

ROSEBURG URBAN SANITARY AUTHORITY

RESOLUTION NO. 25-01

A RESOLUTION ADOPTING FINDINGS OF FACT, DECLARING AN EXEMPTION FROM COMPETITIVE BIDDING, AND AUTHORIZING THE DIRECT APPOINTMENT OF AMERESCO FOR THE 50 kW SOLAR PV WITH BATTERY STORAGE PROJECT

WHEREAS, the Roseburg Urban Sanitary Authority ("RUSA") an Oregon sanitary authority formed and authorized pursuant to Oregon Revised Statutes ("ORS") chapter 450.705-450.787, is subject to Oregon's public contracting laws, including ORS chapter 279C relating to construction of public improvements; and

WHEREAS, ORS 279C.335 permits RUSA's Board of Directors, acting as the Local Public Contract Review Board, to exempt specific projects from the standard competitive bidding requirements of ORS chapter 279C after specifically adopting written findings of fact justifying an exemption from traditional competitive bidding and use of an alternative contracting method; holding a public hearing on the adoption of the findings; and declaring an exemption from competitive bidding; and

WHEREAS, when approving the exemption in ORS 279C.335, the Local Contract Review Board "shall, where appropriate, direct the use of alternative contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods, which are also consistent with the public policy of encouraging competition"; and

WHEREAS, RUSA has determined that, due to the specialized nature of the proposed construction of the 50 kW Solar PV with battery storage Project ("the Project") and its importance to RUSA's long-term sustainability strategy, directly awarding a contract construction of the Project to a qualified contractor is justified; and

WHEREAS, RUSA has prepared written Findings of Fact ("Findings") to support the exemption from competitive bidding and the direct appointment of a contractor, which are attached hereto as Exhibit A and incorporated herein by this reference; and

WHEREAS, a public hearing on the Findings was duly noticed and held on March 12th, 2025; and

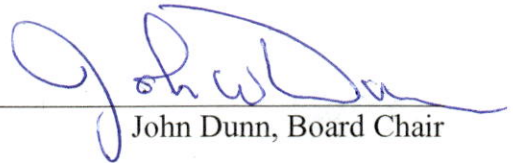
NOW, THEREFORE, RUSA's Board of Directors, acting as the Local Contract Review Board, hereby resolves as follows:

1. The written Findings attached hereto as Exhibit A are hereby adopted.
2. On the basis of the attached Findings, the Board finds that:

1 - RESOLUTION EXEMPTING CONTRACT FROM BIDDING AND AUTHORIZING DIRECT AWARD

- (a) Exempting the Project from competitive bidding is unlikely to encourage favoritism in awarding public improvement contracts or substantially diminish competition for public improvement contracts;
 - (b) Awarding the contract under the exemption will likely result in substantial cost savings and other substantial benefits for RUSA and its customers; and.
 - (c) The Project is a pilot project for which RUSA intends to determine whether using the alternative contracting method actually results in substantial cost savings.
- 3. Consistent with ORS 279C.335, an exemption from competitive bidding processes is hereby declared.
 - 4. The Board hereby approves the direct appointment of Ameresco for the contract award.
 - 5. Staff are hereby directed to carry out the process necessary to enter into a contract with Ameresco as provided in Exhibit B.

APPROVED AND ADOPTED on March 12, 2025.


John Dunn, Board Chair

ATTEST:


James V. Baird, General Manager

EXHIBIT A

FINDINGS IN SUPPORT OF DECLARING AN EXEMPTION FROM COMPETITIVE BIDDING AND DIRECTLY AWARDING A CONTRACT FOR RUSA's 50 KW SOLAR PV WITH BATTERY STORAGE PROJECT

The 50 KW Solar PV with Battery Storage Project is a critical component of Roseburg Urban Sanitary Authority (RUSA)'s long-term sustainability strategy. It is being pursued with funding support from the Clean Water State Revolving Fund (CWSRF) and the Oregon Department of Energy's (ODOE) Community Renewable Energy Program (C-REP) grant, among other sources.

Ameresco has been deeply involved in this project's development since Summer 2023, and through its expertise, RUSA has secured a C-REP grant that requires performance guarantees—a key requirement that Ameresco is uniquely positioned to provide. Given the urgency of meeting funding deadlines, the complexity of the project, and Ameresco's extensive groundwork, going out to bid for a new contractor would cause unnecessary delays, risk grant funding, and disrupt project continuity.

Extensive Project Involvement. Ameresco has been engaged with RUSA since Summer 2023 with a Technical Energy Audit (TEA) being approved and signed at our November 2023 RUSA Board meeting, providing critical pre-construction services that have positioned the project for success:

- **Investment-Grade Audit & Feasibility Analysis:** Ameresco conducted a detailed site assessment, identifying optimal system sizing, integration with wastewater operations, and economic viability. This IGA also identified solar as the preferred renewable energy strategy over other sources such as cogeneration.
- **Sustainability Planning & Financial Strategy:** Ameresco worked closely with RUSA to develop a funding strategy, including leveraging CWSRF, ODOE C-REP, and the Inflation Reduction Act's Investment Tax Credit (ITC) for maximum cost-effectiveness.
- **Grant Application & Award:** Ameresco assisted RUSA in securing a time-sensitive ODOE C-REP grant, which has strict deadlines and performance requirements that must be met.
- **Stakeholder Engagement & Marketing Support:** Ameresco has supported public outreach, internal stakeholder coordination, and project presentations, ensuring alignment with sustainability goals and ratepayer benefits.

If RUSA were required to go out to bid for a new contractor, the new contractor would need to:

- Rebuild feasibility analysis, system design assumptions, and grant compliance strategy from scratch.
- Research, understand and take on current funding mechanisms, which Ameresco has already structured to optimize project cost savings.

- Absorb significant delays, risking the loss of the ODOE C-REP grant, which has strict expenditure deadlines.
- Lack the performance guarantees that are critical to grant compliance and long-term project success.

Cost Savings & Risk Mitigation Through Direct Selection. Under ORS 279C.335, an exemption from competitive bidding may be granted if the alternative procurement method does not encourage favoritism, maintains competition, and results in substantial cost savings and efficiency improvements.

This project meets those criteria in several ways:

- **Performance Guarantees Required by ODOE C-REP**
 - Ameresco is uniquely qualified to provide a performance guarantee on the renewable energy production of the solar PV system. As an ESCO on the ODOE approved ESCO list, Ameresco is intimately familiar with energy performance guarantees.
 - The ODOE C-REP grant requires performance assurances, and Ameresco, as a certified Energy Service Company (ESCO), has the specialized expertise to structure and deliver these guarantees.
 - A traditional construction contractor would not be able to provide these guarantees, and selecting an alternative firm would require an entirely new approach to compliance, delaying or even jeopardizing grant eligibility.
- **Preserving Public Funding & Cost Savings**
 - Ameresco has already developed a financial structure that combines CWSRF funding, ODOE grants, and ITC incentives, resulting in significant cost reductions for RUSA.
 - If RUSA is forced to go out to bid, a new firm would need to redo Ameresco's funding and financial structuring work, leading to delays and potential funding shortfalls.
 - Ameresco's early involvement has already reduced project risk and optimized financial returns. Replacing them would create inefficiencies and uncertainty.
- **Maintaining Competitive Subcontracting for Construction**
 - While Ameresco is being selected without competitive bidding, all major construction scopes (electrical, civil, etc.) will be competitively bid in compliance with DEQ's procurement guidelines.
 - This ensures that cost competition is preserved, while maintaining project continuity with Ameresco's leadership.

Justification for Exemption from Competitive Bidding. Per ORS 279C.335, a public agency may exempt a project from competitive bidding if:

- The exemption will not encourage favoritism or substantially reduce competition; and
- The alternative method will likely result in substantial cost savings or other substantial benefits to the public agency.

