that the Agency shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site.

Section 10.3 Ownership of New Equipment. Upon installation of the Equipment by ESCO and acceptance and payment by Agency, the Agency shall own the Equipment. Agency shall execute the documents necessary for ESCO or the third party financing company to secure and maintain a security interest in the Equipment.

SECTION 11 MAINTENANCE & EQUIPMENT SERVICE

Section 11.1 Actions by ESCO. After the expiration of the applicable Warranty Period and upon payment of the applicable fees, ESCO shall provide all service, repairs, and adjustments to the Equipment installed under terms of this Contract pursuant to Schedule H. Agency shall incur no cost for Equipment service, repairs, and adjustments, except as set forth in Schedule K, provided, however, that when the need for maintenance or repairs principally arises due to the negligence or willful misconduct of the Agency or any employee or other agent of Agency, and ESCO can so demonstrate such causal connection, ESCO may charge Agency for the actual cost of the maintenance or repair insomuch as such cost is not covered by any warranty or insurance proceeds.

Section 11.2 Malfunctions and Emergencies. Agency shall use its best efforts to notify the ESCO or its designee(s) within 24 hours after the Agency’s actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy-related equipment that might materially impact upon the guaranteed energy savings, (ii) any interruption or alteration to the energy supply to the Premises, or (iii) any alteration or modification in any energy-related equipment or its operation.

Where Agency exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings. Agency shall notify ESCO within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. ESCO shall respond or cause its designee(s) to respond within 24 hours and shall promptly proceed with corrective measures. Any telephonic notice of such conditions by Agency shall be followed within three business days by written notice to ESCO from Agency. If Agency unreasonably delays in so notifying ESCO of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, such conditions will be treated as an Energy Performance Change and the applicable provisions of Section 16 shall be applied.

Section 11.3 Actions by Agency. Agency shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of ESCO except as set forth in Schedule K. Notwithstanding the foregoing, Agency may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify ESCO before taking any such actions. In the event of such an emergency, Agency shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency action provided in advance by ESCO. Agency agrees to maintain the Premises in good repair and to protect and preserve all portions thereof which may in any way affect the operation or maintenance of the Equipment.

SECTION 12 UPGRADING OR ALTERING THE EQUIPMENT

ESCO shall at all times have the right, subject to Agency’s prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the Equipment or implement other energy saving actions in the Premises, provided that:
(i) the ESCO complies with the standards of comfort and services set forth in Schedule N herein;

(ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable the ESCO to achieve the energy savings at the Premises and;

(iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of the ESCO.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the Agency for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall be new and have equal or better potential to reduce energy consumption at the Premises than the Equipment being replaced. The ESCO shall update any and all software to be used in connection with the Equipment in accordance with the provisions of the terms and conditions of SRM20080328. All replacements of and alterations or additions to the Equipment shall become part of the Equipment described in Schedule B and shall be covered by the provisions and terms of Section 6.

SECTION 13. STANDARDS OF COMFORT

ESCO will maintain and operate the Equipment in a manner which will provide the standards of heating, cooling, hot water, and lighting as described in Schedule N.

SECTION 14. ENERGY PERFORMANCE CHANGES

Section 14.1 Energy Performance Change Defined: An Energy Performance Change shall include any change in or to the Premises, whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Agency or as identified by the ESCO, to increase or decrease annual energy consumption in accordance with the provisions and procedures set forth in Schedule E and Schedule F by at least five percent (5%) after adjustments for climatic variations. Actions by the Agency which may result in an Energy Performance Change include but are not limited to the following:

(i) manner of use of the Premises by the Agency; or

(ii) hours of operation for the Premises or for any equipment or energy using systems operating at the Premises; or

(iii) permanent changes in the comfort and service parameters set forth in Schedule N; or

(iv) occupancy of the Premises; or

(v) structure of the Premises; or

(vi) types and quantities of equipment used at the Premises or

(vii) modification, renovation or construction at the Premises; or

(viii) the Agency's failure to provide maintenance of and repairs to the Equipment in accordance with Schedule K; or

(ix) any other conditions other than climate affecting energy use at the Premises.

Section 14.2 Reported Energy Performance Changes; Notice by Agency: The Agency shall use its best efforts to deliver to the ESCO a written notice describing all actual or proposed Energy Performance Changes in the Premises or in the operations of the Premises at least 14 days before any actual or proposed Energy Performance Change is implemented or as soon as is practicable after an emergency or other unplanned event. Notice to the ESCO of Energy Performance Changes, which result because of a bona fide
emergency or other situation which precludes advance notification shall be deemed sufficient if given by the
Agency within 24 hours after having actual knowledge that the event constituting the Energy Performance
Change occurred or was discovered by the Agency to have occurred.

