



## ENERGY SERVICES AGREEMENT

This is an Energy Services Agreement (this "Contract") by and between Schneider Electric Buildings Americas, Inc. ("ESCO") and the City of Laurel, MS ("Customer"), dated May 7, 2019 (the "Date of Commencement") whereby ESCO agrees to provide and perform the energy conservation measures ("ECMs") set forth in the attached schedules and exhibit(s) which are listed below and incorporated fully herein, subject to the terms and conditions set forth herein:

**City of Laurel, MS**

**Schneider Electric Buildings  
Americas, Inc.**

By _____ (Signature)	By _____ (Signature)
Print Name <u>Johnny Magee</u>	Print Name _____
Title <u>Mayor, City of Laurel</u>	Title _____

### DEFINITIONS

1. "Change Order" is defined as a written change in the Project executed by both parties.
2. "Contract Documents" consist of this Contract with the terms and conditions set forth herein, the Schedules identified above, other documents listed in the Contract and any mutually agreed upon written modification issued after execution of this Contract. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by ESCO. The Contract Documents are correlative and complimentary, and ESCO'S performance shall be required only to the extent consistent with the Contract Documents.
3. [Intentionally left blank]
4. "Day" as used herein shall mean calendar day unless otherwise specifically designated.
5. [Intentionally left blank.]
6. "Implementation Contract" means those portions of this Contract that refer to the Project.
7. "Project" refers to scope of work, as set forth in Schedule A: Scope of Work, made to facilities of Customer.
8. [Intentionally left blank]
9. "Substantial Completion" refers to and shall mean the date the individual scopes of work are sufficiently implemented in accordance with the Contract Documents that Customer may utilize the Project for the use for which it is intended, and is fully complete except for minor items, adjustments and/or corrections.
10. "Warranty Period" is as defined in Article 4.3.

11. "Work" means the services required by the Contract Documents, whether completed or partially completed and, includes all labor, materials, equipment and services provided or to be provided by ESCO to fulfill ESCO'S obligations. The Work may constitute the whole or a part of the Project.

# TERMS AND CONDITIONS OF IMPLEMENTATION PORTION OF CONTRACT

## ARTICLE 1 – DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

1.1 ESCO projects it will achieve Substantial Completion of the Work within 180 days from Date of Commencement (the "Contract Time"), subject to adjustments of this Contract Time as provided in the Contract Documents.

## ARTICLE 2 – CONTRACT SUM AND PAYMENTS

2.1 The total of all implementation contract payments shall be \$286,049 (the "Contract Sum"). Construction progress payments shall be made to ESCO monthly based on the percentage completion of items delineated on a "Schedule of Values" completed during the prior month. The Schedule of Values will be developed by ESCO and provided to Customer at the beginning of project implementation. The Schedule of Values will be based upon the project cost less the Project Mobilization Payment, if any. If any payment is over ten (10) days late from the due date stated on the invoice, Customer shall pay to ESCO a 1% late penalty per month and ESCO reserves the right to terminate this Contract due to non-payment upon seven (7) days prior written notice.

2.2 [Intentionally left blank.]

2.3 If required by ESCO, within one hundred twenty (120) days of the Date of Commencement, Customer shall make payment to ESCO for expenses incurred to date and project mobilization expenses.

2.4 Payments may be withheld on account of (1) Defective Work not remedied, (2) claims filed by third parties, (3) failure of ESCO to make payments properly to the "Subcontractor(s)" or for labor, materials or equipment, or (4) repeated failure to carry out the Work in accordance with the Contract Documents.

2.5 Final payment shall not become due until ESCO has delivered to Customer a complete release of all liens arising out of this Contract covering all labor, materials, and equipment for which a lien could be filed, or a bond satisfactory to Customer to indemnify Customer against such lien.

2.6 The making of final payment shall constitute a waiver of claims by Customer except those arising from (1) liens, claims, security interests or encumbrances arising out of the Contract and which are unsettled, (2) failure of the Work to comply with the requirements of the Contract Documents, or (3) terms of special warranties required by the Contract Documents.