This project meets both criteria:

- No Favoritism / Maintained Competition:
 - Ameresco was the best positioned ESCO having navigated the complicated Oregon funding opportunities on previous Oregon projects and as RUSA's ESCO and has since provided valuable project development services.
 - All subcontracted work will be competitively bid, ensuring fair pricing and compliance with procurement rules.
- Cost Savings & Efficiency Improvements:
 - Ameresco's early investment in project feasibility, funding, and grant compliance has significantly reduced project risk.
 - The ODOE grant requires a performance guarantee, which Ameresco is uniquely qualified to provide.
 - A new contractor would need to start from scratch, causing delays, funding risks, and inefficiencies.

ORS 279C.335(2)(c) also allows for a contracting agency to seek an exemption that would allow it to use an alternative contracting method not previously used, identifying the project as a pilot project for which the alternative method actually results in substantial cost savings to the contracting agency or the public. Because RUSA has not previously used the direct award process to evaluate and select a qualified solar contractor for this specialized work, RUSA intends to use the Ameresco contract as a pilot project that will be evaluated upon completion to determine whether the same process could be used to complete future similar work at a lower cost.

Unique Qualifications

In evaluating Ameresco's qualifications for the Project, RUSA recognizes:

- Ameresco's critical role in securing grant funding and structuring tax incentives.
- The time-sensitive nature of the ODOE C-REP grant and risk of delays.
- Ameresco's ability to provide performance guarantees, which are essential for grant compliance.
- The cost savings and risk mitigation achieved through maintaining Ameresco's project leadership.
- The competitive subcontracting process that will ensure cost-effectiveness and compliance with CWSRF funding guidelines.

ENERGY SAVINGS PERFORMANCE CONTRACT
EXHIBIT A
PHASE 2: DESIGN AND CONSTRUCTION CONTRACT

THIS **PHASE 2 DESIGN AND CONSTRUCTION CONTRACT** is between Roseburg Urban Sanitary Authority (RUSA the "Owner"), and:

Company	Ameresco, Inc	Contract #	1007787
Address	9700 SW Capitol Hwy, Suite 110	PCA Project/Phase	Ph. 1
City, State Zip	Portland, OR 97219	Tax ID #	04-3512838
Phone	503.290.1285	Date	02/14/2025

(the "ESCO" or "Consultant") (collectively Owner and Consultant are referred to as the "Parties"). This Contract is for all Services related to completion of the project more particularly described as follows (the "Project"):

The scope of work for this project will include a solar array with a battery energy storage system to serve the RUSA main office as described in the PDP, located at 1297 NE Grandview Dr, Roseburg, OR 97470.

The work to be performed under this contract shall commence as soon as the ESCO has been officially notified to proceed (the "Effective Date"). No Services shall be performed prior to the Effective Date. The Contract shall expire, unless otherwise terminated or extended, on **11/1/2028**. The expiration or termination of the Contract shall not extinguish, prejudice, or limit either Party's right to enforce this Contract with respect to any default or defect in performance that has not been cured.

1. RESERVED.
2. SUBSTANTIAL COMPLETION DATE: **12/31/2025** See requirements in Sections 18.2 and 18.3 of this Design and Construction Contract.
3. DEFINITIONS. The key, defined terms used in this Design and Construction Contract, are set forth at Section 1 of Division 1 of the Energy Savings Performance Contract between Owner and ESCO, with an Effective Date of **02/14/25** (the "ESPC" or the "Contract") and Section A, RUSA General Conditions, Exhibit 1A to this Contract (the "General Conditions"), unless defined in the body of this Contract, and in this Section 3 as follows:
 - 3.1. "Construction Work" means the providing of all work, services, construction management services, materials, equipment, transportation, tools, labor and incidentals necessary to complete the construction work described in and reasonably inferred from this Contract and the other Contract Documents, including but not limited to the services and work set forth in Sections 5.5 and 5.6 of this Design and Construction Contract.
 - 3.2. "Contract Time" means any incremental period of time allowed under the Design and Construction Contract to complete any portion of the Work as reflected in the project schedule.
 - 3.3. "Design Services" means all the design services and construction administration services to be performed by ESCO under this Design and Construction Contract and the other Contract Documents, including but not limited to Sections 5.3 and 5.4 of this Design and Construction Contract.

- 3.4. "Project Management Services" means the project management services that ESCO shall perform throughout the period of performance of this Design and Construction Contract, as more particularly described in Section 5.2 of this Design and Construction Contract.
 - 3.5. "Work" means all Project Management Services, Design Services and Construction Work to be performed by ESCO under this Design and Construction Contract and the other Contract Documents for the Project.
4. CONTRACT DOCUMENTS. The Contract Documents listed at Section 4.1 below are intended to reflect the Parties' understanding of their respective rights and responsibilities concerning completion of the Work under the Design and Construction Contract.
- 4.1. Interpretation. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall take precedence in the following order:
 - 4.1.1. All written modifications, amendments and change orders to this Design and Construction Contract that have been executed by Owner following any required Owner approvals;
 - 4.1.2. This Design and Construction Contract, and all Exhibits, Schedules and Attachments to this Contract, including Exhibit 2A, Supplemental General Conditions to the State of Oregon General Conditions;
 - 4.1.3. The State of Oregon General Conditions (Exhibit 1A hereto);
 - 4.1.4. All design and construction drawings, Plans, Specifications and documents prepared and approved for the Project;
 - 4.1.5. The Contract;
 - 4.1.6. The RFP;
 - 4.1.7. ESCO's Proposal submitted in response to the RFP.
 - 4.2. Ownership of Work Product. All drawings, Plans, Specifications, audits, reports, and other work product required to be delivered by ESCO under this Contract ("Work Product") shall be the exclusive property of Owner. Owner and ESCO intend that such Work Product be deemed "work made for hire." If for any reason the Work Product is not deemed "work made for hire," ESCO hereby irrevocably assigns to Owner all of its right, title and interest in and to any and all of the Work Product, whether arising from copyright, or any state or federal intellectual property law or doctrine. ESCO shall execute such further documents and instruments as Owner may reasonably request in order to fully vest such rights in Owner. ESCO forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC §106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
 - 4.2.1. ESCO, notwithstanding other conditions in this Section 4.2, shall have, with Owner's written permission, the right to utilize such Work Product on its brochures or other literature that it may utilize for marketing and sales, and in addition, ESCO may use standard line drawings, specifications and calculations on other unrelated projects.
 - 4.2.2. If Owner reuses or modifies the Work Product without ESCO's involvement or prior written consent, Owner shall to the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, indemnify ESCO against liability for damage to person or property arising from Owner's reuse or modification of the Work Product, provided Owner shall not be required to indemnify ESCO for any such liability arising out of or related to the wrongful or negligent acts of ESCO or ESCO's employees or agents.

