



## BOARD OF SUPERVISORS AGENDA ITEM REPORT AWARDS / CONTRACTS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: 05/20/2025

\* = Mandatory, information must be provided

or Procurement Director Award: ☐

**\*Contractor/Vendor Name/Grantor (DBA):**

Veregy West, LLC (Headquarters: Phoenix, Arizona)

**\*Project Title/Description:**

Guaranteed Energy Cost Savings Services – Pima County - Veregy

**\*Purpose:**

Award: Contract No. PO2500012265. The award of this contract is recommended to a Qualified Provider, as per A.R.S. § 34-105, to provide energy performance improvements and costs savings for the Corona de Tucson Wastewater Reclamation Facility in a not-to-exceed amount of \$7,000,000.00 for a contract term from 05/20/25 to 05/19/27. Administering Department: Regional Wastewater Reclamation Department.

**\*Procurement Method:**

Pursuant to the Pima County Procurement Code 11.24.010, Cooperative procurement authorized for Requisition No. RQ2500006417, the Procurement Director approved the use of 1Government Procurement Alliance (1GPA) Contract No. 22-07P-08, which was awarded through competitive procedures reasonable similar to those set forth by Pima County Procurement Code.

Attachments: Cooperative Procurement Authorized Memo and Contract.

**\*Program Goals/Predicted Outcomes:**

The Corona de Tucson WRF consists of two 0.5 million gallons per day (MGD) bioreactors with a combined capacity to treat 1.0 MGD. In 2017, a 0.5 MGD chlorine contact basin was constructed to allow for disinfection and improvement in water quality to facilitate on-site recharge of effluent and recharge credits. The Corona de Tucson service area is experiencing increased population growth beyond 0.5 MGD daily flow requiring both bioreactors being placed into service. The increased flows now exceed the 0.5 MGD disinfection capabilities necessitating an expansion of the chlorine contact basin. Aeration equipment necessary for providing aeration to the bioreactors is compromised by deteriorated aeration header and seven antiquated rotary lobe blowers. This project will expand the 0.5 MGD chlorine contact basin capacity to 1.0 MGD average dry weather flow to match the combined bioreactor capacities. This project will replace the seven blowers with modern turbo blowers for improved efficiency and replacement of the compromised aeration header with an above ground header for improved serviceability. These changes will also include the installation of fine bubble diffusers and submersible mixers in each bioreactor for improved efficiency and treatment quality. Lastly, the project includes the installation of on-site photovoltaic solar for a reduction in operational cost.

**\*Public Benefit:**

This project will improve treatment water quality and expand disinfection capabilities resulting in a public benefit of increased aquifer recharge capability and associated recharge credits. An additional public benefit of the project is 1GPA's performance contracting services includes a performance guarantee for energy cost savings over a 20-year period and eligible for Inflation Reduction Act (IRA) reimbursement. Performance guarantee contracting provides RWRD and its rate payers with assurances that project savings ultimately serve as ROI for the project.

**\*Metrics Available to Measure Performance:**

Two metrics will be used to measure performance, energy usage and water quality improvements, resulting in increased aquifer recharge.

1. FY24-25 baseline values for energy usage (kWh) and cost savings associated with solar energy will be used for measuring performance. In the event energy savings are not realized, the performance contracting firm must reimburse RWRD for energy use overages. Reconciliation occurs each year with metrics gaged against the agreed upon baseline usage prior to project execution.
2. Aquifer recharge performance improvements will be measured by the annual recharge volume and associated credits.

**\*Retroactive:**

No.

TO: COB, 5-5-2025(1)

VERSION: 1

PAGES: 70

MAY05'25PM1247PO

THE APPLICABLE SECTION(S) BELOW MUST BE COMPLETED

Click or tap the boxes to enter text. If not applicable, indicate "N/A". Make sure to complete mandatory (\*) fields

**Contract / Award Information**

Document Type: PO Department Code: WW Contract Number (i.e., 15-123): PO2500012265  
Commencement Date: 05/20/25 Termination Date: 05/19/27 Prior Contract Number (Synergen/CMS): \_\_\_\_\_  
☒ Expense Amount \$ 7,000,000.00 \* ☐ Revenue Amount: \$ \_\_\_\_\_

**\*Funding Source(s) required: RWRD Obligations**

Funding from General Fund? ☐ Yes ☒ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_  
Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No  
If Yes, is the Contract to a vendor or subrecipient? \_\_\_\_\_  
Were insurance or indemnity clauses modified? ☐ Yes ☒ No  
If Yes, attach Risk's approval.  
Vendor is using a Social Security Number? ☐ Yes ☒ No  
If Yes, attach the required form per Administrative Procedure 22-10.

**Amendment / Revised Award Information**

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Contract Number (i.e., 15-123): \_\_\_\_\_  
Amendment No.: \_\_\_\_\_ AMS Version No.: \_\_\_\_\_  
Commencement Date: \_\_\_\_\_ New Termination Date: \_\_\_\_\_  
Prior Contract No. (Synergen/CMS): \_\_\_\_\_  
☐ Expense ☐ Revenue ☐ Increase ☐ Decrease  
Amount This Amendment: \$ \_\_\_\_\_  
Is there revenue included? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_  
**\*Funding Source(s) required:** \_\_\_\_\_  
Funding from General Fund? ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_

**Grant/Amendment Information** (for grants acceptance and awards)

☐ Award ☐ Amendment

Document Type: \_\_\_\_\_ Department Code: \_\_\_\_\_ Grant Number (i.e., 15-123): \_\_\_\_\_  
Commencement Date: \_\_\_\_\_ Termination Date: \_\_\_\_\_ Amendment Number: \_\_\_\_\_  
☐ Match Amount: \$ \_\_\_\_\_ ☐ Revenue Amount: \$ \_\_\_\_\_  
**\*All Funding Source(s) required:** \_\_\_\_\_  
**\*Match funding from General Fund?** ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_  
**\*Match funding from other sources?** ☐ Yes ☐ No If Yes \$ \_\_\_\_\_ % \_\_\_\_\_  
**\*Funding Source:** \_\_\_\_\_

**\*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?**

Contact: Procurement Officer: Judy Cooper Digitally signed by Judy Cooper  
Date: 2025.04.30 16:28:01 -0700  
Department: Acting Procurement Director: Scott Loomis Digitally signed by Scott Loomis  
Date: 2025.04.30 15:51:22 -0700 Telephone: 520-724-3727  
Department Director Signature: [Signature] Date: 5/1/25  
Deputy County Administrator Signature: [Signature] Date: 5/1/2025  
County Administrator Signature: \_\_\_\_\_ Date: 5/2/2025

## MEMORANDUM

**Date:** April 22, 2025

**To:** Bruce D. Collins  
Procurement Director

**From:** Judy Cooper *jc*  
Procurement Officer

**Re:** 11.24.10, Cooperative Procurement Authorized – RFP #22-07P 1 Government Procurement Alliance (1GPA) Energy Performance Contracting Services - Veregy, LLC - Contract #22-07P-08

Pursuant to Pima County Procurement Code 11.24.10, Cooperative Procurement Authorized, this request seeks the Procurement Director's approval to establish an Energy Performance Contract, utilizing 1GPA's Energy Performance Contractor, for the Pima County Regional Wastewater Reclamation Department to improve the energy efficiency of the Corona de Tucson Wastewater Reclamation Facility.

1GPA issued Request for Proposal (RFP) No. 22-07P and established Contract No. 22-07P-08 with Veregy, LLC for Energy Performance Contracting Services. The RFP conducted by 1GPA is comparable to that which is prescribed by Pima County Procurement Code 11.12.020. This procurement was conducted in accordance with A.R.S. Title 34, Chapter 1, Section 105 for guaranteed energy cost savings contracts with a qualified provider. A qualified provider under this statute is defined as "a person or a business that is experienced in designing, implementing or installing energy cost savings measures, that has a record of established projects or measures of similar size and scope, that has demonstrated technical, operational, financial and managerial capabilities to design and operate cost savings measures and projects and that has the financial ability to satisfy guarantees for energy cost savings."

Regional Wastewater and Reclamation Department staff have determined that the terms and conditions specified in this Contract are acceptable and will satisfy their need for Corona de Tucson Wastewater Reclamation Facility's energy performance improvements.

It is the Procurement Officer's recommendation that a determination be made that the subject cooperative contract meets the requirements of the Pima County Procurement Code and request the Procurement Director's approval for use of Veregy, LLC's Contract No. 22-07P-08.

Attachment: Cooperative Solicitation Summary

Approval:

*Bruce D Collins*

April 23, 2025

Director

Date

## Cooperative Solicitation Summary

**Agency Name:** 1GPA, No. 22-07P

**Awarded:** Veregy, LLC

**Contract No.:** 22-07P-08

**Procurement Process Comparison:**

RFP - Conducted comparable to that which is prescribed by Pima County Procurement Code 11.12.020 and in accordance with A.R.S., Title 34, Chapter 1, Section 105.

Public Notice

Issued: 01/27/2022  
Advertised: 01/27/2022 and 02/03/2022, Florence Reminder & Blade Tribune  
02/02/2022 and 02/09/2022, San Manuel Miner  
01/28/2022, Arizona Capitol Times  
01/28/2022, USA Today  
01/28/2022, DJE Oregon  
Published: 1GPA, OpenGov <https://secure.procurenow.com/portal/1GPA>

Preproposal Conference

Date & Time: None

Receipt of Proposals

Due Date & Time: 03/09/2022, 10:30 AM MST AZ Time  
Responses Received: 13

RFP Evaluation Criteria

<u>Evaluation</u>	<u>1000 Points Possible</u>
Cost	300 Points Possible
Overall Program Offered	275 Points Possible
Experience, Expertise, and Qualifications	250 Points Possible
Organizational Strength	100 Points Possible
Additional Value/Add Services Offered	50 Points Possible
Responsiveness	25 Points Possible

Award Results

Contract awarded to the 9 highest scoring Firms.  
Contract Term: One year (05/19/2022 – 05/19/2023) with 4 one-year extension options.  
Contract Amount: \$30,000,000



## **PIMA COUNTY REGIONAL WASTEWATER RECLAMATION DEPARTMENT**

**PROJECT:** Guaranteed Energy Cost Savings Services – Pima County - Veregy

**CONTRACTOR:** Veregy West, LLC  
3312 East Broadway Road  
Phoenix, Arizona 85040

**CONTRACT NO.:** PO2500012265

**AMOUNT:** \$7,000,000.00

**FUNDING:** RWRD OBLIGATIONS

### **ENERGY PERFORMANCE CONTRACT**

#### **1. Parties, Background and Purpose.**

- 1.1. Parties. This Contract is entered into between Pima County, a body politic and corporate of the State of Arizona ("County"), and Veregy West, LLC ("Veregy"), and collectively referred to as the Parties.
- 1.2. Purpose. County is seeking an energy cost savings services Qualified Provider under A.R.S. § 34-105 to effect the completion of the planning, design, and construction for Corona de Tucson Water Reclamation Facility Improvements as described in Appendix A ("the Project") on a Guaranteed Maximum Price ("GMP") basis.
- 1.3. Authority. County is authorized by Pima County Code § 11.24.010 and A.R.S. § 41-2632 to enter into cooperative purchasing arrangements. The County entered into the GPA National procurement Cooperative Contract No. 22-07P-08 for Energy Performance Contracting Services, which is currently in effect (the "1 GPA Contract"). The 1GPA Contract documents, amendments, requirements and specifications are all incorporated into this Contract by this reference.
- 1.4. Selection. Section 1(C) of the Uniform Terms and Conditions in the 1GPA Contract provides that another governmental entity with which 1GPA has a cooperative purchasing agreement may, with Veregy's approval, purchase products and services at the same prices and under the same terms as in the 1GPA Contract.

#### **2. Term and Extension/Renewal/Changes.**

- 2.1. The effective date of this Contract is the date last signed below.
- 2.2. Unless otherwise terminated or extended, in writing, pursuant to other provisions of this Contract, the term of this Contract shall commence on May 20, 2025 and terminates on May 19, 2027 (the "Term").
- 2.3. Veregy provided County with a preliminary schedule covering the planning, design, and construction of the Project which is attached as Appendix A - Scope of Work (3 pages).

