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August 20, 2025

Dr. Marianne Cartisano  
Assistant Superintendent for Business  
Riverhead Central School District  
814 Harrison Avenue  
Riverhead, NY 11901

Re: Riverhead Central School District  
Energy Performance Contract

Dear Dr. Cartisano:

On April 9, 2025 the Riverhead Board of Education approved that Renu Energy Solutions conduct a Comprehensive Energy Audit associated with the public request for proposals.

Renu Energy Solutions presented the Comprehensive Energy Audit dated June 16, 2025 (Rev 3) including benefits and costs. H2M reviewed this Audit and found the work to include items that would benefit the District infrastructure while installing more energy efficient equipment.

Renu Energy Solutions further prepared an agreement and cost for the scope of work to be included, as per the Comprehensive Energy Audit. H2M reviewed the agreement and found the cost for the work to be fair and reasonable for the associated scope.

We are recommending that the Riverhead Central School District move forward with RENU Energy Solutions (RENU) for the district's Energy Performance Contract construction work.

In conclusion, based upon the team's analysis and review of the Contractor's qualifications and the Comprehensive Energy Audit, we feel RENU Energy Solutions (RENU) has met all the requirements and is therefore qualified to perform the work and we offer the following recommendation:

*Award the Energy Performance Contract (EPC) to RENU Energy Solutions in the amount of \$26,071,139.00.*

If you have any questions, please feel free to contact me at (631) 756-8000 ext. 1507.

Very truly yours,

*[Signature]*

Michael Lantier, P.E., LEED AP  
Vice President | Deputy Market Director, Education

cc: RHSD\_Mr. J. Fleming, Interim Director of Facilities

X:\RHSD (Riverhead Central School District)\RHSD2301\_Energy Performace Contract\03-Bid\Recommendation\letter of rec to approve Renu Contract for EPC.docx

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**ENERGY SERVICES AGREEMENT**

**BY AND BETWEEN**

**RIVERHEAD CENTRAL SCHOOL DISTRICT**

**AND**

**RENU CONTRACTING & RESTORATION, INC. D/B/A RENU ENERGY SOLUTIONS**

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**ENERGY SERVICES AGREEMENT**

**BY AND BETWEEN**

**RIVERHEAD CENTRAL SCHOOL DISTRICT**

**AND**

**RENU CONTRACTING & RESTORATION, INC. D/B/A RENU ENERGY SOLUTIONS**

**THIS ENERGY SERVICES AGREEMENT** ("Agreement") is entered into this 20<sup>th</sup> day of August, 2025 ("Effective Date"), by and between Riverhead Central School District, having its principal place of business located at 814 Harrison Avenue, Riverhead, NY 11901 ("Client") and RENU Contracting & Restoration, Inc. d/b/a RENU Energy Solutions, having its principal place of business at 20 35<sup>th</sup> Street, Copiague, NY 11726 ("ESCO"). The parties to this Agreement will be collectively referred to as the "Parties" and individually as a "Party."

**WHEREAS**, Client issued a Request for Proposals labeled RFP2025-186 and ESCO submitted a proposal in response, which was accepted by Client; and

**WHEREAS**, Client wishes ESCO to perform a project ("Project") consisting of certain energy conservation services and installations (the "Scope of Services") at the Client Properties described in Attachment A (the "Property"), and ESCO wishes to perform such services; and

**WHEREAS**, Client owns the Property; and

**WHEREAS**, State of New York legislation provides the authority for public school districts such as Client to contract for energy services under such terms as described in State or local regulations.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, representations, warranties, and agreements contained herein, and for other good valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**SECTION 1 SCOPE OF SERVICES**

(a) Construction Work: The Parties' obligations hereunder are contingent upon written approval of the New York State Education Department ("NYSED") and the Client securing financing and State aid as set forth in Section 37 of this Agreement. In the event any changes in this Agreement are required in order to achieve NYSED approval of the project, the Parties agree to negotiate in good faith to modify the Agreement to address the required changes. After NYSED approval has been issued for this Project and after Client has secured financing and State aid in accordance with Section 37 of this Agreement, the Client will deliver to ESCO a Notice To Proceed, substantially in the form attached to this Agreement as Attachment D. ESCO shall furnish all labor, materials and equipment and perform all work required for the completion of the Scope of Services set forth in Attachment B, including the installation of the energy conservation measures listed therein ("ECMs"), as such Scope of Services and such Attachments may be modified in accordance with this Agreement. Within ten (10) business days of ESCO's receipt of Client's Notice to Proceed, ESCO will work with Client to establish a plan to schedule the construction work (hereinafter referred to as the "Work"). The Work will be planned to minimize the interruption of the daily routine of Client's staff and building occupants except as permitted in writing by Client. ESCO will list installed ECMs on Attachment J attached hereto and made a part hereof at the time that construction is complete. Attachment J may be modified as provided for herein.

(b) Disposal: ESCO, at its cost, shall be responsible for disposal of all non-hazardous equipment and materials which are rendered useless and removed as a result of the installation of the ECMs pursuant to this Agreement. In addition, ESCO shall, at its cost, cause all lamps and PCB-contaminated ballasts, if any, which

have been rendered useless and removed as a result of the installations of the ECMs to be transported and disposed of via recycling and incineration, respectively. ESCO will be responsible for removing or disposing of any materials including hazardous materials that it uses in providing Work and for the remediation of any areas directly impacted by the release of ESCO hazardous materials. All other existing PCB-contaminated ballasts, lamps and any other hazardous substances, however, remain the responsibility of Client and ESCO shall assume no liability in connection with their removal, handling, transportation, and/or disposal. In all instances, with the only exception being those hazardous materials that Contractor brings to the site, the Client will be the "Generator" of record and sign any and all disposal documents (i.e., manifests, bills of lading, etc.) in order to document the abatement or removal of any such hazardous materials from the Project Site. Notwithstanding anything contained herein to the contrary, the Parties agree and acknowledge that should ESCO encounter any hazardous substances at the Property, after notice to Client, ESCO shall coordinate with a third-party environmental contractor for the removal of the same, at Client's sole cost and expense.

(c) ESCO shall, as needed: (1) keep the area of the Project Site in which the Work is being performed free at all times from waste materials, packing materials and other rubbish accumulated in connection with the execution of the Work by collecting and depositing said material and rubbish into dumpsters provided at designated locations by ESCO, (2) clean and remove from its own Work and from all contiguous work of others any soiling, staining, mortar, plaster, concrete, or dirt caused by the execution of the Work, (3) upon the completion of the Work in each area, perform such cleaning as may be required to leave the areas "broom clean" and (4) upon the completion of the Work, remove all of its materials and/or equipment.

(d) Asbestos: Unless explicitly and specifically identified in Attachment B, ESCO's Scope of Services is predicated on the viability of this Project without any asbestos abatement being required by ESCO. In the event that: (i) ESCO encounters any friable asbestos which is in the immediate vicinity of ESCO's work, or (ii) ESCO determines that its work will result in the disturbance of asbestos material, or (iii) ESCO determines that the presence of asbestos material will impede ESCO's work, ESCO will notify Client of the same and Client will, at its cost, cause the asbestos to be promptly and properly removed, enclosed, encapsulated or otherwise abated in accordance with applicable laws and regulations, or alternatively, Client, at its cost, may provide written test reports showing that asbestos in that area has been properly removed, enclosed, encapsulated or otherwise abated in accordance with applicable laws. In the event ESCO cannot determine whether any particular material does or does not contain asbestos, Client, upon ESCO's written request, will, at its cost, promptly perform tests or cause tests to be performed in order to determine whether or not such material contains asbestos and/or whether there are unacceptable levels of airborne particulate material containing asbestos or provide such a test report. Under no circumstances, shall ESCO be required to handle asbestos.

(e) Maintenance: To the extent provided for in Attachment I - "Maintenance Services," ESCO will service and maintain the equipment that is specifically identified therein, at a cost to the Client which is provided for in Section 4 and Attachments G, for the Term of this Agreement. Except for ECMs (or other equipment) which are to be maintained by ESCO, Client shall be responsible for servicing and maintaining the ECMs (and such other equipment) at its own cost.