5. ESCO's SERVICES

5.1. General.

- 5.1.1. ESCO agrees that the Project Development Plan package of Energy related items, Non-Energy-related items and water-saving measures, and the Design Development Documents approved by ESCO and Owner shall serve as the basis for the Statement of Work for Phase II (as described in Section 3 of Division 1 of the Contract.)
- 5.1.2. As the Design-Builder for this Project, ESCO shall perform all Project Management Services, Design Services, and Construction Work necessary to complete the Project.
- 5.1.3. ESCO shall obtain at its own expense, and shall maintain in effect for the duration of this Design and Construction Contract, the insurance coverage required both in Section G of the General Conditions and in Section 9.3 of Division 1 of the Contract. Before execution of this Design and Construction Contract, ESCO shall provide to Owner certificates of insurance in compliance with the foregoing insurance provisions that demonstrate the required coverages are in effect and are being maintained for this Design and Construction Contract and the Work and services to be performed hereunder. In addition, before execution of this Design and Construction Contract, ESCO shall provide to Owner a performance bond and a payment bond, as required by Section G.2 of the General Conditions, on the bond forms furnished by Owner (attached hereto as Exhibit 3A). Each bond shall be in the total amount of those elements of the Contract Price for this Design and Construction Contract as provided in Section 9.1.5 below. Notwithstanding any provision to the contrary herein, any payment and performance bonds associated with this Contract guarantee only the performance of the installation portion of this Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, (2) any support or maintenance service agreement, or (3) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of this Contract. In addition, before beginning work, ESCO and all subcontractors shall file and maintain with the Construction Contractors Board the public works bond required by ORS 279C.836.
- 5.1.4. ESCO shall perform all services in good faith and shall perform all Work as expeditiously as is consistent with the highest professional skill, care and the orderly progress of the Work.
- 5.1.5. Within one week after execution of this Design and Construction Contract, ESCO shall submit for Owner's approval a schedule for the performance of the Work, which shall include allowances for periods of time required for Owner's review and for approval by authorities having jurisdiction over the Project. Time limits established by this schedule and approved by Owner shall not, except for reasonable cause, be exceeded by ESCO or Owner.
- 5.1.6. ESCO shall in good faith provide Owner with the necessary technical documentation for, and assist Owner in the procurement of, any utility rebates or incentives (the "Rebates") and tax credits (the "Tax Credits") that may be available for the Project. ESCO estimates the Rebates to be approximately \$11,167 and the Tax Credits to be approximately \$0. ESCO does not guarantee the specific availability or amount of the Rebates or the Tax Credits.
- 5.1.7. Under Section 6.4.3 of Division 3 of the Contract, ESCO was required to provide drafts of Schedules 7 through 10 as provided in that Section. As part of the services under this Design and Construction Contract, ESCO is required to provide final versions of Schedules 7 through 10. ESCO shall provide proposed final versions of these Schedules for review by Owner, and ESCO shall then revise these Schedules as required by Owner or as negotiated between Owner and ESCO to arrive at final versions of Schedules 7 through 10. More than one

version of one or more of these Schedules may be necessary in arriving at accepted final versions.

5.1.8. Reserved

5.2. Project Management.

- 5.2.1. ESCO shall appoint an ESCO staff person as ESCO's Project Manager (the "EPM", who is identified in Section 6.3 of this Design and Construction Contract) who shall be reasonably available to Owner and who shall have the expertise and experience required to supervise the Work for the duration of the Project. EPM shall communicate regularly with Owner and shall have the authority to act on behalf of ESCO. EPM shall consult with Owner's Project Manager (the "OPM") on issues affecting design, construction, Contract performance, Project budget and Project schedule. The EPM may be replaced during the Project only with Owner's prior consent, consistent with the provisions of Section 6.3 and 6.5 of this Design and Construction Contract.
- 5.2.2. The EPM shall provide Owner with a status report every two weeks, in which it shall detail the progress of the Work including the following: 1) whether the Work is proceeding according to schedule; 2) any discrepancies, conflicts, or ambiguities in the Contract Documents that require resolution; 3) any safety issues related to the Work; 4) any other matter that requires resolution to ensure timely and cost-effective completion of the Work. At least four working days prior to the scheduled meeting, ESCO shall submit to Owner a list of identified matters that require resolution; any matters that require Owner approvals, and any proposed deviations from the Project schedule.
- 5.2.3. The EPM shall be the principal contact between the OPM and all other ESCO representatives, and shall be responsible for all communications, including, but not limited to, conveying concerns, decisions and formal actions.
- 5.2.4. The EPM shall be responsible for maintaining thorough and complete project records and regular briefings to the OPM. The EPM shall coordinate the flow of information, communications and formal Documents so that Owner has the material required for its timely action on policy, design and budget matters. The EPM shall be responsible for transmission of Documentation required for Owner approval or actions.
- 5.2.5. Owner's review of, and response to, any of the matters presented above shall not relieve ESCO of its obligation to complete the Work within the Contract Time, and shall not be construed as relieving ESCO of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

5.3. Design.

Based on approved design development documents generated by ESCO and approved by Owner during the Project Development Plan, and any further adjustments in the scope or quality of the Project or in the construction budget authorized by Owner, ESCO shall prepare, for approval by Owner, Construction Documents.

- 5.3.1. The Construction Documents must meet the following requirements:
 - 5.3.1.1. ESCO shall provide Specifications that comply with the Construction Specifications Institute's 3-part and 16-division format, shall provide drawings and Plans based on the approved preliminary design documents and shall set forth in detail the architectural, structural, mechanical and electrical construction requirements for the Project.
 - 5.3.1.2. ESCO shall provide Owner with catalog cuts of all specified items, if different than design development documents.

- 5.3.1.3. ESCO shall provide Owner with in-progress Construction Documents as needed. At the completion of construction ESCO shall supply record drawings, and a copy of the final Construction Documents on a re-recordable compact disk.
 - 5.3.1.4. ESCO shall prepare 95% Construction Documents for review and approval by Owner, and shall continue with preparation of the final Construction Documents, including final Specifications for all authorized Work on the Project, and shall incorporate into those final Construction Documents the comments and any modifications or changes desired by Owner, and any modifications required for compliance with applicable codes, regulations or standards. The resulting final Construction Documents shall be a complete, fully coordinated, integrated package, suitable for use in the construction of the Project, without significant addenda or further clarifications required. All submittals shall be made in accordance with the schedule made pursuant to Section 5.1.5 of this Design and Construction Contract.
 - 5.3.1.5. ESCO shall file all documents required for the approval of governmental authorities having jurisdiction over the Project and shall obtain all necessary permits. In the event that Owner files any permits, ESCO shall assist Owner as Owner deems necessary.
- 5.3.2. All specified items shall be standard, cataloged, manufactured items or "off the shelf" items. No custom items are to be designed or specified without prior written authorization of Owner. No proprietary or "sole source" items shall be specified. Brand name products may be specified so long as "or approved equal" is included with their specification.
- 5.3.3. Recycled products shall be used where they are economically feasible. ESCO shall give preference to materials and supplies manufactured from recycled materials under the following conditions:
 - The recycled product is available;
 - The recycled product meets applicable standards;
 - The recycled product can be substituted for a comparable non-recycled product; and
 - Recycled product costs do not exceed the costs of non-recycled products by more than five percent.
- 5.4. Construction Administration Services
 - 5.4.1. GENERAL OFFICE CONSTRUCTION ADMINISTRATION. ESCO shall process submittals, including without limitation, the receipt, review and disposition of shop drawings, product data, and samples. ESCO shall transmit any such submittals to Owner, as required and shall maintain a master file of submittal communications. ESCO shall keep a submittal log on a spreadsheet program and send a copy to Owner on a weekly basis.
 - 5.4.2. INSPECTION COORDINATION. ESCO shall provide all necessary services relating to independent inspection and testing required by applicable regulatory agencies, or relating to other inspection, testing and commissioning of the systems and equipment installed on the Project site as part of the Work, including but not limited to the following:
 - administration and coordination of field testing as required by the Contract Documents;
 - establishing the scope, standards, procedures and frequency of testing and inspections required to complete the Work; arranging for testing and inspections; notifying inspection and testing agencies of status of any portion of the Work requiring testing and inspection;
 - evaluating compliance by testing and inspection agencies with required scope, standards, procedures and frequency; review of reports on inspections and tests; notifying Owner of any observed deficiencies in the Work; and, providing copies of all reports on inspections

and tests, as well as copies of all correspondence from the testing and inspection agencies, to Owner.

