

## **INVESTMENT GRADE AUDIT AGREEMENT**

THIS INVESTMENT GRADE AUDIT AGREEMENT (“Contract”) is made and entered into effective as of July 21 by and between McKinstry Essention, LLC, a Washington limited liability company (“McKinstry”), and Kittitas County.

### **RECITALS**

McKinstry is a full-service design, build, operate, and maintain firm that provides Customers with consulting, design, construction, energy, and facilities services to help them realize operational excellence and energy efficiency in the built environment; and

Customer desires to receive professional services that specifically relate to investment grade audit services to determine the feasibility of, among other things, entering into an energy performance contract including savings measures; and

If such measures are determined to be feasible, Customer and McKinstry may negotiate an energy performance contract under which McKinstry will design, procure, install, implement, maintain and/or monitor such measures;

If Customer is a public entity, this Contract is procured pursuant to the following procurement statute or other authority: RCW 39.35A.030, McKinstry enters into this Contract in reliance on Customer’s representations concerning the appropriateness and validity of the procurement mechanism(s) under which this contract is procured, and Customer as a fiduciary acknowledges such reliance by McKinstry; and

Customer desires to engage McKinstry to provide such professional services in accordance with the terms and conditions set forth in this Contract.

### **AGREEMENT**

In consideration of the mutual agreements, covenants, and conditions herein contained, Customer and McKinstry agree as follows:

#### **1. Performance of Work**

McKinstry shall perform the scope of work (“Work”) described in Exhibit A and Exhibit C. McKinstry shall furnish all services necessary to perform the Work and perform the Work to completion diligently, expeditiously and with adequate forces. Customer shall use its best efforts to provide all information, materials, documents, and assistance that is reasonably required for McKinstry to perform any and all aspects of the Work.

#### **2. Compensation**

For performance of the Work, and subject to the provisions of this Contract, Customer shall pay McKinstry the contract price including its respective components (“Price”) described in Exhibit B.

#### **3. Compliance with Law**

Customer and McKinstry shall comply with all statutory and regulatory requirements applicable to the Work. This includes all public records issues related to the project or disputes as a result of the project. McKinstry shall obtain and maintain all licenses and permits pertaining to activities engaged in by McKinstry, including without limitation licenses and permits required to perform the Work except to the extent actually obtained and maintained by Customer.

#### **4. Independent Contractor**

McKinstry is an independent contractor and is not an agent of Customer. Customer shall in no way be liable as an employer to or on account of any of the employees of McKinstry.

## **5. McKinstry's Employees**

McKinstry shall comply with all statutory and regulatory requirements related to McKinstry's employees, including but not limited to wage rates, hours of labor, and employee labor protections.

## **6. Insurance**

McKinstry shall maintain insurance coverage in the following minimum amounts:

Type of Insurance	Coverage
General Liability	\$4,000,000 General Aggregate / \$2,000,000 Each Occurrence
Professional Liability	\$5,000,000 Policy Aggregate / \$5,000,000 Each Claim
Automobile Liability	\$1,000,000 Combined Single Limit
Workers Compensation	Statutory

## **7. Bonds**

McKinstry shall, at Customer's expense, obtain and maintain performance and/or payment bonds, or other bonds, if directed by Customer.

## **8. Safety**

McKinstry shall ensure the safety of people and property by employing a standard of care that is at least equivalent to the standard of care ordinarily used by members of the trade or profession under similar conditions in the same locality as the Project, or as required under this Contract, or as required by law, whichever standard of care is greater.

## **9. Subcontractors**

McKinstry may hire subcontractors to perform any portion of the Work under this Contract. McKinstry is entirely and ultimately responsible for compliance with the provisions of this Contract and for any part of Work that is performed by a subcontractor.

## **10. Borrowed Equipment**

If requested by McKinstry and if permitted by Customer's representative, McKinstry may use Customer's equipment in performing the Work. McKinstry, assumes full and complete responsibility for the use of the equipment, will ensure that only a competent operator will be permitted to use the equipment and only after fully inspecting the equipment, shall not modify the equipment, shall be solely responsible for all claims, demands, lawsuits, losses, expenses and/or liabilities that arise from its use of the equipment to the extent of McKinstry's negligence, and agrees that Customer makes no representation or warranty regarding the condition or suitability of equipment for any intended use.

