

ATTACHMENT 2

Scope of Construction Services

2.1 DEFINITIONS

2.1.1 "Energy Services Company" (ESCO) shall mean _____

2.1.2 "Engineer" shall mean the design professional engaged by _____ and approved by the Owner to perform the engineering work within the agreement.

2.1.3 "Owner" shall mean the governmental unit.

2.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY ESCO

2.2.1 The Energy Services Company (ESCO) shall, prior to starting work on any single portion of the Work, and at frequent intervals during progress of the Work, carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Subparagraph 2.2.1 and shall at once report to the Owner, in writing, errors, inconsistencies or omissions that may be discovered. The ESCO shall be liable to the Owner for damage resulting from errors, inconsistencies or omissions in the Contract Documents.

2.2.2 The ESCO shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the ESCO with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be corrected at once.

2.3 SUPERVISION AND CONSTRUCTION PROCEDURES

2.3.1 The ESCO shall supervise and direct the Work, using the ESCO's best skill and attention. The ESCO shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters. Where the Contract Documents refer to particular construction means, methods, techniques, sequences and procedures or indicate or imply that such are to be used in the Work, such reference is intended only to indicate that the operations of the ESCO shall be such as to produce at least the quality of work implied by the operations described, but the actual determination of whether or not the described operations may be safely or suitably employed in the Work shall be the sole responsibility of the ESCO.

2.3.1.1 The ESCO shall, prior to start of any portion of the Work, review any specified construction or installation procedures, including those as may be recommended by the proposed manufacturer.

2.3.1.2 Subject to the provisions concerning Warranty, Liability and Force Majeure, Insurance, and Indemnity of this Agreement, loss, damage, or liability, including reasonable attorneys fees, construction litigation support fees and other expert witness fees, or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the ESCO.

2.3.2 The ESCO shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

2.4 LABOR AND MATERIALS

2.4.1 Unless otherwise provided in the Contract Documents, the ESCO shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

2.4.2 The ESCO shall enforce strict discipline and good order among the ESCO's employees and other persons carrying out the work of this Agreement. The ESCO shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

2.4.3 The ESCO shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The ESCO shall also use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

1. If the Work is to be performed by trade unions, the ESCO shall make all necessary arrangements to reconcile, without delay, damage or cost to the Owner and without recourse to the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade.

2. In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

2.4.4 The Contract Documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment

have been selected to have a coordinated design in relation to the overall appearance of the building.

2.5 WARRANTY

2.5.1 The ESCO warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new, and of recent manufacture, unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The ESCO's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the ESCO, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by Owner the ESCO shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2.5.2 The ESCO will be responsible for and shall make good any defects due to faults in labor and materials which may occur within one year after substantial completion except where sections of the specifications call for a longer period of time.

2.5.3 The warranty provided in this agreement shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law. The warranties required under the Contract Documents shall be extended to include the performance of any and all items of work specified under the "proprietary", "patented", and other specified method as well as procedures specifically required by the Contract Documents, thereby not relieving the ESCO of its general warranty obligations.

2.5.4 The ESCO shall procure and deliver to the Owner no later than the date claimed by the ESCO as the date of final completion, all normal and special warranties required by the Contract Documents.

2.6 TAXES

2.6.1 The Owner is a municipal corporation, and a not for profit institution and is, therefore, tax exempt in accordance with the applicable laws of the State of Pennsylvania and with Chapter 32 of the Internal Revenue Code, as most recently amended, for collection of all sales and excise taxes. Exemption certificates will be furnished to the ESCO by the Owner.

2.7 PERMITS, FEES AND NOTICES

2.7.1 Unless otherwise provided in the Contract Documents, the ESCO shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded, but in any case prior to the

start of any construction operations.