#### **3. Scope of Services.**

- 3.1 This is a Guaranteed Energy Cost Savings Contract for energy cost savings services (collectively, the "Services") for Project, as more fully set forth in the following documents attached this Contract: Appendix A – Scope of Work (3 pages); Appendix B – Veregy Performance Contract (9 pages); Appendix C – Design and Construction Services Fee Proposal (5 pages); Appendix D – Performance Guarantee (6 pages); Appendix E – Schedule of Savings (3 pages), which will be supplemented and replaced by a revised Appendix E upon the execution of the Guaranteed Energy Cost Savings Amendment; Appendix

F – Mandatory Federal Provisions, if applicable (8 pages); Appendix G – Guaranteed Energy Cost Savings Amendment (2 pages); Appendix H – Final Delivery and Acceptance Certificate (1 page).

- 3.2 Veregy will proceed with the Work in two phases: Phase 1 - Design and Preconstruction Services; and Phase 2 – Construction Services and Energy Guarantees. This Contract covers only Phase 1 as that is defined in the Scope. Prior to any Veregy work on Phase 2, Veregy must deliver to County a proposed GMP, or multiple GMPs, if construction is divided into multiple phases.
- 3.3 With respect to Phase 2 – Construction Services and Energy Guarantees, the Parties acknowledge that the Construction Documents may be incomplete at the time Veregy delivers the GMP proposal to County, and that Veregy may not complete the Construction Documents until after Veregy begins work on Phase 2. Nevertheless, Veregy's GMP proposal shall include all anticipated costs for the Work required for Phase 2. If County accepts Veregy's GMP proposal, Veregy will not be entitled to any increase in the GMP unless the Work required by the completed Construction Documents: (i) is required by this Contract for Guaranteed Energy Cost Savings Construction; (ii) is reasonably inferable from the incomplete construction documents submitted with the proposed GMP; (iii) is consistent with County's programmatic goals and objectives; (iv) is consistent with County's Design and Construction Standards and the general industry standards for completion of the Work; (v) is not a substantial enlargement of the scope of Work; or (vi) substantially conforms to the nature, type, kind, or quality of Work depicted in the incomplete construction documents submitted with the GMP proposal.
- 3.4 If a GMP proposal is unacceptable to County, County will promptly notify Veregy in writing. Within 14 calendar days of notification, County and Veregy will meet to discuss and resolve any differences, inconsistencies, or misunderstandings and to negotiate recommended adjustments to the Work and/or to the proposed GMP.
- 3.5 County may, at its sole discretion and based upon its sole judgment: (i) accept a GMP proposal; (ii) reject a GMP proposal; (iii) terminate the Project; or (iv) proceed to construct the Project using a Party or Parties other than Veregy.
- 3.6 If County rejects a GMP proposal, neither Party shall have any further obligation pursuant to this Contract.
- 3.7 If County accepts a GMP proposal, the Parties will complete and execute an amendment to this Contract, and County will issue a written Notice to Proceed to Veregy establishing the date that Veregy will commence Phase 2 (the "Phase Commencement Date"). Veregy shall not expend any monies for the new phase prior to receipt of the Notice to Proceed.

#### **4. Compensation and Payment.**

- 4.1 County's total payments to Veregy for Phase 1 and Phase 2 Work, including sales taxes (if applicable) will not exceed \$7,000,000.00 (the "Not-to-Exceed Amount" or "NTE amount"). The payment for Phase 1 is \$240,000. Veregy may invoice County for the sales taxes Veregy is required to pay on goods supplied to County under this Contract.
- 4.2 Veregy will invoice County on a monthly basis unless a different billing period is included in Appendix A. County must receive invoices no more than 30 calendar days after the end of the billing period in which Veregy delivered the invoiced products or services to County. County may refuse to pay for any product or service for which Veregy does not timely invoice County and, pursuant to A.R.S. § 11-622(C), will not pay for any product or service invoiced more than six months late. Veregy will cite the Contract number on all invoices. Veregy shall show sales taxes as a separate line item on invoices. Any pre-printed terms and conditions on a purchase order form do not apply to Work performed under this Contract, which is to be governed solely by the terms of this Contract, including all attached and referenced documents.
- 4.3 County may, at any time during the Term and during the retention period set forth in Section 31 below, question any payment under this Contract. If County raises a question about the propriety of a past payment,

Veregy will cooperate with County in reviewing the payment. County may set-off any overpayment against amounts due to Veregy under this or any other contract between County and Veregy. Veregy will promptly pay County any overpayment that County cannot recover by set-off.

4.4 Veregy will not perform work in excess of the GMP without prior authorization by a written Change Order executed by Pima County's Board of Supervisors or Procurement Director pursuant to the Pima County Procurement Code. Work performed in excess of the GMP without a written and properly approved Change Order is done at Veregy's own risk.

4.5 Price Guarantees. Upon acceptance by County of a GMP under Section 3.7:

4.5.1 Veregy guarantees that the sum of: (i) the actual cost of the work; (ii) Veregy's contingency; (iii) Veregy's staffing costs; (iv) the general conditions cost; and (v) Veregy's overhead and profit, will not exceed the amount in the accepted GMP. Veregy is responsible for all costs or expenses that would cause the sum of the items above to exceed the GMP unless County has adjusted the GMP by an approved change order.

4.5.2 Veregy certifies that: all unit costs supporting the GMP proposal are accurate, complete, and current at the time of negotiations; and that any other factual unit costs that Veregy may provide to County in the future to support any additional amounts that County may authorize will also be accurate and complete. County may reduce payments to Veregy if County determines that any amounts Veregy included are materially inaccurate, incomplete, or non-current factual unit costs.

5. **Insurance.** The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. County in no way warrants that the minimum limits contained herein are sufficient to protect Veregy from liabilities that arise out of the performance of the work under this Contract. Veregy is free to purchase additional insurance.

Veregy's insurance will be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers will have an "A.M. Best" rating of not less than A- VII. County in no way warrants that the above- required minimum insurer rating is sufficient to protect Veregy from potential insurer insolvency.

5.1. Minimum Scope and Limits of Insurance. Veregy will procure and maintain, until all obligations have been discharged, coverage with limits of liability not less than those stated below.

5.1.1. Commercial General Liability (CGL) – Occurrence Form with limits of \$2,000,000 Each Occurrence and \$2,000,000 General Aggregate. Policy will include bodily injury, property damage, and broad form contractual liability coverage, personal and advertising injury and products – completed operations.

5.1.2. Business Automobile Liability – Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract with a Combined Single Limit (CSL) of \$1,000,000 each accident.

5.1.3. Workers' Compensation and Employers' Liability - Statutory requirements and benefits for Workers' Compensation. In Arizona, WC coverage is compulsory for employers of one or more employees. Employer's Liability coverage- \$1,000,000 each accident and each person - disease.

5.1.4. Builder's Risk Insurance – Builder's Risk Insurance does apply to this contract. Veregy shall be required to maintain throughout the course of construction, Builder's Risk Insurance in a dollar amount equal to the full insurable value of the work under contract, which shall include "All Risk" coverage. Pima County shall be named as a "Loss Payee". Veregy shall be responsible for equipment, materials, and supplies until completion of the project and acceptance by Pima County.

- 5.1.5. Professional Liability (Errors and Omissions) Insurance – This insurance is required when soliciting work from licensed professionals. The policy limits will be not less than \$2,000,000 Each Claim and \$2,000,000 Annual Aggregate. The policy will cover professional misconduct or negligent acts for those positions defined in the Scope of Work of this contract.

In the event that the Professional Liability insurance required by this Contract is written on a claims-made basis, Veregy warrants that any retroactive date under the policy will precede the effective date of this Contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised, for a period of 2 years beginning at the time work under this Contract is completed.

5.2. Additional Insurance Requirements.

The policies will include, or be endorsed to include, as required by this written agreement, the following provisions:

- 5.2.1. Additional Insured: The General Liability and Business Automobile Liability Policies shall each be endorsed to include Pima County, its departments, districts, boards, commissions, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of Veregy.
- 5.2.2. Subrogation Endorsement: The General Liability, Business Automobile Liability and Workers' Compensation Policies shall each contain a waiver of subrogation endorsement in favor of County, its departments, districts, boards, commissions, officers, officials, agents, and employees for losses arising from work performed by or on behalf of Veregy.
- 5.2.3. Primary Insurance Endorsement: Veregy's policies shall stipulate that the insurance afforded Veregy shall be primary and that any insurance carried by County, its agents, officials, or employees shall be excess and not contributory insurance, as provided by A.R.S. § 41-621(E).
- 5.2.4. Insurance provided by Veregy shall not limit Veregy's liability assumed under the indemnification provisions of this Contract.
- 5.3. Notice of Cancellation. For each insurance policy required by the insurance provisions of this Contract, Veregy must provide to County, within 2 business days of receipt, a notice if a policy is suspended, voided, or cancelled for any reason. Such notice will be mailed, emailed, or hand-delivered to Pima County Procurement, 150 West Congress Street, 5th Floor, Tucson, Arizona 85701-1317.
- 5.4. Verification of Coverage.

Veregy will furnish County with certificates of insurance (valid ACORD form or equivalent approved by County) as required by this Contract. An authorized representative of the insurer will sign the certificates.

- 5.4.1. All certificates and endorsements, as required by this Contract, are to be received and approved by County before work commences. Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance coverages or policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- 5.4.2. All certificates required by this Contract shall be sent directly to the appropriate County Department. The Certificate of Insurance shall include County project or contract number and project description on the certificate. County reserves the right to require complete copies of all insurance policies required by this Contract at any time.



#### 5.5. Approval and Modifications.

Pima County Risk Management reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this Contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

#### 6. **Payment and Performance Bonds.**

As required by A.R.S. §§ 34-610 and 34-611 and, as a condition precedent to receiving a Notice to Proceed for any new construction phase of the Work, Veregy will deliver to County the Performance Bond and the Payment Bond, each in an amount equal to the portion of the GMP attributable to that phase of the construction work, as financial security for the faithful performance and payment of its Design- Build Period obligations hereunder. Veregy will provide for an increase in the Performance Bond and the Payment Bond to reflect any GMP adjustments, as a condition of its entitlement to the GMP adjustment.

6.1. The Performance Bond and the Payment Bond must be substantially in the form set forth in Attachment 1 hereto and must be issued by a surety company: (1) verified by County having a rating of "A-" in the latest revision of the A.M. Best Company's Insurance Report; (2) be listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) holding a certificate of authority to transact surety business in the State of Arizona, issued by the Director of the Department of Insurance.

6.2. The Performance Bond and the Payment Bond shall be released only upon the achievement of Final Completion by Veregy. In no event shall the Performance Bond or the Payment Bond serve as a limitation on the liability of Veregy under this Contract.

6.3. Veregy's failure to maintain the Performance Bond and Payment Bond in the required amounts throughout the construction phases of this Contract will constitute material breach of this Contract.

7. **Veregy's Performance.** Veregy is responsible for the professional quality, technical accuracy, timely completion, and coordination of all its efforts and other services under this Contract. Without additional compensation from County, Veregy will correct or revise any errors, omissions, or other deficiencies in all products of its efforts and other services provided. This will include resolving any deficiencies arising out of the willful or negligent acts or omissions of Veregy found during or after the course of the services performed by or for Veregy under this Contract, to the extent that such willful or negligent errors, omissions, and acts fall below the standard of care and skill that a professional Veregy in Arizona would exercise under similar conditions. Veregy is responsible for these corrections or revisions regardless of County having knowledge of or condoning/accepting the efforts or services.

8. **Excusable Delays.** Neither Party shall be liable to the other nor deemed in default under this Contract if and to the extent that such Party's performance is prevented or delayed by reason of an Uncontrollable Circumstance. For purposes of this Contract, Uncontrollable Circumstance means any act, event, or condition that: (1) is beyond the reasonable control of the Party relying on it as a justification for not performing an obligation or complying with any condition required of such Party under this Contract; and (2) materially expands the scope of, interferes with, delays, or increases the cost of performing the Party's obligations under this Contract, to the extent that such act, event, or condition is not the result of the intentional or negligent act, error, or omission, failure to exercise reasonable diligence, or breach of this Contract on the part of the Party claiming the occurrence of an uncontrollable circumstance. Excusable Delays shall not include late performance by a subcontractor unless the delay arises out of an Uncontrollable Circumstance. A Party shall extend the time of completion by a Change Order for a period of time equal to the time the Uncontrollable Circumstance prevented the delayed Party from performing in accordance with this Contract.