- 5.4.3. SUPPLEMENTAL DOCUMENTS. ESCO shall prepare, reproduce and distribute supplemental drawings, Plans and Specifications and shall issue interpretations in response to requests for clarification by Owner's Project Manager, or subcontractors or as required by construction exigencies. ESCO shall be responsible for notifying the appropriate parties of Owner's instructions and of changed requirements and schedule revisions.
 - 5.4.4. CHANGE REQUESTS/CHANGE ORDERS, requested or approved by Owner: ESCO shall prepare, reproduce and distribute drawings, Plans and Specifications to describe Work to be added, deleted or modified; review proposals from subcontractor(s) for reasonableness of quantities and costs of labor and materials; review and recommend changes in time for substantial completion; assist in preparation of Owner approved modifications to the GMP; coordinate communications, approvals and notifications. ESCO shall keep a log of all change requests on a spreadsheet program and copy Owner bi-weekly.
 - 5.4.5. PAYMENT REVIEW. ESCO shall evaluate and certify applications for payment and shall maintain detailed records supporting approved applications for payment.
 - 5.4.6. PROJECT CLOSEOUT. ESCO shall verify that work is sufficiently complete, in accordance with the Contract Documents, to permit occupancy or utilization for the use for which it is intended. ESCO shall coordinate a detailed inspection with Owner's representative to ensure that the Work conforms to the Contract Documents; to verify the list submitted by the subcontractor(s) of items to be completed or corrected; to determine the amounts to be withheld until final completion; to issue Certificates of Substantial Completion; to perform inspection(s) upon notice by the sub-contractor(s) that the Work is ready for final inspection and acceptance; to notify Owner and subcontractor(s) of deficiencies found in follow-up inspection(s), if any; to perform final inspection with Owner's representative to verify final completion of the Work; receipt and transmittal of warranties, affidavits, receipts, releases and waivers of lien or bonds indemnifying Owner against liens; and issuance of Final Certificate(s) for Payment.
 - 5.4.7. RECORD DRAWINGS services consisting of: Preparation of record drawings in electronic format based on information furnished by the subcontractors including significant changes in the work made during construction including modifying the floor plan layouts including partitions, furniture and equipment; transmittal of record drawings and general data, appropriately identified, to Owner and others as directed.
 - 5.4.8. WARRANTY REVIEW: Prior to the expiration of the warranties of any subcontractors and manufacturers, ESCO and Owner's representative shall perform a warranty review, documenting defects or deficiencies in installation, materials, systems and equipment and preparing instructions to the sub-contractors and manufacturers for correction of noted defects. The ESCO shall then follow through to ensure that each defect or deficiency is appropriately addressed and verify that an appropriate remedy has been accomplished. ESCO shall copy Owner on the correspondence related to these warranty issues.
- 5.5. Construction Services/Construction Management Services.
- 5.5.1. ESCO shall have complete control over and charge of and shall be responsible for construction means, methods, techniques, sequences or procedures, and for safety precautions and programs in connection with the Work on the Project, so that, upon completion of the Work, the Project shall be structurally sound and shall be a complete, fully-functioning facility suitable for the purposes for which it is intended. These roles are solely ESCO's responsibility under this Design and Construction Contract. ESCO shall be fully

responsible for maintaining construction schedules and for any failure to carry out the Work in accordance with the Contract Documents. ESCO shall be deemed to have complete control over or charge of acts or omissions of all ESCO employees, agents, design professionals, and construction managers, as well as subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

- 5.5.2. ESCO's responsibility to provide the Work under this Design and Construction Contract commences with the execution of this Design and Construction Contract and terminates upon ESCO's satisfaction of all obligations set forth in this Design and Construction Contract including those enumerated at Section K of the General Conditions.
- 5.5.3. ESCO shall provide, supervise and administer all Construction Work as set forth in this Design and Construction Contract and in the General Conditions unless otherwise provided in this Design and Construction Contract.
- 5.5.4. ESCO's duties, responsibilities and limitations of authority shall not be modified or extended without the express written agreement of the Parties and any required Owner approvals.
- 5.5.5. Except as may otherwise be provided in the Contract Documents or when direct communications have otherwise been specifically authorized, Owner shall conduct all communications concerning the Work through the EPM.
- 5.5.6. Subject to the right to suspend and terminate as provided in Section J of the General Conditions, in no event shall the existence of any claim, dispute or question constitute a justification for either party to suspend or terminate the progress of the Work, and both parties, in such event, shall continue to prosecute the Work and perform under this Design and Construction Contract diligently, and shall resolve the claim, dispute or question by agreement, mediation or other means.
- 5.5.7. At its own expense, ESCO shall correct Construction Work which does not conform to the Construction Documents.
- 5.5.8. ESCO warrants to Owner that materials and equipment incorporated in the Construction Work shall be new unless otherwise specified, and that the Construction Work shall be of good quality, free from faults and defects, and in conformance with the Contract Documents.
- 5.5.9. ESCO shall pay all sales, consumer, use and similar taxes and shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Construction Work which are either customarily secured or are legally required. Owner shall compensate ESCO for the actual cost of approved changes in the Construction Work including the cost of permits, licenses, inspections or governmental fees and tariffs incurred by ESCO as a direct result of this Project; provided, however, ESCO shall pay all costs of this Project that result from errors or defects in the design of the Project or in the Construction Work.
- 5.5.10. ESCO shall give notices and comply with all laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project, including but not limited to compliance with energy conservation design measures required under ORS 276.900 to 276.915 and rules adopted pursuant to those statutes.
- 5.5.11. ESCO shall be responsible to Owner for the completion of the Construction Work in accordance with this Design and Construction Contract.
- 5.5.12. ESCO shall keep the premises free from accumulation of waste materials or rubbish caused by ESCO's operations. At the completion of the Construction Work, ESCO shall remove from and about the Project all of ESCO's tools, construction equipment, machinery, surplus materials, waste materials and rubbish.

- 5.5.13. ESCO shall prepare Change Orders for Owner's approval and execution and shall have authority to make minor changes in the design of the Project and Construction Work consistent with the intent of the Project, not involving an adjustment in the contract sum or an extension of the contract time. ESCO shall promptly inform Owner, in writing, of all minor changes in the design of the Project and the Construction Work.
- 5.5.14. ESCO shall notify Owner when the Construction Work or an agreed upon portion thereof is substantially completed by issuing a Certificate of Substantial Completion which shall establish the date of Substantial Completion; state the responsibility for each party for security, maintenance, heat, utilities, and damage to the Construction Work; include a list of items to be completed or corrected; and fix the time within which ESCO shall complete items listed
- 5.5.15. ESCO shall maintain in good order at the site one true and correct record copy of the drawings, Plans, Specifications, product data, samples, shop drawings, Change Orders, and other modifications, marked currently to record changes made during construction. ESCO shall deliver in-progress construction drawings and Plans to Owner upon completion of the design and construction of the Project, and prior to final payment. The record copy shall be based solely on information obtained by ESCO.
- 5.5.16. For this Project, the provisions of ORS 279C.800 to 279C.870, relative to prevailing wage rates, shall apply, and ESCO and all subcontractors shall comply with the foregoing requirements and the related requirements as provided in Section C of the General Conditions, including but not limited to the requirement to pay workers at not less than the specified minimum hourly rate of wage. A copy of the Oregon Bureau of Labor and Industries (BOLI) current prevailing wage rate publication applicable to this Project is appended to this Contract as Exhibit 4A and is incorporated herein by this reference. The ESCO's signature on this Design and Construction Contract constitutes a certification that ESCO agrees to be bound by such rates and the foregoing requirements for this Project, and that ESCO agrees to the attachment of a copy of the applicable BOLI publication. (A copy of the then applicable BOLI prevailing wage rates was referenced in the RFP and incorporated into the RFP, together with the BOLI web address where they were available. However, Owner reserves the right to require that the applicable BOLI wage rates current at the time this Design and Construction Contract is executed be attached to, or incorporated into, and apply to this Design and Construction Contract).
- 5.5.17. Pursuant to ORS 279C.825, the PWR fee shall be paid by Owner according to the administrative rules of the Commissioner of BOLI.
- 5.6. Protection of Persons and Property.
 - 5.6.1. ESCO shall be fully responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with the Work.
 - 5.6.2. ESCO shall take reasonable precautions to ensure the safety of and shall provide reasonable protection to prevent damage, injury or loss to: 1) employees of Owner present on the Work site, employees of ESCO, and other persons who may be affected; 2) the Work and materials and equipment to be incorporated therein; and 3) other property at, or adjacent to the Work site.
 - 5.6.3. ESCO shall be liable for damage or loss to property at the site caused by the negligence of ESCO, or anyone directly or indirectly employed by ESCO, or by anyone for whose acts it may be liable, except to the extent that damage or loss is attributable to the acts or omissions of Owner. This subparagraph shall in no way affect the applicability or coverage of the insurance required in Section G of the General Conditions.