(f) Measurement & Verification: To the extent provided for in Attachment F - "Guarantee of Energy Cost Savings" ESCO will also supply such ongoing Measurement & Verification services to the Client which may be agreed upon between the Parties at an annual fee to be set forth in Section 4 and Attachment G.

(g) Compliance With Law and Safety: This Agreement shall be governed by the law of the State of New York except where the Federal supremacy clause requires otherwise. ESCO shall comply with and obtain, at its expense, all licenses and permits required by Federal, state and local laws in connection with the installation of the ECMs. To the extent that ESCO agrees to perform operations and/or maintenance of specified ECMs or other equipment, it, or its subcontractors shall comply with and obtain, at its expense, all licenses and permits which may be required by Federal, state and local laws in connection with the operation and/or maintenance of such specified ECMs. In the event that ESCO cannot procure any such license or permit, Client will procure the same and ESCO shall reimburse Client for any costs incurred in such procurement within 30 calendar days of Client's written demand therefor, provided that ESCO's inability to procure such license or permit arose from its own act, omission, or negligence, or because the governmental

agency required any such permit or license applications to be submitted directly by the Client.

ESCO will be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and the measurement and verification services.

No drinking of alcoholic beverages, smoking, vaping or use of controlled substances is permitted on or in Client's facilities or properties. ESCO will ensure that none of its subcontractors, employees, representatives, agents, consultants and other individuals performing Work on behalf of ESCO pursuant to this Agreement, perform Work or are present at Client's facilities or properties while impaired by alcohol or any other substances. ESCO bears the responsibility of determining if its subcontractors, employees, representatives, agents and consultants and all other individuals performing Work on behalf of ESCO pursuant to this Agreement are in any way impaired and whether the safety of any person is jeopardized. Each subcontractor must provide drinking water for its own employees, representatives, agents and/or consultants.

ESCO will ensure that its employees, representatives, agents and consultants, and all of the employees, representatives, agents and consultants of ESCO's subcontractors refrain from using indecent language on or in Client's facilities or properties. Client has the right, in its sole discretion, to remove any person impaired by alcohol or any other substance or who used or is using indecent language from its facilities or properties.

Artwork or decoration found on any vehicle belonging to any person or entity performing Work pursuant to this Agreement and parked on or near a Client facility or property which contains indecent language or pictures must be covered or removed from the location. If ESCO fails to have the vehicle covered or removed, the Client may perform this obligation at ESCO's cost and ESCO will pay such cost to Client within 30 calendar days of Client's written demand therefor.

ESCO's employees, representatives, agents, consultants, and the employees, representatives, agents and consultants of ESCO's subcontractors will be required to wear photo identification at all times while on Client's property.

Each and every provision of law required to be inserted in the Agreement is deemed to have been inserted herein. In particular, among other laws, regulations, and ordinances, to the extent applicable to the Work, ESCO must fully comply with:

- (i) Labor Law section 220(2) requiring that no laborer, worker or mechanic in the employ of ESCO, any subcontractor or other person doing or contracting to do all or part of the Work is permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property;
- (ii) Labor Law section 220(3) requiring that the wage rate which can be paid and the supplements which can be provided to each employee of ESCO must be no less than the rates set forth by the Department of Labor. ESCO and its subcontractors must keep original payrolls or transcripts of the original payrolls and submit a transcript of the original payrolls subscribed and sworn to or affirmed as true under the penalties of perjury. The submissions must occur within 30 calendar days of the issuance of the first payroll and every 30 calendar days thereafter. The filing of payrolls by ESCO in a manner consistent with New York Labor Law 220(3-a) is a condition precedent to payment by the Client;
- (iii) Labor Law section 220-e requiring that: (i) in the hiring of employees for the performance of Work, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, will by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the state of New York who is qualified and available to perform the work to which the employment relates; (ii) no contractor, subcontractor, nor any person on his behalf will, in any manner, discriminate against or intimidate any employee hired for the performance of Work on account of race, creed, color, disability, sex or national origin; and (iii) there may be

deducted from the amount payable by the Client to ESCO pursuant to the Agreement a penalty of fifty dollars (\$50.00) for each calendar day during which a person was discriminated against or intimidated in violation of Labor Law § 220-e and the Agreement may be terminated by the Client and all moneys due to ESCO may be forfeited for a second or subsequent violation of the terms or conditions of this Section of the Agreement.

- (iv) Labor Law section 222-a requiring the installation, maintenance, and effective operation of appliances and methods that have been approved by the industrial board of appeals for elimination of harmful dust and stating that if the law is not complied with, this Agreement will be void.

(h) Taxes: Notwithstanding any other provision herein, Client represents that it is a governmental entity and that it will cooperate with ESCO and provide the same with appropriate documentation so that the ESCO may establish that neither it nor any lessor under the Lease shall have to pay taxes, fees and assessments or other charges of any character which may be imposed or incurred by any governmental or public authority as an incident to title to, ownership of, or operation of the ECMs or with respect to the interest component of the Lease payments which would otherwise be levied upon or in respect to said interest component of the ECMs or their operation.

(i) Non-Discrimination: ESCO agrees not to discriminate against any employee, or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex, race, gender, gender identity or expression, disability, color, religion, national origin, Vietnam era military service, ancestry, or any other protected characteristic in accordance with applicable Federal, New York State or local laws.

(j) Specifications: Prior to beginning the Work, ESCO will provide written specification of any ECMs to be installed. Client shall furnish its written approval or disapproval of each such written specification within fifteen (15) business days following its receipt of written notice by ESCO of completion of each such sample installation or the provision of such written specifications to Client. Client's approval of such specifications shall be in substantially the form of Attachment M hereto. If Client disapproves any such ECM, ESCO shall have the right to provide a substitute ECM which conforms to the applicable specifications or is equivalent to any previously approved sample by Client. Upon Client's written approval, ESCO shall revise the Attachments to reflect each substitution, subject to Client's written approval of each revised Attachment. If Client fails to approve or disapprove of any ECM(s) within fifteen (15) business days following ESCO's written notice that the written specifications are ready for inspection, it will be deemed disapproved by Client. If, however, Client still does not approve of any substituted ECMs or specifications, the Parties hereby agree to negotiate in good faith a mutually acceptable solution. Client shall not unreasonably withhold any approval provided for herein.

(k) Duties, Obligations and Responsibilities of ESCO:

(i) All labor furnished under this Agreement shall be competent to perform the Work. All materials and equipment provided shall be new and of suitable quality, and the Work shall reflect the requirements set forth in this Agreement. In the event this Agreement pertains to a public work contract falling under Article 8 of the Labor Law, or a building service contract governed by Article 9 thereof, ESCO and its subcontractors are prohibited from requiring or allowing their employees to work beyond the hours or days specified in said statutes, unless exceptions are permitted under the Labor Law or detailed in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, ESCO and its subcontractors shall remunerate their employees with at least the prevailing wage rate and provide or compensate for prevailing supplements, including premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

(ii) ESCO will keep the premises and the surrounding area free from accumulation of waste materials or rubbish caused by the Work at least daily and, upon completion of the Work, ESCO will remove all remaining waste materials, rubbish, tools, construction equipment, machinery, and surplus materials. If,

after one business day's prior written notice, ESCO fails to keep the premises and the surrounding area free from accumulation of waste materials or rubbish or fails to remove remaining materials, rubbish, tools, construction equipment, or machinery in accordance with this Section, the Client may perform this obligation at ESCO's cost and ESCO will pay such cost to Client within thirty (30) calendar days of Client's demand therefor.

(iii) At all times relevant to this Agreement, ESCO shall permit Client or any of its representatives to enter upon the Project site to review or inspect the construction work without formality or other procedure.

(iv) ESCO will provide equipment manuals and other appropriate information regarding equipment installed hereunder to Client at or about the time of Substantial Completion.

(l) Engineering/Architectural Construction Services:

ESCO shall not perform professional services including engineering or architecture. ESCO having consulted with Client and with Client's authorization, will arrange for the design and engineering services to be performed by H2M Architects + Engineers, P.C. ("Engineer") a qualified professional engineering firm whose services are included in the ECM installation costs to the Client. All costs associated with the Engineer's services in connection with this project will be the responsibility of ESCO. The work performed by the Engineer will include design and engineering services in relation to the required submissions to NYSED in order to obtain approvals. It is understood and agreed that the Engineer shall provide services in connection with the contract pursuant to the requirements set forth in the RFP.