## **11. Payments**

Unless different payment terms are specified in this Contract, Customer shall pay McKinstry for the value of Work that McKinstry has completed, as the Work is completed. Customer shall pay McKinstry within fifteen (15) days of receiving an invoice. McKinstry will be entitled to interest at the rate allowed by law on all sums overdue and unpaid from the date due.

## **12. Warranties**

McKinstry warrants that it shall perform its services consistent with the professional skill and care ordinarily provided by other professionals practicing in the same or similar locality under the same or similar circumstances. THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY.

## **13. Intellectual Property**

Plans, designs, specifications, drawings, materials, exhibits, reports, memoranda, studies, software code, electronic data, and other intellectual information and materials provided by McKinstry to Customer (collectively the "Intellectual Property") as part of the Work are instruments of service owned by McKinstry and are not "work made for hire" as such term is defined under U.S. copyright law. If this Contract is performed to completion, then McKinstry grants to Customer a limited license to use the Intellectual Property to operate, maintain, renovate, and



manage the subject matter of this Contract. The Intellectual Property shall not be used on other projects or for completion of the Work by others, unless the McKinstry is adjudged to be in material breach of this Contract, in which case Customer shall hold McKinstry harmless from any and all errors or omissions in the Work.

#### **14. Limitation of Liability**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR SIMILAR, DAMAGES OR LOSSES, INCLUDING LOSS OF PROFITS, ARISING OUT OF OR RELATING TO THIS CONTRACT, WHETHER BASED IN CONTRACT OR TORT OR ANY OTHER THEORY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHERMORE, THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY, UNDER ANY THEORY, IS LIMITED TO THE CONTRACT PRICE.

#### **15. Indemnification**

To the fullest extent permitted by law, McKinstry shall indemnify and hold harmless Customer, Customer's consultants, and agents and employees of any of them from and against third party claims, damages, losses and expenses, including but not limited to attorneys' fees, directly related to McKinstry's performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property other than the Work itself, but only to the extent caused by the negligent acts or omissions of McKinstry or anyone directly or indirectly employed by McKinstry or anyone for whose acts McKinstry may be liable. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this section.

#### **16. Claims**

McKinstry may request payment for an amount McKinstry believes is due to it, or for additional time to perform under this Contract ("Claim") pursuant to the following procedure. Within thirty (30) days after the occurrence giving rise to the Claim, McKinstry shall provide Customer with a written statement of claim ("Statement of Claim") which shall describe with particularity the occurrence giving rise to the Claim, the reasons why the Claim should be accepted, and McKinstry's requested resolution. Customer shall determine whether to accept or reject the Claim.

#### **17. Changes**

The Scope of Work, Price, and time for performance may be changed pursuant to a written change order executed by an authorized McKinstry signer and Customer signer ("Change Order"). A Change Order is valid only to the extent that it changes the Scope of Work, Price, and/or duration of the Work. Any invalid portions of a Change Order shall be disregarded.

#### **18. Termination**

**Termination for Cause.** If McKinstry fails to perform under this Contract, Customer may notify McKinstry in writing of Customer's intent to terminate this Agreement along with a description of the alleged performance failure. If such failure is not corrected by McKinstry within fifteen (15) days after receipt of such notice, Customer may terminate this Contract, and McKinstry shall be entitled to receive payment for all amounts earned prior to termination. If it is determined for any reason that termination was improper, the termination shall be treated as a termination for convenience.

**Termination for Convenience.** Customer may terminate this Contract in whole or in part for any reason by providing written notice of termination to McKinstry and specifying the date on when the termination becomes effective. Upon receipt of such notice, McKinstry shall incur no further obligations in connection with the terminated work and will stop work to the extent specified. McKinstry shall also terminate outstanding orders and subcontracts as they relate to the terminated work. McKinstry shall settle liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work, and Customer shall pay McKinstry for such expenses, demobilization costs incurred by McKinstry due to the termination, and lost profits on terminated work. Such amounts shall be paid by Customer to McKinstry within fifteen (15) days of McKinstry's delivery to Customer of a request for payment. In addition, McKinstry may terminate this Contract in whole or in part for any reason by providing written notice of termination to Customer and specifying when termination becomes effective. In such case, McKinstry shall refund to Customer all amounts prepaid by Customer and unearned by McKinstry as of the date of termination, and Customer shall have no payment obligation to McKinstry for unperformed Work.

