**ESCO Base Contract**

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**Attachment E: Owner**

**Memorandum of Understanding**

**OWNER’S MEMORANDUM OF UNDERSTANDING**

**FOR THE \_\_\_\_\_\_\_\_\_\_\_\_ PROGRAM MANAGED BY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Program Name & address)**

This document is part of a collection of model procurement and contracting documents that represent best practices for state energy offices (SEOs) to launch and administer programs to increase energy efficiency through Energy Savings Performance Contracting. The documents draw from successful programs in various states and are continually updated to incorporate the latest strategies. They can be easily customized to meet the needs of any SEO or similar government department. It should be noted that these instruments do not constitute legal advice or legal opinion but are provided as samples for adaptation to the laws and regulations of the user.

**DESCRIPTION –Institution’s Memorandum of Understanding**

The contract is between the Owner and the State Energy Office (or other entity managing a performance contracting program). It establishes requirements of a Owner participating in the program, where the Owner benefits from using the pre-qualified list of ESCOs and accessing technical assistance from the SEO. The contract also establishes the State Energy Office (or other government entity) as the program manager with authority to oversee the involvement of ESCOs serving the Owners. (See the parallel contract between the SEO and the ESCOs.) This example includes elements from both Colorado and Wyoming as developed in 2005-2007.

**OWNER MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_ in the year \_\_\_\_\_ between the \_\_\_\_\_\_\_\_\_\_, hereinafter called Program, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , hereinafter called the Owner.

**WHEREAS**, SEO, through its Energy Savings Performance Contracting Program (EPCP), used a state-approved RFP process to select ESCOs to provide as-needed Energy Savings Performance Contracting services;

**WHEREAS**, SEO will maintain a list of pre-qualified ESCOs that are eligible for final selection by the state’s state and local governments to provide performance contracting services.

**NOW, THEREFORE,** it is agreed that:

# Purpose of Contract.

The purpose of this Contract is to provide Owner access to the services and support provided under the Energy Savings Performance Contracting Program (Program) for development and implementation of Energy Savings Performance Contracting (EPC) projects and to obligate the Owner to follow and adhere to the guidelines of the program.

# Term of Contract and Required Approvals.

This Base Agreement shall become effective on the date approval is given and shall terminate on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

# Consideration.

In consideration for the services rendered by the SEO under this contract, the Owner shall engage in a good faith effort to reduce its energy consumption through participation in the Program and follow and adhere to its guidelines, rules, and provisions.

# Responsibilities of Owner.

The responsibilities of the Owner include, but are not necessarily limited to:

1. Agree to program participation by executing a Owner Memorandum of Understanding and engage the Program for assistance in project development
2. Select an ESCO from the current pre-qualified list, using a secondary selection process
3. Assign members to the facility project team including operations, maintenance, financial and upper management personnel
4. Ensure appropriate personnel attend project development meetings dependent upon the subject matter to be discussed
5. Provide access and escort to buildings
6. Provide information as needed for the feasibility study, the Investment Grade Audit, and other project development activities
7. Work with ESCO to develop/refine project parameters
8. Review/approve ESCO proposals, designs, and reports
9. Ensure recommendations of the Program during reviews are addressed
10. Execute Program approved contracts with the ESCO
11. Make payments for ESCO services per contract terms
12. Make arrangements for project financing
13. Provide project management
14. Provide information as needed for measurement and verification activities

# Responsibilities of Program

The responsibilities of the Program include, but are not necessarily limited to:

1. Actively promote the program and educate potential participants about the benefits and implementation of Energy Savings Performance Contracts.
2. Work with Owners to become program participants and to commit to a Owner Agreement
3. Help Owner procure services of an ESCO from the pre-qualified list.
4. Provide information on the website for currently pre-qualified ESCOs, as provided and updated by the ESCO, providing a link to the ESCO’s website for more detailed information.
5. Help Owner develop and initiate a performance contracting project.
6. Facilitate the performance contracting process, to help ensure commitments are met by both the Owner and the ESCO
7. Provide technical guidance to the Owner, attending on-site meetings between the Owner and ESCO as needed
8. Help develop the Standard Investment Grade Audit and Energy Savings Performance Contracts for each project
9. Review audits, proposals, calculations, contracts, and measurement and verification reports
10. Monitor project implementation
11. Identify solutions to mediate any conflicts between Owner and ESCO.

# Responsibilities of Contractor.

The responsibilities of the Contractor shall include, but are not necessarily limited to:

***Marketing and Preliminary Project Evaluation***

1. Promote the Program when marketing directly to Owners (within market sectors defined by PROGRAM)
2. Engage the Program immediately upon identifying a potential Energy Savings Performance Contract project
3. Perform an initial evaluation of project potential and discuss with the Owner
4. Provide a dedicated webpage for PROGRAM participants (e.g., www.ESCONAME/STATENAME-SEO), where Owners that seek ESCO services can gain access to the full proposal and any updated information. The PROGRAM website will provide a link to the ESCO website for this purpose.

***Investment Grade Audit and Project Development***

* + - * 1. Develop a PROGRAM Investment Grade Audit and Project DevelopmentContract with the Owner
        2. Comply with all requirements of the Investment Grade Audit and Project Development Contract (Attachment F to RFP), including but not limited to: conduct a Investment Grade Audit, prepare a detailed technical and financial proposal for the project, help arrange for or procure financing, and develop a monitoring and verification plan.
        3. Assign individuals to the project team representing project development, engineering, project management, monitoring and verification, and upper management support
        4. Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed
        5. Address issues, recommendations and requests from PROGRAM in support of the PROGRAM independent technical review and facilitation process

***Energy Savings Performance Contract Project Implementation***

* + - * 1. Develop a PROGRAM Energy Savings Performance Contract with the Owner based upon results of the Investment Grade Audit
        2. Comply with all requirements of the PROGRAM Energy Savings Performance Contract (Attachment G to RFP), including but not limited to: design services, equipment procurement and purchasing, construction and construction management services, hazardous material abatement or disposal, commissioning services on installed measures and monitoring and verification services.
        3. Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed
        4. Address issues, recommendations and requests from PROGRAM in support of the PROGRAM independent technical review and facilitation process
        5. Provide PROGRAM with an electronic copy of the final contract.
        6. Provide a post-implementation report to Owner and PROGRAM

***Performance Period:***

* + - * 1. Comply with all requirements of the PROGRAM Energy Savings Performance Contract, including but not limited to: measurement and verification reporting and services, guarantee of performance and cost savings, maintenance and/or repair of equipment, training for facility personnel on maintenance and operation of systems, and training for occupants.
        2. Provide the Owner and PROGRAM with annual reports on project cost, status, savings achieved, and square footage impacted by the project as given in Attachment 3.
        3. Ensure appropriate personnel attend project development meetings depending upon the subject matter to be discussed
        4. Address issues, recommendations and requests from PROGRAM in support of the PROGRAM independent technical review and facilitation process

# Signatures.

In witness thereof, the parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

The effective date of this Agreement is the date of the signature last affixed to this page.

**SEO NAme**

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Director Date

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Program Manager Date

**Institution**

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Date