

Execution Copy

ENERGY SAVINGS PERFORMANCE CONTRACT

BY AND BETWEEN

THE CITY OF STAMFORD

AND

CONSOLIDATED EDISON SOLUTIONS, INC.

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ENERGY SAVINGS PERFORMANCE CONTRACT BY AND BETWEEN
THE CITY OF STAMFORD
AND
CONSOLIDATED EDISON SOLUTIONS, INC.

THIS ENERGY SAVINGS PERFORMANCE CONTRACT (the "Agreement") is entered into this ____ day of _____, December, 2016 (the "Effective Date"), by and between *THE CITY OF STAMFORD*, a municipal corporation having its principal place of business located at Stamford Government Center, 888 Washington Boulevard, Stamford, CT 06904 (hereinafter referred to as "Customer" or "Owner") and *CONSOLIDATED EDISON SOLUTIONS, INC.*, a New York corporation having its principal place of business at 100 Summit Lake Drive, Suite 210, Valhalla, NY 10595 (hereinafter referred to as "ConEdison Solutions" or "Contractor"). Customer and ConEdison Solutions are parties to this Agreement and will be collectively referred to as the "Parties" and individually as a "Party."

WHEREAS, Customer issued Request for Proposals No. 649 for Government Center Microgrid and Enhancements to Public Shelters;

WHEREAS, Contractor, as the selected Energy Service Contractor ("ESCO"), submitted a ESCO Response, in response to said Request for Proposals, pertaining to the design, engineering, procurement, installation, financing, savings guarantee, maintenance and monitoring of energy saving measures at the Customer's facilities and to determine the feasibility of entering into an Energy Savings Performance Contract with the Customer to provide for installation and implementation of energy and water saving measures;

WHEREAS, Contractor has made an assessment of the utility consumption characteristics of the Project Site(s) and existing Equipment described in Schedule Q (the "Property"), which was delivered to the Customer and/or its engineering consultant as an Investment Grade Audit Report, the applicable provisions of which have been incorporated into the Schedules attached hereto;

WHEREAS, Customer desires the services of an energy services contractor and desires to contract with the Contractor to perform certain services consisting of the procurement and installation of certain equipment as further described herein a manner that will provide certain energy conservation;

WHEREAS, Contractor is capable of performing the services defined in Schedule B ("Scope of Services"), and agrees to perform such Services, warranty certain equipment, and guarantee certain energy savings to the Customer, in accordance with the terms and conditions set forth herein, at the Customer's buildings described in Schedule Q (the "Property") for reasonable consideration; and

WHEREAS, Customer owns the Property, and is authorized to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the Parties hereby agree as follows:

1. Nature of Engagement. The Contractor is being hired on a lump sum fixed price basis, subject to adjustment only in accordance with this Agreement, to perform the Scope of

Services according to specifications, including design services, installation and construction services, which are more fully described in this Agreement, including all Schedules and Exhibits hereto. The Agreement also provides for Guaranteed Energy and Operational Savings, more fully described in Schedule F.

2. Terms of Engagement. This Agreement shall commence on the Effective Date and shall continue in full force and effect until the Scope of Services and Guaranteed Energy and Operational Savings are completed in accordance with this Agreement, or until the earlier termination of this Agreement as provided herein (the "Term"). Termination, other than for the Contractor's default, shall have no effect on the Customer's obligation to pay for services rendered: (i) under the Investment Grade Audit & Project Proposal Contract dated May 19, 2015 ("IGA Agreement") in the amount of \$95,000 and (ii) for work that has been completed in accordance with this Agreement from the Effective Date of this Agreement through the effective date of any such termination; provided, however, that in the event the Customer terminates the Agreement at any time after more than fifty percent (50%) of the Contract Cost set forth in Section 3(a), below, less that portion of the Contract Cost associated with optional ECM 3 (Street Lighting), has been paid to the Contractor, the Customer shall not owe the Contractor any additional sum for the IGA Agreement.

This Agreement shall end on that date which is exactly three (3) years from the first day of the month following the date of execution of the last of the Final Delivery and Acceptance Certificates are executed by the Customer upon Final Completion of the Scope of Services set forth in Schedule B, unless the Agreement is terminated prior to such date, as provided for in Sections 11, 12, and/or 26 of this Agreement. In addition, Customer may elect to extend the term of the Agreement in one-year increments for an additional period of up to seven (7) years in the aggregate, by: (i) informing Contractor of such election not less than sixty (60) days prior to the expiration of the then current term and (ii) paying the applicable Annual Services Fee set forth in Schedule G in advance. The Scope of Services set forth in Schedule B shall be completed within the time period(s) specified in Schedule H ("Construction Period") for each specific Energy Conservation Measure ("ECM") detailed in Schedule B. Customer shall issue separate Notices to Proceed for each such ECM. The Guaranteed Energy and Operational Savings portions of this Agreement shall commence on the first day of the month following the date the Final Delivery and Acceptance Certificates for each ECM is executed and shall end exactly three (3) years from the first day of the month following the date of execution of the last of the Final Delivery and Acceptance Certificates.

3. Contract Cost and Payment

- (a) Contract Cost. The Contract Cost for the Scope of Services and the Annual Services Fee is set forth in the Contract Cost and Annual Fee Schedule attached hereto as Schedule G, which amount shall not exceed \$11,226,556 (the "Contract Cost"), which Contract Cost includes: (i) the optional street light project and (ii) Annual Services Fees for a three (3) year period only, without an approved Change Order as specified in Section 23. Except as otherwise provided in this Agreement, the Contract Cost includes: Contractor's wages, overhead, general and administrative expenses, insurance and all other direct and indirect costs and profit to be recovered or charged under this Agreement. Any modification to the Scope of Services that increases the Contract Cost of the Scope of Services shall be based upon mutual agreement of the Parties and will require an amendment to this Agreement, pursuant to Section 19(b), and approval by

the Board of Finance, Board of Representatives, Board of Education, and Mayor of the City of Stamford. All local permit fees will be waived by the City; Contractor will remain responsible for State Education Fees required by law.

Pursuant to the City of Stamford's Code of Ordinances, Section 23-18.4 C., Contractor agrees that all contract extras regarding this contract shall be governed by the City of Stamford's Charter and/or Code of Ordinances. Customer shall not be liable for payment of any additional costs, except as otherwise expressly set forth in this Agreement, unless the provisions of the City of Stamford Charter and/or Code of Ordinances are fully complied with. Said Charter and Code of Ordinances can be found at www.municode.com. Equitable adjustments shall be made to the Construction Period, Contract Cost, or both, if: (i) the Customer requests changes to the Scope of Services or (ii) delays Contractor in the performance of the Scope of Services and such requests or delays increase or decrease the Construction Period or the Contract Cost.

- (b) **Warranty.** All equipment, design and installation services performed by the Contractor shall be warranted as set forth in Schedule A ("Contractor Warranties"). In addition, If ConEdison Solutions installs or furnishes, or causes to be installed or furnished, a piece of equipment under this Agreement, and that equipment is covered by a warranty from the manufacturer, ConEdison Solutions will transfer the benefits of that manufacturer's warranty to the Customer upon execution of the Final Delivery and Acceptance Certificate. Customer reserves the right to reject the final design plans if the manufacturers fail to provide a warranty for parts and labor for a least one (1) year from the date the Substantial Completion Certificate is executed. The Customer may purchase an extended warranty from ConEdison Solutions on all equipment installed under this Agreement for an amount to be mutually determined, which amount shall be confirmed by a duly executed Change Order.
- (c) **Invoices.** The Contract Cost for the Scope of Services or portions thereof that are performed shall be invoiced on a monthly basis as work progresses, based on a detailed Schedule of Values as reflected in Schedule I, and in the form of the Application and Certificate for Payment as set forth therein. Invoices shall reflect retainage of ten percent (10%) to be held by the Customer until Final Completion. Such retainage will be released by Customer to Contractor upon issuance of the last of the Final Delivery and Acceptance Certificates as reflected in Schedule E1. Such invoices shall be accompanied by a statement prepared by the Contractor, which indicates in reasonable detail the work performed in the preceding month and shall be payable by Customer within thirty (30) days of the date of the invoice. Past due payments will accrue interest at the lower of: 0.5% per month or the highest rate permitted by law. The final payment of the Contract Cost shall be paid by Customer to Contractor in accordance with Section 4(b), below.
- (d) **Payment Precondition.** As a precondition to payment of each invoice, the Contractor and all subcontractors who have performed work covered by each such invoice shall execute a standard AIA "Release of Liens" for the work covered by such invoice and shall mail, email or fax to the Customer or include such release(s) with such invoice, which shall be satisfactory for purposes of processing each invoice for payment. Original releases should be promptly provided to the Customer.

Contractor shall also complete and provide to Customer a completed Statement of

Payments Made by General Contractor to Subcontractors, a copy of which is attached hereto as Schedule T, within thirty (30) calendar day of receipt of any payment from the Customer.

- (e) Out-of-Pocket Costs; Taxes. The Customer is not obligated to pay sales, use, gross receipts taxes, *ad valorem* or other taxes with respect to the Scope of Services rendered by the Contractor and the Contractor shall not invoice the Customer therefore. Customer shall provide to Contractor any and all documentation necessary to establish its tax-exempt status.
- (f) Sharing of Tax Benefits – Section 179D. Consolidated Edison, Inc. (“CEI”), the ultimate parent company of the Contractor, may be eligible to receive a tax deduction pursuant to Section 179D of the Internal Revenue Code (“§179D”) for certain costs associated with the Contractor’s installation of the ECMs. At Customer’s option, the Contractor agrees to claim tax deductions, through CEI, pursuant to and in accordance with the requirements of 179D, for certain energy efficiency work performed by the Contractor for the Customer, and pay the Customer 50% of the Net Tax Benefit. For purposes hereof, “Net Tax Benefit” shall be calculated by multiplying: (i) the amount of the tax deduction approved by the Internal Revenue Service under §179D for the ECMs installed by the Contractor by (ii) CEI’s then current nominal federal tax for the year the §179D deductions are claimed, and then deducting the Contractor’s expenses for the tax consultant fees paid by Contractor to a third party tax consultant based on the product of: (i) the amount of the deduction claimed by CEI multiplied by the then current CEI nominal tax rate, and (ii) the tax consultant’s fee, but prior to the deduction set forth above.