The fees and total compensation for the Engineer will be paid by ESCO to the Engineer in accordance with the terms of the contract between ESCO and Engineer. Payment thereof being the sole responsibility of ESCO. The Engineer must remain free from any financial interest in the agreement which conflicts with the proper completion of its responsibilities pursuant to this Agreement and which conflicts with its responsibilities and duties to the Client.

ESCO will provide a copy of the contract entered into between ESCO and the Engineer to the Client for the Client's written approval ("Engineer Contract") within five (5) business days of its initial execution. The Engineer Contract will, at a minimum, include the terms and conditions set forth in Attachment N to this Agreement and made a part of this Agreement. The Engineer Contract must require that the Engineer owes its professional and contractual duty to the Client. The Engineer Contract will include third party beneficiary language in favor of the Client. The Client's written approval of the Engineer Contract will mean that the Engineer Contract fulfills the requirements of this Section of the Agreement. The Client's obligations pursuant to this Agreement are contingent upon and subject to the Client's written approval of the Engineer Contract. In the event that the Client does not approve the Engineer Contract, each Party agrees to negotiate in good faith to reach agreeable terms and conditions for the Engineer Contract. Should the Parties fail to come to agreement within three (3) calendar months of the Client's receipt of the Engineer Contract, then this Agreement will terminate with no further obligation of Client to ESCO, unless the Parties agree to extend the Agreement in writing.

**SECTION 2**                    **OWNERSHIP OF ECMS**

Ownership of and title to the ECMS to each Delivery and Acceptance Certificate (Attachment E-1) will automatically transfer to the Client upon both: (a) the delivery of each such Delivery and Acceptance Certificate by Client to ESCO, the execution and delivery of which shall not be unreasonably withheld or delayed, and (b) completion of all Client's payment obligations to ESCO, excluding payment obligations related to maintenance or other annual services hereunder. Subject and subordinate to any lessor's rights pursuant to any lease for this project, ESCO under this Agreement shall be entitled to all rights, benefits and remedies afforded a secured party under law with respect to the equipment installed pursuant to this Agreement, including but not limited to those under the Uniform Commercial Code, as adopted in the State of New York or any other applicable state ("Code"). ESCO shall retain such security interest in the ECMS, pursuant to this Agreement, for equipment installed hereunder until Client shall have accepted the same and title has transferred to Client. If requested by ESCO in connection therewith, Client agrees to provide to

ESCO appropriate financing statements and other documents necessary in order for ESCO and/or any bank, lender or financial institution to which ESCO has assigned any interest in this Agreement, to perfect said subordinate security interest in the ECMs.

### **SECTION 3 FINANCIAL SERVICES**

ESCO will provide cash flow statements to Client upon Client's reasonable request. In addition, ESCO shall provide Client with revised cash flow spreadsheets after the following events: (a) upon approval by NYSED of the project submission and any related revisions; (b) upon issuance of the New York State Aid report (SA4 Report) identifying the state aid allocated for the project (if applicable); and (c) upon other agreed upon changes to the Project. Prior to commencement of the Project, in the event the Project does not create positive cash flow, ESCO and Client shall agree on modifications to the Project to enable the Project to create positive cash flow or Client may terminate this Agreement. Upon NYSED approval of the Project, Client shall be responsible to obtain financing for the Project, and to comply with all laws that may be applicable related to performance contracting. In the event project financing is not obtained pursuant to Section 37, Client will not be responsible to pay ESCO a project development fee.

### **SECTION 4 COMPENSATION AND PAYMENT**

(a) The cost of the Project is Twenty-Six Million Seventy-One Thousand One Hundred Thirty-Nine Dollars (\$26,071,139.00). If, at any time after the Effective Date, any costs or expenses anticipated by ESCO in performing its obligations under this Agreement increase as a result of trade tariffs, the elimination or reduction of Federal Tax Incentives, the imposition of a Project Labor Agreement (PLA) or any other collective bargaining agreement, or utility interconnection fees and/or electrical service upgrades that are not usual and customary, ESCO shall not be responsible for such additional costs or expenses that were not reasonably contemplated by the Parties at the time this Agreement was entered. In such event, the Parties shall engage in good faith negotiations to amend the Project Cost and/or other terms and conditions of this Agreement to ensure that ESCO is reimbursed for such additional costs and expenses. If the Parties are unable to reach an agreement within thirty (30) days following ESCO's written proposal to amend the Agreement, either Party shall have the right to terminate this Agreement upon thirty (30) days' prior written notice; provided, however, that as a condition to such termination, Client shall have paid ESCO all amounts then due and payable pursuant to Section 4 and Attachment G, as of the termination date.

(b) A Schedule of Values is attached hereto as Attachment O and made a part of this Agreement. This Schedule of Values will: (i) allocate the Project Cost to the various portions of the Work, and (ii) be prepared in such form and supported by such data to substantiate its accuracy as the Engineer and Client may reasonably require. During the period beginning on the date of delivery of the Notice to Proceed and continuing through the Date of Substantial Completion with respect to each Phase, Client will make monthly progress payments to ESCO based upon the portion of the Project completed at the end of each month, as respectively provided for in Attachment G for which payment is being made. Client shall (within thirty (30) calendar days of receipt) execute and deliver to ESCO completed forms E-1 (Attachment E-1) upon completion by ESCO of each ECM. A Final Delivery and Acceptance Certificate (Attachment E-2) shall be executed by Client upon final completion of the ECMs. Client shall not unreasonably withhold or delay the execution of any Delivery and Acceptance Certificate. For the purposes of this Agreement, the term "Substantial Completion" shall mean that ESCO has provided sufficient materials and services to permit Client to operate the subject ECM and utilize the Work to obtain savings as set forth in this Agreement and that ESCO has demonstrated that the ECM is operating in a manner consistent with its manufacturer's intended use. After an on-site inspection of the Work, the Engineer will certify the date that the Work has been substantially completed by ESCO, if that is the case. The Engineer must also provide Client and ESCO, in writing, a description of all items that remain to be completed. Substantial completion is achieved when the Work required under this Agreement is substantially, but not entirely, complete and ready for its intended use and can be used pursuant to applicable federal, state local laws, rules, regulations codes and ordinances.

As a condition to the issuance of the Delivery and Acceptance Certificate Upon Substantial Completion (Attachment E-1), ESCO must: (i) conduct testing of the ECM(s) as required in this Agreement and provide a copy of the test results to Client and Engineer; (ii) provide to the Client a complete set of as-built drawings

that are approved by the Engineer; (iii) provide to the Client a complete list of manuals and training sessions provided by ESCO to Client which will include a description of the manual or training provided, the date, and location where the manual or training was provided, the name of the person providing the manual or training, and the name of the person receiving the manual or training; and (iv) provide to the Client all other written documentation, licenses and software necessary for the operation of the ECM(s) or relating to the ECM(s) and their installation, including, but not limited to, equipment specifications and locations, system configurations, and sequences of operations.

Prior to the issuance of the Certificate of Substantial Completion, the Client and Engineer will provide to ESCO a punch list of items remaining to be completed by ESCO. Provided the ECMs are functioning as intended for Client's use, the Certificate of Substantial Completion shall be issued. All items within the punch list must be completed within thirty (30) calendar days of the signed Certificate of Substantial Completion, unless otherwise agreed to by the Parties in writing. For the purposes of this Agreement, the terms "Final Completion" or "Final Acceptance" shall mean that ESCO has fulfilled all of its construction obligations for all ECMs installed under this Agreement. This shall include the completion of all punch list items and the submission of all required documentation.

(c) During the month following each successive twelve (12) month period beginning with the first day of the month following the date on which the Client executes a Final Delivery and Acceptance Certificate (Attachment E-2), Client shall pay the annual maintenance and measurement and verification (M&V) service fees (collectively, the "Performance Period Fee") set forth in Attachment G.

(d) ESCO must submit Applications for Payment to the Client on the form attached hereto as Attachment O based on the percentage of the Work completed pursuant to the Schedule of Values. With each Application for Payment, ESCO must submit certified payrolls and such other documentation reasonably requested by the Engineer or Client. Within thirty (30) business days of the Client's receipt of the Application for Payment, Client will pay ESCO 95% of the value of ESCO's Work.

