

INVESTMENT GRADE ENERGY AUDIT AGREEMENT

BY AND BETWEEN

[STATE AGENCY NAME]

AND

[ENERGY SERVICE PROVIDER]

Project #

SPECIMEN

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This Investment Grade Energy Audit Agreement (“Audit Agreement”) is made and entered into on _____, by and between Agency (“Owner”) and Energy Service Provider (“ESP”). Owner and ESP are referred to herein as the “Parties.” The Parties agree as follows:

ARTICLE 1. DEFINITIONS

Unless otherwise provided herein, the following terms¹ shall be defined as follows:

- 1.1 “Acceptance of the Work” shall mean a time when ESP’s performance of the entire scope of the ECM Installation Work is complete in accordance with the Contract Documents, in strict accordance with Section 13.1 of the GESPC.*
- 1.2 “Act” shall mean the Guaranteed Energy Savings Performance Contracting Act, O.C.G.A. §§ 50-37-1 through 50-37-8.
- 1.3 “Agreement,” as used in the GESPC, shall mean the Guaranteed Energy Savings Performance Contract, or GESPC.
- 1.4 “Annual Review” shall mean the annual review, reconciliation, and verification of the Verified Savings in accordance with Section 5.2 of the GESPC.*
- 1.5 “Audit” shall mean the Investment Grade Energy Audit performed by ESP pursuant to O.C.G.A. § 50-37-3(e), in accordance with the Audit Agreement.
- 1.6 “Audit Agreement” shall mean the Investment Grade Energy Audit Agreement pursuant to which, and in accordance with which, an ESP shall conduct the Audit.
- 1.7 “Audit Fee” shall mean the compensation to which ESP is entitled, if any, for performance of the Audit, as set forth in the Audit Agreement.
- 1.8 “Audit Report” shall mean the report that ESP is required to produce pursuant to the Audit Agreement and which shall include a summary of ESP’s recommendations for ECMs resulting from the Audit.
- 1.9 “Authority” shall mean the Georgia Environmental Finance Authority.*
- 1.10 “Base Period” shall mean the period of time during for which ESP shall examine consumption and usage of electricity, fossil fuels, water, and other applicable utilities for the purpose of developing an appropriate Baseline.
- 1.11 “Baseline” shall mean a base year of consumption and usage data that is representative of

¹ Definitions followed by a “*” indicates that the defined term is not used within this document but may be used in other related documents.

each month of the Base Period, established by agreement in the GESPC, and which is used to calculate Verified Savings in accordance with the GESPC.

- 1.12** “Change Order” shall mean a written order to ESP executed by the authorized representative of Owner, issued after execution of the GESPC, authorizing and directing a change in the Work or an adjustment in ECM Installation Payments or the Project Installation Schedule, or any combination thereof, in accordance with Article 9 of the GESPC.*
- 1.13** “Contract Amendment” shall mean a written agreement that has been executed by Owner and ESP, in accordance with Article 9 of the GESPC.*
- 1.14** “Contract Documents” shall consist of the documents identified in Section 8.1 of the GESPC that form a part of the GESPC.*
- 1.15** “Contract Time for Verified Savings” shall mean the period of time beginning on the later of (i) Acceptance of the Work or (ii) the date Owner provides a Notice of Commencement of Contract Time for Verified Savings, and shall end at the end of the fiscal year that is years thereafter.
- 1.16** “Contract Time for Work” shall mean the period of time beginning on the date that the Work under the GESPC is permitted to proceed, through the date established for Final Completion.*
- 1.17** “ECM” shall mean energy conservation measures, as defined in the Act, that (i) are identified in Schedule A of the GESPC, (ii) are installed in accordance with the GESPC, and (iii) constitute capital expenditures for federal income tax purposes.
- 1.18** “ECM Continuing Services” shall mean annual services provided pursuant to the GESPC, including but not limited to training, operation, maintenance, monitoring, repairs, replacements, and adjustments, measurement and verification, and the Annual Review.
- 1.19** “ECM Continuing Services Payments” shall mean compensation for ECM Continuing Services provided pursuant to the GESPC.
- 1.20** “ECM Installation Payments” shall mean compensation for ECM Installation Work provided pursuant to the GESPC.
- 1.21** “ECM Installation Work” shall mean work associated with the design, procurement, fabrication, construction, installation, testing, and commissioning of ECMs provided pursuant to the GESPC.*
- 1.22** “ECM Modification” shall mean the modification or replacement of ECMs, installation of additional ECMs, revisions to procedures for the operation of ECMs, or implementation of other procedures at the Premises, in accordance with Section 3.5 of the GESPC.*
- 1.23** “ECM Submittal Schedule” shall mean a schedule identifying the dates for submission of all ECM Submittals as set forth in the GESPC.*

1.24 “ESP” (i) as used in the Audit Agreement and GESPC, shall have the meaning set forth in the introductory paragraph thereof, and (ii) as used in the RFP, shall mean an Energy Service Provider. The term shall include companies that meet the definition of either an ESP or an Energy Service Company (“ESCO”) set by the National Association of Energy Service Companies (“NAESCO”). ESPs are not required to be accredited by or members of NAESCO. For the purposes of the RFP, an ESP is also required to possess:

- (A) a record of successful guaranteed energy savings performance contract projects with documented verified savings that meet or exceed their guarantees;
- (B) technical and managerial competence to develop comprehensive energy efficiency projects, including lighting measures; efficient motors and drives; and measures involving heating, ventilation, and air conditioning systems;
- (C) technical and managerial competence to provide a full range of energy services, including conducting investment grade energy audits; providing or arranging for project financing; design engineering; providing operations and maintenance services; and verifying energy savings according to accepted industry practice;
- (D) experience in the design, implementation, and installation of ECMs and the technical capabilities to verify that such measures achieve guaranteed energy and operational cost savings or enhanced revenues, according to accepted industry practice; and
- (E) the ability to secure or arrange the financing necessary to support energy savings guarantees.

1.25 “Event of Default” shall have the meaning set forth in Article 5 of the Audit Agreement, and Section 10.4 of the GESPC.

1.26 “Final Completion” shall mean that stage in the progression of the Work under the GESPC when ESP has fully performed the Work, including but not limited to the ECMs, in strict accordance with the Contract Documents, except for the warranty obligations and such other obligations that extend beyond Final Completion of the Work.*

1.27 “Fiscal Year” (whether or not such term is capitalized) shall mean the fiscal year adopted by the State of Georgia. If a period of time begins on a date that is not the first day of the State of Georgia’s fiscal year, then the first fiscal year for such period of time shall be shortened so as to end on the day before the first day of the State of Georgia’s next fiscal year. If a period of time ends on a date that is not the last day of the State of Georgia’s fiscal year, then the last fiscal year for such period of time shall be shortened so as to end on the day the period of time ends.*

1.28 “Guaranteed Energy Savings Performance Contract” or “GESPC” shall mean the contract for the evaluation, recommendation, and implementation of one or more ECMs, and associated guaranty of Guaranteed Savings, in accordance with the Act and as more fully set forth in the terms of the GESPC.

1.29 “Guaranteed Savings” shall mean the level of energy savings, operational cost savings, and

revenue enhancements identified in Schedule B of the GESPC.

1.30 “Industry Engineering Standards” shall mean

- (A) Life cycle costing;
- (B) The R.S. Means-estimated costing method developed by the R.S. Means Company;
- (C) Historical data;
- (D) Manufacturer's data;
- (E) American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) standards;
- (F) International Performance Measurement and Verification Protocol; and
- (G) other applicable technical performance standards established by nationally recognized standards authorities, but only if Owner specifically consents in writing to the use of such standard.*

1.31 “Issuing Officer” shall mean the person identified in the RFP who is the sole point of contact for the RFP.

