

## ENGINEERED SAVINGS CONTRACT

This Engineered Savings Contract (the “Contract”) is made and entered into as of this 10<sup>th</sup> day of August, 2020, between Willdan Energy Solutions DBA (“WES”), and Thomas County KS (“Customer”), for the purpose of installing certain energy, water or other operating cost saving equipment, described in SCHEDULE A (SCOPE OF WORK), and providing other services designed to save energy, water or other operating costs for the Customer’s property and buildings (the “Premises”).

### RECITALS

WHEREAS, Customer owns and operates the Premises, and is in need of energy saving equipment and service designed to save costs at said Premises;

WHEREAS, WES has made an assessment of the energy consumption characteristics of the Premises and existing equipment;

WHEREAS, Customer desires to retain WES to purchase, install and service certain equipment of the type or class described in SCHEDULE A (SCOPE OF WORK), attached hereto and made part hereof and to provide other services for the purpose of achieving cost reductions within Premises, as more fully set forth herein; and

WHEREAS, Customer is authorized under the Constitution and the laws of the State of Kansas to enter into this Contract for the purposes set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, Customer and WES hereto covenant and agree as follows:

### SECTION 1 ENERGY MANAGEMENT PLAN

Section 1.1 Plan Details: WES has completed an Investment Grade Audit of Customer’s Premises. A copy of the report resulting from the Investment Grade Audit has been provided to Customer.

Section 1.2 Attachments, Schedules, Exhibits and Appendices: WES has prepared and Customer has approved and accepted the Schedules as set forth below, copies of which are attached hereto and made parts of this Contract by reference.

#### Schedules

SCHEDULE A. SCOPE OF WORK

SCHEDULE B. COMPENSATION TO WES

SCHEDULE C. ENERGY SAVINGS GUARANTEE

SCHEDULE D. ADDITIONAL RESPONSIBILITIES

#### Exhibits

EXHIBIT 1. CERTIFICATE OF ACCEPTANCE – PROJECT COMPLETION

### SECTION 2 ENERGY USAGE RECORDS AND DATA

Customer has furnished or shall furnish (or cause its energy suppliers to furnish) to WES, upon its request, all of its records and complete data concerning energy usage and energy-related maintenance for the Premises, including the following data for the most current twenty-six (26) month period; utility records; occupancy information; descriptions of any changes in the building structure or its heating, cooling, lighting or other systems or energy requirements; descriptions of all energy consuming or saving equipment used in the Premises; bills and records relating to maintenance of energy-related equipment, and a description of energy management procedures presently utilized. If requested, Customer shall also provide any prior energy audits of the Premises, and copies of Customer’s financial statements and records related to energy usage and operations for said 26-month period at said Premises, and shall make agents and employees familiar with such records available for consultations and discussions with WES.

### SECTION 3 COMMENCEMENT DATE AND TERMS

Section 3.1 Commencement Date: The effective date of this agreement is the date of agreement’s last signature.

Section 3.2 Construction and Installation Period: The Construction and Installation Period will be a term of no longer than 273 days, beginning on the Commencement Date.

Section 3.3 Guarantee Period: Guarantee Period will begin upon submission of the Certificate of Acceptance – Project Completion and end in accordance with SCHEDULE C (ENERGY SAVINGS GUARANTEE).

### SECTION 4 PAYMENTS TO WES

- Section 4.1 Energy Savings Guarantee: WES has formulated the estimated annual level of energy and operations savings to be achieved as a result of the installation and operation of the equipment and provision of services provided for in this Contract, as specified in SCHEDULE A (SCOPE OF WORK). Customer accepts the estimate of savings calculated by WES.
- Section 4.2 WES Compensation and Fees: WES's fees and compensation are set forth in SCHEDULE B (COMPENSATION TO WES).
- Section 4.3 Billing Information Procedure: Payments due to WES shall be calculated each month and paid in accordance with SCHEDULE B (COMPENSATION TO WES).
- Section 4.4 Payment: Customer shall pay WES within 30 days of receipt of WES's application for payment.
- Section 4.5 Effective Date of Payment Obligation: See SCHEDULE B (COMPENSATION TO WES).

## **SECTION 5 FISCAL FUNDING**

- Section 5.1 Non-appropriation of Funds: In the event no Customer or other funds or insufficient Customer or other funds are appropriated and budgeted, and funds are otherwise unavailable by any means whatsoever in any fiscal period for which payments are due WES under this Contract, then the Customer will, not less than 30 days prior to the end of such applicable fiscal period, in writing, notify WES of such occurrence and this Contract shall terminate on the last day of the fiscal period for which appropriations were made without penalty or expense to the Customer of any kind whatsoever, except as to the portions of payments herein agreed upon for which Customer and/or other funds shall have been appropriated and budgeted or are otherwise available.

## **SECTION 6 CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL**

- Section 6.1 Construction Schedule: Construction and equipment installation shall proceed in accordance with the construction period in SECTION 3 (COMMENCEMENT DATE AND TERMS). A detailed schedule of construction will be submitted to Customer following Commencement of this agreement. This schedule will be updated to reflect ongoing progress on the Project.
- Section 6.2 Systems Startup and Equipment Commissioning: WES shall conduct a thorough and systematic performance test of each element and total system of the installed equipment in accordance with the procedures specified in SCHEDULE D.1 (System Start-up & Commissioning) and prior to acceptance of the project by Customer. WES shall provide notice to the Customer of the scheduled test(s) and the Customer and/or its designees shall have the right to be present at any or all such tests conducted by WES and/or manufacturers of the equipment. WES shall be responsible for correcting and/or adjusting all deficiencies in systems and equipment operations that may be observed during system commissioning procedures.