An example of the calculation of the tax credit follows:

- a. Applicable square footage of City of Stamford facilities where qualified lighting retrofit work is performed: 2,000,000
- b. Maximum tax deduction allowed for qualified lighting retrofit work: \$.60/s.f.
- c. Potential tax deduction = a X b = 2,000,000 X \$.60 = \$1,200,000
- d. Potential tax benefit = c X Consolidated Edison, Inc.’s nominal federal tax rate = \$1,200,000 X 40% = \$480,000 potential tax benefit
- e. Potential value of tax benefit to be shared with the City of Stamford = d minus tax consultant fees = \$480,000 – 12% = \$422,400 potential shareable tax benefit
- f. Potential tax benefit to the City of Stamford = e X 50% = \$211,200.

Such payment would be made by the Contractor to the Customer via check, no later than thirty (30) days after the tax deduction is approved by the Internal Revenue Service. Customer agrees to provide all necessary documentation and approvals required to allow Contractor to claim such tax deductions. Contractor shall have no remedy for damages against Customer should Customer fail to provide such necessary documents or approvals.

The Parties intend this subparagraph (f) to survive Termination as set forth in Section 12 for the Phases of work completed before such termination

(g) Contractor will assist Customer with securing Eversource rebates solely for that portion of the Scope of Work completed by Contractor prior to the effective date of termination and paid for by Customer.

4. Schedule of Payments.

(a) Design and Equipment Installation. All monthly progress payments to ConEdison Solutions shall be made following receipt by Customer of an invoice and Statement prepared by the Contractor, and such payments shall be based on invoices and a schedule of values that includes retainage by the Customer as set forth in Section 3 (c), above.

(b) Final Payment. Final payment, constituting the entire unpaid balance of the Contract Cost, shall be paid by the Customer to the Contractor when:

1. Contractor has fully performed Scope of Services required by the Agreement (including any and all punch list work) except for the Contractor's responsibility to correct work and to satisfy other requirements, if any, which extend beyond final payment; and
2. All Final Delivery and Acceptance Certificates for the Scope of Services have been signed by Customer;
3. All necessary governmental inspections have been conducted and all certificates, including, but not limited to, Certificates of Acceptance and Fire Marshal approval(s), for which the Contractor is responsible have been issued; and
4. Contractor has delivered to the Customer a complete Warranty Book and Operation and Maintenance Manual and all other submittals required under the Scope of Services including without limitation any "as-built" drawings, in a form acceptable to the Customer; and
5. Contractor has delivered an executed AIA G706A, Contractor's Affidavit of Release of Liens and an executed AIA G706, Contractor's Affidavit of Payment of Debts and Claims;
6. Contractor has submitted to Customer all prevailing wage rate documentation; and
7. Contractor shall have provided such training to the Customer's staff as may be required for the staff to comply with the manufacturer's operating and maintenance recommendations and procedures in accordance with Section 21(g), below.

5. Proprietary Rights. It is anticipated that the Contractor will develop or deliver to the Customer certain reports or written recommendations (the 'Work Product'). Nevertheless, the Customer shall own, upon payment to ConEdison Solutions, all rights, title and interest in such Work Product to the extent such materials provide analyses, findings, recommendations or designs uniquely related to the project described in the Scope of Services. The Contractor expressly acknowledges and agrees that the Work Product constitutes "work made for hire" under Federal copyright laws (17 U.S.C. Sec. 101) and is owned exclusively by the Customer and, alternatively, hereby irrevocably assigns to the Customer all right, title and interest in and irrevocably waives all other rights (including moral rights) it might have in the Work Product. The Contractor shall, at any time upon request, execute any reasonable documentation required by the Customer to vest exclusive ownership of the Work Product in the Customer (or its designee). The Contractor retains full ownership of any underlying techniques, methods, processes, skills or know-how used in developing the Work Product and is free to use such

knowledge in future projects.

6. Confidential Information.

- (a) Acknowledgement of Confidentiality. Each Party hereby acknowledges that it may be exposed to confidential and proprietary information belonging to the other Party or relating to its affairs, including, without limitation, source code and design materials for Work Product and other materials expressly designated or marked as confidential ("Confidential Information"). Confidential Information does not include (i) information already known or independently developed by the recipient; (ii) information in the public domain through no wrongful act of the Party; or (iii) information received by a Party from a third Party who was free to disclose it.
- (b) Covenant Not to Disclose. Each Party hereby agrees that during the Term and at all times thereafter it shall not use, commercialize or disclose the other Party's Confidential Information to any person or entity, except to its own employees and/or subcontractors who have a "need to know," to such other recipients as the other Party may approve in writing in advance of disclosure, or as otherwise required by court order, statute or regulation. Each Party shall use at least the same degree of care in safeguarding the other Party's Confidential Information as it uses in safeguarding its own Confidential Information, but in no event shall a Party use less than due diligence and care. Neither Party shall alter or remove from any software, documentation or other Confidential Information of the other Party (or any third Party) any proprietary, copyright, trademark or trade secret legend.

7. Noncircumvention. The Parties acknowledge that each has expended considerable time, effort and resources to create valued-business relationships and promising opportunities with respect to which the other Party may be introduced during the course of this relationship. Therefore, during the Term and for a period of one (1) year thereafter, each Party agrees that it shall not, directly or indirectly hire, solicit, nor attempt to hire or solicit the services or business of any employee of the other Party without the prior written consent of the other Party.

8. Representations and Warranties of Contractor.

The Contractor represents and warrants, as of the date hereof and throughout the Term of this Agreement, as follows:

- (a) The Contractor represents that it has the requisite experience to undertake and complete the Scope of Services pursuant to the requirements of this Agreement and has in its employ qualified, trained personnel and quality equipment accurately calibrated to perform the work required.
- (b) The Contractor represents that its costs were prepared using its best efforts and past experience in light of the facts and circumstances available to it prior to the date of this Agreement and does not expect its costs to be substantially exceeded except for the discovery of facts and circumstances as yet unknown or undiscovered or as a result of changes to the Scope of Services requested by the Customer or delays caused by Customer.

- (c) The Contractor represents that it can complete the Scope of Services within a reasonable time and that the Contractor will commence and complete the Scope of Services within the Construction Period, unless there are delays for reasons of Force Majeure or delays caused by, or suspension of the work by, Customer.
- (d) Contractor represents that it is financially stable and has adequate resources and personnel to complete the Scope of Services in a timely fashion.
- (e) The Contractor's performance of the Scope of Services described herein, will not result in a conflict of interest, will not violate any laws or contractual obligations with third Parties, and is an enforceable obligation of the Contractor.
- (f) The Contractor represents that neither it, nor any of its officers, directors, owners, employees or permitted subcontractors, have committed a criminal violation of federal or state laws arising directly or indirectly from its business operations that resulted in the imposition of a monetary fine, injunction, criminal conviction or other sanction, and further represents that the Contractor, its officers, directors, owners, employees, agents and subcontractors shall comply with the requirements of all laws, rules and regulations applicable to the conduct of its business or the performance of the work under this Agreement.
- (g) The Contractor represents that it will perform the Scope of Services in a good and workmanlike manner and will diligently pursue the completion of such work in accordance with the terms of this Agreement.
- (h) The Contractor represents that it (or a primary subcontractor) possess all required licenses and permits that may be required to perform the Scope of Services.
- (i) The Contractor represents and warrants that the performance of the Scope of Services (including Work Product) will not infringe upon or misappropriate any United States copyright, trademark, patent, or the trade secrets or other proprietary material of any third persons. Upon being notified of such a claim, the Contractor shall (i) defend, at no expense to the Customer, through litigation or obtain through negotiation the right of the Customer to continue using the Services of the Contractor; (ii) revise the Scope of Services so as to make them non-infringing while preserving the original functionality, or (iii) replace the Scope of Services with the functional equivalent. If the Customer determines that none of the foregoing alternatives provide an adequate remedy, the Customer may terminate all or any part of this Agreement and, in addition to other relief, recover the amounts previously paid to the Contractor hereunder.

9. Customer Representations and Warranties.

Customer hereby warrants and represents to ConEdison Solutions that:

- (a) Customer presently intends to continue to use the Property in a manner reasonably similar to its present use;
- (b) Customer 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 ConEdison Solutions by Customer in writing prior

to the execution of this Agreement;

- (c) Customer has provided ConEdison Solutions with all records heretofore requested by ConEdison Solutions and, in that regard, ConEdison Solutions acknowledges that it has received base period data from Customer 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 Customer in writing;
- (d) Customer has not, prior to the Effective Date of this Agreement, entered into any undisclosed contracts or agreements for the Property with persons or entities other than ConEdison Solutions regarding the provision of the energy services referenced herein. Notwithstanding the foregoing representation, Customer may contract freely with respect to the optional Street Lighting project, referenced in Section 3(a), above, and for that portion of the Scope of Services relating to ECM 5 (HVAC DX Units Retro-commissioning at Stamford Government Center) for which an allowance is included in the Contract Cost set forth in Section 3(a), above.

