

Energy Savings Agreement
Project Development Phase
City of Cooper City

PROJECT DEVELOPMENT AGREEMENT

THIS IS AN AGREEMENT, dated the 10th day of March 2026, **2025**, by and between:

THE CITY OF COOPER CITY, a municipal corporation of the State of Florida with a business address of **9090 S.W. 50th Place, Cooper City, Florida 33328** (hereinafter referred to as the "CITY")

and

ENERGY SYSTEMS GROUP, LLC, an Indiana Limited Liability Company, authorized to do business in the State of Florida, with a business address of **9877 Eastgate Court, Newburgh, IN 47630**, (hereinafter referred to as the "CONSULTANT"). CITY and CONSULTANT may hereinafter be referred to collectively as the "Parties."

WITNESSETH:

In consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONSULTANT agree as follows:

ARTICLE 1
PREAMBLE

In order to establish the background, context and form of reference for this Agreement and to generally express the objectives, and intentions of the respective parties herein, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

1.1 On **August 12, 2021**, the CITY advertised its notice to bidders of the CITY's desire to hire a firm to provide **Energy Saving Performance Contractors Services** pursuant to §489.145, Florida Statutes under RFQ 2022-1-UTL, **ENERGY SAVINGS PERFORMANCE CONTRACTORS SERVICES**.

1.2 On June 17th, 2022, the CITY entered into an agreement with **ENERGY SYSTEMS GROUP, LLC**, to perform the work provided in RFQ 2022-1-UTL, the "Original Agreement."

1.3 Since entering into that agreement, the Parties continuously pursued joint efforts to effectuate the terms of the Original Agreement.

1.4 The Original Agreement was terminated on October 14, 2022.

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1.5 The Parties have acted in good faith throughout the term of the Original Agreement, and the CONSULTANT obtained unique, specific, and beneficial knowledge about the CITY, its needs, and operations.

1.6 The CITY desires to continue to work with the CONSULTANT, and the CONSULTANT was selected in compliance with §489.145, Florida Statutes.

1.7 Whereas, the Original Agreement provided for the CITY to pay the CONSULTANT for the initial evaluation if the recommended construction was not approved, and the CONSULTANT in this agreement has agreed to waive those fees if the recommended construction was not approved.

1.8 The Parties agree that the termination of the Original Agreement was the most prudent course of action, and this agreement is otherwise a formal modification of the Original Agreement and is substantially similar to RFQ 2022-1-UTL, which is also include herein as **Exhibit A**.

1.9 The Parties agree that the services provided herein do not meet the definition of "Professional Services" as defined in §287.055, Florida Statutes.

The CITY remains satisfied with the CONSULTANT, and pursuant to §2-258(i), of the City code, the City Commission with the recommendation of the City Manager, agree that it is in the best interests of the CITY to waive the procurement process and enter into this agreement with the CONSULTANT.

ARTICLE 2
SERVICES AND RESPONSIBILITIES

2.1 CONSULTANT hereby agrees to perform Scope of Services/Scope of Work for this Project Development Agreement (referred to as the "Agreement," "PDA," or "Project Development Phase.") defined in the Exhibit "B" attached hereto and made a part of this PDA, in accordance with the general requirements described in "RFQ 2022-1-UTL," attached hereto and made a part hereof as **Exhibit "A,"** CONSULTANT agrees to do everything required by this Agreement, and Addenda to this Agreement which have been signed by both Parties. In the event of any conflicts between this Agreement, Exhibits A and Exhibit B, this terms of this Agreement shall prevail.

2.2 The Parties enter into this agreement to have the CONSULTANT prepare a report that identifies and summarizes the costs associated with the efficiencies including, but not limited to, energy, water, wastewater and conservation measures ("ECMs") and provides an estimate of the amount of the cost savings and enhanced revenue as required by §489.145, Florida Statutes for all City facilities and operations identified in **Exhibit "B."** The intent is for the report include efficiencies including, but not limited to, energy, water, wastewater and conservation measures, energy-related operational cost-saving measures, capital improvements, and services authorized by §489.145, Florida Statutes, which includes but is not limited to the identification of savings sources, enhancing revenue, and obtaining an energy/operational savings guarantee. The cost of the PDA shall be deferred through the Project Development Phase and will be included in the cost

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of the project and paid in the first construction draw of the resultant Construction Phase contract. The PDA shall be prepared at no cost to the City, and the City shall have no obligation to compensate CONSULTANT for the PDA unless and until the construction agreement is approved by the City Commission.

