

## **Guaranteed Energy Savings Act Contract GESA [PROJECT NUMBER AND NAME] Project**

This Guaranteed Energy Savings Act Contract ("GESA Contract") for a GESA Project is executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the **[FUNDING AGENCY]** ("Funding Agency"), an executive agency of the Commonwealth of Pennsylvania authorized to enter into GESA Contracts pursuant to 62 Pa C. S. §§3751-3758, and **[GESA CONTRACTOR]** ("GESA Contractor" or "Contractor"), a company organized under the Laws of the State of **[STATE]**, with its principal offices located at **[GESA CONTRACTOR ADDRESS]**.

### **ARTICLE 1 – CONTRACT DOCUMENTS**

- 1.1 The Contract Documents shall consist of this GESA Contract, the Request for Quote ("the RFQ"), the Contractor's Quote submitted in response to the RFQ, the Contract Bonds, the Conditions of the Contract (General, Special, Supplementary, and other Conditions), all drawings created by or for the Contractor and/or its Retained Professional, the specifications created by or for the Contractor and/or its Retained Professional, the Scope of Work by ECM (**Exhibit 1**), all bulletins and addenda issued prior to execution of this Contract, all change orders, the Administrative Procedures for the GESA Contract, the Installment Purchase Agreement and Payment Schedule, and the Investment Grade Audit Contract Documents, and the Investment Grade Audit. These documents form the Contract and are as fully part of the Contract as if attached to this Contract.

### **ARTICLE 2 – SCOPE OF WORK**

- 2.1 The Contractor shall perform all the Work required by the Contract Documents as stated in the RFQ for the design and implementation/construction of the **[PROJECT NUMBER AND NAME]** ("Project").

### **ARTICLE 3 – TERM**

- 3.1 The term of this Contract shall commence upon the Effective Date of this Contract and shall run for **[LENGTH OF CONSTRUCTION]** calendar days. The Effective Date of this Contract shall be the date of the last required Commonwealth signature.
- 3.2 The format and scope of the Work shall be as stated in the RFQ and the Investment Grade Audit.
- 3.3 Time is of the essence and if the Contractor fails to complete the Work within the time specified above, the Contractor shall pay the Funding Agency, as Liquidated Damages and not as a penalty for such failure, the sum of **[LIQUIDATED DAMAGES {AMOUNT PER DGS' CALCULATION} WRITTEN & NUMERICAL]** (\$0.00) per day for each and every calendar day after the completion date until the Work is completed and accepted. The Funding Agency may extend the completion date of the GESA Contract for causes stated in the General Conditions of the GESA Contract ("General Conditions") that, in fact, delay the completion of the Work. In such case, the Contractor is liable for said Liquidated Damages only after the expiration of the extended period.

### **ARTICLE 4 – CONTRACT SUM**

- 4.1 The Funding Agency will authorize a financing provider, procured separately, to pay the Contractor for the performance of the Work subject to additions and deductions by change order, as provided in the

General Conditions, the Contract Sum of **[CONTRACT SUM – WRITTEN AND NUMERICAL] (\$)**. Payment will be made as stated in the General Conditions. Deductions from, or additions to, this sum will be made as stated in the General Conditions. The Funding Agency is not liable for any debt due to the GESA Contract.

#### **ARTICLE 5 – PROGRESS PAYMENTS AND RETAINAGE**

- 5.1 Based upon Applications for Release of Payment submitted to the Funding Agency by the Contractor, the Funding Agency will authorize the financing provider to release progress payments to the Contractor, in accordance with the provisions of the Prompt Payment Schedules found in the Commonwealth Procurement Code, 62 Pa. C.S. §3931-§3939, and the Administrative Procedures, which are both incorporated by reference and made a part hereof as if those provisions were fully and at length recited, except that, where those provisions refer to the government agency, it is deemed to refer to the Funding Agency. The Funding Agency will retain a portion of the amount due to the Contractor to insure the proper performance of the Contractor in each Application for Release of Payment in accordance with the provisions of Retainage found in the Commonwealth Procurement Code, 62 Pa. C.S. §3921, and the General Conditions, which are both incorporated by reference and made a part hereof as if those provisions were fully and at length recited, except that, where those provisions refer to the government agency, it is deemed to refer to the Funding Agency.

#### **ARTICLE 6 – FINAL PAYMENT**

- 6.1 Final Payment, constituting the entire unpaid balance of the Contract Sum, will be approved by the Funding Agency for release by the financing provider to the Contractor within thirty (30) days after Closeout Inspection of the Work if the Contract has been fully performed and a Final Application for Release of Payment has been submitted, as provided in the General Conditions.

#### **ARTICLE 7 – SMALL DIVERSE BUSINESS PARTICIPATION**

- 7.1 The Contractor provided its Small Business (“Small Business”) and Small Diverse Business (i.e., minority owned small business, woman owned small business, veteran owned small business, service disabled veteran owned small business, LGBT owned small business, or disability owned small business) (“Small Diverse Business”) percentages for Small Business & Small Diverse Business Subcontracts, suppliers, and manufacturers for this Project in its Quote. The GESA Contractor’s Small Business & Small Diverse Business percentage is included in Exhibit 1.