2.7.1.2 The ESCO shall, if required by ordinances, laws, codes, rules, and/or regulations of the governing agencies having jurisdiction over this project, retain a licensed professional engineer of the Owner's selection to supervise the construction of this project including, but not limited to, foundations, structural work, soils, welding, reinforced masonry and the like at the sole cost of the ESCO. The prime ESCOs responsible shall pay fees and fines to the County Fire Marshal's Office for inspections of any work related to this agreement after the date of substantial completion. Said inspection will occur prior to Delivery and Acceptance, but in no event more than one (1) year from the date of substantial completion the Project.

2.7.2 The ESCO shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work. If the ESCO fails to give such notices, it shall be liable for and shall indemnify and hold harmless (1) the Owner, its consultants, employees, officers and agents against any resulting fines, penalties, judgments, or direct damages, including reasonable attorney's fees, imposed on or incurred by the parties indemnified hereunder. The ESCO shall pay any direct costs or fees incurred in such compliance and any fines or penalties imposed for violation thereof and any direct costs or fees incurred by the Owner due to such violation to the extent such violation is directly attributable to the ESCO.

2.7.3 It is the ESCO's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations.

2.7.4 If the ESCO performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner, the ESCO shall assume full responsibility for such Work and shall bear the attributable costs and shall bear the total cost for correction of same.

2.7.5 The ESCO shall secure approval of and comply with requirements of all authorities and deliver certificates of approval to the engineer, and shall prepare all documents, including drawings, necessary to secure such approval as required to achieve final completion of the Project.

2.7.6 In the event any violations are placed upon the premises by any public authority as a result of the ESCOs fault, in connection with the Work, the ESCO shall be solely responsible therefore and shall bear all costs attributable thereto. Final payment in an amount at least sufficient to correct such violations as determined by the Owner shall be withheld until all such violations are cured of record.

2.8 SUPERINTENDENT

2.8.1 The ESCO shall employ a competent, full-time superintendent, and such necessary assistants who shall be in attendance at each project site whenever and wherever work is in progress, during progress of the Work to provide for the expeditious completion of the work. The superintendent shall not be changed, except with the written consent of the Owner, unless the superintendent or such assistant proves to be

unsatisfactory to the ESCO and ceases to be in its employ. The superintendent shall represent the ESCO, and communications given to the superintendent shall be as binding as if given to the ESCO. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

2.8.2 The ESCO shall coordinate and supervise the work performed by its subcontractors so that the work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the work. The ESCO and all subcontractors shall afford each trade reasonable opportunity for the installation of their work and the storage of their materials.

2.8.3 It is required of any and all supervisory personnel proposed for use by any ESCO be versed in the English language or, said ESCO shall furnish a full-time on-site interpreter to facilitate communications with the Owners representative.

2.9 ESCO'S CONSTRUCTION SCHEDULES

2.9.1 The ESCO, promptly after being awarded the Contract, shall prepare and submit for the Owner's information and use a construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

2.9.2 The ESCO shall conform to the most recent schedules.

2.9.3 The construction schedule shall be in a detailed precedence style critical path method (CPM) or primavera type format satisfactory to the Owner which shall also: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as Milestone Dates). Upon review and acceptance by the Owner of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement as Exhibit "A". If not accepted the construction schedule shall be promptly revised by the ESCO in accordance with the recommendation of the Owner and re-submitted for acceptance. The ESCO shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be dated to reflect actual conditions. In the event any progress report indicates any delays, the ESCO shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

2.9.4 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the ESCO to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities and (3) other similar measures (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owners right to require Extraordinary Measures is solely for the purpose of ensuring the ESCO's compliance with the construction schedule.

1. The ESCO shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Paragraph.

2. The Owner may exercise the rights furnished the Owner under or pursuant to this Paragraph as frequently as the Owner deems necessary to ensure that the ESCO's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

2.9.5 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owners premises or any tenants or invitee thereof. The ESCO shall, upon the Owners request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling or performance of the Work under this Paragraph may be grounds for an extension of the Contract Time, if permitted under this agreement, and an equitable adjustment in the Contract Sum if: (1) the performance of the Work was properly scheduled by the ESCO in compliance with the requirements of the Contract Documents and (2) such rescheduling or postponement is required for the convenience of the Owner.

