State of Washington **ENERGY PROGRAM** Department of Enterprise Services P.O. Box 41476 Olympia, WA 98504-1476	**INTERAGENCY AGREEMENT**	
	IAA No.:	K5613
CITY OF SEQUIM 152 West Cedar Street Sequim, Washington 98382	Date:	October 19, 2018

INTERAGENCY AGREEMENT

BETWEEN

CITY OF SEQUIM

AND

WASHINGTON STATE DEPARTMENT OF ENTERPRISE SERVICES

Pursuant to RCW chap. 39.34 and RCW chap 39.35C, this *Interagency Agreement* (*Agreement*) is made and entered into by and between the State of Washington acting by and through the Energy Program of the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and City of Sequim, a Washington State governmental agency ("Client Agency") and is dated and effective as of the date of the last signature.

RECITALS

A. Enterprise Services, through its Energy Program ("Energy Program"), helps owners of public facilities reduce energy and operational costs. Energy Program is a national leader in developing and managing energy savings performance contracts that help reduce energy and operational costs pertaining to publicly-owned facilities.

B. Upgrading to energy efficient infrastructure helps reduce long-term operations and maintenance costs. This allows owners to be better financial stewards while achieving their mission, so that Washington is a better place to live, learn, and work.

C. Acting as the owner's advocate, Energy Program delivers professional expertise and contract management services. By leveraging capital investments, owners can achieve efficiencies, improve facilities, and yield carbon reductions in their publicly-owned facilities. Energy Program also creates value to owners by managing risk through guaranteed total project costs, equipment performance, and energy savings.

D. Client Agency, an owner of a public facility, desires to contract with Energy Program to access and obtain certain Energy Program Services.

E. The purpose of this Agreement is to establish a vehicle for Energy Program to provide future energy/utility conservation project management services to Client Agency and to authorize the development of the energy services proposal in a cost-effective, efficient manner.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties agree as follows:

1. **TERM.** The term of this *Agreement* commences as of the date of the last signature and ends **December 31, 2022**. Substantial completion of the project will include the delivery and acceptance of the notice of commencement of energy cost savings issued by the energy services company ("ESCO").

2. **STATEMENT OF WORK.**

   A. ENERGY PROGRAM. Energy Program agrees to provide the following Services:

      i. Upon request by Client Agency for energy services for a specific Energy/Utility Conservation Project(s), the Parties shall execute an amendment to this *Agreement* to specify the project and associated project management fees. Enterprise Services shall furnish necessary personnel and services as specified and set forth in Attachment A, *Project Management Services Scope of Work.*

      ii. Assist in Dispute Resolution. Dispute resolution is an ongoing process throughout the project. However, this assistance does not include formal dispute resolution, arbitration or legal advice or representation in any legal action, and does not include legal fees and costs related to any dispute. Formal dispute resolution begins when a written claim is received demanding arbitration or other legal process is received. All formal dispute fees and costs will be borne separately by Client Agency. The Attorney General cannot and will not represent or advise a non-state agency.

   B. CLIENT AGENCY. Client Agency agrees to the following:

      i. Will conform to the protocols of this *Agreement*, including Enterprise Services' *General Conditions for Washington State Energy Savings Performance Contracting ("General Conditions")*, as supplemented.

      ii. Will conform to the requirements of the *General Conditions* for timely processing and approval of agreed upon changes to construction contracts involving cost, and for payment.

      iii. Will conform to the following guidelines for communications between Client Agency, Enterprise Services and ESCOs through the design, construction and post-construction phases as outlined below:

         a) Communications between Client Agency, Energy Program Project Manager ("PM") and ESCO shall go through the PM. The PM may authorize exceptions for specific projects or situations. The PM may authorize the ESCO to communicate directly with Client Agency personnel to expedite the design and to avoid communication delays. This action does not authorize additional work, change in scope, or exclude copying all communications between ESCO and Client Agency to the PM.

         b) All drawings, specifications, reports, and project correspondence must contain the State Project Number and suffix.

            - The State Project Number consists of the fiscal year and a numerical sequence number, for example 2018-024, followed by an alphabetical suffix.
            - Professional services agreements have suffixes A through F, for example 2018-024 A.
            - Construction contracts have suffixes G through Z, for example 2018-024 G.

iv. All identification and monitoring of documentation required by the funding source shall remain the responsibility of Client Agency.

3. **COMPENSATION AND REQUIREMENTS.**

A. COMPENSATION. Compensation under this *Agreement* shall be by amendment to this *Agreement* for each authorized project. Each amendment shall include a payment schedule for the specific project.

i. Project Management Services Scope of Work (Attachment A): For project management services provided by Energy Program, Client Agency shall pay Enterprise Services a Project Management Fee for services based on the total project value (including Washington state sales tax) per the Project Management Fee Schedule set forth in Attachment B.

ii. Termination Fee: If Client Agency, after authorizing an investment grade audit and energy services proposal, decides not to proceed with an energy/utility conservation project that meets Client Agency's cost effective criteria, then the Client Agency will be charged a termination fee as set forth in Project Management Fee Schedule. The termination fee shall be based on the estimated total project value outlined in the energy services proposal prepared by the ESCO.

iii. Measurement & Verification Services ("M&V") Scope of Work (Attachment C): If M&V are requested by Client Agency beyond the first three years following the notice of commencement of energy cost savings, Client Agency shall pay Enterprise Services $2,000.00 annually for each year that such M&V are provided.

B. PAYMENT FOR ESCO SERVICES. In the event that Client Agency enters into a contract with an Energy Program pre-qualified ESCO, pursuant to an *Enterprise Services Master Energy Services Agreement for ESCO Services*, Client Agency shall make payment for such contracted services directly to the ESCO, after Energy Program has reviewed, verified, and sent such invoices to Client Agency for payment.

C. FURTHER ASSURANCES. Client Agency shall provide the ESCO with any additional necessary or desired contract language to comply with Client Agency's obligations pertaining to its use of federal, state, or other grants, funding restrictions, or unique contract/entity requirements. The ESCO and their subcontractors are required to comply with all applicable federal regulations and reporting procedures.

D. MANAGING COMPLIANCE WITH STATE AND FEDERAL LAW. In all ESCO project agreements and contracts pertaining to this *Agreement*, Energy Program will require ESCO's compliance with applicable federal and state laws and state policies including, but not limited to, the following:

1. RCW Title 39 and 43
2. ADA Requirements
3. Buy America
4. Davis-Bacon
5. Prevailing Wage
6. DBE Participation
7. Apprentice Participation

Upon request by Client Agency, Energy Program will collect and provide the weekly-certified payroll to Client Agency. Client Agency, however, shall remain responsible for any documentation required by Client Agency's funding source. All federal verification, investigation, survey, reporting and enforcement requirements when there is a possible violation shall remain the

responsibility of the federal grant recipient (Client Agency) unless negotiated by Energy Program and added by amendment to this *Agreement*. In the event that Energy Program becomes aware of a possible violation, it will notify Client Agency.

4. **INVOICES AND BILLING.**

   A. BILLING PROCEDURE. Enterprise Services shall submit invoices to Client Agency upon substantial completion and notice of commencement of energy cost savings of each authorized project, unless an amendment specifies special billing conditions and timeline. Each invoice will clearly indicate that it is for the services rendered in performance under this *Agreement* and shall reflect this *Agreement* and Amendment number. Energy Program will invoice for any provided services within sixty (60) days of the expiration or termination of this *Agreement*.

   B. PAYMENT PROCEDURE. Client Agency shall pay all invoices received from Enterprise Services within ninety (90) days of receipt of properly executed invoice vouchers.

   C. BILLING DETAIL. Each invoice submitted to Client Agency by Enterprise Services shall include information as is necessary for Client Agency to determine the exact nature of all expenditures. At a minimum, the invoice shall reference this *Agreement* and include the following:

      - The date(s) such services were provided
      - Brief description of the services provided
      - Total invoice amount

   D. BILLING ADDRESS. Invoices shall be delivered to Client Agency electronically to:

      Email: asoule@sequimwa.gov

5. **AGREEMENT MANAGEMENT.** The parties hereby designate the following *Agreement* administrators as the respective single points of contact for purposes of this *Agreement*, each of whom shall be the principal contact for business activities under this *Agreement*. The parties may change administrators by written notice as set forth below. Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services
Attention: Lisa Steel
Energy Project Manager, Energy Program
Washington Dept. of Enterprise Services
Post Office Box 41476
Olympia, Washington 98504-1476
Tel: (360) 407-9373
Email: lisa.steel@des.wa.gov

Client Agency
Attn: Ann Soule
Resource Manager
City of Sequim
152 West Cedar Street
Sequim, Washington 98382
Tel: (360) 582-2436
Email: asoule@sequimwa.gov

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

The Client Agency representative shall be responsible for working with Energy Program, approving billings and expenses submitted by Energy Program, and accepting any reports from Energy Program or ESCO.

The Energy Program representative shall be the contact person for all communications regarding the conduct of work under this *Agreement*.

6. **RECORDS.**

   A. AGREEMENT AVAILABILITY. Prior to its entry into force, this *Agreement* shall be posted on the parties' websites or other electronically retrievable public source as required by RCW 39.34.040.

   B. RECORDS RETENTION. Each party shall maintain records and other evidence that sufficiently and properly reflect all direct and indirect costs expended by either party in the performance and payment of the services. These records shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and officials authorized by law. Such records shall be retained for a period of six (6) years following expiration or termination of this *Agreement* or final payment for any service placed against this *Agreement*, whichever is later; Provided, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

   C. OWNERSHIP. Records and other information, in any medium, furnished by one party to this *Agreement* to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third party without first providing notice to the other party and allowing ten (10) business days in which to file, at its sole expense, a motion seeking a protective order, or other legal action. Each party will utilize reasonable security procedures and protections to assure that records and information provided by the other party are not erroneously disclosed to third parties.

   D. PUBLIC RECORDS. This *Agreement* and all related records are subject to public disclosure as required by RCW 42.56, the Public Records Act (PRA). Neither party shall release any record that would, in the judgment of the party, be subject to an exemption from disclosure under the PRA, without first providing notice to the other party and allowing ten (10) business days in which to file, at its sole expense, a motion seeking a protective order, or other legal action.

7. **RESPONSIBILITY OF THE PARTIES.** Each party to this *Agreement* assumes responsibility for claims and/or damages to persons and/or property resulting from any act or omission on the part of itself, its employees, or its agents. Neither party assumes any responsibility to the other party for any third party claims.

