



**CITY OF SOUTH PORTLAND  
REQUEST FOR PROPOSALS**

**FOR ENERGY MANAGEMENT SERVICES**

BID# 03-22

RFP release date	Friday, June 11, 2021
Deadline for submitting questions	Friday, June 25, 2021
RFP proposals due	Monday, July 12, 2021

## GENERAL

The City of South Portland, Maine invites qualified companies to submit proposals to provide utility bill processing, management, and analysis services. This includes the electronic receipt of utility invoices, utility bill auditing, and energy data management through the development of a software platform that will assist City staff in monitoring energy use across the organization and reporting on sustainability metrics.

By issuing this RFP, the City of South Portland seeks to better manage building data and make the most efficient use of the human resources needed to process, administer payment, and track utility invoices. Services provided will centralize, organize, and display energy use data to help the City prepare a portfolio-wide strategic energy management plan. The strategic energy management plan will identify cost-effective conservation measures, target deep energy retrofits, and outline a pathway to beneficial electrification in municipal buildings. These efforts are key components of the City's plan to achieve renewable energy and greenhouse gas reduction goals mandated by the City Council's sustainability commitments.

Proposals must be submitted no later than **3:00 p.m. on Monday, July 12, 2021**. Late or unsigned bids shall not be accepted. Submissions shall be via email only. Your proposal, including any descriptive literature, shall be submitted on the forms provided and pdf format.

### Project Background

The City of South Portland (City) incurs significant annual costs related to the purchase of energy resources. Therefore, the City seeks a service provider to assist with utility bill management, bill auditing, and energy data management to ensure the most effective use of municipal funds and human resources while also improving the quality and transparency of municipal energy data.

The City's annual expenditure for electricity (municipal and school accounts) is approximately \$1.8 million for approximately 7.7 million kWh, while the annual expenditure for natural gas is approximately \$0.5 million for 441,000 ccf. Heating oil and propane represents a much smaller portion of the City's energy mix with an annual expenditure of \$61,000 for 25,500 gallons.

The City of South Portland has established aggressive climate action and renewable energy goals. Resolve #24-17/18 establishes that municipal services will run on 100% clean energy by 2040 and establishes that the City will reduce community wide greenhouse gas emissions 80% by 2050. The City recently adopted a climate action and adaptation plan that identifies near-term and long-term strategies to achieve these goals. The resolutions and adopted climate action and adaptation plan, One Climate Future, can be found on the Sustainability Office website (<https://www.southportland.org/departments/sustainability-office/energy-climate/south-portland-climate-action-adaptation-plan/>.) Services provided by the selected partner will improve the City's ability to track and analyze energy consumption in municipal buildings. This baseline information will allow the City to make informed energy management decisions and begin making progress towards clean energy and decarbonization goals in municipal buildings and operations.

The City’s utilities are provided by Central Maine Power (electricity), Unitol (natural gas), Portland Water District (potable water), South Portland Water Resource Protection (non-potable water systems), and a handful of local propane and oil companies. Collectively, the City of South Portland and South Portland School Department currently have:

	Buildings	Electric Accounts (All)	Net-metered Accounts	Natural Gas Accounts	Propane	Fuel Oil
City	31	122	12	19	9	8
Schools	9	19	0	8	2	1
<b>Total</b>	<b>40</b>	<b>141</b>	<b>12</b>	<b>27</b>	<b>12</b>	<b>8</b>

The City currently has two solar arrays generating net energy billing (NEB) credits.

- The largest solar array is 660 kW (AC) and is located on the closed landfill at 929 Highland Ave., generates approximately 1.2 million kWhs annually. It is tied in behind the meter to the Municipal Services Facility with excess kWh credits applied to eight SGS and one IGS account. The City currently does not own this array, but rather purchases the energy it generates through a PPA. The City has an option to purchase the array at several points in the contract, and expects to purchase it in year seven (2024), at which point the City will continue to receive NEB credits and also retain the renewable energy credits (RECs). With the addition of two new projects described below, the City expects to bring this array in front of the meter and switch to monetary bill credits net metered to twelve MGS accounts.
- An 18 kW (AC) rooftop array on the Planning and Development Office at 496 Ocean Street. It is tied in to the Planning Office and excess kWh credits are applied to three SGS accounts. The system was installed in 2013 and the City purchased the system outright six years later.

The City is currently under contract for two additional on-site solar projects as well as an off-site solar project with dollar credits to be allocated through net energy billing credits.

- A 2,830 kW (AC) project on the closed landfill at 929 Highland Ave is expected to be completed by mid-2022. This project will add 9,848 panels to the existing solar array at this address and generate an additional 4.5 million kWhs of electricity annually. NEB monetary credits will be applied to two IGS, three MGS accounts, and potentially 78 SGS accounts. The City will enter into a 20-year PPA with the option of buying out the system in year seven to see the greatest savings over the life of the project.
- A 163 kW (AC) rooftop array on the Community Center at 21 Nelson Rd is expected to be completed by the end of 2021. It will generate roughly 233,000 kWhs annually and monetary NEB credits will be applied to one MGS account. The City will enter into a 20 year PPA contract on this project as well, but because of the pricing schedule, it is likely that the City will not buy out this project in year seven, but rather see the PPA to its full term of twenty years, after which, the system will be given to the City at no charge.

- Participation in an off-site solar project, expected to be completed in early 2022. The City will purchase approximately 1.3 million kWhs in NEB credits annually over twenty years. These credits will be applied to nine MGS accounts.

With the completion of these projects (expected by mid-2022) approximately 91% of City accounts and 80% of kWh usage will be covered under net energy billing. These will require careful monitoring to ensure the utility applies credits accurately and with great diligence to ensure all billing errors are corrected promptly. The City also expects its energy usage and accounts to change over time with the purchase and sale of City-owned buildings, the implementation of deep energy retrofits, demand response programs, and other innovative approaches to energy conservation and transition to renewable energy.

The City currently has a decentralized system for managing bills received from utilities. City staff from Accounts Payable as well as administrative/financial staff in various departments process paper bills for payment and data management. This system is burdensome and inefficient for staff who must assess whether the utilities have applied the correct tariffs, correctly read meters, relied on estimated usage, or neglected to submit an invoice. Utility bills cataloged for payment and record purposes are then passed to the Sustainability Office for municipal energy management purposes and emissions tracking.

## **SCOPE OF SERVICES**

The City requests proposals from qualified firms to automate and streamline the processing and management of utility bills. The City seeks a service provider that can provide a software platform capable of generating detailed reports that include expenditure, usage, bill payment status, billing errors, and sustainability metrics. These enhanced and additional energy management services will inform efficiency measures, deferred maintenance plans, and performance-based procurement strategies that will accelerate the City's progress towards emissions reduction and clean energy goals in municipal operations.