- 5.7. Additional Services. All other services requested by Owner and mutually agreed to in writing by Owner and ESCO, including, among others, changes in the Work exceeding that described in Section 5 of this Design and Construction Contract, shall constitute additional services and shall be paid by Owner as provided in the written agreement applicable thereto.

6. RELATIONSHIP BETWEEN AND ROLES OF THE PARTIES

- 6.1. Owner Responsibilities.
- 6.1.1. Owner shall designate a representative authorized to act on Owner's behalf with respect to the Project. Owner or such authorized representative shall examine documents submitted by ESCO and shall promptly render decisions pertain thereto to avoid delay in the orderly progress of the Work. Owner shall render approval of formal submittals on the Schedule of Performance within ten (10) calendar days after receipt of submittals from ESCO.
- 6.1.2. If Owner observes or otherwise becomes aware of a fault or defect in the Work or nonconformity with the design documents or Construction Documents, Owner shall give prompt written notice thereof to ESCO.
- 6.1.3. Owner shall furnish required information and services and shall promptly render decisions pertaining thereto to avoid delay in the orderly progress of the design and construction.
- 6.1.4. No approval or acceptance of Construction Documents or changes herein given by or on behalf of Owner shall establish any warranty or representation on the part of Owner that such Construction Documents or changes are technically sound, complete or correct.
- 6.1.5. Owner shall communicate with the design professionals only through ESCO's Representative except in matters of public safety.
- 6.2. Independent Contractor. ESCO is an independent contractor and not an officer, employee, or agent of Owner as those terms are used in ORS 30.265.
- 6.3. ESCO's Key Personnel. ESCO's project staff shall consist of the following personnel. ESCO's personnel identified herein shall be considered unique, key personnel, and shall not be replaced during the Project without the written permission of Owner, which shall not be unreasonably withheld.
- 6.3.1. **Ron Haxton** shall be ESCO's Principal-in-Charge.
- 6.3.2. **Todd Gadawski** shall be the EPM and shall participate in all meetings throughout the Project term.
- 6.3.3. The design professional identified in Section 4.5 of Division 1 of the Contract, namely **Jianpeng Yang**, shall be ESCO's design professional that shall provide all design services or design services oversight provided for in this Design and Construction Contract.
- 6.3.4. **Todd Gadawski** shall be ESCO's on-site job superintendent for the Construction Work throughout the Project.
- 6.4. Design Builder's Consultants/Subcontractors. ESCO shall be assisted by the consultants and/ or subcontractors set forth in Exhibit 5A hereto. The Parties acknowledge and agree that the consultants have been reviewed and approved by Owner, prior to the execution of this Design and Construction Contract.
- 6.5. Replacement of ESCO's Project Team. If ESCO intends to substitute key personnel, consultants, or subcontractors, a request must be given to Owner at least 10 days prior to the intended time of substitution. When Owner has approved replacements, ESCO shall provide a transition period of at least 10 working days during which the original and replacement personnel shall be working on the

Project concurrently, if feasible. Once a replacement for any key personnel, consultants or sub-contractors is authorized, further replacement shall not occur without the written permission of Owner.

7. PAYMENT OF COMPENSATION

Owner shall make payments to ESCO for those portions of the Contract Price (as defined in Section 9 herein) pertaining to the Construction Work in the manner set forth at Section E "Payments" of the General Conditions. Owner shall compensate ESCO for design, engineering and all other contracted Work pursuant to the terms of Section 9 herein.

8. TERMINATION

8.1. Parties' Right to Terminate by Mutual Agreement. This Design and Construction Contract may be terminated by written agreement of the Parties.

8.2. Owner's Right to Terminate for Convenience. Owner may, in its sole discretion, terminate this Design and Construction Contract by written notice to ESCO specifying the date of termination. If Owner, during Phase II terminates this Design and Construction Contract for convenience by providing 15 days advance written notice thereof to ESCO, Owner shall pay to ESCO that sum equal to the percentage of the Work that is completed and accepted by Owner.

8.3. Owner's Right to Terminate for Cause. Owner may terminate this Design and Construction Contract, in whole or in part, immediately upon notice to ESCO, or such later date as Owner may establish in such notice, upon the occurrence of any of the following events:

8.3.1. Owner fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for ESCO's services;

8.3.2. Federal, state or local laws, regulations or guidelines are modified or interpreted in such a way that either the services under this Contract are prohibited or Owner is prohibited from paying for such services from the planned funding source;

8.3.3. ESCO no longer holds a license or certificate that is required to perform the services;

8.3.4. ESCO commits any material breach or default of any covenant, warranty, obligation or agreement under this Design and Construction Contract, fails to perform the work under this Design and Construction Contract within the time specified herein or any extension thereof, or so fails to perform as to endanger ESCO's performance under this Design and Construction Contract in accordance with its terms, and such breach, default or failure is not cured within 10 calendar days after delivery of Owner's notice, or such longer period of cure as Owner may specify in such notice.

8.4. Cessation of Work. Upon receiving a notice of termination, and except as otherwise directed in writing by Owner, ESCO shall immediately cease all activities related to this Design and Construction Contract.

8.5. ESCO's Right to Terminate for Cause.

8.5.1. ESCO may terminate this Design and Construction Contract if Owner fails to pay ESCO pursuant to the terms of this Design and Construction Contract, provided that Owner does not cure its failure to make payment to ESCO within 15 calendar days after receiving written notice from ESCO of such failure to make payment.

8.5.2. ESCO may terminate this Design and Construction Contract, for reasons other than non-payment, if Owner commits any other material breach or default of this Contract, and fails

to cure such breach or default within 30 calendar days after delivery of ESCO's notice, or such longer period as ESCO may specify in such notice.

9. CONTRACT PRICE

The "Contract Price" is the maximum, not-to-exceed, total amount payable under this Design and Construction Contract unless it is increased or decreased by the price of approved change orders, is \$911,997, as established by ESCO as part of the Project Development Plan. The execution of this Design and Construction Contract signifies the acceptance of the Contract Price by Owner. The Contract Price is composed of the following component parts:

9.1. Guaranteed Maximum Price For Construction Work. ESCO agrees that the portion of the Contract Price attributable to the Construction Work shall not exceed \$911,997, that amount having been proposed by ESCO as part of the Project Development Plan. The Guaranteed Maximum Price for Construction Work is composed of the following parts and/or includes the following parts:

9.1.1. Cost of the Work. The Guaranteed Maximum Price For Construction Work includes the Cost of the Work, more particularly described in Section 11 herein. The Cost of Work is \$595,949.

9.1.2. Bonding. The Guaranteed Maximum Price For Construction Work includes Bonding in the amount of \$11,919.

9.1.3. Not to Exceed Contingency. The Guaranteed Maximum Price For Construction Work includes a contingency amount of \$29,797 which is available for ESCO's exclusive use for costs that are incurred in performing the Construction Work that are not included in a specific line item of the Cost of the Work, or the basis for a Change Order under the Contract Documents (the "Contingency"). By way of example, and not as a limitation, such costs include trade buy-out differentials, overtime, unforeseen conditions, acceleration, costs in correcting damaged Work that are not covered by insurance, or Subcontractor defaults. The Contingency is not available to Owner for any reason, including changes in scope or any other item, which would enable ESCO to increase the GMP under the Contract Documents. ESCO shall provide Owner with notice of all anticipated charges against the Contingency; Owner will notify ESCO, within ten (10) days of Owner's receipt of ESCO's notice of anticipated charges against the Contingency, of any objection of Owner to any ESCO-proposed charges against the Contingency.