8. **DISPUTE RESOLUTION.** The parties shall use their best, good faith efforts cooperatively and collaboratively to resolve any dispute that may arise in connection with this *Agreement* as efficiently as practicable, and at the lowest possible level with authority to resolve such dispute. The parties shall make a good faith effort to continue without delay to carry out their respective responsibilities under this *Agreement* while attempting to resolve any such dispute. If, however, a dispute persists regarding this *Agreement* and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree on a mutual resolution within fifteen (15) business days, the parties shall abide by the Governor's dispute resolution process (RCW 43.17.330), if applicable, or collectively shall appoint a third party to evaluate and resolve the dispute and such dispute resolution shall be final and binding on the parties.

9. **TERMINATION FOR CONVENIENCE.** Except as otherwise provided in this *Agreement*, either party may terminate this *Agreement* upon thirty (30) calendar days prior written notification. Upon such

termination, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this *Agreement* prior to the effective date of such termination.

10. **GENERAL PROVISIONS.**

A. COMPLIANCE WITH LAW. The Parties shall comply with all applicable law.

B. INTEGRATED AGREEMENT. This *Agreement* constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.

C. AMENDMENT OR MODIFICATION. Except as set forth herein, this *Agreement* may not be amended or modified except in writing and signed by a duly authorized representative of each party.

D. AUTHORITY. Each party to this *Agreement*, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this *Agreement* and that its execution, delivery, and performance of this *Agreement* has been fully authorized and approved, and that no further approvals or consents are required to bind such party.

E. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this *Agreement*. Neither party is an agent of the other party nor authorized to obligate it.

F. GOVERNING LAW. The validity, construction, performance, and enforcement of this *Agreement* shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules.

G. JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Agreement, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.

H. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this *Agreement* in their entirety.

I. CAPTIONS & HEADINGS. The captions and headings in this *Agreement* are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this *Agreement* nor the meaning of any provisions hereof.

J. ELECTRONIC SIGNATURES. A signed copy of this *Agreement* or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this *Agreement* or such other ancillary agreement for all purposes.

K. COUNTERPARTS. This *Agreement* may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this *Agreement* at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this *Agreement*.

EXECUTED AND EFFECTIVE as of the date of the last signature.

CITY OF SEQUIM		STATE OF WASHINGTON DEPARTMENT OF ENTERPRISE SERVICES	
By:		By:	Roger A Wigfield
Name:	Dennis Smith Dennis Smith	Name:	Roger A. Wigfield
Title:	MAYOR	Title:	Energy Program Manager
Date:	14 November 2018	Date:	11/20/18

ATTACHMENT A

PROJECT MANAGEMENT SERVICES SCOPE OF WORK

Energy/Utility Conservation Projects

Statewide Energy Performance Contracting Program

Energy Program will provide the following project management services for each specific project for the Client Agency. Each individual project shall be authorized by an amendment to this *Agreement*.

1. Assist the Client Agency in the selection of an Energy Service Company (ESCO) consistent with the requirements of RCW 39.35A for local governments; or 39.35C for state agencies and school districts.

2. Assist in identifying potential energy/utility conservation measures and estimated cost savings.

3. Assist in negotiating scope of work and fee for an ESCO audit of the facility(s).

4. Assist in identifying appropriate project funding sources and assist with obtaining project funding.

5. Assist in negotiating the technical, financial and legal issues associated with ESCO's Energy Services Proposal.

6. Review and recommend approval of ESCO energy/utility audits and Energy Services Proposals.

7. Provide assistance during the design, construction and commissioning processes.

8. Review ESCO invoice voucher(s) received for reasonableness and forward to Client Agency for review and payment.

9. Assist with final project acceptance.

10. Assist in resolution of disputes with the ESCO that arise during this *Agreement*, not to include formal disputes.

11. Review up to the first three years of the ESCO's annual Measurement and Verification (M&V) reports for completeness and accuracy. Review any ESCO guarantee compared to reported results and resolve differences, if needed. Review and forward ESCO invoice vouchers for payment by the Client Agency.

ATTACHMENT B

PROJECT MANAGEMENT FEE SCHEDULE

2017-19 Interagency Reimbursement Costs
for Project Management Fees to Administer Energy/Utility Conservation Projects

TOTAL PROJECT VALUE	PROJECT MANAGEMENT FEE	TERMINATION FEE
5,000,001 6,000,000	$68,800	25,700
4,000,001 5,000,000	67,700	25,400
3,000,001 4,000,000	66,700	25,000
2,000,001 3,000,000	62,500	23,400
1,500,001 2,000,000	58,300	21,800
1,000,001 1,500,000	51,600	19,300
900,001 1,000,000	43,800	16,400
800,001 900,000	41,300	15,400
700,001 800,000	38,300	14,400
600,001 700,000	36,500	13,700
500,001 600,000	33,800	12,600
400,001 500,000	30,200	11,300
300,001 400,000	25,800	9,700
200,001 300,000	20,700	7,700
100,001 200,000	14,400	5,400
50,001 100,000	7,800	3,500
20,001 50,000	4,200	2,000

The project management fee on projects over $6,000,000 is 1.15% of the project cost. The maximum Energy Program termination fee is $25,700.

1. These fees cover project management services for energy/utility conservation projects managed by Enterprise Services' Energy Program.
2. Termination fees cover the selection and project management costs associated with managing an ESCO's investment grade audit and energy services proposal. No termination fee will be charged unless Client Agency decided not to proceed to construction based on an energy services proposal that identifies projects that met Client Agency's cost effectiveness criteria.
3. If the project meets Client Agency's cost effectiveness criteria and Client Agency decides not to move forward with a project, then Client Agency will be invoiced per the above listed Termination Fee or $25,700 whichever is less. If Client Agency decides to proceed with the project then the *Agreement* will be amended to include the Project Management Fee listed above.
4. If the audit fails to produce a project that meets Client Agency's established cost effectiveness criteria, then there is no cost to Client Agency and no further obligation by Client Agency.

ATTACHMENT C

***MEASUREMENT & VERIFICATION SERVICES* SCOPE OF WORK**

Energy/Utility Conservation Projects

Statewide Energy Performance Contracting Program

If requested, Energy Program will provide the following measurement and verification services for each year beyond the first three years following the Notice of Commencement of Energy Cost Savings by the ESCO for the specific Client Agency project:

1. Review the ESCO's annual Measurement and Verification report for completeness and accuracy. Review any ESCO guarantee compared to reported results and resolve differences, if needed. Review and forward any ESCO invoice vouchers for payment by the Client Agency.

2. Where necessary, review Client Agency facility operations including any changes in operating hours, changes in square footage, additional energy consuming equipment and negotiate changes in baseline energy use with the ESCO and Client Agency that may impact achieved energy savings.

3. Attend a meeting or meetings with Client Agency and ESCO to review and discuss the annual Measurement and Verification report.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES
1500 Jefferson St. SE, Olympia, WA 98501
PO Box 41476, Olympia, WA 98504-1476

November 20, 2018

TO: Ann Soule, City of Sequim

FROM: Kim Obi, Contracts Specialist, (360) 407-8273

RE Agreement No. 2019-142 A (1)
Investment Grade Audit - Sequim City Hall PV System

IAA No. K5613

Integrity Energy Services Co.

SUBJECT: Funding Approval

The Dept. of Enterprise Services (DES), Energy Program, requires funding approval for the above referenced contract documents. The amount required is as follows:

ESCO Audit	$	4,800.00
Total Funding	**$**	**4,800.00**

In accordance with the provisions of RCW 43.88, the signature affixed below certifies to the DES Energy Program that the above identified funds are appropriated, allotted or that funding will be obtained from other sources available to the using client/agency. The using/client agency bears the liability for any issues related to the funding for this project

By David Mart... Public Works Dir. 11/20/18
Name / Title **Date**

Please sign and return this form to E&AS. If you have any questions, please call me.

2019142Aagrfundko

State of Washington **ENERGY PROGRAM** Department of Enterprise Services P.O. Box 41476 Olympia, WA 98504-1476	**INTERAGENCY AMENDMENT**	
	IAA No.: Project No. Amendment No.	K5613 2019-142 1 - Revised
CITY OF SEQUIM 152 West Cedar St. Sequim, WA 98383	Date:	November 1, 2019

INTERAGENCY AMENDMENT

Between

CITY OF SEQUIM

And

WASHINGTON STATE DEPARTMENT OF ENTERPRISE SERVICES

The parties to this Amendment, the Department of Enterprise Services, Energy Program, hereinafter referred to as "DES", and City of Sequim, hereinafter referred to as the "CLIENT AGENCY", hereby amend the Agreement as follows:

1. **TERM.** The term of the agreement commences November 20, 2018 and ending on **December 31, 2022** unless altered or amended as provided herein.

2. **STATEMENT OF WORK.** Energy Program shall provide the following services, for the following compensation, to Client Agency.

   a. SERVICES: DES shall furnish the necessary personnel and services and otherwise do all things necessary for or incidental to the performance of the work set forth in Attachment "A" and Attachment "C", attached hereto and incorporated herein by reference. Unless otherwise specified, DES shall be responsible for performing all fiscal and program responsibilities as set forth in Attachment "A" and Attachment "C".

   Energy/Utility Conservation projects shall be authorized by Amendment to this Agreement.

   2a.1 Sequim City Center PV System outlined in the Integrity Energy Services Energy Services Proposal dated December 10, 2018.

3. **COMPENSATION.**

   A. Compensation under this Agreement shall be by Amendment to this Agreement for each authorized project. Each Amendment will include a payment schedule for the specific project.

   3a.1 Energy Project Management Fee for the work described in Section 2a.1 is $20,700.00. Anticipated billing date for this Amendment is March 30, 2020.