9. **Liquidated Damages.** Veregy agrees to achieve substantial completion by the end date as determined by mutual agreement of the Parties at time of GMP. Veregy's failure to reach Substantial Completion within the Term will substantially harm County. Because damages resulting from such a failure cannot be calculated with any degree of certainty, the Parties agree that if Veregy does not achieve Substantial Completion within the Term (as may be

amended through written Change Orders), Veregy will pay to County as liquidated damages, and not a penalty, a dollar amount not-to-exceed limits set forth in Pima Association of Governments ("PAG") Standards and Specifications, Section 108-9, for each calendar day between the deadline for Substantial Completion and the date Veregy actually achieves Substantial Completion. Dollar amount to be determined by mutual agreement of the Parties at time of GMP. The Parties further agree that the daily liquidated damages amount is fair, reasonable, and not subject to later challenge.

10. **Unilateral Change Directive.** County may issue a unilateral change directive to Veregy at any time during the term of the Contract. Upon receipt of a unilateral change directive, Veregy will promptly proceed with the performance of any change in the Work as instructed and will promptly advise County in writing of Veregy's agreement (or disagreement) with any price, performance, or schedule, if any, as may be proposed by County in the unilateral change directive. No unilateral change directive will be binding on either Party unless it has been approved by the Pima County Board of Supervisors or, if authorized, County's Procurement Director. A unilateral change directive that is signed by Veregy and approved by the Pima County Board of Supervisors or Procurement Director reflecting the Scope of Work and any price, schedule, or performance relief, if any, will be deemed a Change Order.

**11. Suspension/Termination for Convenience**

- 11.1. Suspension by County for Convenience. County may, without cause, order Veregy, in writing, to suspend or interrupt the Work in whole or in part for such period of time as County may determine necessary; but, in any case, not to exceed 60 calendar days whenever such suspension or interruption would be in the best interest of County. If County suspends the Work for convenience, an adjustment shall be made for substantiated increases in the cost of performance of the Contract, if any, including profit on the increased cost of performance, caused by suspension or interruption. No adjustment shall be made to the extent:

11.1.1. Performance is, was, or would have been so suspended or interrupted by another cause for which Veregy is responsible; or

11.1.2. An equitable adjustment is made or denied by County.

- 11.2. Termination by County for Convenience.

11.2.1. The performance of the Work under this Contract may be terminated by County, in whole or in part, in accordance with this clause whenever County reasonably determines that such termination is in the best interest of County. Any such termination will be affected by delivery to Veregy of a written Notice of Termination specifying the extent to which performance of the Work is terminated, and the date upon which such termination becomes effective.

11.2.2. If the Contract is terminated by County as provided herein, County will compensate Veregy for any Work performed, and accepted, prior to the termination, together with profit in proportion to the Work performed and accepted. The compensation shall include payment for contractual obligations reasonably incurred prior to termination. No amount will be allowed for: anticipated profit on unperformed Work; or consequential damages to Veregy resulting from the termination.

11.2.3. Termination of the Contract or any portion thereof by County for convenience will not relieve Veregy of its contractual responsibilities for Work completed.

**12. Termination of Cause.**

- 12.1. Events of Default. This Contract may be terminated for cause upon the occurrence of one or more of the following Events of Default:

- 12.1.1. If Veregy fails or neglects to carry out the Work in accordance with the provisions of the Contract Documents, and fails, after 10 calendar days written notice from County, to correct such failure or neglect and thereafter diligently pursue the Project to completion.
- 12.1.2. If Veregy materially breaches this Contract and fails, after 10 days written notice from County, to correct such breach and thereafter diligently pursue the Project to completion; or
- 12.1.3. If a custodian, trustee or receiver is appointed for Veregy, or if Veregy becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors, or Veregy causes or suffers an order for relief to be entered with respect to it under applicable federal bankruptcy law or applies for or consents to the appointment of a custodian, trustee or receiver for Veregy, or bankruptcy, reorganization, arrangement or insolvency proceedings, or other proceedings for relief under any bankruptcy or similar law or laws for the relief of debtors, are instituted by or against Veregy, and in any of the foregoing cases such action is not discharged or terminated within 60 days of its institution.

## 12.2. Remedies of County Upon an Event of Default.

- 12.2.1. Upon an Event of Default, County has the right to terminate this Contract upon an additional 7 days' written notice to Veregy provided Veregy has not commenced a cure within the 7-day period.
- 12.2.2. Without prejudice to any of County's other rights or remedies, County may:
  - 12.2.2.1. Take possession of all data, reports, and work in progress in possession of Veregy or to which Veregy otherwise has rights;
  - 12.2.2.2. Accept assignment of Subcontracts; and
  - 12.2.2.3. Finish the Work by whatever reasonable method County may deem expedient.
- 12.2.3. If County terminates the Contract under this Section 12.2, Veregy is not entitled to receive further payment until the Work is finished. If the unpaid balance exceeds costs incurred in finishing the Work, such excess may be paid to Veregy, up to the amount due Veregy to the date of the termination. If such costs exceed the unpaid balance of the Contract, Veregy will pay the difference to County.

## 13. **Dispute Resolution.**

- 13.1. In the event of any dispute between County and Veregy regarding any part of this Contract or the Contract Documents, or the Parties' obligations or performance hereunder, either Party may institute these dispute resolution procedures. The Parties shall continue performance of their respective obligations notwithstanding the existence of a dispute.
  - 13.1.1. The Parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Veregy and County each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner to avoid unnecessary losses, delays, and disruptions to the Work, Veregy and County will first attempt to resolve disputes or disagreements at the field level through discussions between Veregy's Representative and County's Representative.
  - 13.1.2. Either Party may, from time to time, call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of the Project. This meeting will be held at County's offices within 3 working days of a written request for a meeting that specifies in reasonable detail the nature of the dispute. County's Project Manager and Veregy's Project Manager will attend the meeting. These Representatives shall attempt in good faith to resolve the dispute. If unable to resolve the dispute, the Parties may agree to escalation of discussions to a higher level before proceeding to mediation, as described below.

13.1.3. If the Parties are unable to resolve the dispute through the special meeting or escalation, then either Party may request non-binding mediation. The non-requesting Party may decline the request in its reasonable discretion. If there is concurrence that any matter will be mediated, a mediator, mutually acceptable to the Parties and experienced in design and construction matters as well as in the Guaranteed Energy Cost Savings procurement method will be appointed. The Parties will share the cost of the mediator. The mediator will be given any written statements of the Parties and may review Project and any relevant documents. The mediator will call a meeting of the Parties within 10 working days after his/her appointment, which meeting will be attended by County's Project Manager and Veregy's Project Manager. Such Authorized Representatives shall attempt in good faith to resolve the dispute. During such 10-day period, the mediator may meet with the Parties separately.

13.1.4. No minutes will be kept with respect to any mediation proceedings and the comments and/or findings of the mediator, together with any written statements prepared by the Parties, will be non-binding, confidential, and without prejudice to the rights and remedies of any Party. The entire mediation process must be completed within 20 working days of the date upon which the initial special meeting is held, unless the Parties agree otherwise in writing. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

13.1.5. Nothing in this Section limits, interferes with, or delays the right of either Party to this Contract to commence judicial legal proceedings upon a breach of this Contract by the other Party, whether in lieu of, concurrently with, or at the conclusion on any non-binding mediation.

14. **No Consequential or Punitive Damages.** In no event will either Party be liable to the other or obligated in any manner to pay to the other any special, incidental, consequential, punitive, or similar damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Contract, or the material falseness or inaccuracy of any representation made in this Contract, whether such claims are based upon contract, tort, negligence, warranty, or other legal theory; provided, however, that the waiver of the foregoing damages under this Section is intended to apply only to disputes and claims as between County and Veregy. Nothing in this Section shall limit the obligation of Veregy to indemnify, defend and hold harmless County Indemnitees for any special, incidental, consequential, punitive, or similar damages payable to third-parties resulting from any act or circumstance for which Veregy is obligated to indemnify County Indemnitees hereunder. In addition, the Parties acknowledge and agree that nothing in this Section will serve as a limitation or defense with respect to any obligation of a Party to pay liquidated damages specifically provided for under this Contract.

## 15. Laws and Regulations.

15.1. Compliance with Laws. Veregy will comply with all federal, state, and local laws, rules, regulations, standards, and Executive Orders.

15.2. Licensing. Veregy warrants that it (directly or through its subcontractors) is appropriately licensed to provide all services required under this Contract and that its subcontractors will be appropriately licensed.

15.3. Choice of Law; Venue. The laws and regulations of the State of Arizona govern the rights and obligations of the Parties under this Contract. Any action relating to this Contract must be filed and maintained in the appropriate court of the State of Arizona in Pima County.

16. **Independent Contractor.** Veregy is an independent contractor. Neither Veregy, nor any of Veregy's officers, agents, or employees will be considered an employee of Pima County for any purpose or be entitled to receive any employment-related benefits, or assert any protections, under the Pima County Merit System. Veregy is responsible for paying all federal, state, and local taxes on the compensation received by Veregy under this Contract and will indemnify, defend, and hold County harmless from any and all liability that County may incur because of Veregy's failure to pay such taxes.

17. **Subcontractors.** Veregy is fully responsible for all acts and omissions of its subcontractors, and of persons directly or indirectly employed by Veregy's subcontractors, and of persons for whose acts any of them may be liable, to the same extent that Veregy is responsible for the acts and omissions of its own employees. Nothing in this Contract creates any obligation on the part of County to pay or see to the payment of any money due any subcontractor, except as may be required by law.
18. **Assignment.** Veregy may not assign its rights or obligations under this Contract, in whole or in part, without County's prior written approval. County may withhold approval at its sole discretion.
19. **Non-Discrimination.** Veregy will comply with all provisions and requirements of Arizona Executive Order 2009-09, which is hereby incorporated into this contract, including flow-down of all provisions and requirements to any subcontractors. During the performance of this Contract, Veregy will not discriminate against any employee, client, or any other individual in any way because of that person's age, race, creed, color, religion, sex, disability, or national origin.
20. **Americans with Disabilities Act.** Veregy will comply with all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36.
21. **Authority to Contract.** Veregy warrants its right and power to enter into this Contract. If any court or administrative agency determines that County does not have authority to enter into this Contract, County will not be liable to Veregy or any third-party by reason of such determination or by reason of this Contract.
22. **Full and Complete Performance.** The failure of either Party to insist, in one or more instances, upon the other Party's full and complete performance under this Contract, or to take any action based on the other Party's failure to fully and completely perform, is not a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future. The acceptance by either Party of sums less than may be due and owing it at any time is not an accord and satisfaction.
23. **Cancellation for Conflict of Interest.** This Contract is subject to cancellation for conflict of interest pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated into this Contract by reference.
24. **Key Personnel.** Veregy will employ suitably trained and skilled professional personnel to perform all services under this Contract. Prior to changing any key personnel, especially those key personnel County identified in Veregy's Statement of Qualifications relied upon in making this Contract, Veregy will obtain the approval of County.
25. **Ownership of Documents.** Ownership of all original drawings, boring logs, field data, estimates, field notes, plans, specifications, documents, reports, calculations, maps and models, and other information developed by Veregy under this Contract vests in and become the property of the County and will be delivered to County upon completion or termination of the services, but Veregy may retain record copies thereof. The Granting Agency reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes: (a) the copyright in any work developed under this Contract or any Subcontract; and (b) Any rights of copyright to which Veregy or County acquires ownership under this Contract.
26. **Notices.** Any notice required or permitted to be given under this Contract must be in writing and be served by delivery or by certified mail upon the other Party as follows:

COUNTY:

Jackson Jenkins  
Director, RWRD  
201 N. Stone 8<sup>th</sup> Fl  
Tucson, AZ 85701

VEREGY:

Veregy LLC  
Attention: Alyce Neal  
16647 Chesterfield Grove Road, Suite 200  
Chesterfield, MO 63005

