

RESOLUTION NO. R-2022-206

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, APPROVING AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE AN ENERGY SERVICES AGREEMENT WITH NORESKO, LLC FOR ENERGY PERFORMANCE SERVICES ASSOCIATED WITH THE CITY'S ENERGY PERFORMANCE PROGRAM OVER A 20 YEAR PERIOD.

WHEREAS, the Department of Public Works ("Department") desires to enter in an agreement with Noresco, LLC ("Noresco") to perform investment grade performance audits and comprehensive energy management and energy-related capital improvement services for various City buildings, structures, lighting and facilities for the City's energy performance program, financed through guaranteed cost savings achieved from the improvements ("Energy Performance Services"); and

WHEREAS, the Energy Performance Services include the evaluation of all City facilities and resources to recommend and potentially implement energy savings associated with street lights, HVAC units, electrical systems, EV chargers and other energy efficient adjustments to other City assets; and

WHEREAS, on May 4, 2022, the City Commission passed and adopted Resolution No. R-2022-129, authorizing appropriate City officials to negotiate an agreement with Noresco for the desired Energy Performance Services for consideration and approval by the City Commission at a later date; and

WHEREAS, the Department has negotiated the attached Energy Services Agreement, which shall serve as the master agreement that establishes the terms and conditions for various audit and construction work essential for the implementation of the desired Energy Performance Services; and

WHEREAS, the period of performance for the Energy Services Agreement is over a 20 year period for amounts that will be defined at a later time in individual project attachments to the Energy Services Agreement; and

WHEREAS, the Energy Services Agreement includes Audit Work Order No. 1 to complete street light upgrades throughout the City, with expenses in the amount of \$136,860.00 due to Noresco upon completion of the audit; however, those costs will be waived if the City pursues moving forward with the audit results and the resulting Construction Work Order with costs that will be determined after the audit and paid in monthly progress payments throughout completion of the project; and

WHEREAS, the Director of the Department recommends that the City Commission approve and authorize the execution of the Energy Services Agreement with Noresco over a 20 year period; and

WHEREAS, the timing in which the City will be required to pay for services rendered as part of the detailed energy audit, construction costs for the demonstration projects, other energy conservation measure projects, and the performance period fee will vary depending on the City's decision to proceed with the individual projects; and

WHEREAS, during its consideration of the proposed Energy Performance Services offered by Noresco, the City Commission approved a limited audit focusing only upon the street light pilot project, and indicated that staff shall bring back a revised agreement concerning the audit of the City's HVAC units, electrical systems, EV charges and other potential energy efficient adjustments to other City assets for Commission consideration; and

WHEREAS, additional analysis will be conducted by City staff to evaluate financing options as decisions are made on the energy conservation measure projects.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are incorporated in this Resolution.

Section 2: That it approves and authorizes the execution, by the appropriate City officials, of the attached Energy Services Agreement with Noresco, LLC, pertaining to the street light pilot project, together with such non-material changes as may be subsequently agreed to by the City Manager and approved as to form and legal sufficiency by the City Attorney.

Section 3: That this Resolution shall be in full force and effect immediately upon its passage and adoption.

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, APPROVING AND AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE AN ENERGY SERVICES AGREEMENT WITH NORESCO, LLC FOR ENERGY PERFORMANCE SERVICES ASSOCIATED WITH THE CITY'S ENERGY PERFORMANCE PROGRAM OVER A 20 YEAR PERIOD.

PASSED AND ADOPTED this 6 day of July, 2022.

  
*Carol Shubert, Vice Mayor*  
JOSH LEVY, MAYOR

ATTEST:

*Patricia A. Cerny*  
PATRICIA A. CERNY, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY for the use and reliance  
of the City of Hollywood, Florida, only.

*D. R. Gonzales*  
DOUGLAS R. GONZALES  
CITY ATTORNEY *dm*

**ENERGY SERVICES AGREEMENT**

**BY AND BETWEEN**

**CUSTOMER**

**AND**

**NORESCO, LLC**

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## ENERGY SERVICES AGREEMENT

BY AND BETWEEN

CUSTOMER

AND

NORESCO, LLC

**THIS ENERGY SERVICES AGREEMENT** (the "Agreement") is entered into this \_\_\_ day of \_\_\_\_\_ 2022, by and between **CITY OF HOLLYWOOD**, a municipal corporation of the State of Florida, having its principal place of business located at 2600 Hollywood Boulevard, Hollywood, FL 33020 ("Customer") and **NORESCO, LLC**, a Delaware limited liability company, having its principal place of business at One Research Drive, Suite 400C, Westborough, MA 01581 ("NORESCO"). The parties to this Agreement will be collectively referred to as the "Parties" and individually as a "Party."

### SECTION 1 SCOPE OF SERVICES

(a) Audit and Construction Work: In accordance with the terms of this Agreement, NORESKO may perform both audit work ("Audit Work") and construction work ("Construction Work"). The Parties acknowledge that Audit Work relates primarily to an analysis by NORESKO of specified Customer facilities for the purpose of determining and designing potential energy conservation measures ("ECMs") and that Construction Work primarily relates to construction of the ECMs desired by Customer. Where Customer desires that Audit Work be performed, Customer shall issue an Audit Work Order to NORESKO. Where Customer desires that Construction Work be performed, Customer shall issue a Construction Work Order to NORESKO.

(b) Audit Work: Where Customer issues an Audit Work Order to NORESKO, it shall be in substantially the same form as set forth in Exhibit A unless otherwise mutually agreed by the Parties. The terms applicable to an Audit Work Order shall be set forth in the Audit Work Order, which shall substantially incorporate the Terms for Audit Work contained in Exhibit B. The terms contained in this Agreement shall not apply to the Audit Work Orders except as provided by Section 1(a)-(b) of this Agreement. The terms contained in Section 1(a)-(b) of this Agreement will take precedence over the terms contained in Exhibit B.

(c) Construction Work: Upon delivery by the Customer to NORESKO of a Notice to Proceed, substantially in the form attached to this Agreement as Exhibit C, NORESKO shall furnish all labor, materials and equipment and perform all work required for the completion of the Scope of Services set forth in Attachment B, including the installation of the ECMs, for the facilities ("Facilities") described in Attachment A, as such Scope of Services and Facilities may be modified in accordance with this Agreement. If NORESKO does not receive a Notice to Proceed from Customer within 90 days of contract execution, NORESKO may adjust the contract price accordingly. Customer and NORESKO shall mutually plan the scheduling of the construction work. NORESKO will list installed ECMs on Attachment J at the time that construction is complete. Attachment J may be modified as provided for herein.

(d) Hazardous Materials: Unless explicitly and specifically identified in Attachment B, NORESKO's Scope of Services is predicated on the viability of this Project without any asbestos or hazardous materials abatement being required by NORESKO. For the avoidance of doubt, unless explicitly and specifically identified in Attachment B or in Section 1(c) below, the Scope of Services does not include directly or indirectly performing or arranging for the detection, testing, handling, storage, removal, treatment, transportation, disposal, monitoring, abatement or remediation of any contamination of any premise, Property, site, facility, etc. at which Work is performed and any soil or groundwater at the premise, Property, site, facility, etc. by petroleum or petroleum products (collectively called "Oil"), mold, lead, asbestos, or any hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA, CERCLA or any

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Applicable Law (collectively called "Hazardous Materials"), including without limitation: ionization smoke detectors, ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, asbestos, lead-containing paint, mold, and refrigerant. Except as explicitly and specifically identified in Attachment B, the Customer represents and warrants that, to the best of its knowledge following due inquiry, there are no Hazardous Materials or Oil present where the Work is to be performed. All services have been priced and agreed to by NORESKO in reliance on the Customer's representations as set forth in this Article. In the event that (i) NORESKO encounters any Hazardous Materials which are in the immediate vicinity of NORESKO's work, or (ii) NORESKO determines that its work will result in the disturbance of Hazardous Materials, or (iii) NORESKO determines that the presence of Hazardous Materials will impede NORESKO's work, NORESKO will notify Customer of the same and Customer will, at its cost, cause the Hazardous Materials to be promptly and properly removed, enclosed, encapsulated or otherwise abated in accordance with applicable laws and regulations, or alternatively, Customer, at its cost, may provide written test reports showing that Hazardous Materials in that area have been properly removed, enclosed encapsulated or otherwise abated in accordance with applicable laws. In the event NORESKO cannot determine whether any particular material does or does not contain Hazardous Materials, Customer, upon NORESKO's written request, will, at its cost, promptly perform tests or cause tests to be performed in order to determine whether or not such material is a Hazardous Material and/or whether there are unacceptable levels of airborne particulate material containing asbestos or such other Hazardous particulate(s) or provide such a test report. Under no circumstances, shall NORESKO be required to handle Hazardous materials.

(e) Disposal: NORESKO, at its cost, shall be responsible for disposal of all non-hazardous equipment and materials that are rendered useless and removed as a result of the installation of the ECMs pursuant to this Construction Work Order. In addition, NORESKO shall, at its cost, cause all lamps and PCB-contaminated ballasts, if any, that have been rendered useless and removed as a result of the installations of the ECMs to be transported and disposed of via recycling and incineration, respectively. All other existing PCB-contaminated ballasts, lamps and any other hazardous substances, however, remain the responsibility of Customer and NORESKO shall assume no liability in connection with their removal, handling, transportation, and/or disposal. In all instances, with the only exception being those hazardous materials that NORESKO brings to the site, the Customer will be the "Generator" of record and sign any and all disposal documents (i.e. manifests, bills of lading, etc.) in order to document the abatement or removal of any such Hazardous Materials from Customer's site or Premises.

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

(g) Measurement & Verification: To the extent provided in Attachment F – "Determination of Energy Cost Savings" - NORESKO will also supply such ongoing Measurement & Verification services to the Customer that may be agreed upon between the Parties at an annual fee to be set forth in Section 4 and Attachment G.

(h) Compliance With Law: NORESKO shall comply with and obtain, at its expense, all licenses and permits required by Federal, state and local laws in connection with the installation of the ECMs. To the extent that NORESKO agrees to perform operations and/or maintenance of specified ECMs or other equipment, it shall comply with and obtain, at its expense, all licenses and permits that may be required by Federal, state and local laws in connection with the operation and/or maintenance of such specified ECMs. In the event that NORESKO can not procure any such license or permit in light of a requirement that Customer is required to do so, Customer will procure the same. Should a change in law occur subsequent to the date of execution of the Agreement that increases NORESKO's Project costs, the parties shall, to the extent allowed by law, negotiate an equitable resolution. NORESKO shall pay the required prevailing wage rates for work in connection with this Project to the extent required by applicable law.

