APPENDIX A: Chapter 1 – Energy Savings Performance Contracting (ESPC)

Appendix A-1: Owner Process Steps

Appendix A-2: Overview of Debt

APPENDIX A-1: Owner Process Steps

There are several steps a client will need to complete in order to participate in a state ESPC program. After learning about ESPC and deciding whether it is a good fit, competitively select an ESCO, work with the ESCO to develop an Investment Grade Audit (IGA), negotiate and execute an energy savings performance contract, establish a financing agreement, and finally, oversee installation and monitor results.

The owner will participate in the program through the following steps:

1) Learn about ESPC

- ☐ Learn about ESPC and the state's endorsement of the concept from any of the program's outreach events or distributed informational materials.
- ☐ Engage with the program to request guidance and any technical assistance that may be available.
- ☐ Sign or agree to an MOU that establishes expectations of the owner and offerings of the program, if that is part of the program's process.
- ☐ Follow the agreed-upon process and use the program documents.

2) Decide if ESPC is a good fit

- ☐ Convene a decision-making team including administration, finance, legal, procurement, facilities, maintenance and other key staff members.
- ☐ Define goals, without being prescriptive.
- ☐ Work with the program's field representative or project facilitator to make the "go" decision.

3) Select an ESCO

- ☐ Develop a facility profile containing equipment, operation, and utility use information.
- ☐ Notify the procurement department and ask for their involvement.
- ☐ Use the Model RFP and evaluation process documentation.
- ☐ Invite ESCOs to tour the facility during the pre-bid period.
- ☐ Evaluate proposals, including critical team members in the decision-making process.
- ☐ Select an ESCO following the recommended process.

4) Work with the ESCO to develop an Investment Grade Audit (IGA)

- ☐ Request assistance from the program or project facilitators.
- ☐ Secure temporary funds to pay for the IGA in the event that a performance contract is not signed (the cost would otherwise be rolled into the performance contract).
- ☐ Establish criteria for the audit including budget line items that can be used to extract efficiency savings, projected costs, and maximum financing term.
- ☐ Customize, negotiate, and execute an IGA for the ESCO to identify and analyze projects, develop a measurement and verification plan for each measure, and present an ESPC project proposal.

- ☐ Engage the ESCO in an audit kick-off meeting with facilities and maintenance staff members involved to share their knowledge of systems and operating practices and to get their important buy-in and suggested strategies.
- ☐ Interact with the ESCO, providing facility information as needed and attending multiple planning and review meetings as the ESCO develops the IGA.
- ☐ Review the audit findings including equipment to be installed, services to be provided, itemized cost estimates, efficiency savings and cost estimates, guaranteed efficiency savings, planned schedule, measurement and verification plan, and the project proposal (which includes the financing plan).
- ☐ Work with the ESCO to finalize the scope of work to implement in the performance contract.
- ☐ Ensure efficiency savings can be measured and verified, avoiding stipulated efficiency savings where actual measurements can be done.
- ☐ Request guidance from the program on the audit findings/results.

5) Negotiate and Execute an Energy Savings Performance Contract

- ☐ Negotiate scope and terms, carrying over findings from the IGA process.
- ☐ Fully review and ensure understanding of all contract terms.
- ☐ Ensure thorough documentation of all contract schedules.
- ☐ Negotiate the guarantee and understand how it works in the event of efficiency savings shortfalls and with respect to the measurement and verification plan.
- ☐ Obtain final internal legal review.
- ☐ Execute the energy savings performance contract.

6) Establish a Financing Agreement

- ☐ Work with the budget officer to determine the method of financing.
- ☐ Obtain input on financing approaches from the ESCO.
- ☐ Competitively solicit financing.
- ☐ Execute the financing agreement at the same time as signing the energy savings performance contract.

7) Oversee Implementation

- ☐ Oversee construction.
- ☐ Manage the escrow account for construction period drawdowns.

8) Monitor the Project

- ☐ Review annual measurement and verification reports.
- ☐ Ensure compliance with the measurement and verification plan.
- ☐ Ensure the savings guarantee was achieved.

APPENDIX A-2: Overview of Debt

Financing Resources – Overview of Debt

How will financing this project with a tax exempt Lease Purchase Agreement (or Installment Purchase Agreement) affect us?

Statutory Debt View

Most state and local government entities are limited in the amount of debt that they can issue, and in many cases require voter approval. While specific rules vary by jurisdiction, most state constitutions and statutes view “debt” as an obligation to pay money in a future fiscal year. A Municipal Lease Purchase Agreement that incorporates a “non-appropriation clause” removes the legal obligation to make payments in a future fiscal period until funds are appropriated for that future fiscal period. As a result, the typical treatment is to recognize only the current fiscal year payments as debt. Future payments are typically not viewed as debt because they are contingent upon funds being appropriated at that time.

Accounting Debt View

Unlike the Statutory Debt View, lessees that are state and local governments do not follow FASB GAAP but rather follow government accounting rules issued by the Government Accounting Standards Board (GASB). The current GASB GAAP view is that the Municipal Lease Purchase Agreement (a lease with a non-appropriations right to terminate clause, a nominal purchase option and a lease payment that has a principal and interest component) are treated as capital leases by lessees in their financial reporting.

Ratings Agency View

Prior to the financial market meltdown in 2008, Moody’s and Standard & Poors representatives would publicly state that, “if we didn’t rate it, then we don’t look at it when reviewing an issuer’s credit profile.” As a result, Municipal Leases with non-appropriation clauses were generally not considered debt by the ratings agency and were not included in its analysis of the public body’s credit rating. Since 2008, the concept of “materiality” has entered into ratings agency consideration. Today, a $5 million Lease Purchase Agreement for an energy efficiency project may get scant attention from the ratings agency if the lessee has good credit and a large financial profile. However, that same Lease Purchase Agreement entered into by a lessee with a small financial profile, may be highly material and result in impacting the Ratings Agency’s assessment of the credit and result in a lower credit rating. As a result, more and more public officials are requesting their Ratings Agency to review the Energy Services Agreement and the financing to make sure that the project financing will not impact their credit rating.