27. **Non-Exclusive Contract.** Veregy understands that this Contract is Non-Exclusive and is for the sole convenience of County. County reserves the right to obtain like services from other sources for any reason.
28. **Remedies.** Either Party may pursue any remedies provided by law for the breach of this Contract. No right or remedy is intended to be exclusive of any other right or remedy and each is cumulative and in addition to any other right or remedy existing at law or at equity or by virtue of this Contract.
29. **Encumbrances.** Veregy will not directly or indirectly create or permit to be created or to remain and shall promptly discharge or bond any encumbrance or lien arising in relation to the Project or the Guaranteed Energy Cost Savings Work. Veregy's subcontracts with all materialmen, suppliers, and Subcontractors shall provide that the sole recourse for such materialmen, suppliers, and Subcontractors for non-payment shall be against the Payment Bond.
30. **Severability.** Each provision of this Contract stands alone, and any provision of this Contract found to be prohibited by law will be ineffective to the extent of such prohibition without invalidating the remainder of this Contract.
31. **Books and Records.** Veregy will keep and maintain proper and complete books, records and accounts, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County. In addition, Veregy will retain all records relating to this Contract for at least 5 years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.
32. **Public Records.**
- 32.1. Disclosure. Pursuant to A.R.S. § 39-121 et seq., and A.R.S. § 34-603(H) in the case of construction or Architectural and Engineering services procured under A.R.S. Title 34, Chapter 6, all documents submitted in response to the solicitation resulting in award of this Contract, including, but not limited to, pricing schedules, product specifications, work plans, and any supporting documents, are public records. As such, those documents are subject to release and/or review by the general public upon request, including competitors.
- 32.2. Records Marked Confidential; Notice and Protective Order. If Veregy reasonably believes that some of those records contain proprietary, trade-secret, or otherwise-confidential information, Veregy must prominently mark those records "CONFIDENTIAL." In the event a public- records request is submitted to County for records marked CONFIDENTIAL, County will notify Veregy of the request as soon as reasonably possible. County will release the records 10 business days after the date of that notice, unless Veregy, within that period, secured an appropriate order from a court of competent jurisdiction, enjoining the release of the records. County will not, under any circumstances, be responsible for securing such an order, nor will County be in any way financially responsible for any costs associated with securing such an order.
33. **Legal Arizona Workers Act Compliance.**
- 33.1. Compliance with Immigration Laws. Veregy warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Veregy's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Veregy will further ensure that each subcontractor who performs any work for Veregy under this Contract likewise complies with the State and Federal Immigration Laws.
- 33.2. Books & Records. County has the right at any time to inspect the books and records of Veregy and any subcontractor in order to verify such Party's compliance with the State and Federal Immigration Laws.
- 33.3. Remedies for Breach of Warranty. Any breach of Veregy's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, is a material breach of this Contract subjecting Veregy to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, will take



such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or to retain a replacement subcontractor (subject to County approval if SBE or DBE preferences apply), as soon as possible so as not to delay project completion.

- 33.4. **Subcontractors.** Veregy will advise each subcontractor of County's rights, and the Subcontractor's obligations, under this Section by including a provision in each subcontract substantially in the following form:

"Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to ensure that Veregy is in compliance with these requirements. Any breach of this paragraph by Subcontractor is a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

34. **Non-Waiver.** The failure of County to insist in any one or more instances upon full and complete compliance with any of the terms and provisions of this Contract or to take any action permitted as a result thereof is not a waiver or relinquishment of the right to insist upon full and complete performance of the same or any other covenant or condition either in the past or in the future. The acceptance by either Party of sums less than may be due and owing it at any time is not an accord and satisfaction.
35. **Non-Appropriation of Funds.** Notwithstanding any other provision in this Contract, County may terminate this Contract if for any reason the Pima County Board of Supervisors does not appropriate sufficient monies for the purpose of maintaining this Contract. In the event of such termination, County has no further obligation to Veregy, other than payment for services rendered prior to termination.
36. **Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Veregy engages in for-profit activity and has 10 or more employees, and if this Contract has a value of \$100,000.00 or more, Veregy certifies it is not currently engaged in, and agrees for the duration of this Contract to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
37. **Forced Labor of Ethnic Uyghurs.** Pursuant to A.R.S. § 35-394, if Veregy engages in for-profit activity and has 10 or more employees, Veregy certifies it is not currently using, and agrees for the duration of this Contract to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Veregy becomes aware during the term of the Contract that Veregy or its subcontractors are not in compliance with A.R.S. § 35-394, Veregy must notify the County within 5 business days and provide a written certification to County regarding compliance within 180 days.
38. **Heat Injury and Illness Prevention and Safety Plan.** Pursuant to Pima County Procurement Code 11.40.030, Veregy hereby warrants that if Veregy's employees perform work in an outdoor environment under this Contract, Veregy will keep on file a written Heat Injury and Illness Prevention and Safety Plan. At County's request, Veregy will provide a copy of this plan and documentation of heat safety and mitigation efforts implemented by Veregy to prevent heat-related illnesses and injuries in the workplace. Veregy will post a copy of the Heat Injury and Illness Prevention and Safety Plan where it is accessible to employees. Veregy will further ensure that each subcontractor who performs any work for Veregy under this Contract complies with this provision.
39. **No Third-Party Beneficiaries.** Unless explicitly stated otherwise elsewhere in this Contract, no person other than the Parties themselves has any rights or remedies under this Contract.
40. **Order of Precedence.** In the event of any conflict between the terms and provisions of this Agreement and those of any Schedule, Exhibit or Statement of Work, the following order of precedence shall govern: (a) first, any Amendments or Change Orders; (b) second, this Contract, exclusive of any Schedules, Change Orders, and the

General Conditions; (c) third, the Scope of Work in Appendix A; (d) fourth, Veregy Performance Agreement in Appendix B; (e) fifth, the Design and Construction Services Fee Proposal in Appendix C; and (f) sixth, Performance Guarantee in Appendix D and any other Appendices to this Agreement.

41. **Entire Agreement.** This document constitutes the entire agreement between the Parties and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein.

**SIGNATURES ON FOLLOWING PAGE**


Each Party is signing this Contract on the date below that Party's signature.

APPROVED:

\_\_\_\_\_  
Rex Scott, Chairman, Board of Supervisors

\_\_\_\_\_  
Date

VEREGY:

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Clayton Boop, Vice-President West

April 29, 2025

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Melissa Manriquez, Clerk of the Board

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Deputy County Attorney

Cindy Nguyen

\_\_\_\_\_  
Name (Please Print)

4/29/25

\_\_\_\_\_  
Date

**Appendix A Scope of Work (3 pages)****Corona de Tucson (CdT)  
Wastewater Upgrade and Rehabilitation Project  
Scope of Work (SOW)****Project Overview:**

Pima County Regional Wastewater Reclamation Department ("RWRD") is seeking a Qualified Provider pursuant to A.R.S. § 34-105 for upgrade improvements at the Corona de Tucson Water Reclamation Facility ("CdT"). CdT consists of two, 0.5 million gallons per day (MGD) bioreactors, a 0.5 MGD chlorine contact basin ("CCB"), and recharge basins for beneficial use of effluent. Flows at CdT are now approaching 500,000 gallons per day and thus necessitating the use both bioreactors and the existing CCB requires expanded capacity to meet disinfection needs for the increased flow. In addition to increasing CCB capacity, RWRD is seeking upgrades to the air distribution systems for both bioreactors including diffusion grids, high efficiency blowers, and rehabilitation of the existing aeration header piping that is compromised.

Project requirements include the following items:

- 1) The combined CCBs after the upgrade shall have an average design flow of 1.0 MGD and a peak maximum design flow of 1.3 MGD. The minimum concentration time (CT) value (chlorine residual in mg/L times contact time in minutes) target of 100 mg-min/L for E. coli inactivation is required.
- 2) Bioreactor upgrades shall consist of fine bubble diffuser grids and the installation of submersible mixers.
- 3) Blower upgrades shall consist of turbo blower styles equipped with variable frequency drives for maximized efficiency.
- 4) Aeration header shall be able to efficiently deliver total design airflow to both bioreactors.
- 5) The use of solar energy for increased energy efficiency.

**Proposed Summary Scope of Work:**

- 1) Bioaugmentation for Nocardia Control
  - a) Install bioaugmentation dispensing equipment at open trench on discharge side of screening machine.
  - b) Provide bioaugmentation product for three months of operations.
  - c) Provide one hour of training by local Professional Engineer.

## 2) Upgrade Blowers

- a) Remove and replace five existing 25 hp blowers with five new 40 hp turbo blowers.
- b) Provide and install a new blower master control panel (MCP.)
- c) Upgrade electric system to accommodate new blowers.
- d) Integrate new blower MCP into existing SCADA system.
- e) Commission equipment.
- f) Provide four hours of formal training from manufacturer's rep
- g) Provide manufacturer's recommended spare parts & one flash drive with complete O&M manuals.

## 3) Upgrade Blower Piping

- a) Replace approximately 350 feet of 8-inch underground (UG) blower pipe with 350 feet of 8-inch painted carbon steel blower pipe in trenches.
- b) Pressure test pipe.

## 4) Replace Aeration System

- a) Remove existing aeration system in two aeration tanks -
  - a. Remove blower air pipe from inside of tanks.
  - b. Remove Flygt pumps and wastewater recirculation system, including jet piping.
  - c. Remove electric for Flygt submersible pumps from pumps to disconnect switches.
- b) Install new aeration and mixing system in two aeration tanks –
  - a. Install fine bubble diffusers at sufficient capacity to meet Permit requirements.
  - b. Install mixing system to keep solids in suspension when aeration not active, following industry standards for mixing.
  - c. Install electric from existing Flygt disconnects to new mixers.
  - d. Replace motor starters.
- c) Integrate new mixer system into existing SCADA system.
- d) Program SCADA to operate aeration and mixing system to achieve Permit-required nitrogen removal.
- e) Commission system.
- f) Provide four hours of formal training by local Professional Engineer.
- g) Provide manufacturer's recommended spare parts & one flash drive with complete O&M manuals.

## 5) Expand Disinfection System

- a) Install new chlorine contact basin (CCB), as shown in CH2M Hill expansion drawings.

- b) Extend existing piping at existing CCB supply tee and install new tapping saddle in HDPE effluent piping near existing Parshall flume, to allow for design flow thru the CCB.
  - c) Install shade structure, chloring monitoring equipment, and other accessories that are installed on the existing CCB.
  - d) Install new chlorine pumps and feed piping from the existing chemical feed area to the new CCB.
  - e) Commission system.
  - f) Provide four hours of formal training by local Professional Engineer.
  - g) Provide manufacturer's recommended spare parts & one flash drive with complete O&M manuals.
- 6) Install Power Factor Correction Equipment
- a) Install power factor correction equipment at existing SES
  - b) Commission system.
  - c) Provide one hour of formal training by local Professional Engineer.
  - d) Provide manufacturer's recommended spare parts & one flash drive with complete O&M manuals.
- 7) Install Solar PV
- a) Install a ground mount solar PV system, currently sized at 309 kW-dc.
  - b) Commission system.
  - c) Provide two hours of formal training by local Professional Engineer.
  - d) Provide manufacturer's recommended spare parts & one flash drive with complete O&M manuals.

**END OF APPENDIX A**



**Appendix B Performance Contract (9 pages)**

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**VEREGY  
PERFORMANCE  
AGREEMENT**

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CUSTOMER NAME: \_\_\_\_\_  
DATE OF SUBMISSION: \_\_\_\_\_

**PERFORMANCE AGREEMENT**

This Performance Agreement, including all Appendixes, Exhibits, and Schedules referenced herein (hereinafter the "Agreement") is dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the "Effective Date") by and between Veregy West, LLC ("VEREGY"), a limited liability company, with a principal place of business at 3312 East Broadway Road, Phoenix, Arizona 85040, and Pima County, Arizona, a body politic and corporate of the State of Arizona ("CUSTOMER"), with a principal place of business at 115 N. Church Avenue, Tucson, Arizona 85701.

(VEREGY and CUSTOMER collectively referred to hereinafter as the "Parties").

**RECITALS**

**A.** CUSTOMER owns and operates certain public facilities specifically described as:

Corona de Tucson Wastewater Reclamation Facility  
110 W. Sahuarita Rd  
Corona de Tucson, AZ 85641

Such public facilities are collectively referred to herein as the "Facilities" or "Sites" or "Premises".

**B.** CUSTOMER wishes to reduce its energy consumption and energy costs, to provide operational savings, promote energy conservation, and improve the quality and functioning of its facilities.