10. Remedies and Liabilities.

- (a) Remedies. In addition to other remedies expressly acknowledged hereunder and except as expressly limited herein, the Customer shall have, but not be limited to, the full benefit of all remedies generally available to a purchaser of goods under the Uniform Commercial Code.
- (b) Limit of Liability. THE CONTRACTOR SHALL BE LIABLE TO CUSTOMER FOR ANY ACT OR OMISSION, WHICH DIRECTLY (BUT ONLY TO THE EXTENT THE ACT OR OMISSION DIRECTLY) RESULTS IN DAMAGE TO OR LOSS OF PROPERTY OR PERSONAL INJURY, BREACHES OF PROPRIETARY RIGHTS, CONFIDENTIAL INFORMATION, NON-CIRCUMVENTION AND ANY BREACH OF CONTRACTOR'S OBLIGATIONS AS SET FORTH IN THE CONTRACT. WITH THE EXCEPTION OF SECTION 5 ("PROPRIETARY RIGHTS"), SECTION 6 ("CONFIDENTIAL INFORMATION") OR SECTION 7 ("NON-CIRCUMVENTION"), NEITHER PARTY TO THIS CONTRACT SHALL BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST SAVINGS OR PROFIT OF CONTRACTOR) SUSTAINED BY THE OTHER PARTY OR ANY OTHER INDIVIDUAL OR ENTITY FOR ANY MATTER ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THIS CONTRACT. THE PARTIES HEREBY EXPRESSLY ACKNOWLEDGE THAT THE FOREGOING LIMITATIONS HAVE BEEN NEGOTIATED BY THE PARTIES AND REFLECT A FAIR ALLOCATION OF RISK. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT THE CUSTOMER'S RIGHT TO ENERGY SAVINGS IN ACCORDANCE WITH THE ENERGY SAVINGS GUARANTEE AGREEMENT. NOTWITHSTANDING THE FOREGOING, CONTRACTOR ACKNOWLEDGES THAT IT SHALL BE RESPONSIBLE TO CUSTOMER FOR THE COST OF ALTERNATE/TEMPORARY SCHOOL CLASSROOMS, AND/OR SUITABLE RENTAL SPACE AND COSTS REASONABLY RELATED THERETO SHOULD ANY ACT OR OMISSION OF CONTRACTOR WHILE PERFORMING THE SCOPE OF WORK RENDER THE PROPERTY UNFIT FOR THE CONTINUED EDUCATION AND RESPONSIBILITIES OF CUSTOMER'S STUDENTS OR EMPLOYEES. BECAUSE

CUSTOMER WILL SUFFER MATERIAL DIRECT DAMAGES, CONTRACTOR AGREES THAT IN ADDITION TO THE COSTS OF ALTERNATE/TEMPORARY CLASS ROOMS AND/OR SUITABLE RENTAL SPACE, THE EXACT AMOUNT OF WHICH WILL BE DIFFICULT TO DETERMINE AND ACCURATELY SPECIFY, CONTRACTOR AGREES THAT IN SUCH EVENT THE CONTRACTOR SHALL PAY TO THE CUSTOMER, AS LIQUIDATED DIRECT DAMAGES AND NOT AS A PENALTY, A PER DIEM AMOUNT OF ONE THOUSAND (\$1,000.00) DOLLARS FOR EACH SCHOOL DAY WITH RESPECT TO EACH INDIVIDUAL SCHOOL LISTED ON SCHEDULE Q, DURING WHICH ANY SUCH SCHOOL IS RENDERED UNUSABLE. IN ADDITION, SOLELY AS REGARD THE COOLING TOWER REPLACEMENT ECM, IN THE EVENT THAT AS A RESULT OF ITS ACTS OR OMISSIONS CONTRACTOR FAILS TO PROVIDE ADEQUATE COOLING TO THE CUSTOMER'S GOVERNMENT CENTER, CONTRACTOR SHALL PAY TO CUSTOMER, AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY, A PER DIEM AMOUNT OF \$1000 PER CALENDAR DAY FOR EACH SUCH DAY THAT COOLING IS NOT PROVIDED. SUCH LIQUIDATED DAMAGES ARE HEREBY AGREED TO BE A REASONABLE PRE-ESTIMATE OF DIRECT DAMAGES. CUSTOMER MAY DEDUCT LIQUIDATED DAMAGES FROM ANY UNPAID AMOUNTS THEN OR THEREAFTER DUE THE CONTRACTOR. ANY LIQUIDATED DAMAGES NOT SO DEDUCTED SHALL BE PAYABLE BY THE CONTRACTOR TO CUSTOMER, TOGETHER WITH INTEREST, FROM THE DATE OF DEMAND.

11. Notices. Notices sent to either Party shall be effective on the date delivered in person by hand or by overnight mail service or on the date received when sent by certified mail, return receipt requested, to the other Party or such other address as a Party may give notice of in a similar fashion. The addresses of the Parties are as follows:

To: City of Stamford Corporation Counsel
888 Washington Blvd, 9th Floor
Stamford, CT 06904
Attention: Kathryn Emmett, Esq.
Corporation Counsel

To: Consolidated Edison Solutions, Inc.
100 Summit Lake Drive, Suite 210
Valhalla, NY 10595
Attention: Vice President, Energy Services

12. Termination for Default, General; Termination for Convenience.

- (a) This Agreement shall terminate upon expiration of the Term or upon the earlier termination by one of the Parties in accordance with the terms hereof. In addition to other relief, either Party may terminate this Agreement if the other Party breaches any material provision, including payment hereof, and fails after receipt of written notice of default to advise the other Party in writing within fifteen (15) business days of its intentions with respect to such default and in any event fails to correct or cure such default within thirty (30) business days of the receipt of notice of default. If such default cannot be cured or corrected within such thirty (30) business day period and the defaulting Party details in writing to the other the reasons why such default cannot be

so corrected or cured, the other Party shall give an additional sixty (60) day period to correct or cure such default and the defaulting Party shall with best efforts and due diligence promptly commence and consistently pursue corrective or curative action reasonably acceptable to the aggrieved Party to completion. Either Party shall be in default hereof if it becomes insolvent, makes an assignment for the benefit of its creditors, or if a receiver is appointed or a petition in bankruptcy is filed with respect to the Party and is not dismissed within thirty (30) days. Termination shall have no effect on the Parties' respective rights or obligations under Section 6 ("Confidential Information"), Section 7 ("Noncircumvention"), or Section 8 ("Representations and Warranties of Contractor"), or on the Customer's obligation to pay for services rendered: (i) under the IGA Agreement (except as otherwise provided in Section 2, above) and (ii) for Scope of Services that had been completed in accordance with this Agreement from the Effective Date through the effective date of any such termination.

- (b) The Contractor may not terminate for convenience. The Customer may terminate the Agreement for its convenience, however, upon giving Contractor fifteen (15) days prior written notice of termination. In the event of a termination for convenience by the Customer, the Customer shall be obligated to pay Contractor that portion of the Contract Cost for all work adequately performed pursuant to this Agreement after the Effective Date and up to the date of termination, as well as unbilled costs of labor, materials, permitting fees, and other unavoidable charges directly related to the Scope of Services, which amount shall be payable within thirty (30) days of the date of termination. In addition, Customer shall be responsible for the actual cost of any "restocking" fee, not to exceed twenty-five percent (25%), of the cost of materials ordered and shipped for the Building Lighting ECM, plus shipping costs, which materials are required to be returned as a result of Customer's termination of the Agreement for its convenience; and provided further, Contractor shall not arrange for the shipping and/or delivery of materials for the Building Lighting ECM more than three (3) weeks prior to starting installation for each Project Site identified on Schedule Q, unless otherwise approved by the Customer in writing.

13. Resolution of Disputes and Choice of Law.

- A. EXECUTIVE MEETING. The Parties shall endeavor to resolve all claims, disputes, or other matters in controversy arising out of or related to this Agreement ("Claims") through a meeting of the chief executives of each party, or their respective designees ("Executive Meeting").

A request for an Executive Meeting shall be made by a party in writing and delivered to the other Party. The request may be made concurrently with the filing of a non-binding mediation as set forth herein. The Executive Meeting shall be a condition precedent to mediation unless thirty (30) days have passed after the Executive Meeting has been requested with no meeting having been held.

The Executive Meeting shall be held in the place at a mutually agreed location in the City of Stamford, unless another location is mutually agreed upon.

- B. **MEDIATION.** Any Claim subject to, but not resolved by, an Executive Meeting shall be subject to mediation which, unless the Parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation.

The request may be made concurrently with the filing of arbitration but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of thirty (30) days from the date of filing, unless stayed for a longer period by agreement of the Parties or court order; provided, however, that either Party may terminate the mediation by written notice to the other Party at any time after the second day of mediation. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held at a mutually agreed location in the City of Stamford unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- C. **ARBITRATION.** Any Claim subject to, but not resolved by, mediation shall, at the request of either Party, be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law.

Any judgment will be entered or court action will be brought in a court of competent jurisdiction within the State of Connecticut.

- D. **PERFORMANCE DURING DISPUTE.** Unless otherwise directed by the Customer, the Contractor shall continue performance under this Agreement while matters in dispute are being resolved.
- E. **CLAIMS FOR DAMAGES.** Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF THE UNITED STATES AND THE STATE OF CONNECTICUT WITHOUT REGARD TO THAT STATE'S CHOICE OF LAW PROVISIONS. ANY ACTION BROUGHT PURSUANT TO THIS AGREEMENT, IF NOT OTHERWISE RESOLVED BY ARBITRATION, SHALL BE BROUGHT IN THE STATE SUPERIOR COURT IN STAMFORD, CT, OR THE FEDERAL DISTRICT COURT IN BRIDGEPORT, CT.

