

Exhibit "A"
Scope of Work - Design Phase of the Project

1. Responsibilities

Customer Will:

- A. Provide ESCO with 26 months of electric, gas, and water data including Utility billings on meters serving all Customer-owned premises.
- B. Provide ESCO complete access, including granting the ability for remote network access, to facilities for the purpose of performing the energy efficiency analysis, measuring actual energy use, taking equipment inventory, determining operating schedules, identifying known operational deficiencies.
- C. Provide ESCO access to key personnel to discuss operating requirements.
- D. Provide ESCO equipment lists and copies, or the loan of facility plans, for the purpose of facilitating understanding of the characteristics and the current sequences of operation.
- E. Meet with ESCO to establish project criteria and make project decisions necessary for ESCO to complete in a timely manner.
- F. Inform ESCO at the point in which Customer becomes aware of any portions of scope that will not be included or funding that will not be available for final project implementation.

ESCO Will:

- A. Prepare grant applications, including the General Information Package, Technical Package, Environmental Package and Financial Security Packages.
- B. Conduct a project programming meeting, facility walk-through(s) and personnel interview(s) to gain an understanding of facility operations, concerns, needs, and desired performance criteria. This Design Services Phase will be completed in two phases. The first phase will be a deeper analysis and validation of data provided by the Customer and qualification of grant applicability. The completion of phase one will be shared with the Customer and a decision to proceed with the completion of the design will be made. Should phase one's analysis reveal the project is no longer viable, then the Customer and ESCO will agree to pursuant to Exhibit "C".
- C. Work with Customer to refine performance requirements, financial criteria, and project scope of work.
- D. Provide Customer a final scope of work for Construction as defined in Exhibit "D", software, construction and post construction support costs.
- E. Provide Customer a final and guaranteed water, energy, revenue, and cost savings analysis demonstrating the simple ROI effect of project finances and operations.
- F. Provide Customer a Net Present Value lifecycle financial analysis cash flow.
- G. Provide an energy analysis report sufficient to demonstrate that the anticipated cost to the Customer of the recommended project developed will be less than the anticipated marginal cost to the Customer of thermal, electrical, or other energy that would have been consumed by the Customer in the absence of the project in accordance with Government Code section 4217.10 *et seq.*
- H. Provide Customer a Energy Services Agreement including a section detailing a post construction Performance Assurance Support Services (PASS) plan for the facilities, detailing training, measurement and verification of savings.
- I. Provide Customer a final construction completion schedule.
- J. Final project pricing for a turnkey installation.

2. Phases of Design

The ESCO promises and agrees, at its own cost and expense, to furnish to Customer all design services, and incidental and customary work necessary to fully and adequately complete the Project as described in this Exhibit "A". The Design Scope of Work shall consist of two phases: Conceptual Development (Up to Mid-term of Design) and Design Development (Design Completion).

A. Phase 1 – Conceptual Development (Project Scoping)

- (i) At the Mid-term meeting, ESCO shall demonstrate for Customer whether recommended improvement measures are viable and financial benefits (including grants) that can be derived by their implementation can be guaranteed in an amount sufficient to cover costs associated with the project.
- (ii) Scope of work includes a description of the Energy Conservation Measures (ECM), Energy Generation Measures (EGM) and/or Facility Improvement Measures (FIM), a clear understanding of grant criteria and estimated probability of securing grants, calculation of energy and operational savings, and preliminary costs for the construction of the scope.

B. Phase 2 – Design Development (Design Completion)

- (i) At the Design Completion Meeting, ESCO shall present a final scope of work detailing the included ECMs, EGMs and/or FIMs, a lump-sum fixed price proposal to Customer, in accordance with this Agreement. The price proposal shall include a written guarantee of energy and other operational savings and shall set forth the Guaranteed Completion Date. This cost and final scope will be added by Addendum to this Agreement at completion of the Design Services Phase

3. Facilities Included

The Design Services will be performed in Customer's following facilities. Any additional facilities to be added in the future must be by mutual agreement between Customer and ESCO:

Facilities
All Gilroy Unified School District K-12 Sites, the District Office, GECA, Maintenance, and Transportation.

