



STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

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

ESCO Contract No. #####-### X (#-#).
Project Project Title.
Agency Agency Name.
Date Select Date.

STATE OF WASHINGTON
ENERGY SERVICE COMPANY (ESCO) CONSTRUCTION CONTRACT

For the DEPT. OF ENTERPRISE SERVICES, ENERGY PROGRAM

This Energy Service Company (ESCO) Construction Contract, made and entered into this ##. th/_{rd}. day of Select Month., Year., shall be the agreed basis of performing the following work by and between the State of Washington, Agency Name. acting through the Department of Enterprise Services, Energy Program, hereinafter referred to as the Owner, and

ESCO Name.
Address Line 1.
Address Line 2
Telephone (###) ###-####.
E-mail email.

hereinafter referred to as the ESCO or Contractor.

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

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

Energy Services Authorization No. #####-### X (#).
Main Energy Services Agreement No. #####-### X (#).

Audits and Proposals for this project were prepared by the ESCO according to the terms of the Contract Documents which include, but are not limited to, the Main Energy Services Agreement, Energy Services Authorization(s), the accepted Proposal, *General Conditions for Washington*

State Energy Savings Performance Contracting, Addenda, Specifications, Drawings, Bond, and this Construction Contract.

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

(Apprenticeship Option - with options change numbering sequence)

THIRD: The apprenticeship labor hours required for this project are 15% of the total labor hours. The undersigned agrees to utilize this level of apprentice participation. A monetary incentive of \$1,000 will be paid to the contractor meeting the apprentice utilization requirement. A monetary penalty will be applied to the contractor failing to meet the utilization requirement and failing to demonstrate a Good Faith Effort. The penalty will be applied to every hour of short-fall of the minimum number of required apprentice hours using the applicable published wage of a Step 1 apprentice laborer. The penalty will not exceed five percent (5%) of the total Contract Sum. Voluntary workforce diversity goals for this apprentice participation are identified in the *General Conditions for Washington State Energy Savings Performance Contracting*.

SELECT.: In consideration of the Performance of the Work, herein contained on the part of the ESCO, the Owner hereby agrees to pay the ESCO for said work completed according to the Contract Documents, for not more than the sum of \$0.00., plus ##.% state sales tax consisting of the following:

ESCO Contract Cost	\$	0.00.
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The ESCO shall bond this contract in accordance with Section 2.04 of the General Conditions for Washington State Energy Savings Performance Contracting. The construction value plus contingency is a guaranteed maximum not-to-exceed cost and final payment to the ESCO shall be reconciled to reflect the actual installed cost provided it does not exceed the guaranteed maximum cost.

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

SELECT.: Consistent with RCW 39.12.120, ESCO and its subcontractors shall keep accurate payroll records for three years from the date of acceptance of the project and file a copy of its certified payroll records using the Department of Labor and Industries' online system at least once per month. If the Department of Labor and Industries' online system is not used, a contractor, subcontractor, or employer shall file a copy of its certified payroll records directly with the Department of Labor and Industries at least once per month in a format approved by the Department of Labor and Industries. A contractor, subcontractor, or employer's noncompliance with this section constitutes a violation or RCW 39.12.050.

SELECT.: Civil Rights

Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.

SELECT.: Non-Discrimination

1. Nondiscrimination Requirement. During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
2. Obligation to Cooperate. Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
3. Default. Notwithstanding any provision to the contrary, Agency may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Agency receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Agency may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.
4. Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Agency shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Agency for default under this provision.

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



ESCO:
ESCO Name.

Owner:
Agency Name.
acting through the
Department of Enterprise Services
Energy Program

By _____
Name _____
Title _____
Date _____

By _____
Name _____
Title EPM or AD
Date _____

WA State Contractor's License No. _____

UBI Number _____

energy contract

Select Date.

SCOPE OF WORK

ESCO Contract No. #####-### X (#-#).

Project Title.
Agency/Municipality.
Facility.

Furnish and install the energy efficiency measures, including any and all necessary ancillary equipment, as described in the Agency Name. Energy Services Proposal dated Select Date., and the revision dated Select Date..

Reminder – starting 1/1 enter project info into the L&I portal at the time of contract award (delete this prior to sending contract)



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**Contractor's Option for contracts \$150,000 or less (before tax). Remove page if not needed.
Select Date.**

CONTRACTOR'S OPTION

Contractor Contractor Company.
Contract No. #####-### X (#-#).
Description Project Title.
Client Agency Agency Name.

Payment and Performance Bond Waiver

It is hereby requested that the payment and performance bond requirement be waived for the above mentioned contract and 10% of the amount of the contract withheld for a period of forty-five (45) days after date of final acceptance, or until receipt of all necessary releases from the Department of Revenue, Department of Employment Security, and the Department of Labor and Industries, and settlement of any liens filed under Chapter 60.28 RCW, whichever is the latest, as set forth in 39.08 RCW.

*If at any point prior to final acceptance the Contract Sum without tax reaches \$150,000.00 or more, **this waiver will be null and void.** Payment and Performance Bonds will be required.*

Signature _____

Date _____



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Select Date.

RETAINAGE INVESTMENT

ESCO Contractor ESCO Name.
ESCO Contract No. #####-### X (#-#).
Description Project Title.
Client Agency Agency Name.

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

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

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

ENERGY SERVICES CONTRACTOR'S OPTION

_____ I do not request retainage on the above contract to be invested.
_____ I hereby request retainage on the above contract be invested.
_____ I hereby request retainage on the above contract be invested and converted into
bonds and sureties.
_____ Retainage Bond.

Signature

Date

Title