14. Independent Contractor Status. The Contractor and its approved subcontractors are independent contractors in relation to the Customer with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the Parties. The Contractor shall remain responsible, and shall indemnify and hold harmless the Customer, from and against all liability for the withholding and payment of all Federal, state and local personal income, wage, earnings, occupation, social security, worker's compensation, unemployment, sickness and disability insurance taxes, payroll levies or employee benefit requirements (under ERISA, state law or otherwise) now existing or hereafter enacted and attributable to the Contractor, its subcontractors and their respective employees.
15. Security, No Conflicts. Each Party agrees to inform the other of any information made available to the other Party that is classified or restricted data, agrees to comply with the security requirements imposed by any state or local government, or by the United States Government, and shall return all such material upon request. Each Party warrants that its participation in this Agreement does not conflict with any contractual or other obligation of the Party or create any conflict of interest prohibited by the U.S. Government or any other government and shall promptly notify the other Party if any such conflict arises during the Term.
16. Indemnifications; Insurance
 - (a) Indemnification. ConEdison Solutions and Customer each agree to defend, indemnify and hold harmless the other, their elected officials (if applicable), officers, department heads, employees and agents from and against any and all claims, liabilities, obligations, causes of action for damages arising out of the negligence or misconduct of the indemnifying Party, including direct damage to the Customer's or ConEdison Solutions' property, and costs of every kind and description arising from work or activities under this Agreement and alleging bodily injury, personal injury, property damage regardless of cause, except that the indemnifying Party shall not be responsible or obligated for claims arising out of and to the extent of the negligence or misconduct of the indemnified Party, its elected officials, officers, department heads, employees or agents.
 - (b) INSURANCE AND BONDS. The Contractor shall maintain such paid-up insurance as will adequately protect the Contractor and the City of Stamford the Board of Education and their respective officers, directors, agents and employees from damages for personal injury (including death) and/or property damage, which may arise from or which may in any way be related to the work or services to be provided hereunder, in such amounts and types as the risk management department of the City of Stamford shall deem reasonably necessary to adequately protect the Contractor, the City of Stamford, the Board of Education and their respective directors, officers, agents and employees.

At a minimum, the Contractor shall maintain the following insurance coverages:

- **PERFORMANCE BOND AND PAYMENT BOND.** Performance and payment bonds are required for this Agreement. Contractor shall furnish surety bonds from a licensed surety in the State of Connecticut and acceptable to the Customer. The surety bonds shall be in the form of traditional bonds or in the form an irrevocable letter of credit drawn on a financial institution acceptable to the Customer in the full amount of that portion of the Contract Cost for which Customer has issued a Notice to Proceed. Said surety bonds shall be for the faithful and proper performance of all persons/corporations performing work towards the acceptable completion of this Agreement. The cost of all such required surety bonds shall be borne entirely by Contractor. The originals of said surety bonds shall be provided to the Customer before any Scope of Services under the related Notice to Proceed is performed on the Property. The performance and payment bonds must both be underwritten by an insurance company licensed to do business in the State of Connecticut and currently listed in the Department of Treasury's Listing of Approved Sureties (Most Recent Circular) and rated B+ or better by A. M. Best. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this Agreement, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished. Such Bonds shall not expire before Final Payment is made by Customer.
- Commercial general liability insurance in an amount of \$1,000,000 combined single limit per occurrence for bodily injury and property damage and \$2,000,000 in the aggregate. This insurance shall contain, but not be limited to, contractual liability insurance, which covers any indemnities contained in this Agreement, products liability and completed operations coverage, which shall be maintained for a period of not less than three (3) years following completion of the Scope of Services, personal injury and advertising liability, broad form property damage coverage and operations liability.
- Commercial automobile liability insurance in an amount of \$1,000,000 combined single limit per occurrence for bodily injury and property damage. This insurance shall cover, but not be limited to, all owned, non-owned and hired/leased vehicles.
- Excess (umbrella) liability insurance in an amount of \$10,000,000 per occurrence and in the aggregate. This insurance shall provide additional limits of liability for the commercial general liability, commercial automobile liability and employer's liability coverage.
- Workers' compensation insurance, which complies with all the workers' compensation laws and regulations of the State of Connecticut.
- Employer's liability insurance, which contains limits of liability of \$500,000 each accident, \$500,000 disease policy limit and \$500,000 disease each employee.
- Professional liability, which contains a limit of liability of \$1,000,000 per occurrence and \$1,000,000 in the aggregate and covers all work and services to be provided by the Contractor pursuant to this Contract.
- All risk property insurance covering tools and equipment insurance, on a replacement cost basis, which are brought to the work sites, but are not intended to become part of the temporary construction requirements or part of the permanent structures, buildings or improvements.
- All risk property insurance covering materials and equipment, which are intended to become part of the temporary construction requirements or permanent buildings, structures or improvements.

The commercial general liability and automobile liability insurance policies required hereunder shall designate the City of Stamford, the Stamford Public Schools, the Stamford Board of Education, their employees, agents and officers as additional insureds.

Contractor shall use commercially reasonable efforts to have its insurance carrier provide thirty (30) days prior written notice to the Risk Manager of the City of Stamford in the event of cancellation, termination or material change in coverage. If despite the use of such commercially reasonable efforts, Contractor is unable to have its insurance carrier provide such notice, Contractor shall itself provide to Customer such notice, with any failure on the part of Contractor to provide such notice being a material breach of the Agreement, entitling Customer to actual damages.

The Contractor agrees to waive any right of any claim, loss or damage against the City of Stamford, the Stamford Public Schools, the Stamford Board of Education and their employees, agents and officers, which may be covered by any insurance required hereunder. All insurance required hereunder shall be endorsed to provide waivers of subrogation against the City of Stamford, the Stamford Public Schools, the Stamford Board of Education and their employees, agents and officers.

The City of Stamford shall be designated as loss payee with respect to the all-risk property insurance on materials and supplies intended to become part of the temporary construction requirements or permanent buildings, structures or improvements.

Any insurance required hereunder written on a "claims made" rather than on an occurrence basis shall contain a retroactive date no later than the earlier of the commencement date of the services under this Agreement or its execution and shall provide that in the event of cancellation or non-renewal, the discovery period for insurance claims (Tail Coverage) shall be available for at least sixty (60) months following termination of the services under this Agreement or termination of the Agreement, whichever is later.

The Contractor agrees to provide the Risk Manager for the City of Stamford with copies of all ~~bonds~~ certificates of insurance confirming the insurance required pursuant to this Agreement, prior to commencement of services under this Agreement hereunder and throughout the full term of this Agreement upon expiration or termination or change in any insurance coverage required hereunder.

The insurance requirements of the Agreement are an integral part of this Agreement. Any defect in the insurance program required in the Agreement may result in termination of this Agreement, as stipulated hereunder. No employee or the entity can modify the terms of the Agreement without the prior approval of Corporation Counsel and the Chief Administrative Officer or his/her designee.

The Contractor shall require its contractors/sub-contractors to maintain insurance coverage in accordance with applicable law, and as may reasonably be determined to be required by the Contractor, and such insurance shall designate the City of Stamford, the Stamford Public Schools, the Stamford Board of Education, their employees, agents and officers as additional insureds.

17. Nondiscrimination. The Contractor agrees not to discriminate, nor permit discrimination,

against any person in its employment practices, in any of its contractual arrangements, in all services and accommodations it offers the public, and in any of its other business operations on the grounds of race, color, national origin, religion, sex, disability or veteran status, marital status, mental retardation or physical disability, unless it can be shown that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut, and further agrees to provide the Commissioner of Human Rights and Opportunities with information which may be requested from time to time by the Commission concerning the employment practices and procedures of both Parties as they relate to the provisions of Section 4-114a of the Connecticut General Statutes and any amendments thereto. This Agreement is subject to the provisions of the Governor's Executive Order No. 3 promulgated June 16, 1971, and, as such, this Agreement may be canceled, terminated, or suspended by the State Labor Commission for violation of, or noncompliance with, Executive Order No. 3, or any State or Federal law concerning nondiscrimination, notwithstanding that the Labor Commissioner is not a Party to this Agreement. The Parties to this Agreement, as part of the consideration hereof, agree that Executive Order No. 3 is incorporated herein and made a part hereof. The Parties agree to abide by Executive Order No. 3 and agree that the State Labor Commissioner shall have continuing jurisdiction in respect to performance in regard to nondiscrimination, until the Agreement is completed or terminated prior to completion. The Parties agree as part of the consideration hereof that this Agreement is subject to the Guidelines and Rules issued by the State Labor Commissioner to implement Executive Order No. 3 and that they will not discriminate in employment practices or policies, will file reports as required, and will fully cooperate with the State of Connecticut and the State Labor Commissioner.

18. Communications. All non-routine communications shall be made in writing to the Office of the Corporation Counsel of the Customer, or its attorney designee, so long as such communications preserve the attorney/client privilege.

19. Miscellaneous.

- (a) Entire Agreement. This document and the identified exhibits and schedules made a part hereof or incorporated herein, constitute the entire and exclusive agreement between the Parties with respect to the subject matter hereof and supersede all other communications, whether written or oral.
- (b) Modifications. This Agreement may only be modified or amended in writing. Amendments to this Agreement may require approval from the City of Stamford Board of Finance, Board of Representatives, Board of Education, and Mayor.
- (c) Prohibition Against Assignment. Except as specifically permitted in this Section and in Section 24, below, neither this Agreement nor any rights or obligations hereunder may be transferred, assigned or subcontracted by the Contractor without the Customer's prior written consent, not to be unreasonably withheld, and any attempt to the contrary shall be void; provided, however, that Contractor may assign this Agreement to: (i) an affiliate of ConEdison Solutions resulting from an internal corporate reorganization or merger, provided that the Consolidated Edison, Inc. payment guarantee referenced in Section 25(e), below, shall remain in effect with its terms; or (ii) a purchaser of all or substantially all of the assets of Contractor's energy services business, who shall provide a replacement guarantee or other credit support reasonably acceptable to Customer, and provided further, that in the case of preceding clauses (i) or (ii), the assignee shall agree in writing to

be bound by and assume all of Contractor's rights and obligations under this Agreement.