The new total Agreement value is $20,700.00.

i. Project Management Services (Attachment A): For Project Management Services provided by DES, the CLIENT AGENCY will pay DES a Project Management Fee for services based on the total project value per Project Management Fees Schedule set forth in Attachment "B".

ii. Termination Fee: If the CLIENT AGENCY after authorizing an investment grade audit and Energy Services Proposal, decides not to proceed with an Energy/Utility Conservation project that meets the CLIENT AGENCY's cost effective criteria, then the CLIENT AGENCY will be charged a Termination Fee per Attachment "B". The Termination Fee will be based on the estimated Total Project Value outlined in the Energy Audit and Energy Services Proposal prepared by the Energy Services Company (ESCO).

iii. Measurement & Verification Services (Attachment C): If measurement and verification services beyond the first three years following the Notice of Commencement of Energy Services are requested by the CLIENT AGENCY, and provided by DES under Attachment "C" of this Agreement, the CLIENT AGENCY will pay DES $2,000.00 annually for each year that monitoring and verification services are provided.

iv. The CLIENT AGENCY shall provide the Energy Services Company (ESCO) with any additional contract language necessary to comply with the requirements established under federal grants, the American Recovery & Reinvestment Act of 2009 (ARRA) and the Energy Efficiency and Conservation Block Grant (EECBG). The ESCO and their subcontractors are required to comply with all applicable federal regulations and reporting procedures.

v. PAYMENT OF ESCO SERVICES. Compensation for services provided by the ESCO shall be paid directly to the ESCO by the CLIENT AGENCY, after DES has reviewed, recommended approval, and sent the invoices to the CLIENT AGENCY for payment.

Sections b. through d. terms and conditions of the original Agreement remain in full force and effect.

4. INVOICES; BILLING.

A. BILLING PROCEDURE. Energy Program shall submit a single invoice to the CLIENT AGENCY upon **substantial completion** of each authorized project, unless a project specified a Special Billing Condition in the Amendment. **Substantial completion of the project will include the delivery and acceptance of the notice of commencement of energy savings issued by the ESCO.** Each invoice will clearly indicate that it is for the services rendered in performance under this Agreement and shall reflect this Agreement and Amendment number. Energy Program will invoice for any remaining services within 60 days of the expiration or termination of this Agreement.

B. PAYMENT PROCEDURE. The CLIENT AGENCY shall pay all invoices received from the Energy Program within 90 days of receipt of properly executed invoice vouchers. The CLIENT AGENCY shall notify DES in writing if the CLIENT AGENCY cannot pay an invoice within 90 days.

C. BILLING DETAIL. Each invoice submitted to Client Agency by Energy Program shall include information as is necessary for Client Agency to determine the exact nature of all expenditures. At a minimum, the invoice shall reference this Agreement and include the following:

- The date(s) such services were provided
- Brief description of the services provided
- Total invoice amount

D. BILLING ADDRESS. Invoices shall be delivered to Client Agency electronically.

5. AGREEMENT MANAGEMENT.

The parties hereby designate the following *Agreement* administrators as the respective single points of contact for purposes of this *Agreement*, each of whom shall be the principal contact for business activities under this *Agreement*. The parties may change administrators by written notice as set forth below. Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services
Attn: Doug Kilpatrick, PE
Energy Project Manager
Energy Program
Washington Dept. of Enterprise Services
PO Box 41476
Olympia, WA 98504-1476
Tel: (360) 407-9380
Email: doug.kilpatrick@des.wa.gov

Client Agency
Attn: Ann Soule
Resource Manager
City of Sequim
152 West Cedar St.
Sequim, WA 98383
Tel: (360) 582-2436
Email: asoule@sequimwa.gov

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

The Client Agency representative shall be responsible for working with Energy Program, approving billings and expenses submitted by Energy Program, and accepting any reports from Energy Program or ESCO.

The Energy Program representative shall be the contact person for all communications regarding the conduct of work under this *Agreement*.

The requirements of RCW 39.34.030 are satisfied by the underlying Agreement and are incorporated by reference herein.

Each party signatory hereto, having first had the opportunity to read this Amendment and discuss the same with independent legal counsel, in execution of this document hereby mutually agree to all terms and conditions contained herein, and as incorporated by reference in the original Agreement.

City of Sequim

Dennis Smith

Mayor 11/12/19

Title Date

Department of Enterprise Services
Energy Program

Roger A. Wigfield, PE
Energy Program Manager 11/18/19

Title Date

K5613IAAamd1revko

Approved as to form by:

Kristina Nelson-Gross
City Attorney

ATTACHMENT A – SCOPE OF WORK

Energy/Utility Conservation Projects

PROJECT MANAGEMENT SERVICES

Statewide Energy Performance Contracting Program

Energy Program will provide the following project management services for each specific project for the CLIENT AGENCY. Each individual project shall be authorized by Amendment to this Agreement.

1. Assist the CLIENT AGENCY in the selection of an Energy Service Company (ESCO) consistent with the requirements of RCW 39.35A for local governments; or 39.35C for state agencies and school districts.
2. Assist in identifying potential energy/utility conservation measures and estimated cost savings.
3. Negotiate scope of work and fee for ESCO audit of the facility(s).
4. Assist in identifying appropriate project funding sources and assist with obtaining project funding.
5. Assist in negotiating the technical, financial and legal issues associated with the ESCO's Energy Services Proposal.
6. Review and recommend approval of ESCO energy/utility audits and Energy Services Proposals.
7. Provide assistance during the design, construction and commissioning processes.
8. Review and recommend approval of the ESCO's invoice vouchers for payment.
9. Assist with final project acceptance.
10. Provide other services as required to complete a successful energy performance contract.

ATTACHMENT B - Fee Schedule

2019-21 Interagency Reimbursement Costs
for Project Management Fees to Administer Energy/Utility Conservation Projects

TOTAL PROJECT VALUE	PROJECT MANAGEMENT FEE	TERMINATION
5,000,001.....6,000,000	$68,800	25,700
4,000,001.....5,000,000	67,700	25,400
3,000,001.....4,000,000	66,700	25,000
2,000,001.....3,000,000	62,500	23,400
1,500,001.....2,000,000	58,300	21,800
1,000,001.....1,500,000	51,600	19,300
900,001. ... 1,000,000	43,800	16,400
800,001.....900,000	41,300	15,400
700,001.....800,000	38,300	14,400
600,001.....700,000	36,500	13,700
500,001.....600,000	33,800	12,600
400,001.....500,000	30,200	11,300
300,001.....400,000	25,800	9,700
200,001.....300,000	20,700	7,700
100,001.....200,000	14,400	5,400
50,001.....100,000	7,800	3,500
20,001.....50,000	4,200	2,000

The project management fee on projects over $6,000,000 is 1.15% of the project cost. The maximum DES termination fee is $25,700.

1. These fees cover project management services for energy/utility conservation projects managed by DES's Energy Program.

2. Termination fees cover the selection and project management costs associated with managing the ESCO's investment grade audit and energy service proposal. No termination fee will be charged unless the CLIENT AGENCY decides not to proceed to construction based on an energy services proposal that identifies projects that met the CLIENT AGENCY'S cost effectiveness criteria.

3. If the project meets the CLIENT AGENCY's cost effectiveness criteria and the CLIENT AGENCY decides not to move forward with a project, then the CLIENT AGENCY will be invoiced per Attachment B Termination or $25,700.00 whichever is less. If the CLIENT AGENCY decides to proceed with the project then the Agreement will be amended per Attachment B for Project Management Fee.

4. If the audit fails to produce a project that meets the CLIENT AGENCY's established Cost Effectiveness Criteria, then there is no cost to the CLIENT AGENCY and no further obligation by the CLIENT AGENCY.

ATTACHMENT C – SCOPE OF WORK

Energy/Utility Conservation Projects

MEASUREMENT & VERIFICATION SERVICES

Statewide Energy Performance Contracting Program

If requested DES will provide the following measurement and verification services following the Notice of Commencement of Energy Savings by the ESCO for the specific Client Agency project:

1. Review the ESCO's annual Measurement and Verification (M&V) report for completeness and accuracy. Review any ESCO guarantee compared to reported results and resolve differences, if needed. Review and recommend approval of any ESCO invoice vouchers for payment by the Client Agency.

2. Where necessary, review Client Agency facility operations including any changes in operating hours, changes in square footage, additional energy consuming equipment and negotiate changes in baseline energy use with the ESCO and the Client Agency that may impact achieved energy savings.

3. Attend a meeting or meetings with the Client Agency and the ESCO to review and discuss the annual M&V report.

Client#: 179736 INTEENER1

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 11/05/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer any rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Propel Insurance
Tacoma Bonds
1201 Pacific Ave, Suite 1000
Tacoma, WA 98402

CONTACT NAME: Thayona Primas
PHONE (A/C, No, Ext): 800 499-0933 FAX (A/C, No): 866 577-1326
E-MAIL ADDRESS: Thayona.Primas@propelinsurance.com

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A : Ohio Security Insurance Company	24082
INSURER B : The Ohio Casualty Insurance Company	24074
INSURER C : Hiscox Insurance Company	10200
INSURER D :	
INSURER E :	
INSURER F :	

INSURED
Integrity Energy Services Co.
14405 SE 36th Street, Suite 210
Bellevue, WA 98006

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC [ ] OTHER:			BKS55437092	01/31/2019	01/31/2020	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$1,000,000 $1,000,000 $15,000 $1,000,000 $2,000,000 $2,000,000
A	AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] OWNED AUTOS ONLY [X] SCHEDULED AUTOS [X] HIRED AUTOS ONLY [X] NON-OWNED AUTOS ONLY			BAS55437092	01/31/2019	01/31/2020	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$1,000,000 $ $ $
B	[X] UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $10000			USO55437092	01/31/2019	01/31/2020	EACH OCCURRENCE AGGREGATE	$3,000,000 $3,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [N] N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			BKS55437092 WA STOP GAP	01/31/2019	01/31/2020	[ ] PER STATUTE [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$1,000,000 $1,000,000 $2,000,000
C	PROFESSIONAL LIAB CLAIM MADE FORM			ANE132873019	01/31/2019	01/31/2020	EACH CLAIM $2,000,000 AGGREGATE $2,000,000 DEDUCTIBLE $5,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
RE: ESCO Contract No. 2019-142 G (1-1) Sequim City Center PV System.
Additional Insured Status applies per attached form(s).

CERTIFICATE HOLDER
Department of Enterprise Services
PO Box 41476
Olympia, WA 98504-1476

CANCELLATION
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BLANKET ADDITIONAL INSURED CONTRACTORS - PRODUCTS/COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Paragraph **2.** under **Section II - Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract or written agreement. Such person or organization is an additional insured but only with respect to liability for "bodily injury" or "property damage":

1. Caused by "your work" performed for that additional insured that is the subject of the written contract or written agreement; and

2. Included in the "products-completed operations hazard".

However:

a) The insurance afforded to such additional insured only applies to the extent permitted by law; and

b) If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph **b.** of Condition **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** under **Section IV - Commercial General Liability Conditions.**

B. With respect to the insurance provided by this endorsement, the following are added to Paragraph **2. Exclusions** under **Section I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

1. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.