## **SECTION 7 EQUIPMENT WARRANTIES**

WES covenants and agrees that all equipment installed as part of this Contract is new, in good and proper working condition and protected by appropriate written warranties covering all parts and equipment performance. WES further agrees to deliver to Customer for inspection and approval; to pursue rights and remedies against manufacturer and supplier of the equipment under the warranties in the event of equipment malfunction or improper or defective function, and defects in parts, workmanship and performance, to notify the Customer whenever defects in equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by WES. The cost of any risk of damage or damage to the equipment and its performance, including damage to property and equipment of the Customer or the Premises, due to WES's failure to exercise its warranty rights shall be borne solely by WES.

All warranties shall be transferable and extend to the Customer. The warranties shall specify that only new, and not reconditioned parts, may be used and installed when repair is necessitated by malfunction.

All warranties required hereunder shall be in force for a minimum of one year from the commencement date as defined in Section 3.1 hereof.

Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve WES from complying with its obligations to perform under all terms and conditions of this Contract and as set forth in all attached Schedules.

## **SECTION 8 TRAINING BY WES**

WES shall conduct the training program described in SCHEDULE D.4 (WES Maintenance Responsibilities) hereto. The training specified in SCHEDULE D.7 (Training Requirements) must be completed prior to acceptance of the equipment installation. WES shall provide ongoing training whenever requested by Customer with respect to updated or altered equipment, including upgraded software. The fee for such training shall be provided at no charge to the Customer.

## **SECTION 9 PERMITS AND APPROVALS; COORDINATION**

Section 9.1 Permits and Approvals: Customer shall use its best efforts to assist WES in obtaining all necessary permits and approvals for installation of the Equipment. In no event shall Customer, however, be responsible for payment of any permit fees. The equipment and the operation of the equipment by WES shall at all times conform to all federal, state and local code requirements. WES shall furnish copies of each permit or license which is required to perform the work to the Customer before WES commences the portion of the work requiring such permit or license.

Section 9.2 Coordination During Installation: The Customer and WES shall coordinate the Construction activities of WES's equipment installers with those of the Customer, its employees, and agents.

## **SECTION 10 PERFORMANCE BY WES**

WES shall perform all tasks/phases under the Contract, including construction, and install the Equipment in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in SCHEDULE D.3 (Standards of Comfort). WES shall repair and restore to its original condition any area of damage caused by WES's performance under this Contract. The Customer reserves the right to review the work performed by WES and to direct WES to take certain corrective action if, in the opinion of the Customer, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by WES's performance of the work shall be borne by WES.

WES shall remain responsible for the professional and technical accuracy of all services performed, whether by WES or its subcontractors or others on its behalf, throughout the term of this Contract.

## **SECTION 11 OWNERSHIP**

Section 11.1 Ownership of Certain Proprietary Property Rights: Customer shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Equipment. WES shall grant to the Customer a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for the Customer to continue to operate, maintain, and repair the Equipment in a manner that will yield maximal energy consumption reductions.

Section 11.2 Ownership of Existing Equipment: Ownership of the equipment and materials presently existing at the Premises at the time of execution of this Contract shall remain the property of the Customer even if it is replaced or its operation made unnecessary by work performed by WES pursuant to this Contract. If applicable, WES shall advise the Customer in writing of all equipment and materials to be replaced at the Premises and the Customer shall within 30 days designate in writing to WES which equipment and materials that should not be disposed of off-site by WES. It is understood and agreed to by both Parties that the Customer shall be responsible for and designate the location and storage for any equipment and materials that should not be disposed of off-site. WES shall be responsible for the disposal of all equipment and materials designated by the Customer as disposable off-site in accordance with all applicable laws and regulations regarding such disposal.

Section 11.3 New Equipment: All new equipment or materials supplied to the Customer shall become the property of the Customer.

## **SECTION 12 LOCATION AND ACCESS**

Customer shall provide sufficient space on the Premises for the installation and operation of the Equipment and shall take reasonable steps to protect such Equipment from harm, theft and misuse. Customer shall provide access to the Premises for WES to perform any function related to this Contract during regular business hours, or such other reasonable hours as may be requested by WES and acceptable to the Customer. WES's access to Premises to make emergency repairs or corrections as it may determine are needed shall not be unreasonably restricted by the Customer.

## **SECTION 13 EQUIPMENT SERVICE**

Section 13.1 Actions by WES: WES shall provide all service, repairs, and adjustments to the Equipment Installed under terms of this Contract pursuant to SCHEDULE D.4 (WES Maintenance Responsibilities). Customer shall incur no cost for Equipment service, repairs, and adjustments, except as set forth in SCHEDULE B (COMPENSATION TO WES), provided, however, that when the need for maintenance or repairs principally arises due to the negligence or willful misconduct of the Customer or any employee or other agent of Customer, and WES can so demonstrate such causal connection, WES may charge Customer for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

Section 13.2 Malfunctions and Emergencies: Customer shall use its best efforts to notify WES or its designee(s) within 24 hours after the Customer's actual knowledge and occurrence of: (i) any malfunction in the operation of the Equipment or any preexisting energy related equipment that might materially impact upon the guaranteed energy savings, (ii) any interruption or alteration to the energy supply to the Premises, or (iii) any alteration or modification in any energy-related equipment or its operation.