(e) Amounts not in dispute and not paid to ESCO on or before the due dates specified in Sections 4(a)-(d) above will accrue interest at the rate of the prime interest rate plus four (4) percent for the number of days following the due date until such time as such amount due has been paid in full, provided that ESCO has provided prior written notice of such non-payment and ten (10) business days have elapsed since such notice was received and payment has still not been made or disputed by Client.

(f) The services provided for hereunder may overlap one another. In that regard, the payments to be made by Client to ESCO with respect to one or more services shall be in addition to one another.

(g) Client may purchase an extended warranty from ESCO on all ECMs and related equipment installed under this Agreement for an amount to be mutually determined.

**SECTION 5                    TERM**

The Term of this Agreement shall begin on the date above first written and shall end on that date which is exactly eighteen (18) years from the first day of the month following the date of execution of the Delivery and Acceptance Certificate (Attachment E-2) upon Substantial Completion of this Project by the Client, unless terminated prior to such date, as provided for in Section 12 and/or Section 14 and/or Section 32 of this Agreement. If not otherwise terminated as provided for herein, the Term of this Agreement shall terminate simultaneously with any termination of the Financing. Notwithstanding the foregoing, nothing in this Section 5 shall relieve the Client from paying amounts which accrued prior to such termination of this Agreement, when due under this Agreement.

**SECTION 6                    GUARANTEE OF ENERGY SAVINGS**

ESCO will guarantee to the Client the amount of energy savings determined in accordance with Attachment F, "Guarantee of Energy Cost Savings".

**SECTION 7                    RIGHT OF ENTRY/SPACE**

During the Term of this Agreement, Client shall grant ESCO, its employees, agents, and subcontractors, including any utility which provides or may provide any payment under this Agreement, access to the Property for the purpose of fulfilling ESCO's obligations under this Agreement. Client shall provide mutually satisfactory space for the installation and operation of the ECMs and shall protect such equipment in the same careful manner that Client protects its property. Additionally, Client shall provide ESCO remote electronic access to the energy management system (if required) during the Term of this Agreement. ESCO shall obey and abide by all reasonable rules of Client relative to the Property as they would directly relate to ESCO's performance of its obligations under this Agreement.

ESCO will conduct its Work during hours that are in compliance with federal, State and local laws, rules, regulations, codes and ordinances. ESCO must obtain Client's written permission prior to conducting any Work during Client's non-standard business hours.

**SECTION 8                    CHANGES IN WORK**

The quantity, quality, dimensions, type or other characteristics of the ECMs may be changed only by written consent of the Client and ESCO (and, where required by the Lease, the Lessor), via the execution of a Change Order Form (Attachment H) and the approval of NYSED. In addition, the Scope of Services may be reduced or expanded to include other significant energy efficiency measures and facilities not included within the ECMs listed on Attachment B (and, following Substantial Completion, listed on Attachment J) by the execution of such a Change Order Form and its approval by NYSED.

**SECTION 9                    WARRANTIES**

All warranties for materials and workmanship are stipulated by ECM in Attachment B (Scope of Services). The following provisions will be in effect should any warranty language be omitted from Attachment B.

(a) ESCO warrants that the design, engineering, and installation services it performs will be performed consistent with good engineering practices and that such work is warranted to be free from defects in materials and workmanship for a period of two (2) years from the date of execution of the Delivery and Acceptance Certificate by the Client with respect to Substantial Completion. Any manufacturers' warranties which exceed this two (2) year period shall be assigned to Client to the extent allowed by the manufacturer. Except as provided above, ESCO MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO THE VALUE, DESIGN, AND CONDITION OR FITNESS FOR USE OR PARTICULAR PURPOSE AND MERCHANTABILITY, REGARDING THE ECMs OR ANY SERVICES PROVIDED HEREUNDER.

(b) Individual ECM warranties that extend beyond the warranty defined in (a) above will transfer to the Client. ESCO will not be responsible for administering extended warranties.

(c) Client may purchase extended warranty coverage for all equipment installed under this Agreement as long as the annual cost of the project inclusive of the extended warranty coverage does not exceed the guaranteed savings value should this Agreement be subject to rules or laws requiring annual savings to exceed annual costs. Payment of such shall be in accordance with Section 4(d) and Attachment G.

(d) ESCO represents and warrants that: (a) it is financially solvent and experienced in and competent to perform the Work; (b) it is familiar with all federal, State, county, and local laws, regulations, and ordinances which may in any way affect the Work or those employed therein; and (c) it or its subcontractors performing the Work are holders of all licenses which are necessary to perform the Work and that said licenses will remain in effect through completion of the Work; (d) it has inspected the site and has become familiar with the conditions and operations under which the Work is to be performed; and (e) it will observe and comply with the policies, rules, and regulations of the Client which are made known to it respecting the performance of its duties (and will cause its employees to do that same), including, but not limited to, the Client's Code of

Conduct; provided, however, that ESCO will determine the manner of carrying out its duties hereunder consistent with its status as an independent contractor.

(e) ESCO will perform the Work in a professional, workman-like manner. ESCO will promptly re-perform any non-conforming Work for no charge, as long as Client provides written notice of such defect to ESCO within one year following Substantial Completion or such other period identified in Attachment B. If ESCO fails to commence the correction of non-conforming Work within thirty (30) calendar days after the Client gives notice to ESCO, the Client may correct it at ESCO's cost and expense, including with respect to the costs of consultants, without relieving ESCO of its obligations hereunder. ESCO will pay Client, on demand, for the cost of such corrective work.

(f) Prior to the commencement of the Work, ESCO will be fully responsible for reviewing any and all existing warranties of equipment, fixtures and appurtenances located at the Client's facilities that are directly impacted by the Work performed under the Agreement to verify that the Work will not void any such existing warranties. In the event that ESCO's review uncovers a potential issue, ESCO will notify the Client in writing and the Parties will agree upon a resolution. Notwithstanding the foregoing, if ESCO: (a) proceeds with any Work that will impair or nullify any existing warranty; and (b) the Client has not been notified in writing of the potential issue and agreed to the performance of such work, ESCO will be fully liable to Client for the warranty. Upon completion of the Work of the Agreement, ESCO will be fully responsible for reviewing and informing Client of all warranties that result from the Work.

## **SECTION 10                    CLIENT ROLE AND RESPONSIBILITIES**

(a) **Operations:** Client shall operate the equipment installed hereunder in accordance with the manufacturers' recommendations and the procedures supplied to the Client by ESCO.

(b) **Maintenance:** Client shall, at its expense, maintain the Property in good working order during the Term of this Agreement. Except as may otherwise be provided for in Attachment I, the Client will maintain, at Client's expense: (i) the equipment and all other components which comprise the ECMs (following the date of Substantial Completion), and (ii) all other equipment which is attached thereto and/or is integral to the proper functioning of the ECMs.

(c) **Malfunctions:** Client will notify ESCO within 10 business days in the event of any malfunction in the operation of the ECMs or the equipment installed hereunder.

(d) **Protection of ECMs:** Except in the case of emergency, Client will not remove, move, alter, turn off or otherwise significantly affect the operation of the equipment installed hereunder or the operation of the ECMs, or any individual part thereof, without the prior approval of ESCO, which approval shall not be unreasonably withheld. After receiving ESCO's approval, Client shall proceed as instructed. Client shall act reasonably to protect the ECMs from damage or injury, if, due to an emergency, it is not reasonable to notify ESCO before acting. Client agrees to protect and preserve the facility envelope and the operating condition of all ECMs, mechanical systems, and other energy consuming systems located on the Property.

(e) **Measurement & Verification System:** Client shall not alter, move, modify or otherwise change the measurement and verification system or any component thereof without the written consent of ESCO unless such action is in accordance with operating procedures provided by ESCO.

(f) **Adjustment to Baseline:** If, in ESCO's reasonable opinion, and acknowledged by Client in good faith, Client fails to reasonably protect the ECMs and/or maintain the Property in good repair and good working condition, the baseline referenced in Attachment F may be reasonably adjusted by the Parties for any increased energy usages at the Property.