2.9.7 The ESCOs shall be responsible for the coordination and orderly arrangement of the various equipment, lines and piping and engineering features, and to avoid any unsightly arrangements in exposed work.

2.10 DOCUMENTS AND SAMPLES AT THE SITE

2.10.1 The ESCO shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner and shall be submitted to the Owner upon the ESCOs completion of the Work.

2.10.2 ESCO shall maintain at the Project site, and shall make available to Owner one record copy of the Drawings (the "Record Drawings") in good order. The Record Drawings shall be prepared and updated

Request for Proposals, Energy Performance Project at (NAME OF GOVERNMENT UNIT)

during the prosecution of the Work. The prints for Record Drawing use will be a set of black line prints provided by Engineer to ESCO at the start of construction. ESCO shall maintain said set in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show: (i) deviations from the Drawings made during construction; (ii) details in the work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (v) such other information as either Owner may reasonably request. At the completion of the work, ESCO shall deliver all Record Drawings to Owner Final payment and any retainage shall not be due and owing to ESCO until the final Record Drawings marked by ESCO as required above are delivered to Owner.

2.10.3 The ESCO shall maintain all approved permit drawings in a manner so as to make them accessible to government inspectors and other authorized agencies. All approved drawings shall be wrapped, marked and delivered to the Owner within sixty (60) days of final completion of the Work.

2.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

2.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the ESCO or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the ESCO to illustrate materials or equipment for some portion of the Work.

2.11.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the ESCO proposes to conform to the information given and the design concept expressed in the Contract Documents.

2.11.5 The ESCO shall review, approve and submit to the Owner Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner

2.11.6.1 If the ESCO elects to release work without approvals, same shall be at his own risk and expense.

2.11.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the ESCO represents that the ESCO has determined and verified materials, field measurements and field

construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

2.11.8 When professional certification of performance criteria of materials, systems or equipment is required of the ESCO, the Owner shall be entitled to rely in a reasonable and professional fashion upon the accuracy and completeness of such calculations and certifications. In the event and all such calculations and/or certifications are found to be inaccurate and/or incomplete, the ESCO shall assume full responsibility and bear all costs attributable or related thereto.

2.11.9 The ESCO represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared and, if required by the Owner or applicable law, by a licensed engineer.

2.11.10 Unless otherwise directed or specified, the submittal shall be in the form of one (1) set and three (3) prints. Six (6) copies of catalogs and catalog data shall be submitted.

2.12 USE OF SITE

2.12.1 The ESCO shall confine operations at the site to areas permitted by law, ordinances, permits and shall not unreasonably encumber the site with material or equipment.

2.12.1.1 The ESCO's right to entry and use thereof arises solely from the permission granted by the Owner under this agreement.

2.12.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the ESCO. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the ESCO.

2.12.2.1 The ESCO shall provide all required temporary access walkways, both interior and exterior, temporary partitioning and the like necessary to complete the operations. The ESCO shall maintain in an unobstructed condition all entrances and/or exits from present buildings.

2.12.3 The ESCO and any entity for whom the ESCO is responsible shall not erect any sign on the Project site without the prior written consent of the Owner which may be withheld in the sole discretion of the Owner

2.12.4 Without prior approval of the Owner the ESCO shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner Without limitation of any other provision of the Contract Documents, the ESCO shall use its best efforts to comply with all rules and regulations promulgated by

the Owner in connection with the use and occupancy of the Project site and the Building as amended from time to time. The ESCO shall immediately notify the Owner in writing if during the performance of the Work the ESCO finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owners sole discretion, adopt such suggestions, develop new alternatives or require compliance with the existing requirements of the rules and regulations. The ESCO shall also comply with all insurance requirements and collective bargaining agreements applicable to use and occupancy of the Project site and the Building.

2.12.4.1 All ESCOs shall confine their use of the premises, for all purposes, to the areas occupied by the construction and related storage areas as and if shown.