(i) Taxes: Notwithstanding any other provision herein, Customer shall be responsible for all taxes arising from or in connection with Customer's participation in this Agreement and the benefits to Customer hereunder.



Customer shall reimburse NORESKO for any taxes, permits or fees not in effect on the date of this Agreement, but for which NORESKO may become liable during the Term of this Agreement. If Customer is a tax-exempt entity, it shall cooperate reasonably with NORESKO to ensure purchases of materials or equipment required under this Agreement enjoy any reasonable favorable tax considerations available under applicable State or local law or regulation.

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

(k) Standards of Service and Comfort: Customer shall operate the ECMs in a manner that shall provide the standards of service and comfort provided for in Attachment K (to be attached).

(l) Specifications: Prior to beginning the work, NORESKO may provide (or Customer, at its option, may reasonably request to have NORESKO provide) written specification of any ECMs to be installed. Customer shall furnish its written approval or disapproval of each such written specification within ten (10) working days following its receipt of written notice by NORESKO of completion of each such sample installation or the provision of such written specifications to Customer. Customer's approval of such specifications shall be in substantially the form of Attachment \_\_\_\_\_. If Customer disapproves any such ECM, NORESKO shall have the right to provide a substitute ECM that conforms to the applicable specifications or is equivalent to any applicable sample provided and approved by Customer for Customer's approval. In the event Customer approves the substitute ECMs (in writing), NORESKO shall revise the Attachments to reflect each such substitution, subject to Customer's written approval of each revised Attachment. In the event that Customer does not approve or disapprove of any ECM(s) within ten (10) working days following NORESKO's written notice to Customer that the written specification is ready for inspection, Customer shall be deemed to have given its approval. If, however, Customer again does not approve of any such substituted ECMs or specifications, the Parties agree to negotiate a mutually acceptable solution. Customer shall not unreasonably withhold any approval provided for herein.

(m) Duties, Obligations and Responsibilities of NORESKO:

(i) All labor furnished under this Agreement shall be competent to perform the tasks undertaken, that all materials and equipment provided shall be new and of appropriate quality, and that the completed work shall comply with the requirements of this Agreement.

(ii) NORESKO shall maintain the Project site in a reasonably clean condition during the performance of the construction work.

(iii) NORESKO shall thoroughly and regularly clean the Project site of all nonhazardous debris, trash and excess material or equipment.

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

(v) NORESKO will provide equipment manuals and other appropriate information regarding equipment installed hereunder to Customer at or about the time of Substantial Completion.

## **SECTION 2 OWNERSHIP OF ECMS**

Ownership of and title to the ECMs referenced in Attachment E(1) to each Delivery and Acceptance Certificate (Attachment E) will automatically transfer to the Customer upon both: (a) the delivery of each such Delivery

and Acceptance Certificate and Attachment E(1) by Customer to NORESKO, the execution and delivery of which shall not be unreasonably withheld or delayed, and (b) completion of all Customer's payment obligations to NORESKO, excluding payment obligations related to maintenance or other annual services hereunder.

Subject and subordinate to Lessor's rights pursuant to the Lease, as defined below, NORESKO under this Agreement shall be entitled to all rights, benefits and remedies afforded a secured party under law with respect to the equipment installed pursuant to this Agreement, including but not limited to those under the Uniform Commercial Code, as adopted in Florida ("Code") and any other applicable state laws. NORESKO shall retain such security interest in the ECMs, pursuant to this Agreement, for equipment installed hereunder until Customer shall have accepted the same and title has transferred to Customer. If requested by NORESKO in connection therewith, Customer agrees to provide to NORESKO appropriate financing statements and other documents necessary in order for NORESKO and/or any bank, lender or financial institution to which NORESKO has assigned any interest in this Agreement, to perfect said subordinate security interest in the ECMs.

### **SECTION 3                      FINANCIAL SERVICES**

Non-Applicable

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

(a) During the period beginning on the date of execution of this Agreement and continuing through the Date of Substantial Completion with respect to each Phase, Customer will make monthly progress payments to NORESKO based upon the portion of the Project completed at the end of each month, as respectively provided for in Attachment G for which payment is being made. Customer shall (within five days of receipt) execute and deliver to NORESKO completed forms E-1 (Attachment E-1) upon completion by NORESKO of each ECM. A Final Delivery and Acceptance Certificate (Attachment E-2) shall be executed by Customer upon final completion of the ECMs. Customer shall not unreasonably withhold or delay the execution of any Delivery and Acceptance Certificate, which shall be deemed approved by NORESKO if Customer has not taken action with respect to any Certificate within ten (10) days of its receipt thereof. For purposes of this Agreement, the term "Substantial Completion" shall mean that the subject ECM has been demonstrated by NORESKO to be operating in a manner consistent with its manufacturer's intended use. For the purposes of this Agreement, the terms "Final Completion" or "Final Acceptance" shall mean that NORESKO has fulfilled all of its construction obligations for all ECMs installed under this Agreement. This shall include the completion of all punchlist items and the submission of all required documentation.

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

(c) In accordance with the Local Government Prompt Payment Act, Noresco shall submit an invoice on account of work done by NORESKO, and Customer shall pay NORESKO 95% of the value of NORESKO's work. The remaining 5% retained shall be held as additional security for the faithful performance by NORESKO of all the work required under this Agreement and shall be paid to NORESKO within 30 days after Final Acceptance.

(d) Amounts not paid to NORESKO on or before the due dates specified in Sections 4(a)-(c) above will accrue interest at the rate of the prime interest rate plus four percent for the number of days following the due date until such time as such amount due has been paid in full.

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

(f) Reserved.

## **SECTION 5 COMMENCEMENT DATE AND TERM**

The Commencement Date shall be the first (1<sup>st</sup>) day of the month following the date of execution of the Delivery and Acceptance Certificate (Attachment E-2) upon Final Acceptance of this Project. Subject to the following sentence, and the Term of this Agreement shall begin on the Commencement Date and shall end exactly 20 years from the Commencement Date, unless terminated prior to such date, as provided for in this Agreement. If not otherwise terminated as provided for herein, the Term of this Agreement shall terminate simultaneously with any termination of the Lease or termination of the Measurement and Verification Services. Nonetheless, the Contract shall be effective and binding upon the parties immediately upon its execution, and the period from contract execution until the Commencement Date shall be known as the "Interim Period".

## **SECTION 6 PUBLICITY**

Customer grants to NORESKO and its directors, officers, employees, and affiliates ("Authorized Representatives"):

- a) authorization to use Customer's name in NORESKO's client list;
- b) authorization to disclose the nature of Customer's relationship with NORESKO and certain summary "Project Information" (as defined below) in connection with the Project for use in NORESKO's marketing efforts (the "Marketing Works");
- c) a non-exclusive, nontransferable, royalty-free license to copy any Project progress photos taken by NORESKO, or photos or other copyrighted material supplied by the Customer regarding the Project (the "Licensed Material") or any portion thereof, solely as needed to create Marketing Works, except that the Parties agree that such Licensed Material explicitly excludes Customer's City seal, and
- d) authorization allowing NORESKO to publicly display the Licensed Material included in the Marketing Works.

Summary "Project Information" may include the location of the Project, services provided by NORESKO in connection with the Project, Project price and any recognition or certification (e.g., LEED® certification) associated with the Project. Authorized marketing materials which include summary Project Information-and/or Customer's name shall include internal newsletters or publications, press releases, case studies, photos, promotional brochures and other publications (e.g., annual reports) created by or on behalf of NORESKO (the "Marketing Works"). Customer warrants that it owns the copyrights in the Licensed Material and waives any fees or royalties for use of the Licensed Material in the Marketing Works. For the avoidance of doubt, none of NORESKO, its Authorized Representatives, successors or assigns has authorization from the Customer to publicize the Customer name, summary Project Information or Licensed Material for any other purpose.

## **SECTION 7 GUARANTEE OF ENERGY SAVINGS**

NORESKO will guarantee to the Customer the amount of energy savings determined in accordance with Attachment F, "Guaranty of Energy Cost Savings".

## **SECTION 8 RIGHT OF ENTRY/SPACE**

During the Term of this Agreement, Customer shall provide NORESKO and its employees, agents and subcontractors, including any utility that provides or may provide any payment under this Agreement, access to the Property for the purpose of fulfilling NORESKO's obligations under this Agreement. Customer shall provide mutually satisfactory space for the installation and operation of the ECMs and shall protect such equipment in the same careful manner that Customer protects its property. Additionally, Customer shall provide NORESKO remote electronic access to the Energy Management System (if required) during the Term

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of this Agreement. NORESKO shall obey and abide by any and all reasonable rules of Customer relative to the Property as they would directly relate to NORESKO's performance of its obligations under this Agreement.

## **SECTION 9                      CHANGES IN WORK**

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

The Parties agree that the Project Cost is based on prices of materials and labor in effect as of the date of the Agreement. The Project Cost shall be adjusted via Change Order if changes in tariffs, import duties, trade policy, epidemics, applicable laws, market conditions, or related impacts result in substantial inequity (i.e., increase in over 5% of the Project Cost) to NORESKO, or its subcontractors/suppliers at any tier. For any such Change Order request, NORESKO shall provide documentation substantiating the price increase.