Services to be provided in the following work categories include but are not limited to the following:

### **Utility Bill Processing, Management, and Data Analysis**

- Support bulk upload of historical data through various formats and methods, including but not limited to importing the City's existing tracking spreadsheets and historical reports or bills from utility vendors.
- Receive electronic billing and consumption information from the utility if the utility or energy provider is able to provide it. Maintain digital copies of bills.
- Convert paper utility bills, as necessary, to a format that can be electronically imported into the software platform.
- Audit utility bills and generate alerts/notification to users for duplicates, abnormal dates, missing bills, or excessively high or low usage, cost, unit cost, or demand. Ensure applicable rates, tariffs and costs are accurate and correctly applied.

- Provide a software platform that automatically exports key bill payment variables/data in a format compatible with the City’s MUNIS accounting system.
- Detailed monitoring of the City’s consumption of various commodities (electric, natural gas, fuel oil, and propane), demand charges, and billing information/utility costs.
- Provide a software platform that automatically imports relevant data to Energy Star Portfolio Manager for select utility accounts.
- Provide a software platform that enables fine grained reporting about utility bill information relevant to staff across the City organization. Data must include, but not be limited to, information about accounts paid, information about billing errors and corrections, digital copies of bills, energy usage, and commodity types.
- Enable data comparisons by building size, EUI, cost/sf, unit cost overall usage, consumption & peak loads, peak watts/sf, and other vendor recommended metrics.
- Calendarize consumption data and enable customizable reporting to filter report data by interval, day, month, year, and other timeframes as deemed relevant.
- Normalize energy and carbon emissions data for factors such as weather, occupancy, floor area, and other vendor recommended factors to allow for comparison across peer groups.
- Provide “dashboards” that update frequently to provide City staff with current and actionable information.
- Use utility billing data to track the City’s energy and utility costs, consumption, and emissions performance, including greenhouse gas and carbon footprint. Provide carbon-inventorying services as needed or requested, including, but not limited to scope 1 and scope 2 emissions. Inventorying may include data aggregation, data sorting and cleaning, and data conversion into GHG emissions.

### **Training and Support**

- Provide initial training of City staff and support for all aspects of the software platform and its usage, including but not limited to functionality of the data management, analysis, and visualizations for sustainability, accounting, and building operations.
- Provide additional training of City staff on usage and features of the software platform as needed to accommodate new employees, changes in the software platform, or unanticipated issues.

### **Duration**

The successful bidder will be required to enter into an energy services agreement substantially in the form in **Attachment C**. All bidders shall include any exceptions to the form agreement as part of their bid responses. The City intends to offer a contract for three (3) years with an option for an additional period upon mutual agreement.

**PROPOSAL PROCESS**

**Submission**

Bids for Energy Management Services (BID# 03-22) will be received by the City of South Portland Purchasing Agent VIA EMAIL until 3:00pm on Monday, July 12, 2021. Bids submitted after this time will not be accepted. Each proposal must be submitted in pdf format, with all documents, including the email subject line clearly marked "Bid for Energy Management Services" (BID#03-22)."

South Portland Purchasing Agent: Colleen Selberg ([cselberg@southportland.org](mailto:cselberg@southportland.org))

**Proposal Timeline**

RFP release date.....	Friday, June 11, 2021
Deadline for submitting questions.....	Friday, June 25, 2021
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**Addenda, Interpretations, and Questions**

It is the bidder’s responsibility to advise this RFP’s point of contact, Lucy Perkins, concerning any conflicting requirements, omissions of information, or the need for clarification before proposals are due. Contact with any other City of South Portland employee can result in disqualification. No interpretation of the meaning of this RFP will be made to any bidder orally. Every request for such interpretation, including questions concerning the RFP process and procedures, the RFP's specifications, or the contract must be submitted by Friday, June 25, 2021 in writing by email and directed to:

South Portland Sustainability Program Coordinator: Lucy Perkins ([lperkins@southportland.org](mailto:lperkins@southportland.org))

Questions received after this time will not be addressed. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the RFP. Any addenda if issued, will be emailed. Failure of any bidder to receive any addendum or interpretation shall not relieve any bidder from any obligation under their bid as submitted. All addenda so issued shall become part of the contract documents.

**PROPOSAL FORMAT**

All proposal must include a completed Proposal Form in **Attachment A** and a completed Pricing Form in **Attachment B**. Proposals must be submitted in the following format using the numbering sequence outlined below. This is the minimum information to be provided and will be used in the evaluation process. Proposals are to be limited to a maximum of 25 pages excluding addendum.

## **A. Cover Letter**

A cover letter signed by an authorized representative of the company of Proposer shall outline the intent of the response and shall state that the information contained in the Proposal accurately describes the services to be provided

## **B. Company Profile**

- Provide a description of your firm's business, its purpose, history and successes, including the number of years in the energy services business and major successes.
- List any similar projects completed or underway, the client/owner, and the approximate value of the work.
- Describe your firm's experience working with municipal or other government clients.

## **C. Key Personnel**

Identify key personnel that would be employed for this program and provide a detailed resume/CV of their relevant experience, education & successes. Key personnel should demonstrate ample experience in the business area they would be assigned to.

## **D. References**

Include a list of at least three (3) clients for which your firm has provided energy management services. By submitting a proposal, the Proposer consents to allow the City to contact these references, and also consents to the City contacting any other organization for the purposes of evaluating the Proposal.

## **E. Approach for providing services**

Describe the approach proposed to address the project requirements identified in this RFP. Include any notable methodologies, tools and techniques, and their respective suitability to this project.

The following key components must be included in the approach description. Please complete a description for each service you propose to provide.

### **1. Utility Bill Processing, Management, and Data Analysis**

- Describe the types of utilities your software platform can support. (Electricity, Water, Natural Gas, Fuel Oil, etc.)
- Discuss how your software platform receives and processes account information from the utilities. Please highlight how your firm on-boards new utilities to support their billing practice in the software platform.
- Discuss how your software platform audits bills for errors and works with utilities to correct them. Please highlight how your platform tracks electricity accounts associated with net energy billing (both kWh and monetary credits).
- Describe whether your firm is able to audit bills received during the past 12 months.

- Describe how your software platform can identify key variables/data on utility bills, format data in a downloadable format consistent with the City’s accounting system, and integrate with the City’s general ledger.
- Describe the accounting metrics your software platform can provide such as accounts paid, billing inconsistencies, errors, and corrections.
- Describe how your software platform provides custom “dashboards” so City staff in various departments can access data that is most relevant to them.
- Describe the sustainability metrics your software platform can provide such as carbon emissions, calendarized and interval consumption data, weather normalized data, etc.
- Describe the facility and energy management metrics your software platform can provide such as building size, EUI, cost/sf, unit cost overall usage, consumption & peak loads, peak watts/sf.
- Note whether or not your software platform can automatically upload data to the City’s Energy Star Portfolio Manager account.