**C.** VEREGY is a full-service performance contractor with the technical capabilities to provide services to the CUSTOMER including, but not limited to, energy and energy system auditing, engineering, design, procurement, construction management, installation, construction, training, monitoring and verification, maintenance, operation, and repair.

**D.** CUSTOMER and VEREGY desire that VEREGY design and install the improvements, as described in the Scope of Work attached hereto as Appendix "A", on the Premises under the terms and conditions of this Agreement.

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual covenants contained in this Agreement, the Parties hereto agree as follows:

**ARTICLE 1**

**GENERAL PROVISIONS**

**1.1** EXTENT OF AGREEMENT: This Agreement, including all attachments and exhibits hereto, represents the entire agreement between CUSTOMER and VEREGY and supersedes all prior negotiations, representations or agreements. This Agreement shall not be superseded by any provisions of the documents for construction and may be amended only by written instrument signed by both CUSTOMER and VEREGY. None of the provisions of this Agreement shall be modified, altered, changed or voided by any subsequent Purchase Order issued by CUSTOMER, which relates to the subject matter of this Agreement.

**1.2** As used in this Agreement, the term "Work" means the construction and other related services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by VEREGY to fulfill VEREGY's obligations, as described in Appendix A and otherwise set forth in the Contract Documents. The Work may constitute the whole or a part of the Project.

**1.3** The Project is the total design and construction of which the Work performed by VEREGY under this Agreement may be the whole or a part.

**1.4** The Contract Documents consist of this Agreement, its attachments, exhibits, schedules, and addenda.

**1.5** Installation Schedule means that schedule set out in Appendix B describing the Parties' intentions respecting the times by which the components or aspects of the Work therein set forth shall be installed and/or ready for acceptance or beneficial use by CUSTOMER.

## **ARTICLE 2**

### **VEREGY'S RESPONSIBILITIES**

#### **2.1 VEREGY Services**

**2.1.1** VEREGY shall be responsible for design and construction of the Project, as further described herein.

**2.1.2** VEREGY will assist in securing permits necessary for the Work. CUSTOMER shall pay such proper and legal fees to public officers and others as may be necessary to the due and faithful performance of the Work and which may arise incidental to the fulfilling of these specifications.

**2.1.3** VEREGY's design services consist of the three phases described in Paragraphs 2.2 through 2.4 and may include architectural and structural, mechanical, electrical, and plumbing engineering and any other services included herein ("Services").

#### **2.2 Preliminary Design Services.**

**2.2.1** VEREGY shall review the program requirements furnished by the CUSTOMER ("Program") to ascertain the requirements of the Project and shall review the understanding of such requirements with the CUSTOMER.

**2.2.2** VEREGY shall provide a preliminary evaluation of the Program and the Project budget requirements.

**2.2.3** VEREGY shall review with the CUSTOMER alternative approaches to design and construction of the Project.

**2.2.4** Based on the mutually agreed upon Program and Project budget requirements, VEREGY shall prepare, for approval by the CUSTOMER, Preliminary Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

**2.2.5** VEREGY shall submit to the CUSTOMER a Statement of Probable Construction Cost.

#### **2.4 Design Phase Responsibilities.**

**2.4.1** Based on the approved Preliminary Design Documents and any further adjustments in the scope or quality of the Project or in the Project budget authorized by the CUSTOMER, VEREGY shall prepare, for approval by the CUSTOMER; Civil/Site Construction Documents and General Construction Documents consisting of Drawings and other documents, as determined by VEREGY, to fix and describe the size and character of the Work as to architectural, structural, electrical and other systems, materials and such other elements as may be appropriate. Upon completion of the foregoing Construction Documents, VEREGY shall submit the same to CUSTOMER for approval. CUSTOMER shall promptly review and either approve or notify VEREGY in writing of any proposed modifications within a reasonable time not to exceed fourteen (14) calendar days from CUSTOMER's receipt.

**2.4.2** After the Services are completed and the design of the Work has been approved by CUSTOMER, VEREGY shall provide CUSTOMER with the price for VEREGY to perform the construction of the Work ("Contract Price"). Provided that the Contract Price does not exceed \$7,000,000.00 ("Approved Amount"), the Parties shall execute the Amendment, in the form attached hereto as Appendix G, thereby establishing the Contract Price. CUSTOMER acknowledges and agrees that an amount less than or equal to the Approved Amount has been approved by CUSTOMER's Board of Supervisors as an acceptable Contract Price for the Work. Upon execution of the Amendment, CUSTOMER shall provide a Notice to Proceed to VEREGY at which time VEREGY shall proceed with the construction of the Work, as described in Section 2.5.

**2.4.3** If the Contract Price exceeds the Approved Amount, then the Contract Price shall require the approval of CUSTOMER's Board of Supervisors. If the Contract Price is approved by CUSTOMER's Board of Supervisors, then the Amendment shall be executed by the Parties thereby establishing the agreed upon Contract Price. In the event that the

CUSTOMER's Board of Supervisors does not approve the Contract Price, then the CUSTOMER shall pay VEREGY for the Services rendered herein, as described in Section 2.4.4.

**2.4.4** The cost of VEREGY furnishing the Services, as described in Sections 2.2 through 2.4, shall be included in the Cost of the Work, provided that an Amendment has been executed by the Parties. If the Amendment is not executed by the Parties, then the CUSTOMER shall pay VEREGY the sum of \$240,000.00\_("Design Service Price") for the Services. Payment shall be made within thirty (30) days of receipt of an invoice from VEREGY by the CUSTOMER.

**2.4.5** VEREGY hereby grants CUSTOMER a non-exclusive perpetual, paid-up, royalty-free license to the design of the Work. CUSTOMER may make any changes, additions, and deletions to the design, in whole or in part, including (without limitation) destruction of any tangible portion of the design, all without further permission or consent of VEREGY, provided, however, that VEREGY shall bear no liability whatsoever for modifications to the design made by others.

**2.4.6** Reuse of any of these documents by CUSTOMER to complete, repair, or on extensions of the Work or on any other project shall be at the CUSTOMER's sole expense and risk. VEREGY shall be permitted to retain copies, including reproducible copies, of any or all documents for such use as it may require. Use by VEREGY of the design in other applications shall be at its own risk.

**2.4.7** VEREGY shall perform the Services described in Sections 2.2 through 2.4 as expeditiously as is consistent with professional skill and care and the orderly progress of the work. Upon request of the CUSTOMER, VEREGY shall submit for the CUSTOMER's approval, a schedule for the performance of VEREGY's Services, and shall include allowances for periods of time required for the CUSTOMER's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the CUSTOMER, shall not, except for reasonable cause, be exceeded by VEREGY. If the VEREGY is delayed in the performance of its Services by any fault, neglect, error or omission of the CUSTOMER, or by any other matter beyond the reasonable control of the VEREGY, then the VEREGY shall receive an equitable extension of time to perform its Services. If the delay is due to the acts or inactions of the CUSTOMER, then the VEREGY shall be entitled to an equitable adjustment of the Design Service Price to the extent that the VEREGY's costs are in fact increased by such delay.

**2.4.8** The standard of care for the Services performed by VEREGY under this Agreement shall be the care and skill ordinarily used by members of the professional's profession practicing under similar conditions at the same time and locality.

## **2.5 Responsibilities with Respect to the Performance of the Work**

**2.5.1** VEREGY will provide construction supervision, inspection, labor, materials, tools, construction equipment and subcontracted items necessary for the execution and completion of the Work.

**2.5.2** VEREGY shall keep the premises in an orderly fashion and free from unnecessary accumulation of waste materials or rubbish caused by its operations. If VEREGY damages property not needed for the Work, VEREGY shall repair the property to its pre-existing condition unless CUSTOMER directs otherwise. At the completion of the Work, VEREGY shall remove and properly dispose of waste material supplied by VEREGY under this Agreement as well as all its tools, construction equipment, machinery and surplus material. VEREGY shall dispose of all waste materials or rubbish caused by its operations.

**2.5.3** VEREGY shall give all notices and comply with all laws and ordinances legally enacted as of the date of execution of the Agreement governing the execution of the Work. Provided, however, that VEREGY shall not be responsible nor liable for the violation of any code, law or ordinance caused by CUSTOMER or existing in CUSTOMER's property prior to the commencement of the Work.

**2.5.4** VEREGY, and its contractors or subcontractors, shall comply with all applicable federal, state, and municipal laws and regulations that regulate the health and safety of its workers while providing the Work and shall take such measures as required by those laws and regulations to prevent injury and accidents to other persons on, about or adjacent to the site of the Work. It is understood and agreed, however, that VEREGY shall have no responsibility for elimination or abatement of health or safety hazards created or otherwise resulting from activities at the site of the Work carried on by persons not in a contractual relationship with VEREGY, including CUSTOMER, CUSTOMER's contractors or subcontractors, CUSTOMER's tenants, or CUSTOMER's visitors. CUSTOMER agrees to cause its contractors, subcontractors, and tenants to comply fully with all applicable federal, state and municipal laws and regulations governing health and safety and to comply with all reasonable requests and directions of VEREGY for the elimination or abatement of any such health or safety hazards at the site of the work.

## **2.7 Warranties and Completion**

**2.7.1** VEREGY warrants CUSTOMER good and clear title to all equipment and materials furnished to CUSTOMER pursuant to this Agreement free and clear of liens and encumbrances. VEREGY hereby warrants that all such equipment and materials shall be of good quality and shall be free from defects in materials and workmanship, including installation and setup, for a period of 2 years from the date of beneficial use or substantial completion of the equipment or portion of the Work in question, provided that no repairs, substitutions, modifications, or additions have been made, except by VEREGY or with VEREGY's written permission, and provided that after delivery such equipment or materials have not been subjected by non-VEREGY personnel to accident, neglect, misuse, or use in violation of any instructions supplied by VEREGY. VEREGY's sole liability hereunder shall be to repair promptly or replace defective equipment or materials, at VEREGY's option and at VEREGY's expense. The limited warranty contained in this Section 2.7.1 shall constitute the exclusive remedy of CUSTOMER and the exclusive liability of VEREGY for any breach of any warranty related to the equipment and materials furnished by VEREGY pursuant to this Agreement.

**2.7.2** In addition to the warranty set forth in Section 2.7.1 above, VEREGY shall, at CUSTOMER's request, assign to CUSTOMER any and all manufacturer's or installer's warranties for equipment or materials not manufactured by VEREGY and provided as part of the Work, to the extent that such third-party warranties are assignable and extend beyond the one (1) year limited warranty set forth in Section 2.7.1.

**2.7.3** The warranties set forth herein are exclusive, and VEREGY expressly disclaims all other warranties, whether written or oral, implied or statutory, including but not limited to, any warranties of merchantability and fitness for a particular purpose, with respect to the equipment and materials provided hereunder. VEREGY shall not be liable for any special, indirect, incidental or consequential damages arising from, or relating to, this limited warranty or its breach.

**2.7.4** VEREGY's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by VEREGY, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

## **2.8 Hazardous Materials**

**2.8.1** VEREGY and its subcontractors shall not be required to handle, remove, come into contact with, dispose of, or otherwise work with hazardous materials existing on the project site at the date of this Agreement or resulting, either directly or indirectly, from any acts or omissions of CUSTOMER, its employees, agents or assigns, or any of its other contractors or subcontractors. "Hazardous materials" as used herein includes all hazardous or toxic substances or materials as may be so designated by federal, state or local governmental entities. "Hazardous materials" shall also include fungus and mold. If, during the performance of the Work, the presence of hazardous materials is discovered or reasonably suspected, VEREGY shall notify CUSTOMER of such discovery or suspicion and shall be permitted to immediately cease all work which requires contact with or exposure to such hazardous materials, until the CUSTOMER has made arrangements for the removal of the same. VEREGY shall be entitled to an extension of the Contract Time for ceasing work pursuant to this Section.

**2.8.3** Unless prior to the execution of this Agreement, VEREGY received written notification from CUSTOMER of the existence of Hazardous Materials on the site, and said notice included a description of the Hazardous Materials, and the quantity and location of the Hazardous Materials, CUSTOMER is hereby representing to VEREGY that CUSTOMER is not aware of any Hazardous Materials present at the site.

## **ARTICLE 3**

### **CUSTOMER'S RESPONSIBILITIES**

**3.1** CUSTOMER shall provide full information regarding requirements for the Work and will cooperate with VEREGY during design phase to set forth the CUSTOMER's design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements. During the construction phase, CUSTOMER shall provide VEREGY full information regarding the requirements for the performance of the Work.