(g) **Changes to Property:** Client will notify ESCO in writing prior to making any change to the Property that would significantly affect the energy usage at the Property, including but not limited to changes in the hours or days that the Property is occupied or operated, the number of occupants (including, but not limited to, staff and students), the activity conducted, the equipment, or the size of the Property (if possible, Client

will provide this notice to ESCO at least fourteen (14) calendar days prior to the making of a change). In the event ESCO receives such notification or otherwise determines that such a change has occurred, it will make the appropriate revisions to the Attachments as mutually agreed to by the Parties or take such other action as may be provided for hereunder.

(h) Energy Usage Data: Client will make available to ESCO, on a monthly basis for the Term of this Agreement, copies of all energy bills, energy usage data, and any and all other such documentation maintained by the Client, as requested by ESCO, which is necessary for ESCO to determine and satisfy all of its obligations under this Agreement.

(i) Insurance and Risk of Loss or Damage: Without limiting any of its obligations or liabilities under this Agreement, the Client will, at its expense, provide and maintain at all times during the Term of this Agreement, sufficient insurance against the loss or theft of or damage to the ECMs related equipment and all components installed hereunder, for the full replacement value thereof.

Client shall purchase and maintain all-risk full cost replacement property insurance in form acceptable to ESCO for the duration of Project and Agreement term. The insurance shall include ESCO, its subcontractors and sub-subcontractors as additional insureds. Client shall provide ESCO with copies of said insurance coverage prior to the commencement of the Project.

Client assumes all risk of loss of or damage to the ECMs from any cause whatsoever except to the extent that such loss or damage was caused by ESCO.

If, following Client's execution of the Delivery and Acceptance Certificate to be provided upon Substantial Completion and subsequent to Client's complete payment to ESCO in accordance with Section 4(a), as that amount may then have been modified in accordance with this Agreement, any fire, flood, other casualty, or condemnation renders a majority of the Property incapable of being occupied and renders the ECMs or the equipment installed hereunder inoperable and, in the case of a casualty, the affected portion of such ECMs or equipment is not reconstructed or restored within one hundred and twenty (120) calendar days from the date of such casualty, ESCO and/or Client may terminate this Agreement by delivery of a written notice to the other Party. Upon such termination, Client shall pay ESCO any amounts, or pro-rata portions thereof, accrued under Section 4(b)-(e), Attachment G and the applicable Termination Value, if any, set forth on Attachment C or in Section 4. ESCO shall not be responsible for any savings deficiencies resulting from ECMs being rendered useless for the period of time prior to reconstruction of the ECM. The savings Guarantee will be adjusted to account for the unavailability of the ECM.

(j) Telephone/Broadband: Client is responsible for installing and maintaining either telephone lines or providing broadband access to the energy management system via Client's Local Area Network (LAN). Client is responsible for all associated costs for the energy management system's telephone lines or broadband access.

(k) Protection: Client shall at all times act reasonably to protect the ECMs from damage, theft or injury to the same extent and in the same manner in which it protects its other property.

(l) Alteration: Client agrees not to move, alter or change the ECMs in any way that causes a reduction in the level of efficiency or savings generated by any ECM or the equipment installed hereunder without obtaining ESCO's prior written approval which shall not be unreasonably withheld.

(m) Storage: ESCO shall store all materials, supplies, tools, and equipment ("Stored Materials") at the Property, within a rent-free area, in a location agreed to by the Parties. ESCO shall bear all risk of loss for the Stored Materials but only to the extent that any loss is not attributable to any act or omission of Client. Access to this storage area shall be limited to ESCO, its subcontractors, and Client-assigned personnel exclusively. ESCO shall maintain insurance on such Property sufficient to cover the value of same for damage or theft, and name Client as an additional insured on such policy.

(n) Utilities: Client shall procure and pay for all energy and utility costs including, without

exception, fuel for the operation of the Property.

**SECTION 11 DEFAULTS BY CLIENT AND ESCO**

- (a) Client shall be in default under this Agreement upon the occurrence of any of the following:
  - (i) Client fails to pay when due any amount to be paid under this Agreement and such failure continues for a period of sixty (60) business days after notice of overdue payment is delivered by ESCO to Client;
  - (ii) Client fails to perform or meet any of its other required duties or obligations under this Agreement and fails to cure such failure and the effects of such failure within thirty (30) calendar days of receipt of written notice of default, unless such failures and effects cannot be completely cured within thirty (30) calendar days after said written notice, in which case a default shall exist only if Client does not commence and diligently pursue to cure such failure and effects as soon as possible;
- (b) ESCO shall be in default under this Agreement upon the occurrence of the following:
  - (i) ESCO fails to perform or meet any of its required duties or obligations under this Agreement and fails to cure such failure or effects of such failure within thirty (30) calendar days of receipt of written notice of default, unless such failure or effects cannot be completely cured within thirty (30) calendar days after said written notice, in which case a default shall exist only if ESCO does not commence and diligently pursue to cure such failure as soon as possible.

**SECTION 12 REMEDIES FOR DEFAULTS**

In the event that one party defaults under this Agreement, the other party, after providing notice and an opportunity to cure: may bring actions for any remedies available at law or in equity or other appropriate proceedings for the recovery of damages, (including, without exception, amounts past due), and/or bring an action in equity for specific performance.

**SECTION 13 GOVERNING LAW, CHOICE OF FORUM AND WAIVER OF JURY TRIAL**

This Agreement is subject to, governed by, enforced according to and construed according to the laws of the State of New York, without regard to the conflicts of law provisions thereof. Any dispute arising under this Agreement will be litigated in a New York State Court in Suffolk County, New York or the Eastern District of New York. The Parties hereby consent to the jurisdiction of each such court and knowingly, voluntarily, intentionally and irrevocably waive any objection which such party may have to the laying of venue in any such court. The Parties each waive trial by jury in any action concerning this Agreement.

**SECTION 14 TERMINATION**

Client may terminate this Agreement for any reason upon thirty (30) calendar days written notice to ESCO, provided that Client has paid to ESCO: (a) all amounts due, as set forth in Section 4 and on Attachment G (other than amounts due for future performance by ESCO). If Client wishes to terminate this Agreement by reason of any default hereunder by ESCO, Client must first provide ESCO with notice of such default, as well as afford ESCO thirty (30) calendar days to cure its default ("Cure Period"). If ESCO's default cannot reasonably be cured within the Cure Period, ESCO must begin efforts to cure the default within the Cure Period and diligently continue those efforts until the default is resolved.

**SECTION 15 INSURANCE AND BONDING**

- (a) Without limiting any of its obligations or liabilities under this Agreement, ESCO will provide and maintain at its expense the following minimum insurance:

- Workers' Compensation and N.Y.S. Disability: Statutory Workers' Compensation (C-105.2 or U-26.3); and N.Y.S. Disability Benefits Insurance (DB-120.1) for all employees. Proof of coverage must be on the approved specific form, as required by the New York State Workers' Compensation Board. ACORD certificates are not acceptable.
- Comprehensive General Liability Insurance, including contractual liability:
  - Each Occurrence - \$1,000,000
  - General Aggregate (per project basis)- \$2,000,000
  - Products - Completed/Operations (each occurrence) - \$2,000,000
  - Personal & Advertising Injury (any one person) - \$2,000,000
  - Fire Damage (any one fire) - \$300,000
  - Medical Expenses (any one person) - \$10,000
- Comprehensive Automobile Liability Insurance, including owned, non-owned, borrowed and hired automotive equipment: \$1,000,000 combined single limit
- Environmental Contractors Liability Insurance (to be obtained by ESCO or its subcontractors if/when performing Work relating to Hazardous Materials or ACM): With coverage for the services rendered by ESCO or its subcontractors for the Client, including, but not limited to, removal, replacement, enclosure, encapsulation and/or disposal of hazardous materials, along with any related pollution events, including coverage for third-party liability claims for bodily injury, property damage and clean-up costs, and coverage for non-owned disposal sites. \$2,000,000.00 per occurrence/\$2,000,000.00 aggregate including products and completed operations. If a retroactive date is used, it must pre-date the inception of the Agreement. If ESCO or a subcontractor is using motor vehicles for transporting hazardous materials, the entity using the motor vehicles will provide pollution liability broadened coverage (ISO endorsement CA 9948 or equivalent) as well as proof of MCS 90.