Section 13.3 Where Customer exercises due diligence in attempting to assess the existence of a malfunction, interruption, or alteration it shall be deemed not at fault in failing to correctly identify such conditions as having a material impact upon the guaranteed energy savings. Customer shall notify WES within twenty-four (24) hours upon its having actual knowledge of any emergency condition affecting the Equipment. WES shall respond or its designee(s) shall respond within twenty-four (24) hours to promptly proceed with corrective measures. Any telephonic notice of such conditions by Customer shall be followed within three business days by written notice to WES from Customer. If Customer unreasonably delays in so notifying WES of a malfunction or emergency, and the malfunction or emergency is not otherwise corrected or remedied, such conditions will be treated as a Material Change and the applicable provisions of SECTION 16 (MATERIAL CHANGES) shall be applied.

Section 13.4 Actions by Customer: Customer shall not move, remove, modify, alter, or change in any way the Equipment or any part thereof without the prior written approval of WES except as set forth in SCHEDULE D.5 (Customer Maintenance Responsibilities). Notwithstanding the foregoing, Customer may take reasonable steps to protect the Equipment if, due to an emergency, it is not possible or reasonable to notify WES before taking any such actions. In the event of such an emergency, Customer shall take reasonable steps to protect the Equipment from damage or injury and shall follow instructions for emergency action provided in advance by WES. Customer agrees to maintain the Premises in good repair and to protect and preserve all portions thereof which may in any way affect the operation or maintenance of the Equipment.

#### **SECTION 14 UPGRADING OR ALTERING THE EQUIPMENT**

WES shall at all times have the right, subject to Customer's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment, revise any procedures for the operation of the equipment or implement other energy saving actions in the Premises, provided that:

- (i) WES complies with the standards of comfort and services set forth in SCHEDULE D.3 (Standards of Comfort) herein;
- (ii) such modifications or additions to, or replacement of the Equipment, and any operational changes, or new procedures are necessary to enable WES to achieve the energy savings at the Premises and;
- (iii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of WES.

All modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental Schedule(s) to be provided to the Customer for approval, which shall not be unreasonably withheld, provided that any replacement of the Equipment shall be new and have equal or better potential to reduce energy consumption at the Premises than the Equipment being replaced. WES shall update any and all software to be used in connection with the Equipment in accordance with the provisions of Section 11.1 (Ownership of Certain Proprietary Rights). All replacements of and alterations or additions to the Equipment shall become part the Equipment described in SCHEDULE A (SCOPE OF WORK) and shall be covered by the provisions and terms of SECTION 6 (CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION; APPROVAL).

#### **SECTION 15 STANDARDS OF COMFORT**

WES will maintain and operate the Equipment in a manner which will provide the standards of heating, cooling, hot water, and lighting as described in SCHEDULE D.3 (Standards of Comfort).

#### **SECTION 16 MATERIAL CHANGES**

Section 16.1 Material Changes Defined: A Material Change shall include any change in or to the Premises, whether structural, operational or otherwise in nature which reasonably could be expected, in the judgment of the Customer, to increase or decrease annual energy consumption. Actions by the Customer which may result in Material Change include but are not limited to the following:

- (i) manner of use of Premises by the Customer; or
- (ii) hours of operation for the Premises or for any equipment or energy using systems operating at the Premises; or
- (iii) permanent changes in the comfort and service parameters set forth in SCHEDULE D.3 (Standards of Comfort); or
- (iv) occupancy of the Premises; or
- (v) structure of the Premises; or
- (vi) types and quantity of equipment used at the Premises; or
- (vii) modification, renovation or construction at the Premises; or

(viii) the Customer's failure to provide maintenance of or repairs to the Equipment in accordance with SCHEDULE D.5 (Customer Maintenance Responsibilities); or

(ix) any other conditions other than climate affecting energy use at the Premises.

Section 16.2 **Reported Material Changes: Notice by Customer:** The Customer shall use its best efforts to deliver to WES a written notice describing all actual or proposed Material Changes in the Premises or in the operation of the Premises at least 30 days before any actual or proposed Material Changes is implemented or as soon as is practicable after any emergency or unplanned event. Notice to WES of Material Changes which result because of a Bona Fide emergency or other situation which precludes advanced notification shall be deemed sufficient if given by the Customer within 30 hours after having actual knowledge that the event constituting the Material Change occurred or was discovered by the Customer to have occurred.

Section 16.3 **Unreported Material Change:** In the absence of any Material Changes in the Premises or in their operations, the baseline energy consumption should not change more than 2% during any month from the projected energy use for that month, after adjustments for changes in climate conditions. Therefore, if energy consumption for any month deviates by more than 2% from the energy consumption of the same month of the preceding contract year after adjustments for changes to climatic conditions, then such deviation shall be timely reviewed by WES to ascertain the cause of deviation. WES shall report its findings to the Customer in a timely manner and WES shall determine what, if any adjustments to the baseline will be made.

## **SECTION 17 INDEMNIFICATION**

Section 17.1 WES shall be responsible for (i) any damage to the Equipment or other property on the Premises and (ii) any personal injury where such damage or injury occurs as a result and to the extent of WES's negligence or other wrongful conduct in its performance under this Contract.

Section 17.2 WES shall save and hold harmless Customer and its officers, agents and employees or any of them from any and all claims, demands, actions or liability of any nature based upon or arising out of WES's negligence or other wrongful conduct in any services performed by WES, its agents or employees under this Contract.

## **SECTION 18 CONDITIONS BEYOND CONTROL OF THE PARTIES**

If a party ("performing party") shall be unable to reasonably perform any of its obligations under this Contract due to acts of Nature, insurrections or riots, or similar events, this Contract shall at the other party's option (i) remain in effect but said performing party's obligations shall be suspended until the said events shall have ended; or, (ii) be terminated upon ten (10) days' notice to the performing party, in which event neither party shall have any further liability to the other.