9.1.4. GMP Savings. In the event that the actual and final Cost of the Work plus the Contingency is less than the GMP as amended, the difference shall accrue to Owner.

9.1.5. Tariffs. Ameresco is not responsible for additional costs related to the impact of tariffs that are levied after the date of execution of this Agreement. If a tariff is established that impacts the cost of equipment purchased, Ameresco may request a change order to recover the additional cost of the tariff.

9.1.6. RESERVED

9.2. Design Services Fee. This fee shall be a firm fixed price of \$59,595 (\$59,595 for Mechanical, Water and General, and \$0 for Lighting) to provide those services defined in Sections 5.3 and 5.4 of this Design and Construction Contract. A portion of this amount is payable with each application for payment during the design phase, as a percentage of the completed design services.

9.3. Systems Start-up and Commissioning Fee shall be a firm fixed price of \$11,919, to provide those services as agreed upon by ESCO and Owner, based on the Proposal presented by ESCO in the Project

Development Plan. A portion of this amount is payable with each application for payment, as a percentage of the completed systems start-up and commissioning services/work.

- 9.4. Training of Owner's Operations & Maintenance Personnel Fee. This fee shall be a firm fixed price of \$2,980 to provide those services as agreed upon by ESCO and Owner, based on the proposal presented by ESCO in the Project Development Plan. A portion of this amount is payable with each application for payment, as a percentage of the completed training services/work.
- 9.5. Measurement and Verification ("M & V") Services Fee. This fee shall be \$3,013, to be paid upon completion and delivery of the M & V annual report. The annual report shall be based on the prior 12 months beginning with the M & V Commencement Date (as defined in Exhibit 6A). The annual report is due within 60 days after the end of each M&V period. The M & V services shall run parallel with the energy savings guarantee contract provisions (the "Savings Contract") (See Section 9.6 below) and shall terminate when the Savings Contract terminates. Should the M & V services be terminated by Owner, the Savings Contract shall also be terminated.
- 9.6. Energy Savings Guarantee Contract Fee. This fee shall be \$0, to be paid upon completion and delivery of the M & V annual report. The Savings Contract terms and provisions shall be as provided in Exhibit 6A (which is attached hereto and incorporated by this reference). Notwithstanding any term or provision to the contrary in Exhibit 6A, any of the referenced Schedules, or this Design and Construction Contract, the terms of this Section 9.6 shall be controlling for the Savings Contract and ESCO and Owner hereby specifically agree that: (1) The Savings Term (or Energy Savings Term) shall be One (1) Year, beginning on the Notice of Commencement of Energy Savings, defined as the date contracting Agency issues its Notice of Commencement of Energy Savings. (2) Exhibit 6A may contain provisions regarding potential changes to increase savings. Notwithstanding any such provisions to the contrary, any such changes must be made during the eighteen (18) months immediately following the Notice of Commencement of Energy Savings, may be made only with the consent of Owner, and shall be made at sole expense of ESCO unless agreed otherwise in Owner's sole discretion.
 - 9.6.1. If at the end of each twelve (12) month period the guaranteed savings have not been achieved, ESCO shall pay to Owner the difference between the actual amount saved and the guaranteed amount, upon receipt of Owner's written request for payment. Owner also has the option of withholding payments otherwise due ESCO (if any) in the amount of the difference between the actual amount saved and the guaranteed amount.
 - 9.6.2. The Savings Contract term shall commence on the date ESCO issues its Notice of Commencement of Energy Savings for Phase II and shall be one (1) year, unless extended for additional consecutive years up to the project financing term or sooner terminated by Owner before that time. The Owner may terminate the Savings Contract at any time. If cancellation occurs, Owner is responsible for payment to ESCO for the work completed.
- 9.7. ESCO's Overhead and Profit. ESCO's fee shall be included as a firm fixed fee of \$107,271, which is **18%** of the Cost of the Work (as that term is defined in Section 11 herein).
- 9.8. Construction Management. Project Management, Construction Management, and Construction Administration Services shall be a firm fixed fee of \$59,595, which is **10%** of the Cost of Work.
- 9.9. Audit and Development Fee. The Contract Price includes the Audit and Development Fee, which is \$29,960 (Amount contracted in Phase I applied to Phase II at Customer's request).

10. CHANGES IN THE WORK. Adjustments to the GMP required by changes in the Work beyond the stated scope may be determined by any of the methods listed in Section D of the General Conditions, except that the overhead and profit markup for ESCO shall be limited to the Overhead and Profit percentage as noted in Section 9.7 of this Design and Construction Contract and the other firm fixed fees at the same percentage of the Cost of Work as the original scope.

11. COST OF THE WORK. (Covered in the GMP, to be reimbursed) The term "Cost of the Work" shall mean costs necessarily incurred by ESCO in the proper performance of the Construction Work; provided, however, the Cost of the Work shall include only the items specifically identified in this Section 11 and must be directly related to the construction of the Project.

11.1. Labor Costs.

11.1.1. Wages of construction workers directly employed by ESCO to perform the Construction Work at the site.

11.1.2. Wages and salaries of ESCO's supervisory and administrative personnel stationed at the site, and for such personnel off the site when specifically related to the Project and with Owner's agreement after review of any information and Documents required by Owner.

11.1.3. Wages and salaries of ESCO's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time directly required for the Construction Work.

11.1.4. Fringe benefit costs paid or incurred by ESCO for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 11.1 through 11.3 of this Design and Construction Contract.

11.2. Subcontract Costs.

11.2.1. Payments made by ESCO to Subcontractors in accordance with the requirements of the subcontracts toward completion of the Construction Work.

11.2.2. Costs, including transportation, of materials and equipment incorporated or to be incorporated into the completed Construction Work.

11.2.3. Costs of materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be delivered to Owner at the completion of the Work or, at Owner's option, shall be sold by ESCO. Any sale shall be commercially reasonable and ESCO shall provide an accounting for such a sale within 15 days of the transaction. Net amounts realized if any, from such sales shall be credited to Owner as a deduction from the Cost of the Work

11.3. Costs of Other Materials and Equipment, and Related Items.

11.3.1. Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by ESCO at the site and fully consumed in the performance of the Construction Work; and cost less salvage value on such items if not fully consumed, whether sold to others or retained by ESCO. Cost for items previously used by ESCO shall mean fair market value.

11.3.2. Rental charges for temporary facilities, machinery, and equipment and hand tools not customarily owned by the construction workers, which are provided by ESCO at the site,

whether rented from ESCO or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be according to industry standards, shall not exceed acquisition costs, and for individual items exceeding \$10,000, shall be subject to Owner's prior approval.

11.3.3. Costs of removal of debris from the site.

11.3.4. Cost of telegrams and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office, which are solely for the benefit of the Construction Work.

11.3.5. That portion of the reasonable travel and subsistence expenses of ESCO's personnel, at Owner approved rates, but not in excess of the rates allowed State Employees, incurred while traveling in discharge of duties connected with the Construction Work. Main office staff travel shall not be reimbursed unless approved in advance by Owner.

11.4. Miscellaneous Costs.

11.4.1. That portion of premiums for insurance directly attributable to this Design and Construction Contract, including deductible for builders all/risk insurance (but excluding premiums for comprehensive/commercial general liability, automobile liability, professional liability/errors & omissions, and worker's compensation coverage), and payment and performance bonds as required by Section G of the General Conditions (but excluding premiums for Subcontractor bonds unless authorized by Owner), Section 9.3 of Division 1 of the Contract, and Section 9.1.5 this Design and Construction Contract.

11.4.2. Sales, use or similar excise taxes imposed by a governmental authority which are directly related to the Construction Work and for which ESCO is liable.

11.4.3. Fees and assessments for the building permit and for other permits, licenses and inspections for which ESCO is required by the Contract Documents to pay.