Coverage must extend for a period of three (3) years following Final Completion.

- Owners Contractors Protection Insurance: \$2,000,000 per occurrence; \$4,000,000 aggregate with the Client as the named insured. Notwithstanding any provision in this Agreement or any related Contract Documents, including RFP 2025-186, ESCO's subcontractors shall not be obligated to obtain Owners and Contractors Protective (OCP) liability insurance on behalf of, or for the benefit of, the Client. Nor shall any subcontractor of ESCO be obligated to secure coverage that is duplicative of the coverage maintained by ESCO or that imposes an unreasonable financial burden, where the cost to the subcontractor is disproportionate to the value of its subcontract and the protection such coverage provides. ESCO shall obtain Client's prior approval for before accepting any insurance coverage procured by its subcontractors from out-of-state carriers. Such approval shall not be unreasonably withheld.
- Builder's Risk: Must be purchased and maintained by the Client to include interest of the Client, ESCO and ESCO's subcontractors jointly. The limit must reflect the total completed value (all material and labor costs) and provide coverage for fire, lightning, explosion, extended coverage, vandalism, malicious mischief, windstorm, hail and/or flood. Coverage must remain in effect until the Client is the only entity that has an insurable interest in the property.
- Excess Insurance: \$10,000,000 each occurrence and aggregate. Excess coverage must be on a follow-form basis or provide broader coverage over the general liability and automobile liability coverages.

(b) Notwithstanding any terms, conditions or provisions, in any other writing between the Parties, ESCO hereby agrees to effectuate the naming of the Client as an additional insured on ESCO's insurance policies, with the exception of workers' compensation, N.Y. State disability and professional liability. Each policy naming the

Client as an additional insured must:

- be an insurance policy from an insurer licensed in New York State with an A.M. Best rating of not less than "A-".
- state that ESCO's coverage is primary and non-contributory coverage for the Client, its Board, employees and volunteers including a waiver of subrogation in favor of the Client and additional insureds for all coverages including Workers Compensation.

(c) The Client, all of its elected and appointed officials, employees and volunteers, engineers, appointed professionals and consultants must be listed as an additional insured by using standard or other endorsements that extend coverage to the Client for both on-going (CG 20 38 or equivalent) and products and completed operations (CG 20 37 or equivalent). With regard to the Commercial General Liability Insurance, the Client, H2M Architects + Engineers, all of its elected and appointed officials, employees and volunteers, engineers, appointed professionals and consultants must be listed as an additional insured by using standard or other endorsements that extend coverage to the Client for both on-going (CG 20 38 or equivalent) and products and completed operations (CG 20 37 or equivalent). The decision to accept an alternative endorsement rests solely with the Client. A completed copy of the endorsement(s) must be attached to the certificate of insurance and the certificate must state that the endorsement is being used. The certificate of insurance will reference coverage that applies to this contract by number or description. A fully completed New York Construction Certificate of Liability Insurance Addendum (ACORD 855 2014/05) must be included with the certificates of insurance. For any "Yes" answers on Items G through L on this Addendum additional details must be provided in the writing.

(d) All liability policies must be written on an occurrence basis. The commercial general liability policy must include all major divisions of coverage and be on a comprehensive basis including, but not limited to: (1) blanket contractual liability ESCO has assumed under contract (including indemnification obligations); (2) completed operations/products liability; (3) broad form property damage and loss of use; (4) explosion, collapse and underground ("XC&U" perils), where applicable; (5) premises; and (6) operations.

(e) ESCO hereby indemnifies and holds harmless the Client for any applicable deductibles and self-insured retentions, all of which are the sole responsibility of ESCO, to the extent not covered by the applicable policy.

(f) ESCO acknowledges that failure to obtain the foregoing insurance on behalf of the Client constitutes a material breach of this Agreement and subjects ESCO to liability for damages, indemnification and all other legal remedies available to the Client. ESCO must provide the Client with the required proof of insurance prior to the commencement of Work or use of Client facilities. The failure of the Client to object to the contents of the certificate or the absence of same will not be deemed a waiver of any and all rights held by the Client.

(g) ESCO must require all subcontractors to carry similar insurance coverages and limits of liability as set forth herein and adjusted to the nature of subcontractors' operations and submit same to the Client for written approval prior to start of any Work. Notwithstanding any other terms, conditions or provisions, ESCO must require each subcontractor, pursuant to a written agreement, that the subcontractor effectuate the naming of the Client as an additional insured on the subcontractor's insurance policies, with the exception of workers' compensation and N.Y. State disability insurance. Client must be listed as an additional insured on any subcontractor policy by using standard or other endorsements that extend coverage to the Client for both on-going and completed operations. The decision to accept an endorsement rests solely with the Client. ESCO must submit to Client for Client's approval a completed copy of the endorsement(s) and the certificates of insurance and the certificates must state that the endorsement is being used.

(h) **Payment and Performance Bond.** ESCO shall within seven (7) calendar days of execution of this Agreement, deliver to the Client Performance and Payment Bonds in a sum equal to the contract price with sureties satisfactory to the Client, conditioned upon the faithful performance by ESCO, for the implementation of the ECMs as it may be from time to time modified by Change Orders, such bonds to be in such form and otherwise to contain such provisions as are reasonably satisfactory to the Client. ESCO shall deliver to Client the Payment and Performance Bond prior to commencement of construction of any work in respect of this

**Agreement.** The Payment and Performance Bonds required hereunder shall expire upon Final Acceptance of all ECMs required under this Agreement (including any applicable two year warranty period), and shall not secure any energy savings, measurement and verification obligations or maintenance/service obligations, which may be guaranteed by ESCO under this Agreement. All bonds must be provided by a bonding company licensed to do business in the State of New York and rated Class A by Best or Moody's Listings. The Contractor shall provide evidence of the required Moody's Listings Class A rating to the satisfaction of the Architect at the time of the Contract signing. All bonds shall be in the form of AIA Document A312 (1984) or Current Edition. Every bond must display the Surety's Bond Number. A rider including the following provision shall be attached to each bond:

- i. Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract documents. Such addition, alteration, change, extension of time, or other modification of the Contract documents, or forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations hereunder and notice to the Surety of such matters is hereby waived.
- ii. The Surety further agrees that in event of any default by the Owner in the performance of the Owner's obligations to the Contractor under the Contract, the Contractor or Surety shall cause written notice of such default (specifying said default in detail) to be given to the Owner, and the Owner shall have thirty (30) days from time after receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) days. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to Lender and the Owner.
- iii. This bond shall remain in effect for a period not less than two (2) years following final completion of the work by the Contractor.

#### **SECTION 16                    INDEMNIFICATION AND LIMIT OF LIABILITY**

(a) To the fullest extent permitted by law, each Party (hereinafter referred to as the "Indemnifying Party") agrees to defend, indemnify and hold harmless the other Party from and against any and all claims for damages sustained by third parties arising by reason of bodily injury or damage to third party property caused by the Indemnifying Party's willful misconduct or negligent physical acts (or the willful misconduct or negligent physical acts of any entity under the control, responsibility or direction of the Indemnifying Party). In no event, however, shall the Indemnifying Party be obligated to indemnify the other Party to the extent that any injury or damage is caused by the negligence of the other Party or any entity for which the other Party is legally responsible.

(b) To the fullest extent permitted by law, ESCO shall be solely responsible for and shall indemnify and hold harmless the Client, its officers, members of the Board of Education, employees, and agents (the "Indemnified Parties") from and against any and all liabilities, losses, costs, expenses (including, without limitation, reasonable attorneys' fees and disbursements) and damages ("Losses"), arising out of or in connection with any acts or omissions of ESCO or a ESCO Agent, regardless of whether taken pursuant to or authorized by this Agreement and regardless of whether due to negligence, fault, or default, including Losses in connection with any threatened investigation, litigation or other proceeding or preparing a defense to or prosecuting the same; provided, however, that ESCO shall not be responsible for that portion, if any, of a Loss that is caused by the negligence or wrongful act of the Client.

(c) ESCO shall, upon the Client's demand and at the Client's direction, promptly and diligently defend, at ESCO's own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more Indemnified Parties for which ESCO is responsible under this Section and ESCO shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.