Exhibit "B"
Preliminary Schedule – Design Phase of the Project

Following is the preliminary schedule for the design phase of the Project. A firm development schedule will be developed and presented for acceptance by Customer once ESCO has discussed development requirements and timing with Customer's partners.

Item	Target Schedule
Customer approves selection of ESCO and to move forward with project at regularly scheduled Council Meeting.	
Customer signs Agreement for Turnkey Design and Construction Energy Services authorizing ESCO to proceed with design services	
Customer provides complete utility information, building plans, etc.	
ESCO and Customer conduct a Kick-Off Meeting	
General Information of Grant package submitted	
Mid-term Meeting (Preliminary Scope of work, budgetary costs, budgetary savings, grant summary and probability review and other financing options)	
Final Design Phase Meeting	
Technical, Environmental and Financial Grant Packages Submitted	
Customer and ESCO complete negotiations of construction services scope and pricing and iron out all details for the Council package.	
Customer posts public notice 2 weeks prior to Board Meeting of approving going forward with the construction phase	
Customer approves resolution authorizing of Construction Amendment at regularly scheduled board meeting.	
NTP issued allowing ESCO to proceed with the construction phase of the Project.	TBD
A construction kick-off meeting is held to prepare for the construction phase.	TBD

EXHIBIT "C"
Compensation for Design and Construction Services

In Exchange for full and satisfactory completion of the Design and Construction Services, the Customer shall compensate ESCO as provided below in this Exhibit "C" for the ESCO Services described in Exhibits "A" and "D" to this Agreement. The Scope of Work shall consist of three phases: Conceptual Development (Up to Mid-term of Design), Design Development (Design Completion), and Construction. The Scope of Work, including all three phases, is more particularly described in Attachments "A" and "D". Subject to the foregoing, the Customer shall pay to ESCO the following:

1. Phase 1 – Conceptual Development (Project Scoping)

If ESCO fulfills all of its responsibilities as part of the Conceptual Development phase, Customer must determine within sixty (60) days of receiving all Conceptual Development deliverables whether to terminate the Contract or move to Phase 2. Customer shall notify ESCO in writing of its decision.

If ESCO complies with all obligations under the Agreement and Customer terminates the Agreement instead of proceeding to the next Phase, Customer shall pay ESCO a fee of \$95,000, as full and final satisfaction for all services performed. All deliverables including but not limited to documents, engineering, budget costs, preliminary design, schedule and data shall become the exclusive property of Customer. If Customer elects to move to Phase 2, all costs incurred during Phase 1, will roll over to Phase 2.

2. Phase 2 – Design Development (Design Completion)

After a Final Design Meeting and if ESCO fulfills all of its responsibilities as part of the Design Development phase, Customer must determine within sixty (60) days of receiving all Design Development deliverables whether to terminate the Contract or move to Phase 3.

At or before the Final Design Meeting, ESCO shall present a price proposal to Customer based on a guaranteed lump sum price, in accordance with this Agreement. The price proposal shall include a written guarantee of energy and other operational savings where costs of the ECMs, EEMs and/or FIMs of this Project will be offset by a combination of expected grants and energy and operational savings over the useful life of those improvements, but not more than thirty (30) years ("Performance Guarantee"). The price proposal shall set forth the Guaranteed Completion Date. The price proposal shall be a firm offer valid for ninety (90) days from submission.

If ESCO complies with all obligations under the Agreement and Customer terminates the Agreement instead of proceeding to the next Phase, Customer shall pay ESCO a fee of \$150,000, inclusive of the Phase 1 and Phase 2 termination fees, as full and final satisfaction for all services performed. All deliverables including but not limited to documents, engineering, budget costs, design, schedule and data shall become the exclusive property of Customer upon receipt of payment.