- (d) Partial Invalidity. Any provision hereof found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be deleted and the balance of the Agreement shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect.
- (e) Partial Waiver. The waiver of any provision hereof in one instance shall not preclude enforcement thereof on future occasions.
- (f) Headings. Headings are for reference purposes only and have no substantive effect.
- (g) Survival. All representations and warranties contained herein shall survive for the term of this Agreement unless earlier terminated; each Party's indemnification obligations surviving for the applicable statute of limitations.
- (h) Precedence of Documents. In the event there is any conflict between: (i) this Agreement and the Schedules thereto and (ii) the General Conditions attached as Exhibit 1, the Agreement and Schedules shall control and take precedence; provided that in the event the Agreement and Schedule are silent on an issue or provision contained in the General Conditions, such silence shall not be construed as a conflict.
- (i) Customer may, without consent of Contractor, assign this Agreement to a lender providing construction financing for the Scope of Services, if the lender assumes the Customer's rights and obligations under this Agreement and Contractor shall execute all consents reasonably required to facilitate such assignment.
- (j) Set Off. Customer shall, pursuant to City of Stamford Ordinance 23-18.4.1, have the right to set off or withhold any payment, or portion thereof, due the Contractor under this Agreement, for an up to the amount of any taxes, penalties, lien fees or delinquent interest that have been levied by the Customer against any property of the Contractor, both real and personal, provided such taxes owed by the Contractor are delinquent and have been delinquent for a period of not less than one year.

20. Contractor's Responsibilities.

(a) General

- (i) Contractor shall be responsible for the purchase and installation of equipment in accordance with Schedule B attached to this Agreement;
- (ii) Contractor shall obtain whatever permits are necessary for the services, by the submission of design plans and specifications, in the manner required by the State of Connecticut, the City of Stamford Engineer, Inspectors and Local Building Official, including design drawings and specifications needed for the Customer's review process to insure compliance with all Health, Fire, Safety and Engineering requirements. Customer shall provide reasonable assistance and cooperation to Contractor in securing such permits.
- (iii) Contractor shall prepare Final Design Plans in conformance with Schedule B.

- (iv) The Contractor must obtain written approval of Final Design Plans, pursuant to (iii) above, from the Customer prior to the commencement of the Installation Schedule set forth in Schedule H, and said approval shall not be unreasonably withheld. Customer acknowledges that if the Contractor has submitted the Final Design Plans in compliance with the Scope of Work in Schedule B a review period of more than thirty (30) days will cause a delay in the construction period that will be attributed to Customer. Said plans shall include a list of vendors to be approved for all phases of the Scope of Work in Schedule B including, but not limited to, the purchase of all equipment and control systems, and all construction, demolition, restoration and installation procedures. Failure of the Contractor to obtain written approval of Final Design Plans shall terminate this entire Agreement or, in the sole discretion of the Customer, only the portion of the Scope of Services that pertains to the unacceptable Final Design Plans. Notwithstanding the requirements of Section 12, the Customer's obligation to pay the Contractor for Final Design Plans shall remain a valid and binding obligation. The Cost to the Customer for engineering services necessary to produce Final Design Plans shall not exceed Fifty Thousand (\$50,000.00) Dollars.
- (v) At all times during the period when the Scope of Services are being performed at one or more of the Properties listed in Schedule Q, Contractor shall one or more of Contractor's representatives identified below shall be physically present within the City of Stamford in order to provide installation supervision, inspection, labor materials, tools, installation equipment and subcontracted items necessary for the execution and completion of the services in Schedule B set forth and attached to the Agreement. Without limiting the foregoing, Dylan Albach (albachd@conedsolutions.com) and Michael Smith (smithm@Conedsolutions.com) will be the Contractor's primary points of contact for any communications from the Customer requiring an immediate response. ~~In the event that either~~ Neither of the foregoing individuals ~~are may be~~ reassigned by the Contractor, without the Customer's prior approval, not to be unreasonably withheld, of the Contractor shall consider any reasonable objections raised by the Customer to such replacements, replacement.
- (vi) Contractor shall secure and pay for all necessary approvals, assessment, and charges required for the permanent changes in existing facilities not owned by the Customer and associated with the Scope of Services, but the Customer shall assist in the preparation of these applications. If easements are required, the Contractor shall notify the Customer ninety (90) days in advance so that Eminent Domain procedures, or other appropriate measures at the sole discretion of the Customer may be taken to secure said easements if they pertain to property not currently owned by the Customer.
- (vii) Contractor shall give all notices and comply with all statutes, regulations and ordinances legally enacted as of the Effective Date of this Agreement, which govern the execution of the Scope of Services. Provided, however, that the Contractor shall not be responsible nor liable for any violation of any code, law or ordinance caused by the Customer, or that existed in the Customer's property prior to the commencement of the services conditioned upon the Contractor using due diligence to avoid the existing condition by utilizing State "Call Before You Dig", National Electrical Safety Code, and National Gas Pipeline Safety

Regulations requirements, and other procedures required for the work by the laws of this State.

- (viii) Contractor shall fully comply with the requirements of the City of Stamford Code of Ordinances, Sections 103-1 through 103-10, regarding contractors in general. Failure to so comply shall constitute a material breach of the terms of this Agreement. The provisions of the City Code can be found at www.municode.com. Contractor shall provide to Customer a fully executed Contractor's Statement Pursuant to Section 103-1, which is attached hereto as Schedule R.
- (ix) Pursuant to City of Stamford Sec. 103.10, Contractor shall comply with and shall be responsible for the compliance of its subcontractors with:
 - a. All state and federal laws and regulations regarding prevailing wages;
 - b. All applicable state and federal laws and regulations, regarding maintenance and participation in apprenticeship training programs;
 - c. All applicable state laws concerning employee insurance; and
 - d. All state and federal laws concerning classification of employees as employees rather than independent contractors, workers' compensation, unemployment compensation and social security and income tax withholdings.

(b) Services

- (i) Construction Services. Upon delivery by the Customer to Contractor of a Notice To Proceed for a particular ECM, substantially in the form attached to this Agreement as Schedule D, Contractor shall furnish all labor, materials and equipment and perform all work required for the completion of the Scope of Services for that ECM only, as set forth in Schedule B, including the installation of the energy conservation measures listed therein ("ECMs"). Customer and Contractor shall mutually plan the scheduling of the construction work. The construction work will be planned to minimize the interruption of the daily routine of Customer's staff and students except as permitted in writing by Customer. It is anticipated that the Building Lighting Upgrades portion of the Scope of Services ~~set forth in Schedule B~~ shall primarily be performed after normal work/school hours as set forth in Schedule B, and on weekends and holidays, provided that Customer will work with Contractor in an effort to permit work to be performed at such other times provided that the performance of the work does not unduly burden or disrupt activities at the Property- or interfere with student activities. No adjustments to the Contract Price shall be made for this schedule. Contractor shall be responsible for any additional costs to Customer for custodial overtime, police overtime, project inspection overtime directly and reasonably required for the completion of the Scope of Services.
- (ii) All labor furnished under this Agreement shall be competent to perform the tasks undertaken, that all materials and equipment provided shall be new and of appropriate quality, and that the completed work shall comply with the requirements of this Agreement.
- (iii) Installation/Specifications: In connection with the Building Lighting Upgrade ECM, Customer, at its option, may reasonably request to have ConEdison Solutions

provide a sample installation of the ECM at no cost to the Customer prior to full implementation of the ECM.

- (iv) Site Operations and Storage Areas. The Contractor shall confine all operations (including storage of materials) on Customer premises to areas authorized of approved by the Customer. The Contractor shall abide by the following terms and conditions regarding the Site of Operation and/or Storage Areas.
- a. Temporary buildings (e.g. storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Customer and shall be built with labor and materials furnished by the Contractor without expense to the Customer. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. Only with written consent of the Customer, may the buildings and utilities that are abandoned not need to be removed. Utilities for temporary buildings shall be under the Customer's account; however, the Contractor is responsible for any utility usage at the temporary facilities. Contractor shall also be responsible for all costs incurred by its staff for paper, copies, office supplies, mail, patching, security and security personnel at temporary buildings, barricades, fencing, and winter weatherization.
 - b. The Contractor shall, under regulations prescribed by the Customer, use only established roadways, or use temporary roadways constructed by the Contractor when and as authorized by the Customer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks to meet the new Federal guidelines, or roads to their pre-existing condition, to the satisfaction of the Project manager.
 - c. The Contractor shall keep the premises and surrounding area clean and free from accumulation of non-hazardous waste materials, trash, or refuse during performance of the work under this Agreement. The Contractor shall provide floor and roof protection at all times and leave work areas broom-clean at the end of every day. The Contractor, upon instruction by the Customer, will promptly clean any portion of the site or remove any non-hazardous debris that, in the reasonable opinion of the Customer was created by the Contractor, and poses an unacceptable threat to the safety of workers or public.
 - d. If Contractor damages property not needed for the work, Contractor shall repair the property to its pre-existing condition to the reasonable satisfaction of the Customer, unless the Customer directs otherwise. At the completion of the work, Contractor shall remove non-hazardous waste material that is supplied or generated by the Scope of Services under the Agreement as well as its tools, construction/installation equipment, machinery and surplus material. Contractor shall dispose of all non-hazardous waste materials or rubbish caused by its operations and shall also be responsible for disposal of PCB ballasts and cooling tower waste materials removed from the facilities by

the Contractor in performance of the activities defined in the Scope of Services, in a manner prescribed by the rules and regulations of the State of Department of Environmental Protection. When refrigerants are involved, the Contractor shall reclaim, store, reuse and dispose of all refrigerants in accordance with the rules and regulations of the State Department of Environmental Protection. Between the time of removal and disposal, the Contractor may store certain items nearby at a location designated by the Customer, with the prior written permission of the Customer.