2. "Bodily injury" or "property damage" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services including:

a. The preparing, approving or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawing and specifications; and

b. Supervisory, inspection, architectural or engineering activities.

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C. With respect to the insurance afforded by this endorsement, exclusion **l. Damage To Your Work** of Paragraph **2. Exclusions** under **Section I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

D. With respect to the insurance afforded to these additional insureds, the following is added to **Section II - Limits of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declaration.

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declaratio ns.

E. With respect to the insurance afforded by this endorsement, **Section IV - Commercial General Liability Conditions** is amended as follows:

1. The following is added to Paragraph **2. Duties In The Event Of Occurrence, Offense, Claims Or Suit:**

An additional insured under this endorsement will as soon as practicable:

a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;

b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and

c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.

d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

2. Paragraph **4.** of **Section IV - Commercial General Liability Conditions** is amended as follows:

a. The following is added to Paragraph **a. Primary Insurance:**

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

b. The following is added to Paragraph **b. Excess Insurance:**

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY EXTENSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

A. NON-OWNED AIRCRAFT

Under Paragraph **2. Exclusions** of **Section I – Coverage A - Bodily Injury And Property Damage Liability,** exclusion **g. Aircraft, Auto Or Watercraft** does not apply to an aircraft provided:

1. It is not owned by any insured;

2. It is hired, chartered or loaned with a trained paid crew;

3. The pilot in command holds a currently effective certificate, issued by the duly constituted authority of the United States of America or Canada, designating her or him a commercial or airline pilot; and

4. It is not being used to carry persons or property for a charge.

However, the insurance afforded by this provision does not apply if there is available to the insured other valid and collectible insurance, whether primary, excess (other than insurance written to apply specifically in excess of this policy), contingent or on any other basis, that would also apply to the loss covered under this provision.

B. NON-OWNED WATERCRAFT

Under Paragraph **2. Exclusions** of **Section I – Coverage A – Bodily Injury And Property Damage Liability,**

Subparagraph **(2)** of exclusion **g. Aircraft, Auto Or Watercraft** is replaced by the following:

This exclusion does not apply to:

(2) A watercraft you do not own that is:

(a) Less than 52 feet long; and

(b) Not being used to carry persons or property for a charge.

C. PROPERTY DAMAGE LIABILITY – ELEVATORS

1. Under Paragraph **2. Exclusions** of **Section I – Coverage A – Bodily Injury And Property Damage Liability,** Subparagraphs **(3), (4)** and **(6)** of exclusion **j. Damage To Property** do not apply if such "property damage" results from the use of elevators. For the purpose of this provision, elevators do not include vehicle lifts. Vehicle lifts are lifts or hoists used in automobile service or repair operations.

2. The following is added to **Section IV – Commercial General Liability Conditions,** Condition **4. Other Insurance,** Paragraph **b. Excess Insurance:**

The insurance afforded by this provision of this endorsement is excess over any property insurance, whether primary, excess, contingent or on any other basis.

D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage)

If Damage To Premises Rented To You is not otherwise excluded from this Coverage Part:

1. Under Paragraph **2. Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:**

a. The fourth from the last paragraph of exclusion **j. Damage To Property** is replaced by the following:

Paragraphs **(1), (3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire, lightning, explosion, smoke, or leakage from an automatic fire protection system) to:

(i) Premises rented to you for a period of 7 or fewer consecutive days; or

(ii) Contents that you rent or lease as part of a premises rental or lease agreement for a period of more than 7 days.

Paragraphs **(1), (3)** and **(4)** of this exclusion do not apply to "property damage" to contents of premises rented to you for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in **Section III – Limits of Insurance.**

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b. The last paragraph of subsection **2. Exclusions** is replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by fire, lightning, explosion, smoke or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to Damage To Premises Rented To You as described in **Section III – Limits Of Insurance.**

2. Paragraph **6.** under **Section III – Limits Of Insurance** is replaced by the following:

6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to:

a. Any one premise:

(1) While rented to you; or

(2) While rented to you or temporarily occupied by you with permission of the owner for damage by fire, lightning, explosion, smoke or leakage from automatic protection systems; or

b. Contents that you rent or lease as part of a premises rental or lease agreement.

3. As regards coverage provided by this provision **D. EXTENDED DAMAGE TO PROPERTY RENTED TO YOU (Tenant's Property Damage) -** Paragraph **9.a.** of **Definitions** is replaced with the following:

9.a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire, lightning, explosion, smoke, or leakage from automatic fire protection systems to premises while rented to you or temporarily occupied by you with the permission of the owner, or for damage to contents of such premises that are included in your premises rental or lease agreement, is not an "insured contract".

E. MEDICAL PAYMENTS EXTENSION

If **Coverage C Medical Payments** is not otherwise excluded, the Medical Payments provided by this policy are amended as follows:

Under Paragraph **1. Insuring Agreement** of **Section I – Coverage C – Medical Payments,** Subparagraph **(b)** of Paragraph **a.** is replaced by the following:

(b) The expenses are incurred and reported within three years of the date of the accident; and

F. EXTENSION OF SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. Under **Supplementary Payments – Coverages A** and **B,** Paragraph **1.b.** is replaced by the following:

b. Up to **$3,000** for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Paragraph **1.d.** is replaced by the following:

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to **$500** a day because of time off from work.

G. ADDITIONAL INSUREDS - BY CONTRACT, AGREEMENT OR PERMIT

1. Paragraph **2.** under **Section II – Who Is An Insured** is amended to include as an insured any person or organization whom you have agreed to add as an additional insured in a written contract, written agreement or permit. Such person or organization is an additional insured but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by:

a. Your acts or omissions, or the acts or omissions of those acting on your behalf, in the performance of your on going operations for the additional insured that are the subject of the written contract or written agreement provided that the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" is committed, subsequent to the signing of such written contract or written agreement; or

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b. Premises or facilities rented by you or used by you; or

c. The maintenance, operation or use by you of equipment rented or leased to you by such person or organization; or

d. Operations performed by you or on your behalf for which the state or political subdivision has issued a permit subject to the following additional provisions:

(1) This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of the operations performed for the state or political subdivision;

(2) This insurance does not apply to "bodily injury" or "property damage" included within the "completed operations hazard".

(3) Insurance applies to premises you own, rent, or control but only with respect to the following hazards:

a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or

(b) The construction, erection, or removal of elevators; or

(c) The ownership, maintenance, or use of any elevators covered by this insurance.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

With respect to Paragraph **1.a.** above, a person's or organization's status as an additional insured under this endorsement ends when:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

With respect to Paragraph **1.b.** above, a person's or organization's status as an additional insured under this endorsement ends when their written contract or written agreement with you for such premises or facilities ends.

With respects to Paragraph **1.c.** above, this insurance does not apply to any "occurrence" which takes place after the equipment rental or lease agreement has expired or you have returned such equipment to the lessor.

The insurance provided by this endorsement applies only if the written contract or written agreement is signed prior to the "bodily injury" or "property damage".

We have no duty to defend an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured as required in Paragraph **b.** of Condition **2. Duties In the Event Of Occurrence, Offense, Claim Or Suit** under **Section IV – Commercial General Liability Conditions.**

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2. With respect to the insurance provided by this endorsement, the following are added to Paragraph **2. Exclusions** under **Section I - Coverage A - Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

a. "Bodily injury" or "property damage" arising from the sole negligence of the additional insured.

b. "Bodily injury" or "property damage" that occurs prior to you commencing operations at the location where such "bodily injury" or "property damage" occurs.

c. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

(1) The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(2) Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

d. "Bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

e. Any person or organization specifically designated as an additional insured for ongoing operations by a separate **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS** endorsement issued by us and made a part of this policy.

3. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

a. Required by the contract or agreement; or

b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

H. PRIMARY AND NON-CONTRIBUTORY ADDITIONAL INSURED EXTENSION

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

Condition **4. Other Insurance of SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

a. The following is added to Paragraph **a. Primary Insurance:**

If an additional insured's policy has an Other Insurance provision making its policy excess, and you have agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, this policy shall be primary and we will not seek contribution from the additional insured's policy for damages we cover.

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b. The following is added to Paragraph **b. Excess Insurance:**

When a written contract or written agreement, other than a premises lease, facilities rental contract or agreement, an equipment rental or lease contract or agreement, or permit issued by a state or political subdivision between you and an additional insured does not require this insurance to be primary or primary and non-contributory, this insurance is excess over any other insurance for which the additional insured is designated as a Named Insured.

Regardless of the written agreement between you and an additional insured, this insurance is excess over any other insurance whether primary, excess, contingent or on any other basis for which the additional insured has been added as an additional insured on other policies.

I. ADDITIONAL INSUREDS - EXTENDED PROTECTION OF YOUR "LIMITS OF INSURANCE"

This provision applies to any person or organization who qualifies as an additional insured under any form or endorsement under this policy.

1. The following is added to Condition **2. Duties In The Event Of Occurrence, Offense, Claim or Suit:**

An additional insured under this endorsement will as soon as practicable:

a. Give written notice of an "occurrence" or an offense that may result in a claim or "suit" under this insurance to us;

b. Tender the defense and indemnity of any claim or "suit" to all insurers whom also have insurance available to the additional insured; and

c. Agree to make available any other insurance which the additional insured has for a loss we cover under this Coverage Part.

d. We have no duty to defend or indemnify an additional insured under this endorsement until we receive written notice of a "suit" by the additional insured.

2. The limits of insurance applicable to the additional insured are those specified in a written contract or written agreement or the limits of insurance as stated in the Declarations of this policy and defined in **Section III – Limits of Insurance** of this policy, whichever are less. These limits are inclusive of and not in addition to the limits of insurance available under this policy.

J. WHO IS AN INSURED - INCIDENTAL MEDICAL ERRORS / MALPRACTICE
WHO IS AN INSURED - FELLOW EMPLOYEE EXTENSION - MANAGEMENT EMPLOYEES

Paragraph **2.a.(1)** of **Section II - Who Is An Insured** is replaced with the following:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph **(1) (a)** above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1) (a)** or **(b)** above; or

(d) Arising out of his or her providing or failing to provide professional health care services. However, if you are not in the business of providing professional health care services or providing professional health care personnel to others, or if coverage for providing professional health care services is not otherwise excluded by separate endorsement, this provision (Paragraph **(d)**) does not apply.