3. Phase 3 – Construction

If the Customer elects to proceed to Phase 3, and is satisfied with ESCO's construction price proposal and Performance Guarantee, then ESCO shall submit a formal change order request establishing the Price for Construction, the Guaranteed Completion Date, the scope of work and the Performance Guarantee. Approval of the change order request shall be contingent upon Customer's Board holding a public hearing and finding that all of the requirements of Government Code section 4217.10 *et seq.* are met.

Once a change order is approved and executed, Customer may issue a Notice to Proceed with Construction and ESCO shall begin construction work. ESCO shall perform all construction services, labor, materials, tools, equipment, services, engineering and incidental and customary work necessary to fully and adequately complete Phase 3. Compensation for construction work shall be paid monthly for work performed, in accordance with this Agreement.

EXHIBIT "D"
Scope of Work - Construction Phase of the Project

[Intentionally Blank. Will be added by Addendum at completion of the Design Services Phase]

Exhibit "E"
Preliminary Schedule – Construction Phase of the Project

[Intentionally Blank. Will be added by Addendum at completion of the Design Services Phase]

EXHIBIT "F"
Insurance Requirements

1. *Insurance a Condition Precedent to Commencing the Construction Phase of the Project.* Timely compliance by ESCO with all applicable requirements of this Exhibit "F" shall be deemed and construed as a condition precedent to ESCO commencing any portion of the construction phase. However, in no event shall ESCO's compliance, failure to comply, or failure to timely comply, with the requirements of this Exhibit "F" be deemed or construed to relieve ESCO of any of its responsibilities pursuant to the Construction Documents, including, without limitation the requirements to timely commence and complete the construction services. ESCO shall be responsible for all damages and costs incurred by the Customer arising from any failure by ESCO to comply or to timely comply with the requirements of this Exhibit "F".

2. *Commercial General Liability Insurance.* ESCO must obtain and maintain a policy of commercial general liability insurance, written on an "occurrence" basis, providing coverage for all activities related to or undertaken in connection with the construction phase of the Project ("Liability Policy"). Unless expressly agreed by the Customer in writing, the Liability Policy must at a minimum include or be endorsed to include coverage for: (i) bodily injury, disease, sickness and death; (ii) property damage; (iii) premises/operations liability; (iv) products-completed operations liability; (v) explosion, collapse and underground (XCU) (i.e., exclusion deleted); (vi) personal and advertising injury; (vii) contractual liability coverage; and (viii) independent contractor's liability. If a general aggregate limit applies to the Liability Policy, not less than "Per Project Aggregate" specified below in this Section shall apply specifically to the construction phase of the Project and the Agreement as a Per Project Aggregate. ESCO must keep the Liability Policy in full force and effect for at least one year after the date of final payment to ESCO pursuant to Section 7.9 of the General Provisions or the Project Acceptance Date, whichever occurs later, to ensure that coverage for products-completed operations remains in effect for at least such one-year period. In addition to any other applicable requirements, the Liability Policy shall provide insurance with coverage limits not less than:

Per Occurrence (combined single limit)	\$1,000,000
Per Project Aggregate	\$2,000,000
Explosion, Collapse & Underground	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Products-Completed Operations	\$1,000,000
Excess Liability	\$5,000,000

3. *Automobile Liability Insurance.* ESCO must obtain and maintain a policy of business automobile liability insurance with a combined single limit, per occurrence, of not less than \$1,000,000 ("Vehicle Liability Policy"). The Vehicle Liability Policy shall provide coverage for owned, hired, borrowed, and non-owned automobiles.

4. *Workers' Compensation Insurance.* ESCO and each of its subcontractors must obtain and maintain: (i) workers' compensation insurance in accordance with Section 3700 *et seq.* of the Labor Code and other applicable Legal Requirements (Workers Compensation Policy); and (ii) employers' liability insurance with limits of not less than \$1,000,000 per incident ("Employer Liability Policy"). Within seven days after receipt of the Notice of Award (if issued by the Customer) or prior to the Required Commencement Date, whichever is sooner, ESCO will provide evidence of such coverage on an ISO ACORD Form.