1.32 “Material Change” shall mean any change in or to the Premises after Acceptance of the Work, not covered by Schedule K of the GESPC, whether structural, operational or otherwise in nature, that results in an increase or decrease in Verified Savings by at least \$_____, in the aggregate, after adjustments to account for variables that are not, in whole or in part, within ESP’s control. A change is not a Material Change if it results, in whole or in part, from ESP’s failure to perform any obligation in accordance with the Contract Documents, including but not limited to defective or deficient installation of ECMs and Work, failure to perform or properly perform maintenance, repairs, replacements, or similar tasks under Section 4.1, or failure to perform or properly perform any duty in connection with the Audit. A change is not a Material Change if it results, in whole or in part, from malfunction or nonperformance of an ECM.*

1.33 “Notice of Award” or “NOA” shall mean a Notice of Award, which signifies Owner’s selection of one or more ESPs pursuant to the RFP.*

1.34 “Notice of Commencement of Contract Time for Verified Savings” shall mean the written document executed by Owner indicating that the Contract Time for Verified Savings shall begin. Such notice shall not relieve ESP of any obligation under the GESPC or the Audit Agreement.*

1.35 “Notice of Intent to Award” or “NOIA” shall mean a Notice of Intent to Award, which signifies Owner’s preliminary selection of one or more ESPs pursuant to the RFP.*

1.36 “Owner” (i) as used in the Audit Agreement and GESPC, shall have the meaning set forth in the introductory paragraph thereof, and (ii) as used in the RFP, shall mean the State Agency

that issued the RFP pursuant to the Act and which may enter into an Audit Agreement and a GESPC with an ESP for the proposed Project.

- 1.37** “Preliminary Technical Energy Audit Report” shall mean the report prepared in connection with an ESP’s Proposal and further described in Article 2 of Attachment C (Form of Preliminary Technical Proposal) of the RFP.
- 1.38** “Preliminary Technical Proposal” or “Proposal” shall mean the proposal submitted in response to the RFP, in the form set forth in the Attachment C of the RFP, to the extent such proposal complies with the requirements and standards set forth in the RFP.*
- 1.39** “Premises” (i) as used in the Audit Agreement, shall mean the facilities listed in Attachment A of the Audit Agreement, (ii) as used in the GESPC, shall mean the facilities listed in Schedule D of the GESPC, and (iii) as used in the RFP, shall mean shall mean the facilities listed in Attachment A of the RFP.
- 1.40** “Prequalified ESPs” shall mean those ESPs listed on the Prequalification List.*
- 1.41** “Prequalification List” shall mean the list of Prequalified ESPs selected by the Authority in connection with the RFQ for Project #928-E-RFQC-0000007.*
- 1.42** “Project” shall mean the design and installation of ECMs, operation and maintenance of ECMs, and all other Work and services required under a GESPC.
- 1.43** “Project Installation Schedule” shall mean the schedule for Work contained in Schedule J of the GESPC.*
- 1.44** “Proposed Savings” shall mean anticipated energy, operational, water, or waste-water savings, cost savings, savings or revenue increases, but only if such amounts are verifiable and appropriate, as set forth in the Audit Agreement.
- 1.45** “Qualification Period” shall mean the three-year period beginning with the publication of the Prequalification List during which Prequalified ESPs will be eligible to receive RFPs under the Act.*
- 1.46** “Resident ESP” shall mean an ESP that has regularly maintained a place from which business is physically conducted in Georgia for at least one (1) year prior to the submission of its Statement of Qualifications, or a new business that is domiciled in Georgia which regularly maintains a place from which business is physically conducted in Georgia. A post office box, site trailer, or temporary structure is not a place of business for purposes of the RFP.*
- 1.47** “Request for Proposals” or “RFP” shall mean the document issued by Owner to elicit Preliminary Technical Proposals from selected Prequalified ESPs for the proposed Project.*
- 1.48** “Request for Statements of Qualifications” or “RFQ” shall mean the document issued by the Authority to establish the Prequalification List.*

- 1.49** “Schedule of Events” shall mean the schedule identified in the RFP that lists the preliminary dates and times certain events in the RFP procurement process shall occur.*
- 1.50** “Statement of Qualifications” or “SOQ” shall mean the responses submitted by ESPs in response to the RFQ.*
- 1.51** “State Agency” or “State Agencies” shall mean every state agency, authority, board, bureau, commission, and department of the State of Georgia, including but not limited to the Board of Regents of the University System of Georgia and its universities.*
- 1.52** “Substantial Completion” shall mean that stage in the progression of the Work under the GESPC when the Work is sufficiently complete in accordance with the Contract Documents that Owner can enjoy beneficial use and occupancy of the Work, including but not limited to ECMs, and can utilize such Work for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.*
- 1.53** “Verified Savings” shall mean actual energy savings, operational cost savings, and revenue enhancements realized with reference to the Baseline set forth in Schedule E of the GESPC, and determined in accordance with the methods and procedures in Schedule M of the GESPC, in accordance with Section 5.2 of the GESPC. Verified Savings shall result solely from ECMs installed or performed by ESP in accordance with the GESPC.
- 1.54** “Work” shall mean all work and services required or implied by, or reasonably inferable from, the GESPC and Contract Documents, including but not limited to work associated with all ECMs identified in Schedule A of the GESPC and installed in or on the Premises listed in Schedule D of the GESPC, in accordance with Section 3.1 of the GESPC.

ARTICLE 2. SCOPE OF ENERGY AUDIT AND ENERGY AUDIT REPORT

2.1 Energy Audit

ESP shall perform an Investment Grade Energy Audit (“Audit”), as defined in the Act and in accordance with this Audit Agreement, of the Premises identified by Owner in Attachment A.

2.2 Audit Report

ESP shall prepare an Audit Report with recommendations for ECMs based on Proposed Savings resulting solely from such ECMs. The Audit Report shall also contain detailed engineering and economic data and analysis over the life of the proposed Guaranteed Energy Savings Performance Contract, including the Contract Time For Verified Savings.

The Audit Report shall specifically identify the ECMs recommended by ESP to be installed or implemented at the Premises. It shall identify all anticipated costs that Owner is expected to incur in connection with the design, installation, operation, maintenance, repair, and replacement of ECMs and other costs that Owner would incur if Owner elects to execute a GESPC with ESP. It will further contain detailed projections of Proposed Savings to be realized as a result of the

installation and operation of the recommended ECMs. The Proposed Savings calculations must utilize assumptions, projections, and reference points which best represent the true value of future Proposed Savings for the Premises, including but not limited to (i) accurate marginal cost for each unit of savings at the time those guaranteed savings would occur; (ii) documented material and contracted labor costs actually avoided; and (iii) calculations which account for the interactive effects of the recommended ECMs.

All assumptions made to calculate anticipated Proposed Savings shall be clearly listed and labeled in the Audit Report. The Audit Report shall clearly describe how utility rate schedules were used to calculate Proposed Savings for all ECMs. The Audit Report shall describe ESP's plan for installing or implementing the measures at the Premises, including all anticipated costs associated with such installation and implementation.

Notwithstanding anything to the contrary herein, the Audit Report and all related and supporting documents shall become the property of Owner, even if Owner terminates this Audit Agreement with or without cause. If ESP does not possess sufficient rights to give effect to the obligations of this paragraph, ESP shall procure the right for Owner to own and maintain possession of such documents.