## **19. Disputes**

The Parties agree that the following process will be used to resolve any dispute between them. All dispute resolution shall be conducted in good faith, shall be confidential, shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence, and shall be inadmissible in any litigation, or other judicial proceeding. First, the Parties will attempt to negotiate a resolution. If a dispute remains unresolved more than thirty (30) calendar days after the commencement of negotiation and the Parties have not mutually agreed to extend the negotiation period, then the Parties shall pursue mediation. In mediation, the Parties shall mutually select a mediator, the cost of the mediator and other administrative costs shall be shared equally by the Parties, and each Party shall be responsible for its own costs and expenses. If any dispute remains unresolved more than sixty (60) calendar days after the commencement of mediation, and the Parties have not mutually agreed to extend the mediation period, then either Party may pursue arbitration. In arbitration, the Parties shall mutually select an arbitrator, and the non-prevailing Party shall reimburse the prevailing Party for all of its reasonable attorneys' fees, costs, and expenses related to the arbitration.

## **20. Notices**

All notices to McKinstry shall be written, shall be sent via certified or registered mail or personally delivered, shall consist of one copy to McKinstry's General Counsel at McKinstry headquarters, and one copy to the primary McKinstry contact for the Work, and shall be deemed delivered when received.

## **21. Non-Solicitation of Employees**

Customer shall not, so long as McKinstry is engaged by Customer and for twelve (12) months after such engagement ends, directly or indirectly solicit or recruit any employee of McKinstry to leave his or her employment with McKinstry. This provision does not apply if the McKinstry employee approaches Customer of his or her own accord.

## **22. Choice of Law, Venue**

The validity, interpretation, and performance of this Contract shall be governed exclusively in accordance with and by the laws of the state in which the Work is performed. The venue for resolving any dispute shall be the county in which the Work is performed.

## **23. Flow Down**

No provisions of, or obligations or duties of Customer under, any other agreement to which Customer is a party will flow down to McKinstry unless explicitly provided for in this Contract.

## **24. Force Majeure**

Neither McKinstry nor Customer shall be considered in breach of this Contract to the extent that the Party's performance is prevented by an event or events that are beyond the control of such party, including but not limited to acts of God, fire, earthquake, flood, storm, war, rebellion, revolution, insurrection, riot, strike, nuclear contamination, and/or acts or threats of terrorism.

## **25. Assignment**

McKinstry may not assign or transfer its rights and/or obligations under this Contract without the prior written consent of Customer which shall not be unreasonably withheld, unless the assignment is to an affiliate of McKinstry.

## **26. No Waiver**

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver.

## **27. No Third Party Beneficiaries**

There are no third party beneficiaries under this Contract or any portion thereof.



## **28. Severability, Survival**

If any portion of this Contract shall be held invalid in whole or in part under any law, rule, regulation, or order, then such portion shall remain in effect only to the extent permitted, and the remaining portions of the Contract shall remain in full force and effect. Any invalid portions shall be substituted with an interpretation that most accurately reflects the Parties' intentions.

## **29. Tax Benefits**

Unless otherwise specified in this Contract, McKinstry is solely entitled to claim tax benefits available under section 179D of the Internal Revenue Code (EPAct), or its successor.

## **30. Waiver of Subrogation**

The Parties waive all rights against each other and their directors, officers, agents, and employees, and other contractors, for damages or losses to the extent covered by insurance.

## **31. Amendment**

This Contract may not be amended except pursuant to a written amendment signed by an authorized signer of each Party.

## **32. Headings**

The headings of this Contract are for purposes of reference only and shall not limit or define the meaning of the provisions of this Contract.