Section 14.3 Unreported Energy Performance Change. In the absence of any Energy Performance
Changes in the Premises or in their operations, the baseline energy consumption as set forth in Schedule F
should not change more than five percent (5%) during any month from the projected energy usage for
that month, after adjustments for the year to year weather conditions. Therefore, if energy consumption for any
month as set forth in Schedule E deviates by more than five percent (5%) from the energy consumption
for the same month of the preceding contract year after adjustments for changes to climactic conditions, then
such deviation shall be timely reviewed by the ESCO to ascertain the cause of deviation. The ESCO shall
report its findings to the Agency in a timely manner and the ESCO and Agency shall determine what, if any,
adjustments to the baseline will be made in accordance with the provisions set forth in Schedule F.

Section 14.4 Annual Agency Acknowledgment. Within thirty (30) days after the end of each year of
this Contract, Agency shall provide ESCO with a written acknowledgment notifying ESCO of any possible or
planned energy performance changes to the premises from those standards set forth in Attachment 4 and
Schedule N.

SECTION 15. RISK OF LOSS

Upon acceptance of the Equipment, the Owner assumes all risk of loss of or damage to the Equipment
from any cause whatsoever except for the negligent acts of the ESCOP and (except as provided in Section 7,
11, and 17), and no such loss of or damage to the Equipment shall relieve the Owner of the obligation to make
payments or to perform any other obligation under this Agreement. In the event of damage to any item of
Equipment, the Owner will immediately notify ESCO or its assignee and place the same in good repair except
as provided in Sections 7, 11, and 17. If Owner determines that any item of Equipment is lost, stolen, destroyed
or damaged beyond repair and ESCO is not responsible for repair or replacement, then the savings guarantee
will be adjusted by mutual agreement to account for the losses associated with the Equipment and Owner will
replace the same with like Equipment in good repair.

Force Majeure: Neither party shall be liable for any losses arising out of delay or interruption of its
performance of its obligations under this Agreement due to any act of God, war, terrorism, civil disturbance,
court order or natural disaster, or any other cause beyond the reasonable control of the affected party.

SECTION 16. CASUALTY OR CONDEMNATION OF PREMISES

Any construction or restoration of the Premises following or necessitated by fire, flood, or other casualty,
or any condemnation affecting any portion of the Premises, shall be deemed an Energy Performance Change,
and the provisions of Section 14 shall be applicable. If the casualty or condemnation renders fifty percent (50%)
or more of the Premises uninhabitable or unusable and, in the case of a casualty, the affected portion is not
reconstructed or restored within one hundred and twenty (120) days from the date of such casualty, Agency
shall have the option to terminate this Contract by a notice to ESCO. In the event of condemnation, Agency
agrees that ESCO shall be entitled to that portion of the condemnation award equal to the purchase option value
applicable at that time with appropriate adjustments for applicable portions of the Premises which are
condemned versus portions of the Premises which are unaffected. Upon such termination, ESCO may remove
the Equipment from the condemned portion of the Premises.

SECTION 17. EVENTS OF DEFAULT

Section 17.1 Events of Default by Agency. Each of the following events or conditions shall
constitute an "Event of Default" by Agency:

(i) Any failure by Agency to pay ESCO any sum due for a service and maintenance period
of more than sixty (60) days after written notification by ESCO that Agency is delinquent in making payment and
provided that ESCO is not in default in its performance under the terms of this Contract; or
(ii) Any other material failure by Agency to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for sixty (60) days after notice to Agency demanding that such failure to perform be cured or if such cure cannot be effected in sixty (60) days, Agency shall be deemed to have cured default upon the commencement of a cure within sixty (60) days and diligent subsequent completion thereof; or

(iii) Any representation or warranty furnished by Agency in this Contract which was false or misleading in any material respect when made.

Section 17.2 Events of Default by ESCO. Each of the following events or conditions shall constitute an "Event of Default" by ESCO:

(i) The standards of comfort and service set forth in Schedule N are not provided due to failure of ESCO to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within thirty (30) days after written notice by Agency to ESCO demanding that such failure be cured, shall be deemed cured for purposes of this Contract;

(ii) Any representation or warranty furnished by ESCO in this Contract is false or misleading in any material respect when made;

(iii) Failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in Schedule I; provided that such failure continues for thirty (30) days after written notice to ESCO demanding that such failure to perform be cured, if corrected or cured within thirty (30) days after ESCO's receipt of such written notice shall be deemed cured for the purpose of this Contract.