2.3 Minimum Requirements

ESP shall undertake all tasks necessary to perform the Audit and prepare an Audit Report. At a minimum, ESP shall perform the following:

2.3.1 Collect General Information for Each Premises

ESP shall collect general Premises information, such as size, age, construction type, condition, and general use of each Premises. ESP shall also collect and summarize Premises utility cost and consumption data for the most recent _____-month period. After its inquiry with Owner, ESP shall evaluate the impact on utility cost and consumption for any energy measures currently being installed or currently contemplated to be installed by Owner at the Premises over the next _____ years, other than those recommended and installed by ESP.

ESP shall furnish to Owner a form with specific and detailed requests for information concerning the Premises. As requested by such form, Owner shall furnish (or cause its energy suppliers to furnish) all available records and data concerning energy and water usage for the Premises for the most current _____-month period, if available, including but not limited to utility records; occupancy information; descriptions of any changes in the structure of the Premises or its heating, cooling, lighting or other systems or energy requirements; descriptions of all major energy and water consuming or energy and water saving equipment used in the Premises; and a description of energy management procedures presently utilized. Owner shall also furnish a record of any energy-related improvements or modifications that have been installed during the past three years, or are currently being installed, or are currently contemplated to be installed by Owner in the Premises over the next _____ years, other than those recommended and installed by ESP. Owner shall also provide copies of drawings, equipment logs, and maintenance work orders to ESP to the extent such information is readily available.

2.3.2 Inventory Existing Systems and Equipment

ESP shall compile an inventory based on its investigation and physical inspection of the major electrical, mechanical, and water systems at the Premises, including but not limited to

- (a) Cooling systems and related equipment;
- (b) Heating and heat distribution systems;
- (c) Automatic temperature control systems and equipment;
- (d) Air distribution systems and equipment;
- (e) Outdoor ventilation systems and equipment;
- (f) Kitchen and associated dining room equipment, if applicable;
- (g) Exhaust systems and equipment;
- (h) Hot water systems;
- (i) Electric motors, transmission, and drive systems;
- (j) Interior and exterior lighting;
- (k) Laundry equipment, if applicable;
- (l) Water consumption end uses, such as restroom fixtures, water fountains, irrigation, etc.;
- (m) Generator sets; and
- (n) Building envelope.

The inventory of existing equipment shall address the following conditions:

- (a) The loads, proper sizing, efficiencies, and hours of operation for each system (If the operating or climatic conditions require, engineering estimates may be used only with Owner's consent, but for large fluctuating loads with high potential savings, appropriate measurements are required unless waived in writing by Owner);
- (b) Current operating condition of each system;
- (c) Remaining useful life of each system;
- (d) Feasible replacement systems; and
- (e) Hazardous materials and other environmental concerns.

ESP shall use data loggers and shall conduct interviews with Premises operation and maintenance staff regarding the Premises' systems operation, occupancy patterns, and problems with comfort levels or equipment reliability.

2.3.3 Establish Proposed Baseline and Estimated Consumption Data

ESP shall examine consumption and usage of electricity, fossil fuels, and water for the Base Period, which shall consist of the most recent _____ months from execution of this Audit Agreement. By averaging such data, ESP shall establish a proposed Baseline, which is a base year of consumption and usage data that is representative of each month of the Base Period.

ESP shall identify, investigate, and account for any unusual or anomalous consumption data, such as utility bills, which may skew consumption estimates of the proposed Baseline from a

reasonable representation of the Base Period. ESP shall include the identity and cause of such unusual or anomalous consumption data, and the suggested modification to the proposed Baseline consumption and usage data, in the Audit Report.

ESP shall analyze consumption, usage, and hours of operation for all end uses of energy and water representing more than _____% in aggregate of total Premises consumption, but shall at a minimum include the following end uses:

- (a) Water;
- (b) Lighting;
- (c) Heating;
- (d) Cooling;
- (e) HVAC motors (fans and pumps);
- (f) Plug load;
- (g) Kitchen equipment;
- (h) Other equipment; and
- (i) Miscellaneous.

The “Miscellaneous” category shall not account for more than _____% of total Premises consumption. Where load or usage is highly uncertain, ESP shall, with the consent of Owner, employ spot measurement or short-term monitoring.

ESP shall reconcile the estimated annual consumption for each end use with the annual proposed Baseline consumption to within _____% for electricity (kWh) and water. ESP shall reconcile each end use’s contribution to electric peak demand with the annual proposed Baseline peak within _____%.

2.3.4 Develop List of Potential Energy Conservation Measures

2.3.4.1 ESP shall identify and propose ECMs for installation or implementation at the Premises, including but not limited to cut sheets on proposed equipment. ECMs of interest to Owner, if any, are included in Attachment ___ hereto. ESP shall provide information regarding proposed installation of ECMs in and on the Premises. ESP shall provide additional information and detail as Owner may request.

2.3.4.2 With respect to each proposed ECM, ESP shall provide a detailed estimate of (i) all costs of installation, implementation, testing, commissioning, operation, maintenance, repair, replacement, and other costs in any way related to each proposed ECMs, (ii) all anticipated Proposed Savings, and (iii) life expectancy. The costs of installation and implementation shall be itemized to allow Owner to identify the specific nature of such anticipated costs. ESP shall provide additional information and detail as Owner may request.

2.3.4.3 ESP shall specifically identify all tasks required for operation, maintenance, monitoring, repairs, replacements, and adjustments of ECMs, and their associated cost. ESP shall itemize such tasks in a detailed schedule and develop a checklist

of such tasks, the expected frequency that such tasks will be performed, and the associated cost.

ESP acknowledges that its obligation to identify all tasks and costs associated with operation, maintenance, monitoring, repairs, replacements, and adjustments of ECMs is of paramount importance. As set forth in the GESPC, if ESP fails to identify any task related to operation, maintenance, monitoring, repairs, replacements, and adjustments required for any ECM before execution of the GESPC, then ESP shall perform such task without additional fees or increase in compensation. Failure to identify such tasks before execution of the GESPC shall result in a waiver by ESP of any right to assert that Owner's alleged failure to perform such tasks results in a Material Change, or otherwise seek additional compensation.

2.3.4.4 ESP shall identify and describe all current operations and maintenance procedures of the Premises that may be affected by the installation or implementation of the proposed ECMs.

2.3.4.5 ESP shall, in consultation with Owner, recommend specific ECMs from its preliminary compilation of potential ECMs for installation and implementation at the Premises.

2.3.4.6 ESP shall prepare a detailed schedule of all activities associated with the design, installation, implementation, testing, and commissioning associated with ECMs, including but not limited to those activities listed on the Project Installation Schedule.

2.3.4.7 ESP shall identify and describe the impact on Owner's facilities, operations, and personnel caused by the activities to be performed under a potential GESPC for the proposed ECMs, including but not limited to surveying, installation, implementation, testing, commissioning, maintenance, operation, maintenance, repair, and replacement of proposed ECMs. ESP shall further identify methods for mitigating or reducing any impact to Owner arising therefrom. ESP shall explicitly identify and estimate any impacts that may result in additional or increased cost to Owner.

2.3.5 Provide Adequate Documentation, Information, and Access

ESP shall provide the following with the Audit Report:

- (a) Provide all analyses, methodologies, supporting calculations, and assumptions used to derive proposed Baselines and estimated Proposed Savings. ESP shall provide existing and proposed settings and conditions of all end uses and other factors that impact energy and water consumption, including but not limited to air and hot water temperatures, amount of outdoor air ventilation, and lighting and acoustic levels. ESP shall provide copies of the utility tariffs and commodity price histories used in Proposed Savings calculations. Manual calculations should disclose essential data, such as assumptions and formulas, so that Owner can replicate the calculations based on the data provided.