(d) ESCO shall, and shall cause ESCO Agents to, cooperate with the Client in connection with the investigation, defense or prosecution of any action, suit or proceeding in connection with this Agreement including the acts or omissions of ESCO and/or a ESCO Agent in connection with this Agreement.

- (e) The provisions of this Section shall survive expiration or sooner termination of this Agreement.

#### **SECTION 17 AGREEMENT INTERPRETATION AND PERFORMANCE**

The interpretation and performance of this Agreement, and the interpretation and enforcement of the rights of the Parties hereunder, shall be in accordance with and controlled by the laws of the State of New York, except where the Federal supremacy clause requires otherwise. In the event of any ambiguity or conflict in meaning, the terms of this Agreement shall not be construed against the drafting Party based upon that Party's having drafted this Agreement.

The terms and conditions of RFP2025-186 is attached hereto at Attachment Q and is incorporated by reference herein. In the event that any of the terms and conditions of RFP2025-186 conflict with this Agreement, the terms and conditions of this Agreement shall control.

#### **SECTION 18 PRIVILEGED AND PROPRIETARY INFORMATION**

ESCO's systems, means, cost, and methodologies of evaluating, implementing, accomplishing and determining energy savings and the terms of the Agreement for this Project is considered by ESCO as privileged and proprietary information. The New York State Freedom of Information Law, Public Officers Law, Article 6 ("FOIL"), provides for public access to information. Public Officers Law § 87(2)(d) provides that the Client may deny access to records or portions thereof that are "trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained by a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information that ESCO believes is a trade secret or would cause substantial injury to the competitive position of the ESCO if disclosed, should be labeled "Confidential" or "Proprietary" on each page at the time of submittal to Client. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. The designation of information by ESCO as "confidential" or "proprietary" does not guarantee that it is, in fact, confidential or proprietary or that the information will not be released by the Client in response to a FOIL request.

When any request for disclosure of information that is labeled Confidential or Proprietary by ESCO is made under FOIL, Client will provide prompt verbal and written notice to ESCO such that ESCO will have the opportunity to timely object under FOIL should it desire to object to such disclosure of that information in whole or in part. In the event that Client is required to make a filing with any agency or other governmental body, which includes such information, Client shall notify ESCO and cooperate with ESCO in order to seek confidential treatment of such information included within any such filing or, if all such information cannot be protected from disclosure, to request that Client be permitted to redact portions of such information, as ESCO may designate, from that portion of said filing which is to be made available to the public.

#### **SECTION 19 SEVERABILITY**

In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement.

#### **SECTION 20 ASSIGNMENTS AND SUBCONTRACTING**

(a) ESCO may elect to use subcontractors in meeting its obligations pursuant to this Agreement. Client will approve all subcontractors and outside professionals in advance in writing, which approval will not be unreasonably withheld or delayed.

(b) Client shall not assign, transfer, or otherwise dispose of this Agreement, the ECMs, or any interest therein, or sublet or lend the ECMs or permit the ECMs to be used by anyone other than Client and Client's employees without the prior express written consent of ESCO (or, if applicable, the Lessor) such consent not to be unreasonably withheld. If Client transfers ownership or its interest in the Property, Client shall require the new party acquiring ownership of the Property to assume Client's obligations hereunder, pursuant to an

assignment and assumption agreement, subject to ESCO's approval; otherwise, this Agreement will terminate as provided for in Section 14.

(c) ESCO shall not assign this Agreement in whole or in part to any other party without first obtaining the written consent of Client, which consent shall not be unreasonably withheld.

## **SECTION 21**                    **DELAYS**

If ESCO is delayed in the performance of the Work by causes beyond its control, including but not limited to, a Force Majeure condition, ESCO shall provide written notice to Client of the existence, extent of, and reason for such delays and their potential impacts. ESCO agrees to make a claim only for additional costs attributable to delay in the performance of this Agreement necessarily extending the time for completion of the Work, such as: (i) unreasonable delays attributable to the review of shop drawings, the issuance of change orders, or the cumulative impact of change orders that were not brought about by any act or omission of ESCO; (ii) the unavailability of the project site caused by acts or omissions of Client; (iii) differing project site conditions or environmental hazards that were neither known nor reasonably ascertainable on a pre-bid inspection of the project site or review of the bid documents or other publicly available sources, or that are not ordinarily encountered in the project site's geographical area or neighborhood or in the type of Work to be performed, and not contemplated by the Parties. ESCO agrees that in the event of any such other delay caused solely by ESCO, it shall only make a claim for an adjustment of the project schedule.

## **SECTION 22**                    **WAIVER**

The failure of either Party to require compliance with any provision of this Agreement shall not affect that Party's right to later enforce the same. It is agreed that the waiver by either Party of performance of any other terms of this Agreement or of any breach thereof will not be held or deemed to be a waiver by that Party of any subsequent failure to perform the same or any other term or condition of this Agreement or any breach thereof.

## **SECTION 23**                    **FORCE MAJEURE**

(a) If either Party shall be unable to carry out any part of its obligations under this Agreement due to causes beyond its control ("Force Majeure"), including but not limited to an act of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders or restraints of any kind of the government of the United States or any state or any of their departments, agencies, or officials, or any other civil governmental, transportation delays, military or judicial authority, war, blockage, insurrection, riot, sudden action of the elements, pandemic, fire, explosion, flood, earthquake, storms, drought, landslide, or explosion or nuclear emergency, this Agreement shall remain in effect but the affected Party's obligations shall be suspended for a period equal to the disabling circumstances, provided that:

(i) the non-performing Party gives the other Party prompt written notice describing the particulars of the Force Majeure, including but not limited to the nature of the occurrence and its expected duration, and continues to furnish timely regular reports with respect thereto during the period of Force Majeure;

(ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

(iii) no obligations of either Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;

(iv) the non-performing Party uses reasonable efforts to remedy its inability to perform; and

(v) the Term of this Agreement, at ESCO's option, shall be extended for a period equal to the number of days that the Force Majeure prevented the non-performing

Party from performing.

(b) Any decision by Client to close or change the use of the facilities or ECMs at the Property shall not constitute a Force Majeure excusing Client's performance under this Agreement unless the decision was the result of a Force Majeure event.

**SECTION 24 CONTRACT DOCUMENTS**

(a) Upon execution of this Agreement by both Parties, this Agreement and its Attachments will constitute the entire Agreement between the Parties relating to the subject matter hereof, and supersedes all proposals, previous agreements, discussions, correspondences, and all other communications, whether oral or written, between the Parties relating to the subject matter of this Agreement.

(b) Headings are for the convenience of reference only and are not to be construed as a part of the Agreement.

(c) This Agreement may not be modified or amended except in writing signed by the Parties.

(d) This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**SECTION 25 NOTICES**

All notices and other communication under this Agreement (other than regularly scheduled payments) shall be deemed properly given upon receipt if delivered in person or sent by electronic facsimile with regular mail follow-up or sent by overnight delivery service or sent by registered mail, return receipt requested and postage prepaid, addressed as follows:

**To: Client**  
Riverhead Central School District  
814 Harrison Avenue  
Riverhead, NY 11901  
Attention: Assistant Superintendent for Business

With a copy to:  
Guercio & Guercio  
77 Conklin St,  
Farmingdale, NY 11735  
Attention: Eric Levine, Esq.

**To ESCO:**  
RENU Energy Solutions  
20 35<sup>th</sup> Street  
Copiague, NY 11726  
Attention: Robert Ragozine

Either Party may change such address from time to time by written notice to the other Party.

**SECTION 26 RECORDS**

ESCO shall establish and maintain complete and accurate books, records, documents and other evidence (Records) directly pertinent to performance under this Agreement. The Records shall be kept for the balance of the calendar year in which they were made and for six (6) years after final payment. The State Comptroller, the Attorney General, the Commissioner of Education, and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the ESCO within the State of New York or, if no such office is

available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying.

ESCO will provide services and maintain records, logs and reports in accordance with all applicable laws, regulations and requirements of NYSED and the New York State Department of Labor in force during the term of this Agreement. ESCO must provide Client with a copy of any reports, tests, evaluations or observations that are prepared in connection with the Agreement. The Client will have the right to examine any or all records or accounts maintained by ESCO in connection with the Agreement.