2.12.5 ESCOs, their workers, suppliers, etc. will be held to adhere strictly to the requirements hereinbefore stated, and shall not occupy or carry on traffic through other parts of the site or interior of present buildings, except by specific permission of the Owner.

2.12.6 The ESCO shall repair or replace any existing trees, shrubbery or other planting damaged by operations and/or workers employed in performance of its contract.

2.12.7 ESCO shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, ESCO shall use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Building in the event of partial occupancy.

2.12.8 Employees, vehicles, equipment and material of the ESCO and of all others utilized by the ESCO for the performance of its work shall enter onto the construction site only at those locations designated or approved by the Owner

2.12.9 The ESCO shall familiarize itself with the access and storage requirements of the Owner and shall be subject to them. The ESCO shall properly maintain all access to work and storage areas so that there will be continuous unimpeded access to the work site in all seasons of the year, on all regular working days and during all regular working hours of any and all trades employed by any ESCO during work at this site.

2.12.10 Only such vehicles, trucks and equipment shall be parked or stored within the work area as are absolutely necessary for performing the work, for the length of time that particular phase of work is performed. All other ESCOs' vehicles and/or employees and/or workers' vehicles, including passenger cars shall be parked off the site There are no exceptions to the rule.

2.12.11 It shall be the responsibility of the ESCO to provide necessary and required security measures to adequately safeguard the construction site from vandalism and intrusion of unauthorized persons.

2.12.11.1 The ESCO shall submit means and methods of security to the Owner for approval.

2.12.11.2 All workers and employees of any ESCO are prohibited from :

1. trespassing or leaving any vehicle on any property not assigned by the Owner as set aside for the use of the ESCO .
2. leaving any vehicle on the grounds unless it is locked and the ignition keys removed .
3. smoking is not permitted.

2.12.11.3 All employees or persons entering the property surrounding the facilities affected by the construction are restricted to the immediate area of work. Only persons having official business will be admitted to the construction site. **NO COMMUNICATION BETWEEN WORKERS AND OCCUPANTS WILL BE TOLERATED.**

2.13 CUTTING AND PATCHING

2.13.1 The ESCO shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

2.13.2 Only trades persons skilled and experienced in cutting and patching shall perform such work.

2.14 CLEANING UP

2.14.1 The ESCO shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the ESCO shall remove from and about the Project waste materials, rubbish, the ESCO's tools, construction equipment, machinery and surplus materials, and shall leave the entire area clean or its equivalent.

2.14.2 All ESCO's work areas shall be kept clean each day, of refuse including containers, cups and the like. The facilities will remain in operation during the course of the entire construction operation. All ESCOs performing work on this contract shall schedule their work so as to not interfere with any traffic to and from the required areas of use. The ESCO shall be responsible for maintaining all traffic, and shall provide all required barriers and protection as required to safeguard the work and the public and the occupants of the building during construction. The prime ESCOs shall comply with all fire code regulations during construction. They include vehicular parking, smoke partitions, rescue window obstructions, use of extension cords. The fire code is available for reference at the office of the (OWNER

NAME/GOVERNMENT AGENCY).

2.14.3 If the ESCO fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the ESCO.

2.15 ACCESS TO WORK

2.15.1 The ESCO shall provide the Owner and Engineer access to the Work in preparation and progress wherever located.

2.16 SUBCONTRACTORS

2.16.1.1 As soon as practicable after receipt of Letter of intent to Award, Notice to Proceed or other form of official notice of award of the Contract, but not more than thirty (30) days after receipt of official notice of award of the Contract, the ESCO shall furnish the Owner, in writing, with (1) the name, trade and subcontract amount for each subcontractor and (2) the names of all persons or entities proposed as manufacturers of the products identified in the specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing subcontractor. Copies of all subcontractor contracts, fully executed, are to be provided to the Owner, including but not limited to all addenda, appendices, and/or exhibits including scope of work sheets. All such subcontracts shall be submitted to the Owner within thirty(30) days of the Owner's award of the contract to the ESCO.