## ARTICLE 3 – CUSTOMER

3.1 Except for permits and fees, which are the responsibility of ESCO under the Contract Documents, Customer shall secure and pay for necessary approvals, easements, assessments and charges required for the use or occupancy of permanent structures or permanent changes in facilities.

3.2 If with the Warranty Period, ESCO fails to correct Work that is not in material accordance with the requirements of the Contract Documents ("Defective Work") or repeatedly fails to carry out the Work in accordance with the Contract Documents, Customer, upon seven (7) days prior written notice to ESCO, and if ESCO does not correct or diligently commence to correct such failure within such notice period, may order ESCO to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, the right of Customer to stop the Work shall not give rise to a duty on the part of Customer to exercise this right for the benefit of ESCO or any other person or entity.

3.3 Customer agrees to repair or replace as necessary any defective existing equipment that is intended

to be reused.

3.4 Information under Customer's control shall be furnished by Customer with reasonable promptness as requested by ESCO.

3.5 Customer shall notify ESCO in writing of any or all uses or restrictions in usage of all areas of Customer's facility.

3.6 The foregoing are in addition to any other duties and responsibilities of Customer set forth herein or in any other Contract Documents, including but not limited to those duties and responsibilities set forth in Schedule E.

#### **ARTICLE 4 – ESCO**

4.1 ESCO shall supervise and direct the Work, using ESCO'S skill and attention. ESCO shall be solely responsible for and have control over means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

4.2 Unless otherwise provided in the Contract Documents, ESCO shall provide and pay for labor, materials, tools, equipment and machinery necessary for the proper execution and completion of the Work.

4.3 ESCO warrants to Customer for a period of one (1) year from the date of Substantial Completion that the materials and equipment manufactured by ESCO will be of good quality and new unless the Contract Documents require or permit otherwise, and further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. ESCO'S warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by or for ESCO, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. ESCO shall repair or replace defective material or equipment and re-perform Work to correct any defect within the Warranty Period. ESCO does not warrant products not manufactured by ESCO, but it will pass on to Customer any manufacturer's warranty to the extent permitted.

4.4 Unless otherwise provided in the Contract Documents, ESCO shall pay sales, consumer, use, and other similar taxes which are legally enacted when bids are received or negotiations concluded, whether or not effective or merely scheduled to go into effect, and shall secure and pay for the building permit and other permits, licenses and inspections necessary for proper execution and completion of the Work.

4.5 ESCO shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on performance of the Work.

4.6 ESCO shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, ESCO shall remove from and about Project waste materials, rubbish, ESCO'S tools, equipment, machinery and surplus material.

4.7 ESCO shall provide Customer access to the Work in preparation and progress wherever located.

4.8 ESCO shall pay all royalties and license fees, shall defend suits or claims for infringement or patent rights, and shall hold Customer harmless from loss on account thereof.

4.9 Except to the extent of the negligence or willful misconduct of Customer, or its agents, representatives, employees, officers, directors or assigns, ESCO shall indemnify and hold harmless Customer, and agents and employees thereof from and against all third party claims, damages, losses and expenses, including, but not limited to, reasonable attorney's fees, arising out of or resulting from performance of the Work provided that such claim, damage, loss or expense is attributable to bodily injury,

sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused in whole or in part by negligent acts or omissions of ESCO, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

4.10 [Intentionally left blank]

## **ARTICLE 5 – DISPUTE RESOLUTION**

5.1 [Intentionally left blank]

5.2 [Intentionally left blank]

## **ARTICLE 6 – SUBCONTRACTS**

6.1 A Subcontractor is a person or entity who has a direct contract with ESCO to perform a portion of the Work at the site.