## **2. Training & Support**

- Describe how your firm will provide initial training and support to ensure that relevant City staff can operate and navigate software platform functionalities including but not limited to data management, analysis, and visualizations for sustainability, accounting, and building operations.
- Describe how your firm will provide timely, targeted, and additive ongoing training and support for City staff to accommodate new employees, changes in software, or unanticipated issues.

## **F. Maine Solar Net Energy Billing**

The City is currently participating in a large solar procurement for up to 80% of its electricity load as part of programs made possible by the passage of LD 1711 during the past legislative session. The City anticipates that this procurement will associate a large percentage of its electricity accounts with the Net Energy Billing / Distributed Generation Tariff program enacted by statute with rules adopted by the Maine Public Utilities Commission. Describe how your firm can monitor electricity accounts participating in these programs to ensure that the utility has properly applied the relevant kilowatt hour and/or financial credits to each account, and describe the process and any associated costs with adding or removing accounts from the provided energy management service.

## **G. Distinguishing Elements**

The proposer may provide information about products, strategies, market knowledge, or other aspects of its business that distinguish it from other firms working in this space.



## H. Project Schedule

The selected Proposer shall begin work immediately upon contract signing and complete the tasks in their entirety within a reasonable yet aggressive schedule.

### STANDARDS

The successful bidder must comply with the following:

Non-discrimination in Employment and Labor Standards: Bidders on this work and all subcontractors will be required to comply with the President's Executive Order No. 11246 (EEO) and the amendments and supplements to that Order regarding affirmative action and equal employment opportunity. A Compliance Certification Form is required with bid (Supplemental Conditions SC-20 CDBG Program Federal Contract Provisions). Requirements under this Order are detailed in the Bidding Documents.

Department of Labor Regulations: The chosen firm must comply with all the Safety and Health Regulations (CFR29 Part 1926 and all subsequent amendments) as promulgated by the US Department of Labor on June 24, 1974; the Department of Labor Regulations relating to Copeland "Anti-Kickback Act (18 U.S.C. 874) as supplemented by 29 CFR Part 3; Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by 29 CFR Part 5, and Occupational Safety and Health Standards (OSHA) (29 CFR Part 1910).

Environmental Regulations: The chosen firm must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15). Contractors are urged to become familiar with the requirements of these regulations.

Liability Insurance: The chosen firm shall not commence work under a contract until it has obtained all insurance required under this paragraph and such insurance has been approved by the City. It is a requirement that the "CITY OF SOUTH PORTLAND" specifically be named as an Additional Insured on the General Liability and Automobile Liability policies. "Certificate Holder" is hereby named as additional insured" is NOT acceptable.

Commercial General Liability to include products and completed operations, and blanket contractual. The limits of liability shall be as follows:

Bodily Injury and Property Damage	\$1,000,000
Personal Injury and Advertising Injury	\$1,000,000
Per Project Aggregate	\$1,000,000
General Aggregate	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000
Medical Payments	\$10,000

Business Automobile Liability: Automobile physical damage coverage shall be at the option of the solar provider, all sub-contractors and lower tier contractors. The City shall not be liable for physical loss or damage to any owned, non-owned, leased, rented or hired automobile. The chosen firm shall

maintain and cause all sub-contractors and lower tier contractors to maintain business automobile liability insurance covering all owned, non-owned, leased, rented or hired automobiles. The limits of liability shall be as follows:

Bodily Injury and Property Damage \$1,000,000

Workers' Compensation Insurance: The chosen firm shall maintain and cause all sub-contractors and lower tier contractor's to maintain Workers' Compensation and Employers Liability in accordance with the laws and regulations of the State of Maine. The limits of liability provided shall be as follows:

Coverage A Statutory  
Coverage B \$100,000/\$500,000/\$100,000

Professional Liability: If the chosen firm is an Architect, Engineer or Surveyor, they shall maintain a policy of insurance to pay on their behalf whatever amounts that may become legally required to pay on account of an error, omission or negligent act.

Limits of Liability shall be as follows: \$1,000,000 per occurrence and in the aggregate site specific. It is a requirement that this policy be maintained for a period of three (3) years following completion of the project.

Certificates of Insurance of the types and in the amounts required shall be delivered to the City prior to the commencement of any work by the chosen firm, subcontractor or lower tier contractor or any person or entity working at the direction or under control of the chosen firm. The chosen firm shall assume the obligation and responsibility to confirm insurance coverage for all sub-contractors or lower tier contractors who will participate in the project.

The Certificate of Insurance and the policies of insurance shall include a sixty (60) day notice to the City of cancellation, non-renewal or material change in coverage or form.

The City shall be named as an Additional Insured on the General Liability and Automobile Liability policies to the extent of the solar provider's obligations under the Agreement. The City shall fully cooperate with the chosen firm, its representatives and insurers on any claim.

The chosen firm shall defend, indemnify and hold harmless the City, its officers, agents and employees from all suits, actions or claims of any character brought because of any injuries or damage received or sustained by any person, persons or property on account of the operations of the said solar provider; or to the proportionate extent caused by or on account of or in consequence of any neglect in safeguarding the work; or through use of unacceptable materials in construction of the work; or because of any act or omission, neglect, or misconduct of said solar provider, but only to the extent caused by negligent acts or omissions of the chosen firm, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder; or because of any claims or amounts recovered from any infringements or patent trademark, or copyright; or from any claims or amounts arising or recovered under the "Workmen's Compensation Act" or of any other law, ordinance, order or decree.

**SELECTION CRITERIA**

The City will accept the proposal that it judges to be in its best interest. Although cost savings (annually and in total) will be a critical factor, it will not be the only basis for award. At its discretion, the City may select a firm (or firms) outright or select a finalist(s) for in-person interviews. The City reserves the right to negotiate directly with the firm selected for additional project work at a negotiated contract for services. The City reserves the right to accept or reject any or all proposals for any reason, to negotiate with any individual or firm and to select one or more of the proposals.