## **SECTION 10                      WARRANTIES**

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

## **SECTION 11                      CUSTOMER ROLE AND RESPONSIBILITIES**

- (a) **Operations:** The Customer shall operate the equipment installed hereunder in accordance with the manufacturers' recommendations and the procedures supplied to the Customer by NORESKO.
- (b) **Maintenance:** The Customer shall, at its expense, maintain the Property in good working order during the Term of this Agreement. Except as may otherwise be provided for in Attachment I, the Customer will maintain, at Customer's expense: (i) the equipment and all other components that comprise the ECMs (following the date of Substantial Completion), and (ii) all other equipment that is attached thereto and/or is integral to the proper functioning of the ECMs.
- (c) **Malfunctions:** The Customer will notify NORESKO immediately in the event of any malfunction in the operation of the ECMs or the equipment installed hereunder.
- (d) **Protection of ECMs:** Except in the case of emergency, the Customer will not remove, move, alter, turn off or otherwise significantly affect the operation of the equipment installed hereunder or the operation of the ECMs, or any individual part thereof, without the prior approval of NORESKO, which approval shall not be unreasonably withheld. After receiving NORESKO's approval, Customer shall proceed as instructed. Customer shall act reasonably to protect the ECMs from damage or injury, if, due to an emergency, it is not reasonable to notify NORESKO before acting. Customer agrees to protect and preserve the facility envelope and the operating condition of all ECMs, mechanical systems, and other energy consuming systems located on the Property.

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

(f) Adjustment to Baseline: If, in the reasonable opinion of NORESKO, the Customer does not reasonably protect the ECMs and/or maintain the Property in good repair and good working condition, then NORESKO will equitably adjust the baseline, as referenced in Attachment F, for any increased energy usages at the Property.

(g) Changes to Property: The Customer will notify NORESKO in writing at least 30 days prior to making any change to the Property that would significantly affect the energy usage at the Property, including but not limited to changes in the hours or days that the Property is occupied or operated, the number of occupants (including but not limited to staff, faculty and students), the activity conducted, the equipment, or the size of the Property. In the event NORESKO receives such notification or otherwise determines that such a change has occurred, it will make the appropriate revisions to the Attachments or take such other action as may be provided for hereunder.

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

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

Customer assumes all risk of loss of or damage to the ECMs from any cause whatsoever except to the extent that such loss or damage was caused by the negligence of NORESKO. In the event of damage to any item of the equipment installed hereunder or ECMs, Customer will promptly notify NORESKO and immediately place the same in good repair with the proceeds of any insurance received applied to the cost of such repair. If Customer determines that any item of the ECMs is lost, stolen, confiscated, destroyed or damaged beyond repair, Customer will replace the same with like equipment in good repair in a timely fashion.

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

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

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

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

(m) Storage: Customer will provide reasonable rent-free space for NORESKO, or any of its subcontractors, to mobilize and store its supplies, tools and equipment during installation of the ECMs or other activities by NORESKO within the Property pursuant to this Agreement for which such storage may be required. Said storage space shall be provided with locking capacity acceptable to NORESKO. Only NORESKO, or any of NORESKO's subcontractors, and the Customer's assigned personnel shall have access to the storage. Customer assumes no responsibility nor will Customer provide any additional security for the storage provided.

(n) Fuel: Customer shall procure and pay for all energy, fuel, and water for the operation of the Property.

## **SECTION 12** **DEFAULTS BY CUSTOMER AND NORESKO**

(a) Customer shall be in default under this Agreement upon the occurrence of any of the following:

(i) Customer fails to pay when due any amount to be paid under this Agreement and such failure continues for a period of five working days after notice of overdue payment is delivered by NORESKO to the Customer;

(ii) Customer fails to perform or meet any of its required duties or obligations under this Agreement and fails to cure such failure and the effects of such failure within 30 days of receipt of written notice of default, unless such failures and effects cannot be completely cured within 30 days after said written notice, in which case a default shall exist only if Customer does not commence and diligently pursue to cure such failure and effects as soon as possible;

(iii) Customer goes into receivership, or makes an assignment for the benefit of creditors whether voluntary or involuntary, or a petition is filed by or against the Customer under any bankruptcy, insolvency or similar law and such petition is not dismissed within 60 days;

(iv) Customer becomes aware that the allocated funds associated with this Agreement have been reduced (or are no longer available) to an amount insufficient to meet its outstanding obligations on the Project.

(b) NORESKO shall be in default under this Agreement upon the occurrence of the following:

(i) NORESKO fails to perform or meet any of its required duties or obligations under this Agreement and fails to cure such failure or effects of such failure within 30 days of receipt of written notice of default, unless such failure or effects cannot be completely cured within 30 days after said written notice, in which case a default shall exist only if NORESKO does not commence and diligently pursue to cure such failure as soon as possible.

## **SECTION 13** **REMEDIES FOR DEFAULTS**

(a) In the event Customer defaults under this Agreement, NORESKO:

(i) may bring actions for any remedies available at law or in equity or other appropriate proceedings for the recovery of direct damages (including amounts past

due), and/or bring an action in equity for specific performance; and

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

(b) In the event NORESKO defaults under this Agreement, Customer may terminate this Agreement and bring an action in law for damages.

#### **SECTION 14                    MEDIATION AND ARBITRATION**

In the event of any dispute whatsoever between the Parties, they shall first exhaust every reasonable effort to settle or dispose of the same, including through a discussion of the matter between senior executives of each Party. The exhaustion of such efforts to settle as outlined in this paragraph shall be a prerequisite to any Party's right to pursue arbitration as outlined in this Section.

In the event the Parties are unable to resolve the dispute as outlined above, any controversy or claim arising out of or relative to this Agreement or the breach thereof, not adjusted or disposed of by mutual agreement between the Parties following senior executive discussion, shall be first attempted to be settled by non-binding mediation utilizing a mutually-agreed third party mediator, with such proceedings to take place in Broward County, Florida, or at such other location as may be mutually agreed in writing by the parties, and then (in the absence of settlement after mediation), by arbitration under the rules then obtaining of the American Arbitration Association Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof, and arbitration decision shall be final and binding on the Parties and on all Parties subject to the following. Said arbitration proceedings shall be filed in the nearest Regional office of the American Arbitration Association to Broward County, Florida, or such other location as may be mutually agreed by the Parties. All arbitrators shall be bound by the terms of this Agreement. The expenses of any arbitration shall be borne equally by the Parties to the arbitration, provided that each Party shall pay for and bear the cost of its own experts, evidence, and counsel.

#### **SECTION 15                    TERMINATION**

At any time after the Customer has executed the Delivery and Acceptance Certificate to be provided upon Substantial Completion, Customer may terminate this Agreement upon 30 days written notice to NORESKO, provided that Customer has paid to NORESKO all amounts due as set forth in Section 4 and on Attachment G (other than amounts due for future performance by NORESKO). Termination of the Agreement simultaneously terminates all remaining obligations of NORESKO under the Agreement, including any Guarantee of Energy Cost Savings.

#### **SECTION 16                    INSURANCE**

Without limiting any of its obligations or liabilities under this Agreement, NORESKO shall provide and maintain at its expense the following minimum insurance coverage's where reasonable market availability for such insurance exists:

##### **(a)            GENERAL LIABILITY:**

Prior to the commencement of work governed by this contract, the Contractor shall obtain General Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum:

- Premises Operations
- Products and Completed Operations
- Blanket Contractual Liability

➤ Personal Injury Liability

Expanded Definition of Property Damage The minimum limits acceptable shall be:

\$1,000,000 Combined Single Limit (CSL) / \$2,000,000 Aggregate

An Occurrence Form policy is preferred. If coverage is provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported should extend for a minimum of twelve (12) months following the acceptance of work by the City.

The City of Hollywood shall be named as Additional Insured on all policies issued to satisfy the above requirements.

The City shall be listed as the certificate holder per the following format:

City of Hollywood  
2600 Hollywood Blvd  
Hollywood, FL 33020

Recognizing that the work governed by this contract involves either underground exposures, explosive activities, or the possibility of collapse of a structure, the Contractor's General Liability Policy shall include coverage for the XCU (explosion, collapse, and underground) exposures with limits of liability equal to those of the General Liability Insurance policy.

(b) **VEHICLE LIABILITY:**

Recognizing that the work governed by this contract requires the use of vehicles, the Contractor, prior to the commencement of work, shall obtain Vehicle Liability Insurance. Coverage shall be maintained throughout the life of the contract and include, as a minimum, liability coverage for:

➤ Owned, Non-Owned, and Hired Vehicles The minimum limits acceptable shall be:

\$1,000,000 Combined Single Limit (CSL)

The City of Hollywood shall be named as Additional Insured on all policies issued to satisfy the above requirements.

The City shall be listed as the certificate holder per the following format:

City of Hollywood (nothing else on this line)  
2600 Hollywood Blvd  
Hollywood, FL 33020

(c) **WORKERS' COMPENSATION:**

Prior to the commencement of work governed by this contract, the Contractor shall obtain Workers' Compensation Insurance with limits sufficient to respond to the applicable state statutes.

In addition, the Contractor shall obtain Employers' Liability Insurance with limits of not less than:

\$500,000 Bodily Injury by Accident  
\$500,000 Bodily Injury by Disease, policy limits  
\$500,000 Bodily Injury by Disease, each employee



Coverage shall be maintained throughout the entire term of the contract.

The City shall be listed as the certificate holder per the following format:

City of Hollywood (nothing else on this line)  
2600 Hollywood Blvd  
Hollywood, FL 33020

(d) **PROFESSIONAL LIABILITY INSURANCE**

Recognizing that the work governed by this contract involves the furnishing of advice or services of a professional nature, the Contractor shall purchase and maintain, throughout the life of the contract, Professional Liability Insurance which will respond to damages resulting from any claim arising out of the performance of professional services or any error or omission of the Contractor arising out of work governed by this contract.

The minimum limits of liability shall be:

\$2,000,000 each claim / \$4,000,000 aggregate

If coverage is provided on a claims made basis an "extended reporting period" of (3) years will be required.

The City shall be listed as the certificate holder per the following format:

City of Hollywood (nothing else on this line)  
2600 Hollywood Blvd  
Hollywood, FL 33020

Coverage shall be provided by a company or companies authorized to transact business in the state of Florida and the company or companies must maintain a minimum rating of "A" and Class X, as assigned by the A.M. Best Company.

The policy must be endorsed to provide the City with (30) days' notice of cancellation.

If the Contractor has been approved by the Florida's Department of Labor, as an authorized self-insurer, the City shall recognize and honor the Contractor's status. The Contractor may be required to submit a Letter of Authorization issued by the Department of Labor and a Certificate of Insurance, providing details on the Contractor's Excess Insurance Program.

If the Contractor participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, the Contractor may be required to submit updated financial statements from the fund upon request from the City.

Any sub-consultant shall supply such similar insurance required of the Consultant. Such certificates shall name the City as additional insured in the general liability and auto liability policies.