6.2 Unless otherwise stated in the Contract Documents or the bidding requirements ESCO, if requested in writing by Customer, shall furnish in writing to Customer the names of the Subcontractors to whom ESCO plans to award Work. Contracts between ESCO and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to ESCO by the terms of the Contract Documents, and to assume all the obligations and responsibilities which ESCO, by the Contract Documents, assumes toward Customer, and (2) allow to the Subcontractor the benefit of all rights, remedies and redress afforded to ESCO by these Contract Documents.

## **ARTICLE 7 – CHANGES IN THE WORK**

7.1 Customer may request order changes in Work consisting of additions, deletions or modifications, whereby, the Contract Sum and Contract Time shall be adjusted accordingly. Such changes in the Work shall be authorized by written Change Order that shall be mutually agreed to and signed by Customer and ESCO. The parties shall negotiate in good faith and use their best efforts to execute any Change Order, and any Change Order must be fully executed in writing by Customer and ESCO prior to any actual changes being implemented.

7.2 Notwithstanding anything to the contrary contained in the Contract Documents, changes to the Contract Sum and Contract Time shall be changed only by Change Order.

7.3 The cost or credit to Customer from a change in the Work shall be determined by mutual agreement and, in the absence of a mutual agreement being reached within a reasonable amount of time after the request for such Change Order was made, the cost or credit to Customer shall be decided by the dispute resolution process as provided in the Contract Documents.

7.4 In the event of any suspension or delay due to the acts or omissions of Customer or Customer directives to stop Work for any reason, through no fault of ESCO, the Contract Time for Substantial Completion shall be extended to reflect such period of interruption and the Contract Sum shall be equitably adjusted to recover ESCO'S costs of demobilization, delay and remobilization related to such suspension or delay. ESCO agrees it will cooperate with Customer and mitigate such costs to the extent and efforts commercially reasonable. If such suspension or delay continues for more than ninety (90) consecutive days, through no act or fault of ESCO, ESCO may terminate this Contract and recover from Customer payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination and damages.

## **ARTICLE 8 – TIME**

8.1 The date of Substantial Completion is the date certified by ESCO in accordance with Article 9.3.

8.2 If ESCO is delayed at any time in progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any other causes which are beyond the control of ESCO, then the parties hereto agree to execute a Change Order allowing for a mutually agreeable extension of time for performance of ESCO'S Work to cover such delay.

## **ARTICLE 9 – PAYMENTS AND COMPLETION**

9.1 Payments shall be made as provided in Article 2 of the Contract.

9.2 Payments may be withheld on account of (1) Defective Work not remedied, (2) claims filed by third parties, (3) failure of ESCO to make payments properly to the Subcontractors or for labor, materials or equipment, or (4) repeated failure to carry out the Work in accordance with the Contract Documents.

9.3 Upon Substantial Completion, ESCO will issue a certificate of Substantial Completion to Customer.

9.4 Final payment shall not become due until ESCO has delivered to Customer a complete release of all liens arising out of this Contract covering all labor, materials, and equipment for which a lien could be filed, or a bond satisfactory to Customer to indemnify Customer against such lien.

9.5 [Intentionally left blank]

## **ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY**

10.1 ESCO shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. ESCO shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to (1) employees on the Work and other persons who may be affected thereby, (2) the Work and materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto.

10.2 ESCO shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss.

10.3 The scope of work or service to be performed by ESCO pursuant to this Contract, and the compensation to be paid to ESCO hereunder for Work or services performed, expressly exclude any Work or service of any nature associated or connected with the identification, abatement, cleanup, control or removal of environmentally hazardous materials beyond what is specifically defined and identified in Schedule A of this Contract. "Hazardous Materials" to include, but not be limited to, asbestos and PCBs discovered in or on the premises. Customer agrees that all duties and obligations in connection with any hazardous materials located in or on the premises, other than those defined in Schedule A, are strictly the responsibility of Customer. Customer warrants and represents to the best of Customer's knowledge there are no hazardous materials in or on the premises which will affect, be affected by, come in contact with, or otherwise impact upon or interfere with the Work to be performed by ESCO pursuant to this Contract.