The following table will be used to rank proposals in the selection process:

<b>RATING CATEGORY</b>	<b>WEIGHT</b>
<p><b>Price: Total cost for five (5) years including all one time set-up and training fees.</b></p> <p>Reviewers will evaluate the price proposal. The reviewers will determine whether the proposer’s future annual subscription and service fees do not exceed the Consumer Price Index (CPI) or 3%, whichever is less.</p>	40
<p><b>Company Capability &amp; Experience</b></p> <p>Reviewers will evaluate the proposer’s ability to provide the services they are offering and will determine whether the proposed services align with the City’s objectives as described in the RFP document. Reviewers will consider value-added services offered by the proposer as well as particular skills or expertise the proposer may be able to offer. Reviewers will also evaluate the proposer’s experience providing services to clients similar to the City of South Portland by checking references, evaluating the proposer’s general business knowledge, determining the functionality of software platforms offered, evaluating the proposer’s ability to communicate effectively, and reviewing the proposer’s overall track record of providing client services in this space.</p>	30
<p><b>Project Approach</b></p> <p>Reviewers will evaluate the proposer’s overall approach to providing the services described in their proposal. This will include the process for on-boarding the City as a new client, understanding the local regulatory and utility environment, evaluating the proposer’s strategy for customer service including approach to communicating with the City’s point of contact as well as other users who may require information from the proposer or the proposer’s software platform. Reviewers will determine whether the proposer’s approach to providing service and its software platform aligns with City needs and goals as described in the RFP document.</p>	30

**ATTACHMENT A- PROPOSAL FORM**

**Request for Proposals  
ENERGY MANAGEMENT SERVICES–  
BID #03-22**

**\*\* THIS SHEET MUST BE INCLUDED IN YOUR PROPOSAL \*\***

The undersigned hereby declares that he/she or they are the only person(s), firm or corporation interested in this proposal as principal, that it is made without any connection with any other person(s), firm or corporation submitting a proposal for the same, and that no person acting for or employed by the City of South Portland is directly or indirectly interested in this proposal or in any anticipated profits which may be derived therefrom.

The undersigned hereby declares that they have read and understand all conditions as outlined in this Request for Proposals, and that the proposal is made in accordance with the same.

The bidder acknowledges the receipt of Addenda numbered: \_\_\_\_\_

COMPANY NAME:

\_\_\_\_\_

AUTHORIZED SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

PRINT NAME & TITLE:

\_\_\_\_\_

ADDRESS:

\_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_

TYPE OF ORGANIZATION - PARTNERSHIP, CORPORATION, INDIVIDUAL, OTHER:

\_\_\_\_\_

STATE OF INCORPORATION, IF APPLICABLE: \_\_\_\_\_

FEDERAL TAX IDENTIFICATION NUMBER (Required): \_\_\_\_\_

*NOTE: Proposals must bear the handwritten signature of a duly authorized member or employee of the organization submitting a proposal.*

**ATTACHMENT B- PRICE PROPOSAL**

**\*\* THIS SHEET MUST BE INCLUDED IN YOUR PROPOSAL \*\***

For the purposes of this RFP, the Proposer shall assume that the City will require up to 10 user log-ins, five of which shall have administrative privileges, to any software platform offered. The Proposer shall assume the following utility accounts listed below. Any future cost increases in annual subscription and service fees are not to exceed the Consumer Price Index (CPI) or 3%, whichever is less.

	Buildings	Electric Accounts	Net-metered Accounts	Natural Gas Accounts	Propane	Fuel Oil
City	31	124	12	19	9	8
Schools	9	19	0	8	3	0
<b>Total</b>	<b>40</b>	<b>143</b>	<b>12</b>	<b>27</b>	<b>12</b>	<b>8</b>

<b>Utility Bill Processing, Management, Payment, and Account Data Annual Fee:</b>	
Year 1: Annual subscription and service fees	
Year 1: Implementation, training, and any other one-time set-up charges	
Year 2: Annual subscription and service fees	
Year 3: Annual subscription and service fees	
Total Cost Proposal	

## ATTACHMENT C- ENERGY MANAGEMENT SERVICES AGREEMENT

This Energy Management Services Agreement (the “Agreement”) is entered into as of the Effective Date described below, by and between \_\_\_\_\_, a \_\_\_\_\_ with a mailing address of \_\_\_\_\_ (“Company”) and the City of South Portland, Maine, with a mailing address of 25 Cottage Road, South Portland, ME 04106 (“Client”).

WHEREAS, the Client is in need of energy services and did advertise a Request for Proposals #0322 entitled “Energy Management Services,” dated \_\_\_\_\_, 2021, (hereinafter, the “Request for Bids”), a copy of which is attached hereto as **Exhibit A** and made a part hereof; and

WHEREAS, the Company has the requisite knowledge and technical ability to perform the services described in the Request for Proposals, and has submitted a proposal for the provision of such services dated \_\_\_\_\_, 2021, (hereinafter, the “Proposal”), a copy of which is attached hereto as **Exhibit B** and made a part hereof; and

WHEREAS, after due consideration, the Client decided to award this contract to Company for the provision of the services described in the Request for Proposals and the Proposal;

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

- 1. Services.** During the Term of this Agreement, Company will provide services as more fully described in each Scope of Work (each a “SOW”) (the “Services”). Company and Client each agree to perform their respective obligations as described in this Agreement, its Schedules and SOWs, which are attached hereto and made a part of this Agreement by reference.

For purposes of all payables Services, Client acknowledges that Company acts as a conduit for Client in order to consolidate, process, present and, if Client authorizes and transfers funds to Company, pay Client’s Facility Charges to the applicable Provider. Client’s transfers of funds to Company in order to pay Facility Charges are made in the ordinary course of business and are not used to pay an antecedent debt owed to Company.

- 2. Definitions.** Capitalized terms not otherwise defined in this Agreement are defined in Schedule 1.
- 3. Service Fees and Payment Terms.** Client will pay Company the Service Fees pursuant to the payment terms set forth in Schedule 2.
- 4. Term.** This Agreement is binding on the parties when signed by both parties. Unless earlier terminated pursuant to the terms of this Agreement, the Term shall remain in force for five (5) years from the later of (i) the Effective Date; or (ii) the Live Date (the “Initial Term”).
- 5. Termination; Suspension.**

5.1 Termination for Default. Either party may terminate this Agreement upon the Default of the other party. Default means (i) the failure of either party to cure the breach of

any material term of this Agreement within thirty (30) calendar days, unless a longer cure period is agreed upon by the parties in writing, after the defaulting party receives written notice of such breach from the other party.

5.2 Client's Right to Terminate for Convenience. The Client shall have the right to terminate this Agreement at any time for its convenience with prior written notice to the Company. If the Agreement is terminated by the Client for convenience, the Client shall pay the Company for all services provided pursuant to this Agreement prior to receipt of such notice.

5.3 Suspension. Company may suspend the System at any time if Company in its sole discretion determines that the operation of the System poses a security or integrity risk to its clients or itself, including but not limited to risks resulting from computer viruses, hacking, tampering or unauthorized access.