(e) **Payment and Performance Bond.** NORESCO shall within thirty (30) days of execution of this Agreement, deliver to the Customer Performance and Payment Bonds in a sum equal to the contract price with sureties satisfactory to the Customer, conditioned upon the faithful performance by NORESCO, for the implementation of the ECMs as it may be from time to time modified by Change Orders, such bonds to be in such form and otherwise to contain such provisions as are reasonably satisfactory to the Customer. NORESCO shall deliver to Customer the Payment and Performance Bond prior to commencement of construction of any work in respect of this Agreement. The Payment and Performance Bonds required hereunder shall expire upon final acceptance of all ECMs required under this Agreement (including any

applicable one year warranty period), and shall not secure any energy savings, measurement and verification obligations or maintenance/service obligations, which may be guaranteed by NORESO under this Agreement.

(f) Customer will provide and maintain insurance as described in Section 11 (i), naming NORESO as additional named insured and waiving subrogation. NORESO shall be primary on such insurance.

#### **SECTION 17 INDEMNIFICATION AND LIMIT OF LIABILITY**

(a) NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, AND TO THE EXTENT PERMITTED BY LAW, NORESO'S TOTAL LIABILITY, AND THAT OF ITS OFFICERS, DIRECTORS, EMPLOYEES, PARENTS, SUBSIDIARIES, AGENTS, AFFILIATES, INSURERS AND SUBCONTRACTORS, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, ARISING IN CONNECTION WITH ANY SERVICES UNDER THIS AGREEMENT (EXCEPT FOR PERSONAL INJURIES ARISING FROM THE SERVICES TO THE EXTENT CAUSED BY NORESO'S NEGLIGENT ACTS OR OMISSIONS, OR DIRECT DAMAGES CAUSED BY NORESO'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) SHALL BE LIMITED TO THE AGGREGATE AMOUNT RECEIVED BY NORESO FROM CUSTOMER UNDER THE AGREEMENT IN THE 36 MONTHS IMMEDIATELY PRECEDING THE EVENT FORMING THE BASIS OF THE CLAIM.

(a) Each Party (hereinafter referred to as the "Indemnifying Party") agrees to indemnify and hold harmless the other Party from and against any and all claims for damages sustained by third parties arising by reason of bodily injury or damage to third party property caused by the Indemnifying Party's willful misconduct or negligent physical acts (or the willful misconduct or negligent physical acts of any entity under the control, responsibility or direction of the Indemnifying Party). In no event, however, shall the Indemnifying Party be obligated to indemnify the other Party to the extent that any injury or damage is caused by the negligence of the other Party or any entity for which the other Party is legally responsible. Nothing contained herein shall act as a waiver of Customer's sovereign immunity in tort pursuant to Section 768.28, Florida Statutes, or any other immunities provided under Florida law. Notwithstanding this, both Parties understand that state sovereign immunity in Florida does not render this Agreement non-binding or unenforceable as against Customer.

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

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

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

(e) The provisions of this Section shall survive the termination of this Agreement.

(f) Anything herein notwithstanding, in no event shall either Customer or NORESO be liable to the other party for special, indirect, incidental or consequential damages, including commercial loss, loss of use, or lost

profits, even if either party has been advised of the possibility of such damages.

#### **SECTION 18                    AGREEMENT INTERPRETATION AND PERFORMANCE**

The interpretation and performance of this Agreement, and the interpretation and enforcement of the rights of the Parties hereunder, shall be in accordance with and controlled by the laws of the State of Florida. In the event of any ambiguity or conflict in meaning, the terms of this Agreement shall not be construed against the drafting Party based upon that Party's having drafted this Agreement. All lawsuits commenced under this Agreement shall be brought in that State or Federal Court having jurisdiction over matters arising in the county in which this contract shall be performed.

#### **SECTION 19                    PRIVILEGED AND PROPRIETARY INFORMATION**

NORESCO's systems, means, cost, and methodologies of evaluating, implementing, accomplishing and determining energy savings and the terms of the Agreement for this Project shall be considered privileged and proprietary information. Customer shall use the same level of effort to protect and safeguard such information as it employs to safeguard its own confidential information. Customer shall not disclose such proprietary information without the express written consent of an officer of NORESKO unless required to do so by statute or regulation. When any request for disclosure of such information is made under any applicable freedom of information law ("FOIL"), Customer will provide prompt verbal and written notice to NORESKO such that NORESKO will have the opportunity to timely object under FOIL should it desire to object to such disclosure of that information in whole or in part. In the event that Customer is required to make a filing with any agency or other governmental body, which includes such information, Customer shall notify NORESKO and cooperate with NORESKO in order to seek confidential treatment of such information included within any such filing or, if all such information cannot be protected from disclosure, to request that Customer be permitted to redact portions of such information, as NORESKO may designate, from that portion of said filing that is to be made available to the public.

#### **SECTION 20                    SEVERABILITY**

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

#### **SECTION 21                    ASSIGNMENTS AND SUBCONTRACTING**

(a) NORESKO may elect to use subcontractors in meeting its obligations hereunder. Customer shall approve all significant subcontractors and outside professionals in advance, which approval shall not be unreasonably withheld or delayed.

(b) Customer shall not assign, transfer, or otherwise dispose of this Agreement, the ECMs, or any interest therein, or sublet or lend the ECMs or permit the ECMs to be used by anyone other than the Customer and Customer's employees without the prior express written consent of NORESKO (or, if applicable, the Lessor) such consent not to be unreasonably withheld. If Customer transfers ownership or its interest in the Property, the Customer will terminate this Agreement as provided for in Section 14.

(c) NORESKO shall not assign this Agreement in whole or in part to any other party without first obtaining the consent of Customer, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, NORESKO may assign, without obtaining the consent of Customer, its rights and obligations under this Agreement in whole or in part to any affiliated or associated company of NORESKO and its rights for payments under this Agreement to any financial institution, lender or investor in connection with a leasing or financing arrangement for the ECMs. NORESKO will notify Customer 30 days prior to any such assignment.

#### **SECTION 22                    WAIVER**

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

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

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

- (i) the non-performing Party gives the other Party prompt written notice describing the particulars of the Force Majeure, including but not limited to the nature of the occurrence and its expected duration, and continues to furnish timely regular reports during the period of Force Majeure;
- (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
- (iii) no obligations of either Party that arose before the Force Majeure causing the suspension of performance are excused as a result of the Force Majeure;
- (iv) the non-performing Party uses reasonable efforts to remedy its inability to perform; and
- (v) the Term of this Agreement, at NORESO's option, shall be extended for a period equal to the number of days that the Force Majeure prevented the non-performing Party from performing.

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

## **SECTION 24**                    **CONTRACT DOCUMENTS**

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

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

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

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

**SECTION 25****NOTICES**

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

**To: CITY OF HOLLYWOOD**

2600 Hollywood Blvd  
Hollywood, FL 33020

Attention: Peter Bieniek  
Director, Public Works

Email: [pbieniek@hollywoodfl.org](mailto:pbieniek@hollywoodfl.org)

**To NORESO:**

One Research Drive  
Suite 400C  
Westborough, MA 01581

Attention: Pablo Hernandez  
Vice President

Email:

With U.S mail a copy to:

NORESCO, LLC Legal Department  
c/o Carrier  
13995 Pasteur Blvd.  
Palm Beach Gardens, FL 33418

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

**SECTION 26****RECORDS**

To assist NORESO in its performance of this Agreement, Customer shall (to the extent it has not already done so) furnish (or cause its energy suppliers to furnish) to NORESO, upon its request, accurate and complete data (kept by Customer or Customer's energy suppliers in the regular course of their respective businesses) concerning energy usage for the existing facilities at the Property, including the following data for the most current 36 month period: utility records, occupancy information; descriptions of any changes in building structure or heating, cooling or other systems or energy requirements; descriptions of all energy consuming or saving equipment used on Property; descriptions of all energy management procedures presently utilized.

The Customer and the NORESO shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law). Pursuant to Section 119.0701, Florida Statutes, any party contracting with Customer is required to (a) keep and maintain available for public inspection any records that pertain to services rendered under this Agreement; (b) provide the public with access to public records on the same terms and conditions that the Customer would provide such records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (d) meet all requirements for retaining public records and transfer, at no cost, to Customer all public records in

that party's possession upon termination of its contract with Customer and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All of such party's records stored electronically must be provided to Customer in a format that is compatible with the Customer's information technology systems. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law. Each party acknowledges that this Agreement and all attachments thereto are public records and do not constitute trade secrets.

**IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTOMER'S CUSTODIAN OF PUBLIC RECORDS AT (954) 921-3211, [PCERNY@HOLLYWOODFL.ORG](mailto:PCERNY@HOLLYWOODFL.ORG), 2600 HOLLYWOOD BOULEVARD, HOLLYWOOD, FLORIDA 33020.**

## **SECTION 27                      NORESCO NOT A MUNICIPAL ADVISOR**

The Customer acknowledges and agrees that NORESKO has not acted as a municipal financial advisor to the Customer and that the Customer has not relied on NORESKO for any matters relating to the financing of the Project, including issuance of any bonds.

## **SECTION 28                      REPRESENTATIONS AND WARRANTIES**

Each Party warrants and represents to the other that:

- (a) It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;
- (b) Its execution, delivery, and performance of this Agreement have been duly authorized by, or are in accordance with, as to NORESKO, its organic instruments and, as to Customer, by all requisite municipal, board, or other action and are not in breach of any applicable law, code or regulation; this Agreement has been duly executed and delivered by the signatories so authorized, and constitutes each Party's legal, valid and binding obligation;
- (c) Its execution, delivery, and performance of this Agreement shall not result in a breach or violation of, or constitute a default under, any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; and
- (d) It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially adversely affect its ability to perform hereunder.
- (e) The persons executing this Agreement are fully authorized by law to do so.
- (f) In addition, Customer warrants and represents to NORESKO that Customer has obtained or shall obtain all necessary governmental, legal, administrative and any other approval necessary for it to enter into this Agreement.
- (g) To assist in NORESKO's tax compliance, upon job completion Customer agrees, if applicable, to execute the required Written Allocation including the Declaration related to Section 179D of the Internal Revenue Code. NORESKO will be responsible for preparing the Declaration, all accompanying documentation and the contents therein. NORESKO will be designated the sole Section 179D beneficiary.
- (h) The Customer acknowledges and agrees that NORESKO has not acted as a municipal financial advisor to the Customer and that the Customer has not relied on NORESKO for any matters relating to the

financing of the Construction Work, including issuance of the Bonds.