- (b) For Proposed Savings estimates using computer simulations, provide access to the program and all inputs and assumptions used, if requested by Owner.
- (c) Provide detailed calculations for any rate-saving proposals.
- (d) Provide detailed supporting calculations for any Proposed Savings. Describe annual variances in savings from year to year.
- (e) Provide all details, analyses, methodologies, supporting calculations, and assumptions supporting any estimate of cost associated with installation, implementation, testing, commissioning, operation, maintenance, repair, replacement, and other cost in any way related to each proposed ECMs.
- (f) Estimate any environmental costs or benefits of the proposed ECMs (e.g. disposal costs, avoided emissions, and water conservation). Provide emissions reductions estimates for NOX, CO2 and SO2. Segment emissions data for direct site emissions reductions (e.g. fossil fuels) and indirect emissions reduction data (e.g. electricity/water). In developing the estimates in this subparagraph, ESP shall use all applicable calculation tools available through the U.S. Environmental Protection Agency and its website (www.epa.gov), including the Greenhouse Gas Equivalencies Calculator available at:
<http://www.epa.gov/cleanenergy/energy-resources/calculator.html>.
- (g) For all proposed ECMs, provide a detailed statement of all applicable state, federal, and local laws and rules in effect at the time of this analysis, and describe how ESP proposes to comply with such laws and rules.
- (h) Provide a detailed preliminary commissioning plan for the proposed ECMs.
- (i) Using the EPA's ENERGY STAR tools and resources, provide an estimated post-retrofit Energy Performance Rating using the Delta Score Estimator and submit a completed Cash Flow Opportunity spreadsheet using the Cash Flow Opportunity Calculator for each Premises. Information regarding ENERGY STAR, Portfolio Manager and a list of eligible facility types can be found at:
http://energystar.gov/index.cfm?c=tools_resources.bus_energy_management_tools_resources.

2.3.6 Develop Proposed Measurement and Verification Plan

ESP shall provide a detailed proposed measurement and verification plan for each proposed ECM. ESP shall explain in detail how the measurement and verification plan will work, including but not limited to the precise times and locations of measurement, measurement tools, methods of measurement, any conversion or calculations applied to the measurements, any software or programs that ESP proposes to use, and how the ESP proposes to reconcile the measurements.

The measurement and verification plan shall identify how ESP proposes to convert units of Verified Savings into dollar values for each fiscal year of the Contract Time for Verified Savings, including but not limited to utility cost and inflation indices.

ESP shall provide any additional information or explanation requested by Owner. At Owner's request, ESP shall cooperate with Owner to identify alternatives to the proposed measurement and verification plan or particular components of such plan.

2.3.7 Cost and Fee Estimates

ESP shall provide detailed firm fixed price estimates of all costs associated with the installation, implementation, commissioning, and measurement and verification of each of the ECMs proposed in the Audit Report. ESP shall include aggregate costs and itemized costs, including but not limited to itemized costs for labor, materials, and equipment. At a minimum, the costs shall be itemized in the following categories:

- (a) engineering/design costs for individual ECMs;
- (b) materials costs for individual ECMs;
- (c) labor costs for individual ECMs, including labor burden;
- (d) contractor/vendor estimates for individual ECM hard and soft costs;
- (e) contingency costs for individual ECM hard cost;
- (f) construction management fees for the project;
- (g) commissioning costs for individual ECMs;
- (h) retro-commissioning cost for existing systems that will not be replaced;
- (i) initial training costs (and ongoing training, if applicable);
- (j) overhead and profit; and
- (k) costs for ECM Continuing Services, including but not limited to:
 - (i) measurement and verification;
 - (ii) maintenance;
 - (iii) performance monitoring;
 - (iv) ongoing training services; and
 - (v) other costs/fees (specify).

In addition, project cost data must be provided in the format included in Attachment E (Proposed Project Cost Form), Attachment F (Form of Implementation Cost by Energy Conservation Measure), Attachment G (Form of First Year Estimated Annual Cost Savings by ECM), and Attachment H (Form of GESPC Cash Flow Summary). ESP shall also provide estimates of monthly costs associated with sustaining the project performance, including detail for ECM Continuing Services and maintenance fees, monitoring fees, and training fees.

The estimates identified under this Section shall remain valid and firm for a period of _____ months following submission of the final Audit Report (including revisions, if any). ESP acknowledges that Owner will rely on such estimates in determining whether to execute a GESPC.

If the results of the Audit Report are not within ten percent (10%) of both the guaranteed savings and the total proposed project cost in ESP's Preliminary Technical Energy Audit Report (as defined in RFP _____), then Owner may terminate this Audit Agreement as set forth in Section 5.2(iv).

2.3.8 Proposed Savings Estimates and Guaranteed Savings

2.3.8.1 Approved Proposed Savings and Proposed Savings Calculation

Methods

Only verifiable Proposed Savings will be recognized as Proposed Savings for purposes of the Audit and the Audit Report. Owner shall have sole and complete discretion to approve the Proposed Savings and calculation methods used to determine Proposed Savings. If ESP is uncertain whether certain items are acceptable Proposed Savings, or whether a method of calculating Proposed Savings is appropriate, ESP shall in writing request guidance from Owner. Upon ESP's written request, Owner shall provide its response in writing. ESP shall provide all information and explanation required by Owner to adequately evaluate ESP's request.

2.3.8.2 Acceptable Proposed Savings

Owner and ESP may mutually agree in writing executed by both parties that certain factors shall be considered as estimated Proposed Savings or may be used in the development of Proposed Savings. Such factors must be clearly identified in the Audit Report with reference to this Section.

The following items will be allowed as Proposed Savings or in the development of Proposed Savings:

- Owner material/commodity cost (if applicable): \$ _____
- Contracted maintenance labor costs (if applicable): \$ _____
- Escalation rates of _____% for natural gas
- Escalation rates of _____% for electricity
- Escalation rates of _____% for water
- Escalation rates of _____% for material/commodity cost savings
- Escalation rates of _____% for allowable contract labor savings

Unless Owner agrees in writing, the following items will not be credited as Proposed Savings derived from a proposed ECM. The ESP may seek exemptions from the Owner on a case-by-case basis. However, Owner shall have complete discretion and authority to determine the allowable Proposed Savings, or factors in the development of Proposed Savings, in each case considered.

Owner in-house labor cost
Owner deferred maintenance cost

2.3.9 Audit Report Format and Content

ESP shall prepare a two-volume Audit Report as required by this Audit Agreement. Although the Audit Report shall be formatted in accordance with this Section, nothing in this Section shall be deemed to limit or diminish the information required to be provided under this Audit Agreement.

Each volume should be submitted using 8 ½ " x 11" sheets of paper and a font size no smaller than 10 point, and such pages should be numbered sequentially. Each volume should include a table of contents and tabs with the visible titles of corresponding Schedules (Volume 1) or Parts (Volume 2). In addition, ESP shall prepare an electronic version of the Audit Report in the format requested by Owner (e.g., .pdf portfolio format).

2.3.9.1 Volume 1 of 2

Volume 1 of 2 shall include the presentation of information in the following Schedules to the extent such information is developed or acquired during the Audit. If the Parties subsequently enter into a GESPC, some of the information called for in the following Schedules may be used in conjunction with such GESPC. The Parties recognize that, if they enter into a GESPC, the information in the following Schedules may be modified as agreed by the Parties. This Section shall not, however, limit or diminish ESP's obligations under this Audit Agreement or any other agreement between the Parties.