**SECTION 27                    REPRESENTATIONS AND WARRANTIES**

Each Party warrants and represents to the other that:

- (a) It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder, subject to the approval of the Commissioner of Education;
- (b) Its execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, as to ESCO, its organic instruments and, as to Client, by all requisite municipal, board, or other action and are not in breach of any applicable law, code or regulation; this Agreement has been duly executed and delivered by the signatories so authorized, and constitutes each Party's legal, valid and binding obligation;
- (c) Its execution, delivery, and performance of this Agreement shall not result in a breach or violation of, or constitute a default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- (d) It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially adversely affect its ability to perform hereunder.
- (e) The persons executing this Agreement are fully authorized by law to do so.

**SECTION 28                    INDEPENDENT CONTRACTOR**

ESCO is engaged by Client only for the purpose and to the extent set forth in this Agreement and its relation to Client shall, during the period of the engagement and service hereunder, be that of an independent contractor. ESCO shall not be considered under this provision of the Agreement, or otherwise, as having an employee status or as being entitled to participate in any plans, arrangements or collective bargaining agreements by Client pertaining to, or in connection with any salary, term or condition of employment, health insurance, workers compensation insurance, unemployment insurance or similar benefits as provided for regular employees.

Nothing in this Section shall be deemed to be a waiver of the Client of the right to use its property. Client and ESCO are independent of one another and shall have no other relationship relating to or arising out of this Agreement. Neither Party shall have or hold itself out as having the right or authority to bind or create liability for the other by its intentional or negligent act or omission, or to make any contract or otherwise assume any obligation or responsibility in the name of or on behalf of the other Party.

It is understood and agreed that ESCO, its employees, agents, subcontractors and employees of such agents and subcontractors, shall adhere to Client's policies with respect to conduct on Client property as well as any and all federal, state, and local laws, rules, ordinances, Client policies and procedures applicable to construction projects on Client premises.

**SECTION 29                    ADDITIONAL REPRESENTATIONS AND WARRANTIES OF CLIENT**

Client hereby warrants and represents to ESCO that:

- (a) Client presently intends to continue to use the Property in a manner reasonably similar to its present use, and will properly maintain all equipment and building systems in accordance with the manufacturer's specifications;
- (b) Client does not presently contemplate any changes to the electrical and thermal consumption characteristics of the Property as these existed during the base period except as may have been disclosed to ESCO by Client in writing prior to the execution of this Agreement, or those changes deemed necessary as a result of ESCO's discovery of concealed or unknown physical conditions while performing its Work hereunder at the Property;
- (c) Client has provided, and will continue to provide, ESCO with all records heretofore requested by ESCO and, in that regard, ESCO acknowledges that it has received base period data from Client which appears to be complete as of the date of this Agreement, and that the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement shall be, true and accurate in all material respects except as may be disclosed by Client in writing;
- (d) Client has not entered into any contracts or agreements for the Property with persons or entities other than ESCO regarding the provision of the energy services referenced herein.
- (e) Any material change in population or other design parameter that materially impacts consumption will be disclosed to ESCO within thirty (30) business days. The impact on energy savings calculations will be mutually agreed upon by ESCO and Client at the time a change is determined.
- (f) In the event of renovations or construction at any Facility listed in this Agreement, Client agrees to provide and install sub-metering equipment to enable calculations to allow ESCO to adjust the Savings Guarantee.

**SECTION 30                    ABSENCE OF FRAUD OR COLLUSION**

In accordance with Section 139-d of the State Finance Law and/or Section 103 of the General Municipal Law, if this Agreement was awarded based upon the submission of bids, ESCO warrants, by its execution of this Agreement, that no official or employee of Client has any pecuniary interest in this Agreement or in the expected profits to arise here from, and that this Agreement is made in good faith without fraud or collusion with any other person involved in the bidding process.

**SECTION 31                    NEGLIGENT/WRONGFUL ACTS**

Intentionally Omitted.

**SECTION 32                    FURTHER DOCUMENTS AND EVENTS**

The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement, in that regard, it being understood and agreed that ESCO covenants and agrees to execute or procure the execution of all documents reasonably required to release any lien held by ESCO or its assignees upon the termination of this Agreement and payment of all amounts required to be paid by Client to ESCO, pursuant to this Agreement, including but not limited to the Termination Value, if any. It being further agreed and understood that Client agrees to execute all documents which may be reasonably required by an entity which provides funds for any financing contemplated herein and to cooperate with ESCO in obtaining such funds.

It is further understood that Client agrees to execute all documents which may be reasonably required to obtain all licenses, permits and governmental approvals required by ESCO for installation and operation of the ECMs. ESCO's obligations hereunder are also subject to obtaining any such licenses, permits and governmental approvals.

**SECTION 33                    NON-APPROPRIATION**

Pursuant to NYS Energy Law § 9-103, this Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of the Agreement, and no liability on account therefore shall be incurred beyond the amount of such monies. It is understood that neither this Agreement nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the Agreement.

**SECTION 34                    THIRD-PARTY BENEFICIARIES**

Except as may be specifically provided for in this Agreement, the Parties hereto do not intend to create any rights for, or grant any remedies to, any third-party beneficiary of this Agreement.

**SECTION 35                    NOTIFICATIONS OF GOVERNMENTAL ACTION - OCCUPATIONAL SAFETY AND HEALTH**

The Parties agree to notify each other as promptly as is reasonably possible upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act or any other provision of Federal, State or Local law, relating in any way to the undertakings of either Party under this Agreement.

**SECTION 36                    REFERENCES**

Unless otherwise stated all references to a particular Attachment or to Attachments herein are to the referenced Attachment or Attachments which are attached to this Agreement and all such referenced Attachments are incorporated by reference within this Agreement. All references herein to a Section shall refer to a Section of this Agreement unless this Agreement specifically provides otherwise.

**SECTION 37                    APPROVAL**

ESCO and Client acknowledge that this Agreement is subject to 8 NYCRR 155.20 and, as such, requires the approval of the Commissioner of Education of the State of New York. This Agreement shall not be executory until NYSED approval is obtained. In addition, this Agreement shall not be executory until Client has secured state aid at the current projected level and secured project financing with terms and conditions comparable to those of similar projects under prevailing market conditions. In the event approval of said financing or other means of payment has not been secured by the Client within one (1) year after NYSED approval, and Client has made good faith efforts to secure financing, then this Agreement will terminate with no further obligation of Client to ESCO or any other party, unless the Parties agree to extend the Agreement in writing. Upon obtaining project financing, Client shall issue a Notice to Proceed to ESCO. Prior to NYSED approval, it shall be ESCO's sole responsibility to validate each ECM with Client and gain their final approval of the savings numbers as outlined herein. ESCO shall forward a copy of the specifications to Client's attorney for review and approval prior to sending to NYSED.

Notwithstanding the above, should any portion of this Agreement fail to be approved by NYSED, or, if the Scope of Work contained in this Agreement is not approved by NYSED in its entirety, Client may, at its sole discretion, elect to terminate this Agreement. ESCO shall have no remedy at law or in equity for such termination.

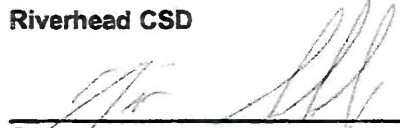
**SECTION 38                    IRAN DIVESTMENT ACT OF 2012**

By signing this Agreement, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its/his/her own organization, under

penalty of perjury, that to the best of its/his/her knowledge and belief that each person is not on the list created pursuant New York State Finance Law § 165-a(3)(b).

**IN WITNESS WHEREOF**, the duly authorized officers or representatives of the Parties have set their hand on the date first written above with the intent to be legally bound.

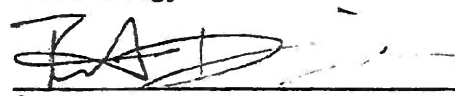
**Riverhead CSD**

  
\_\_\_\_\_  
Signature

James Scudder, President, Board of Education  
Print Name and Title

\_\_\_\_\_  
Date 8/20/25

**RENU Energy Solutions**

  
\_\_\_\_\_  
Signature

Robert Ragozine, Vice President  
Print Name and Title

\_\_\_\_\_  
Date 8/19/25