2.3 The CITY's obligation to compensate the CONSULTANT shall be fully contingent on the projection of energy, water, wastewater and conservation measures' cost savings, or enhanced revenue, to the CITY being equal to or greater than the total projected costs of the design and installation of the ECMs improvements identified in the report. The CONSULTANT understands and agrees that no compensation shall be provided, demanded, or remitted under this Agreement for any and all efforts related to the PDA or the Project Development Phase.

2.3.1 The Project Development Phase report shall provide a detailed analysis of the cost savings projected to be realized by the City for each ECM.

2.3.2 The Project Development Phase report shall identify all cost savings projected to be realized by each ECM for a period of time not to exceed twenty (20) years.

2.3.3 The Project Development Phase report shall identify, account for, and include the anticipated useful life of all improvements which may be less than twenty (20) years.

2.3.2 The Project Development Phase report shall consider and provide a detailed analysis on how savings from each ECM shall be calculated. Savings will be considered only during the term of the ECM installation/Measurement & Verification (M&V) contract, not to exceed 20 years.

2.3.2 Project Development Phase report shall identify the costs of the Project Development Phase which the CONSULTANT intends to claim within the Construction Phase agreement. The Project Development Phase report shall identify the cost savings for each ECM, inclusive of all costs to the CITY within the Construction Phase agreement, including any and all amounts claimed by the CONSULTANT for the Project Development Phase.

2.4 The CITY and CONSULTANT may enter into a separate agreement for the construction or implementation of the ECM improvements identified during the Project Development Phase. CONSULTANT acknowledges and agrees that the CITY may, at its sole option, selectively determine which, if any, recommendations provided within the Project Development Phase are constructed or implemented.

2.5 CONSULTANT shall furnish all services and materials necessary and as may be required in the performance of this Agreement, except as otherwise specifically provided for herein, and all work performed under this Agreement shall be done in a professional manner.

2.6 CONSULTANT hereby represents to CITY, with full knowledge that CITY is relying upon these representations when entering into this Agreement with CONSULTANT, that CONSULTANT

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has the professional expertise, experience and manpower to perform the services to be provided by CONSULTANT pursuant to the terms of this Agreement.

2.7 CONSULTANT shall not utilize the services of any sub-consultant without the prior written approval of CITY.

ARTICLE 3

TERM AND TERMINATION

3.1 The CONSULTANT shall complete the Scope of Services/Scope of Work related to the Project Development Phase provided within ONE HUNDRED AND TWENTY (120) days following the execution of this Agreement. CONSULTANT may request an extension of this completion date by written notice submitted to CITY and CITY shall not unreasonably withhold approval of such extension.

3.2 This Agreement may be terminated by either party for convenience, upon fifteen (15) days written notice. In the event that the CONSULTANT determines that it is not feasible to develop a project meeting the requirements of this Agreement, CONSULTANT shall provide notice of termination to the CITY and shall not receive any compensation whatsoever under this Agreement. All finished documents, data, studies, plans, surveys, and reports prepared by CONSULTANT for the CITY shall become the property of CITY and shall be delivered by CONSULTANT to CITY immediately upon termination.

3.4 SCRUTINIZED COMPANIES. CONTRACTOR certifies that it and any of its affiliates are not scrutinized companies as identified in Section 287.135, F.S. In addition, CONTRACTOR agrees to observe the requirements of Section 287.135, F.S., for applicable sub-agreements entered into for the performance of work under this Agreement. Pursuant to Section 287.135, F.S., the CITY may immediately terminate this Agreement for cause if the CONTRACTOR, its affiliates, or its subcontractors are found to have submitted a false certification; or if the CONTRACTOR, its affiliates, or its subcontractors are placed on any applicable scrutinized companies list or engaged in prohibited contracting activity during the term of the Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

ARTICLE 4

COMPENSATION AND METHOD OF PAYMENT

4.1 CONSULTANTS' costs and expenses in developing the project shall be deferred through the Project Development Phase and will be rolled into the cost of the project and paid in the first construction draw of the resultant Construction Phase contract. In the event the City elects not to proceed, for any reason, with the negotiation of a Guaranteed Energy, Water and Wastewater Performance Savings Contract ("GPSC") after the completion of the Project Development phase, the City shall have no obligation to compensate the CONSULTANT.