2.16.1.2 Upon review of the ESCO's list of Subcontractors, the Owner will advise the ESCO in writing stating whether or not the Owner, after due investigation, accepts or rejects, any proposed subcontractor. Subcontractors will not be acceptable unless, when requested by the Owner, evidence is furnished that the proposed subcontractor has satisfactorily completed similar subcontracts as contemplated under this Contract, and has the necessary experience, personnel, equipment, plant, and financial ability to complete the subcontract in accordance with the intent to the Documents. As verification of financial ability, the Owner reserves the right to request and receive up to five (5) years worth of financial statements, bank references, bond/insurance company references and all other information required to assess financial ability.

2.16.1.3 If the Owner has reasonable objection to a person or entity proposed by the ESCO, the ESCO shall propose another to whom the Owner have no objection. No increase in the contract sum shall be allowed where a sub-contractor is rejected by the Owner who is (1) deemed unqualified to perform the particular work subcontracted by the ESCO, (2) does not have the necessary experience, personnel, equipment, plant and financial ability to complete the subcontract, or (3) has a history of poor performance in work of similar nature. Upon receipt of a rejection of a subcontractor by the Owner, the ESCO shall have the right to request a meeting with the Owner to discuss the reasons it believes the

subcontractor is qualified to perform the work. Upon review of such reasons, the Owner shall re-consider its determination and shall advise the ESCO of its determination upon such review. If the Owner still finds that such subcontractor does not meet the requirements above-stated, it shall advise the ESCO. The Owner's determination upon such review shall be final and binding on the ESCO and its subcontractor and the ESCO hereby waives any and all claims it or its subcontractor might have against the Owner concerning the rejection of such subcontractor and shall require its subcontractors to execute such similar waiver in its agreement with the ESCO.

2.16.1.4 The ESCO shall not change a subcontractor, person or entity previously selected if the Owner makes reasonable objection to such change.

2.16.2 By appropriate agreement, the ESCO shall require each subcontractor to be bound to the ESCO by terms of the ESCO's agreement with the Owner, and to assume toward the ESCO all the obligations and responsibilities which the ESCO, by said agreement, assumes toward the Owner. Each subcontract agreement shall preserve and protect the rights of the Owner and the ESCO's agreement with the Owner so that subcontracting thereof will not prejudice such rights, and shall allow the subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the ESCO that the ESCO, by its agreement with the Owner, has against the Owner. However, the subcontract agreement between the ESCO and the subcontractor shall not provide, nor shall this Agreement be deemed to provide any rights, remedies or redress by the subcontractor(s) against the Owner. Where appropriate, the ESCO shall require each subcontractor to enter into similar agreements with sub-subcontractors.

2.16.3 The ESCO shall promptly notify the Owner of any material defaults by any Subcontractors and/or whether it has terminated its agreement with any of its subcontractor for any reason.

2.16.4 The ESCO hereby assigns all of its rights in its agreements with its subcontractor(s) and hereby does assign, transfer and set over to the Owner all of its rights and/or interests in its agreements with its subcontractor(s), but only in the event of termination of the ESCO's agreement with the Owner pursuant to Article 17, paragraph A of these General Conditions of the Contract for Construction and only to the extent the Owner implements its rights to take such assignment of contract by notifying the subcontractor in writing of its intention to do so. Such an assignment is subject to the prior rights of the surety, if any, obligated to the Owner pursuant to a performance bond submitted in connection with the ESCO's work.

2.16.5 If the work in connection with a subcontract has been suspended for more than ninety (90) days after termination of the Contract by the Owner and the Owner accepts assignment of such subcontract, the subcontractor's compensation shall not be adjusted for any increase in direct costs incurred by such subcontractor as a result of the suspension.

2.16.6 It shall be the ESCO's responsibility, when sub-contracting any portion of its work, to arrange or group items of work under particular trades to conform to the prevailing customs of the trade, regardless of the particular divisions and sections of the specifications in which the work is described.

2.16.7 All subcontracts over \$5,000 shall be in writing.