## **33. Contract Documents**

By this reference, the following exhibits are attached hereto and made a part of this Contract:

Exhibit A: Scope of Work

Exhibit B: Price

Exhibit C: Investment Grade Audit/ ROM Proposal July 8, 2015

## **34. Complete Agreement**

This Contract, including the exhibits attached hereto, is a fully integrated agreement, and contains the entire understanding between McKinstry and Customer with respect to the subject matter hereof. Any legal terms and conditions appearing elsewhere in this Contract shall be ignored to the extent they contradict or are inconsistent with the terms and conditions contained in the foregoing numbered list. All previous agreements between McKinstry and Customer as to the Work are superseded by this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the Effective Date.

DATED THIS \_\_\_\_ day of October, 2015

BOARD OF COUNTY COMMISSIONERS  
KITITITAS COUNTY, WASHINGTON

\_\_\_\_\_  
Gary Berndt - Chairman

\_\_\_\_\_  
Obie O'Brien - Vice Chairman

\_\_\_\_\_  
Paul Jewell - Commissioner

ATTEST:

\_\_\_\_\_  
Clerk of the Board

APPROVED AS TO FORM:

✓ #22847  
\_\_\_\_\_  
(Deputy) Prosecuting Attorney

**MCKINSTRY**

By: \_\_\_\_\_

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

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

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

## EXHIBIT A

### SCOPE OF WORK

The scope of work includes the services described in this exhibit and in the investment grade audit proposal attached as Exhibit C. In case of conflict between provisions in Exhibit A and Exhibit C, the provision(s) in Exhibit C control.

As applicable, the investment grade audit shall be performed as described below, to the extent consistent with applicable laws and regulations:

- 1.1. McKinstry shall establish allowable cost and savings factors with Customer:
  - 1.1.1. Customer will provide McKinstry with relevant information and assistance in developing savings estimates.
  - 1.1.2. Savings estimates may include:
    - a. Energy and water savings
    - b. Customer material/commodity savings, including scheduled replacement of parts
    - c. Outside labor cost savings, including maintenance contracts
    - d. Customer in-house labor costs
    - e. Customer deferred maintenance cost
    - f. Offset of future customer capital cost
  - 1.1.3. The following items may be negotiated, as applicable:
    - a. Escalation rates for natural gas, electricity, water, material/commodity cost savings, and allowable labor savings. These are rates to be used in cash flow projections for project development purposes. Actual rates and a floor rate may be used in a subsequent energy performance contract.
    - b. Interest rates (various types of financing that are available)
    - c. Customer equity cash contribution to the project.
  - 1.1.4. The following costs are disclosed to provide the Customer with typical project costing approach for a project of similar scope and size. These rates are a percentage of the overall project costs and will be expected to be used in the investment grade audit and subsequent energy performance contract:

Cost category	% of project
Overhead	10%
Profit	8%
Design	12% maximum
Construction Management/Administration	6%
Performance Bond	1.3%
Project Development Costs	2%
(Includes completion of IGA)	
- 1.2. McKinstry shall collect data and background information from Customer:
  - 1.2.1. Customer shall to use its best efforts to assist McKinstry in performing the investment grade audit.
  - 1.2.2. Customer agrees to work diligently to provide McKinstry full and accurate information regarding the facilities that are the subject of the investment grade audit, and acknowledges that McKinstry will rely on the accuracy of such information.
  - 1.2.3. Customer will provide McKinstry with information concerning facility operation and energy use for the most recent three years from the effective date of this Contract as follows:
    - a. Building area (square footage)
    - b. Construction date of buildings and major additions
    - c. Utility company invoices