(iv) Any other material failure by ESCO to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to ESCO demanding that such failure to perform be cured, if corrected or cured within sixty (60) days after ESCO's receipt of such written notice shall be deemed cured for the purpose of this Contract.

(v) Any lien or encumbrance upon the Equipment by any subcontractor, laborer or materialman of ESCO, that is not bonded off within 10 days.

(vi) The filing of a bankruptcy petition whether by ESCO or its creditors against ESCO which proceeding shall not have been dismissed within thirty (30) days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of ESCO;

(vii) Any change in ownership or control of the ESCO without the prior approval of the Agency, which shall not be unreasonably withheld;

(viii) Failure by the ESCO to pay any amount due the Agency or perform any obligation under the terms of this Contract or the Energy Savings Guarantee as set forth in Schedule E provided that such failure continues for thirty (30) days after written notice to ESCO demanding that such failure to perform be cured, if corrected or cured within thirty (30) days after ESCO's receipt of such written notice shall be deemed cured for the purpose of this Contract; or

(ix) Repossession or removal of the Equipment by ESCO or a third-party without good cause.

SECTION 18. REMEDIES UPON DEFAULT

Section 18.1 Remedies upon Default by Agency. If an Event of Default by Agency occurs, ESCO may, without a waiver of other remedies which exist in law or equity, elect one or both of the following remedies:
Exercise any and all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by Agency, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy;

(ii) Without recourse to legal process, terminate this Contract by delivery of a notice declaring termination, enter the Premises, and dismantle and/or remove its Equipment from the Premises, without liability to Agency.

Section 18.2 Remedies Upon Default by ESCO. In the Event of Default by ESCO, Agency shall have the choice of one or more of the following remedies without waiving any other rights or remedies in law or equity:

(i) Exercise any and all remedies at law or equity, or institute other proceedings, including, without limitation, bringing an action or actions from time to time for specific performance, and/or for the recovery of amounts due and unpaid and/or for damages, which shall include all costs and expenses reasonably incurred;

(ii) If the payments under this Contract have been assigned, and the Equipment has been accepted by Agency, the Agency shall declare ESCO to be in default, but continue to make the payments under Schedule A for the Equipment which has been so accepted. If no Equipment has been so accepted, Agency may terminate this Contract without liability to make any payments;

(iii) If the payments under this Contract have not been assigned, Agency may set off or counterclaim against its obligation to make any of the payments provided in default;

(iv) ESCO (but not the assignee) will be liable to Agency for damages incurred by Agency as a result of any default by ESCO. Such damages may include, but are not limited to: (a) payments made to ESCO or its assignee which represents payment towards a unit of Equipment for which acceptance was revoked because of a latent defect (b) the difference in price between the market price of the Equipment which was not delivered or which was rejected (or the actual purchase price if Agency purchases replacements (like Equipment) for any undelivered or rejected unit of Equipment) and the purchase price indicated in the Contract for such units of Equipment (c) damages as a result of breach of warranty, failure to meet specifications, or damages incurred by Agency resulting from the delivery of Equipment which is defective or fails to meet specifications, or resulting from ESCO's failure to comply with any other requirements of this Contract, and (d) any other damages recoverable by law.

SECTION 19. REPRESENTATIONS AND WARRANTIES

Each party warrants and represents to the other that:

(i) It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

(ii) Its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

(iii) Its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or

(iv) As of the Effective Date of this Contract, it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

SECTION 20. ADDITIONAL REPRESENTATIONS OF THE PARTIES.
Section 20.1  Agency hereby warrants, represents and promises that:

(i) It has provided or shall provide timely to ESCO, all records relating to energy usage and energy-related maintenance of Premises requested by ESCO and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and

(ii) It has not entered into any leases, or contracts with other persons or entities regarding the leasing of energy efficiency equipment or the provision of energy management services for the Premises or with regard to servicing any of the energy-related equipment located in the Premises. Agency shall provide ESCO with copies of any successor or additional leases of energy efficiency equipment and contracts for management or servicing of preexisting equipment at Premises which may be executed from time to time hereafter within thirty (30) days after execution thereof.