#### **ARTICLE 8 – MISCELLANEOUS PROVISIONS**

- 8.1 Terms used in this Contract defined in the General Conditions have the meanings designated in those General Conditions.
- 8.2 In addition to any other guarantees or warranties, the Contractor covenants and agrees after acceptance of the Work performed under this Contract, to remedy without cost to the Funding Agency, any such defect in the Work, provided said defects in the reasonable judgment of the Funding Agency, or its successors having jurisdiction over the premises, are caused by defective or inferior materials, equipment, or workmanship. If the corrective Work is not completed within thirty (30) days after the notification by the Funding Agency to the GESA Contractor, the Funding Agency may do the Work and submit those costs to the Surety Company for reimbursement.

- 8.3 The Contract Bonds given by the Contractor conditioned upon the faithful performance of the Contract and for the payment of labor, material, equipment, and public utility service claims are attached to this Contract and are made a part of it. No third party shall acquire any rights against the Funding Agency under the Contract Documents. The Performance Bond does not cover the Assured Performance Guarantee or guaranteed savings under the Contract Documents. However, failure to meet Assured Performance Guarantee or guaranteed savings may be the result of defective or inferior materials, equipment, or workmanship due to the Contractor's failure of faithful performance. Where and when such cases of defective and/or nonconforming work occurs, such defective and/or nonconforming work is covered by the Performance Bond.
- 8.4 The Contractor agrees to abide by and be bound by the Laws of Pennsylvania, including those relating to and regulating the hours and conditions of employment.
- 8.5 Nothing in this Contract shall be deemed to waive or otherwise affect the sovereign immunity of the Commonwealth and its agencies, officers, and employees, or to subject any Commonwealth party to any liability not expressly authorized by law.
- 8.6 Any person, co-partnership, association, or corporation furnishing labor, material, equipment or renting equipment, or rendering public utility services in connection with the performance of this GESA Contract, has a right of action to recover the cost from the Contractor and the Surety on the Bond given to secure the payment of such labor, material, equipment, or equipment rental and services rendered by public utility as though such person or corporation had been named as Obligee in the Bond. For those who do not have a Contract directly with the Contractor, this right of action may not be exercised unless the Contractor is notified of the claim within ninety (90) days from the last performance of labor or provision of materials. The Contractor shall include in all of its Subcontracts or supply Contracts a provision requiring that its Subcontractors and Suppliers notify, in writing, their Subcontractors and Suppliers of this requirement. It is agreed that no third-party rights arise against the Funding Agency for any reason under this Article, and the Contractor agrees to inform all Subcontractors and Suppliers in writing.
- 8.7 This Contract may be executed in one or counterparts, each of which is an original, and all of which together are a single Contract.

#### **ARTICLE 9 – CONTRACT COMPLIANCE REGULATIONS**

- 9.1 Refer to the appropriate paragraph of the General Conditions (which are made a part of this Contract by incorporation by reference), which prohibits discrimination in hiring or employment opportunities. Also made a part of this Contract by incorporation by reference are all State and Federal Laws prohibiting discrimination in hiring or employment opportunities. The Contract Documents also list applicable statutory provisions, which are incorporated by reference into this GESA Contract.

#### **ARTICLE 10 – ASSURED PERFORMANCE GUARANTEE**

- 10.1 The Contractor is required to guarantee energy and cost savings stipulated in this Contract on an annual basis. The savings must be guaranteed to equal or exceed the Project financing payment, plus the service fees during that year for the Contract duration. No credit for savings above the annual guarantee will be credited toward the performance guarantees for future years of this Contract. The

recovery of Contract costs from energy savings over the term of this Contract shall not exceed **[PAYBACK PERIOD – WRITTEN & NUMERICAL] ( ) years**. Refer to the Assured Performance Guarantee (which is made a part of this Contract by incorporation) for the Contractor’s requirements regarding documenting and verifying the annual energy and/or cost savings that are attributed to this Project **(Exhibit 2)**.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS.]

SAMPLE COPY

The parties have caused this contract to be executed on the dates written above.