5.4 Effect of Termination. Upon expiration or termination of this Agreement, neither party is relieved from any of its obligations or liabilities accrued before the effective date of expiration or termination of this Agreement. All licenses granted to Client under this Agreement shall terminate. The provisions that are intended by their nature and context to survive termination or expiration shall survive. If Client requests transition services, Company shall provide such services at its standard rates.

## **6. Warranties; Representations; Disclaimer of Warranties.**

6.1 Client. Client represents and warrants to Company that: (i) with respect to each Facility, as of the Effective Date and at all times during the Term, Client will have full power and authority to execute, deliver and perform its obligations under this Agreement; and (ii) this Agreement will be the legal, valid and binding obligation of Client enforceable according to its terms.

6.2 Company. Company represents and warrants to Client that: (i) it has full power and authority to enter into this Agreement; (ii) this Agreement will be the legal, valid and binding obligation of Company enforceable according to its terms; and (iii) it will perform the Services in a competent and workmanlike manner in accordance with industry standards. Client's sole and exclusive remedy for any breach of subsection (iii) above will be, at Company's option, re-performance or termination of the applicable SOW and return of any portion of Service Fees paid to Company by Client for the non-conforming Services.

## **7. Indemnity; Client's Remedies; Limitation of Liability; Exclusion of Certain Damages.**

### **7.1 Indemnity.**

7.1.1 Company Indemnity. To the fullest extent permitted by law, Company shall defend, indemnify and hold harmless the Client, its officers and employees (collectively, "Client Indemnitees"), from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and attorney's fees arising out of or resulting from the performance of this Agreement ("Claims") by a third party, provided that any such Claims (1) are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use therefrom, and (2) are caused

by the negligence or willful misconduct of Company or anyone directly or indirectly employed by it, or anyone for whose act it may be liable, or (3) if such Claims arise out of an allegation that Client's authorized use of the System or Services infringes any patent, copyright, trademark or trade secret of any third party; provided, however, that Company shall not be liable to the extent that any Claim that results from or arises out of (i) a Client Indemnitee's negligence; (ii) any instruction, information, designs, specifications, data or other materials provided by Client; (iii) the use of the System or Services in combination with any materials or equipment other than those supplied by Company, if the infringement would have been avoided by the use of the System or Services not so combined; (iv) any modifications or changes made to the System or Services by or on behalf of any person other than Company; or (v) the breach of this Agreement, including without limitation, any misuse or unauthorized use of the System or Services.

Such obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Client that otherwise exists, and nothing in this Agreement is intended, or shall be construed, to constitute a waiver of any defense, immunity or limitation of liability that may be available to Client, its officers, agents and employees, pursuant to the Maine Tort Claims Act, 14 M.R.S. §§ 8101 et seq., or as otherwise provided by law. The extent of the indemnification provision shall not be limited by the provision for insurance in this Agreement. Company's obligations under this paragraph shall survive termination of this Agreement.

7.1.2 Client Indemnity. To the extent permitted by law, Client shall indemnify, defend and hold harmless Company and directors, officers, employees, successors and permitted assigns (collectively, "Company Indemnitees") from and against any and all Losses in connection with any Claim by a third party (other than an Affiliate of a Company Indemnitee), including a Provider, that arises out of or relates to any: (i) Client Data; or (ii) Facilities Charge, but only to the extent such losses are caused by Client's negligence, except that Client shall not be liable to the extent that any Loss results from or arises out of (i) a Company Indemnitee's negligence; (ii) any infringement Claim covered by Company's indemnity as provided under Section 7.1.1; (iii) any instruction, information, designs, specifications, data or other materials provided by Company; or (iv) the Company's breach of this Agreement. Client's obligations under this paragraph are subject to and limited by the defenses, immunities, or limitations of liability or damages available to the Client under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Client.

7.1.3 Indemnity Procedure. With respect to any Claim that is subject to the provisions of this Section 7.1, the indemnified party shall (i) provide the indemnifying party with prompt written notice of such Claim; (ii) permit the indemnifying party to assume sole control over the defense of the Claim and all related settlement negotiations; and (iii) provide the indemnifying party complete information in the indemnified party's possession regarding the Claim and/or reasonable assistance in connection with the defense of the Claim, as requested by the indemnifying party at the indemnifying party's sole cost and expense. Each party further acknowledges and agrees that the indemnified party may participate in, but not control, the defense of any such Claim, using lawyers of its choosing and at its sole cost and expense, and that the indemnifying party shall not settle any such Claim under terms that would require that the indemnified party undertake any affirmative conduct (other than the payment of money damages that are fully indemnified by the



indemnifying party hereunder), or that would otherwise require any admission of fault or liability on the part of the indemnified party.

7.1.4 Infringement Indemnity. With regards to Company's infringement indemnity, if Company believes that all or any part of the System or Services may be deemed to infringe as described above, Company may, in addition to its indemnity obligations, (i) procure for Client the right to continue using the System; or (ii) replace or modify the System to avoid infringement; or (iii) terminate all rights and obligations of the parties under this Agreement. The remedy described in this Section 7.1 is the sole and exclusive liability of Company to Client concerning infringement of any patent, copyright, trademark, or trade secret.

7.2 Exclusion of Certain Damages. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, EVEN IF COMPANY OR CLIENT, AS THE CASE MAY BE, HAS BEEN ADVISED OF THE FORESEEABILITY OF SUCH DAMAGES.

## **8. Confidentiality; Proprietary Rights; Data Use.**

8.1 Confidentiality. This Section 8 describes the parties' obligations of confidentiality under this Agreement.

8.1.1 In connection with this Agreement, each party has disclosed and may continue to disclose (the "Disclosing Party") to the other party (the "Receiving Party") information, as applicable, that relates to the Disclosing Party's business operations, financial condition, customers, products, services or technical knowledge. Except as may otherwise be specifically agreed in writing by the parties, the parties acknowledge and agree that (i) all information communicated to the Receiving Party by the Disclosing Party and identified as confidential or proprietary by the Disclosing Party, whether before or after the Effective Date; (ii) all information identified as confidential or proprietary by Company to which Client has access in connection with the System or Services, whether before or after the Effective Date; and (iii) all information communicated to the Receiving Party that reasonably should have been understood by the Receiving Party, whether because of confidentiality or similar legends, the circumstances of disclosure or the nature of the information itself, to be proprietary and confidential to the Disclosing Party; shall be, and shall be deemed to have been received in confidence by the Receiving Party and shall be used by the Receiving Party only for purposes of this Agreement in compliance with applicable law. For purposes of clarity, the parties further acknowledge and agree that (a) Client Data shall at all times be deemed Client's Confidential Information; and (b) any information, in whatever form that relates to Company's System or to Services to be provided under this Agreement, shall at all times be deemed Company's Confidential Information.