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Paragraphs **(a)** and **(b)** above do not apply to "bodily injury" or "personal and advertising injury" caused by an "employee" who is acting in a supervisory capacity for you. Supervisory capacity as used herein means the "employee's" job responsibilities assigned by you, includes the direct supervision of other "employees" of yours. However, none of these "employees" are insureds for "bodily injury" or "personal and advertising injury" arising out of their willful conduct, which is defined as the purposeful or willful intent to cause "bodily injury" or "personal and advertising injury", or caused in whole or in part by their intoxication by liquor or controlled substances.

The coverage provided by provision **J.** is excess over any other valid and collectable insurance available to your "employee".

K. NEWLY FORMED OR ADDITIONALLY ACQUIRED ENTITIES

Paragraph **3.** of **Section II - Who Is An Insured** is replaced by the following:

3. Any organization you newly acquire or form and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the expiration of the policy period in which the entity was acquired or formed by you;

b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

d. Records and descriptions of operations must be maintained by the first Named Insured.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations or qualifies as an insured under this provision.

L. FAILURE TO DISCLOSE HAZARDS AND PRIOR OCCURRENCES

Under **Section IV – Commercial General Liability Conditions,** the following is added to Condition **6. Representations:**

Your failure to disclose all hazards or prior "occurrences" existing as of the inception date of the policy shall not prejudice the coverage afforded by this policy provided such failure to disclose all hazards or prior "occurrences" is not intentional.

M. KNOWLEDGE OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

Under **Section IV – Commercial General Liability Conditions,** the following is added to Condition **2. Duties In The Event of Occurrence, Offense, Claim Or Suit:**

Knowledge of an "occurrence", offense, claim or "suit" by an agent, servant or "employee" of any insured shall not in itself constitute knowledge of the insured unless an insured listed under Paragraph **1.** of **Section II – Who Is An Insured** or a person who has been designated by them to receive reports of "occurrences", offenses, claims or "suits" shall have received such notice from the agent, servant or "employee".

N. LIBERALIZATION CLAUSE

If we revise this Commercial General Liability Extension Endorsement to provide more coverage without additional premium charge, your policy will automatically provide the coverage as of the day the revision is effective in your state.

O. BODILY INJURY REDEFINED

Under **Section V – Definitions,** Definition **3.** is replaced by the following:

3. "Bodily Injury" means physical injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death that results from such physical injury, sickness or disease.

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P. EXTENDED PROPERTY DAMAGE

Exclusion a. of **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by the following:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

Q. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US – WHEN REQUIRED IN A CONTRACT OR AGREEMENT WITH YOU

Under **Section IV – Commercial General Liability Conditions,** the following is added to Condition **8. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have against a person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard" provided:

1. You and that person or organization have agreed in writing in a contract or agreement that you waive such rights against that person or organization; and

2. The injury or damage occurs subsequent to the execution of the written contract or written agreement.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS AUTO COVERAGE ENHANCEMENT ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

With respect to coverage afforded by this endorsement, the provisions of the policy apply unless modified by the endorsement.

If the policy to which this endorsement is attached also contains a Business Auto Coverage Enhancement Endorsement with a specific state named in the title, this endorsement does not apply to vehicles garaged in that specified state.

COVERAGE INDEX

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SECTION I - COVERED AUTOS is amended as follows:

1. **TRAILERS - INCREASED LOAD CAPACITY**

   The following replaces Paragraph **C.1. Certain Trailers, Mobile Equipment And Temporary Substitute Autos** of **SECTION I - COVERED AUTOS:**

   "Trailers" with a load capacity of 3,000 pounds or less designed primarily for travel on public roads.

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SECTION II - LIABILITY COVERAGE is amended as follows:

2. NEWLY FORMED OR ACQUIRED SUBSIDIARIES

SECTION II - LIABILITY COVERAGE, Paragraph **A.1. - Who Is An Insured** is amended to include the following as an "insured":

d. Any legally incorporated subsidiary of which you own more than 50 percent interest during the policy period. Coverage is afforded only for 90 days from the date of acquisition or formation. However, "insured" does not include any organization that:

(1) Is a partnership or joint venture; or

(2) Is an "insured" under any other automobile policy except a policy written specificall y to apply in excess of this policy; or

(3) Has exhausted its Limit of Insurance or had its policy terminated under any other automobile policy.

Coverage under this provision **d.** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization.

3. EMPLOYEES AS INSUREDS

SECTION II - LIABILITY COVERAGE, Paragraph **A.1. Who Is An Insured** is amended to include the following as an "insured":

e. Any "employee" of yours while using a covered "auto" you do not own, hire or borrow but only for acts within the scope of their employment by you. Insurance provided by this endorsement is excess over any other insurance available to any "employee".

f. Any "employee" of yours while operating an "auto" hired or borrowed under a written contract or agreement in that "employee's" name, with your permission, while performing duties related to the conduct of your business and within the scope of their employment. Insurance provided by this endorsement is excess over any other insurance available to the "employee".

4. ADDITIONAL INSURED BY CONTRACT, AGREEMENT OR PERMIT

SECTION II - LIABILITY COVERAGE, Paragraph **A.1. Who Is An Insured** is amended to include the following as an "insured":

g. Any person or organization with respect to the operation, maintenance or use of a covered "auto", provided that you and such person or organization have agreed in a written contract, written agreement, or permit issued to you by governmental or public authority, to add such person, or organization, or governmental or public authority to this policy as an "insured".

However, such person or organization is an "insured":

(1) Only with respect to the operation, maintenance or use of a covered "auto";

(2) Only for "bodily injury" or "property damage" caused by an "accident" which takes place after you executed the written contract or written agreement, or the permit has been issued to you; and

(3) Only for the duration of that contract, agreement or permit.

The "insured" is required to submit a claim to any other insurer to which coverage could apply for defense and indemnity. Unless the "insured" has agreed in writing to primary noncontributory wording per enhancement number 24, this policy is excess over any other collectible insurance.

5. SUPPLEMENTARY PAYMENTS

SECTION II - LIABILITY COVERAGE, Coverage Extensions, 2.a. Supplementary Payments, Paragraphs **(2)** and **(4)** are replaced by the following:

(2) Up to $3,000 for cost of bail bonds (including bonds for related traffic violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $500 a day because of time off from work.

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6. AMENDED FELLOW EMPLOYEE EXCLUSION

In those jurisdictions where, by law, fellow "employees" are not entitled to the protection afforded to the employer by the workers compensation exclusivity rule, or similar protection, the following provision is added:

SECTION II - LIABILITY, Exclusion B.5. Fellow Employee does not apply if the "bodily injury" results from the use of a covered "auto" you own or hire if you have workers compensation insurance in force for all of your "employees" at the time of "loss".

This coverage is excess over any other collectible insurance.

SECTION III - PHYSICAL DAMAGE COVERAGE is amended as follows:

7. HIRED AUTO PHYSICAL DAMAGE

Paragraph **A.4. Coverage Extensions** of **SECTION III - PHYSICAL DAMAGE COVERAGE,** is amended by adding the following:

If hired "autos" are covered "autos" for Liability Coverage, and if Comprehensive, Specified Causes of Loss or Collision coverage are provided under the Business Auto Coverage Form for any "auto" you own, then the Physical Damage coverages provided are extended to "autos":

a. You hire, rent or borrow; or

b. Your "employee" hires or rents under a written contract or agreement in that "employee's" name, but only if the damage occurs while the vehicle is being used in the conduct of your business,

subject to the following limit and deductible:

a. The most we will pay for "loss" in any one "accident" or "loss" is the smallest of:

(1) $50,000; or

(2) The actual cash value of the damaged or stolen property as of the time of the "loss"; or

(3) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality, minus a deductible.

b. The deductible will be equal to the largest deductible applicable to any owned "auto" for that coverage.

c. Subject to the limit, deductible and excess provisions described in this provision, we will provide coverage equal to the broadest coverage applicable to any covered "auto" you own.

d. Subject to a maximum of $1,000 per "accident", we will also cover the actual loss of use of the hired "auto" if it results from an "accident", you are legally liable and the lessor incurs an actual financial loss.

e. This coverage extension does not apply to:

(1) Any "auto" that is hired, rented or borrowed with a driver; or

(2) Any "auto" that is hired, rented or borrowed from your "employee" or any member of your "employee's" household.

Coverage provided under this extension is excess over any other collectible insurance available at the time of "loss".

8. TOWING AND LABOR

SECTION III - PHYSICAL DAMAGE COVERAGE, Paragraph **A.2. Towing,** is amended by the addition of the following:

We will pay towing and labor costs incurred, up to the limits shown below, each time a covered "auto" classified and rated as a private passenger type, "light truck" or "medium truck" is disabled:

a. For private passenger type vehicles, we will pay up to $75 per disablement.

b. For "light trucks", we will pay up to $75 per disablement. "Light trucks" are trucks that have a gross vehicle weight (GVW) of 10,000 pounds or less.

c. For "medium trucks" , we will pay up to $150 per disablement. "Medium trucks" are trucks that have a gross vehicle weight (GVW) of 10,001 - 20,000 pounds.

However, the labor must be performed at the place of disablement.

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9. PHYSICAL DAMAGE - ADDITIONAL TRANSPORTATION EXPENSE COVERAGE

Paragraph **A.4.a. Coverage Extensions, Transportation Expenses** of **SECTION III - PHYSICAL DAMAGE COVERAGE,** is amended to provide a limit of $50 per day and a maximum limit of $1,500.

10. RENTAL REIMBURSEMENT

SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, is amended by adding the following:

a. We will pay up to $75 per day for rental reimbursement expenses incurred by you for the rental of an "auto" because of "accident" or "loss", to an "auto" for which we also pay a "loss" under Comprehensive, Specified Causes of Loss or Collision Coverages. We will pay only for those expenses incurred after the first 24 hours following the "accident" or "loss" to the covered "auto."

b. Rental Reimbursement requires the rental of a comparable or lessor vehicle, which in many cases may be substantially less than $75 per day, and will only be allowed for the period of time it should take to repair or replace the vehicle with reasonable speed and similar quality, up to a maximum of 30 days.

c. We will also pay up to $500 for reasonable and necessary expenses incurred by you to remove and replace your tools and equipment from the covered "auto". This limit is excess over any other collectible insurance.

d. This coverage does not apply unless you have a business necessity that other "autos" available for your use and operation cannot fill.

e. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided under Paragraph **4. Coverage Extension.**

f. No deductible applies to this coverage.

g. The insurance provided under this extension is excess over any other collectible insurance.

If this policy also provides Rental Reimbursement Coverage you purchased, the coverage provided by this Enhancement Endorsement is in addition to the coverage you purchased.