**ATTEST:**

**[CONTRACTOR]**

\_\_\_\_\_  
Secretary/Treasurer *Date*

\_\_\_\_\_  
[NAME] President *Date*

**COMMONWEALTH OF PENNSYLVANIA  
ACTING THROUGH [FUNDING AGENCY]**

**ATTEST:**

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
Secretary *Date*

I hereby certify that funds in the amount of  
\$ \_\_\_\_\_  
Are available under Appropriation Symbol

\_\_\_\_\_  
Comptroller Operations *Date*  
(Comptroller Operations execution may be by electronic  
signature and does not imply verification of funds)

**APPROVED AS FORM AND LEGALITY**

\_\_\_\_\_  
Office of Chief Counsel *Date*  
Department of General Services

\_\_\_\_\_  
Office of General Counsel *Date*

\_\_\_\_\_  
Office of Attorney General *Date*

**CONTRACT BOND**

**KNOW ALL PERSONS BY THESE PRESENTS**, That we the undersigned

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

as Principal and

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

as the Surety Company, a Corporation organized and existing under the Laws of the State of

\_\_\_\_\_ and authorized to transact business in Pennsylvania, as surety, are held and firmly

bound unto the **[FUNDING AGENCY]** ("Funding Agency"), as hereinafter set forth, in the full and just several

sums of:

(A) \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_) for faithful performance of the GESA Contract as

designated in Paragraph "A" below; and

(B) \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_) for payment for labor, material equipment rental and

public utility services as designated in Paragraph "B" below; and

Sealed with our respective seals and dates this \_\_\_\_\_ day of \_\_\_\_\_.

**WHEREAS**, the above Principal has entered into a GESA Contract with the Department of General Services dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ for \_\_\_\_\_ upon certain terms and conditions in said GESA Contract more particularly mentioned; and

WHEREAS, it is one of the conditions of the Award pursuant to which said GESA Contract is about to be entered into, that these presents be executed;

NOW, THEREFORE, the joint and several conditions of this obligation are such:

A. That, if the above Principal as GESA Contractor shall well and faithfully do and perform the things agreed by it to be done and performed according to the terms of said Contract Documents, including the plans and specifications therein referred to and made part thereof, and such alterations as may be made in said plans and specifications as therein provided and which are hereby made part of this Bond the same as though they were fully set forth herein, and shall indemnify and save harmless the Department of General Services and all of their officers, agent and employees from any expense incurred through the failure of said GESA Contractor to complete the Work as specified and for any damages growing out of the manner of performance of said GESA Contract by said GESA Contractor or its Subcontractors, or their agents or servants, including, but not limited to, patent trademark and copyright infringements, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect.

B. That, if the above Principal shall and will promptly pay or cause to be paid all sums of money which may be due by the Principal or any of its Subcontractors to any person, co-partnership, association or corporation for all material furnished and labor supplied or performed in the prosecution of the work, whether or not the said material or labor entered into and become component parts of the Work or improvements contemplated, and for rental of equipment used, and services rendered by public utilities in, or in connection with, the prosecution of such Work, then this part of this obligation shall be void; otherwise, it shall be and remain in full force and effect.

C. It is further agreed that any alterations which may be made in the terms of the GESA Contract or in the Work to be done or materials to be furnished or labor to be supplied or performed, or equipment to be rented, or public utility services to be rendered, or the giving by the Funding Agency of any extension of time for the performance of the GESA Contract, or the reduction of the retained percentage as permitted by the GESA

Contract, or any other forbearance on the part of either the Funding Agency or the Principal to the other, shall not in any way release the Principal and the surety or sureties or either or any of them, their heirs, executors, administrators, successors or assigns, from their liability hereunder; notice to the surety or sureties of any such alterations, extension or forbearance being hereby waived.

D. The Principal and Surety hereby jointly and severally agree with the Funding Agency herein that every person, co-partnership, association or corporation which, whether as subcontractor as a person otherwise entitled to the benefits of this Bond, has furnished material or supplied or performed labor or rented equipment used in the prosecution of the Work as above provided and any public utility, which has rendered services, in, or in connection with, the prosecution of such Work, and, which has not been paid in full therefore, may sue in assumpsit on this Bond in his, their, or its name and prosecute the same to final judgment for such sum or sums as may be justly due him, them, or its, and have execution thereon; provided, however, that the Funding Agency shall not be liable for the payment of any cost or expenses of such suit to a third party under any theory of law or equity.

E. Recovery by any persons, co-partnership, association or corporation hereunder is subject to the provisions of the Pennsylvania Procurement Code, 62 Pa. C.S §§101-4509, as amended, which Act is incorporated herein and made a part hereof, as fully and completely as though its provisions were fully and at length herein recited, except that, where said Act refers to the Commonwealth of Pennsylvania or a Department thereof, it is deemed to refer to the Funding Agency.



**IN WITNESS WHEREOF**, the said Principal and Surety have duly executed this Bond under seal the day and year above written.