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ARTICLE 5

CHANGES TO SCOPE OF WORK AND ADDITIONAL WORK

5.1 CITY or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services, as described in the **Exhibits** to be provided under this Agreement as described in Article 2 of this Agreement. Such changes or additional services must be in accordance with the provisions of the Code of Ordinances of the CITY, and must be contained in a written amendment, executed by the Parties hereto, with the same formality, equality and dignity herewith prior to any deviation from the terms of this Agreement, including the initiation of any additional or extra work.

5.2 In no event will the CONSULTANT be compensated for any work that has not been described in a separate written agreement executed by the parties hereto.

ARTICLE 6

INDEMNIFICATION

6.1 CONSULTANT shall indemnify and save harmless and defend the CITY, its trustees, elected and appointed officials, agents, servants and employees from and against any and all claims, demands, or causes of action of whatsoever kind or nature sustained by the CITY or any third party to the extent arising out of, or by reason of, or resulting from the error, omission, or negligent acts of CONSULTANT, its agents, servants or employees in the performance under this Agreement, for all costs, losses and expenses, including but not limited to, damages to persons or third party property, judgments and reasonable attorneys' fees to the extent arising out of or in connection with the performance by CONSULTANT under to this Agreement.

6.2 CONSULTANT shall indemnify CITY for all loss, damage, expense or liability including, without limitation, court costs and reasonable attorneys' fees that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right resulting from the services furnished to the CITY pursuant to this Agreement. CONSULTANT will defend and/or settle at its own expense any action brought against the CITY to the extent that it is based on a claim that products or services furnished to CITY by CONSULTANT pursuant to this Agreement, or if any portion of the services or goods furnished in the performance of the service becomes unusable as a result of any such infringement or claim.

6.3 The Parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification by the CONSULTANT and that Florida Statutes §725.06 requires a specific consideration be given therefor. The parties therefore agree that the sum of **Ten Dollars and 00/100 (\$10.00)**, receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by CONSULTANT. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall serve the term of this Agreement and continue in full force and effect as to the party's

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responsibility to indemnify.

ARTICLE 7 **INSURANCE**

7.1 The CONSULTANT shall indemnify and hold harmless the CITY and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the CITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the CONSULTANT or its employees, agents, servants, partners principals or subConsultants. The CONSULTANT shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the CITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The CONSULTANT expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the CONSULTANT shall in no way limit the responsibility to indemnify, keep and save harmless and defend the CITY or its officers, employees, agents and instrumentalities as herein provided.

Prior to the execution of this agreement, Contractor shall provide the City with a certificate of insurance and a copy of the Insurance Service Office (ISO) Additional Insured Endorsement naming the City of Cooper City its employees, directors, officers, agents, independent contractors, successors and assigns, and other authorized representatives as additional insured to the extent of the contractual obligation assumed by the Proposer. Additionally, the Contractor shall provide the City with a copy of the certificates of insurance and a copy of the Insurance Service Office (ISO) Additional Insured Endorsement reflecting the same insurance coverage for all subcontractors utilized by Contractor pursuant to this agreement.

The City shall be granted a Waiver of Subrogation on the Consultant's Workers' Compensation and General Liability insurance policy, and affirmed on the Certificate of Insurance. The Consultant waives, and the Consultant shall ensure that the Consultant's insurance carrier waives, all subrogation rights against the City, its officials, employees, agents and volunteers for all losses or damages.

7.2 CONSULTANT shall not commence work under this Agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the CITY nor shall the CONSULTANT allow any subConsultant to commence work on his subcontract until all similar such insurance required of the subConsultant has been obtained and similarly approved.

7.3 Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the City's Risk Manager prior to the commencement of this Agreement. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. The insurance company shall be rated no less than "A" as to management, and no less than "Class VI" as to financial

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strength according to the latest edition of Best's Insurance Guide published by A.M. Best Company.