8.1.2 The Disclosing Party's Confidential Information shall remain the property of the Disclosing Party except as may otherwise be expressly provided in this Agreement. The Receiving Party shall use at least the same degree of care it uses to protect its own confidential and proprietary information of a similar kind or nature in order to safeguard and

prevent disclosing to third parties the Disclosing Party's Confidential Information and, in any event, not less than reasonable care. The Receiving Party shall not (i) use or make or copies of the Disclosing Party's Confidential Information except as contemplated by this Agreement; (ii) acquire any right in or assert any lien against the Disclosing Party's Confidential Information; or (iii) except as permitted elsewhere in the Agreement, disclose the Disclosing Party's Confidential Information to a third party or otherwise sell, assign, lease or commercially exploit the Disclosing Party's Confidential Information. The Receiving Party shall not withhold the Disclosing Party's Confidential Information or refuse for any reason, including due to the Disclosing Party's actual or alleged breach of this Agreement, to promptly return to the Disclosing Party its Confidential Information, including copies, if requested to do so. Upon expiration or any termination of this Agreement and completion of the Receiving Party's obligations under this Agreement, the Receiving Party shall, except as otherwise provided in this Agreement return or destroy, as the Disclosing Party may direct, all documentation in any medium that contains or refers to the Disclosing Party's Confidential Information, and retain no copies, except for archival purposes and to evidence compliance with this Section 8.

8.1.3 This Section 8 shall not apply to System Data or to any particular information that the Receiving Party can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) was, after disclosure to it, published or otherwise becomes part of the public domain through no fault of the Receiving Party; (iii) was in the possession of the Receiving Party at the time of disclosure to it and was not the subject of a pre-existing confidentiality obligation; (iv) was received after disclosure to it from a third party who had a lawful right to disclose such information to it; (v) was independently developed by the Receiving Party without use of the Confidential Information of the Disclosing Party as evidenced by the Receiving Party's own records; or (vi) was required to satisfy any legal requirement of a competent governmental authority; provided that the Receiving Party promptly, upon receiving any such request and prior to making the disclosure, advised the Disclosing Party of the request.

8.1.4 Nothing contained in this Section 8 shall be construed as obligating a party to disclose its Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any rights or license to the Confidential Information of the other party. In any event, Client agrees that the general fact that it is receiving Services from Company and the general nature of the Services performed for Client by Company are not Confidential Information.

8.1.5 Notwithstanding anything to the contrary herein, Company acknowledges and agrees that Client is subject to Maine's Freedom of Access Act ("FOAA"), 1 M.R.S. §§ 401 et seq. Client shall not disclose Confidential Information in its possession except as required by FOAA, and such disclosure will be without liability to Company or any third party. Prior to disclosing such information, Client will provide Company with a reasonable opportunity to seek an injunction or other court order, at Company's own expense, to prevent such disclosure.

## 8.2 Proprietary Rights.

8.2.1 Company Proprietary Rights. Client acknowledges the System and its underlying source code, System passwords, software, methods, procedures, programs,

content, documentation, reports, performance results, know-how, algorithms, data structures, processes, screen formats, ideas and concepts that Company employs to deliver the Services (the “Company Information”), and any suggestions, ideas, enhancement requests, feedback, recommendations for modifications or improvements to the System or Services provided by Client are confidential and proprietary to Company and provide it with a commercial advantage in the performance of energy and sustainability management services. All such Company Information, and all Intellectual Property Rights associated therewith, is and shall remain the sole and exclusive property of Company, and except as otherwise expressly set forth herein, including the license granted under Section 9, Client shall have no right, title or interest in the Company Information, whether by implication, estoppel or otherwise. Client shall not use or disclose information regarding the System or the Services except as permitted in this Agreement. The System Data is and shall remain Company’s sole and exclusive property. Client acknowledges and agrees that Company may retain and use System Data for any legal purpose, including without limitation, to (i) incrementally improve and develop the Services; and (ii) create statistical marketing studies, research, analytics, products or strategic planning, provided that such studies, research, analytics products or plans do not specifically identify Client.

8.2.2 Client Proprietary Rights. All Client Confidential Information, including Client Data, is and shall remain the sole and exclusive property of Client. Client hereby grants to Company a worldwide, royalty-free, non-exclusive, sublicensable right and license to use, copy, display and modify the Client Data for the purposes of (i) providing the Services to Client hereunder; and (ii) evaluating and improving the efficiency, utility and functionality of its existing or future products and services.

8.2.3 Weather Information. Client acknowledges that weather-related information provided as part of the Services is provided under restricted use licenses. Client agrees to limit its use of such information to those activities necessary to perform energy and sustainability management analyses and evaluations and for no other use without the express prior written consent of Company.

## **9. License.**

9.1 License Grant. Company hereby grants to Client and its Authorized Users a limited, non-exclusive, worldwide, fully paid up, multi-site, enterprise-wide, license to access and use the System and Services during the Term, subject to an in accordance with the terms and conditions of this Agreement, including without limitation, the restrictions described in 9.2. Such license includes the rights (i) to access the System, its features and Content and (ii) to download, use, reproduce and manipulate Client Data for Client’s internal purposes and for no other purposes without the express written consent of Company.

### 9.2 License Restrictions.

(a) Client may use the System and Services solely for its own internal purposes. Any violation or breach of this Section 9.2 shall be a Default, and Company reserves the right, in its sole discretion, to immediately suspend Client’s Services and/or disable Client’s user access to the System until the Default is cured in accordance with Section 5.1.

(b) Authorized Users may access the System and Services solely for Client's benefit, provided that Client (i) is fully responsible for the acts and omissions of its Authorized Users, and (ii) ensures that any access to the System or Services by Authorized Users is completely disabled upon completion of the Authorized Users' services requiring use of or access to the System or Services or upon such time as such Authorized User no longer qualifies as an Authorized User hereunder.

(c) Neither Client nor its Authorized Users may:

- (1) sell, resell, rent, timeshare, lend, share or lease the System or Services;
- (2) use the System in any manner that could damage, disable, overburden or impair the System or any network or server owned or controlled by Company or otherwise associated with the System;
- (3) access or attempt to access any area of the System that Client is not authorized to access;
- (4) probe, scan or test the vulnerability of any system or network owned or controlled by Company or otherwise associated with the System;
- (5) reproduce, distribute, display, perform or otherwise use the Content for commercial purposes, except its own internal purposes;
- (6) use the System to create products or perform services which compete or interfere with those of Company and/or its licensors; or
- (7) access the System by any means other than through the interfaces provided by Company.