Witness:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Principal (Date)  
**[CONTRACTOR]**

(Corporate Seal)

\_\_\_\_\_  
Surety

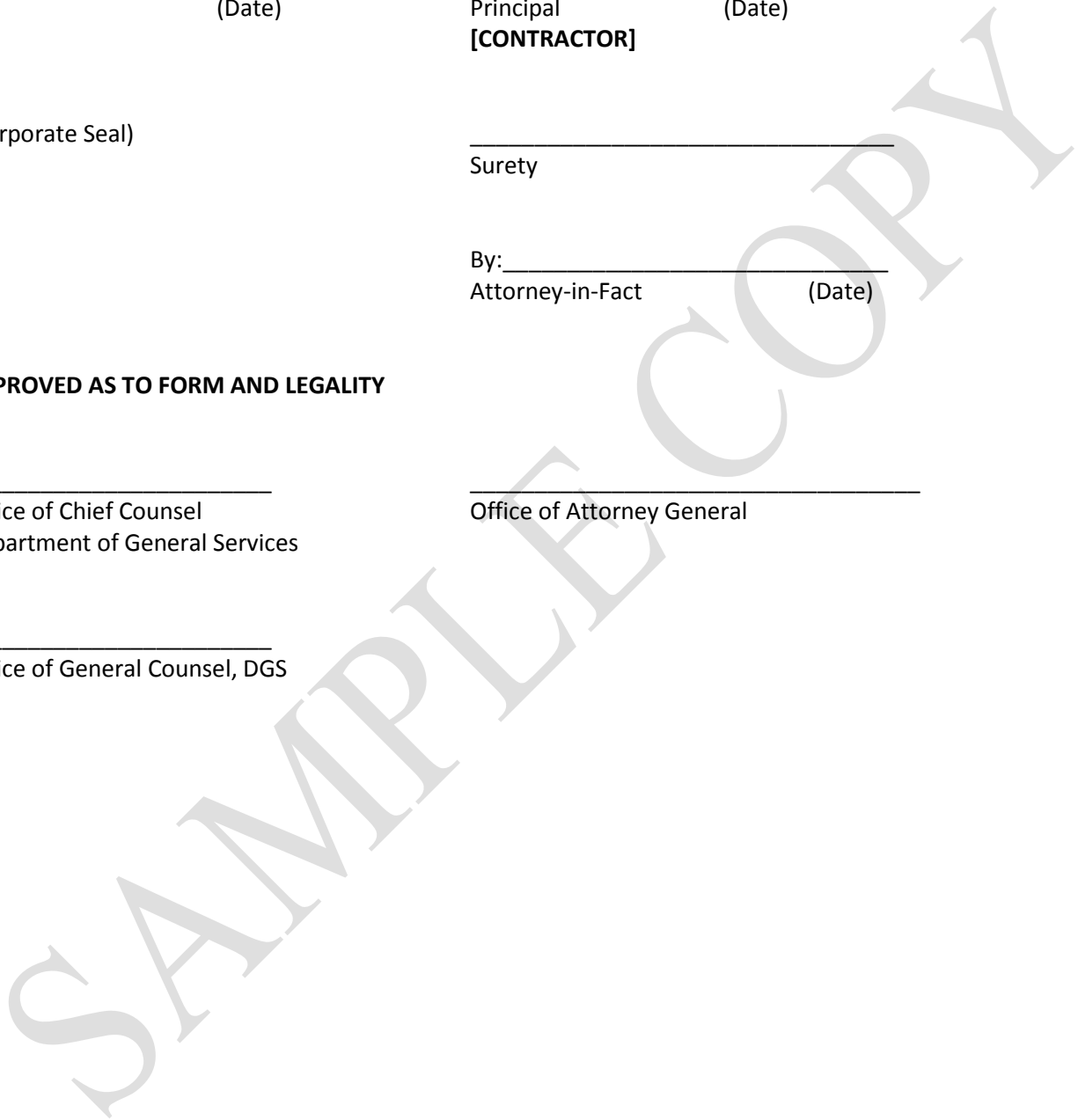
By: \_\_\_\_\_  
Attorney-in-Fact (Date)

**APPROVED AS TO FORM AND LEGALITY**

\_\_\_\_\_  
Office of Chief Counsel  
Department of General Services

\_\_\_\_\_  
Office of Attorney General

\_\_\_\_\_  
Office of General Counsel, DGS



**EXHIBIT 1**  
Scope of Work by ECM  
Including  
Small Diverse Business Participation

**Project Scope**

**[LIST PROJECT SCOPE / DESCRIPTION OF ECMS] EXAMPLE:** Listed in the table below are the Base Project Energy Conservation Measures (ECMs) (Lighting, Building Envelope and Water Conservation), as well as, the additional “Wish List” ECMs which **[FUNDING AGENCY]** wanted to include in the project:

**[INSERT TABLES OR CHART SHOWING EACH ECM & DESCRIPTION OF ECM]**

[Remainder of this page left intentionally blank]

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[INSERT SB/SDB FORM HERE]

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**EXHIBIT 2**

**ASSURED PERFORMANCE GUARANTEE  
For  
GESA CONTRACT**

**PART 1**

**1-1. DEFINITIONS**

For purposes of this Agreement, the following terms have the meanings set forth below:

**Annual Project Benefits** are the portion of the projected Total Project Benefits to be achieved in any one year of the Guarantee Term.

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

**Annual Project Benefits Shortfall** is the amount by which the Annual Project Benefits exceed the Annual Project Benefits Realized in any one year of the Guarantee Term.

**Annual Project Benefits Surplus** is the amount by which the Annual Project Benefits Realized exceed the Annual Project Benefits in any one year of the Guarantee Term.