7.4 Policies shall be endorsed to provide the CITY with notice of cancellation or the CONSULTANT shall obtain written agreement from its Agent to provide the CITY with notice of cancellation.

7.5 Insurance shall be in force until all obligations required to be fulfilled under the terms of the Agreement are satisfactorily completed as evidenced by the formal acceptance by the CITY. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the CONSULTANT shall furnish, as soon as reasonably practicable, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The CONSULTANT shall not commence nor continue to provide any services pursuant to this Agreement unless all required insurance remains in full force and effect. CONSULTANT shall be liable to CITY for any lapses in service resulting from a gap in insurance coverage.

7.6 REQUIRED INSURANCE

7.6.1 Comprehensive General Liability Insurance written on an occurrence basis including but not limited to: coverage for bodily injury and property damage, personal & advertising injury, products & completed operations, and contractual liability. Coverage must be written on an occurrence basis, with limits of liability no less than:

1. Each Occurrence Limit - \$1,000,000
2. Fire Damage Limit (Damage to rented premises) - \$100,000
3. Personal & Advertising Injury Limit - \$1,000,000
4. General Aggregate Limit - \$2,000,000
5. Products & Completed Operations Aggregate Limit - \$2,000,000

Products & Completed Operations Coverage shall be maintained for two (2) years after the final payment under this contract.

The City of Cooper City must be shown as an additional insured with respect to this coverage.

7.6.2 Worker's Compensation and Employers Liability Insurance covering all employees, and/or volunteers of the CONSULTANT engaged in the performance of the scope of work associated with this Agreement. In the case any work is sublet, the CONSULTANT shall require the subConsultants similarly to provide Workers Compensation Insurance for all the latter's employees unless such employees are covered by the protection afforded by the CONSULTANT. Coverage for the CONSULTANT and his subConsultants shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation Insurance with limits of liability no less than:

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1. Workers' Compensation: Coverage A – Statutory
2. Employers Liability: Coverage B \$500,000 Each Accident
\$500,000 Disease – Policy Limit
\$500,000 Disease – Each Employee

If CONSULTANT claims to be exempt from this requirement, CONSULTANT shall provide CITY proof of such exemption along with a written request for CITY to exempt CONSULTANT, written on CONSULTANT letterhead.

7.6.3 Comprehensive Auto Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Agreement, with a combined single limit of liability for bodily injury and property damage no less than:

1. Any Auto (Symbol 1)
Combined Single Limit (Each Accident) - \$1,000,000
2. Hired Autos (Symbol 8)
Combined Single Limit (Each Accident) - \$1,000,000
3. Non-Owned Autos (Symbol 9)
Combined Single Limit (Each Accident) - \$1,000,000

7.6.4 Professional Liability/Errors & Omissions Insurance, when applicable, with a limit of liability no less than \$1,000,000 per wrongful act. This coverage shall be maintained for a period of no less than two (2) years after final payment of the contract.

7.6.5 Sexual Abuse may not be excluded from any policy.

7.7 REQUIRED ENDORSEMENTS

- 7.7.1 The City of Cooper City shall be named as an Additional Insured on each of the General Liability policies required herein
- 7.7.1 Waiver of all Rights of Subrogation against the CITY
- 7.7.3 30 Day Notice of Cancellation or Non-Renewal to the CITY
- 7.7.4 CONSULTANTS' policies shall be Primary & Non-Contributory
- 7.7.5 All policies shall contain a "severability of interest" or "cross liability" liability clause without obligation for premium payment of the CITY

7.8 CONSULTANT shall name the CITY, as an additional insured on each of the General Liability policies required herein and shall hold the CITY, its agents, officers and employees harmless on account of claims for damages to persons, property or premises arising out of the services provided hereunder.

7.9 Any insurance required of the CONSULTANT pursuant to this Agreement must also be required by any subConsultant in the same limits and with all requirements as provided herein, including naming the CITY as an additional insured, in any work that is subcontracted unless such subConsultant is covered by the protection afforded by the CONSULTANT and provided proof of

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such coverage is provided to CITY. The CONSULTANT and any subConsultants shall maintain such policies during the term of this Agreement

7.10 Consultant agrees to waive all rights of subrogation against the City, members of the City Commission, boards, commissions and committees, officers, agents, employees and volunteers for losses arising from activities and operations of Contractor in the performance of its obligations under this agreement.