For the purposes of this endorsement provision, materials and equipment do not include "personal effects" as defined in provision **12.B.**

11. EXTRA EXPENSE - BROADENED COVERAGE

Under **SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage,** we will pay for the expense of returning a stolen covered "auto" to you. The maximum amount we will pay is $1,000.

12. PERSONAL EFFECTS COVERAGE

A. SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, is amended by adding the following:

If you have purchased Comprehensive Coverage on this policy for an "auto" you own and that "auto" is stolen, we will pay, without application of a deductible, up to $600 for "personal effects" stolen with the "auto."

The insurance provided under this provision is excess over any other collectible insurance.

B. SECTION V - DEFINITIONS is amended by adding the following:

For the purposes of this provision, "personal effects" mean tangible property that is worn or carried by an "insured." "Personal effects" does not include tools, equipment, jewelry, money or securities.

13. ACCIDENTAL AIRBAG DEPLOYMENT

SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions is amended by adding the following:

If you have purchased Comprehensive or Collision Coverage under this policy, the exclusion for "loss" relating to mechanical breakdown does not apply to the accidental discharge of an airbag.

Any insurance we provide shall be excess over any other collectible insurance or reimbursement by manufacturer's warranty. However, we agree to pay any deductible applicable to the other coverage or warranty.

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14. PHYSICAL DAMAGE DEDUCTIBLE - VEHICLE TRACKING SYSTEM

SECTION III - PHYSICAL DAMAGE COVERAGE, D. Deductible, is amended by adding the following:

Any Comprehensive Deductible shown in the Declarations will be reduced by 50% for any "loss" caused by theft if the vehicle is equipped with a vehicle tracking device such as a radio tracking device or a global position device and that device was the method of recovery of the vehicle.

15. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE

SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions, Paragraph **a.** of the exception to exclusions **4.c.** and **4.d.** is deleted and replaced with the following:

Exclusions **4.c.** and **4.d.** do not apply to:

a. Electronic equipment that receives or transmits audio, visual or data signals, whether or not designed solely for the reproduction of sound, if the equipment is:

(1) Permanently installed in the covered "auto" at the time of the "loss" or removable from a housing unit that is permanently installed in the covered "auto"; and

(2) Designed to be solely operated by use from the power from the "auto's" electrical system; and

(3) Physical damage coverages are provided for the covered "auto".

If the "loss" occurs solely to audio, visual or data electronic equipment or accessories used with this equipment, then our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by a $100 deductible.

16. LOAN / LEASE GAP COVERAGE (Not Applicable In New York)

A. Paragraph **C. Limit Of Insurance** of **SECTION III - PHYSICAL DAMAGE COVERAGE** is amended by adding the following:

The most we will pay for a "total loss" to a covered "auto" owned by or leased to you in any one "accident" is the greater of the:

1. Balance due under the terms of the loan or lease to which the damaged covered "auto" is subject at the time of the "loss" less the amount of:

a. Overdue payments and financial penalties associated with those payments as of the date of the "loss";

b. Financial penalties imposed under a lease due to high mileage, excessive use or abnormal wear and tear;

c. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease;

d. Transfer or rollover balances from previous loans or leases;

e. Final payment due under a "Balloon Loan";

f. The dollar amount of any unrepaired damage which occurred prior to the "total loss" of a covered "auto";

g. Security deposits not refunded by a lessor;

h. All refunds payable or paid to you as a result of the early termination of a lease agreement or as a result of the early termination of any warranty or extended service agreement on a covered "auto";

i. Any amount representing taxes;

j. Loan or lease termination fees; or

2. The actual cash value of the damage or stolen property as of the time of the "loss".

An adjustment for depreciation and physical condition will be made in determining the actual cash value at the time of the "loss". This adjustment is not applicable in Texas.

B. Additional Conditions

This coverage applies only to the original loan for which the covered "auto" that incurred the "loss" serves as collateral, or lease written on the covered "auto" that incurred the "loss".

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C. SECTION V - DEFINITIONS is changed by adding the following:

As used in this endorsement provision, the following definitions apply:

"Total loss" means a "loss" in which the cost of repairs plus the salvage value exceeds the actual cash value.

A "balloon loan" is one with periodic payments that are insufficient to repay the balance over the term of the loan, thereby requiring a large final payment.

17. GLASS REPAIR - WAIVER OF DEDUCTIBLE

Paragraph **D. Deductible** of **SECTION III - PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

No deductible applies to glass damage if the glass is repaired rather than replaced.

18. PARKED AUTO COLLISION COVERAGE (WAIVER OF DEDUCTIBLE)

Paragraph **D. Deductible** of **SECTION III - PHYSICAL DAMAGE COVERAGE** is amended by the addition of the following:

The deductible does not apply to "loss" caused by collision to such covered "auto" of the private passenger type or light weight truck with a gross vehicle weight of 10,000 lbs. or less as defined by the manufacturer as maximum loaded weight the "auto" is designed to carry while it is:

a. In the charge of an "insured";

b. Legally parked; and

c. Unoccupied.

The "loss" must be reported to the police authorities within 24 hours of known damage.

The total amount of the damage to the covered "auto" must exceed the deductible shown in the Declarations.

This provision does not apply to any "loss" if the covered "auto" is in the charge of any person or organization engaged in the automobile business.

19. TWO OR MORE DEDUCTIBLES

Under **SECTION III - PHYSICAL DAMAGE COVERAGE,** if two or more company policies or coverage forms apply to the same "accident", the following applies to Paragraph **D. Deductible:**

a. If the applicable Business Auto deductible is the smaller (or smallest) deductible, it will be waived; or

b. If the applicable Business Auto deductible is not the smaller (or smallest) deductible , it will be reduced by the amount of the smaller (or smallest) deductible; or

c. If the "loss" involves two or more Business Auto coverage forms or policies, the smaller (or smallest) deductible will be waived.

For the purpose of this endorsement, company means any company that is part of the Liberty Mutual Group.

SECTION IV - BUSINESS AUTO CONDITIONS is amended as follows:

20. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

SECTION IV- BUSINESS AUTO CONDITIONS, Paragraph **B.2.** is amended by adding the following:

If you unintentionally fail to disclose any hazards, exposures or material facts existing as of the inception date or renewal date of the Business Auto Coverage Form, the coverage afforded by this policy will not be prejudiced.

However, you must report the undisclosed hazard of exposure as soon as practicable after its discovery, and we have the right to collect additional premium for any such hazard or exposure.

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21. AMENDED DUTIES IN THE EVENT OF ACCIDENT, CLAIM, SUIT, OR LOSS

SECTION IV - BUSINESS AUTO CONDITIONS, Paragraph **A.2.a.** is replaced in its entirety by the following:

a. In the event of "accident", claim, "suit" or "loss", you must promptly notify us when it is known to:

(1) You, if you are an individual;

(2) A partner, if you are a partnership;

(3) Member, if you are a limited liability company;

(4) An executive officer or the "employee" designated by the Named Insured to give such notice, if you are a corporation.

To the extent possible, notice to us should include:

(a) How, when and where the "accident" or "loss" took place;

(b) The "insureds" name and address; and

(c) The names and addresses of any injured persons and witnesses.

22. WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

SECTION IV - BUSINESS AUTO CONDITIONS, Paragraph **A.5. Transfer Of Rights Of Recovery Against Others To Us,** is amended by the addition of the following:

If the person or organization has in a written agreement waived those rights before an "accident" or "loss", our rights are waived also.

23. HIRED AUTO COVERAGE TERRITORY

SECTION IV - BUSINESS AUTO CONDITIONS, Paragraph **B.7. Policy Period, Coverage Territory,** is amended by the addition of the following:

f. For "autos" hired 30 days or less, the coverage territory is anywhere in the world, provided that the "insured's" responsibility to pay for damages is determined in a "suit", on the merits, in the United States, the territories and possessions of the United States of America, Puerto Rico or Canada or in a settlement we agree to.

This extension of coverage does not apply to an "auto" hired, leased, rented or borrowed with a driver.

24. PRIMARY AND NON-CONTRIBUTING IF REQUIRED BY WRITTEN CONTRACT OR WRITTEN AGREEMENT

The following is added to **SECTION IV - BUSINESS AUTO CONDITIONS, General Conditions, B.5. Other Insurance** and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and

2. You have agreed in a written contract or written agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

SECTION V - DEFINITIONS is amended as follows:

25. BODILY INJURY REDEFINED

Under **SECTION V - DEFINITIONS,** Definition **C.** is replaced by the following:

"Bodily injury" means physical injury, sickness or disease sustained by a person, including mental anguish, mental injury, shock, fright or death resulting from any of these at any time.

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BUILRISK19

ACORD™

EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY) 11/12/2019

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY Propel Insurance Tacoma Commercial Insurance 1201 Pacific Ave, Suite 1000 Tacoma, WA 98402	PHONE (A/C, No, Ext): 253 759-2200 FAX (A/C, No): 866 577-1326 E-MAIL ADDRESS: Kyle.Howat@propelinsurance.com CODE: SUB CODE: AGENCY CUSTOMER ID #: 183661
COMPANY The Ohio Casualty Insurance Company	
INSURED Integrity Energy Services Co., City of Sequim, and/or Subcontractors of all Tiers 1201 Pacific Ave. Tacoma, WA 98402	LOAN NUMBER POLICY NUMBER: BINDER1380744 EFFECTIVE DATE: 12/15/19 EXPIRATION DATE: 05/15/20 ☐ CONTINUED UNTIL TERMINATED IF CHECKED THIS REPLACES PRIOR EVIDENCE DATED:

PROPERTY INFORMATION

LOCATION/DESCRIPTION
152 W Cedar Street, Sequim, WA 98382

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

COVERAGE/PERILS/FORMS	AMOUNT OF INSURANCE	DEDUCTIBLE
Builders Risk Coverage Excluding Earthquake and Flood Coverages	143,620	1,000

REMARKS (Including Special Conditions)

Contract No. 2019 - 142 G (1-1)

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

NAME AND ADDRESS City of Sequim acting through the Department of Enterprise Services Energy Program 1500 Jefferson St. SE Olympia, WA 98501	☐ MORTGAGEE ☐ LOSS PAYEE ☒ ADDITIONAL INSURED LOAN # AUTHORIZED REPRESENTATIVE

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AMH00

ENERGY SERVICES AUTHORIZATION AMENDMENT NO. 1

Project Title Sequim City Center PV System Authorization No. 2019-142 A (1)

Facility City of Sequim Date October 25, 2019

This Amendment, when properly signed, shall be the basis on which the Subject Authorization shall be modified.