**Baseline** is the mutually agreed upon data and/or usage amounts that reflect conditions prior to the installation of the Energy Conservation Measures.

**Guarantee Term** will commence on the first day of the month following the Final Payment date and will continue through the duration of the M&V Services.

**Installation Period** is the period beginning on the effective date of the GESA Contract and ending on the commencement of the Guarantee Term.

**Measured Project Benefits** are the utility savings and cost avoidance calculated in accordance with the methodologies set forth in Part 2 of this Agreement.

**Project Benefits** are the Measured Project Benefits to be achieved for a particular period during the term of this Agreement.

**O&M Benefits** are the operations and maintenance cost avoidance savings as stipulated in Part 2 of this Agreement.

**Rebate Project Benefits** are the energy rebate or incentive non-recurring savings as stipulated in Part 2 of this Agreement.

**Total Project Benefits** are the projected Project Benefits to be achieved during the entire term of this Agreement.

## **1-2. SCOPE**

- A.** The Funding Agency is contracting for a full range of energy services and energy-related capital improvements at no initial capital cost for the Project. The ECMs may include but are not limited to: the design, acquisition, installation, modification, maintenance and training of funding agency personnel in the operation of existing and new equipment. The ECMs will reduce energy consumption and related costs associated with the heating, ventilation and air conditioning system, lighting systems, control systems, building envelope, the hot water systems, water consumption, sewage costs and other energy using devices. Additionally, savings which will not reduce consumption but are aimed at cost savings, such as fuel switching, demand side management, on-site generation, utility bill auditing, utility rate changes, and distribution upgrades etc. have been considered. ECMs may also include the training of facility staff with respect to routine maintenance and operation of all improvements. ECMs must result in a guaranteed minimum energy savings with payments linked to actual documented energy and cost reductions.
- B.** Any stipulated energy and/or operational cost savings that are attributed to this project have been rigorously reviewed and the GESA Contractor is required by this contract to thoroughly document and verify the savings, which have been approved by DGS and the Funding Agency. The Annual Project Benefits Realized by the ECMs in any year must be guaranteed to equal or exceed the Annual Project Benefits during that year for the duration of the contract. The GESA Contractor is required to guarantee energy and cost savings on an annual basis. No credit for the achievement of savings above and beyond the annual guarantee will be credited to satisfy performance guarantees in future years of the contract. Annual reconciliation of the achieved savings will be required.

## **1-3. MEASUREMENT & VERIFICATION**

- A.** Measurement & Verification (M&V) services shall commence on the first day of the month following the month in which the Funding Agency releases the Final Payment to the GESA Contractor and shall continue throughout the Assured Performance Guarantee Term, subject to earlier termination of the Assured Performance Guarantee as provided herein. The GESA Contractor shall ensure that an approved representative from the Funding Agency is physically present for all pre-retrofit and post-retrofit measurements for each ECM as applicable to the Energy Savings Guarantee unless the Funding Agency waives their right to be present. The final completion date shall be the date when all Work is completed, including all punch list items, as evidenced by the release of the Final Payment by the Funding Agency. In the event the Funding Agency (i) cancels or terminates receipt of M&V Services, (ii) fails to fulfill any of Funding Agency responsibilities necessary to enable GESA Contractor to complete the Work and provide the M&V Services, or (iii) otherwise cancels, terminates or materially breaches this Agreement, GESA Contractor shall issue a written notice to the Funding Agency stating the nature of the alleged breach, the date upon which it arose, and the remedy sought. GESA Contractor shall provide the Funding Agency with a thirty (30) day period to cure such breach. In the event of a dispute, all parties shall act in good faith to mitigate damages with a reservation of rights as to damages.
- B.** If the GESA Contractor is delayed in the commencement, performance, or completion of the M&V Services by causes beyond its control and without its fault, including but not limited to inability to access property; concealed or unknown conditions encountered at the project, differing from the conditions represented by Funding Agency in the quote documents or otherwise disclosed by Funding Agency to the GESA Contractor; a Force Majeure condition; failure by Funding Agency to perform its obligations under this GESA Contract; or failure by Funding Agency to reasonably

cooperate with GESA Contractor in the timely completion of the M&V Work where such failure is material, substantial and inconsistent with the terms of this GESA Contract, GESA Contractor shall provide written notice to Funding Agency of the existence, extent of, and reason for such delays and impacts. Under such circumstances, an equitable adjustment in the time for performance and the Assured Performance Guarantee shall be made, subject to the mutual written agreement of the parties.