**3.2** CUSTOMER shall designate a representative who shall be fully acquainted with the Work, and who has authority to approve changes in the scope of the Work and render decisions promptly.

**3.3** The CUSTOMER shall furnish, where needed by VEREGY, a legal description and a certified land survey of the Premises, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; and to the extent able locations, dimensions and complete data pertaining to existing buildings, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.

**3.4** CUSTOMER shall furnish the services of soil engineers or other consultants when such services are deemed necessary by VEREGY. Such services shall include test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations for determining subsoil, air and water conditions, with reports and appropriate professional recommendations. The CUSTOMER shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports of existing facilities as may be reasonably required by VEREGY for the design and performance of the Work.

**3.5** CUSTOMER shall secure and pay for all necessary approvals, easements, assessments, permits and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities, including charges for legal and auditing services.

**3.6** The services, information, surveys and reports required by Paragraphs 2.6.2, 3.1, 3.3, 3.4 and 3.11 shall be furnished with reasonable promptness and at the CUSTOMER's sole expense, and VEREGY shall be entitled to rely upon the accuracy and completeness thereof.

**3.7** If CUSTOMER becomes aware of any fault or defect in the Work, it shall give prompt written notice thereof to VEREGY and if such notice is not promptly given, CUSTOMER shall be responsible for any additional repair or remedial costs which could have been avoided if such notice had been promptly given.

**3.8** The services and information required by the above paragraphs shall be furnished with reasonable promptness at CUSTOMER's expense and VEREGY shall be entitled to rely upon the accuracy and the completeness thereof.

**3.9**

**3.10** CUSTOMER shall comply with all applicable federal, state and municipal laws and regulations governing occupational health and safety in the areas where VEREGY will perform services and/or perform the Work.

**3.11** CUSTOMER represents and warrants that, except as otherwise disclosed in this Agreement, in the areas where VEREGY will undertake Work or provide services, there are no: (a) materials or substances classified as toxic or hazardous either (i) on or within the walls, floors, ceilings or other structural components, or (ii) otherwise located in the work area, including asbestos or presumed asbestos-containing materials, formaldehyde, containers or pipelines containing petroleum products or hazardous substances, etc.; (b) situations subject to special precautions or equipment required by federal, state or local health or safety regulations; or (c) unsafe working conditions. CUSTOMER shall notify VEREGY of any changes or updates that occur during the course of the Agreement. If any such materials, situations or conditions, whether disclosed or not, are in fact discovered by VEREGY or others and provide an unsafe condition for the performance of the Work or services, the discovery of the material, situation or condition shall constitute a cause beyond VEREGY's reasonable control and VEREGY shall have the right to cease or not commence the Work until the area has been made safe by CUSTOMER or CUSTOMER's representative, at CUSTOMER's expense.

## **ARTICLE 4**

### **SUBCONTRACTS**

**4.1** At its exclusive option, VEREGY may subcontract some or all of the Work. VEREGY warrants that it (directly or through its subcontractors) is appropriately licensed to provide all services required under the Contract and that its subcontractors will be appropriately licensed.

**4.2** A Subcontractor is a person or entity who has a direct contract with VEREGY to provide work, labor and materials in connection with the Work. The term Subcontractor does NOT include any separate contractors employed by CUSTOMER or such separate contractors' subcontractors.

**4.3** For the purposes of this Agreement, no contractual relationship shall exist between CUSTOMER and any Subcontractor. VEREGY shall be responsible for the management of its Subcontractors in their performance of their Work,



and VEREGY shall be responsible to pay the subcontractors. Nothing in this Agreement creates any obligation on the CUSTOMER's part to pay or see to the payment of any money due to any subcontractor. VEREGY will also be fully responsible for all acts and omissions of its subcontractors and of persons directly or indirectly employed by VEREGY's subcontractors, and of persons whose acts any of them may be liable, to the same extent that VEREGY will be responsible for the acts and omissions of its own employees.

## **ARTICLE 5**

### **INSTALLATION AND ACCEPTANCE**

**5.1** The Work to be performed under this Agreement shall be commenced and substantially completed as set forth in the Installation Schedule attached hereto as Appendix B.

**5.2** If VEREGY is delayed at any time in the progress of performing its obligations under this Agreement by any act of neglect of CUSTOMER or of any employee or agent of CUSTOMER or any contractor employed by CUSTOMER; or by changes ordered or requested by CUSTOMER in the Work performed pursuant to this Agreement; or by labor disputes, fire, unusual delay in transportation or deliveries, the availability or unavailability of equipment, tools or materials, adverse weather conditions or other events or occurrences which could not be reasonably anticipated; or unavoidable casualties; or by any pandemic, international, national or regional health crisis or condition or any federal, state or local directive, declaration of emergency or order to suspend, shut down or suspend business in general or the Work in particular, resulting from said pandemic or crisis, that impacts the provision of labor or interferes with VEREGY's or any of VEREGY's subcontractor's ability to procure materials, supplies or equipment, or that otherwise disrupts or shuts down the jobsite, either temporarily or for an extended duration ("Pandemic Delay"); or any other problem beyond VEREGY's reasonable control ("Force Majeure" or an "Excusable Delay"), then the time for performance of the obligations affected by such Excusable Delay shall be extended by the period of any delay actually incurred as a result thereof. If any delay, or cumulative delays, within CUSTOMER's control, extends beyond ten (10) days, CUSTOMER shall reimburse VEREGY for all additional costs resulting therefrom. VEREGY shall be entitled to additional compensation for any added costs associated with the performance of the Work caused by any Pandemic Delay.

**5.3** VEREGY shall provide Delivery and Acceptance Certificates in a form acceptable to CUSTOMER and VEREGY (the "Delivery and Acceptance Certificates") for the Work provided pursuant to the Schedule identified in Appendix H. Upon receipt of each Delivery and Acceptance Certificate, CUSTOMER shall promptly inspect the Work performed by VEREGY identified therein and execute each such Delivery and Acceptance Certificate as soon as reasonably possible, but in no event later than ten (10) days after delivery of the same by VEREGY, unless CUSTOMER provides VEREGY with a written statement identifying specific material performance deficiencies that it wishes VEREGY to correct. VEREGY will use reasonably diligent efforts to correct all such material deficiencies and will give written notice to CUSTOMER when all such items have been corrected. The Parties intend that a final Delivery and Acceptance Certificate will be executed for the Work as soon as all Work is installed and operating. Execution and delivery by CUSTOMER of such final Delivery and Acceptance Certificate with respect to the Work shall constitute "Final Acceptance" of such Work performed by VEREGY pursuant to the Installation Schedule.

**5.4** In the event of significant delay or price increase of material, or equipment occurring during the performance of the Agreement through no fault of VEREGY, the Contract Price, time of completion or contract requirements shall be equitably adjusted by change order in accordance with the procedures of the Agreement. A change in price of an item of material, equipment, or energy will be considered significant when the price of an item increases 15% between the date of this Agreement and the date of purchase.

## **ARTICLE 6**

### **PRICE AND PAYMENT**

#### **6.1 Price**

**6.1.1** The Contract Price shall be established upon the execution of the Amendment. The Contract Price shall be subject to the adjustments set forth in Articles 5 and 7 or as otherwise provided in this Agreement.

**6.1.2** The Contract Price is based upon laws, codes and regulations in existence as of the date this Agreement is executed. Any changes in or to applicable laws, codes and regulations affecting the cost of the Work shall be the responsibility of CUSTOMER and shall entitle VEREGY to an equitable adjustment in the Contract Price and schedule.

**6.1.3** The Contract Price will be modified for delays caused by CUSTOMER and for Changes in the Work, all pursuant to Article 7.

**6.1.4** The license fees for all licensed software are included in the Contract Price to be paid by CUSTOMER as identified in this Article 6.

**6.1.5** If, at any time, CUSTOMER requests overtime work which requires overtime or premium pay, VEREGY shall be entitled to add such premium or overtime pay to the Contract Price, plus VEREGY's overhead and profit.

**6.1.6** The Contract Price does not include the items of work specifically excluded in Appendix A. If CUSTOMER requests VEREGY to perform any of the work expressly excluded in said Appendix, the cost for this additional work, plus VEREGY's overhead and profit, shall be added to the Contract Price.

## **ARTICLE 7**

### **CHANGES IN THE PROJECT**

**7.1** A Change Order is a written order signed by CUSTOMER and VEREGY authorizing a change in the Work or adjustment in the price, or a change to the Installation Schedule described in Appendix B. Each Change Order shall describe the change in the work, the amount of adjustment, if any, to the Contract Price, and the extent of any adjustment to the completion date.

**7.2** CUSTOMER may request VEREGY to submit proposals for changes in the Work. Unless otherwise specifically agreed to in writing by both parties, if VEREGY submits a proposal pursuant to such request but CUSTOMER chooses not to proceed, CUSTOMER shall issue a Change Order to reimburse VEREGY for any and all costs incurred in preparing the proposal.

#### **7.3 Claims for Concealed or Unknown Conditions**

The Contract Price has been based on normal site conditions, without allowance for any additional work that might be caused by unanticipated site conditions. If conditions are encountered at the site that are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents, or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions, and, if appropriate, an equitable adjustment to the Contract Price and Installation Schedule shall be made by a Change Order. Said adjustment in Contract Price shall include VEREGY's overhead and profit. If agreement cannot be reached by the Parties, the party seeking an adjustment in the Price or Installation Schedule may assert a claim in accordance with Paragraph 7.4.

**7.4** If VEREGY wishes to make a claim for an increase in the Contract Price or an extension in the Installation Schedule it shall give CUSTOMER written notice thereof within a reasonable time after the occurrence of the event giving rise to such claim. This notice shall be given by VEREGY before proceeding to execute the Work, except in an emergency endangering life or property, in which case VEREGY shall have the authority to act, in its discretion, to prevent threatened damage, injury or loss. Claims arising from delay shall be made within a reasonable time after the delay. Increases based upon design and estimating costs with respect to possible changes requested by CUSTOMER shall be made within a reasonable time after the decision is made not to proceed with the change. No such claim shall be valid unless so made. Any change in the Price or the Installation Schedule resulting from such claim shall be authorized by Change Order.

#### **7.5 Emergencies**

In any emergency affecting the safety of persons or property, VEREGY shall immediately notify CUSTOMER and act reasonably to prevent threatened damage, injury or loss. Any increase in the Price or extension of time claimed by VEREGY on account of emergency work shall be determined as provided in Section 7.4.

## **7.6 Mutual Waiver of Consequential Damages**

In no event shall either party be liable for any special, incidental, indirect, speculative, remote, or consequential damages arising from, relating to, or connected with the work, equipment, materials, or any goods or services provided hereunder. Each party waives claims against the other party for consequential damages arising out of or relating to this Agreement.

**7.7 Ownership of Certain Proprietary Property Rights.** CUSTOMER shall not, by virtue of this Agreement, 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. VEREGY shall grant to CUSTOMER a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for CUSTOMER to continue to operate, maintain, and repair the equipment in a manner that will yield maximum energy production and/or energy consumption reductions.

**7.8 Ownership of Any Existing Equipment.** Ownership of any equipment and materials presently existing at the Premises at the time of execution of this Agreement shall remain the property of the CUSTOMER even if it is replaced or its operation made unnecessary by work performed by VEREGY pursuant to this Agreement. If applicable, VEREGY shall advise CUSTOMER in writing of all equipment and materials that will be replaced at the Premises and CUSTOMER shall, within five (5) Business Days of VEREGY's notice, designate in writing to VEREGY which replaced equipment and materials that should not be disposed of off-site by VEREGY (the "Retained Items"). It is understood and agreed to by both Parties that CUSTOMER shall be responsible for and designate the location and storage for the Retained Items. VEREGY shall be responsible for the disposal of replaced equipment and materials, except for the Retained Items. VEREGY shall use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto, or if it is unreasonable to avoid damage altogether, to minimize the damage done.