- (v) Protection of work and of Persons and Property. During the performance and up to the date of final acceptance, the Contractor shall be under an absolute obligation to protect the finished and unfinished work against any damage, loss or injury. In the event of such damage, loss or injury, he or she shall promptly replace or repair such work, whichever the Customer shall determine to be preferable. The obligation to deliver finished work in strict accordance with the Agreement prior to final acceptance shall be absolute and shall not be affected by the Customer's approval of or failure to prohibit means and methods of construction used by the Contractor or Subcontractors.

During the performance and up to the date of final acceptance, the Contractor must take all reasonable precautions to protect the persons and property of the Customer and of others from damage, loss or injury resulting from his or his subcontractor's negligent operations under this Agreement, except such property as any other Party or the Customer thereof may themselves be under legal duty to protect.

The Contractor's obligation to protect shall include the duty to provide, replace and adequately maintain at or about the site suitable and sufficient guards (i.e. personnel with sufficient security training to insure the protection of the site), lights, barricade and enclosures as applicable at the Contractor's sole cost.

Within ten (10) days after notice to the Customer of the happening of any such loss, damage or injury to work, persons or property, the Contractor shall make a full and complete report thereof in writing to the Customer.

The provisions of this Section shall not be deemed to create any new right of action in favor of third Parties against the Contractor, or Customer.

- (vi) Use of Subcontractors. A Subcontractor is a person or entity that has a direct contract with the Contractor to perform any effort in connection with the work. The term subcontractor does not include any separate contractors employed by the Customer or such separate contractors' subcontractors.

At the option of the Contractor, Contractor may subcontract some or all of the Scope of Services. Any subcontractors proposed for use by the Contractor other than those listed on Schedule C must be approved by the Customer in writing prior to Contractor proceeding to implement the Scope of Services for each ECM under this Agreement, in accordance with Schedule C attached hereto. The Customer shall not unreasonably withhold or delay its approval of any such subcontractors.

For the purposes of this Agreement, no contractual relationship exists between the Customer and any subcontractor. Contractor shall be responsible for the management of its subcontractors in their performance of their work, the payment of all fees and expenses, and shall indemnify the Customer from all claims for wages or damages associated with the Scope of Services. The Contractor shall adhere to the additional terms and conditions regarding the use of Subcontractors, as set forth below.

1. Before entering into any subcontract hereunder, the Contractor shall inform the subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the work to be performed and the materials to be furnished under such subcontract, and every such contractor shall expressly stipulate that all labor performed and materials furnished hereunder shall strictly comply with the requirements of this Agreement.
 2. The agreement between the Contractor and its subcontractors shall contain the same terms and conditions as to method of payment for work, labor and materials and as to retained percentages as are contained in this Agreement.
 3. The Contractor shall pay its subcontractors for and on account of work performed by such subcontractors in accordance with the terms of their respective subcontracts and the prevailing wage requirements set by the Connecticut Department of Labor. Contractor shall provide Customer a fully executed Statement of Payments Made by General Contractor to Subcontractors, attached hereto as Schedule T, within thirty (30) calendar days of the receipt of any payment from the Customer. The Customer shall be entitled to withhold future payments to the Contractor until such time as said statement has been received by the Customer.
 4. No subcontractor shall be permitted to perform work at the site until it has furnished satisfactory evidence to Contractor and the Customer of insurance covering Workers' Compensation and General Liability insurance, as required, and said subcontractor has been approved by the Customer.
 5. Each subcontractor shall provide Customer a fully executed Affidavit of Non-Collusion, attached hereto as Schedule S before said subcontractor shall be consider approved by the Customer.
- (vii) Contractor will provide equipment manuals and other appropriate information regarding equipment installed hereunder to Customer at or about the time of Substantial Completion, including commissioning procedures and on-going maintenance and service requirements.

21. Customer's Responsibilities

- (a) Property Access. The Parties understand that it is the Customer's obligation to obtain legal access to each property listed in Schedule B, Scope of Services. The Contractor shall not be held liable for any unlawful entry onto any property where such entry has been ordered, requested or directed by the Customer in writing.

- (b) The Customer shall provide the Contractor with information regarding ongoing projects or other activities that could reasonably be expected to impact Contractor's performance of the Scope of Services set forth in Schedule B.
- (c) Changes to the Scope of Services shall require the review, approval of both Parties, including Customer officials, and the modification of the Agreement. The Customer shall provide the staff necessary to make such a review and recommendation to Customer officials.
- (d) The Customer shall furnish the Contractor with all utility location information in its records, but this shall not relieve the Contractor from the due diligence of verifying the correctness of this information with the State "Call Before You Dig" Agency.
- (e) If easements are required, the Contractor shall notify the Customer ninety (90) days in advance of the date when such an approved easement is required to maintain the construction schedule. Upon such notice, the Customer shall, at its sole option, initiate Eminent Domain procedures, or whatever appropriate measures are necessary to secure easements if they pertain to property not currently owned by the Customer. The services and information required by this paragraph only shall be furnished with reasonable promptness at the Customer's expense and Contractor shall be entitled to rely upon the accuracy and the completeness thereof, unless additional due diligence by the Contractor is required.
- (f) Except as disclosed in AHERA reports provided by the Customer to Contractor, the Customer is unaware of the presence of any condition that would provide an unsafe work environment for Contractor's performance of the Scope of Services, including, but not limited to, the presence of: a) materials or substances classified as toxic or hazardous either (i) on or within the walls, floors, ceilings or other structural components, or (ii) otherwise located in the work area, including any asbestos or presumed asbestos-containing materials, formaldehyde, containers or pipelines containing petroleum products or hazardous substances, etc., other than as disclosed and specifically referenced and assumed by Contractor in Schedule B. If any such materials, situations or conditions, whether disclosed or not, are in fact discovered by Contractor or others and provide an unsafe condition for the performance of the Scope of Services, the discovery of the material, situation or condition shall constitute a cause beyond Contractor's reasonable control and Contractor shall provide notice of the condition to the Customer and immediately cease or not commence the Scope of Services until the area has been made safe by the Customer or the Customer's representative, at the Customer's expense. The remediation of any condition described herein shall be the sole responsibility of the Customer. In the event any such hazardous materials are found to be present, Contractor shall be entitled to an extension of time to the Construction Period on a day-for-day basis for such delay.
- (g) Operations: The Customer shall operate the equipment installed hereunder in accordance with the manufacturers' recommendations and the procedures and operating manuals supplied to the Customer by Contractor. Contractor shall provide all necessary training to Customer's personnel as may be reasonably required in order for Customer to comply with the manufacturer's operating and maintenance recommendations and procedures.

- (h) Maintenance: The Customer shall, at its expense, maintain the Property in good working order during the Term of this Agreement and shall maintain, at Customer'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.
- (i) Malfunctions: The Customer will notify ConEdison Solutions immediately in the event of any malfunction in the operation of the ECMs or the equipment installed hereunder.
- (j) Protection of ECMs: Except in the case of emergency, the Customer 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 ConEdison Solutions, which approval shall not be unreasonably withheld, unless an emergency exists. After receiving ConEdison Solutions' approval, Customer shall proceed as instructed. Customer shall act reasonably to protect the ECMs from damage or injury, if, due to an emergency, it is not reasonable to notify ConEdison Solutions before acting. Customer 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.
- (k) Measurement System: Customer shall not alter, move, modify or otherwise change the measurement and verification system or any component thereof without the written consent of ConEdison Solutions unless such action is in accordance with operating procedures provided by ConEdison Solutions.
- (l) Adjustment to Baseline: If, in the reasonable opinion of ConEdison Solutions, the Customer does not reasonably protect the ECMs and/or maintain the Property in good repair and good working condition, then ConEdison Solutions will equitably adjust the baseline, as referenced in Schedule F, for any increased energy usages at the Property.
- (m) Changes to Property: The Customer will notify ConEdison Solutions in writing at least thirty (30) days prior to making any change to the Property that would materially change 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, faculty and students), the activity conducted, the equipment, or the size of the Property. In the event ConEdison Solutions receives such notification or otherwise determines that such a change has occurred, it will make the appropriate revisions to the Schedules or take such other action as may be provided for hereunder.
- (n) Energy Usage Data: The Customer will make available to ConEdison Solutions, on a quarterly 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 Customer, as requested by ConEdison Solutions, which is necessary for ConEdison Solutions to determine and satisfy all of its obligations under this Agreement.
- (o) Insurance and Risk of Loss or Damage: Without limiting any of its obligations or liabilities under this Agreement, the Customer 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.

If, following Customer's execution of Final Delivery and Acceptance Certificates, 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) days from the date of such casualty, ConEdison Solutions and/or Customer may terminate this Agreement by delivery of a written notice to the other Party. Upon such termination, Customer shall pay ConEdison Solutions any amounts, or pro-rata portions thereof for the installation of equipment and maintenance and services to date, if applicable, accrued under Section 3.