- C. Funding Agency shall provide GESA Contractor, its subcontractors, and its agents reasonable and safe access to all facilities and properties in Funding Agency's control that are subject to the M&V Services. Work to be performed by GESA Contractor in accordance with this GESA Contract shall be performed during normally scheduled staff shifts and as agreed to by both parties. Funding Agency further agrees to assist GESA Contractor, its subcontractors, and its agents to gain access to facilities and properties that are not controlled by Funding Agency but are necessary for GESA Contractor to provide the M&V Services. An equitable adjustment in the time for performance and Assured Performance Guarantee shall be made as a result of any failure to grant such access, subject to the mutual written agreement of the parties.
- D. In order for GESA Contractor to perform its obligations under this Agreement with respect to the Work, the Assured Performance Guarantee, and the M&V Services, Funding Agency shall be responsible for:
  - 1. Providing GESA Contractor, its subcontractors, and its agents reasonable and safe access to all facilities and properties that are subject to the Work and/or M&V Services;
  - 2. Properly maintaining, and performing appropriate preventative maintenance on, all equipment and building systems affecting the Assured Performance Guarantee in accordance with manufacturers' standards and specifications;
  - 3. Providing the utility bills, reports, and similar information reasonably necessary for administering GESA Contractor's obligations under the Assured Performance Guarantee within thirty (30) days of Funding Agency receipt and/or generation or GESA Contractor's request therefore;
  - 4. Providing all records relating to energy and/or water usage and related maintenance of the premises and relevant equipment requested by GESA Contractor; and
  - 5. Promptly notifying GESA Contractor of any change in use or condition or any other matter that may impact the Assured Performance Guarantee.

[Remainder of this page left intentionally blank]

**PART 2  
PROJECT BENEFITS**

**2-1. PROJECT BENEFITS SUMMARY**

- A. Subject to the terms and conditions of this GESA Contract, GESA Contractor and Funding Agency agree that, upon Final Completion, Funding Agency will be deemed to achieve a total of \$ in annual increments as shown in the Maintenance Material Savings column of the Total Project Benefits table below. GESA Contractor guarantees that Funding Agency will achieve a total of \$ in Total Annual Energy Savings during the term of this Assured Performance Guarantee, for Total Project Benefits of \$ as set forth in the Total Project Benefits table below.

**Table A. Total Project Benefits**

**[INSERT TABLE SHOWING BREAKDOWN OF ANNUAL SAVINGS HERE]**

The energy cost savings provided in **Table A** above are based on the annual escalation stated in **Table A-1** below and will be applied to the unit utility rates listed in **Table B** beginning the first month following the baseline period, escalating annually throughout the Guarantee Period.

**Table A-1 – Annual Escalation Rates**

Energy Cost Esc./yr	<b>1.0%</b>
Labor Cost Esc./yr	<b>3.0%</b>
Maintenance Cost Esc	<b>1.0%</b>

The actual escalation of calculated savings that will be applied in the M&V Report will be the highest of:

- (1) **Table A-1** above
  - (2) CPI (Consumer Price Index) for the geographical region, or
  - (3) Actual fuel rate
- B. Within thirty (30) days of the commencement of the Guarantee Term, GESA Contractor will calculate the Measured Project Benefits achieved during the Installation Period and provide the Funding Agency of written confirmation of the calculations.
- C. Within thirty (30) days of each anniversary of the commencement of the Guarantee Term, GESA Contractor will calculate the Measured Project Benefits achieved for the applicable year applicable to such period and provide both DGS and the Funding Agency with an annual report containing:
1. an executive overview of the project's performance and Project Benefits achieved to date; and
  2. a summary analysis of the Measured Project Benefits accounting; and
  3. a detailed analysis of the Measured Project Benefits calculations.

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

## 2-2. PROJECT SAVINGS SHORTFALLS OR SURPLUSES

A. Guaranteed Savings Shortfalls: If an Annual Project Benefit Shortfall occurs for any year of the Assured Performance Guarantee Term, GESA Contractor shall, at the sole discretion of the Funding Agency, perform one or more of the following:

1. pay to Funding Agency the amount of such shortfall, or
2. subject to Funding Agency's written approval, provide to Funding Agency additional products or services, in the value of such shortfall, at no additional cost to Funding Agency.

B. Guaranteed Savings Surpluses: If an Annual Project Benefit Surplus occurs for any year of the Guarantee Term, GESA Contractor may not apply the amount of such surplus to set off any subsequent Annual Project Benefit Shortfall during the Guarantee Term.

C. Additional Energy Conservations. Where an Annual Project Benefits Shortfall has occurred, GESA Contractor may, subject to Funding Agency approval, implement additional Energy Conservation Measures, at no cost to Funding Agency, which may generate additional Project Benefits in future years of the Guarantee Term. Such improvements do not relieve the GESA Contractor from liability set forth in Paragraph 2-2(A).

D. Event of Default by GESA Contractor: If an Annual Project Benefits Shortfall has occurred and the GESA Contractor does not comply with Paragraph 2-2(A), the Funding Agency may deem this to be an Event of Default. If default occurs, the Funding Agency may place the GESA Contractor in the Contractor Responsibility Program and also pursue debarment or suspension in accordance with the Commonwealth Procurement Code.