## **SECTION 19 EVENTS OF DEFAULT**

Section 19.1 **Events of Default by Customer:** Each of the following events or conditions shall constitute an "Event of Default" by Customer:

- (i) any failure by Customer to pay WES any sum due for a service and maintenance period of more than 30 days after written notification by WES that Customer is delinquent in making payment and provided that WES is not in default in its performance under the terms of this Contract; or
- (ii) any other material failure by Customer to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty days after notice to Customer demanding that such failures to perform be cured or if such cure cannot be effected in thirty days, Customer shall be deemed to have cured default upon the commencement of a cure within thirty days and diligent subsequent completion thereof;
- (iii) any representation or warranty furnished by Customer in this Contract which was false or misleading in any material respect when made.

Section 19.2 **Events of Default by WES:** Each of the following events or conditions shall constitute an "Event of Default" by WES:

- (i) the standards of comfort and service set forth in SCHEDULE D.3 (Standards of Comfort) are not provided due to failure of WES to properly design, install, maintain, repair or adjust the Equipment except that such failure, if corrected or cured within 30 days after written notice by Customer to WES demanding that such failure be cured, shall be deemed cured for purpose of this Contract. (ii) any representation or warranty furnished by WES in this Contract is false or misleading in any material respect when made;
- (ii) failure to furnish and install the Equipment and make it ready for use within the time specified by this Contract as set forth in SCHEDULE A (SCOPE OF WORK) and SECTION 3 (COMMENCEMENT DATE AND TERMS);

- (iii) any failure by WES to perform or comply with the terms and conditions of this Contract, including breach of any covenant contained herein except that such failure, if corrected or cured within 30 days after written notice by the Customer to WES demanding that such failure to perform be cured, shall be deemed cured for purposes of this Contract;
- (iv) any lien or encumbrance upon the equipment by any subcontractor, laborer or material man of WES;
- (v) the filing of a bankruptcy petition whether by WES or its creditors against WES which proceeding shall not have been dismissed within 30 days of its filing, or an involuntary assignment for the benefit of all creditors or the liquidation of WES;
- (vi) Failure by WES to pay any amount due the Customer or perform any obligation under the terms of this Contract or the Energy Savings Guarantee as set forth in SCHEDULE C (ENERGY SAVINGS GUARANTEE).

## SECTION 20 REMEDIES UPON DEFAULT

Section 20.1 Remedies upon Default: All disputes shall be submitted to the individuals listed in SECTION 32 (NOTICE) for resolution. In the event that a remedy acceptable to both Customer and WES cannot be found, either party may seek remedy as outlined in SECTION 21 (mediation).

## SECTION 21 MEDIATION

Section 21.1 Any Claim arising out of or related to the Contract shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

Section 21.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

Section 21.3 The parties shall share the mediator's fee and any filing fees equally.

Section 21.4 The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon.

Section 21.5 Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

## SECTION 22 REPRESENTATIONS AND WARRANTIES

Each party warrants and represents to the other that:

- (i) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
- (ii) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- (iii) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
- (iv) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

## SECTION 23 ADDITIONAL REPRESENTATIONS OF THE PARTIES

Customer hereby warrants, represents and promises that it has provided or shall provide timely to WES, all records relating to energy usage and energy-related maintenance of Premises requested by WES and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects.

WES hereby warrants, represents and promises that:

- (i) before commencing performance of this Contract, it shall have become licensed or otherwise permitted to do business in the State of Kansas;



- (ii) it shall make available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;
- (iii) it shall use qualified subcontractors and delegates, licensed and bonded in this state to perform the work so subcontracted or delegated pursuant to the terms hereof;
- (iv) that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under this Contract.

**SECTION 24 WAIVER OF LIENS**

All property of the Customer is exempt from attachment and levy.

**SECTION 25 COMPLIANCE WITH LAW AND STANDARD PRACTICES**

WES shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of Customer relative to the Premises. WES shall be responsible for obtaining all governmental permits, consents, and authorizations as may be required to perform its obligations hereunder.

**SECTION 26 INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties hereto agree that WES, and any agents and employees of WES, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of the Customer.

**SECTION 27 NO WAIVER**

The failure of WES or Customer to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of WES or Customer.

**SECTION 28 SEVERABILITY**

In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable or unconscionable.

**SECTION 29 COMPLETE CONTRACT**

This Contract, when executed, together with all Schedules attached hereto or to be attached hereto, as provided for by this Contract shall constitute the entire Contract between both parties and this Contract may not be amended, modified, or terminated except by a written Contract signed by the parties hereto.

**SECTION 30 FURTHER DOCUMENTS**

The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

**SECTION 31 APPLICABLE LAW**

This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State of Kansas.

**SECTION 32 NOTICE**

Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

TO WES:

Willdan Energy Solutions

Attention: Aaron Etkorn

900 Massachusetts Street, Suite 301

Lawrence, KS 66044

TO CUSTOMER:

Thomas County Kansas

Attention: Mike Baughn, Commission Chairman

300 N Court Ave

Colby, KS 67701

**SECTION 33 CUSTOMER'S COMPLIANCE WITH FACILITIES MAINTENANCE CHECKLIST**

Section 33.1 The parties acknowledge and agree that WES has entered into this Contract in reliance upon the prospect of earning compensation based on guaranteed energy savings in energy used at Premises, as set forth on SCHEDULE C

(ENERGY SAVINGS GUARANTEE) and SCHEDULE B (COMPENSATION TO WES), attached hereto and made a part hereof.