- (p) Telephone: Customer is responsible for installing and maintaining telephone lines or other required data lines, and all associated costs for communications required by the control systems within the cooling tower at Stamford Government Center.
- (q) Protection: Customer 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.
- (r) Alteration: Customer 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 ConEdison Solutions' prior written approval that shall not be unreasonably withheld.
- (s) Utilities: Customer shall procure and pay for all energy and fuel for the operation of the Property, except for the use of utilities by the Contractor at temporary onsite buildings.

22. Installation and Acceptance

The work to be performed under this Agreement shall be commenced and substantially completed, as further defined herein, and as set forth in the Scope of Services and Installation Schedule and attached hereto as Schedules B and H. The dates and times for the commencement and completion of the Scope of Services must be agreed to in writing by the Parties and incorporated into Schedule H. For the purposes of this Agreement the term "Substantial Completion" shall ~~mean that a definable portion of an ECM, has been installed and is substantially completed by ConEdison Solutions, and, if such ECMs are equipment, that said equipment is operating as defined in a manner consistent with each manufacturers' intended use~~ the General Conditions attached as Exhibit 1. Contractor shall notify Customer in writing when it believes that a definable portion of an ECM is substantially complete. Within five (5) business days after Customer's receipt of Contractor's notice, Customer and Contractor will jointly inspect the relevant installed scope of work to verify that it is substantially complete in accordance with the requirements of this Agreement. If the installation is substantially complete, Contractor shall prepare and Customer shall issue a Certificate of Substantial Completion in the form attached hereto as Exhibit E2 that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final acceptance, (iii) provisions (to the extent not already provided in this Agreement) establishing Customer's and Contractor's responsibility for the security, maintenance, utilities and insurance of the substantially complete Equipment and ECMs pending completion and (iv) an acknowledgement that warranties commence to run in accordance with the provisions of Schedule A hereof, on the date of Substantial Completion, except as may otherwise be modified by vendors and noted in the Certificate of Substantial Completion. For any portions of an ECM

reasonably determined by Customer during the inspection as not being substantially complete, Customer will promptly provide Contractor with a written statement identifying specific material performance deficiencies of non-warranty items that must be corrected or completed before Customer accepts the Scope of Services as complete. Contractor will complete all items identified by Customer as required for substantial completion, and once completed, Contractor will provide a written request for a final inspection by Customer to verify that the Scope of Services is now complete. Such ~~final-re~~ inspection shall occur within five (5) business days after Customer's receipt of Contractor's notice for final inspection. In the event that the Substantial Completion certificate is not issued within ten (10) business days of the completion of the inspection, it will be deemed approved.

- (a) THE ISSUANCE OF MONTHLY PAYMENTS PRIOR TO THE EXECUTION OF FINAL DELIVERY AND ACCEPTANCE CERTIFICATES SHALL NOT CONSTITUTE ACCEPTANCE OF THE WORK.
- (b) THE PARTIES INTEND THAT FINAL DELIVERY AND ACCEPTANCE CERTIFICATES IN ACCORDANCE WITH SCHEDULE E WILL BE EXECUTED BY THE CUSTOMER FOR THE FINAL COMPLETION OF WORK AS SOON AS ALL WORK IS INSTALLED, OPERATING, AND FINAL INSPECTIONS HAVE BEEN PERFORMED BY ALL LOCAL AND STATE OFFICIALS. IF THE WORK PERFORMED BY THE CONTRACTOR FAILS TO PASS A FINAL INSPECTION BY THE CUSTOMER, THE CUSTOMER SHALL PROVIDE THE CONTRACTOR WITH A WRITTEN STATEMENT IDENTIFYING SPECIFIC MATERIAL PERFORMANCE DEFICIENCIES THAT IT WISHES CONTRACTOR TO CORRECT. CONTRACTOR WILL USE REASONABLY DILIGENT EFFORTS TO CORRECT ALL SUCH MATERIAL DEFICIENCIES AND WILL GIVE WRITTEN NOTICE TO THE CUSTOMER WHEN ALL SUCH ITEMS HAVE BEEN CORRECTED. EXECUTION AND DELIVERY BY THE CUSTOMER OF SUCH FINAL DELIVERY AND ACCEPTANCE CERTIFICATES WITH RESPECT TO THE WORK SHALL CONSTITUTE "ACCEPTANCE" OF SUCH WORK PERFORMED BY CONTRACTOR PURSUANT TO THE INSTALLATION SCHEDULE IN SCHEDULE H ATTACHED, BUT SHALL NOT AFFECT THE CUSTOMER'S RIGHT TO CANCEL THIS AGREEMENT IF THE EQUIPMENT FAILS TO PERFORM TO THE CUSTOMER'S REASONABLE SATISFACTION. CUSTOMER SHALL NOT UNREASONABLY WITHHOLD OR DELAY THE EXECUTION AND DELIVERY OF ANY FINAL DELIVERY AND ACCEPTANCE CERTIFICATE.

23. Changes in the Project

- (a) A Change Order is a written order signed by the Customer authorizing a change in the work, including but not limited to changes to the Scope of Services set forth in Schedule B and/or the Construction Period. A Change Order that will increase or decrease the Contract Cost or add or eliminate a portion of the Scope of Services will require a written amendment to the Agreement that must be executed by both Parties and approved by the appropriate authorities of the City of Stamford, which may include approval by the City of Stamford Board of Finance, Board of Representatives, and Board of Education.
- (b) The Customer may request Contractor to submit proposals for changes in the work. However, if the Customer chooses not to proceed, all costs incurred in preparing the proposal shall be borne by the Customer only if Customer has previously agreed in writing to the reasonableness of such costs prior to such costs being incurred by the Contractor.

- (c) The Customer, may request Contractor to submit proposals for subsequent phases of work to include additional ECM's and/or additional facilities beyond those included within the Scope of Services set forth in Schedule B. Each such additional ECM (or group of ECM's) will have a separate scope of work, contract cost, term and guarantee, all of which will require a written amendment to the Agreement that must be executed by both Parties and approved by the appropriate authorities of the City of Stamford, which may include approve by the City of Stamford Board of Finance, Board of Representatives, and Board of Education. In the event that Customer accepts such proposal, the Parties understand and agree that the general terms, conditions, representations, warranties and other provisions set forth in this Agreement shall also apply to such subsequent phase of work, subject only to the Parties' agreement as to the specific scope of work and contract cost for such services.
- (d) If conditions are encountered at the site that are: (1) subsurface or otherwise concealed physical conditions which differ materially from those indicted in this Agreement, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in this Agreement, then notice by the observing Party shall be given to the other Party promptly before conditions are disturbed and in no event later than twenty-one (21) days after the first observance of the conditions and, if appropriate, an equitable adjustment shall be made by a Change Order authorized by the Customer.

If Contractor performs any work-related activity involving an error, omission, discrepancy, unsuitability or other inconsistency which Contractor knew of, or reasonably should have known of, without first reporting same to Customer, Contractor shall be responsible for all defects, delays, damages and additional costs to Owner arising from or relating thereto, including without limitation all costs of correction, inspection, testing, supervision and project administration.

- (e) In any emergency affecting the safety of persons or property, Contractor shall act, at its discretion, to prevent threatened safety of the students and building personnel, damage, injury or loss. This section shall not act to limit Contractor's liability for such actions or inactions for any such emergency resulting from Contractor's acts.

24. Ownership of ECMs

Ownership of and title to the Energy Conservation Measures ("ECMs") referenced in Schedule B shall vest in the Customer on a pro rata basis, based upon percentage of completion of the ECM as invoiced by Contractor. Transfer of title shall occur upon payment to Contractor of Customer approved invoices. Upon such payments, Customer's pro rata ownership rights in each ECM shall be in accordance with the schedule of values that accompanied the applicable Customer approved invoices. This ownership shall transfer exclusive of payment obligations related to maintenance or other annual services hereunder.

25. Guarantee of Energy Savings

- (a) Con Edison Solutions hereby represents, warrants and guarantees to the Customer that the amount of the annual Energy and Operational Savings during the Term shall equal or exceed the Guaranteed Energy and Operational Savings specified in Table F1 and

F2, with such savings to be adjusted to reflect any reductions to the Scope of Services.

(b) For the purposes of this guarantee, the following assumptions and provisions will apply:

- (i) Calculation of energy consumption and savings shall be performed under, and governed by, the methods, formulas, and procedures described in Schedules F and L.
- (ii) (ii) "Year" shall mean the consecutive twelve (12) month period beginning with the first day of the month following the date on which the Customer executes the last of the Final Delivery and Acceptance Certificates as set forth in Schedule E, with respect to Substantial Completion of the Scope of Services (the "Anniversary Date"), and each subsequent twelve (12) month period thereafter.
- (iii) The savings guaranteed hereunder are subject to the Customer performing its obligations under this Agreement, which affect the achieved savings. In the event that Customer fails to perform, or fails to properly perform, its obligations under this Agreement or interferes with, or permits any person to take any action that prevents the achievement of savings under this guarantee, ConEdison Solutions may adjust the savings during the period wherein savings were affected to reflect the same. ConEdison Solutions' rights in this section shall not be in limitation of any other rights it possesses under this Agreement.

(c) ConEdison Solutions will perform a guarantee reconciliation within 120 days from each Anniversary Date ("Guarantee Reconciliation"). The Guarantee Reconciliation will calculate the cumulative Energy Savings achieved in relation to the cumulative Guarantee of Energy Savings for the subject year being reconciled.