ARTICLE 8

INDEPENDENT CONSULTANT

8.1 This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the CONSULTANT is an independent Consultant under this Agreement and not the CITY's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers' Compensation Act, and the State unemployment insurance law. The CONSULTANT shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONSULTANT's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT, which policies of CONSULTANT shall not conflict with CITY, State, H.U.D., or United States policies, rules or regulations relating to the use of CONSULTANT's Funds provided for herein. The CONSULTANT agrees that it is a separate and independent enterprise from the CITY, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY and the CITY will not be liable for any obligation incurred by CONSULTANT, including but not limited to unpaid minimum wages and/or overtime premiums.

ARTICLE 9

VENUE

9.1 This Agreement shall be governed by the laws of the State of Florida as now and hereafter in force. The venue for actions arising out of this agreement shall be in Broward County, Florida.

ARTICLE 10

PUBLIC RECORDS

10.1 The City of Cooper City is public agency subject to Chapter 119, Florida Statutes. The CONSULTANT shall comply with Florida's Public Records Law. Specifically, the CONSULTANT shall:

10.1.1 Keep and maintain public records required by the CITY to perform the service;

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10.1.2 Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Fla. Stat., or as otherwise provided by law;

10.1.3 Ensure that public records that are exempt or that are confidential and exempt from public record disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and, following completion of the contract, CONSULTANT shall destroy all copies of such confidential and exempt records remaining in its possession after the CONSULTANT transfers the records in its possession to the CITY; and

10.1.4 Upon completion of the contract, CONSULTANT shall transfer to the CITY, at no cost to the CITY, all public records in CONSULTANT's possession. All records stored electronically by the CONSULTANT must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

10.2 The failure of CONSULTANT to comply with the provisions set forth in this Article shall constitute a Default and Breach of this Agreement, for which, the City may terminate the Agreement.

**IF THE CONSULTANT HAS QUESTIONS REGARDING THE
APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO
THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS
RELATING TO THIS CONTRACT, CONTACT THE
CUSTODIAN OF PUBLIC RECORDS AT**

**CITY CLERK
9090 S.W. 50th PLACE
COOPER CITY, FL 33328
(954) 434-4300
pr@coopercityfl.org**

**ARTICLE 11
FEMA REQUIREMENTS
(OMITTED)**

**ARTICLE 12
MISCELLANEOUS**

12.1 **Ownership of Documents.** Reports, surveys, plans, studies and other data provided to CONSULTANT by CITY in connection with this Agreement are and shall remain the property of CITY whether or not the project for which they are made is completed. City hereby agrees to use CONSULTANT's work product only for its intended purposes which is to evaluate proceeding to an

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GPSC with CONSULTANT.

12.2 **Records.** CONSULTANT shall keep such records and accounts and require any and all subConsultants to keep records and accounts as may be necessary in order to record in accordance with its regular business practice's complete and correct entries as to personnel hours charged to this engagement, and any expenses for which CONSULTANT expects to be reimbursed. Such books and records will be available at all reasonable times for examination and audit by CITY and shall be kept for a period of ten (10) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries. All records shall be maintained and available for disclosure, as appropriate, in accordance with Chapter 119, F.S.

12.3 **Assignments; Amendments.** This Agreement, and any interests herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT without the prior written consent of CITY. For purposes of this Agreement, any change of ownership of CONSULTANT shall constitute an assignment which requires CITY approval. However, this Agreement shall run to the benefit of CITY and its successors and assigns.

It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

12.4 **No Contingent Fees.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

12.5 **Notice.** Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, CONSULTANT and CITY designate the following as the respective places for giving of notice:

CITY	Alex Rey, City Manager
	City of Cooper City
	9090 S.W. 50 th Place
	Cooper City, Florida 33328
	Telephone No. (954) 434-4300

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Copy To: Jacob G. Horowitz, City Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone No. (954) 771-4500 / Fax No: (954) 771-4923

Consultant ENERGY SYSTEMS GROUP, LLC
Attn: General Counsel
9877 Eastgate Court
Newburgh, IN 47630
E-mail:generalcounsel@esg.email
Telephone No: (812) 471-5000

12.6 **Binding Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

12.7 **Headings.** Headings herein are for convenience of reference only and shall not be considered on any interpretation of this Agreement.