## **SECTION 29                    INDEPENDENT CONTRACTOR**

Nothing in this Agreement shall be construed as reserving to Customer any right to exercise any control over or to direct in any respect the conduct or management of business or operations of NORESKO on the Property. The entire control or direction of such business and operations shall be in and shall remain in NORESKO, subject only to NORESKO's performance of its obligations under this Agreement. Neither NORESKO nor any person performing any duties or engaged in any work on the Property on behalf of NORESKO shall be deemed an employee or agent of Customer.

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

## **SECTION 30                    ADDITIONAL REPRESENTATIONS AND WARRANTIES OF CUSTOMER**

Customer hereby warrants and represents to NORESKO that:

- (a) Customer presently intends to continue to use the Property in a manner reasonably similar to its present use;
- (b) Customer does not presently contemplate any changes to the electrical and thermal consumption characteristics of the Property as these existed during the base period except as may have been disclosed to NORESKO by Customer in writing prior to the execution of this Agreement;
- (c) Customer has provided NORESKO with all records requested by NORESKO and, in that regard, NORESKO acknowledges that it has received base period data from Customer which appears to be complete as of the date of this Agreement, and that the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Agreement shall be, true and accurate in all material respects except as may be disclosed by Customer in writing;
- (d) Customer has not entered into any contracts or agreements for the Property with persons or entities other than NORESKO regarding the provision of the energy services referenced herein.

## **SECTION 31                    ABSENCE OF FRAUD OR COLLUSION**

NORESKO certifies, by its execution of this Agreement, that no official or employee of Customer has any pecuniary interest in this Agreement or in the expected profits to arise here from, and that this Agreement is made in good faith without fraud or collusion with any other person involved in the bidding process.

## **SECTION 32                    NEGLIGENT/WRONGFUL ACTS**

It is understood and agreed that neither Party to this Agreement shall be liable for any negligent or wrongful acts, either of commission or omission, chargeable to the other, unless such liability is imposed by law, and that this Agreement shall not be construed as seeking to either enlarge or diminish any obligation or duty owed by one Party against the other or against third parties.

## **SECTION 33                    FURTHER DOCUMENTS AND EVENTS**

**SECTION 32                    NEGLIGENT/WRONGFUL ACTS**

It is understood and agreed that neither Party to this Agreement shall be liable for any negligent or wrongful acts, either of commission or omission, chargeable to the other, unless such liability is imposed by law, and that this Agreement shall not be construed as seeking to either enlarge or diminish any obligation or duty owed by one Party against the other or against third parties.

**SECTION 33                    FURTHER DOCUMENTS AND EVENTS**

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

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

**SECTION 34                    APPROPRIATION**

Customer warrants and represents that Customer has on-hand, or shall obtain complete Project funding to compensate NORESO for their services, in accordance with this Agreement, before Notice to Proceed shall be issued.

**SECTION 35                    THIRD PARTY BENEFICIARIES**

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

**SECTION 36                    NOTIFICATIONS OF GOVERNMENTAL ACTION - OCCUPATIONAL SAFETY AND HEALTH**

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

**SECTION 37                    REFERENCES**

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

**SECTION 38                    AMERICAN RECOVERY AND REINVESTMENT ACT FUNDS**

Non-Applicable

**SECTION 39                    APPROVAL**



Non-Applicable

**SECTION 40**

**PROTECTING PERSONAL DATA**

NORESCO processes personal data as described in our privacy notices at noresco.com. The parties will comply with applicable data privacy laws governing personal data processed in connection with this Agreement, including the California Consumer Privacy Act (CCPA), and take all reasonable commercial and legal steps to protect personal data. If Customer provides NORESKO with personal data, Customer will ensure that it has the legal right to do so, including notifying the individuals whose personal data is shared. If a party collects or processes personal data from California residents under this Agreement, such party is a "Service Provider" under the CCPA, and will not sell or exchange such personal data for anything of value.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

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

NORESCO, LLC

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF HOLLYWOOD, FLORIDA,  
a municipal corporation of the State of Florida

By: \_\_\_\_\_  
Josh Levy, Mayor

ATTEST:

\_\_\_\_\_  
Patricia A. Cerny, MMC  
City Clerk

APPROVED AS TO FORM & LEGAL  
SUFFICIENCY for the use and reliance  
of the City of Hollywood, Florida only.

\_\_\_\_\_  
Douglas R. Gonzales, City Attorney

**EXHIBIT A**

**AUDIT WORK ORDER NO. \_\_\_\_\_**

1. This Audit Work Order No. \_\_\_\_\_ ("Audit Work Order"), executed between NORESKO and Customer and dated \_\_\_\_\_, is issued pursuant to Section 1(a)-(b) of the Energy Services Agreement ("ESA") dated \_\_\_\_\_, between NORESKO and Customer.
2. The terms applicable to this Audit Work Order are set forth in the Terms for Audit Work, attached hereto and incorporated herein.
3. Customer hereby requests that NORESKO complete the Audit Work described in this Audit Work Order and NORESKO agrees to complete the Audit Work described in this Audit Work Order.

By signing below, the Parties agree to the terms of this Audit Work Order.

NORESKO, LLC

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF HOLLYWOOD, FLORIDA,  
a municipal corporation of the State of Florida

By: \_\_\_\_\_  
Josh Levy, Mayor

ATTEST:

\_\_\_\_\_  
Patricia A. Cerny, MMC  
City Clerk

APPROVED AS TO FORM & LEGAL  
SUFFICIENCY for the use and reliance  
of the City of Hollywood, Florida only.

\_\_\_\_\_  
Douglas R. Gonzales, City Attorney

**EXHIBIT B**  
**TERMS FOR AUDIT WORK**

**1. SERVICES**

NORESCO shall provide a Detailed Investment Grade Audit ("IGA") for the specified City owned or maintained streetlights listed in Section 21. The IGA shall include descriptions of potential ECMs and shall further include the scope of work described in Section 21.

The findings of the IGA will be presented to the Customer in a report (the "IGA Report"). Customer acknowledges that NORESKO is expending significant time and resources on the behalf of the Customer by performing the IGA and preparing the IGA Report and therefore agrees as follows:

- a) Customer shall work exclusively with NORESKO on this IGA for the period in which this Audit Work Order is in place.
- b) Customer shall furnish (or cause its energy suppliers to furnish) to NORESKO, upon its request, accurate and complete data concerning energy usage for the Site. Customer acknowledges that NORESKO shall rely on this data in conducting its audit.
- c) Customer shall require its staff to cooperate fully with NORESKO personnel as NORESKO gathers on-site data required to complete its analysis of the Site. Customer may also provide any prior energy audits or studies of the Site.
- d) Customer will receive an initial IGA Report Summary, and a proposed Construction Work Order. Customer and NORESKO will jointly select efficiency measures to be implemented, and NORESKO will prepare a final IGA Report and Construction Work Order from these selected measures. Both Parties agree that the final Construction Work Order shall be in substantially the same form as the Exhibit C (including attachments) to the Agreement.

**2. TERM**

NORESCO shall commence providing services under this Audit Work Order \_\_\_\_\_ on \_\_\_\_\_, shall diligently perform as required and complete performance within 120 \_\_\_\_\_ days.

**3. COMPENSATION**

In the event that, for any reason, Customer decides not to issue a Construction Work Order for the ECMs described in the applicable Audit Work Order and corresponding IGA that incorporates the cost of such IGA and demonstration project described in section III.C of this document, Customer agrees to pay NORESKO for services satisfactorily rendered pursuant to Audit Work Order in the amount of \$136,860. If such an event occurs, Customer shall pay NORESKO for IGA services rendered within thirty calendar days of receipt of approved invoice and acceptance of services.

**4. INDEPENDENT CONTRACTOR**

NORESCO, in the performance of this Audit Work Order, shall be and act as an independent contractor. NORESKO understands and agrees that it and all of its employees shall not be considered officers, employees or agents of the Customer, and are not entitled to benefits of any kind or nature normally provided employees of the Customer and/or to which Customer's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. NORESKO shall assume full

responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to NORESKO's employees.

## **5. MATERIALS**

NORESCO shall furnish, at its own expense, all labor, materials, transportation, equipment, supplies, subcontractors, and other items necessary to complete the services to be provided pursuant to this Audit Work Order.

## **6. ORIGINALITY OF SERVICES**

NORESCO agrees that all technology, formulae, procedures, processes, methods, writings, iLGAs, dialogue, compositions, recordings, teleplays, and video productions prepared for, written for, submitted to the Customer and/or used in connection with this Audit Work Order, shall be wholly original to NORESKO and shall not be copied in whole or in part from any other source, except that submitted to NORESKO by Customer as a basis for such services.

## **7. OWNERSHIP AND REUSE OF DOCUMENTS**

- (a) The original of all documents, including but not limited to drawings, calculations, test results, recommendations, technical specifications, renderings, exhibits, models, prints, photographs, or other materials prepared by NORESKO shall be and remain the property of the Customer.
- (b) Reuse of the design and/or corresponding contract documents or portions thereof by the Customer shall be limited to the Customer and for the benefit of the Customer. When reuse is contemplated, all title blocks and references to NORESKO shall be removed from drawings unless written consent for reuse is given by NORESKO. The Customer shall defend, indemnify and hold NORESKO, its officers, employees and agents harmless from and against any and all liability, loss, expense, attorneys' fees, or claims or injury or damages arising out of the reuse of the design and / or corresponding contract documents or portion thereof, unless Customer obtains written consent of NORESKO in a separate agreement setting forth terms of reuse.