- Section 33.2 The parties further acknowledge and agree that the said guaranteed energy savings would not likely be obtained unless certain procedures and methods of operation designed for energy conservation shall be implemented and followed by Customer on a regular and continuous basis.
- Section 33.3 Customer agrees that it shall adhere to, follow and implement the energy conservation procedures and methods of operation to be set forth on SCHEDULE D.5 (Customer Maintenance Responsibilities), to be attached hereto and made a part hereof after Customer's approval.
- Section 33.4 Customer agrees that WES shall have the right once a month, with prior notice, to inspect Premises to determine if Customer is complying, and shall have complied with its obligations as set forth above in Section 33.3 For the purpose of determining Customer's said compliance, the checklist to be set forth at SCHEDULE D.6 (Facility Maintenance Checklist) as completed and recorded by WES during its monthly inspections, shall be used to measure and record Customer's said compliance. Customer shall make the Premises available to WES for and during each monthly inspection and shall have the right to witness each inspection and the recordings on the checklist.

#### SECTION 34 HEADINGS

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

#### SECTION 35 BONDS

Any and all bonds obtained by WES for this project shall specifically exclude coverage for those portions of the Contract or the Work pertaining to design services, efficiency guarantees, and any other part of this Contract and the Contract Documents which do not relate specifically to construction management and supervision of Work for purchasing and installing of Equipment, or for work to be accomplished by the Customer.

#### SECTION 36 INSURANCE

WES shall procure and maintain in effect insurance coverage in amounts not less than the following.

- Section 36.1 Workers' Compensation and Employer's Liability Insurance with limits of not less than \$1,000,000 per occurrence.
- Section 36.2 Commercial General Liability Insurance for personal and bodily injury, including death, and property damage with limits not less than \$1,000,000 combined single limit each occurrence and \$2,000,000 general aggregate.
- Section 36.3 Automobile Liability Insurance for personal and bodily injury, including death and property damage in the amount of not less than \$1,000,000 per occurrence.
- Section 36.4 Professional Liability Insurance for damages incurred by reason of any negligent act, error or omission committed by WES in performing professional services with limits of not less than \$1,000,000 per claim and \$2,000,000 annual aggregate.
- Section 36.5 Builders All-Risk Insurance WES, at Customer's expense, shall maintain "All Risk Insurance" for all equipment, and property obtained by or for WES which is to become a part of the work while such equipment and property is stored at the jobsite, at temporary locations, or while in transit to the project from such temporary locations. WES shall also be responsible for insuring Subcontractor's owned, rented, or borrowed equipment.

WES will provide Customer with certificates of insurance evidencing coverage required above. Each certificate shall provide that the coverage shall not be canceled except with at least thirty days prior written notice to Customer, ten days' notice if cancellation is due to nonpayment of premium. Should this occur, WES shall procure and furnish to Customer prior to such effective date new certificates conforming to the above coverage requirement.

#### SECTION 37 EPACT 179D

To encourage the implementation of a more energy-efficient system, Section 179D of the Internal Revenue Code provides for the allocation of a tax deduction based on the efficiency of the design. Since a public entity is exempt from paying taxes, the Code permits this allocation to be passed along to the designer of the system as an additional incentive to incorporate the most efficient system affordable. Accordingly, once the building/system is placed into service, it is understood and agreed that the tax deduction granted pursuant to Section 179D of the Internal Revenue Code will be allocated to Willdan, in consideration of which Willdan will use its best efforts to maximize the energy efficiency of the design being contracted.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto subscribe their names to this Contract by their duly authorized officers on the date first below written.



WES

Signed 

Name Aaron Etzkorn

Title VP of Engineering

Date 8/12/2020

CUSTOMER

Signed 

Name Mike Baughn

Title Commissioner, Chairman

Date 08/12/2020



## SCHEDULE A. SCOPE OF WORK

### Equipment Installed by WES:

The Projects identified in the following sections of this Schedule are the entire Scope of Work to be performed as part of this contract.

### **BASE PROJECT SCOPE OF WORK:**

#### HVAC and Electrical upgrades:

1. HVAC Demolition:
  - a. Remove all existing ductwork and diffusers on the first and second floors
  - b. Remove existing hydronic piping and fan coil units throughout the building
  - c. Remove existing air separator and hydronic pump in the mechanical room
  - d. Remove existing thermostats, and cover with blank cover.
2. HVAC New Work:
  - a. Install new condensing boiler, air separators, expansion tank, hydronic pumps in the boiler room
  - b. Reuse existing expansion tank and relocate in mechanical room
  - c. Connect new Chilled water piping to existing chilled water piping that goes to chiller.
  - d. Install four pipe hydronic HVAC system as shown on the drawings.
  - e. Installation of new HVAC control system with web access.
3. Electrical Demolition:
  - a. Remove selected sections of raceway, wire, and other associated devices dedicated to the mechanical equipment which is being removed.
  - b. Remove existing ceiling fans.
  - c. Remove selected flush-mounted panels which do not meet code requirements.
  - d. Remove selected surface-mounted panels which do not meet code requirements.
  - e. Remove selected feeders which do not meet code requirements.
4. Electrical New Work:
  - a. Install new electrical distribution system surge protection device
  - b. Install raceways and conductors as necessary to power new mechanical equipment (e.g. pumps, boiler, fan coil units, unit heater, etc.)
  - c. Install raceways and conductors as necessary to power new smoke detectors and damper actuators on each floor.
  - d. Install new panels on 2<sup>nd</sup> and 3<sup>rd</sup> floors to power new mechanical and electrical loads.
  - e. Provide overcurrent protection for feeders and branch circuits as required per NEC.