Schedules

Schedule A	Energy Conservation Measures
Schedule B	Guaranteed Savings
Schedule C-1	ECM Installation Payments
Schedule C-2	ECM Continuing Services Payments
Schedule D	Premises
Schedule E	Calculation of Baseline/Benchmarks
Schedule F	ESP Maintenance Responsibilities
Schedule G	Owner Maintenance Responsibilities
Schedule H	Operating Parameters for ECMs/Standards of Comfort & Service
Schedule I	ESP Training Responsibilities
Schedule J	Project Installation Schedule
Schedule K	Current and Known Future Capital Projects at the Premises
Schedule L	Pre-Installation Equipment Inventory
Schedule M	Methods of Savings Measurement and Verification
Schedule N	Systems Startup and Commissioning of ECMs
Schedule O	Insurance and Bonds / Savings Guarantee Security
Schedule P	Warranties
Schedule Q	Proposed Project Cost Form; Form of Implementation Cost by Energy Conservation Measure; Form of First Year Estimated Annual Cost Savings by ECM
Schedule R	GEFA Annual Reporting Requirements

Exhibits

Exhibit I	Bonds
Exhibit II (i)	Certification of Acceptance – Audit Report
Exhibit II (ii)	Certification of Acceptance – Energy Conservation Measures
Exhibit III	Equipment Warranties

2.3.9.2 Volume 2 of 2

Volume 2 of 2 shall include all of the information identified in the following Parts and presented in the following format:

1. **Executive Summary:** Provide an executive summary which summarizes the Audit, including but not limited to the following: describe the Premises, all ECMs evaluated, methods of analysis, results and conclusions, and a summary table presenting the estimated cost and Proposed Savings for each recommended ECM. Include a summary of the recommended ECMs and costs using the table format provided below.

	ECM	Total Cost	Proposed Savings	Simple Payback	Life Expectancy of ECM
1.					
2.					
3.					
TOTALS					

2. **Measures Not Evaluated:** Include a discussion of ECMs not evaluated in detail and the explanation of why a detailed analysis was not performed.
3. **Proposed Baseline:** Provide a summary of the proposed Baselines; how they were established; and a reconciliation of estimated annual consumption for each end use with the annual proposed Baseline consumption. Summarize any unusual or anomalous characteristics and findings. Provide in this Part all other information required by this Audit Agreement concerning the proposed Baselines.
4. **ECM Summaries:** Provide summarized descriptions for each ECM, including the method of analysis utilized, supporting calculations (which may be submitted in appendices), results, proposed equipment, and implementation issues. Provide an economic analysis for each proposed ECM. Include in this Part all other information required by the Agreement concerning proposed ECMs.
5. **Cost and Proposed Savings Estimates:** Provide all information relied upon by ESP in developing estimated costs and Proposed Savings associated with each ECM. Identify any shortfalls or inherent limitations of estimates, assumptions, and calculations used in developing the estimated costs and Proposed Savings. Include in

this Part all other information required to be provided by this Audit Agreement concerning estimated costs and Proposed Savings.

6. **Appendices:** Provide thorough appendices which document the data relied upon to prepare ESP's analysis and how that data was collected. Provide in this Part any other information required to be provided by this Audit Agreement that is not otherwise provided in the Audit Report.

2.3.10 Submission and Review of the Audit Report

The Audit Report shall be completed and submitted to Owner within _____ days after execution of this Audit Agreement.

If Owner determines, in its sole and complete discretion, that (i) one or more of the recommended ECMs are not feasible or are otherwise inappropriate for Owner or the Premises, or (ii) the Audit Report contains invalid Proposed Savings or methods of calculation, errors, inappropriate assumptions, or any other condition that Owner determines is objectionable, then Owner shall give ESP written notice of any said objections within _____ days of receipt of the Audit Report. ESP shall cooperate with Owner to develop a feasible replacement or adjustment to the Audit Report. ESP shall modify the Audit Report as necessary and submit a second draft within _____ days after receipt of said notification. Owner shall have _____ days from receipt of the revised Audit Report to notify ESP if any objections have not been adequately addressed. Upon receipt of such notification, ESP shall have _____ days to revise and resubmit the Audit Report, and Owner shall have _____ days from receipt of the revised submission to determine if any objections have not been adequately addressed. The review and re-submission process may continue until Owner has no further objections, unless Owner terminates the Agreement or declares ESP to be in default.

ARTICLE 3. GUARANTEED ENERGY SAVINGS PERFORMANCE CONTRACT

The Parties may subsequently negotiate a GESPC, as defined in the Guaranteed Energy Savings Performance Contracting Act. However, nothing in this Audit Agreement or any other pre-existing agreement between the Parties shall be construed as an obligation on Owner to execute a GESPC. The terms and provisions of any such GESPC shall be separately set forth therein. Specifically, none of the schedules, exhibits, attachments, or other documents developed pursuant to or in connection with this Audit Agreement shall be effective unless and until Owner specifically incorporates such documents as provided in a GESPC.

ESP expressly acknowledges that Owner has no obligation to enter into any other contract, including but not limited to the GESPC, or engage in any other transaction with ESP or any other entity.

ARTICLE 4. PAYMENT

4.1 Audit Fee

ESP shall receive from Owner the amount of \$ _____ as full and complete compensation for all services performed and expenses incurred under this Audit Agreement (the "Audit Fee"). As a condition precedent to Owner's payment obligation, (i) ESP must complete all of its obligations under this Audit Agreement in accordance with this Audit Agreement and (ii) no Event of Default has occurred.

Notwithstanding the previous paragraph, if Owner and ESP execute a GESPC, then the Audit Fee shall be determined as set forth in Section 4.3.

4.2 Effect of Termination

If this Audit Agreement is terminated pursuant to any Section or Subsection in Article 5, then the payment obligations under the applicable Section or Subsection of Article 5 shall control the amount to which ESP is entitled, if any, except that Section 4.3 shall continue to apply.

4.3 Waiver and Limitation of Liability

ESP waives any right to recover special, indirect, incidental, or consequential damages or losses. Notwithstanding any other provision of this Audit Agreement, ESP agrees that Owner's maximum liability under this Audit Agreement for any reason and under any theory of law is the Audit Fee.

ARTICLE 5. TERMINATION

5.1 Termination By ESP

ESP may terminate this Audit Agreement prior to the completion of the Audit and submission of the Audit Report if:

- (i) it determines that it cannot guarantee a minimum ___% of Proposed Savings through the installation or implementation of ECMs at the Premises; or
- (ii) it determines that, even though it can guarantee a ___% of Proposed Savings, such amount would be insufficient to cover the costs associated with performing the Audit, installing or implementing ECMs, and related training, maintenance and monitoring services.

Submission of the Audit Report shall end ESP's right to terminate the Agreement under this Section.

In the event ESP terminates the Agreement pursuant to this Section, Owner shall not be obligated to pay any amount to ESP for services performed or expenses incurred by ESP in

connection with this Audit Agreement. ESP shall provide Owner with any documents developed or acquired through this Audit Agreement, including but not limited to preliminary notes, reports or analysis.

Termination under this Section shall be effective upon Owner's receipt of written notification from ESP stating the reason for the termination and all documents which support termination pursuant to this Section.