Section 20.2  ESCO hereby warrants, represents and promises that:

(i) Before commencing performance of this Contract:

(a) It is or shall become licensed or otherwise permitted to do business in the Commonwealth of Virginia and shall have a Class A Contractor's License

(b) It shall have provided proof and documentation of required insurance pursuant to terms and conditions of SRM20080328 and it shall make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;

(c) It shall have provided all performance and payment bonds and labor and material bonds for the work to be performed; these bonds do not cover the energy savings;

(ii) It shall use qualified subcontractors and delegees, licensed and bonded in this state to perform the work so subcontracted or delegated pursuant to the terms hereof;

(iii) That it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Contract.

SECTION 21.  INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties hereto agree that ESCO, and any agents and employees of ESCO, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the Agency.

SECTION 22.  NO WAIVER

The failure of ESCO or Agency to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of ESCO or Agency.

SECTION 23.  CONTRACTOR RESPONSIBILITY PROVISIONS

Section 23.1  ESCO certifies that it is not currently under suspension or debarment by the Commonwealth of Virginia, any other state, or the federal government.

Section 23.2  If ESCO enters into any subcontracts under this Contract with subcontractors who are currently suspended or debarred by Commonwealth or federal government or who become suspended or debarred by Commonwealth or federal government during the term of this Contract or any extensions or renewals thereof, Agency shall have the right to require ESCO to terminate such subcontracts.
Section 23.3 ESCO agrees that it shall be responsible for reimbursing Agency for all necessary and reasonable costs and expenses incurred by the Office of the Attorney General relating to an investigation of ESCO's compliance with the terms of this or any other Contract between ESCO and Agency which results in the suspension or debarment of the ESCO.

SECTION 24. AGENCY'S COMPLIANCE WITH FACILITIES MAINTENANCE CHECKLIST

Section 24.1 The parties acknowledge and agree that ESCO has entered into this Contract in reliance upon the prospect of earning compensation based on guaranteed energy savings in energy used at Premises, as set forth on Schedule E, attached hereto and made a part hereof.

Section 24.2 The parties further acknowledge and agree that the said guaranteed energy savings would not likely be obtained unless certain procedures and methods of operation designed for energy conservation shall be implemented, and followed by Agency on a regular and continuous basis.

Section 24.3 Agency agrees that it shall adhere to, follow and implement the Standards of Comfort set forth on Schedule N, to be attached hereto and made a part hereof after Agency's approval.

Section 24.4 Agency agrees that ESCO shall have the right once a month, with prior notice, to inspect Premises to determine if Agency is complying. For the purpose of determining Agency's said compliance, the checklist to be set forth on Schedule L as completed and recorded by ESCO during its monthly inspections, shall be used to measure and record Agency's said compliance. Agency shall make the Premises available to ESCO for and during each monthly inspection, and shall have the right to witness each inspection and the recordations on the checklist.

Section 25. MISCELLANEOUS

Section 25.1 Agency agrees to allocate to ESCO the Section 179D tax deduction under the Internal Revenue Code for all services performed under this Agreement. Agency further agrees to provide ESCO with reasonable assistance, including but not limited to completion of all necessary reports and documentation that ESCO is required to complete, so that ESCO may qualify for the 179D tax deduction.

Section 25.2 The terms and conditions of these Contract Documents shall be governed by the law of the Commonwealth of Virginia without regard to conflicts of law principles.
Section 25.3 Any dispute arising hereunder which is not otherwise resolved by the parties may be brought in the Courts of the Commonwealth of Virginia. Each party hereby submits to the nonexclusive jurisdiction of those courts for purposes of any such proceeding.

SECTION 26. NOTICE

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, or electronically (e-mail) with receipt confirmation, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO ESCO: Pepco Energy Services, Inc.
Attention: David Weiss
1300 North 17th Street, Suite 1600
Arlington, VA 22209
(703) 253-1730
dweiss@pepcoenergy.com

Include COPY TO:
Pepco Energy Services, Inc.
Attention: Legal
1300 North 17th Street, Suite 1600
Arlington, VA 22209

TO Owner: Virginia Polytechnic and State University
Attention: David Dent, PE, VCCO,
University Design & Construction
28 Sterrett Facilities Complex
Blacksburg, VA 24061
(540) 231-9326
ddent@vt.edu

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

Pepco Energy Services, Inc. (ESCO):

By:
(Signature in Ink)

Name: David Weiss
Title: President and COO, Energy Services
Date: 12/20/11
Attest: [Signature and Date]

Virginia Polytechnic and State University (AGENCY):

By:
(Signature in Ink)

Name: [Signature]
Title: Vice President for Admin
Date: 12/20/11
Attest: [Signature and Date]

Schedules, Exhibits, Attachments
The following pages are not available due to confidentiality. Please see buyer for more information.