#### Sanitary and Domestic Plumbing Upgrades:

1. Demolition:
  - a. Removal and disposal of five water closets, two urinals, five lavatory faucets, two exterior hose bibbs, domestic hot and cold water piping, two small tank-type electric water heaters, select sanitary waste piping, wall and floor demolition for access to plumbing piping, condensate piping from HVAC FCUs.
  - b. Excavate up to three locations of below grade sanitary waste as it heads north east under building to site to connection with City 8" sewer main.
  - c. Leave plumbing vents in place from above upper most water closets to termination above roof.
2. New Work:
  - a. New 1-1/2" domestic water service from meter to building.
  - b. New 4" sanitary sewer connection to City 8" main to north of building
  - c. Two instantaneous electric water heaters to serve lavatory faucets.
  - d. New domestic hot and cold water piping (DHW/DCW)
  - e. Scope below grade sanitary lines to identify compromised piping sections. Replace up to three 10' sections of piping.
  - f. Patching of walls where plumbing lines were removed and installed.
  - g. Reconnection of any DHW/DCW to plumbing fixtures to remain, condensate piping for HVAC, insulation for DHW/DCW and condensate piping.

#### Window Replacements:

1. Demolition:

- a. Demolition of select windows on the first, second, and third floor. Existing wood interior trim to be retained and reused with the new windows.
- 2. New Work:
  - a. New, High Efficiency aluminum windows. Window color to be selected by County from the manufacturer's standard colors.
  - b. Windows will be fixed, non operable.
  - c. Existing Doors will remain.

Ceilings

- 1. Demolition:
  - a. Removal and disposal of all existing suspended ceiling tile and grid.
- 2. New Work:
  - a. Installation of new suspended ceiling system throughout office areas, corridors, lobbies, and restrooms on the first, second, and third floors.
    - i. Courtroom ceiling tile will be Armstrong Tincraft
    - ii. First floor and second floor lobby ceiling tiles will be Armstrong Cirrus
    - iii. All other ceiling tile will be Armstrong 1728

Lighting:

- 1. Demolition:
  - a. Remove recessed fixtures in offices, break rooms, and hallways which have 2' x 4' drop ceiling that will be replaced.
  - b. Remove surface-mounted or suspended fixtures in vaults, hallways, courtroom, and other areas.
- 5. New Work:
  - a. Install new recessed 2' x 2' LED fixtures in offices, break rooms, and selected hallways which will be furnished with new drop ceiling.
  - b. Install new surface-mounted or suspended LED fixtures in vaults and other selected storage areas.
  - c. Install new wall sconce LED fixtures in the 2<sup>nd</sup> floor (main) hallway.
  - d. Install new suspended chandelier LED fixtures at selected entrances, selected hallways, and the 3<sup>rd</sup> floor hallway.
  - e. Install new recessed can-mounted LED and wall sconce fixtures in restrooms.
  - f. Install new exterior floodlights to provide accent lighting of the clock tower.

**ALTERNATE ADD PROJECTS:**

COVID-19 and infection control measures

- 1. New ventilation ductwork will be routed in new mechanical chases as shown on the drawings.
- 2. Install new MERV 13 filters in new fan coil units.
- 3. Install a dedicated ventilation air handling system consisting of two energy recovery ventilators and associated ductwork, diffusers, returns, etc.
- 4. Fire/Smoke Dampers, rated shafts associated with ventilation ductwork.
- 5. Provide five commercial floor-mounted water closets and two wall-mounted urinals with battery operated "touch-less" automatic flush valves, five lavatory faucets, five foot-door pulls, five battery-operated automatic soap dispensers, two exterior hose bibbs.
- 6. Associated electrical for ventilation system.
- 7. Install new wall-mounted or ceiling-mounted occupancy sensors in selected areas for lighting control.
- 8. Bi-polar ionizers in all fan coils.

Third Floor and Clock Tower Windows

- 1. Demolition:
  - a. Demolition of all half moon windows on third floor, and clock tower window openings.
- 2. New Work:
  - a. New, High Efficiency aluminum windows. Window color to be selected by County from the manufacturer's standard colors.
  - b. Windows will be fixed, non operable.
  - c. Windows will be spandrel glass
  - d. Existing Doors will remain.

South Entrance Door Replacement:

1. Demolition:
  - a. Remove south entrance storefront door assembly.
2. New Work:
  - a. Install new storefront door assembly to match new window finish.

Sanitary Sewer Replacement:

1. New Work:
  - a. Install new 8" sanitary sewer line and tie into city main.
  - b. Repair of any concrete, grass, and asphalt that is disturbed as a part of this scope of work.

Install New 80kW Generator:

1. New Work:
  - a. Install new 80kW Diesel backup generator.
  - b. Install new concrete pad for backup diesel generator to be installed on north end of Courthouse.
  - c. Install new automatic transfer switch (ATS) on north end of Courthouse.
  - d. Install new main disconnect on north end of Courthouse.
  - e. Install new buried service conductors from utility transformer to main disconnect, from main disconnect to ATS, and from ATS to MDP.
  - f. Install new buried feeder from diesel generator to new ATS.