5. *ESCO's Professional Liability Insurance.*

(a) In connection with ESCO having responsibility, whether directly or acting through any subcontractor, for any design, engineering or similar professional services in accordance with the Construction Documents (e.g., design of fire-sprinklers, shoring, falsework, scaffolding, etc.), ESCO must obtain and maintain a policy of contractor's professional liability (errors and omissions) insurance ("ESCO's Professional Liability Policy") providing coverage in an amount not less than \$2,000,000 for each claim and in the aggregate. Notwithstanding anything else to the contrary: (i) ESCO must have ESCO's Professional

Liability Policy in full force and effect prior to commencing any such professional services; (ii) each renewal or replacement of the ESCO's Professional Liability Policy must have a retroactive date that is prior to the date ESCO commenced any such professional services; and (iii) ESCO must keep the ESCO's Professional Liability Policy in full force and effect (if and as applicable, through renewal or replacement with retroactive effect as noted in clause (ii) herein) for not less than the four-year period commencing on the Substantial Completion Date and, if ESCO's Professional Liability Policy will not so remain in effect, ESCO must obtain at its cost a supplemental extended reporting period (i.e., tail) applicable to ESCO's Professional Liability Policy covering the remainder of such four-year period, and the obligations of this clause (iii) shall survive termination of this Agreement and/or completion of the Project.

(b) In addition to ESCO obtaining and maintaining the ESCO's Professional Liability Policy, ESCO must require and ensure that each of its subcontractors having responsibility for any design, engineering or similar professional services in connection with the Project obtains and maintains a policy of contractor's professional liability (errors and omissions) insurance ("ESCO's Professional Liability Policy") providing coverage in an amount not less than \$1,000,000 for each claim and in the aggregate. Notwithstanding anything else to the contrary: (i) each such subcontractor must have its ESCO's Professional Liability Policy in full force and effect prior to commencing any such professional services; (ii) each renewal or replacement of the ESCO's Professional Liability Policy must have a retroactive date that is prior to the date the subcontractor commenced any such professional services; and (iii) as a condition to final payment to ESCO pursuant to Section 7.9 of the General Provisions, the subcontractor agrees to maintain such policy coverage of not less than four years after the Substantial Completion Date.

6. *ESCO All-Risk Installation Floater Insurance.*

(a) ESCO must procure a policy of builder's all-risk installation floater insurance, written on a replacement cost basis ("ESCO All-Risk Policy"). The ESCO All-Risk Policy must apply, at a minimum, to loss of owned or rented equipment and tools brought onto and/or used on a job site provided by ESCO, or the equipment of others in ESCO's care, custody and control, whether stored on-site, off-site or in transit.

7. *Umbrella Coverage.* The Customer, in its sole discretion, may approve or disapprove of a request by ESCO to satisfy portions of the coverage requirements for the Insurance Policies specified in this Exhibit "F" (excluding the Workers Compensation Policy) by means of additional umbrella policy of insurance. Any such umbrella policy must: (i) follow the form of the underlying Insurance Policies; (ii) provide coverage at least as broad as the underlying Liability Policy, Vehicle Liability Policy and Employers Liability Policy; and (iii) provide coverage in excess of the coverage of such underlying insurance policies, without gaps in coverage limits. In no event shall: (i) the aggregate coverage (including umbrella) be less than the coverage that would otherwise be available pursuant to the separate policies specified in this Exhibit "F"; or (ii) terms of coverage be impaired or otherwise provide less protection than would otherwise be available pursuant to the separate policies specified in this Exhibit "F".

8. *ESCO Insurance Shall be Primary.* The coverages provided by each of the Liability Policy and Vehicle Liability Policy shall be primary and not contributing with respect to any insurance or self-insurance programs covering the Customer, the Governing Board, any individual members of the Governing Board, or the Customer's officers, employees, or agents.