12.8 **Exhibits.** Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

12.9 **Severability.** If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

12.10 **Extent of Agreement.** This Agreement represents the entire and integrated agreement between the CITY and the CONSULTANT and supersedes all prior negotiations, representations or agreements, either written or oral.

12.11 **Legal Representation.** It is acknowledged that each party was represented by counsel in the preparation of and contributed equally to the terms and conditions of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.

12.12 **Counterparts and Execution.** This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed to be an original and together shall constitute one and the same agreement. Execution and delivery of this Agreement by the Parties shall be legally binding, valid and effective upon delivery of the executed documents to the other party through facsimile transmission, email, or other electronic delivery.

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12.13 Kidnapping, Custody Offenses, Human Trafficking and Related Offenses Affidavit

By entering into, amending, or renewing this Contract, including, without limitation, a grant agreement or economic incentive program payment agreement (all referred to as the "Contract"), as applicable, the CONSULTANT is obligated to comply with the provisions of Section 787.06, Florida Statutes ("F.S."), "Human Trafficking," as amended, which is deemed as being incorporated by reference in this Contract. All definitions and requirements from Section 787.06, F.S., apply to this Contract.

This compliance includes the CONSULTANT providing an affidavit that it does not use coercion for labor or services. This attestation by the CONSULTANT shall be in the form attached to this Contract as the Kidnapping, Custody Offenses, Human Trafficking and Related Offenses Affidavit (the "Affidavit") and must be executed by the CONSULTANT and provided to the CITY when entering, amending, or renewing this Contract.

This Contract shall be void if the CONSULTANT submits a false Affidavit pursuant to Section 787.06, F.S., or the CONSULTANT violates Section 787.06, F.S., during the term of this Contract, even if the CONSULTANT was not in violation at the time it submitted its Affidavit.

ARTICLE 12

E-Verify

12.14 E-Verify - CONSULTANT certifies that it is aware of and complies with the requirements of Section 448.095, Florida Statutes, as may be amended from time to time and briefly described herein below.

Definitions for this Section.

"CONSULTANT" means a person or entity that has entered or is attempting to enter into a contract with a public employer to provide labor, supplies, or services to such employer in exchange for salary, wages, or other remuneration. "CONSULTANT" includes, but is not limited to, a vendor or CONSULTANT.

"Subcontractor" means a person or entity that provides labor, supplies, or services to or for a CONSULTANT or another subcontractor in exchange for salary, wages, or other remuneration.

"E-Verify system" means an Internet-based system operated by the United States Department of Homeland Security that allows participating employers to electronically verify the employment eligibility of newly hired employees.

Registration Requirement; Termination. Pursuant to Section 448.095, Florida Statutes, effective January 1, 2021, contractors, shall register with and use the E-verify system in order to verify the work authorization status of all newly hired employees. CONSULTANT

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shall register for and utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of:

All persons employed by a CONSULTANT to perform employment duties within Florida during the term of the agreement.

All persons (including subcontractors/subcontractors) assigned by CONSULTANT to perform work pursuant to the contract with the City of Cooper City. The CONSULTANT acknowledges and agrees that registration and use of the U.S. Department of Homeland Security's E-Verify System during the term of the agreement is a condition of the agreement with the City of Cooper City; and

The CONSULTANT shall comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility," as amended from time to time. This includes, but is not limited to registration and utilization of the E-Verify System to verify the work authorization status of all newly hired employees. CONSULTANT shall also require all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The CONSULTANT shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Agreement, or if a subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than twenty (20) calendar days after the date of termination. Termination of this Agreement under this Section is not a breach of contract and may not be considered as such. If this contract is terminated for a violation of the statute by the CONSULTANT, the CONSULTANT may not be awarded a public contract for a period of one (1) year after the date of termination.

[Remainder of page intentionally left blank; signature page to follow.]