Work Excluded:

1. General
  - a) Sales taxes are excluded from the project. Owner will assist ESCO in securing project exemption certificate.
  - b) Abatement of asbestos and other hazardous materials are not included in the scope of work. This work is to be performed under a separate contract by the Owner in a timely manner.
  - c) Specific areas of the building not included in project scope.
  - d) Landscaping beyond reseeding of damaged or disturbed earth.
  - e) Integration of modification of security access controls and surveillance system.
  - f) Relocation and replacement of furniture, signage, artwork, decorations, electronics, and personal items. County is responsible for moving these items out of the work area so contractors have full access to complete scopes of work.
  - g) Organizing and relocating existing cabling is excluded.
  - h) Contractors are to repair any new openings they make in walls and floors and are to fix any existing openings where new piping, conduit, or equipment is installed. Existing openings in walls and floors not covered above are excluded from repair.
  - i) Data cabling has been installed on top of ceiling tiles in several locations. This may limit amount ceilings are able to be raised in the areas where this is called for.
  - j) Temporary heating or cooling. The plan is to keep existing system operating while new system is being installed. We will do our best to maintain appropriate building temperatures in occupied spaces, however, there will likely be windows of time when this is not possible due to construction phasing and stopping and starting of utilities.
2. Mechanical/Controls
  - a) IT infrastructure and IT support:
    - (1) Owner to provide IT support to assist in connection of Controls for remote access.
  - b) New concrete pads for existing mechanical equipment. Existing concrete house-keeping pads will be re-used for this equipment.

- c) Repair or replacement of existing HVAC equipment and component that are to be reused with the new HVAC system.
  - d) Expansion of fire panel to accommodate added points or functionality.
3. Lighting
- a) Existing LED Exterior Lighting
  - b) Incandescent fixtures in decorative applications
  - c) Task lighting on modular furniture
  - d) Abandoned fixtures
  - e) Area lighting provided by electrical provider owned lights
4. Electrical:
- a) Fire safety, data, intercom, timeclocks and other systems not shown on the drawings.
5. Ceiling Work:
- a) Removal or relocation of ceiling mounted devices including ceiling mounted IT equipment, Signage, Decorations, and security cameras.
  - b) Courtroom ceiling removal.
6. Windows:
- a) Window tinting
  - b) Installation of window shades, blinds or other window treatments.
  - c) Operable windows

Time:

WES and Customer will work together to develop construction schedules that minimize disruption to Customer operations while allowing for completion of Scope of Work in a timely fashion. All construction will be completed in accordance with SECTION 3 (COMMENCEMENT DATE AND TERMS).

Weather disruptions, availability of necessary equipment, remediation of hazardous materials, and other delays beyond the control of WES shall not count toward the construction timeframe in SECTION 3 (COMMENCEMENT DATE AND TERMS).



## SCHEDULE B. COMPENSATION TO WES

Total compensation from Customer to WES shall be \$3,141,882. A detailed description of the components of this compensation is provided below.

The breakdown of projects includes:

Base Project: \$2,500,018

COVID-19 and infection control measures: \$279,849

Third Floor and Clock Tower Windows: \$221,544

South Entrance Door Replacement: \$11,816

Sanitary Sewer Replacement: \$42,031

Install new 80kW Generator: \$86,624

### 1. CHANGES IN THE CONTRACT SUM:

- a) Any overage in the cost of the Scope of Work in SCHEDULE A (SCOPE OF WORK) shall be the responsibility of WES.
- b) Changes to the contract sum are warranted for, but are not limited to: Hazardous materials, additions or modifications to the Scope of Work, and Differing Site Conditions as defined in SCHEDULE D - ADDITIONAL RESPONSIBILITIES, I.EXHIBIT 1.8 - Differing Site Conditions. All additional costs associated with these items shall be the responsibility of Customer.

### 2. PAYMENT AND CLOSEOUT PROCEDURES

- a) Project Mobilization: The initial Application for Payment shall include all project development and engineering expenses, as well as 10 percent of the remaining total compensation to allow for mobilization of WES and subcontractors.
- b) Progress Payments: WES shall provide a monthly Application for Payment to Customer for work completed during the previous month. The Customer shall make payment in the manner and within the time provided in Section 4.4. Until the Project is complete, as identified as a line item in the Schedule of Values, Customer will pay one hundred percent (100%) of the amount due to WES on account of progress payments. WES shall provide a Retainage Bond that represents 10% of the total contract value.
- c) Schedule of Values: WES will prepare and submit a complete schedule of values along with initial Application for Payment. Projects listed as line items in the Schedule of Values will be treated as individual projects for the purposes of Progress Payments, Substantial Completion, Project Completion, and withholding of retention amounts.
- d) Substantial Completion: Substantial Completion is the stage in the progress of the Project when the Project or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Customer can utilize the Work for its intended use.

When WES considers that an individual Project is substantially complete, WES shall prepare and submit to the Customer a comprehensive list of items to be completed or corrected prior to final payment. Upon receipt of WES's list, the Customer shall, within seven days, inspect the Work to formulate the Customer's Punch List and to determine whether the Work or designated portion thereof is substantially complete. If the Customer's inspection discloses any item, whether or not included on WES's list, which is not sufficiently complete in accordance with the Contract Documents so that the Customer can utilize the Project or designated portion thereof for its intended use, WES shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Customer. In such case, WES shall then submit a request for another inspection by the Customer to determine Substantial Completion.

When the Work or designated portion thereof is substantially complete, WES will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Customer and WES for security, maintenance, heat, utilities, damage to the Project and insurance, and shall fix the time within which WES shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Project or designated portion thereof unless otherwise provided

in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Customer for their written acceptance of responsibilities assigned to them in such Certificate.