**10. Notice.** Whenever this Agreement requires either party to give notice to the other, the notice will be given in writing and delivered by certified mail, return receipt requested, or by email if receipt is confirmed by the intended recipient, to the party at the address set forth below:

If to Client:

Scott Morelli, City Manager  
City of South Portland  
25 Cottage Road  
South Portland, ME 04106

If to Company:

**11. General.**

11.1 Audit Rights. No more than once annually, Client will have the right to inspect, examine and audit (collectively "Audit") the records, data, practices and procedures of Company that are directly relevant to determining the accuracy of Company's invoices or any other legitimate purpose under this Agreement. Audits will be conducted during business hours or as mutually agreed between the parties and will take place upon such advance notice as is reasonable under the circumstances, but not less than one week's notice. Company will keep and maintain financial records pertinent to substantiating Company's invoices, which will be kept in accordance with international financial accounting principles. Audits will be conducted at Client's expense; provided, however, that if any financial Audit determines that Company has overcharged Client by an amount equal to or greater than five percent (5%) of Company's total invoiced charges for the period being audited, then Company will reimburse Client for the actual, reasonable cost of the Audit.

11.2 Insurance. Company will maintain at its expense the following insurance during the term of this Agreement:

(a) Commercial General Liability with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

(b) Business Automobile Liability insurance for owned, non-owned and hired vehicles, with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage combined;

(c) Workers' Compensation in the statutory limits required by the State of Maine and Employers' Liability with limits of \$500,000;

(d) Professional Liability (errors & omissions) with minimum limits of \$1,000,000; and

(e) Crime coverage with minimum limits of \$5,000,000.

With respect to the Automobile and Commercial General Liability Insurance, the Company shall name the Client as an additional insured for coverage only in those areas where government immunity has been expressly waived by 14 M.R.S. § 8104-A, as limited by § 8104-B, and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the Client under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the Client. Prior to execution of this Agreement, the Company shall furnish the Client, at Client's request, and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' written notice to the Client of termination of insurance from the insurance provider or agent. Company shall also provide a copy of any endorsement naming the Client as additional insured, at Client's request. A certificate that merely has a box checked under "Addl Insr," or the like, or that merely states the City of South Portland is named as an Additional Insured, will not be acceptable. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of South Portland, its officers or employees. Upon Client's request, Company shall provide Client with a complete copy of any of the above-referenced policies. Company shall be responsible for any and all deductibles and/or self-insured retentions. Client's acceptance or lack of

acceptance of Company's Certificate of Insurance or other evidence of insurance shall not be construed as a waiver of the Company's obligation to obtain and maintain such insurance as required by this agreement. If the Company maintains broader coverage and/or higher limits than the minimum shown above, the Client requires and shall be entitled to the broader coverage and/or higher limits maintained by the Company. Additional insured status, including coverage for ongoing and completed operations, must apply to a claim arising from Company's performance of the Agreement or caused in whole or in part by act or omission of Company, but will not apply to a claim resulting from the negligence of Client, its Authorized Users or any authorized representative acting on its behalf.

11.3 Assignment. Neither party may assign this Agreement without the written consent of the other party, unless to a successor which acquires all or substantially all of the assets and liabilities of the assignor and assumes in writing the obligations of this Agreement.

11.4 Company Affiliates and Strategic Contractors. Company may share Confidential Client Information, provided such Client Information is aggregated and does not identify Client in any way, with its Affiliates and Strategic Contractors that are contractually bound by confidentiality obligations at least as restrictive as those set forth in this Agreement; provided that Company shall be responsible for any unauthorized disclosure of Client's Confidential Information by such Affiliate and/or Strategic Contractor.

11.5 Publicity. The parties agree to do an initial press release (the "Release") within thirty (30) days of Effective Date. Company will draft the Release and provide to Client for review and comment. The Release shall not be issued without the prior consent of Client. In the Release, Company may use Client's name, logos, marks and information specific to Client and the Services. During the Term, subject to Client's written approval, Company may, through any media, use Client's name, logos, marks and other relevant information specific to Client and the Services in promotional materials, case studies or lists (the "Publicity"); provided that Company shall include protective legends necessary to protect Client's rights in and to its trademarks, service marks or copyrighted materials. Company will draft the Publicity and provide to Client for its approval.

11.6 Delegation. Company may retain third parties to provide goods or services in connection with the performance of the Services and may share Confidential Information with such third parties; provided that such delegation shall not relieve Company of its duty to perform any of its obligations under this Agreement, and any such third party with access to Confidential Information shall be bound by the confidentiality obligations described in Section 8 of this Agreement.

11.7 Dispute Resolution. The parties will make good faith efforts to resolve any dispute under this Agreement before pursuing litigation.

11.8 Governing Law; Jurisdiction. This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine, without regard to conflicts of law principles. The parties hereby consent to the exclusive jurisdiction of the state and federal courts located in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court.

11.9 Severability. If any provision of this Agreement is held invalid for any reason, the remaining provisions of this Agreement shall remain valid and enforceable, and the parties shall substitute a valid provision for the invalid provision, which most closely approximates the intent and economic effect of the invalid provision.

11.10 Modification; Waiver. No amendment or modification of this Agreement shall be effective unless made in writing, signed by the authorized representative of each party, and delivered to each party at the address provided for notice. The failure of either party to require performance of any provision of this Agreement shall not affect the right to require the performance at a subsequent time. The waiver by either party of a breach of any provision of this Agreement shall not be taken as a waiver of such provision. This Agreement shall not be amended or limited by any course of performance.

11.11 Independent Contractors. The parties to this Agreement are independent contractors, and do not intend by this Agreement to create a relationship of partners, joint venturers, or any other association for profit between them. Except as expressly provided for in this Agreement, each party shall bear its own costs and expenses associated with performing its obligations.

11.12 Force Majeure. Except for the payment of monies when due and owing, for the period and to the extent that a party is unable to perform, in whole or in part, its obligations under this Agreement, where such inability arises by reason of any court order, law, regulation or agency rule or other governmental action or inaction, war, terrorism, cyberattack, riot, strike, lockout, labor dispute, explosion, fire, storm, wind, drought, flood, earthquake, volcanic eruption, disease, epidemic/pandemic or other natural catastrophe or act of God (a "Force Majeure Event"), such party shall be temporarily excused from its obligations that are so prevented until the abatement of such Force Majeure Event; provided that such party uses its best efforts to promptly overcome or mitigate the delay or inability to perform. The term of this Agreement shall not be extended by the period of duration of such Force Majeure Event. Notice of any such inability and abatement shall be promptly given to the other party.

11.13 Entire Agreement. This Agreement and the attached Schedules and SOWs referenced below constitute the entire agreement of the parties and supersede all prior written or oral agreements or understandings between the parties with respect to the subject matter of this Agreement.

AGREED AND ACCEPTED by the parties' authorized representatives as of the date last signed below (the "Effective Date").

