

Amendment No. 1

PROJECT: INVESTMENT GRADE AUDIT – TOWN OF PRESCOTT VALLEY, ARIZONA

REVISIONS TO THE INVESTMENT GRADE AUDIT AGREEMENT BETWEEN SCHNEIDER ELECTRIC BUILDINGS AMERICAS, INC. (ESCO) AND TOWN OF PRESCOTT VALLEY, ARIZONA (CUSTOMER) ENTERED ON JUNE 9, 2022, ARE AGREED AS FOLLOWS.

A. CHANGE:

CUSTOMER REQUESTS THAT ESCO ORDER THE EQUIPMENT ITEMIZED IN SECTION C BELOW, SUBJECT TO THE TERMS AND CONDITIONS ATTACHED HERETO AND INCORPORATED HEREIN AS EXHIBIT A.

B. REASON FOR CHANGE:

LONG LEAD TIME ITEMS – IN CONDUCTING THE INVESTMENT GRADE AUDIT, ESCO HAS IDENTIFIED SEVERAL PIECES OF EQUIPMENT THAT WILL BE INCORPORATED INTO THE GUARANTEED ENERGY SAVINGS PROJECT THAT HAVE LEAD TIMES OF GREATER THAN 180 DAYS. BY EXECUTION OF THIS CHANGE ORDER CUSTOMER WISHES TO AUTHORIZE ESCO TO PURCHASE THE EQUIPMENT ITEMIZED IN SECTION C IN ACCORDANCE WITH THE TERMS AND CONDITIONS CONTAINED IN EXHIBIT A.

<u>C. EQUIPMENT TO BE PURCHASED</u>	<u>QUANTITY</u>
-------------------------------------	-----------------

Civic Center - \$405,520

1. 50 Ton Packaged Commercial Rooftop	2
2. 40 Ton Packaged Commercial Rooftop	2

Event Center - \$589,230

1. IPAK 1 130T Packaged Rooftop (IP1LG)	2
---	---

D. CONTRACT SUM:

CONTRACT SUM PRIOR TO THIS CHANGE:	\$138,000
------------------------------------	-----------

CONTRACT SUM AFTER THIS CHANGE:	\$1,132,750
---------------------------------	-------------

TOTAL CHANGE:	\$994,750
----------------------	------------------

THE PARTIES HEREBY AGREE THAT THE TERMS AND CONDITIONS CONTAINED IN EXHIBIT A SHALL GOVERN THE PURCHASE OF THE EQUIPMENT IDENTIFIED IN SECTION C AND THE TERMS AND CONDITIONS OF THE INVESTMENT GRADE AUDIT AGREEMENT SHALL REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

CUSTOMER:

DATE:

ESCO:

DATE:

EXHIBIT A

1. Taxes

Except as may be otherwise provided in the Change Order, prices do not include taxes, duties, or any other governmental levies, all of which are payable by Customer. The price excludes all present or future sales taxes, revenue or excise taxes, value-added taxes, import and export duties and any other taxes, surcharges, or duties now existing or hereafter imposed by governmental authorities upon equipment and/or services quoted by ESCO. The Customer shall be responsible for all such taxes, duties and charges resulting from these Conditions of Sale or any associated purchase. ESCO is required to impose taxes on orders and shall invoice the Customer for such taxes and/or fees according to applicable law, statutes, or regulations, unless ESCO furnishes the Customer at the time of order with a properly completed exemption certificate(s) acceptable to the authorities imposing the tax or fees. Any changes in foreign exchange rates, sales taxes, customs tariffs, or other taxes shall be chargeable to the Customer.

2. Terms of payment

For this Amendment No. 1, payment of invoice is due thirty (30) days after the invoice application date. If receipt of any payment exceeds the thirty (30) days after the invoice application date, Customer shall pay to ESCO a 1% late penalty per month and ESCO reserves the right to terminate this Contract due to non-payment upon seven (7) days prior written notice.

3. Delivery and Schedule

The Customer acknowledges that the Products or part thereof are produced in, or otherwise sourced from, or will be installed in areas already affected by, or that may be affected in the future by, the prevailing COVID-19 epidemics/pandemic and that the situation may trigger stoppage, hindrance or delays in ESCO's (or its subcontractors) capacity to produce, deliver, install or service the products, irrespective of whether such stoppage, hindrance or delays are due to measures imposed by authorities or deliberately implemented by ESCO (or its subcontractors) as preventive or curative measures to avoid harmful contamination exposure of ESCO's (or its subcontractors') employees. The Customer therefore recognizes that such circumstances shall be considered as a cause for excusable delay not exposing ESCO to contractual sanctions including without limitation, delay penalties, liquidated or other damages or termination for default. Upon delivery, Client is responsible for all material handling including off-loading from delivery vehicle and storage.

4. Risk of loss

Unless otherwise specifically agreed by the Parties, the Products are delivered Ex Works (Incoterms 2010) and the risk of loss or damage shall pass to the Customer upon collection of the Products by the first carrier at ESCO's premises, plants or warehouses. Delivery of Products by ESCO will be deemed to be made to the Customer upon obtaining a signed receipt from the carrier showing receipt of the Products in good order. Title passes on full payment.

5. Force Majeure

ESCO will be excused from and not be liable for any non-performance if such delay or non-performance is due to any cause beyond the reasonable control of ESCO, or which ESCO could not reasonably foresee or reasonably provide against, and which prevents ESCO from carrying out the terms of the Purchase Order. This includes but is not limited to the following: pandemic, war, revolution, insurrection or hostilities (whether declared or not), riot, economic upheaval, civil commotion or uprising, flood, earthquake, tempest, hurricane, lightning or other natural disaster; fire or explosion; strike, lockout, or other industrial disturbance whether at ESCO or one of its suppliers; sabotage, accident, cyber-attack, embargo, car shortage, wrecks or delays in transportation, non-delivery of materials or order or action of government authority. Any delay resulting from such cause shall extend the date of delivery accordingly.