- e) **Substantial Completion Payment:** Upon Substantial Completion acceptance, the Customer shall make payment of retainage applying to such Work or designated portion thereof within the time provided in Section 4.4. Such payment shall be reasonably adjusted to reflect the dollar value of Work that is incomplete or not in accordance with the requirements of the Contract Documents.
- f) **Project Completion and Payment:** After WES's completion of all punch list items, project closeout requirements, and upon receipt of written notice that the Project is ready for final inspection and acceptance and upon receipt of a Final Application for Payment, the Customer will make such inspection within seven days and, when the Customer finds the Project acceptable under the Contract Documents and the Contract fully performed, the Customer will execute and issue the Certificate of Acceptance within two days from the final inspection and pay the entire balance found to be due to WES as stated in the Final Application for Payment within the time provided in Section 4.4.
- g) **Failure of Payment:** If the Customer does not pay WES within seven days after the date established in Section 4.4, then WES may, upon written notice to the Customer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the WES's reasonable costs of shut-down, delay and start-up, plus interest of 1.5% per month.

SCHEDULE C. ENERGY SAVINGS GUARANTEE

1. Guaranteed Energy Savings: WES guarantees that Customer will save \$209,460 annually during a 15-year Guarantee Term.

Customer and WES agree that energy savings of \$2,310 annually is achieved as guaranteed at the Courthouse. No further tracking or monitoring of this savings shall take place.

Customer and WES agree that annual operational and maintenance savings of \$207,150 which includes direct maintenance savings of \$3,800, and annualized operational savings of \$203,350 are stipulated and achieved as guaranteed. No further tracking or monitoring of this savings shall take place.

2. Utility Rates Used to Calculate Savings: The utility rates listed in the table below have been used to determine:
  - a) The amount of dollar savings achieved each year for purposes of measuring the program’s performance relative to the Energy Savings Guarantee

Table 1 - Utility Rates used for determining Actual Energy Savings

Program Year	Electric Rate	Natural Gas
0	\$0.0834/ kWh & \$7.25/ kW	\$0.55/ therm
Future Years	Year zero rate adjusted for current year’s CPI or future year’s actual rate, whichever is greater.	

Notes:

Rates include all applicable riders, fees and surcharges.



## SCHEDULE D. ADDITIONAL RESPONSIBILITIES

1. System Start-up & Commissioning
  - a) WES will perform start-up and commissioning services for all equipment installed.
2. Operating parameters of installed equipment
  - a) WES will provide operating parameters in the Operation and Maintenance Manuals. These manuals will be provided to Customer prior to Project Completion.
3. Standards of Comfort
  - b) Customer will maintain the following standards of comfort, which were used to evaluate the energy conservation measures for this program., in order to accurately verify the Energy Savings Guarantee.
    - (1) Occupied temperature set points: 70°F or below in heating and 74°F or above in cooling.
    - (2) Unoccupied temperature set points: 55°F in heating and 85°F or above in cooling.
4. WES Maintenance Responsibilities
  - a) WES is not responsible for performance of any maintenance on equipment or premises.
5. Customer Maintenance Responsibilities
  - a) Customer is required to perform all necessary maintenance as recommended by the manufacturer in the Operation and Maintenance manuals (to be provided upon Project Completion) for equipment installed as part of this Contract, as well as all additional equipment that will continue to operate in Customer facilities.
6. Facility Maintenance Checklist
  - a) WES shall provide Customer with a complete facility maintenance checklist prior to the Acceptance of Project Completion.
7. Customer Information Technology Responsibilities
  - a) Customer is responsible for providing a working WAN infrastructure connecting multiple buildings and configuring it for connecting new internet-based building control system, accessible via standard web-browser from inside and outside the Customer's network.
  - b) Customer is responsible for providing network connection(s) (cables and switches), open ports and IP addresses for connection of building control system's web server to Customer's network for internet accessibility.
  - c) Customer shall engage their IT representative familiar with the Customer's network to work with WES and its subcontractors to establish IP addresses and communications to assure proper operation of the building control system with the Customer's wide area network.
8. Differing Site Conditions
  - a) The conditions at the site are the property of the Customer regardless of whether or not they could be identified by an investigation or exploration conducted according to the professional standard of care. A "Differing Site Condition" is a subsurface, hidden, latent, or physical condition at a project site/building not revealed by the site exploration, site investigation, or other information provided to the Customer and which cannot be reasonably anticipated. Special risks occur whenever engineering is applied to identifying site/building conditions. Even a comprehensive investigation according to the professional standard of care may not detect all subsurface or site/building conditions. WES shall not be liable for site/building conditions which could not be identified by such an investigation or exploration. Accordingly, the Customer agrees to indemnify, including all costs and fees, and hold WES harmless from all claims for Differing Site Conditions.
9. Training Requirements
  - a) WES will provide eight (8) hours of dedicated training prior to Project Completion to ensure proper understanding of installed systems. Additional training will be provided at no additional cost until Project Completion as deemed necessary by Customer and WES.





EXHIBIT 1. CERTIFICATE OF ACCEPTANCE – PROJECT COMPLETION

This is to certify that a final inspection of the Project has been conducted jointly by WES and Thomas County Kansas, and that the parties have determined that the Project has been fully completed in accordance with the Contract Documents. All guarantees and warranties that have not commenced previously shall commence as of the date of completion below.

Customer accepts the Project as being fully completed and assumes responsibility for maintenance, custodial care, and utilities for the premises. WES remains responsible to correct errors and omissions discovered subsequent to the execution of this document and to respond to claims made under applicable warranties.

WES

CUSTOMER

Signed \_\_\_\_\_

Signed \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_