5.2 Termination By Owner

Owner may terminate this Audit Agreement pursuant to any of the following Subsections:

- (i) If ESP fails to timely or properly perform any obligation of this Audit Agreement ("Event of Default"), including but not limited to completing the Audit or submitting the Audit Report to Owner by the date established herein, Owner may terminate this Audit Agreement. Termination under this Subsection (i) shall be effective upon ESP's receipt of written notification from Owner that the ESP is in default of this Audit Agreement. If Owner terminates this Audit Agreement under this Subsection (i), Owner shall not be obligated to pay any amount to ESP for services performed or expenses incurred by ESP in connection with this Audit Agreement. ESP shall provide Owner with any documents developed or acquired through this Audit Agreement, including but not limited to preliminary notes, reports or analysis.
- (ii) If ESP notifies Owner in writing that it is unable to guarantee a sufficient level of Proposed Savings identified in Section 5.1, then Owner may elect to terminate this Audit Agreement as provided in this Subsection (ii). Termination under this Subsection shall be effective upon ESP's receipt of written notification of termination from Owner. If Owner terminates the Agreement under this Subsection (ii), Owner shall not be obligated to pay any amount to ESP for services performed or expenses incurred by ESP in connection with this Audit Agreement. ESP shall provide Owner with any documents developed or acquired through this Audit Agreement, including but not limited to preliminary notes, reports or analysis, and documentation supporting ESP's inability to guarantee a sufficient level of Proposed Savings.
- (iii) If an Event of Default has not occurred and Owner notifies ESP in writing that it will not enter into a GESPC, or otherwise wishes to terminate this Audit Agreement for Owner's convenience, then Owner may terminate this Audit Agreement under this Subsection (iii). If Owner terminates the Agreement under this Subsection (iii), then Owner shall pay ESP for the lesser of (a) the actual costs directly incurred in the performance of this Audit Agreement or (b) the percent of the Audit Fee that corresponds to the percent that the Audit and Audit Report are completed as of the effective date of termination. Termination under this Subsection (iii) shall be effective upon ESP's receipt of written notification from Owner.

As a condition precedent to recovery as provided under Subsection (iii) of this Section, ESP shall provide Owner with documentation of all costs incurred by ESP. ESP waives any right to claim costs were incurred unless it can provide contemporaneous documentation of same. If costs are recoverable under this Subsection (iii), then such costs shall solely include direct project costs and shall not include indirect costs, special or consequential damages of any kind or nature, or any home office overhead, loss of profit, loss of efficiency or productivity, loss of bonding capacity, loss of use of capital, or similar items of alleged cost, loss, damage, or expense.

ESP further agrees to provide Owner with documentation of costs incurred and any preliminary notes, reports, or analyses which have been produced or prepared prior to the effective date of the termination. Such documentation shall be used by Owner to determine the extent of work completed by ESP prior to termination and shall become the property of Owner. ESP shall provide Owner with any documents developed or acquired through or in connection with this Audit Agreement, including but not limited to preliminary notes, reports or analysis.

- (iv) If the Audit Report's cost and fee estimates and guaranteed savings are not within ten percent (10%) of ESP's Preliminary Technical Energy Audit Report, then Owner may terminate this Audit Agreement. If Owner terminates this Audit Agreement under this Subsection (iv), then Owner shall not be obligated to pay any amount to ESP for services performed or expenses incurred by ESP in connection with this Audit Agreement. ESP shall provide Owner with any documents developed or acquired through this Audit Agreement, including but not limited to preliminary notes, reports or analysis.

5.3 Termination By Execution of GESPC

If the Parties execute a GESPC, then this Audit Agreement shall automatically terminate. If this Audit Agreement is terminated under this Section, notwithstanding anything to the contrary in this Audit Agreement, the Parties expressly agree that (i) the Audit Fee as set forth in Article 4 shall be reduced to zero dollars (\$ 0.00), (ii) that no separate payment shall be due for the Audit or Audit Report under the terms of this Audit Agreement, and (iii) that compensation due ESP pursuant to the GESPC includes compensation for any and all work, services, and benefits provided by ESP in connection with this Audit Agreement, even if such compensation is not separately specified or itemized in the GESPC, or on any invoices or applications for payment.

If this Audit Agreement is terminated as provided in this Section, ESP shall remain obligated to complete and comply with the continuing obligations and provisions of this Audit Agreement, and other obligations that survive the termination of this Audit Agreement, including but not limited to those obligations set forth in Section 5.4.

5.4 Survival of Obligations

The following provisions and obligations of ESP shall survive termination of this Audit Agreement: (a) express and implied warranties and representations, (b) obligations to provide reliable information, accurate calculations, and reasonable estimates to Owner, (c) waivers and limitation of losses and damages under Section 4.3, (d) limitations on recovery under Article 5, (e) obligations to comply with all federal, state, and local laws and rules (e.g., Section 6.8), (f) obligations concerning patent and copyright infringement under Section 6.3, (g) indemnity obligations under Section 6.9, (h) ESP's obligations and warranties under Section 6.12, (i) obligation to provide documents under Section 6.5.

ARTICLE 6. ADDITIONAL TERMS AND CONDITIONS

6.1 Agreement Term

The Agreement term shall commence on the date the Agreement is executed by Owner and shall end upon execution of a GESPC, unless earlier terminated pursuant to the provisions of Article 5. Notwithstanding the preceding sentence, ESP shall comply with and adhere to the deadlines set forth in Article 2 regarding the completion and submission of the list of ECMs and the Audit Report. This Section shall not affect the continuing applicability of obligations identified under Section 5.4.

6.2 Materials, Equipment and Supplies

ESP shall provide or cause to be provided all materials, equipment, and supplies necessary to perform its obligations under this Audit Agreement, including but not limited to the Audit and the Audit Report. ESP recognizes that the cost of said items is included in the Audit Fee.

6.3 Patent and Copyright Responsibility

ESP agrees, warrants, and represents that any material or design specified by ESP or supplied by ESP, and any software or program utilized by ESP, under this Audit Agreement shall not infringe any patent, copyright, or other intellectual property right. ESP shall be solely responsible for securing any necessary licenses required for the performance of the Audit and preparation of the Audit Report. ESP shall indemnify and hold harmless Owner for any damages, losses, or costs incurred by Owner, including attorney fees, arising from ESP's (including any entity employed by ESP) failure to comply with this Section.

ESP shall ensure that Owner receives unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to Owner as part of the performance of this Audit Agreement.

6.4 Insurance

ESP shall purchase, maintain, and provide evidence of insurance coverage of the types, in the amounts, and for the periods specified in Attachment D. Such insurance shall, at a minimum,

include Worker's Compensation and Employer's Liability Insurance, Commercial General Liability Insurance, and Professional Liability (Errors and Omissions) Insurance for design professionals, subconsultant engineers and architects, and all other consultants. Upon execution of this Audit Agreement, ESP shall submit to Owner all certificates of insurance evidencing the insurance coverage required herein.

ESP understands and agrees that any insurance protection furnished by ESP hereunder shall in no way limit or diminish its responsibility to indemnify and save harmless Owner under the provisions of this Audit Agreement.

6.5 Owner Access to Records

Owner shall have the right, throughout the term of this Audit Agreement and for a minimum of 10 (ten) years following completion of the Agreement, to inspect, audit, and obtain copies of all books, records, and supporting documents created or obtained by, used by, or maintained by ESP in connection with, or in any way related to, this Audit Agreement.

6.6 Personnel

All personnel necessary for the effective performance of this Audit Agreement shall be employed by ESP and its subcontractors, shall be qualified to perform the services required under this Audit Agreement, and shall in all respects be subject to the rules and regulations of ESP governing staff members and employees and safety.