10.4 Should ESCO become aware or suspect the presence of hazardous materials beyond those to be addressed in Schedule A during performance of its Work under this Contract, ESCO will be authorized to cease Work in the affected area immediately, and will promptly notify Customer of the conditions discovered. Should ESCO stop Work because of the discovery or suspicion of hazardous materials, the time for performance of ESCO'S Work or service will be extended to cover the period required for abatement, cleanup, or removal of the hazardous materials. ESCO will not be held responsible for any claims, damages, costs, or expenses of any kind associated with the period during which ESCO has stopped Work as a result of hazardous materials. If appropriate, ESCO will be entitled to an equitable adjustment of the Contract Sum for any increased costs or other charges incurred by ESCO in connection with the existence of its rights under this paragraph.

10.5 Customer will be responsible for taking all necessary steps to correct, abate, clean up, or control hazardous materials not addressed by ESCO in Schedule A in accordance with all applicable statutes and regulations.

## **ARTICLE 11 – INSURANCE AND BONDS**

11.1 ESCO shall maintain adequate levels and types of insurance coverage appropriate to its business and profession and as may be required by applicable law and the Contract Documents. Such insurance shall be in companies authorized to do business in the jurisdiction in which the Project is located with an A.M. Best's rating of at least A- VII and as a minimum shall include Workers' Compensation and Employer's Liability at statutory limits, Automobile Liability covering all owned, hired and other non-owned vehicles and Commercial General Liability covering public liability, property damage and completed operations with limits not less than \$2,000,000 per occurrence. Certificates of such insurance shall be provided to Customer prior to commencement of the Work.

11.2 If required in the Contract Documents, and upon Customer's request and expense, ESCO shall provide payment and performance bonds for 100% of the Contract Sum to secure the faithful performance of the Work, compliance with the terms of this Contract and to insure ESCO'S payment obligations to its Subcontractors and suppliers related to the Work. Notwithstanding any provision to the contrary herein, any payment and performance bonds associated with this Contract guarantee only the performance of the installation portion of the Contract, and shall not be construed to guarantee the performance of: (1) any efficiency or energy savings guarantees, (2) any support or maintenance service agreement, or (3) any other guarantees or warranties with terms beyond one (1) year in duration from the completion of the installation portion of the Contract.

## **ARTICLE 12 – TERMINATION OF THE CONTRACT**

12.1 If Customer fails to make payments to ESCO as required in this Contract, through no fault of ESCO, ESCO may, upon seven (7) days written notice to Customer, terminate the Contract and recover from Customer payment for all Work executed and for proven loss with respect to materials, equipment, tools, and machinery, including reasonable overhead, profit and damages applicable to the Project.

12.2 If ESCO breaches a material provision of this Contract, Customer, after delivery of written notice and providing ESCO seven (7) days to cure such breach, may make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due ESCO.

12.3 Any remedies provided for in this Article 12, shall not be exclusive of any additional remedies available to a party pursuant to this Contract, in equity or in the law.

12.4 The continuation of this contract is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature or other budgeting authority. If the Legislature or other budgeting authority fails to appropriate sufficient monies to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which appropriations were made. The termination shall be without penalty or expense to the entity of any kind whatsoever, except as to the portions of payments for which funds were appropriated.

## **ARTICLE 13 – OTHER CONDITIONS OR PROVISIONS**

13.1 If any provision of this Contract shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

13.2 Nothing herein shall be deemed to establish a relationship of principal and agent between ESCO and Customer, or any of their respective agents or employees, and this Contract and the Contract Documents may not be construed as creating any form of legal association or arrangement that would

impose liability upon one party for the act or failure to act of the other party.

13.3 This Contract shall be governed by the laws of the state where the Project is located.

13.4 [Intentionally left blank]

13.5 This Contract sets forth the entire understanding between the parties and supersedes all prior oral or written understandings relating to the subject matter herein. This Contract may not be altered or modified except by a written instrument signed by a duly authorized representative of each party.