9. *Insurer Standards.* Each Insurance Policy must be issued by an insurer that is licensed to do business in this State and that has, as determined by the A.M. Best Company, a "Financial Strength Rating" of not less than "A-" (A minus), a "Ratings Outlook," if assigned, of either stable or positive, and a "Financial Size Category" of not less than VII.

10. *Designation of Additional Insureds.* The Liability Policy and the Vehicle Liability Policy each must name or be endorsed to name the Customer and each of the Customer Agents as an additional insured with respect to liability arising out of ESCO's operations performed on behalf of Customer where required by written contract and allowed by law. Each endorsement specifying any additional insured must be ISO Form CG 2010 04/13 and ISO Form CG 2037 04/13 combined, or equivalent approved in advance by the Customer. The Liability Policy and Vehicle Liability Policy shall be primary coverage and non-contributory with any insurance coverage of Customer, and state to the effect that: "The insurance afforded

by this policy for the benefit of the additional insureds shall be primary insurance, and any insurance maintained by the additional insureds shall be excess and non-contributory with the insurance provided hereunder." The coverage provided to the additional insureds must be at least as broad as the coverage provided to ESCO and may not contain any additional exclusionary language or limitations applicable only to the additional insureds.

11. *Cross-Liability and Waivers of Transfer of Rights of Recovery.* Each of the Liability Policy, Vehicle Liability Policy, and ESCO All-Risk Installation Floater Policy must: (i) be endorsed with a cross-liability endorsement (separation of insureds) and include a waiver of the transfer of rights of recovery against each person or entity that is an additional insured or joint loss payee. Each of the Workers Compensation Policy and the Employer Liability Policy must be endorsed to include a waiver of transfer of rights of recovery in favor of the Customer. A waiver of transfer of rights of recovery shall be effective with respect to each applicable person or entity regardless of whether the person or entity: (i) has a right to indemnification (ii) has an obligation to indemnify any other person or entity (iii) paid any premium for the applicable insurance or (iv) has an insurable interest in any property.

12. *Premiums, Deductibles and Self-Insured Retentions.* ESCO shall be solely responsible and liable for paying any and all premiums and other costs incurred in obtaining and maintaining the Insurance Policies, including, without limitation, any and all renewal premiums, deductibles and self-insured retentions.

13. *Evidence of Coverage.* Within seven days after receipt of the Notice of Award (if issued by the Customer) or prior to the Required Commencement Date, whichever is sooner, ESCO must provide to the Customer, for each Insurance Policy required pursuant to this Exhibit "F", a certificate of insurance evidencing that the Insurance Policy is in effect (each a "Certificate of Insurance"), together with any and all endorsements to the Insurance Policies required pursuant to Article 2 of this Agreement and this Exhibit "F". Each Certificate of Insurance must certify the names of the insured, any additional insureds, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance. ESCO must provide to the Customer an updated Certificate of Insurance for each renewal of an Insurance Policy not less than thirty days prior to any expiration of the Insurance Policy. Each renewal and replacement of any Insurance Policy that, as permitted by this Exhibit "F", is written on a "claims made" basis must have a retroactive date that is prior to the date ESCO was initially required to have such insurance policy in effect pursuant to this Exhibit "F".

14. *Mandatory Notice from Insurer of Change in Coverage.* ESCO shall notify the Customer within fifteen calendar days of its receipt of written notice from an applicable insurer that a policy required hereunder will be canceled.

15. *Customer Review and Approval of Insurance Policies.* No failure by the Customer to identify noncompliance with the insurance requirements herein, shall be deemed or construed to be an assumption of liability by the Customer or to constitute a waiver of any non-compliance by ESCO with the requirements of this Exhibit "F".