## PART 3

### MEASUREMENT AND VERIFICATION METHODOLOGY

#### 3-1. MEASUREMENT & VERIFICATION PROTOCOL

A. GESA Contractor shall apply either Option A or Option B verification methodologies, as more fully detailed in the guidelines and standards of the International Measurement and Verification Protocol (IPMVP) and/or the Federal Energy Management Program (FEMP), or modified variations as outlined below, in connection with the provision of M&V Services hereunder. The applicable option shall be as set forth in the Project-Specific Request for Quote submitted to and accepted by DGS and the Funding Agency. Option A shall not be accepted without DGS and the Funding Agency's prior written approval.

B. Option A: Partially Measured Retrofit Isolation

Measured Project Benefits are determined by partial field measurement of the energy use of the system(s) to which an ECM was applied separate from the energy use of the rest of the facility. Measurements will be short-term with only one-time measurements before and after the Installation Period.

Partial measurement means that some but not all parameters will be measured. Careful review of the design and installation of ECMs is intended to demonstrate that the stipulated values fairly represent the probable actual values. Agreed-upon values will be shown in the measurement and verification plan, along with analysis of the significance of the error they may introduce. Engineering calculations using short-term pre and post-retrofit measurements and stipulations are used to calculate Measured Project Benefits for the duration of the Guarantee Term.

C. Option B: Retrofit Isolation

Savings are determined by field measurement of the energy use of the systems to which the ECM was applied, separate from the energy use of the rest of the facility. Short-term or continuous measurements are taken throughout the post-retrofit period.

#### 3-2. CHANGES IN USE OR CONDITION

A. Funding Agency agrees to notify GESA Contractor within thirty (30) days of (i) any actual or intended change, whether before or during the Guarantee Term, in the use of any facility, equipment, or Energy Conservation Measure to which this schedule applies; (ii) any proposed or actual expansions or additions to the premises or any building or facility at the premises; (iii) a change to utility services to all or any portion of the premises; or (iv) any other change or condition arising before or during the Guarantee Term that reasonably could be expected to change the amount of Project Savings realized under this Agreement.

1. Such a change, expansion, addition, or condition would include, but is not limited to: (a) changes in the primary use of any facility, Energy Conservation Measure, or portion of the premises; (b) changes to the hours of operation of any facility or portion of the premises; (c) changes or modifications to the Energy Conservation Measures or any related equipment; (d) changes to the M&V Services provided under this GESA Contract; (e) insufficient or improper maintenance or unsound usage of the Energy Conservation Measures or any related equipment at any facility or portion of the premises (other than by GESA Contractor); or (f)

additions or deletions of Energy Conservation Measures or any related equipment at any facility or portion of the premises.

- B.** If GESA Contractor independently learns of any such change or condition, GESA Contractor shall calculate and send to Funding Agency a Notice of adjustment to the Annual Project Benefits to reflect the impact of such change or condition, and the adjustment shall become effective as of the date the change or condition first arose. If the Funding Agency fails to promptly provide GESA Contractor with notice of any such change or condition, GESA Contractor may make reasonable estimates as to the impact of such change or condition and as to the date on which such change or condition first arose in calculating the impact of such change or condition, and such estimates shall be conclusive.

SAMPLE COPY

## PART 4

### BASELINE CALCULATIONS AND UTILITY RATES

#### 4-1. UTILITY COSTS FOR BASELINE

- A. The unit utility costs for the Baseline period are set forth below as “Base Utility Cost” and shall be used for all calculations. The Base Utility Cost shall be escalated annually by escalation rate of one percent (1%). The Base Utility Cost for electric represents the 12- month average utility costs from [BASELINE PERIOD] **EXAMPLE:** July 1, 2014 through June 30, 2015.
- B. The [BASELINE PERIOD] energy rates used to calculate savings are [COST/KWH] \$ / kWh for electricity, [COST/MMBTU] \$/mmBtu for natural gas, [COST/KBTU] \$ / KBtu for heating fuel and [COST/KGAL] \$/kGal for water.

Baseline utility rates used for the energy savings calculations were determined according to the following methods:

Electric Rates:

Heating Fuel Rates:

Natural Gas Rates:

Water Rates:

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**PART 5**

**PRIMARY OPERATIONS SCHEDULE PRE & POST RETROFIT**

**5-1. PRE/POST RETROFIT**

**[INCLUDE CHARTS/TABLES ETC. THAT EXPLAIN PRE/POST RETROFIT LIGHTING BURN HOURS, TEMPERATURES, SETPOINTS, ETC. OF ECMS]**

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## PART 6

### 6.1 MEASUREMENT & VERIFICATION SERVICES

#### COMMONWEALTH REPRESENTATIVE

- A. **GESA Contractor shall ensure that an approved representative from Funding Agency is physically present for all pre-retrofit and post retrofit measurements, for each ECM as applicable to the Energy Savings Guarantee. Funding Agency and GESA Contractor shall mutually witness and record said measurements and sign GESA Contractor's measurement logbook, if deemed mutually acceptable. GESA Contractor shall include all logged measurements in the annual report to be provided.**