# SCHEDULE A: SCOPE OF WORK

Customer hereby acknowledges and agrees that the scope of work shall be limited to, and ESCO shall only perform, the following:

## 1 MECHANICAL

ESCO will be performing mechanical retrofits at the following Customer facilities.

- Laurel Police Department

### Laurel PD

This ECM involves the replacement of a 70-ton air cooled split chiller at the Laurel Police Department.

The following is included in the scope for the new chiller:

- Disconnect and dispose of existing chiller and refrigerant lines from chiller to remote condenser
  - Disconnect vent pup and prepare for reuse
- Disconnect chilled water piping and valves in penthouse and dispose of existing isolation valves
- Furnish and install new air-cooled chiller (Evaporator and Remote Condenser)
- Modify new chilled water piping and furnish/install new isolation valves, relief valves as applicable in replacement of demo chilled water piping and valves
- Provide, and install new copper for new refrigerant lines to remote condenser
- Provide and install new weather rated service disconnect. Existing feeders from building to the disconnect will remain.
- Provide Trane Factory Start-up of new chiller
- Provide and install new support frame to secure condenser to roof
- Provide and install OSHA Certified safety guard rails on the roof
- Temporary cooling is excluded from this scope of work
- Customer will be responsible for parking lot access for crane setup, work area and safety of pedestrians in or around the work / crane area.
- CUSTOMER is responsible for the proper operation and/or repair of any defective equipment not identified in this scope of work to be replaced.

### Exclusions and Clarifications

1. The following items are excluded from ESCO'S scope of work or provide additional clarifications:
2. Night/holiday work unless otherwise specified in the Scope of Work.
3. Salvage materials are designated to ESCO. Except where identified in the scope of work.
4. Additional labor cost due to restriction of allowable work hours.
5. Costs incurred due to lack of access to required areas or due to access to storage areas to which materials are to be delivered.
6. Costs of providing access, access control, or security escorts not specified in the Scope of Work.
7. Hazardous materials testing and abatement not specified in the Scope of Work.
8. Materials and labor associated with modifications to existing systems and equipment not identified in these documents as included in the Scope of Work.

9. Testing, adjusting, and balancing of existing systems not identified in these documents as included in the Scope of Work.
10. Commissioning of existing systems not identified in these documents as included in the Scope of Work.
11. Repair or replacement of ceiling beyond that required to accomplish the Scope of Work.
12. Repair or replacement of existing roofing, penthouse or facility structures are not included in the scope of work
13. Painting of floors, walls or ceilings beyond that required to match existing surfaces in the immediate work area.
14. Waste disposal other than that required to accomplish the Scope of Work.
15. Demolition of equipment, piping and accessories indicated herein to be abandoned in-place unless indicated herein to be included.
16. The cost for utilities including natural or propane gas, fuel oil, electricity, potable or non-potable water during the construction period.
17. The cost for equipment and/or utilities to provide temporary heating or cooling of facilities during the construction period.
18. Cost escalation of materials as a result of a delay in the construction schedule caused by Customer action or inaction.
19. Inspection and permitting fees for agencies (state and/or federal) other than the local authority having jurisdiction.
20. Fees for third party engineers acting as Customer's agent.
21. Water treatment equipment not specified in the Scope of Work.
22. Structural modifications not specified in the Scope of Work.
23. Building envelope modifications not specified in the Scope of Work.
24. Replacement of ductwork and diffusers not specified in the Scope of Work.
25. Replacement of piping not specified in the Scope of Work.
26. Ductwork and piping insulation not specified in the Scope of Work.
27. Electrical systems not specified in the Scope of Work.
28. Equipment replacement and their components not specified in the Scope of Work
29. Changes to the design intent to include additional operation of system to reduce humidity or include extra conditioning will require adjustments in savings calculations.