16. *Additional Required and/or Optional Insurance.* In addition to maintaining in effect all other insurance coverage required pursuant to this Exhibit "F", ESCO, at all times during the performance of the construction phase of the Project or as otherwise required by any applicable legal requirement, shall obtain or otherwise have in effect any and all other insurance coverage that ESCO is required to maintain in accordance with applicable legal requirements. ESCO also may obtain or otherwise have in effect any and all other insurance coverages that ESCO determines are necessary in light of prudent business practices, including, without limitation, coverages in excess of the amounts required pursuant to this Exhibit "F". ESCO shall be responsible for obtaining its own insurance coverage for tools, equipment and materials not intended to be incorporated into the construction services or the Project. ESCO shall be solely responsible for any and all premiums, deductibles, self-insured retentions, losses, etc. attributable to any additional required and/or optional insurance coverage described in this Section.

17. *Subcontractor Insurance.* ESCO shall require in each subcontract that the subcontractor also obtain and maintain insurance coverage consistent with the Insurance Policies required pursuant to this Exhibit "F", but with insurance coverage limits as determined pursuant to this Section. Upon request of the

ESCO, the Parties shall meet and confer to determine appropriate insurance coverage limits for any particular subcontractor as are consistent with the subcontractor's scope/value of work and the potential for loss attributable to same. In the absence of any such request by ESCO with respect to any subcontractor, or in the event the Parties are unable to agree on appropriate insurance coverage limits for any subcontractor, the limits for that subcontractor's insurance shall be the same as specified for ESCO herein. ESCO shall be responsible for ensuring that each and every one of its subcontractors are insured in accordance with this Section, and for providing all documentation of the subcontractors' insurance coverage (i.e., Insurance Policies, Certificates of Insurance, *etcetera*) to the Customer within the time(s) required pursuant to this Exhibit "F". All subcontractor insurance coverage shall be subject to review and approval as described in Section 15 of this Exhibit "F".

18. *Compliance with Safety Programs.* ESCO, and each subcontractor, materialman, and other person or entity that furnishes any labor, materials, services, goods or other things in connection with the construction phase of the Project, must at all times comply with the requirements of any and all applicable and provided to ESCO; Safety Programs, insurer's property protection or conservation recommendations, *etcetera*, in order to assist in minimizing claims, damages and losses in connection with the construction services and the Project.

19. *Failure to Maintain Required Insurance.* If ESCO or any subcontractor fails to maintain any required Insurance Policy in full force and effect consistent with the requirements of this Exhibit "F", the Customer may declare ESCO in default.

20. *Insurance Coverage Not a Limitation on Liability.* The requirements set forth in this Exhibit "F", including, without limitation, the types and limits of insurance coverage specified, are not intended to and shall not in any manner be deemed or construed to limit or qualify the liabilities and obligations otherwise assumed by ESCO pursuant to the Construction Documents. ESCO shall be solely responsible for paying any loss amount, or portion thereof that is subject to an applicable deductible or self-insured retention requirement.

21. *Adequacy of Coverage.* The Customer shall not be deemed or construed to represent or warrant that the insurance coverage required pursuant to this Exhibit "F" will completely address any and all of the risks assumed by ESCO or any of the Subcontractors in connection with the Project. It shall be the responsibility of each of ESCO and the Subcontractors to assess whether such insurance coverage provides adequate protection for its interests and, if not to procure additional insurance coverage, at its sole cost and expense to address its needs.

EXHIBIT "G"
Performance Assurance Support Services Agreement

[Intentionally Blank. Will be added by Addendum at completion of the Design Services Phase]

Exhibit "H"
Performance Guarantee

[Intentionally Blank. Will be added by Addendum at completion of the Design Services Phase]

Exhibit "I"
Measurement & Verification Plan

[Intentionally Blank. Will be added by Addendum at completion of the Design Services Phase]

Exhibit "J"
Customer Responsibilities for Performance Guarantee

[Intentionally Blank. Will be added by Addendum at completion of the Design Services Phase]

Exhibit "K"
Performance Assurance Support Services

[Intentionally Blank. Will be added by Addendum at completion of the Design Services Phase]