(d) In the event that the cumulative Energy Savings realized by the Customer as of any Anniversary Date, as detailed in the Guarantee Reconciliation, is less than the Guaranteed Energy Savings as of that Anniversary Date, then ConEdison Solutions will pay to the Customer the difference between actual and Guaranteed Energy Savings, such payment to be made within 120 days from the subject Anniversary Date, except with respect to such energy saving payments which ConEdison Solutions has previously made to Customer. For the purposes of the Guarantee Reconciliation, the cumulative Guarantee of Energy Savings shall include all such savings guaranteed from the first day of the month following the date of execution of the last of the Final Delivery and Acceptance Certificates to the subject Anniversary Date and the cumulative Energy Savings shall include all such savings provided from the first day of said month to the subject Anniversary Date.

The Parties intend this Section to survive Termination as set forth in Section 12 for the Phases of work completed before such termination and for such ECMs for which Customer continues to pay the prorated Annual Services Fee for that portion of the Scope of Services completed prior to Termination.

(e) ConEdison Solutions' corporate parent, Consolidated Edison, Inc., shall provide Customer with a payment guarantee, substantially in the form attached hereto as Exhibit 2, to backstop the Guaranteed Energy and Operational Savings, in the amount of \$3,000,000, for a period of three (3) years from the date of Final Acceptance, with the amount and term of such guarantee being subject to adjustment to reflect the actual

Scope of Services performed and term of this Agreement. In the event that such corporate guarantee is terminated at any time during the period referenced in the preceding sentence, ConEdison Solutions shall, prior to such termination, provide a ~~replacement guarantee or other credit support (e.g., a~~ letter of credit from a national bank) reasonably acceptable to the Customer.

26. Defaults

- (a) Customer shall be in default under this Agreement upon the occurrence of any of the following:
- (i) Customer fails to pay when due any amount to be paid under this Agreement, and such failure then continues for an additional period of ten (10) business days after notice of overdue payment is delivered by ConEdison Solutions to the Customer;
 - (ii) (ii) Customer fails to perform or meet any of its required duties or obligations under this Agreement and fails to cure such failure and the effects of such failure within thirty (30) days of receipt of written notice of default, unless such failures and effects cannot be completely cured within thirty (30) days after said written notice, in which case the procedures for additional time to cure the default set forth in Section 12 shall apply;
 - (iii) Customer goes into receivership, or makes an assignment for the benefit of creditors whether voluntary or involuntary, or a petition is filed by or against the Customer under any bankruptcy, insolvency or similar law and such petition is not dismissed within thirty (30) days.
- (b) ConEdison Solutions shall be in default under this Agreement upon the occurrence of the following:
- (i) Contractor furnishes any statement, representation, warranty, guaranty, certification in connection with this Agreement that is materially false, deceptive or incorrect;
 - (ii) Contractor is declared bankrupt, has a petition in bankruptcy filed against it, or if the Contractor file for bankruptcy protection;
 - (iii) Contractor causes or threatens to cause or create labor unrest, dispute, picketing, slowdowns, work stoppage, strike or disharmony; or
 - (iv) Contractor fails to perform or meet any of its required duties, obligations, warranties or guarantees under this Agreement, and Contractor fails to cure such failure(s) or effects of such failure(s) within thirty (30) days of receipt of written notice of default, unless such failure(s) or effects cannot be completely cured within thirty (30) days after said written notice, in which case the procedures for additional time to cure the default as set forth in Section 12 shall apply.

27. Remedies for Defaults

- (a) In the event Customer defaults under this Agreement, ConEdison Solutions:
- (i) may, subject to the Resolution of Disputes and Choice of Law provisions in Section 13, bring actions for any remedies available at law or in equity or other

appropriate proceedings for the recovery of direct damages, (including amounts past due); and

- (ii) without recourse to legal process, ConEdison Solutions may terminate this Agreement by delivery of written notice of termination.

(b) In the event ConEdison Solutions defaults under this Agreement, Customer may terminate this Agreement and avail itself to any all remedies in law or equity allowed and/or not disallowed by this Agreement.

(c) In no event shall Contractor's failure to complete the Scope of Services by the end of the Construction Period be construed as an event of default under Section 26(b), if such delay is for reasons attributable to the Customer.

28. Force Majeure and Excusable Delay

The Parties hereto, respectively, shall not be in default of this Agreement if either is unable to fulfill or is delayed in fulfilling, any of its respective obligations hereunder, or is prevented or delayed from fulfilling its obligations, in spite of its employment of best efforts and due diligence, as a result of natural disasters, unusually severe weather, transportation delays, catastrophic events, casualties to persons or properties, war, governmental preemption in a national emergency, enactment of law, rule or regulation or change in existing laws, rules or national emergency, enactment of law, rule or regulation or change in existing laws, rules or regulations which prevent or adversely affect any Party's ability to perform its respective obligations under this Agreement, or actions by other persons beyond the exclusive control of the Party claiming hindrance or delay, including employees of the other Party, except for the Customer's obligation to make payments when due. If a Party believes that a hindrance or delay has occurred, it shall give prompt written notice to the other Party of the nature of such hindrance or delay, its effect upon such Party's performance under this Agreement, the action needed to avoid the continuation of such hindrance or delay, and the adverse effects that such hindrance or delay then has or may have in the future on such Party's performance. Notwithstanding notification of a claim of hindrance or delay by one Party, such request shall not affect, impair or excuse the other Party hereto from the performance of its obligations hereunder unless its performance is impossible, impractical or unduly burdensome or expensive in accordance with the terms of this Agreement as set forth in Section 23(c), above, due to unforeseen conditions as determined by the agreement of the Parties including subsurface conditions, or cannot effectively be accomplished without the cooperation of the Party claiming delay or hindrance. The occurrence of such a hindrance or delay may constitute a change in the scope of service, and may result in the need to adjust the Contract Cost in accordance with the terms of this Agreement. In that event, the Agreement must be amended and approved in accordance with Section 19(b) herein.

Any decision by the Customer to close or change the use of the facilities or ECMs at the Property shall not constitute a Force Majeure excusing Customer's performance under this Agreement.

29. Books and Records

To assist ConEdison Solutions in its performance of this Agreement, in addition to the data to be provided pursuant to Section 21, the Customer shall (to the extent it has not already done so) furnish (or cause its energy suppliers to furnish) to ConEdison Solutions, upon its

request, accurate and complete data (kept by Customer or Customer's energy suppliers in the regular course of their respective businesses) concerning energy usage for the existing facilities at the Property, including the following data for the most current thirty-six (36) month period: utility records, occupancy information; descriptions of any changes in building structure or heating, cooling or other systems or energy requirements; descriptions of all energy consuming or saving equipment used on Property; descriptions of all energy management procedures presently utilized. If requested by ConEdison Solutions, Customer shall also provide any prior energy analyses of the Property to the extent reasonably available.

Contractor shall maintain or cause to be maintained all records, books, drawings, specifications, addenda, and other documents related to the Scope of Services to be provided by Contractor pursuant to this Agreement and also any documents relative to charges, costs, expenses, fees, subcontracts, alleged breaches of this Agreement, settlement of claims, or any other matters pertaining to the Contractor's demand for compensation from the Customer, all for a period of not less than three (3) years from the date of the final payment for work performed under this Contract

30. Absence of Fraud or Collusion

ConEdison Solutions hereby certifies, by its execution of this Agreement, that no official or employee of Customer 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. Contractor shall provide to Customer a fully executed Affidavit of Non-Collusion, which is attached hereto as Schedule S.

During the term of this Agreement, including any extensions, Contractor shall refrain from making gifts of money, goods, real or personal property or services to any appointed or elected official or employee of The City of Stamford, The Stamford Public Schools or The Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies or Authorities. All references to the Contractor shall include its members, officers, directors, employees, and owners of more than 5% equity in the Contractor. Violation of this provision shall constitute a material breach of this Agreement, for which this Agreement may be summarily terminated.

Contractor shall comply with the City of Stamford Code of Ethics as codified in Chapter 19 of the City of Stamford Code of Ordinances and shall be considered an "employee" as defined in that Chapter for the purposes of compliance thereto. Failure to so comply shall constitute a material breach of the terms of this Agreement. The provisions of the City of Stamford Code can be found at www.municode.com.

31. 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 ConEdison Solutions covenants and agrees to execute or procure the execution of all documents reasonably required to release any lien held by ConEdison Solutions or its assignees upon the termination of this Agreement and payment of all amounts required to be paid by Customer to ConEdison Solutions, pursuant to this Agreement, including, but not limited to, the Termination Value, if any. It being further

agreed and understood that Customer 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 ConEdison Solutions in obtaining such funds.

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

32. Non-appropriation

Contractor acknowledges that Customer is a municipal corporation and that Customer's obligation to make payments under this Agreement is contingent upon the appropriation by Customer's Board of Representatives. 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. This Agreement is not a general obligation of the Customer. The full faith and credit of the Customer is not pledged to the payment of any amount due or to become due under this Agreement. 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 purposes of this Agreement.

It is understood by Contractor that Customer has not, as of the Effective Date of this Agreement, appropriated funds for the street lighting ECM included in the Scope of Services and all such projects shall remain optional, subject to the approved terms and conditions contained in this Agreement.

33. 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.

34. References

Unless otherwise stated all references to a particular Schedule or to Schedules herein are to the referenced Schedule or Schedules which are attached to this Agreement and all such referenced Schedules 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.

35. Approval

This Agreement shall not be executed until all necessary State or local approvals are obtained.

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.

CONSOLIDATED EDISON SOLUTIONS, INC.

Mark Noyes
President and Chief Executive Officer

Witness

CITY OF STAMFORD

David R. Martin
Mayor

Witness

Approved as to Form

Approved as to Insurance

Chris Dellaselva
Assistant Corporation Counsel

Ann Marie Mones
Risk Manager