**7.9 Utility Work.** CUSTOMER expressly understands and agrees that the definition "Force Majeure" contained in this Agreement also includes any Interconnection Premises work that may need to be performed by the local Utility ("Utility") in order for VEREGY to fully implement the Project. "Interconnection Premises" shall mean any distribution or transmission lines and other facilities that may be required to connect equipment supplied under this Agreement to an electrical distribution/transmission system owned and maintained by the Utility. Any Interconnection Premises work that may be required will be performed by the Utility under a separate contract between CUSTOMER and the Utility. VEREGY shall prepare all Interconnection Premises documentation and collect all Interconnection Premises information in a time frame to ensure maximum benefit to the CUSTOMER and to comply with all requirements. VEREGY shall also cooperate and assist the CUSTOMER in facilitating the Interconnection Facilities work.

**7.10 Energy Credits.** CUSTOMER shall own all right, title, and interest associated with or resulting from the development, construction, installation and ownership of any facilities installed on the Project ("Generating Facilities"). VEREGY is not responsible for compliance, certification, reporting, or other requirements associated with the sale, ownership, rights, or certifications for these energy credits, but VEREGY will provide advice and consultation to the CUSTOMER as requested. On behalf of the CUSTOMER, VEREGY shall use commercially reasonable efforts to assist CUSTOMER in the preparation and submission to the applicable agencies all applications and documentation necessary for all available energy production incentives, grants or rebates ("Incentive Funds"). This shall include commercially reasonable efforts assisting the CUSTOMER with compliance with the Utility's net metering program and all interconnection agreements and related documents for the CUSTOMER's participation and utilization of the benefits of that program. While VEREGY has experience in assisting customers with procuring Incentive Funds, VEREGY cannot guarantee that these Incentive Funds will be received by the CUSTOMER. Procurement, or lack thereof, of these Incentive Funds will not alter the Contract Price of this Agreement, or payment timeline associated with standard progress invoicing and payments.

**END OF APPENDIX B**

**APPENDIX C -**  
**Design and Construction Services Fee Proposal (5 pages)**

**ARTICLE 1 – GENERAL**

Veregy will develop the Guaranteed Maximum Price (GMP) as provided for in this Contract and appendices. The GMP Proposal for the entire Work (or portions thereof) will be presented in a format acceptable to County and will include the clarifications or assumptions upon which the GMP Proposal is based.

A. Unless otherwise directed by County, each GMP proposal will include all of the following components:

1. Summary of the GMP: A summary of the GMP with a total for each of the components of the GMP defined in the Construction Provisions (i.e., “Cost of the Work”, “VeregyContingency”, “Fee”). If there will be multiple GMPs, then the GMP Summary will be presented in a spreadsheet format with each successive GMP in a separate column with the total GMP in the rightmost column.
2. Description of Work: a brief description of the Work to be performed for the Project or phase(s) to which the GMP proposal applies. Exclusions must be clearly stated.
3. List of Plans and Specifications used for GMP Proposal: A list of the Plans and Specifications with latest issuance date including all addenda used in preparation of the GMP proposal. (Date stamped and signed by Veregy).
4. List of clarifications, assumptions and exclusions: A list of the clarifications, assumptions, and exclusions by Veregy with regard to the Scope of Work in the GMP proposal, to supplement the information contained in the documents.
5. Project Schedule in Critical Path Method format: A Critical Path Method (CPM) diagram construction schedule. An updated Project Management Plan will also be submitted with each GMP proposal.
6. A calendared spend plan to show a cash-flow forecast based on the proposed construction schedule, schedule of values and GMP. If the construction covered by the GMP overlaps construction performed under a prior GMP, their cash flows will be consolidated into a single cash-flow statement.
7. Subcontractor Selections / SBE Requirements / Utilization Form / Letters of Intent: A summary of the subcontractor selections, including an SBE requirements section addressing the goals set for the Project and the current status on meeting the Project goals. The Utilization Form and Letters of Intent must be attached when subcontractor selection has been made prior to final GMP submittal. Subcontractor selections must conform to the approved Subcontractor Selection Plan provided by Veregy.

B. Veregy must keep the submittal package as simple as possible and submit it on 8 ½ x 11-inch paper. Color or shading must be kept to a minimum. If used, the color or shading must not affect the reproduction of the submittal in black and white.

C. The Parties may, by agreement, use a simplified GMP format for smaller projects or phases, so long as the documents supporting the GMP clearly delineate the Work—or that portion of the Work—to which the GMP applies and provide a schedule for completion of the Work.

**ARTICLE 2 – COST OF THE WORK**

The term “Cost of the Work” means costs necessarily incurred by Veregy in the proper performance of the Work. Such costs will be at rates not higher than the standard paid at the place of the Project except with prior consent of County. The Cost of the Work includes only the items set forth in this Article.

1. Wages of direct employees of Veregy performing the Work at the site or, with County's agreement, at

locations off the site, provided, however, that the costs for those employees of Veregy performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

2. Wages or salaries of Veregy's supervisory and administrative personnel engaged in the performance of the Work and who are located at the site or working off-site to assist in the coordination, production or transportation of material and equipment necessary for the Work.
3. Wages or salaries of Veregy's personnel stationed at Veregy's principal or branch offices and performing the payment of the salaries of Veregy's project management, estimating, administrative, scheduling, safety and other personnel when working on items of Work specifically related to the Project at Veregy's principal office, Design Consultant(s)' office, job site, field office or any other location for that portion of their time spent in the performance of the Work for the Project shall be included in the Cost of the Work. The cost of Vice Presidents and the President of Veregy is included in Veregy's Fee and is not part of the Cost of the Work. The reimbursable costs of personnel stationed at Veregy's principal or branch offices shall include a fifty percent (50%) markup to compensate Veregy for the Project related overhead associated with such personnel.
4. Costs incurred by Veregy for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design- Builder, excluding bonuses, to the extent such costs are based on wages and salaries paid to employees of Veregy covered under paragraphs 1 through 3 of this Article.
5. The reasonable portion of the cost of travel, accommodations and meals for Veregy's personnel necessarily and directly incurred in connection with the performance of the Work.
6. Payments properly made by Veregy to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.
7. Costs incurred by Veregy in repairing or correcting defective, damaged, or nonconforming Work, provided that such defective, damaged, or nonconforming Work was beyond the reasonable control of Veregy, or caused by the ordinary mistakes or inadvertence, and not the negligence of Design- Builder or those working by or through Veregy. If the costs associated with such defective, damaged or nonconforming Work are recoverable from insurance, Subcontractors or Design Consultants, Veregy will exercise best efforts to obtain recovery from the appropriate source and credit County if recovery is obtained.
8. Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.
9. Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned Veregy employees or subcontractors that are not fully consumed in the performance of the Work and which remain the property of Veregy, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.
10. Costs of removal of debris and waste from the project site.
11. The reasonable costs and expenses incurred in establishing, operating, and demobilizing the site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying, and reasonable petty cash expenses.
12. Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment, and hand tools not customarily owned by the workers, which are provided by Veregy at the project site, whether rented from Veregy or others, and incurred in the performance of the Work.
13. Premiums for insurance and bonds required by the Contract or the performance of the Work.
14. All fuel and utility costs incurred in the performance of the Work.
15. Sales, use, privilege, or similar taxes, tariffs, or duties incurred in the performance of the Work.
16. Costs for permits, royalties, licenses, tests, and inspections incurred by Veregy as a requirement of the Contract Documents provided, however, that costs for re-tests and re-inspections are not included in

the Cost of Work to the extent the re-tests and re-inspections result from re-work or re-testing due to Veregy's failure to meet County requirements under this Contract.

17. Deposits which are lost, except to the extent caused by Veregy's negligence or delay.
18. Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property except to the extent the emergency was caused by Veregy's negligence.
19. Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by County.

### **ARTICLE 3 - COSTS NOT TO BE REIMBURSED**

The following are excluded from the Cost of the Work:

1. Compensation for Veregy's personnel stationed at Veregy's principal or branch offices, except as provided for in paragraphs 1 through 3 of Article 2.
2. Overhead and general expenses, except as provided for elsewhere in this Contract, or which may be recoverable for changes to the Work.
3. The cost of Veregy's capital used in the performance of the Work.
4. Costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

### **ARTICLE 4 - DISCOUNTS, REBATES AND REFUNDS**

- A. Cash discounts obtained on payments made by Veregy will accrue to County if (1) before making the payment, Veregy included them in an Application for Payment and received payment therefor from County, or (2) County has deposited funds with Veregy with which to make payments; otherwise, cash discounts will accrue to Veregy. Trade discounts, rebates, refunds, and amounts received from sales or surplus materials and equipment will accrue to County, and Veregy will make provisions so that they can be secured.
  1. Cost of the Work will be credited with all insurance policy discounts, performance and payment bond rebates or refunds, refunds or return premiums from any subcontractor default insurance, refunds or rebates from any Veregy controlled insurance programs applicable to the project, merchandise rebates of any nature, refunds of any nature, insurance dividends; and a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to the job.
  2. "Cash" discounts which may accrue to Veregy will be limited to a maximum of one and one-half percent (1.5%) of invoice cost. Any portion of "Cash" discounts greater than one and one-half percent (1.5%) will automatically accrue to County if Veregy is eligible to take advantage of the discounts.
- B. Amounts that accrue to County in accordance with the provisions of Paragraph 4.A.1 will be credited to County as a deduction from the Cost of the Work.

### **ARTICLE 5 - CONTINGENCY FUND**

**Generally:**

- A. The GMP may include a Veregy Contingency in the amount stated in the GMP Summary. Each line item of the GMP Summary for which risk remains for the Veregy after the Design and Preconstruction Phase will carry an agreed upon contingency that can be traced back to the initial cost model. Subject to the terms of the Contract Documents and with prior notification to and approval by County, Veregy may allocate from and apply against the Veregy Contingency increases in the Cost of the Work that could not have been reasonably anticipated by a Veregy using the standard of care and skill that a professional Veregy in Arizona would exercise under similar conditions at the time the GMP was established or for increases in General Condition Costs. County may disallow such Veregy Contingency use and deny reimbursement in the absence of prior notice or if County determines that the use was not consistent with the Contract documents.

- B. Veregy may not apply, use, or allocate from the Veregy Contingency any amounts for any of the foregoing purposes that are the result of a material breach or material failure to perform by Veregy, any Subcontractor, or vendor (except as necessary to replace any subcontractor, or vendor because of the bankruptcy or failure of such entity to perform), or any entity for which any of them are liable or responsible at law or under the Contract Documents, or for any non-allowable costs of the Work.
- C. Each application of the Veregy Contingency by Veregy will be reflected (with narrative explanation) on the Application for Progress Payment for the period during which Veregy makes such application. Application of Veregy Contingency to any particular risk event should not exceed the agreed associated amount of the Veregy Contingency previously assigned to the specific line item in the GMP. Any portion of the Veregy Contingency remaining unapplied at final completion will be a credit against and reduce the GMP. When Veregy utilizes Veregy's Contingency funds, Veregy will make the appropriate changes to the Schedule of Values with the next regular progress payment request. Veregy will deduct the amount of Veregy's Contingency funds used from Veregy's Contingency line item and add the same amount to the line item on the Schedule of Values where the funds were used. If Veregy's Contingency funds are used for a new line item that was not included in the original Schedule of Values, Veregy will so indicate.
- D. The Veregy Contingency is not cumulative across multiple GMPs.
- E. County's Contingency is a sum of money in the Contract but not included in the GMP that may be used at the discretion of County to cover any increases in Project costs that result from County-directed changes, changed site conditions, or additional costs of Allowance Items that exceeds the Allowance. County's Contingency will be added to the GMP amount provided by Veregy, the sum of which will be the full Contract price for construction. Markups for the Construction Fee, taxes, and overhead will be applied by Veregy at the time that County's Contingency is used.
- F. County's Contingency and the Veregy Contingency will not be combined into a single project contingency.