6.7 Independent Contractor

In performing the services required by this Audit Agreement, ESP will act as an independent contractor and not as an employee or agent of Owner. Neither ESP, its subcontractors, nor their personnel shall be considered agents or employees of Owner.

6.8 Compliance with Applicable Law

In performance of its obligations under this Audit Agreement, ESP shall comply with all applicable federal, state and local laws, rules, codes, and regulations. ESP shall perform its obligations under this Audit Agreement in accordance with sound engineering and safety practices, and in compliance with any and all rules of Owner relative to the Premises.

ESP shall further comply with all applicable federal, state and local laws, rules, codes, and regulations concerning environmental protection and environmental quality control. ESP is responsible for any such violations and shall secure all required permits.

All limits or standards set forth in this Audit Agreement to be observed in the performance required under this Audit Agreement are minimum requirements, and shall not affect the application of more restrictive or stringent federal, state or local standards which apply to the performance of the Agreement.

ESP acknowledges that the Project is funded, in whole or in part, by proceeds of one or more Qualified Energy Conservation Bonds, as defined in Section 54D of the Internal Revenue Code of 1986. As a result, Subchapter IV of Chapter 31 of Title 40, United States Code (“Davis-Bacon Act”), shall apply to all labor on or related to the Project. (Pub. L. 111-5, Division B, Section 1601). ESP is responsible for compliance with each and every provision of the Davis Bacon Act and all rules and regulations promulgated thereunder. ESP shall comply with Appendix (Applicable Labor Provisions), which is incorporated herein by reference.

ESP shall indemnify and hold Owner harmless for any damages, losses, or costs incurred by Owner, including attorney fees, arising from ESP’s (including any entity employed by ESP) failure to comply with this Section.

6.9 Indemnity

ESP shall indemnify and hold harmless Owner for any damages, losses, or costs incurred by Owner, including attorney fees, arising from ESP’s (including any entity employed by ESP) failure to comply with any provision of this Audit Agreement or arising from ESP’s wrongful or negligent act. If requested by Owner, ESP shall assign any right or defense it possesses as required to effectuate this indemnity obligation.

6.10 Waivers

No right of either Party hereto shall be deemed to have been waived by non-exercise thereof, or otherwise, unless such waiver is reduced to writing and executed by the party entitled to exercise such right.

6.11 Assignment

This Audit Agreement may not be assigned, in whole or in part, by ESP without the prior written consent of Owner. Any attempted assignment without Owner’s prior written consent shall be void and of no force or effect.

ESP shall not subcontract any work under this Audit Agreement without the written consent of Owner.

6.12 No Warranty by Owner

The Parties acknowledge that any and all information provided by Owner under this Audit Agreement is at ESP’s request. Owner makes no warranty concerning the accuracy, adequacy, or appropriateness of the information provided by Owner or any other person or entity. ESP shall investigate and verify the information provided to assure itself that such information is accurate, adequate, and appropriate.

In the event the parties execute a GESPC, ESP expressly represents and warrants that it will not assert the inaccuracy, inadequacy, or inappropriateness of information provided by Owner or any other person or entity as a defense to any deficiency in realized Verified Savings.

6.13 Time is of the Essence

Time is of the essence with respect to all of ESP's obligations under this Audit Agreement.

6.14 Federal Taxpayer Identification Number and Legal Status Disclosure

Under penalty of perjury, ESP certifies that ___-_____ is ESP's correct Federal Taxpayer Identification Number and that ESP is doing business as a Corporation.

6.15 Governing Law

This Audit Agreement shall be governed by the laws of the State of Georgia. ESP hereby consents to personal jurisdiction and venue of any dispute, action, or suit in the Superior Court of Fulton County, Georgia, which Court shall have exclusive jurisdiction of same.

6.16 Entire Agreement

This Audit Agreement, including all incorporated documents, constitutes the entire agreement between the parties. No agent, representative, employee or officer of Owner or ESP has the authority to make, or has made, any statement, agreement or representation, oral or written, in connection with this Audit Agreement, which in any way can be deemed to modify, add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict any of the terms and conditions of this Audit Agreement. No modifications, alterations, changes, or waiver to this Audit Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties.

The following documents are incorporated in, and made a part of, this Audit Agreement:

- Attachment A – Project Sites
- Attachment B – Owner Preferences
- Attachment C – GEFA Management Fee Schedule
- Attachment D – Insurance
- Attachment E – Proposed Project Cost Form
- Attachment F – Form of Implementation Cost by Energy Conservation Measure
- Attachment G – Form of First Year Estimated Annual Cost Savings by ECM
- Attachment H – Form of GESPC Cash Flow Summary

Appendix I – Application of Certain Labor Provisions

6.17 Project Management

All necessary and ordinary communications, submittals, approvals, requests and notices related to Project work shall be issued or received by:

For Owner:
Name:

For ESP:
Name:

Address:
City state zip
Phone:
Email address

Address:
City State Zip
Phone:
Email address

ARTICLE 7. EXECUTION UNDER SEAL

IN WITNESS WHEREOF, the Parties have executed this Audit Agreement under seal by their authorized signatures as of this _____ day of _____, _____.

For Owner

For ESP

By: _____

By: _____

Title: _____

Title: _____

Under Seal

SPECIMEN

Attachment A – Premises

SPECIMEN

Attachment C – GEFA Management Fee Schedule

SPECIMEN

Attachment D – Insurance Requirements

ESP shall maintain the following insurance coverage during the term of this agreement:

- (A) Workers Compensation Insurance (Occurrence) in the amounts of the statutory limits established by the General Assembly of the State of Georgia. A self-insurer must submit a certificate from the Georgia Board of Workers Compensation stating that ESP qualifies to pay its own workers compensation claims. In addition, ESP shall require all subcontractors occupying the Premises or performing work under a contract to obtain an insurance certificate showing proof of Workers Compensation Coverage with the following minimum coverage:

Bodily injury by accident – per employee	\$100,000
Bodily injury by disease – per employee	\$100,000
Bodily injury by disease – policy limit	\$500,000

- (B) Commercial General Liability Policy with the following minimum coverage:

Each Occurrence Limit	\$1,000,000
Personal & Advertising Injury Limit	\$1,000,000
General Aggregate Limit	\$ 2,000,000
Products/Completed Ops. Aggregate Limit	\$ 2,000,000

- (C) Automobile Liability:

Combined Single Limit	\$1,000,000
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- (D) Professional Liability (Errors and Omissions) Insurance for design professionals, subconsultant engineers and architects, and all other applicable consultants with the following minimum coverage:

For Projects with a budgeted construction cost of more than \$30,000,000:	
i. For ESP	
Per claim	\$3,000,000
Aggregate coverage	\$4,000,000
ii. For Subconsultant Engineers and Architects	
Per claim	\$2,000,000
Aggregate coverage	\$3,000,000
iii. For Other Consultants	
Per claim	\$1,000,000

Aggregate coverage	\$2,000,000
For Projects with a budgeted construction cost of \$20,000,000 up to \$30,000,000:	
i. For ESP	
Per claim	\$2,000,000
Aggregate coverage	\$3,000,000
ii. For Subconsultant Engineers and Architects	
Per claim	\$1,000,000
Aggregate coverage	\$2,000,000
iii. For Other Consultants	
Per claim	\$1,000,000
Aggregate coverage	\$1,000,000
For Projects with a budgeted construction cost of less than \$20,000,000:	
i. For ESP	
Per claim	\$1,000,000
Aggregate coverage	\$1,000,000
ii. For Subconsultant Engineers and Architects	
Per claim	\$1,000,000
Aggregate coverage	\$1,000,000
iii. For Other Consultants	
Per claim	\$1,000,000
Aggregate coverage	\$1,000,000

ESP shall maintain professional liability insurance that shall be either a practice policy or project-specific coverage. Professional liability insurance shall contain prior acts coverage for services performed for this Project. If project-specific coverage is used, these requirements shall be continued in effect for two (2) years following the later of issuance of the Certificate of Acceptance under an Audit Agreement or, if executed, a GESPC.