#### 6-2. M&V SERVICES

- A. GESA Contractor will, for a period of 3 Guarantee Years (the "Reporting Period") unless earlier terminated by Funding Agency, provide the "M&V Services" set forth below in connection with the Assured Performance Guarantee. Funding Agency shall pay GESA Contractor an annual fee during the Reporting Period for such M&V Services as identified in the table below. Notwithstanding anything to the contrary, Funding Agency may choose to continue the M&V services in Guarantee Year Four (4) and beyond by notifying GESA Contractor within thirty (30) days of the end of the third Guarantee Year. If Funding Agency, after GESA Contractor's completion of the third year of M&V Services, does not continue with the M&V Services, it irrevocably acknowledges GESA Contractor's full satisfaction of, and release from, this Assured Performance Guaranty.
1. During the Installation Period, the GESA Contractor's Performance Assurance Engineer will track Measured Project Benefits. The GESA Contractor will report the Measured Project Benefits achieved during the Installation Period to the Funding Agency within 90 days of the commencement of the Guarantee Term.
  2. Within 90 days of each anniversary of the commencement of the Guarantee Term, for a period of 3 years, GESA Contractor will provide the Funding Agency with an annual report containing:
    - A. an executive overview of the project's performance and Project Benefits achieved to date;
    - B. a summary analysis of the Measured Project Benefits accounting; and
    - C. depending on the M&V Option, a detailed analysis of the Measured Project Benefits calculations.
  3. During the Guarantee Term, for a period of 3 years, the GESA Contractor's Performance Assurance Engineer will monitor the on-going performance of the ECMs, as specified in this GESA Contract, to determine whether anticipated Measured Project Benefits are being achieved. In this regard, the Performance Assurance Engineer will periodically assist the Funding Agency, on-site or remotely, with respect to the following activities:
    - A. Conduct one annual on-site visit to verify proper operation of the equipment installed under the project.
    - B. review information furnished by the Funding Agency from the facility

- management system to confirm that control strategies are in place and functioning;
  - C. advise Funding Agency’s designated personnel of any performance deficiencies based on such information;
  - D. coordinate with Funding Agency’s designated personnel to address any performance deficiencies that affect the realization of Measured Project Benefits; and
  - E. inform Funding Agency of opportunities to further enhance project performance and of opportunities for the implementation of additional ECMs.
4. For specified ECMs utilizing “Option A” and “Modified Option A” M&V protocols, the GESA Contractor will:
- A. conduct pre and post installation measurements required under this GESA Contract;
  - B. confirm the building management system employs the control strategies and set points specified in this GESA Contract; and
  - C. analyze actual as-built information and adjust the Baseline and/or Measured Project Benefits to conform to actual installation conditions (e.g., final lighting and water benefits calculations will be determined from the as-built information to reflect the actual mix of retrofits encountered during installation).

**6-3. COST OF M&V SERVICES**

Based on direction from the Commonwealth, the fees for the first three (3) years of annual M&V service has been included in the Project; refer to the project cash flow in the Investment Grade Audit. The amount to be paid annually by Funding Agency for the M&V services provided is listed in the table below. If the Funding Agency chooses to continue the M&V services in Guarantee Year Four (4) and beyond, it must notify GESA Contractor within thirty (30) days of the end of the third Guarantee Year. If the Customer wishes to continue the M&V Services past the third Guarantee Year, the pricing for each additional Guarantee Year for M&V services will be the Year 3 M&V Cost annually escalated at 3% in each additional Guarantee Year. The billing for the 1st three Guarantee Years will begin with Final Acceptance of this project.

<b>Year</b>	<b>M&amp;V Cost</b>
1	\$
2	\$
3	\$
<b>Total</b>	<b>\$</b>

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## PART 7

### FUNDING AGENCY RESPONSIBILITIES

**7-1. In order for GESA Contractor to perform its obligations under this GESA Contract with respect to the Work, the Assured Performance Guarantee, and the M&V Services, Funding Agency shall be responsible for:**

1. Providing GESA Contractor, its subcontractors, and its agents reasonable and safe access to all facilities and properties that are subject to the Work and/or M&V Services;
2. Properly maintaining, and performing appropriate preventative maintenance on, all equipment and building systems affecting the Assured Performance Guarantee in accordance with manufacturers' standards and specifications;
3. Providing the utility bills, reports, and similar information reasonably necessary for administering GESA Contractor's obligations under the Assured Performance Guarantee within thirty (30) days of Funding Agency receipt and/or generation or GESA Contractor's request therefore;
4. Providing all records relating to energy and/or water usage and related maintenance of the premises and relevant equipment requested by GESA Contractor;
5. Providing and maintaining a dedicated telephone line and/or TCP/IP remote connection to facilitate remote monitoring of relevant equipment;
6. Promptly notifying GESA Contractor of any change in use or condition or any other matter that may impact the Assured Performance Guarantee.

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**ENERGY EFFICIENT MEASURES**

The table(s) below summarizes ECM savings and cost and simple payback

[INSERT SUMMARY TABLE(S)]

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