## **8. TERMINATION**

- (a) Customer may, at any time, for any reason, terminate this Audit Work Order after first providing ten (10) calendar days written notice. In the event of such termination, Customer shall pay NORESKO within 30 calendar days of such termination for the full reasonable value of its services including direct and indirect costs, expenses, overhead and profit not to exceed the rates indicated in paragraph 3.
- (b) Upon receipt of notification, NORESKO shall stop all work. Segments of partially completed work may be completed during the 30-day period only at the written direction of the Customer and NORESKO shall be compensated fairly for this work. The total compensation paid shall not exceed the amount due according to Paragraph 3.
- (c) NORESKO may, at any time, for any reason, terminate this Audit Work Order after first providing 30 calendar days' notice. In this event, Customer is not obligated to compensate NORESKO for services.
- (c) NORESKO may terminate this Audit Work Order in the event of breach by Customer of any material provisions including, but not limited to, payment or failure to provide NORESKO with access to the Facilities and records described in any Customer obligations in the Scope of Work. Written notice by NORESKO shall contain the reasons for such intention to terminate

and unless within 30 calendar days after service of such notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Audit Work Order shall upon the expiration of the 30 calendar days cease and terminate. In the event of such termination for cause, Customer shall be responsible for NORESO's fees incurred to date at the rate indicated in paragraph 3.

## **9. LIMITATION OF LIABILITY**

Notwithstanding anything else in this Agreement, and to the extent permitted by law, NORESO's total liability, and that of its officers, directors, employees, parents, subsidiaries, agents, affiliates, insurers and subcontractors, whether in contract, tort, strict liability or otherwise, arising in connection with any Audit Work Order (except for personal injuries arising from the Audit Work Order to the extent caused by NORESO's negligent acts or omissions) shall be limited to the aggregate amount paid by Customer to NORESO under the applicable Audit Work Order.

Except as otherwise expressly provided herein, no Party nor its respective officers, directors, agents, employees, parent, subsidiaries or affiliates or their officers, directors, agents or employees shall be liable, irrespective of whether such claim of liability is based upon breach of warranty, tort (including negligence, whether of any of the Parties to this Audit Work Order or others), strict liability, contract, operation of law or otherwise, to any other Party, or its parent, subsidiaries, affiliates, officers, directors, agents, employees, successors or assigns, or their respective insureds, for incidental, indirect, punitive or consequential damages, connected with or resulting from performance or non-performance of this Audit Work Order, or anything done in connection therewith, including without limitation claims in the nature of lost revenues, income or profits (other than payments expressly required and properly due under this Audit Work Order), and increased expense of, reduction in or loss of power generation production or equipment used therefor.

## **10. INSURANCE**

Insurance types and limits shall be in accordance with CUSTOMER requirements, as agreed by NORESO herein.

[List Customer's insurance requirements here.]

## **11. ASSIGNMENT**

NORESOS shall not assign this Audit Work Order in whole or in part to any unaffiliated party without first obtaining the written consent of Customer, which consent shall not be unreasonably withheld. Notwithstanding the above, NORESO may assign its rights and obligations under this Audit Work Order to any affiliated company of NORESO with which NORESO may merge or consolidate or to which NORESO may assign substantially all of its assets or that portion of its business to which this Audit Work Order pertains upon providing prior written notice to Customer.

## **12. COMPLIANCE WITH APPLICABLE LAWS**

NORESOS agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances that are now applicable to NORESO, NORESO's business, equipment and personnel engaged in operations covered by this Audit Work Order.

## **13. PERMITS/LICENSES**

NORESOS and all NORESO's employees or agents shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Audit Work Order. NORESO may subcontract engineering services to a licensed professional engineer.

## **14. AFFIRMATIVE ACTION EMPLOYMENT**

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NORESCO agrees that it will not engage in unlawful discrimination in employment of persons because of race, color, religious creed, national origin, ancestry, physical handicap, marital status, or sex of such persons.

**15. NON WAIVER**

The failure of Customer or NORESKO to seek redress for violation of, or to insist upon, the strict performance of any term or condition of this Audit Work Order, shall not be deemed a waiver by that Party of such term or condition, or prevent a subsequent similar act from again constituting a violation of such term or condition.

**16. NOTICE**

All notices or demands to be given under this Audit Work Order by either Party to the other, shall be in writing and given whether by: (a) personal service or (b) by U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally serviced or if mailed on the third day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either Party may be changed by written notice given in accordance with the notice provisions of this section. At the date of this Audit Work Order, the addresses of the Parties are as follows:

**CUSTOMER**

Peter Bieniek  
CITY OF HOLLYWOOD  
Director, Public Works  
2600 Hollywood Blvd  
Hollywood, FL 33020

**NORESCO**

Pablo Hernandez  
NORESCO, LLC  
Vice President  
One Research Drive, Suite 400C  
Westborough, MA 01581  
With a copy to:  
NORESCO, LLC Legal Dept.  
c/o Carrier  
13995 Pasteur Blvd.  
Palm Beach Gardens, FL 33418

**17. SEVERABILITY**

If any term, condition or provision of this Audit Work Order is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions, will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

**18. GOVERNING LAW**

The terms and conditions of this audit Work Order shall be governed by the laws of the State of Florida without regard to conflicts of law principles.

**19. VENUE**

In the event of litigation, jurisdiction shall be in United States District Court and venue shall be in the State of Florida.

## **20. FORCE MAJEURE**

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

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

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

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

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

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

## **21. SCOPE OF AUDIT WORK**

### **I. GENERAL**

#### **A. General Expectations:**

The purpose of the IGA is to provide an investment grade analysis that quantifies the size, scope, payback, and firm cost for streetlighting upgrades that may be implemented through a subsequent Construction Work Order.

**B. Presentation:** The IGA findings shall be presented in an Investment Grade Audit Report in the format prescribed in section V. Tabs or markers shall separate each section of the report. Each table shall be titled and/or numbered and labeled clearly. four packages (one original and 3 copies) of the IGA shall be submitted in three-ring binders.

**C. Cash Flow Analysis:** A cash flow table shall be provided listing the annual energy and O&M savings, the annual payments, the annual M&V, maintenance, other costs, and the net annual cash flow. Interest rate and applicable escalation rates will be clearly listed. An estimate of the Customer's capitalized interest costs and any available utility rebates will be clearly listed and included in the analysis as appropriate.

### **II. CALCULATIONS**

**A. General Calculations:** For all calculations, major assumptions will be clearly stated and labeled. When calculating energy savings for more than ECM, interaction between/among the measures will be taken into account.



- B. Energy Consumption:** Accurate energy consumption and cost data is important to establish a baseline for measuring and evaluating the effectiveness of all recommended actions. Estimates will be used if the necessary information is not available. If estimates are used, the data should be clearly labeled and an explanation will be provided on why monthly records were not available. Procedures used to estimate monthly consumption figures will be presented and clearly explained. In addition, an analysis of the various variables that may affect the baseline will be included. The parties agree adjustment factors for weather, occupancy, and hours of operation shall be mutually determined
- C. Calculation of ECM Costs:** A firm turnkey cost per ECM shall be provided including all materials and labor to complete the work.

### **III. SCOPE OF WORK**

#### **A. General Scope:**

The Investment Grade Audit shall include the following:

1. A summary of the historical energy use as available and cost of the streetlight systems. Energy use anomalies or high costs will be evaluated and recommendations will be made.
2. All ECMs will be developed, designed, and implemented in a way as not to compromise the general guidelines for illumination of exterior spaces or roadways. Evidence will be provided, if appropriate, to demonstrate that the measure will not violate any state or local code or ordinance.
3. ECMs will be developed for financial and construction feasibility. Savings will be verified using engineering calculations and estimates. Cost models will be verified through subcontractor pricing.

#### **B. Streetlighting Scope:**

The IGA will include a survey of the city-owned, FDOT-owned, Broward County-owned, and CRA-owned street lighting currently managed by the City. FPL-owned streetlights will not be included in the survey but will be included in the utility billing analysis

1. Geographic Information System (GIS) audit of existing streetlights – NORESO will review available Customer and utility records for existing inventory of streetlights and will work with the Customer to determine priority areas, City borders, and/or other areas containing non-City-owned fixtures. NORESO will collect data on the existing inventory of streetlights and identify on-site characteristics, including but not limited to:
  - The horizontal GPS coordinates (latitude and longitude) of each fixture location
  - Street name
  - Luminaire type
  - Lamp type
  - Luminaire wattage
  - Observed issues (tree interference, pole damage, etc.)

2. Data Reconciliation – NORESO will conduct a detailed investigation of the Customer's existing inventory records, including utility billing records. NORESO will reconcile the records with the data from our Audit to confirm ownership and billing record accuracy. In the event we cannot identify a matching utility record with an audited location, we will create an ongoing list of locations to be resolved by the Customer. If the Customer does not provide remedies for reported discrepancy locations prior to the deadline in the schedule for submission of Purchase Order, all locations not resolved will be removed from the Project scope of work.
3. Replacement Plan – NORESO will provide a street light replacement plan consistent with applicable IES RP-8-14 guidelines (where possible) or Customer design standards, including brand of fixture, photocell, replacement wattages, color temperatures, and other appropriate settings and options to optimize the LED streetlight retrofit. This will result in a Replacement Plan for all existing streetlights that includes final cost, savings, and payback analysis.

**C. Demonstration Streetlight Project**

As part of the IGA, NORESO will furnish and install sample materials as a demonstration project to solicit City staff and constituent feedback of the various technologies recommended in the final proposed solution.

1. Demonstration Project Scope of Work:

- a. Retrofit no more than 13 existing streetlights located in the Emerald Hills neighborhood of Hollywood, FL. Exact streetlights to be retrofitted will be identified in coordination with City staff during the IGA. Retrofits will include the following:
  - i. Furnish and install new LED heads on existing poles. New heads will be Acuity Autobahn series or similar, rated for approximately 40 watts.
  - ii. Furnish and install new "smart" nodes on the new LED heads to include the following functions: light controls, voltage detection, and utility-grade metering. Nodes will be UbiCell series or similar.
  - iii. It is assumed that all existing pole bases and conductors are in good condition and no cost for repair or replacement of pole bases or conductors have been included.
- b. Furnish and install one ClearWorld Retroflex residential solar wrap kit (RS260 or RS320 model) to an existing streetlight pole in the Emerald Hills neighborhood. The existing pole selected for the Retroflex installation shall be one of the streetlight poles included in section C.1.a.
- c. Furnish and install two ClearWorld Retroflex systems complete with new poles, new LED heads, and solar wraps in the parking lot of the Hollywood City Hall facility located at 2600 Hollywood Blvd. Exact pole installation location to be determined in coordination with City staff during the IGA.
- d. General assumptions for demonstration project installation.
  - i. Project is based on fair market wage rates. Union labor, Davis Bacon or prevailing wage rates have not been accounted for in this estimate.
  - ii. Work will take place during normal business hours.
  - iii. No minority-owned or disadvantaged business participation has been incorporated.
  - iv. NORESO will be responsible for properly removing and disposing of any materials made obsolete by this project.
  - v. No abatement of asbestos, lead, or other hazardous materials is included.