**Client: City of South Portland**

**Company:** \_\_\_\_\_

By (signature): \_\_\_\_\_

By (signature): \_\_\_\_\_

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

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

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



## **Schedule 1**

### **Definitions**

1. Definitions: The following definitions apply to capitalized terms used in this Agreement.

1.1 “\_\_\_\_\_” or “Company” refers to \_\_\_\_\_.

1.2 “Affiliate” means any entity that directly or indirectly controls, is controlled by or is under common control with a party to this Agreement, with “control” meaning ownership of 51% or more of the voting equity interests, or the power to otherwise direct the affairs of the applicable entity.

1.3 “Authorized Affiliate” means an Affiliate of Client that has received approval from Company to receive Services under the Agreement. Company may give or withhold such approval in its commercially reasonable discretion. Company may require such Authorized Affiliate to execute certain additional documents that Company deems reasonably necessary to memorialize the relationship.

1.4 “Authorized User” means a Client employee needing access to Company’s System.

1.5 “Business Day” excludes Saturday, Sunday, the day after Thanksgiving and recognized federal holidays.

1.6 “Client Data” means all data, content and information submitted by Client or received in connection with the Client’s use of the System or Services.

1.7 “Consolidated Account” means an account established by Company with a national banking institution of its selection and used for the purpose of paying Facilities Charges under the consolidated billing component of the Services. All sums deposited by Client into the Consolidated Account are managed in trust by Company, as a bill payment conduit, for the benefit of Client. Funds held in the Consolidated Account need not be segregated from funds held for other customers of Company, provided that these funds shall be segregated from Company’s operating funds. Company will be under no liability for interest on the balances held in the Consolidated Account. Upon termination of the Agreement, any funds held for Client in the Consolidated Account will be applied in accordance with the Agreement or as Client may reasonably direct.

1.8 The “Consolidated Bill Amount” or “CBA” is the amount required, in any given period, to pay all Facilities Charges that Company is authorized to pay for Client for such period.

1.9 “Content” means all contents of the System, such as text, graphics, images, information provided under license from third parties, and other material available through the System. All Content is protected by copyright under both United States and foreign laws. All marks and logos appearing on the System are registered and common-law trademarks or service marks of Company, its licensors, or other third parties.

1.10 “Estimated Annual Revenue” means the amount of Service Fees paid by Client to Company pursuant to this Agreement in the immediately preceding twelve (12) calendar months. If this Agreement has been in effect for less than twelve (12) months at the time of termination, the Estimated Annual Revenue shall be the average amount of monthly Service Fees since the Effective Date multiplied by twelve (12).

1.11 “Facilities Charge” means an amount due to a Provider for services rendered or goods or commodities delivered to a Facility, including taxes.

1.12 “Facility” or “Site” means any building, structure, or improved real property which is owned, occupied, or managed by Client and which (i) receives electricity, natural gas, telecommunications, water, solid waste removal or sewer service and (ii) is separately metered or billed for any such service by the Provider.

1.13 “Implementation Process” and “Implementation” refer, with respect to a Facility, to the information Client must provide to Company and the arrangements that Company or Client must make with Providers before Company is able to provide Service for the Facility. The nature of the information and arrangements involved varies depending on the scope of the Service desired. Until the Implementation Process is complete for a Facility, Company may, but is not required to provide Service for the Facility.

1.14 “Intellectual Property Right” means any right arising from patent, copyright, trademark, trade secret law or from an agreement regarding the use of any patent, copyright, trademark or trade secret or the use or disclosure of confidential or proprietary information.

1.15 “Invoiced Processed” or “Bill Processed” means any invoice received from the Provider and/or Client and entered into the System for bill payment and/or reporting purposes.

1.16 “Live Date” means the date of commencement of any expense management service, which will be determined by Company during Implementation.

1.17 “Provider” means any entity that provides electricity, natural gas, telecommunications, solid waste removal, water, or sewer service to a Facility. A Provider may provide the actual goods, services, or commodity, the transmission, distribution or transportation of the commodity, or any of the foregoing.

1.18 “Provider Account” or “Account” means an account maintained in the business records of a Provider, typically identified by a separate account number, for which the Provider separately bills Client for any portion of the Facilities Charges at one or more Facilities. For example (i) a Facility served by multiple Providers will have multiple Provider Accounts; (ii) a Facility served by a single Provider through multiple meters will have multiple Provider Accounts if the Provider generates separate bills for two or more meters; and (iii) alternately, a Provider may bill Facilities Charges for several different meters or different services to a Facility under a single account, generating a single bill to Client, in which case there is a single Provider Account.

1.19 “Reversed Payment” means a transfer of funds from a Client to the Consolidated Account, whether effected by wire transfer, electronic funds transfer or otherwise, fails or would fail to be completed for any reason, including as a result of insufficient funds, a stop payment order, or a reversal, return or rejection of an order or request to transfer funds through an ACH operator.

1.20 “Service Fees” means all amounts payable to Company under this Agreement, any Schedule or SOW to this Agreement.

1.21 “Service Type” includes, but is not limited to, electricity, natural gas, coal, data services, irrigation, water, sewer, other fuels, non-utility charges, local, long distance, organics, recycling, or solid waste removal. A Provider may bill for one or multiple Service Types on an Account or on a Summary billing Sub-Account.

1.22 “Strategic Contractor” means companies with whom Company develops value-added services for the benefit of its customers.

1.23 “Suggestions” means any feedback, improvements or other suggestions provided by Client to Company with respect to Client’s use of the System or Services.

1.24 “System” (including any successor system) is Company’s proprietary, integrated suite of energy and sustainability management services. The System is a flexible, paperless reporting system, which provides real-time information, historical information, client-specific reports and is accessible via the internet to users authorized by Company in its sole discretion.

1.25 “System Data” means (A) all data, content and information, including, but not limited to: (i) system administrative data, (ii) de-identified or aggregate Client Data, and (iii) statistical and demographical data, and (B) operational information and data generated by or characterizing the use of the System or Services.

1.26 “Transaction Taxes” means any taxes, federal, state or otherwise, or duties, fees or charges, however designated, that are levied or imposed by any governmental authority by reason of Company’s sale or license to Client of any services, software or other goods and products covered by this Agreement, or Client’s use of the System or consumption of the Services, except for taxes levied on the income or gross revenue of Company payable by Company. For the avoidance of doubt, however, Client is exempt from all state sales and use taxes.

**Schedule 2**  
**Fees and Payment Terms**

[To be added following award of bid.]

**Schedule 3**  
**Scope of Work**

[To be added following award of bid.]

**Exhibit A**  
**Client's Request for Proposals**

[To be added following award of bid.]

**Exhibit B**  
**Company's Proposal**

[To be added following award of bid.]