6. Cybersecurity

ESCO is not responsible for implementing or maintaining a security program to safeguard and protect Customer's or the end user's Systems or Deliverables against Cyber Threats ("Security Program"). Failure by Customer and/or the end user to maintain an appropriate Security Program in accordance with industry standards or to promptly follow guidance provided by ESCO (including, without limitation, with respect to installation of any recommended updates or patches, and whether provided via ESCO's security notification webpage at <https://www.se.com/ww/en/work/support/cybersecurity/security-notifications.jsp> or otherwise), may result in the Systems or Deliverables becoming vulnerable to Cyber Threats or may result in impaired functionality, and ESCO shall not be responsible for any losses or damages that may result. As used herein, (i) "Systems" means Customer's or the end user's computer networks, systems, machines and/or data, including those Systems on which it runs the Deliverables, (ii) "Deliverables" means products, services, software, and/or information provided by ESCO, and any technologies embedded therein, and (iii) "Cyber Threat" means any circumstance or event with the potential to adversely impact, compromise, damage, or disrupt Systems or Deliverables or that may result in any unauthorized access, acquisition, loss, misuse, destruction, disclosure, and/or modification of Systems or Deliverables, including through malware, hacking, or similar attacks.

7. Standard Warranty

ESCO warrants Products manufactured by ESCO under its own brands and supplied by ESCO as part of the Purchase Order, if any, against defects in material and workmanship of those Products arising under normal use for a period of 12 months from the date of commissioning or 18 months from the date of shipment from ESCO, whichever occurs first. ESCO does not warrant products not manufactured by ESCO, but it will pass on to Customer any manufacturer's warranty to the extent permitted.

8. Software

Any software or computer information, in whatever form, that is provided with Products manufactured by ESCO (collectively, the "Software"), is licensed to Customer solely pursuant to standard licenses of ESCO or its supplier of such Software, which licenses are hereby incorporated by reference and are available upon request. Customer shall not reverse engineer, decompile, disassemble, or apply any process, technique, or procedure or make any attempt to ascertain or derive the source code of any Product OR Software.

9. LIMITATION OF LIABILITY

The amount of liability of ESCO shall be limited to three (3) times the total contract amount.

10. Import and Export

The Products and Software provided by ESCO under these Conditions of Sale contain or may contain components and/or technologies from the United States of America ("US"), the European Union ("EU") and/or other nations. Customer acknowledges and agrees that the Products, assignment and/or usage of the Products, Software, Services, information, other deliverables and/or the embedded technologies (hereinafter referred to as "Deliverables") under these Conditions of Sale shall fully comply with related applicable US, EU and other national and international export control laws and/or regulations. Unless applicable export license has been obtained from the relevant authority and ESCO has approved, the Deliverables shall not (i) be exported and/or re-exported to any destination and party (may include but not limited to an individual, group and/or legal entity) restricted by the applicable export control laws and/or regulations; or (ii) be used for those purposes and fields restricted by the applicable export control laws and/or regulations. Customer also agrees that the Deliverables will not be used either directly or indirectly in any rocket systems or unmanned air vehicles; nor be used in any nuclear weapons delivery systems; and will not be used in any design, development, production or use for any weapons which may include but not limited to chemical, biological or nuclear weapons.

If any necessary or advisable licenses, authorizations or approvals are not obtained, whether arising from inaction by any relevant government authority or otherwise, or if any such licenses, authorizations or approvals are denied or revoked, or if the applicable export control laws and/or regulations would prohibit ESCO from fulfilling any order, or would in ESCO's judgment otherwise expose ESCO to a risk of liability under the applicable export control laws and/or regulations if it fulfilled the order, ESCO shall be excused from all obligations under such order and/or these Conditions of Sale.

11. Nature of Relationship

Customer agrees that ESCO is an independent contractor and nothing in these Conditions of Sales creates between ESCO and Customer a relationship of partners, joint venturers, or agents of each other, and no Party may so represent itself any of these manners.

12. Amendments

No amendment, supplement, modification, waiver or termination of the Change Order or these Conditions of Sale is binding unless executed in writing by both Parties.

13. Antibribery and Corruption

Customer acknowledges that ESCO is committed to eliminating all risk of bribery and corruption, influence peddling, money laundering and tax evasion or the facilitation thereof in its business activities. Customer must immediately notify ESCO of any suspected, or known, breaches of Anti-Corruption Law. Customer may raise this alert through their point of contact or through the Trust Line: <https://secure.ethicspoint.eu/domain/media/en/gui/104677/index.html>.

14. Applicable Laws

All matters arising out of or relating to the execution, construction, interpretation or breach thereof, are to be governed by the laws of the state of Arizona, USA without regard to the conflict of law provisions thereof.

15. Procurement

Pursuant to A.R.S. §34-105 et seq. and Prescott Valley Town Code §3-04-090, Customer has authority to utilize cooperative purchasing contracts. ESCO has entered into the Agreement with the Town through the Strategic Alliance for Volume Expenditure (SAVE) Contract, as awarded through the City of Scottsdale Solicitation No. 20SQ023 As Needed Guaranteed Energy Cost Savings, fully incorporated by reference, to provide the services described herein. ESCO agrees to abide by all terms and conditions of the cooperative contract in addition to any special provisions agreed to in this Agreement.