**IV. IGA SCHEDULE**

Within two (2) weeks of the date that Audit Work Order is fully executed, NORESO shall submit an audit project schedule for the streetlights with the following milestones:

- Pre-Audit review kickoff meeting date;
- Site visit dates;
- Preliminary recommendations;
- Final IGA Report submittal date (one original and three copies).

**V. FORMAT FOR DETAILED ENERGY AUDIT REPORT**

The format for the Investment Grade Audit Report shall be as follows:

## **A. Facility Profile**

1. Baseline Energy Use: Tabular summary of the streetlight historical energy use in the appropriate energy units including source references and analysis of the appropriate variables.
2. Energy Costs: Tabular summary of the facility's historical energy costs and current energy costs based currently applicable rate tariffs.
3. Description of streetlight systems per section B.1:

## **B. Utility information**

1. Rate Summary Table, including:
  - energy type
  - unit (in kWh, gals, etc.)
  - average price per unit
  - marginal price per unit, if applicable
  - effective date of prices
  - monthly listing for rates that vary
2. Alternative Rate Options:

If a more favorable rate can be obtained from the utility or other supplier, this alternative should be discussed in this section. If a more favorable rate could be obtained by making a capital improvement, the auditor shall perform cost and savings analysis to determine its feasibility.
3. Rebate and/or Subsidy Opportunities

## **C. Savings Opportunities Summary**

1. Summary table of all recommended ECMs.
2. Detailed description of each recommended ECM including the following information:
  - a. a description of the existing systems or equipment,
  - b. a description of the recommended systems or equipment,
  - c. a description of the system scope, major equipment and required components,
  - d. a description of the projected system efficiency levels or performance characteristics of the equipment or other significant physical or operating characteristics,
  - e. a description of the interface with new and existing systems and of the peripheral equipment required for the ECM to achieve operational status,
  - f. a description of the ECM's compatibility with existing systems and the proper O&M procedures required to achieve the measure's maximum savings potential,
  - g. outline specifications and conceptual drawings, diagrams, and manufacturer cut sheets, as appropriate, for the recommended new equipment,
  - h. an analysis of the annual savings and the calculations and other relevant back-up documentation, as well as any additional O&M costs that the facility will incur, and
  - i. an estimate of initial costs for design and installation.

## **D. Measurement & Verification**

Measurement & Verification Plan: A detailed plan for measuring and verifying the savings and performance of each ECM. The plan will include definitions of terminology and the methods and procedures for reconciling the verified savings to the guaranteed savings.

**EXHIBIT C**

**CONSTRUCTION WORK ORDER NO. \_\_\_\_\_**

1. This Construction Work Order No. \_\_\_\_\_ ("Construction Work Order"), executed between NORESKO and Customer and dated \_\_\_\_\_, is issued pursuant to Section 1(a) of the Energy Services Agreement ("ESA") dated \_\_\_\_\_, between NORESKO and Customer.
2. The terms applicable to this Construction Work Order are set forth in the ESA and include all attachments referenced in the ESA.
3. Customer hereby requests that NORESKO complete the Construction Work described in this Construction Work Order and NORESKO agrees to complete the Construction Work described in this Construction Work Order.
4. Customer hereby acknowledges that this Construction Work Order constitutes a valid Notice to Proceed issued by the Customer for the work discussed herein.

By signing below, the Parties agree to the terms of this Construction Work Order.

NORESKO, LLC

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF HOLLYWOOD, FLORIDA,  
a municipal corporation of the State of Florida

By: \_\_\_\_\_  
Josh Levy, Mayor

ATTEST:

\_\_\_\_\_  
Patricia A. Cerny, MMC  
City Clerk

APPROVED AS TO FORM & LEGAL  
SUFFICIENCY for the use and reliance  
of the City of Hollywood, Florida only.

\_\_\_\_\_  
Douglas R. Gonzales, City Attorney

**ATTACHMENT A**

**PROPERTY DESCRIPTION**

**TO BE DETERMINED**

## **ATTACHMENT B**

### **SCOPE OF SERVICES**

#### **DESCRIPTION OF THE ENERGY EFFICIENCY MEASURES AND THE EQUIPMENT**

The following is a brief description of the ECMs and related equipment to be installed by NORESKO at the Property.

[Description]

**ATTACHMENT C**  
**EQUIPMENT LEASE DOCUMENTS**

(TO BE PROVIDED)



**ATTACHMENT D**

Intentionally left blank.

**ATTACHMENT E-1**

**DELIVERY AND ACCEPTANCE CERTIFICATE  
UPON SUBSTANTIAL COMPLETION**

Customer acknowledges receipt of the Energy Conservation Measure(s) ("ECM(s)") described in the applicable Attachment B to the Energy Services Agreement ("Agreement") between Customer and NORESO, as fully installed and in good working condition, which are listed and attached hereto. Customer accepts the ECM(s) listed hereto after full inspection thereof as satisfactory for all purposes of the Agreement. Customer agrees to make the related payment(s) to NORESO as set forth in Section 4 of the Agreement.

Substantial Completion Date:

ECM(s):

Date Accepted by Customer: \_\_\_\_\_

Accepted for: **Customer**

Accepted by: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Note: ECM(s) to which this Delivery and Acceptance Certificate relates is/are attached hereto.

**ATTACHMENT E-2**

**FINAL DELIVERY AND ACCEPTANCE CERTIFICATE  
FINAL ACCEPTANCE OF PROJECT**

Customer acknowledges Final Acceptance of all Energy Conservation Measures ("ECMs") described in the applicable Attachment B to the Energy Services Agreement ("Agreement") between Customer and NORESO. The date of Final Acceptance is the date certified by the Customer that the Work has been installed, functionally tested and all punchlist items completed in accordance with the Contract Documents, so that the Customer has possession of the Work and can use it for its intended use. Customer accepts the ECMs listed hereto after full inspection thereof as satisfactory for all purposes of the Agreement. Customer agrees to make the required payment(s) to NORESO as set forth in Section 4 and Attachment G of the Agreement.

Date Accepted by Customer: \_\_\_\_\_

Accepted for:           **Customer**

Accepted by: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Note: ECMs to which this Delivery and Acceptance Certificate relates are attached hereto.

## **ATTACHMENT F**

### **GUARANTY OF ENERGY COST SAVINGS**

#### **1. DEFINITIONS**

When used in this Agreement, the following capitalized words shall have the meaning ascribed to them below:

"Baseline Period" is the period of time that defines the Baseline Usage and is representative of the facilities operations, consumption, and usage that is used as the benchmark for determining cost avoidance.

"Baseline Usage" is the calculated energy usage of the Facilities prior to the implementation of the ECMs.

"Baseline Demand" is the calculated energy demand of a piece of equipment or a site prior to the implementation of the ECMs. Baseline physical conditions, such as equipment counts, nameplate data, and control strategies, will typically be determined through building occupancy, energy end-use survey and plug load surveys of the Facilities.

"Cumulative Excess Verified Savings" is the total amount of Excess Verified Savings based on the results of the Measurement & Verification Plan in the Guaranteed Savings Reconciliation Report carried over to subsequent Guaranty Periods.

"Energy and Operational Cost Avoidance Guarantee Practices" are those practices identified in The Schedule of Savings, intended to achieve avoided costs in energy and/or operating expenses.

"Energy Costs" may include the cost of electricity and fuels to operate HVAC equipment, cogeneration system, facility mechanical and lighting systems, and energy management systems, and the cost of water and sewer usage, as applicable.

"ECM" the Energy Conservation Measure (ECM) is the installation of equipment or systems, or modification of equipment or systems as described in Attachment B.

"Excess Verified Savings" is the amount of Verified Savings minus Guaranteed Savings in a Guaranteed Period.

"Facilities" shall mean those described in Attachment A.

"F.E.M.P." shall mean the Federal Energy Management Program of the U.S. Department of Energy and its Measurement and Verification Guidelines for Federal Energy Projects (DOE/GO 10096-248, February 1996, or later versions). The F.E.M.P. guidelines classify measurement & verification approaches as Option A, Option B, Option C, and Option D.

"First Guarantee Period" is defined as the period beginning on the first (1<sup>st</sup>) day of the month following the date of execution of the Delivery and Acceptance Certificate (Attachment E-2) upon Final Acceptance of this Project by the Customer and ending on the day prior to the first (1<sup>st</sup>) twelve-month anniversary thereof.

"Guarantee Period" is defined as the First Guarantee Period and each of the successive 12 month periods commencing on the anniversary of the commencement of the First Guarantee Period throughout the Term of this Agreement.

"Guaranteed Savings" is defined as the amount of avoided Energy and Operational Costs guaranteed to the CUSTOMER in each Guarantee Period.

"Guaranteed Savings Reconciliation Report" is defined as the process and report for determining the Verified

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Savings in each Guarantee Period and reconciling it to the Guaranteed Savings in the same Guarantee Period.

“IPMVP” shall mean the International Performance Measurement and Verification Protocol and its Measurement and Verification Guidelines for energy savings performance contract projects. The IPMVP guidelines classify measurement & verification approaches as Option A, Option B, Option C, and Option D.

“Measurement and Verification Plan” (M&V Plan) is defined as the plan providing details on how the Guarantee Savings will be verified.

“Operational Costs” shall include the cost of operating and maintaining the Facilities, such as, but not limited to, the cost of inside and outside labor to repair and maintain Covered Systems and Equipment, the cost of custodial supplies, the cost of replacement parts, the cost of deferred maintenance, the cost of lamp and ballast disposal, and the cost of new capital equipment as defined for each ECM in Section 4, Schedule of Values.

“Term” shall be \_\_\_\_\_ (X) years from acceptance.

“Verified Savings” is defined as the summation of avoided Energy and Operational Costs as determined by the Measurement & Verification Plan for the Facilities in each Guarantee Period as a result of the ECMs provided by NORESKO as well as Excess Verified Savings, if any carried forward from previous years.