11.4.4. Direct costs associated with ESCO's job site safety program.

11.4.5. ESCO deposits lost for causes other than ESCO's fault or negligence.

11.5. Other Costs.

11.5.1. Costs of drawings, Plans, Specifications and other Documents required to complete the Construction Work, except as provided by Owner.

11.5.2. Other costs incurred in the performance of the Construction Work if and to the extent approved in advance in writing by Owner.

11.6. Repairs to Damaged, Defective or Nonconforming Construction Work. The Cost of the Work shall also include costs, which are incurred by ESCO in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

12. COSTS INCLUDED IN OVERHEAD AND PROFIT (Not to be reimbursed). The Overhead and Profit shall include all costs that are not directly attributable to the Construction Work as defined in Section 11 of this Design and Construction Contract. Generally, the Overhead and Profit shall include the following:

12.1. Salaries and other compensation of ESCO's personnel stationed at ESCO's principal office or offices other than the site office except as otherwise allowed under the Contract.

12.2. Expenses of ESCO's principal office and offices other than the site office.

12.3. Any overhead and general expenses, except as may be expressly included in Section 11 of this Design and Construction Contract.

- 12.4. ESCO's capital expenses, including interest on ESCO's capital employed for the Construction Work.
- 12.5. Any cost associated with the Project not specifically and expressly described in Section 11 of this Design and Construction Contract.
- 12.6. Costs due to the fault or negligence of ESCO, subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming Construction Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Construction Work.
- 12.7. Any costs which would exceed the GMP.

13. DISCOUNTS, REBATES AND REFUNDS

- 13.1. Discounts, Rebates and Refunds. Cash discounts obtained on payments made by ESCO shall accrue to Owner. Trade discounts, rebates, refunds and net amounts received from sales of surplus materials and equipment shall accrue to Owner, and ESCO shall use its best efforts to obtain such discounts, refunds and net amounts.
- 13.2. Amounts Credited to Owner. Amounts, which accrue to Owner in accordance with the provisions of Section 13.1 of this Design and Construction Contract, shall be credited to Owner as a deduction from the Cost of the Work.

14. ESCO'S OBLIGATIONS UNDER SUBCONTRACTS.

- 14.1. No use of a subcontractor shall relieve ESCO of any of its obligations or liabilities under this Design and Construction Contract. ESCO shall be fully responsible and liable for the acts or omissions of all subcontractors and suppliers including persons directly or indirectly employed by them. ESCO shall have sole responsibility for managing and coordinating the operations of its subcontractors and suppliers, including the settlement of disputes with or between ESCO and any such subcontractor.
- 14.2. ESCO shall include in each subcontract and require each subcontractor to include in any lower tier subcontract, any provisions necessary to make all of the provisions of the General Conditions fully effective as applied to subcontractors. The ESCO shall provide all necessary Plans, Specifications, and instructions to its suppliers and subcontractors to enable them to properly perform their work.

15. SUBCONTRACTOR SELECTION.

- 15.1. The selection of all subcontractors shall be the sole responsibility of ESCO.
- 15.2. RESERVED

16. MISCELLANEOUS LABOR.

- 16.1. ESCO may provide normal layout, clean up, and other "pick-up" work required to complete the Project with its own forces, without the necessity of subcontracting.
- 16.2. If ESCO desires to perform any other Construction Work through third-party subcontractors or other entities, that Construction Work shall be bid according to the provisions of Section 16 of this Design and Construction Contract.

17. **ACCOUNTING; AUDIT ACCESS.** ESCO shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Design and Construction Contract; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's representatives, including the Oregon Secretary of State accountants and auditors, shall be afforded reasonable and regular access to ESCO's records, books, correspondence, instructions, drawings, Plans, Specifications, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and ESCO shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. Owner may, at its discretion, perform periodic audits of the Cost of the Work and any other reimbursable costs associated with the Project. Owner intends to conduct a final audit of reimbursable costs prior to the Agreement closeout. The ESCO shall cooperate fully with Owner in the performance of such audits.
18. **CONTRACT TIME**
- 18.1. **Commencement of Work.** The Work shall commence on the date ESCO receives Owner's Notice to Proceed, unless the parties mutually agree otherwise in writing. Owner's Notice to Proceed shall be issued on or after the effective date of this Design and Construction Contract.
- 18.2. **Substantial Completion.** Substantial Completion for the entire Construction Work shall be achieved no later than **12/31/2025** ("Scheduled Substantial Completion Date"), subject to adjustment as set forth in the Contract Documents.
- 18.3. **Acceptance of Work.** A prerequisite to Owner's acceptance is that ESCO must first warrant, by written notice to Owner's authorized representative, that ESCO has substantially completed the Statement of Work as follows: Phase II, The Energy Related and Non-Energy related items are substantially complete, commissioning has been performed, and the EEMs are producing savings equal to or greater than the Guaranteed Savings.
- 18.4. **Final Completion of the Construction Work.** Final Completion of the Construction Work, or identified portions of the Construction Work, shall be achieved as expeditiously as practicable. All of the dates set forth in this Section 18 shall be subject to adjustment in accordance with the General Conditions.
- 18.5. **Project Schedule and Work Time Limitations.** ESCO shall comply with the "Project Schedule" and "Work Time Limitations" for the Project negotiated by Owner and ESCO as provided in Sections 3.4 and 3.5 of Division 1 of the Contract. Changes, if any, to the Project Schedule and Work Time Limitations, including changes for the Work under this Design and Construction Contract, must be agreed to in writing by Owner and ESCO.
19. **LIQUIDATED DAMAGES FOR DELAY.** ESCO understands that if it does not attain Substantial Completion by the Scheduled Substantial Completion Date, Owner will suffer damages, which are difficult to determine and accurately specify. ESCO agrees that if it does not attain Substantial Completion by the Scheduled Substantial Completion Date, ESCO shall pay to Owner **\$100 PER DAY** as liquidated damages for each subsequent day until ESCO attains Substantial Completion. The liquidated damages provided herein shall be in lieu of a claim for consequential damages incurred by Owner as a result of delay in achieving Substantial Completion.
20. **STANDARD OF CARE; DRAWINGS, PLANS & SPECIFICATIONS.** ESCO hereby represents and warrants that all drawings, Plans, Specifications, and other Documents prepared pursuant to this Design and Construction Contract shall be completed in a manner consistent with the highest professional standard of care, and shall

function for the purposes intended, and that the Project, if constructed in accordance with such drawings, Plans, Specifications, and other Documents, shall be structurally sound and a complete and properly functioning and suitable for the purposes for which it is intended.

21. CORRECTION OF DRAWINGS, PLANS & SPECIFICATIONS. ESCO shall be responsible for correcting any inconsistencies, errors or omissions in the drawings, Plans, Specifications, and other documents. ESCO shall correct, at no additional cost to Owner, any and all inconsistencies, errors and omissions in the drawings, Plans and Specifications.
22. FUNDS AVAILABLE AND AUTHORIZED; PAYMENTS. Owner reasonably believes that sufficient funds are anticipated to pay all amounts due hereunder and hereby covenants and agrees that it will use its best efforts to obtain and properly request and pursue funds from which payments hereunder may be made, including making provisions for such payments to the extent necessary in the budget submitted for the purpose of obtaining funds and using its best efforts to have such budget approved. It is Owner's intention to make all payments due hereunder if funds are legally available for this Project and in that regard Owner represents and warrants to ESCO that this Design and Construction Contract is important to Owner's efficient and economic operation. If, despite the above, Owner is not allotted sufficient funds for the next succeeding fiscal period by appropriation, appropriation limitation, grant, or other funds source lawfully available to it for such purposes to continue the Project and make payments hereunder, Owner may terminate this Agreement, by notice to ESCO, without penalty, effective at the end of the current fiscal period for which funds have been allocated and if not so terminated Owner will remain fully obligated for all amounts owing hereunder. Such termination shall not constitute an event of default under any other provision of the Design and Construction Contract, but Owner shall be obligated to pay all charges incurred through the end of such fiscal period. Owner shall give ESCO notice of such non-availability of funds within thirty (30) days after it received notice of such non-availability.
23. MISCELLANEOUS.
 - 23.1. Governing Law; Jurisdiction; Venue. This Design and Construction Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively "Claim") between Owner and ESCO that arises from or relates to this Design and Construction Contract shall be brought and conducted solely and exclusively within the Circuit Court of Douglas County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, the it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon located in Douglas County. In no event shall this Subsection be construed as a waiver by the State of Oregon of any form of defense or immunity, whether based on sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the United States Constitution or otherwise. ESCO, BY EXECUTION OF THIS DESIGN AND CONSTRUCTION CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.
 - 23.2. Foreign Contractor. If ESCO is not domiciled in or registered to do business in the State of Oregon, ESCO shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Design and Construction Contract. ESCO shall demonstrate its legal capacity to perform the work under this Design and Construction Contract in the State of Oregon prior to entering into this Design and Construction Contract.