- d. Occupancy and usage information
  - e. Description of all energy-consuming or energy-saving equipment used on the premises, as available
  - f. Description of energy management procedures utilized on the premises
  - g. Description of any energy-related improvements made or currently being implemented
  - h. Description of any changes in structure of the facility or energy-using or water-using equipment
  - i. Description of future plans regarding building modifications or equipment modifications and replacements
  - j. Drawings, as available (may include mechanical, plumbing, electrical, buildings automation and temperature controls, structural, architectural, modifications, and remodels)
  - k. Original construction Submittals and factory data (specifications, pump curves, etc.), as available
  - l. Operating engineer logs, maintenance work orders, etc. as available
  - m. Records of maintenance expenditures on energy-using equipment, including service contracts
  - n. Prior energy audits or studies, if any
- 1.2.4. Customer agrees to work diligently to furnish McKinstry, upon request, accurate and complete data and information as available.
- 1.3. McKinstry shall perform an inspection survey:
- 1.3.1. McKinstry shall interview the facility manager, maintenance staff and/or others regarding facility operation, including:
    - a. Energy management procedures
    - b. Equipment maintenance problems
    - c. Comfort problems and requirements
    - d. Equipment reliability
    - e. Projected equipment needs
    - f. Occupancy and use schedules for the facility and specific equipment
    - g. Facility improvements, past and planned
  - 1.3.2. McKinstry shall inspect major energy-using equipment, including:
    - a. Lighting (indoor and outdoor)
    - b. Heating and heat distribution systems
    - c. Cooling systems and related equipment
    - d. Automatic temperature control systems and equipment
    - e. Air distribution systems and equipment
    - f. Outdoor ventilation systems and equipment
    - g. Exhaust systems and equipment
    - h. Hot water systems
    - i. Electric motors, transmission and drive systems
    - j. Special systems (kitchen/dining, swimming pools, laundry equipment, etc.)
    - k. Renewable energy systems
    - l. Other energy using systems
    - m. Water consuming systems (restroom fixtures, water fountains, irrigation systems, etc.)
  - 1.3.3. McKinstry shall develop a preliminary list of potential energy and water saving measures. Consider the following for each system:
    - a. Comfort and maintenance problems
    - b. Energy use, loads, proper sizing, efficiencies and hours of operation
    - c. Current operation condition
    - d. Remaining useful life
    - e. Feasibility of system replacement
    - f. Hazardous materials and other environmental concerns
    - g. Customer's future plans for equipment replacement or building renovations
    - h. Facility operation and maintenance procedures that could be affected.
  - 1.3.4. Customer will allow McKinstry reasonable access to facility staff to ensure understanding of existing systems and opportunities. McKinstry agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.
- 1.4. McKinstry shall establish base year consumption and reconcile with end use consumption estimates.



- 1.4.1. McKinstry shall examine utility bills for the past 36 months and establish base year consumption for electricity, gas, steam, water, etc. in terms of energy units (kWh, kW, ccf, therms, gallons, or other units used in bills) and in terms of dollars. Describe the process used to determine the base year (averaging, selecting most representative contiguous 12 months, etc.). Consult with facility personnel to account for any anomalous billings that could skew the base year representation.
- 1.5. McKinstry shall develop a preliminary analysis of potential Facility Improvement Measures (FIMs)
  - 1.5.1. Identify FIMs, which appear in the judgment of McKinstry to be likely to be cost effective or provide strategic benefit to the Customer and therefore warrant detailed analysis.
  - 1.5.2. For each FIM, prepare a preliminary estimate of energy cost savings including description of analysis methodology, supporting calculations and assumptions used to estimate savings.
  - 1.5.3. The Customer's rejection of calculations of savings, or potential savings allowed, shall be at the risk of McKinstry.
- 1.6. McKinstry shall prepare a preliminary rough order of magnitude presentation:
  - 1.6.1. McKinstry shall prepare a presentation, which includes a rough order of magnitude assessment of energy use, savings potential, retrofit opportunities, and potential for developing an energy performance contract. Describe how the projected project economies meet the customer's terms for completing the requirements of the audit report. Customer will work mutually with McKinstry to select FIMs for further analysis.
- 1.7. McKinstry shall analyze each FIM:
  - 1.7.1. McKinstry shall consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems or other special equipment.
  - 1.7.2. For each FIM, McKinstry shall:
    - a. Follow the methodology of ASHRAE or other nationally-recognized authority and be based on the engineering principle(s) identified in the description of the retrofit option.
    - b. Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use.
    - c. Develop a preliminary measurement and verification plan for each ECM. Prepare a detailed report as described below.
- 1.8. McKinstry shall prepare a draft energy services proposal which may include:
  - 1.8.1. Overview Section containing:
    - a. Contact information.
    - b. Summary table of recommended FIMs, with each FIM's estimated design and construction costs, annual maintenance costs, the first year cost avoidance (in dollars and energy units), and simple payback.
    - c. Summary of annual percentage savings expected if all recommended FIMs were implemented.
    - d. Calculation of annual percentage savings expected if all recommended FIMs were implemented.
    - e. Summary description of energy conservation measures, including estimated costs and savings for each as detailed above.
    - f. Conclusions and recommendations.
  - 1.8.2. ECM section containing complete descriptions of each ECM including:
    - a. Full written description of each FIM to include:
      1. Existing conditions
      2. Recommendations. Include discussion of facility operations and maintenance procedures that will be affected by ECM installation and implementation.
    - b. Base year energy use:
      1. Summary of all utility bills
      2. Base year consumption and description of how established
      3. End use reconciliation with base year (include discussion of any unusual findings)
    - c. Savings calculations:
      1. Base year energy use and cost