## 2. TERM AND TERMINATION

2.1 Guarantee Term. The Term of this Guarantee shall commence on the first (1<sup>st</sup>) day of the month following the date of execution of the Final Delivery and Acceptance Certificate (Attachment E-2) upon Final Acceptance of this Project by the Customer and shall terminate at the end of \_\_\_\_\_ years unless terminated earlier as provided for herein.

2.2 Guarantee Termination. Should this Agreement be terminated (including, as applicable, the Maintenance or Measurement & Verification Services) in whole or in part for any reason prior to the end of the Term, the Guaranteed Savings for the Guarantee Period in which such termination becomes effective shall be prorated as of the effective date of such termination, with a reasonable adjustment for seasonal fluctuations, if any, in Energy and Operational Costs, and the Guaranteed Savings for all subsequent Guarantee Periods shall be null and void.

## 3. SAVINGS GUARANTEE

3.1 Guaranteed Savings: The following table lists the amount of Guaranteed Savings resulting from the ECMs to be installed by NORESKO.

Year	\$ Amount

3.1.1 Additional Savings. Additional energy and/or operational cost avoidance that can be demonstrated as a result of NORESO's efforts that result in no additional costs to Customer beyond the costs identified in this Agreement will be included in the Guarantee Savings Reconciliation Report for the applicable Guarantee Period(s).

3.1.2 Savings Prior to Final Retrofit Acceptance. All energy and operational cost avoidance realized by Customer and as calculated through the Measurement & Verification Plan that result from activities undertaken by NORESO prior to Final Acceptance may be applied to the Verified Savings for the First Guaranty Period.

3.1.3 Cumulation of Savings. The Guaranteed Savings in each Guarantee Period are considered satisfied if the Verified Savings for such Guarantee Period equals or exceeds the Guaranteed Savings for such Guarantee Period.

3.1.4 Savings Shortfalls. In the event that the Verified Savings in any Guarantee Period is less than the Guaranteed Savings required for that Guarantee Period, after giving credit for any Excess Verified Savings carried forward from previous Guarantee Periods, NORESO shall, upon receipt of written demand from Customer, compensate Customer the amount of any such shortfall, limited by the value of the guarantee, within 30 calendar days. Resulting compensation shall be NORESO's sole liability for any shortfall in the Guaranteed Savings.

3.2 Savings Reconciliation Documentation. NORESO will provide Customer with a Guarantee Savings Reconciliation Report after each Guarantee Period within 120 days. Customer will assist NORESO in generating the savings reconciliation report by providing NORESO's receipt thereof, together with access to relevant records relating to such Energy and Operating Costs. Customer will also assist NORESO by permitting access to any energy billing information, maintenance records, drawings, or other data deemed necessary by NORESO to generate the said report. Data and calculations utilized by NORESO in the preparation of its Guarantee Savings Reconciliation Report will be made available to Customer, along with such explanations and clarifications as Customer may reasonably request.

3.2.1 Acceptance of Guarantee Savings Reconciliation Report. At the end of each Guarantee Period, Customer will have 45 days to review the Guarantee Savings Reconciliation Report and provide written notice to NORESO of non-acceptance of the Guarantee Savings Reconciliation Report for that Guarantee Year. Failure to provide written notice within 45 days of the receipt of the Guarantee Savings Reconciliation Report shall constitute the deemed acceptance of the Report and its findings by the Customer.

3.2.2 Guarantee Savings Reconciliation. Verified Savings will be determined in accordance with the methodology(s), operating parameters, formulas, and constants as described below and/or defined in the Measurement & Verification Plan and/or additional methodologies defined by NORESO that may be negotiated with Customer at any time. Actual savings reduction in utility bills may vary from the Verified Savings for reasons outside of NORESO's control including but not limited to: changes in energy and other utility rates and tariffs, changes in Customer operating schedules and usage patterns, changes in Customer loads due to addition or reductions in energy and water consuming devices, changes in weather, impacts due to the operations of ECMs, impacts due to the maintenance of ECMs maintained by Customer, and additions to and/or reduction in facility space usage. For the purposes of calculating any shortfalls or excesses of Verified Savings versus Guaranteed Savings, the Measurement & Verification Plan will be utilized.

3.2.3 Activities and Events Adversely Impacting Savings. Customer must promptly notify NORESO of any activities known to Customer, which adversely impacts NORESO's ability to realize the Guaranteed Savings and NORESO shall be entitled to reduce the Guaranteed Savings by the amount of any such adverse impact to the extent that such adverse impact is beyond NORESO's reasonable control.

3.2.4 Guarantee Adjustment. NORESO's Guaranteed Savings obligations under this Agreement are contingent upon: (1) Customer following the operations and maintenance requirements for the ECMs in accordance with the Agreement; (2) no alterations or additions being made by the Customer without prior

notice and written agreement of the Parties; (3) Customer sending all current utility bills to NORESKO within two (2) weeks after receipt; and (4) NORESKO'S ability to render services not being impaired by circumstances beyond its control. To the extent that the Customer defaults or fails to perform fully any of its obligations under this Agreement, NORESKO may, in its sole discretion, adjust the Guaranteed Savings obligation; provided, however, that no adjustment hereunder shall be effective unless NORESKO has first provided the Customer with written notice of Customer's default(s) or failure(s) to perform and Customer has failed to cure its default(s) and failure(s) to perform within 30 days after receipt of such notice.

### 3.2.5 Energy Rates. TO BE DETERMINED.

## 4. MEASUREMENT & VERIFICATION PLAN

4.1 Measurement and Verification. NORESKO and the Customer agree that the Verified Savings will be determined using the following Measurement and Verification Plan. Through this plan, the Guaranteed Savings generated by the ECMs installed in the Facilities will be verified found in NORESKO's Detailed Energy Audit dated \_\_\_\_\_, as may be amended by the Parties.

Measurement & Verification Plan: NORESKO and the Customer agree that the Verified Savings by ECM will be determined using the following Measurement & Verification plans further described in this section. Through this plan, the guaranteed savings generated by the ECMs installed in the Facilities will be validated. The M&V methodologies proposed for these ECMs are based on the version 2.2 of the F.E.M.P. Measurement and Verification Guidelines. The objective of the plan is to quantify the actual electrical and fossil fuel and compare those to the specific Baseline Usage for each Facility, the difference of which is the Verified Savings.

During the term of the Agreement, NORESKO will make adjustments to energy savings due to changes in building occupancy, weather data, and utility rate schedules, etc. The unit costs of energy will be applied to the energy savings calculated by this M&V plan. Current utility cost will be used as a basis for determining the unit cost, with floor and ceiling prices set by baseline rate information, presented herein this Attachment.

### 4.2 M&V Descriptions: TO BE DETERMINED

**ATTACHMENT G**

**CONTRACT COST AND ANNUAL SERVICES**

- (a) Customer agrees to pay to NORESKO, the amount equal to the Project Cost, as listed below, in accordance with the terms described in Section 4 of the Agreement. The proposed monthly progress payments shall be substantially the same as those found in Attachment G-1, Proposed Progress Payments, attached hereto.

Project Cost = \$x,000,000

Proposed Monthly Progress Payments are attached hereto as Attachment G-1.

- (b) Maintenance Fee: Customer shall pay NORESKO for annual (monthly) maintenance provided under this Agreement that the Parties mutually agree to have NORESKO perform. Customer agrees to pay the annual (monthly) Maintenance Fee as provided for below with respect to such agreed upon services.

[Maintenance Fee(s)]

- (c) Measurement & Verification Fee: Customer shall pay NORESKO for annual (monthly) measurement and verification services provided under this Agreement that the Parties mutually agree to have NORESKO perform. Customer agrees to pay the annual (monthly) Measurement & Verification fee as provided for below with respect to such agreed upon services.

Year 1 M&V Fee:

Year 2 M&V Fee:

XXXXXXXX

- (d) Performance Period Fee: The annual performance period fee shall be the sum of the Maintenance Fee and the Measurement and Verification Fee. Customer agrees to pay the following Performance Period Fees.

<u>Year</u>	<u>Annual Amount</u>
1	
2	
3	
4	
5	



**ATTACHMENT H**

**CHANGE ORDER FORM**

(Request & Agreement for Change in Plans and/or Specifications and/or Contract)

Change Request No. \_\_\_\_\_

Customer: \_\_\_\_\_

Department: \_\_\_\_\_

Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_ Site: \_\_\_\_\_

Title: \_\_\_\_\_

**I. REQUEST**

Date: \_\_\_\_\_

(a) Requested by \_\_\_\_\_ Of \_\_\_\_\_

(b) Description of change \_\_\_\_\_  
\_\_\_\_\_

**II. NORESKO's AGREEMENT**

For all costs involved in this change including extensions of time herein requested NORESKO proposes to perform the work described in accordance with the provisions of the subject Agreement and certifies that the attached cost data is accurate, complete and current, and mathematically correct.

Payment shall be made on the basis of:

If necessary, attach detailed estimates and breakdown for above in accordance with change order instruction. A claim for work performed under protest may be submitted in writing.

An extension of contract time of \_\_\_\_\_ calendar days to \_\_\_\_\_ is requested.

NORESKO \_\_\_\_\_ by \_\_\_\_\_ Date: \_\_\_\_\_

CUSTOMER APPROVAL: \_\_\_\_\_ Date: \_\_\_\_\_

Customer _____	Contract Award	\$
	Previous Additions	\$
	Previous Deductions	\$
By: _____	Net Total	\$
Title: _____	This Change	\$
	Total	\$

## **ATTACHMENT I**

### **MAINTENANCE SERVICES**

Maintenance services provided by NORESO are limited to annual oversight activities as described in the M&V Plan in the Detailed Energy Audit dated \_\_\_\_\_, as may be amended by the Parties. Oversight activities are limited to annual confirmation that the Customer continues to operate, maintain, and repair the ECMs in a manner consistent with contract requirements to ensure the persistence of guarantees savings over the term of the Project. NORESO shall submit an annual report indicating the results of its maintenance oversight functions.

**ATTACHMENT J**

**NORESCO INSTALLED EQUIPMENT**

**ATTACHMENT K**  
**STANDARDS OF SERVICE**