Energy Savings Agreement
Project Development Phase
City of Cooper City

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

CITY:

CITY OF COOPER CITY, FLORIDA

ATTEST:

DocuSigned by:

Tedra Allen

6A9930738A34441...
TEDRA ALLEN, CITY CLERK

Signed by:

By:

Alex Rey

432944AE9915453...
ALEX REY, CITY MANAGER

APPROVED AS TO FORM:

DocuSigned by:

Jacob Horowitz

1668A10DF05147...
OFFICE OF THE CITY ATTORNEY

CONSULTANT:

ENERGY SYSTEMS GROUP, LLC

By:

Name: DAVID J JONES

Title: VICE PRESIDENT - EAST REGION

STATE OF New York
COUNTY OF Essex

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 29 day of October 2025, by David J. Jones of Energy Systems Group, LLC, a State of Indiana Limited Liability Company, on behalf of the corporation.

Brenda A. Darrah
NOTARY PUBLIC

Personally Known OR
☒ Produced Identification

NYS Drivers License
Type of Identification Produced

BRENDA A. DARRAH
Notary Public, State of New York
No. 01DA6064907
Qualified in Essex County
My Commission Expires 10-01-2029

Exhibit A

Potential ESG Projects Identified

1. Citywide AC Replacement
2. LED Streetlight Conversion
3. Facility Lighting Systems Upgrades
4. Pool Heater & Chillers
5. Sports Lighting (Bill Lips)

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EXHIBIT B

SCOPE OF SERVICES/SCOPE OF WORK

PROJECT DEVELOPMENT PHASE

- A. The purpose of the Project Development Agreement (referred to as the "PDA") is to identify the scope of work, enhanced revenue/savings sources, and energy/operational savings/revenue guarantee. The cost of the PDA will be deferred through the Project Development phase and will be rolled into the cost of the project and paid in the first construction draw of the resultant Construction Phase contract. The result of the PDA will be a contract for scope, schedule, budget and guarantees for the Construction Phase of the Project.
- B. The scope of services shall include a full range of Energy, Water, or Wastewater Efficiency and Conservation Measures ("ECMs") related capital improvements to be implemented for the City of Cooper City facilities, including buildings, grounds, parks, water and wastewater facilities. The specific facilities and project scope will be determined in a co-authored, partnership approach with the City.
- C. As required by to §489.145(4), Florida Statutes, the CONSULTANT shall provide a report that summarizes the costs associated with the ECM improvements and provides an estimate of the amount of the cost savings or increased revenue.
- D. City of Cooper City facilities that shall be included are:
 - a. City Hall/Community Development Building, 9090 SW 50th Street, Cooper City, 33328;
 - b. The Community Center, 9000 SW 50th Place, Cooper City, 33328;
 - c. George A. Haughney Utilities Complex, 11505-11791 SW 49 Street, Cooper City, including but not limited to;
 - i. The Water Treatment Plant Building and appurtenances
 - ii. High Service Pump Building and appurtenances
 - iii. The Generator Day Tank Room and appurtenances
 - iv. All Waste Water Treatment Plant Buildings, including the Blowers Building and appurtenances
 - v. The Field Crews Office/Work/Storage Building
 - vi. The Electricians Office
 - vii. The Foreman's Building
 - viii. The Chlorine Building
 - ix. The Centrifuge Building, and;
 - x. The Steel Storage Building
 - d. Public Works Compound, 9070 SW 51st Street, Cooper City, 33328;
 - e. The Pool & Tennis Center, 11600 Stonebridge Parkway, Cooper City, 33026;

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- f. Police Station/Broward Sheriff's Office substation, 10580 Stirling Rd, Cooper City, 33024;
 - i. This building is owned by the City of Cooper City;
 - ii. All contractors and subcontractors who enter this building must submit to and pass all Broward Sheriff's Office's security requirements, including background checks;
- g. Fire Station, 10550 Sterling Rd, Cooper City, 33024.
- h. Flamingo West Park, 6201 S. Flamingo Rd, Cooper City, 33330
- i. Suellen H. Fardelmann Sports Complex, 10300 Stirling Rd, Cooper City, 33024;
- j. Bill Lips Sports Complex (11700 SW 49th Street, Cooper City, 33030)
- k. Repump Station 55 Building (9070 SW 51 St)
- l. Pine Island Road Pump Station (2650 Pine Island Rd)
- m. All sewer pumping stations within the City's sewer collection and transmission system.
- n. Fleet Maintenance Facility and fleet ops/alternate fuel source.