- 23.3. Notices. Except as otherwise expressly provided in this Design and Construction Contract, any notices to be given hereunder shall be given in writing by personal delivery, facsimile, or mailing the same, postage prepaid, to ESCO or Owner at the addresses or numbers as either party may hereafter indicate pursuant to this Section. Any notice so addressed and mailed shall be deemed to be given five (5) calendar days after the date of mailing. Any notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against Owner, such facsimile transmission must be confirmed by telephone notice to Owner's Representative for the Project. Any notice by personal delivery shall be deemed to be given when actually delivered.
- 23.4. Disclosure of Tax Identification Number. ESCO must provide its federal tax ID number to Owner. This number is required pursuant to ORS 305.385. The Tax Identification Number provided pursuant to this authority will be used for the administration of state, federal and local tax laws.
- 23.5. Compliance with Applicable Law. ESCO agrees to comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Services to be provided under this Design and Construction Contract. ESCO specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. ESCO also shall comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Failure or neglect on the part of ESCO to comply with any or all such laws, ordinances, rules, and regulations shall not relieve ESCO of these obligations nor of the requirements of this Design and Construction Contract. ESCO further agrees to make payments promptly when due, to all persons supplying to such ESCO labor or materials for the performance of the Services to be provided under this Design and Construction Contract; pay all contributions or amounts due the Industrial Accident Fund from such ESCO incurred in the performance of this Design and Construction Contract; not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If ESCO fails or refuses to make any such payments required herein, the appropriate Institution official may pay such claim. Any payment of a claim in the manner authorized in this Section shall not relieve ESCO from obligation with respect to any unpaid claims.

Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and the Oregon Building Codes require all new construction to be totally accessible to people with physical limitations. Owner expects that all spaces in designs for new facilities and in remodel projects shall be accessible to people with physical limitations.

- 23.6. Tax Compliance Certification. By signature on this Design and Construction Contract, the undersigned hereby swears or affirms under penalty of perjury that the undersigned is authorized to act on behalf of ESCO and has authority and knowledge regarding the payment of taxes, and that ESCO is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means those programs listed in ORS 305.380(4), namely any state tax imposed by ORS chapters 118, 314, 316, 317, 318, 321 and 323 and sections 10 to 20, chapter 533, Oregon Laws 1981, as amended by chapter 16, Oregon Laws 1982 (first special session); the elderly rental assistance program under ORS 310.630 to 310.706; and local taxes administered by the Department of Revenue under ORS 305.620.

- 23.7. Severability. If any term or provision of this Design and Construction Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Design and Construction Contract did not contain the particular term or provision held to be invalid.
- 23.8. Waiver. The failure of Owner to enforce any provision of this Design and Construction Contract shall not constitute a waiver by Owner of that provision or any other provision.
- 23.9. Media Contacts; Confidentiality. ESCO shall provide no news release, press release, or any other statement to a member of the news media regarding this Project, without Owner's prior written authorization. Furthermore, except in the case where Owner specifically authorizes disclosure of Owner's confidential information in writing, ESCO shall maintain the confidentiality of Owner's information pertaining to the Project, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent ESCO from establishing a claim or defense in an adjudicatory proceeding. ESCO shall require of its subcontractors similar agreements to maintain the confidentiality of Owner's information.
- 23.10. Conflict of Interest. Except with Owner's prior written consent, ESCO shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise ESCO's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

THIS DESIGN AND CONSTRUCTION CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER ADDRESSED HEREIN. THE TERMS OF THIS DESIGN AND CONSTRUCTION CONTRACT CAN NOT BE WAIVED, ALTERED, MODIFIED, SUPPLEMENTED, OR AMENDED, IN ANY MANNER WHATSOEVER, EXCEPT BY WRITTEN INSTRUMENT SIGNED BY THE PARTIES AND CONTAINING ALL REQUIRED OWNER APPROVALS. ANY SUCH WAIVER, ALTERATION, MODIFICATION, SUPPLEMENTATION, OR AMENDMENT, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, REGARDING THIS DESIGN AND CONSTRUCTION CONTRACT EXCEPT AS CONTAINED, INCORPORATED OR REFERENCED HEREIN. ESCO, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT HAS READ THIS DESIGN AND CONSTRUCTION CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS. THIS DESIGN AND CONSTRUCTION CONTRACT MAY BE EXECUTED IN SEVERAL COUNTERPARTS, EACH OF WHICH SHALL BE AN ORIGINAL, AND ALL OF WHICH SHALL CONSTITUTE THE SAME INSTRUMENT.

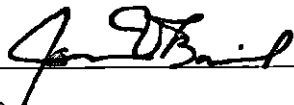
IN WITNESS WHEREOF, and intending to be legally bound, the authorized representatives of the parties hereto subscribe their names.

ESCO:


Signature

Digitally signed by Ron Haxton
DN: C=US, E=rhaxton@ameresco.com,
O=West Region, OU=Ameresco, CN=Ron
Haxton
Date: 2025.02.13 12:10:24-08'00'

OWNER:


Signature

By

Ron Haxton

By

James V. Baird

Title

Vice President, Northwest Region

Title

General Manager

Date

2/13/25

Date

2/12/2025

Federal I.D. #:

04-3512838

TABLE OF EXHIBITS TO THE DESIGN AND CONSTRUCTION CONTRACT

Exhibit 1A	<u>State of Oregon Standard General Conditions (January 1, 2012)</u>
Exhibit 2A	<u>Phase II, Supplemental General Conditions</u>
Exhibit 3A	<u>Performance and Payment Bond(s)</u>
Exhibit 4A	<u>Prevailing Wage Rate Schedules</u>
Exhibit 5A	<u>Consultants/Sub-contractors List</u>
Exhibit 6A	<u>Savings Contract Provisions</u>

**ENERGY SAVINGS PERFORMANCE CONTRACT
EXHIBIT 1A
STATE OF OREGON GENERAL CONDITIONS**

<https://www.oregon.gov/das/Procurement/Guiddoc/GenCon4Pl.pdf>

January 1, 2012 Edition

**ENERGY SAVINGS PERFORMANCE CONTRACT
EXHIBIT 2A
SUPPLEMENTAL GENERAL CONDITIONS**

None

ENERGY SAVINGS PERFORMANCE CONTRACT
EXHIBIT 3A
PERFORMANCE AND PAYMENT BONDS

To be provided upon contract execution.

**ENERGY SAVINGS PERFORMANCE CONTRACT
EXHIBIT 4A
PREVAILING WAGE RATE SCHEDULES**

<https://www.oregon.gov/boli/employers/pages/prevailing-wage-rates.aspx>

**ENERGY SAVINGS PERFORMANCE CONTRACT
EXHIBIT 5A
SUBCONTRACTOR/ SUB-CONSULTANT LIST**

Welburn Electric, Inc.

**ENERGY SAVINGS PERFORMANCE CONTRACT
EXHIBIT 6A
SAVINGS CONTRACT PROVISIONS**