Authorization (this sheet)
Scope of Work Options: Modify Basic Services

Project Completion and Compensation

Approvals

Energy Services Company:

Integrity Energy Services Co.
14405 SE 36th St., Suite 210
Bellevue, WA 98006

By:
Name: MICHAEL L. DEAN
Title: PRESIDENT
Date: 10/29/2019

Owner:

City of Sequim
acting through the
Department of Enterprise Services
Energy Program

Doug Kilpatrick, PE
Energy Engineer
11/18/2019

Compensation for Energy Services

	COMPENSATION		
Basic Services	Current	New	Previous
Energy Audit and Energy Services Proposal	$ 4,800.00	$ 0.00	$ 4,800.00
Design	$ 1,436.00	$ 1,436.00	$ 0.00
Construction Management	$ 11,490.00	$ 11,490.00	$ 0.00
Overhead and Profit	$ 24,415.00	$ 24,415.00	$ 0.00
Grand Total (Plus WSST as applicable)	**$ 42,141.00**	**$ 37,341.00**	**$ 4,800.00**

Value of this Amendment = $37,341.00 (Plus Washington State Sales Tax)

RCVD BY E&RS NOV 18 '19 AM10:45

Scope of Work

Energy efficiency measures under Contract No. 2019-142 G (1-1) will include renovation of Sequim Civic Center, including any and all necessary ancillary equipment. The ESCO will perform a detailed engineering design as needed to obtain Owner review and approval of the proposed systems and to obtain bids as required. The ESCO will provide construction management, as-built drawings, and O&M manuals. All work is per the City of Sequim Energy Services Proposal dated December 10, 2018. This includes the transfer of funds from the Detailed Investment Grade Energy Audit & Energy Services Proposal Agreement to this Energy Professional Services Agreement.

Schedule For Completion

Final completion 120 days from execution of this Amendment.

2019142Aamd1ko

MEASUREMENT & VERIFICATION (M&V) AUTHORIZATION No. 2019-142 B (2) - REVISED

City of Sequim

Sequim City Center PV System

October 28, 2019

MASTER ENERGY SERVICES AGREEMENT NO. 2019-179 E (5)

The Owner and the Energy Services Company (ESCO) named below do hereby enter into an Agreement under terms described in the following sections:

Authorization to Proceed	Scope of Work
Compensation Schedule	Compensation for M&V Services
Project Conditions	Schedule for M&V Services

I. AUTHORIZATION TO PROCEED:

Energy Services Company:	Owner:
Integrity Energy Services Co. 14405 SE 36th St., Suite 210 Bellevue, WA 98006 Telephone No. (206) 228-7229 Fax No. N/A E-Mail Address miked@iesinnovates.com	City of Sequim acting through the Department of Enterprise Services Energy Program PO Box 41476 Olympia, WA 98504
By M. L. D. Name MICHAEL L. DEAN Title PRESIDENT Date 10/29/2019	By Roger Wigfield Name Roger A. Wigfield, PE Title Energy Program Manager Date 11/18/19
State of Washington Contractor's License No.	INTEGES877CE
WA Revenue Registration No.	602 256 882
Federal Tax Identification No.	91-2181368
MWBE Certification No.	

II. COMPENSATION SCHEDULE:

Total Services being provided under this Agreement:

Services	Compensation
	New
Measurement and Verification Services Year 1	$ 1,000.00
Measurement & Verification Services Years 2 & 3	$ 750.00
Grand Total (plus WSST as applicable)	**$ 1,750.00**

III. PROJECT CONDITIONS:

The Project Conditions contained in the Master Energy Services Agreement will be used unless specifically changed herein. Specifically, after the project is constructed and the Notice of Commencement of Energy Cost Savings (NCES) has been issued, the Measurement and Verification (M&V) period begins. The guarantee of savings by the ESCO shall remain in effect for the term of the M&V Agreement.

IV. SCOPE OF WORK:

Provide M&V reporting for 3 years starting immediately after Owner acceptance of the NCES for the Sequim City Center PV System, 2019-142 G (1-1), per the City of Sequim Energy Services Proposal dated December 10, 2018.

The ESCO shall submit within sixty (60) days of the end of the annual M&V period, an M&V report consistent with the M&V procedures described in the ESCO's approved Energy Services Proposal (ESP). The M&V report shall describe the energy savings and equipment performance for the previous twelve-month period. The M&V report shall be consistent with and incorporate relevant data described in the ESCO energy audit, ESP and the project's Energy Services Authorization. Utility bill reporting, if appropriate, shall include reporting of current billing utility units compared to the baseline use both in tabular and graphic form, for the previous 12 months. Relevant data and calculations will support the conclusions and findings of the M&V report. It is understood that the ESCO and the Owner have agreed that the International Performance Measurement & Verification Protocol, will be used as a reference for the M&V report should there be questions or disagreements on the form or content of the report.

V. COMPENSATION FOR M&V SERVICES:

The Owner shall reimburse the ESCO annually, in accordance with the M&V fee schedule included in the original ESP or as agreed to under a separate proposal for ongoing M&V services. The total compensation for M&V services shall be $1,750.00, from the guaranteed savings for the M&V services. The M&V fee shall be paid to the ESCO within sixty (60) days following acceptance of the M&V report. Payment to the ESCO shall be contingent upon the Owner's acceptance of the ESCO's M&V report. The ESCO's M&V report shall be considered accepted 30 days after its submission; unless the ESCO is notified in writing that the report has been rejected.

VI. SCHEDULE FOR M&V SERVICES:

M&V Services shall start immediately after Owner acceptance of the NCES and will run for 3 years plus 60 days for final report preparation, unless this Authorization is amended or terminated earlier. If the Owner wishes to terminate the M&V Agreement after the first year, the Owner will contact the DES Energy Program prior to the next scheduled M&V period. DES and the ESCO will have determined the total amount of work completed by the ESCO and will have the final bill prepared. Upon payment of the final bill, the M&V Authorization shall be terminated.

2019142Bagrrevko

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES
1500 Jefferson St. SE, Olympia, WA 98501
PO Box 41476, Olympia, WA 98504-1476

November 19, 2019

Integrity Energy Services Co.
14405 SE 36th St., Suite 210
Bellevue, WA 98006

RE: Contract No. 2019-142 G (1-1)
Sequim City Center PV System
City of Sequim

NOTICE TO PROCEED

Energy Savings Performance Contracting

This is your official notice to proceed with the work of our contract on November 19, 2019. Enclosed is a copy of our executed contract.

Please complete and have approved by L & I the "Intent to Pay Prevailing Wages" forms for yourself and any Subcontractors. These forms must be submitted to me with your first invoice voucher.

In accordance with the *"Supplemental Conditions for Washington State Energy Savings Performance Contracting* PART 5.22", the Contractor shall provide all subcontractor/supplier and payment data on a monthly basis. This information must be entered into the DES Diversity Compliance system (B2GNow) at https://des.diversitycompliance.com. Failure to do so may result in Owner withholding payment. Invoice voucher forms and instructions can be obtained at http://www.des.wa.gov/services/facilities/Construction/Forms/Pages/Forms.aspx#energyforms.

Should you have any questions or concerns, please call me at (360) 407-9380.

Sincerely,

FOR

Doug Kilpatrick, PE
Energy Engineer

DK:ko

Enclosures

cc: Ann Soule, City of Sequim

KO

STATE OF WASHINGTON

DEPARTMENT OF ENTERPRISE SERVICES

1500 Jefferson St. SE, Olympia, WA 98501
PO Box 41476, Olympia, WA 98504-1476

October 25, 2019

RETAINAGE INVESTMENT

ESCO Contractor	Integrity Energy Services Co.
ESCO Contract No.	2019-142 G (1-1)
Description	Sequim City Center PV System
Client Agency	City of Sequim

Pursuant to R.C.W. 60.28, you are required to exercise your option, IN WRITING, on whether or not monies reserved from the amounts due you on the above contract shall be placed in escrow. You are therefore directed to complete and return this form with the signed copy of the above contract to the Energy Program.

Should you desire to have the retained monies invested, it will then be necessary that you enter into an escrow agreement with a bank, trust or savings and loan company, and the above Client Agency.

This form will be transmitted to the Client Agency for further action in preparing the escrow agreement.

ENERGY SERVICES CONTRACTOR'S OPTION

✓ I do not request retainage on the above contract to be invested.

____ I hereby request retainage on the above contract be invested.

____ I hereby request retainage on the above contract be invested and converted into bonds and sureties.

N. Z — 10/29/2019

Signature Date

PRESIDENT

Title

ESCO Contract No.	2019-142 G (1-1)
Project	Sequim City Center PV System
Agency	City of Sequim
Date	October 25, 2019

STATE OF WASHINGTON

ENERGY SERVICE COMPANY (ESCO) CONSTRUCTION CONTRACT

For the DEPT. OF ENTERPRISE SERVICES, ENERGY PROGRAM

This Energy Service Company (ESCO) Construction Contract, made and entered into this 25th day of October, 2019, shall be the agreed basis of performing the following work by and between the State of Washington, City of Sequim acting through the Department of Enterprise Services, Energy Program, hereinafter referred to as the Owner, and

Integrity Energy Services Co.
14405 SE 36th St., Suite 210
Bellevue, WA 98006
Telephone (206) 228-7229
E-mail miked@iesinnovates.com

hereinafter referred to as the ESCO or Contractor.

WITNESSETH: Whereas the parties hereto have mutually covenanted and by these presents do covenant and agree with each other as follows:

FIRST: The said ESCO agrees to furnish all permits, material, labor, tools, equipment, apparatus, facilities, etc., necessary to perform and complete in a workmanship like manner the work called for in the attached Scope of Work, Energy Services Proposal dated December 10, 2018 for:

Energy Services Authorization No. 2019-142 A (1)
Master Energy Services Agreement No. 2019-179 E (5)

Audits and Proposals for this project were prepared by the ESCO according to the terms of the Contract Documents which include, but are not limited to, the Master Energy Services Agreement, Energy Services Authorization(s), the accepted Proposal, *General Conditions for Washington State Energy Savings Performance Contracting,* Addenda, Specifications, Drawings, Bond, and this Construction Contract.

SECOND: Time of Completion: The work to be performed under this contract shall commence as soon as the ESCO has been officially notified to proceed and shall be substantially complete within 120 consecutive calendar days after the date of Notice to Proceed.