Additional Insurance Policy Requirements

The foregoing policies shall contain a provision that coverage afforded under the policies will not be canceled, or not renewed, or allowed to lapse for any reason until at least thirty (30) days' prior written notice has been given to Owner. Certificates of Insurance showing such coverage to be in force shall be filed with Owner prior to commencement of any work under this agreement. The foregoing policies shall be obtained from insurance companies licensed to do business in Georgia and shall be with companies acceptable to Owner, which must have a minimum A.M. Best rating of A-. All such coverage shall remain in full force and effect during the term and any renewal or extension thereof.

Within ten (10) business days of execution of the Audit Agreement, the ESP must procure the required insurance and provide Owner with two (2) Certificates of Insurance. Certificates must reference the Audit Agreement (and if executed, the GESPC) by project number. ESP's submitted

pricing must include the cost of the required insurance. No contract performance shall occur unless and until the required insurance certificates are provided.

Owner and ESP waive all rights against each other and each of their subcontractors, agents, employees, each of the other, for damages caused by fire or other perils to the extent covered by property insurance applicable to the ECMs and the Work, except such rights as they have to proceeds of such insurance held by ESP as fiduciary. ESP shall require its consultants and subcontractors, and their agents and employees, by written agreement to execute similar waivers in favor of Owner and ESP. The policies provide such waivers of subrogation by endorsement or otherwise. This waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

SPECIMEN

Attachment E - Proposed Project Cost Form

	State Project Name:	State Project #:
	ESP Name:	Date Submitted:
	Submittal Identifier:	
	HARD COSTS	Percent of Total
	Furnish and Install all ECMs	\$ Amount
	Contingency ¹	
A	SUBTOTAL HARD COSTS	
	SERVICE FEES	Percent of Total
	Payment and Performance Bonds	\$ Amount
	Engineering, Design Plans and Specifications	
	Project Management, Onsite Construction Supervision	
	Investment Grade Audit Fee	
	Maintenance Costs	
	Commissioning	
	Construction Period Interest (if applicable)	
	Cost of Guarantee Security Instrument	
	Other	
B	SUBTOTAL SERVICE FEES	
C	SUBTOTAL DIRECT COSTS (A + B)	
		Percent of Total
	Overhead and General Conditions	\$ Amount
	Profit	
D	SUBTOTAL OVERHEAD, PROFIT	
E	TOTAL PROJECT COST (C + D)²	

Notes:

- 1 Contingency not to exceed 10% of Furnish and Install
- 2 Total Project Cost must match Total Implemented ECM Cost from Attachment_“Implementation Cost by Energy Conservation Measure”

Attachment E - Proposed Project Cost Form

State Agency Name:			State Project #:			
ESP Name:			Date Submitted:			
Submittal Identifier:						
ECM	M&V	Contract Management	O&M	Training	Other	Total
						\$
						\$
						\$
						\$
						\$
						\$
						\$
TOTAL	\$	\$	\$	\$	\$	\$

Attachment G - First Year Estimated Annual Proposed Savings by ECM

State Agency Name:	State Project #:
ESP Name:	Date Submitted:
Submittal Identifier:	

ECM #	ELECTRIC							NATURAL GAS			OTHER			WATER			TOTAL SAVINGS		
	Baseline Consumption ¹ (kWh/yr)	Electric energy savings (kWh/yr)	Electric energy savings (\$/yr)	Baseline Consumption ¹ (kW/yr)	Electric demand savings (kW/yr)	Electric demand savings (\$/yr)	Total annual electric bill savings (\$/yr)	Baseline Consumption ¹ (therms/yr)	Natural gas savings (therms/yr)	Natural gas savings (\$/yr)	Baseline Consumption ¹ (units/yr)	Other energy savings (units/yr)	Other energy savings (\$/yr)	Baseline Consumption ¹ (kgal/yr)	Water savings (kgal/yr)	Water savings (\$/yr)	Total Utility Proposed Savings (\$/yr)	O&M savings (\$/yr)	Estimated annual cost savings (\$/yr)
			[1]			[2]	[3]			[4]			[5]			[6]	[7]	[8]	[7 + 8]
							[1 + 2]										[3 + 4 + 5 + 6]		[7 + 8]
Totals²																			

- Notes:
1. Baseline figures are for ECM savings calculation purposes and are not intended to imply an M&V method, but instead relative savings.
 2. Total savings from ECMs must match those shown in Attachment __ "GESPC Cash Flow Summary"

Attachment H - GESPC Cash Flow Summary

Total Project Cost ¹	
Annual Interest Rate	N/A
Finance Term (years)	N/A
Construction Period (months)	
Guaranteed Savings to	
Projected Savings Ratio	

Escalation Rates - Utilities ²	
Electric	
Natural Gas	
Water/Sewer	
Other (specify)	
Escalation Rate - Continuing Services	
Escalation Rate - ECM Installation	

Year ³	SAVINGS					Payments		TOTAL	
	Utility Savings ⁴	O&M Savings ⁵	Incentives & Rebates	Total Projected Savings	Total Guaranteed Savings	ECM Continuing Services Payments ⁶	ECM Installation Payments ⁷	Total Payments	Net Cash Flow ⁸
1	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
6	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
7	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
8	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
9	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
11	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
12	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
13	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
14	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
15	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
TOTAL	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

- Notes: 1 Must match Total Project Costs on Attachment _ "Project Cost Form"
- 2 Utility Escalation Rates are set by Agency in RFP
- 3 Year 1 is the first full year of post-construction performance
- 4 Includes electricity, natural gas, water/sewer, and other utilities as shown in Attachment _ "First Year Annual Proposed Savings by ECM"
- 5 Any O&M Savings will be rigorously reviewed and must be supported by reducible costs to an agency
- 6 Includes M&V, contract management, maintenance, training, etc. as per Attachment _ "Year One ECM Continuing Services"
- 7 Total ECM Installation Payments must be allocated on a straight-line basis over the Contract Time For Verified Savings
- 8 Net Cash Flow cannot be negative for any year; positive cash flow from one year cannot help make-up another year's shortfall

Attachment H - GESPC Cash Flow Summary

State Agency Name:					State Project #:	
ESP Name:					Date Submitted:	
Submittal Identifier:						
<i>Instructions: Detail ECM Construction Costs – add rows as necessary. Examples shown below for illustration only.</i>						
ECM #	ECM Description	Qty	Unit Cost¹	Total Cost	ECM Subtotal	Comments
1	Lighting Measures				\$240,000	
	Common Area Lighting	300	\$300	\$90,000		
	Office Lighting	1000	\$150	\$150,000		
2	Water Measures				\$35,000	
	Tank/Floor Mount	100	\$300	\$30,000		
	Faucet Aerators	50	\$100	\$5,000		
SUBTOTAL AIA Construction Costs²					\$275,000	

Notes

- 1- Installed unit cost. Does not include service fees, contingency, or overhead and profit.
- 2- Must match Furnish and Install all ECMs on Attachment _ - Project Cost Form