2. Post-retrofit energy use and cost
3. Savings estimates including analysis methodology, supporting calculations and assumptions used
4. Savings estimates must be limited to savings allowed by the Customer as described above.
5. Percent cost-avoidance projected
6. Description and calculations for any proposed rate changes
7. Explanation of how savings duplication or interaction between retrofit options is avoided
8. Operation and maintenance savings, including detailed calculations and description
9. If computer simulation is used, include a short description and state key input data. If requested by the customer, access will be provided to the program and all assumptions and inputs used, and/or printouts shall be provided of all input files and important output files and included in the Investment Grade Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts.
10. If manual calculations are employed, formulas, assumptions and key data shall be stated.
- d. Cost estimate – detailed scope of the construction work needed, suitable for cost estimating including:
  1. Engineering/design costs
  2. Construction costs
  3. Permit costs
  4. Construction management fees
  5. Performance/payment bond costs
  6. Commissioning fees
  7. Other costs/fees
  8. Company overhead/profit
  9. Environment costs or benefits (disposal, avoided emissions, handling of hazardous materials, etc.)
  10. Note that all markups and costs disclosed and negotiated prior to contract negotiations shall be used in the cost estimates.
- e. Other
  1. Preliminary commissioning plan
  2. Preliminary measurement and verification plan, explaining how each ECM is to be measured and verified (stipulated by agreement, utility bill analysis, end-use measurement and calculation, etc).
- f. Complete appendices including data used to prepare analyses and description of how data were collected.

1.9. McKinstry shall meet with Customer to:

- 1.9.1. Review the FIM options proposed and assemble a package of options which are compatible with Customer's investment and infrastructure improvement goals.
- 1.9.2. Review the proposed project cost and list of services to be provided to determine which additional services Customer may want McKinstry to provide.

Future scopes of work may be added to this Contract by execution of one or more work orders between McKinstry and Customer.



## **EXHIBIT B**

### **PRICE**

To the extent consistent with applicable laws and regulations:

The maximum fee for the investment grade audit shall be \$18,608.00. McKinstry will perform the investment grade audit at no upfront cost to Customer.

If Customer accepts the investment grade audit and enters into an energy performance contract with McKinstry, Customer shall have no up-front payment obligations under this Contract, but acknowledges that the fee for the investment grade audit shall become part of the compensation owed to McKinstry under the energy performance contract.

If the investment grade audit demonstrates that an energy performance contract would result in net financial gain for Customer but Customer fails or refuses to enter into an energy performance contract with McKinstry within thirty business days after completion of the investment grade audit, Customer shall pay McKinstry the fee listed above within 30 days of completion of the investment grade audit, and this Contract will terminate without any further liability of either party.

If, during the investment grade audit, Customer terminates this Contract, Customer shall pay McKinstry for work performed prior to such termination, calculated as a prorated portion of the fee listed above, within 30 days of completion of the investment grade audit, and this Contract will terminate without any further liability of either party.

**EXHIBIT C**

**See Investment Grade Audit/ROM Proposal Dated July 8, 2015**