THIRD: In consideration of the Performance of the Work, herein contained on the part of the ESCO, the Owner hereby agrees to pay the ESCO for said work completed according to the Contract Documents, for not more than the sum of $143,620.00, plus 8.8% state sales tax consisting of the following:

ESCO Contract Cost	$ 143,620.00

The ESCO shall bond this contract in accordance with Section 2.04 of the General Conditions for Washington State Energy Savings Performance Contracting. The construction value plus contingency is a guaranteed maximum not-to-exceed cost and final payment to the ESCO shall be reconciled to reflect the actual installed cost provided it does not exceed the guaranteed maximum cost.

FOURTH: ESCO payments to subcontractors and materialmen shall not be contingent upon the ESCO receiving payment from the Owner. Unless otherwise agreed upon, payment to the ESCO shall be made only after completion of the energy efficiency measure(s) and the ESCO has issued a Notice of Commencement of Energy Savings and the Owner has accepted such Notice.

IN WITNESS WHEREOF: The said Department of Enterprise Services, Energy Program, has caused this ESCO Construction Contract to be subscribed in its behalf, and the said ESCO has signed this ESCO Construction Contract the day and year first above written.

ESCO:	Owner:
Integrity Energy Services Co.	City of Sequim acting through the Department of Enterprise Services Energy Program
By M~ Z+	By
Name MICHAEL I. OKAN	Name Roger A. Wigfield, PE
Title PRESIDENT	Title Energy Program Manager
Date 10/29/2019	Date 11/18/19

WA State Contractor's License No. INTEGES877CE

Federal Tax ID No. 91-2181368

UBI Number 602 256 882

MWBE Certification No. _____

2019142Gcontko

October 25, 2019

SCOPE OF WORK

ESCO Contract No. 2019-142 G (1-1)

Sequim City Center PV System
City of Sequim

Furnish and install the energy efficiency measures, including any and all necessary ancillary equipment, as described in the City of Sequim Energy Services Proposal dated December 10, 2018.

CONTRACTOR'S OPTION: Payment and Performance Bond Waiver

It is hereby requested that the payment and performance bond requirement be waived for Contract No. 2019-142 G (1-1), and 50% of the amount of the contract withheld for a period of forty-five (45) days after date of final acceptance, or until receipt of all necessary releases from the Department of Revenue, Department of Employment Security, and the Department of Labor and Industries, and settlement of any liens filed under Chapter 60.28 RCW, whichever is latest, as set forth in 39.08 RCW.

Signature _____

Date _____

AIA® Document A312™ – 2010

Performance Bond

Bond No. PB00499800206

CONTRACTOR:
(Name, legal status and address)

Integrity Energy Services, Co.
14405 SE 36th Street, Suite 210
Bellevue, WA 98006

SURETY:
(Name, legal status and principal place of business)

Philadelphia Indemnity Insurance Company
1420 5th Ave Suite 3510
Seattle, WA 98101

OWNER:
(Name, legal status and address)

City of Sequim acting through the Department of Enterprise Services Energy Program
1500 Jefferson Street SE
Olympia, WA 98501

CONSTRUCTION CONTRACT
Date: 10/25/2019

Amount: One Hundred Fifty-six Thousand Two Hundred Fifty-eight And 56/100 ($156,258.56)

Description:
(Name and location)
Sequim City Center PV System, ESCO Contract No. 2019-142 G (1-1)

Sequim

BOND
Date: 10/30/2019
(Not earlier than Construction Contract Date)

Amount: One Hundred Fifty-six Thousand Two Hundred Fifty-eight And 56/100 ($156,258.56)

Modifications to this Bond: ☒ None ☐ See Section 16

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312–2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Integrity Energy Services, Co.		Philadelphia Indemnity Insurance Company	
Signature:		Signature:	
Name and Title:	MICHAEL L. DEAN, PRESIDENT	Name and Title:	Heather L. Allen, Attorney-in-Fact

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or **BROKER:**
Propel Insurance
PO Box 2940
Tacoma, WA 98401
(253) 759-2200

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

.1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

.2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

.3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

.2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and

.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		SURETY	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature: N/A		Signature: N/A	
Name and Title:		Name and Title:	
Address		Address	

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

AIA® Document A312™ – 2010

Bond No. PB00499800206

Payment Bond

CONTRACTOR:
(Name, legal status and address)

Integrity Energy Services, Co.
14405 SE 36th Street, Suite 210
Bellevue, WA 98006

SURETY:
(Name, legal status and principal place of business)

Philadelphia Indemnity Insurance Company
1420 5th Ave Suite 3510
Seattle, WA 98101

OWNER:
(Name, legal status and address)

City of Sequim acting through the Department of Enterprise Services Energy Program
1500 Jefferson Street SE
Olympia, WA 98501

CONSTRUCTION CONTRACT
Date: 10/25/2019

Amount: One Hundred Fifty-six Thousand Two Hundred Fifty-eight And 56/100 ($156,258.56)

Description:
(Name and location)
Sequim City Center PV System, ESCO Contract No. 2019-142 G (1-1)

Sequim

BOND
Date: 10/30/2019
(Not earlier than Construction Contract Date)

Amount: One Hundred Fifty-six Thousand Two Hundred Fifty-eight And 56/100 ($156,258.56)

Modifications to this Bond: ☒ None ☐ See Section 18

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312–2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

CONTRACTOR AS PRINCIPAL		SURETY	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Integrity Energy Services, Co.		Philadelphia Indemnity Insurance Company	
Signature:		Signature:	
Name and Title: Michael L. Dean, President		Name and Title: Heather L. Allen, Attorney-in-Fact	

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or **BROKER:**
Propel Insurance
PO Box 2940
Tacoma, WA 98401
(253) 759-2200

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- **.1** have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- **.2** have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- **.1** the name of the Claimant;
- **.2** the name of the person for whom the labor was done, or materials or equipment furnished;
- **.3** a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- **.4** a brief description of the labor, materials or equipment furnished;
- **.5** the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- **.6** the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- **.7** the total amount of previous payments received by the Claimant; and
- **.8** the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company:	*(Corporate Seal)*	Company:	*(Corporate Seal)*
Signature: N/A		Signature: N/A	
Name and Title:		Name and Title:	
Address		Address	

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

PHILADELPHIA INDEMNITY INSURANCE COMPANY
One Bala Plaza, Suite 100
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS: That **PHILADELPHIA INDEMNITY INSURANCE COMPANY** (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint **Carley Espiritu, Christopher Kinyon, Cynthia L. Jay, Eric A. Zimmerman, James B. Binder, Jamie L. Marques, Karen C. Swanson, Kyle Joseph Howat, Aliceon A. Keltner, Tamara A. Ringeisen, Annelies M. Richie, Heather L. Allen, Jacob T. Haddock, Ally Rombach, Holli Albers, Erica E. Mosley and Brandon K. Bush of Bratrud Middleton Insurance Brokers, Inc. dba Propel Insurance**, its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed **$50,000,000**.

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14th of November, 2016.

RESOLVED: That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

FURTHER RESOLVED: That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached.

IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEALTO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 27TH DAY OF OCTOBER, 2017.

(Seal)

Robert D. O'Leary Jr., President & CEO
Philadelphia Indemnity Insurance Company

On this 27th day of October, 2017, before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the **PHILADELPHIA INDEMNITY INSURANCE COMPANY**; that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed.

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
Morgan Knapp, Notary Public
Lower Merion Twp., Montgomery County
My Commission Expires Sept. 25, 2021
MEMBER PENNSYLVANIA ASSOCIATION OF NOTARIES

(Notary Seal)

Notary Public: Morgan Knapp

residing at: Bala Cynwyd, PA

My commission expires: September 25, 2021

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 27th day of October, 2017 are true and correct and are still in full force and effect. I do further certify that Robert D. O'Leary Jr., who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 30th day of October, 2019.

Edward Sayago, Corporate Secretary
PHILADELPHIA INDEMNITY INSURANCE COMPANY

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES
1500 Jefferson St. SE, Olympia, WA 98501
PO Box 41476, Olympia, WA 98504-1476

October 28, 2019

TO: Ann Soule, City of Sequim

FROM: Kim Obi, Contracts Specialist, (360) 407-8273

RE Agreement No. 2019-142 A (1), Amendment No. 1
Project No. 2019-142 G (1-1)
Sequim City Center PV System

IAA No. K5613

Integrity Energy Services Co.

SUBJECT: Funding Approval - REVISED

The Dept. of Enterprise Services (DES), Energy Program, requires funding approval for the above referenced contract documents. The amount required is as follows (see page 2 for funding detail):

ESCO Professional Services Total	$	41,049.41
ESCO Measurement and Verification Total	$	1,904.00
ESCO Construction Total	$	160,088.59
DES Energy Program Project Management Services Total (IAA)	$	20,700.00
Total Funding	**$**	**223,742.00**

In accordance with the provisions of RCW 43.88, the signature affixed below certifies to the DES Energy Program that the above identified funds are appropriated, allotted or that funding will be obtained from other sources available to the using client/agency. The using/client agency bears the liability for any issues related to the funding for this project

By Dennis Smith Mayor — 11/12/19
Name / Title **Date**

Please sign and return this form to E&AS. If you have any questions, please call me.

Agreement No. 2019-142 A (1), Amendment No. 1
Project No. 2019-142 G (1-1)

Funding Approval Detail

ESCO Professional Services		
Energy Audit and Energy Services Proposal	$	4,800.00
*Audit & Energy Services Proposal from Authorization 19-142 A (1)	$	(4,800.00)
Design and Implementation of Energy Conservation Measures	$	37,341.00
Sales Tax (8.8%) (Includes tax on Audit proposal)	$	3,708.41
Total	**$**	**41,049.41**
ESCO Measurement and Verification		
First Year Measurement & Verification	$	1,000.00
Years 2 & 3 Measurement & Verification	$	750.00
Sales Tax (8.8%)	$	154.00
Total	**$**	**1,904.00**
ESCO Construction		
ESCO Contract Amount	$	143,620.00
Sales Tax (8.8%)	$	12,638.56
Contingency Amount (with Tax)	$	3,830.03
Total	**$**	**160,088.59**
DES Energy Program Project Management Services		
Project Management Fee from IAA No. K5613, Amendment No. 1	$	20,700.00
Total	**$**	**20,700.00**

Note: Items and dollar values shown in a lighter color shade have been approved via previous funding authorizations and are shown for informational purposes only.

2019142Gcontfundrevko