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## ATTACHMENT 1 TO APPENDIX C

### GMP Summary Format

CONSTRUCTION		AMOUNT
	<b>CONSTRUCTION COSTS:</b>	
	Cost of Construction	\$ 4,224,990.00
	Cost of Design	\$ 240,000.00
	Veregy Contingency	\$ 232,374.45
	<b><i>Subtotal Direct Construction Costs</i></b>	<b>\$ 4,697,364.45</b>
	<b>INDIRECT CONSTRUCTION COSTS:</b>	
	General Conditions	\$ 466,596.92
	Overhead	\$ 581,341.04
	Insurance	\$ 63,884.16
	Payment and Performance Bonds	\$ 57,072.98
	Subtotal Direct Construction Cost + Gen Cond, Overhead, Bonds, Insurance	\$ 5,866,259.54
	Construction Fee (As a percentage of Subtotal above or to exclude any items above)	\$ 498,632.06
	Subtotal Direct Construction Cost + Gen Cond, Overhead, Bonds, Insurance and Fee	\$ 6,364,891.60
	Arizona Gross Receipts Tax	\$ 18,000.00
	Subtotal Direct Construction Cost + Gen Cond, Overhead, Bonds, Insurance, Fee and Tax	\$ 6,382,891.60
	<b>GUARANTEED MAXIMUM PRICE (GMP)</b>	<b>\$ 6,382,891.60</b>
	<b>OTHER PROJECT COSTS:</b>	
	County Contingency	\$ 617,108.40
	<b>TOTAL CONTRACT COST</b>	<b>\$ 7,000,000.00</b>

Costs other than the Cost of Design are subject to County's acceptance of Veregy's GMP Proposal.

**END OF APPENDIX C – DESIGN AND CONSTRUCTION SERVICES FEE PROPOSAL**



## APPENDIX D

### ENERGY GUARANTEE (6 pages)

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#### 1. DEFINITIONS

When used in this Agreement, the following capitalized words shall have the meanings ascribed to them below:

**“Avoided Energy Costs”** are the avoided costs calculated by multiplying the Energy Savings by the Energy Rates as established in Appendix E. These rates are established based on current billing and/or rate schedules as applicable. Future rates may vary from the rates identified in Appendix E. Avoided Energy Cost may also include, but are not limited to, Savings from power factor correction, taxes, ratchet charges, rate changes and other utility tariff charges that are reduced as a result of the VEREGY involvement.

**“Avoided Operational Costs”** is defined as the reduction in Operational Costs achieved as a result of the implementation of the Retrofit. These savings are as agreed to between VEREGY and CUSTOMER, and as such are not verified. Avoided Operational Costs, if any, are shown in Appendix E.

**“Avoided Related Capital Expenditure Costs”** is defined as planned or budgeted expenses for the replacement of systems or equipment that would have occurred had the Work not been performed and are agreed to between VEREGY and CUSTOMER. These savings are as agreed to between VEREGY and CUSTOMER, and as such are not verified. Avoided Related Capital Expenditure Costs, if any, are shown in Appendix E.

**“Baseline Period”** is the defined period of time chosen to represent the Facilities' operations and energy use prior to the implementation of the Energy Conservation Measures.

**“Baseline Period Energy Use or Demand”** is the energy consumption or demand by a piece of equipment or a site occurring during the Baseline Period without adjustments. Baseline physical conditions, such as equipment counts, nameplate date, and control strategies, will typically be determined through surveys, inspections, and/or metering at the site.

**“Commissioning Period”** refers to the period between Final Completion and Final Retrofit Acceptance as defined herein. This period will be used to “fine tune” and adjust each system to perform the energy and operational savings as designated in Appendix E. This period is a minimum of 12 months unless specifically agreed upon otherwise in this Agreement. This period can be extended beyond 12 months at the mutual Agreement of VEREGY and CUSTOMER.

**“Energy Use and Operational Cost Avoidance Guarantee Practices”** are those practices identified in Appendix E, intended to achieve Energy Savings, resulting Avoided Energy Costs, and/or Avoided Operational Costs.

**“Energy Costs”** may include the cost of electricity and fuels to operate HVAC equipment, Facility mechanical and lighting systems, and energy management systems, and the cost of water and sewer usage, as applicable.

**“Energy Conservation Measure (ECM)”** is the installation of equipment or systems, or modification of equipment or systems as described in Appendix A.

**“Energy Rates”** are Energy Costs per unit of energy.

**“Energy Savings”** is the reduction in energy use or demand as relative to the energy use or demand identified during the Baseline Period. This equates to (Baseline Period Energy) – (Reporting Period Energy) ± Adjustments. This also includes energy production from systems such as photovoltaic systems, wind turbines, etc.

**“Facilities”** shall mean those buildings where the energy use and operational cost savings will be realized.

**"F.E.M.P."** shall mean the Federal Energy Management Program of the U.S. Department of Energy and its Measurement and Verification Guidelines for Federal Energy Projects (November 2015, or later versions). The F.E.M.P. guidelines classify measurement and verification approaches as Option A, Option B, Option C, and Option D. The F.E.M.P. guidelines are based on the International Performance Measurement and Verification Protocol (I.P.M.V.P.) and were written to be fully consistent with it. It is intended to be used by Federal procurement teams consisting of contracting and technical specialists. The focus of F.E.M.P. guidelines is on choosing the M&V option and method most appropriate for specific projects.

**"Financing Document"** refers to that document executed between CUSTOMER and a third-party financing entity providing for payments from CUSTOMER third-party financing entity.

**"Final Project Acceptance"** refers to CUSTOMER acceptance of the installation of the ECMs as described in Appendix A.

**"First Guarantee Year"** is defined as the period beginning on the first (1<sup>st</sup>) day of the month following the date of Final Acceptance of the Work installed and ending on the day prior to the first (1<sup>st</sup>) anniversary thereof.

**"Guarantee Period"** is defined as the period beginning on the first (1<sup>st</sup>) day of the First Guarantee Year and ending on the last day of the final Guarantee Year.

**"Guarantee Year"** is defined as the First Guarantee Year and each of the successive twelve (12) month periods commencing on the anniversary of the commencement of the First Guarantee Year throughout the Term of this Agreement.

**"Guaranteed Savings"** is defined as the amount of Energy Savings, resulting Avoided Energy Costs as determined using the rates as identified in Appendix E, Avoided Operational Costs, and Avoided Future Costs necessary to pay for the cost of the Work incurred by CUSTOMER in each Guarantee Year (as identified in Section 3.1 hereof).

**"I.P.M.V.P."** International Performance Measurement and Verification Protocol (2022 or later version) provides an overview of current best practice techniques available for measurement and verification of performance Agreements. This document is the basis for the F.E.M.P. protocol and is fully consistent with it. The techniques are classified as Option A, Option B, Option C, and Option D.

**"Measurement and Verification Plan"** (M&V Plan) is defined as the plan providing details on how the Guaranteed Energy Savings will be verified.

**"Operational Costs"** shall include the cost of operating and maintaining the Facilities, such as, but not limited to, the cost of inside and outside labor to repair and maintain the ECMs, the cost of custodial supplies, the cost of replacement parts, the cost of deferred maintenance, the cost of lamp and ballast disposal, and the cost of new capital equipment.

**"Option A" Retrofit Isolation with Key Parameter(s) Measurement** is a verification approach used for ECMs in which energy use or demand of the equipment can be isolated from that of the remainder of the Facility. Key parameters impacting the Energy Savings are measured pre- and post-installation, while some parameters may be estimated. This is the most cost effective method for verification of savings. Option A involves:

- Identifying key parameters to be measured; and
- Parameters that are not impacted by the ECM have been determined and;
- Operational Verification, which includes confirming:
  - The equipment and/or systems that were to be installed under this Agreement have been installed; and
  - The installed equipment is operating and functioning in accordance with the specifications in the Agreement
  - The installed equipment components or systems *continue, during the term of the Agreement*, to meet the specifications of the Agreement and are maintained by CUSTOMER or VEREGY as required per the Agreement.

**"Option B" Retrofit Isolation with All Parameter Measurement** is a verification approach used for ECMs in which energy use or demand of the equipment can be isolated from that of the remainder of the Facility, and the ECM has variable loads and operating hours. All parameters impacting the Energy Savings are measured pre- and post-installation. Option B involves:

- Identifying all parameters associated with the Energy Savings; and
- Operational Verification, as outlined under Option A.

**"Option C" Whole Facility** is a verification approach where Energy Savings are determined by measuring post-retrofit energy use at the whole Facility or sub-Facility level and comparing it to the measured baseline energy use. This is typically done through utility billing data. This verification approach is more often used when the ECM affects many systems within a Facility. Adjustments are made to the Baseline Energy Use to reflect operational or external changes from the Baseline Period to the Guarantee Year. Operational Verification is performed as identified under Option A.

**"Option D" Calibrated Simulation** is a verification approach where baseline energy use is determined using a calibrated simulation and is compared to a simulation of Guarantee Year energy use. Option D can involve measurements of energy use both before and after the Retrofit for specific equipment or energy end use as needed to calibrate the simulation program. Periodic inspections of the equipment may also be warranted. Energy consumption is calculated by developing calibrated hourly simulation models of whole-building energy use, or equipment sub-systems in the baseline mode and in the post-installation mode and comparing the simulated annual differences for either an average year or for conditions that correspond to the specific year during either the baseline or post-installation period. Operational Verification is performed as identified under Option A.

**"Retrofit"** is the work provided by VEREGY as defined by the "ECMs".

**"Savings"** is defined as avoided, defrayed, or reallocated costs.

**"Stipulated Savings"** is defined as Energy Savings that have calculated and documented using industry engineering standards.

**"Term"** shall have the meaning as defined in Section 2 hereof.

**"Total Guarantee Year Savings"** is defined as the summation of Avoided Energy, Operational and Future Costs realized by Facilities in each Guarantee Year as a result of the Retrofit provided by VEREGY as well as Excess Savings, if any, carried forward from previous years.

## **2. TERM AND TERMINATION**

**2.1 Guarantee Term.** The Term of this Guarantee Period shall commence on the first (1<sup>st</sup>) day of the month following the date of Final Project Acceptance of the Work installed pursuant to this Agreement and shall terminate at the end of the Guarantee Period unless terminated earlier as provided for herein. The Term of this Guarantee Period is defined in Section 1 of Appendix E.

**2.2 Guarantee Termination.** Should this Agreement be terminated in whole or in part for any reason prior to the end of the Term, the Guaranteed Savings for the Guarantee Year in which such termination becomes effective shall be prorated as of the effective date of such termination, with a reasonable adjustment for seasonal fluctuations in Energy and Operational Costs, and the Guaranteed Savings for all subsequent Guarantee Years shall be null and void.

## **3. SAVINGS GUARANTEE**

**3.1 Guaranteed Savings.** VEREGY guarantees to CUSTOMER that the identified Facilities will realize the total Avoided Energy, Operational, and Future Costs through the combined value of all ECMs over the Term of the Agreement as defined in Section 1 of Appendix E, as amended or adjusted by the execution of Appendix K, Design-Build Amendment, together with a revised Appendix E, as described in the Design-Build Amendment. In no event

shall the Savings Guarantee provided herein exceed the total contract value for the Work under this Agreement. Notwithstanding any other provision of this Agreement requiring savings reconciliation or verification, the Total Guarantee Year Savings in each Guarantee Year are stipulated and agreed to by both parties to this Agreement to equal the Avoided Energy, Operational, and Future Cost amounts set forth in Appendix E, as amended or adjusted by the execution of Appendix K, Design Build Amendment and the revised Appendix E, and shall be deemed realized upon the date of final Project Acceptance. The total Avoided Energy, Operational, and Future Cost and increase in billable revenues due to the ECMs are guaranteed to cover the costs of the payments for the measures; and VEREGY will reimburse CUSTOMER for the difference between the Guaranteed Savings and the actual Savings.

**3.1.1 Additional Savings.** Additional energy and/or operational cost avoidance that can be demonstrated as a result of VEREGY's efforts that result in no additional costs to CUSTOMER beyond the costs identified in this Agreement will be included in the guaranteed savings reconciliation report for the applicable Guarantee Year(s).

**3.1.2 Savings Prior to Final Retrofit Acceptance.** All Avoided Energy and Operational Costs realized by CUSTOMER that result from activities undertaken by VEREGY prior to Final Project Acceptance, including any utility rebates or other incentives earned as a direct result of the installed ECMs provided by VEREGY, will be applied toward the Guaranteed Savings for the First Guarantee Year.

**3.1.3 Cumulation of Savings.** The Guaranteed Savings in each Guarantee Year are considered satisfied if the Total Guarantee Year Savings for such Guarantee Year equals or exceeds the Retrofit and Support Costs for such Guarantee Year or the amount identified in Section 1 of Appendix E hereto, as amended or adjusted by the execution of Appendix K, Design Build Amendment.

**3.1.4 Excess Savings.** In the event that the Total Guarantee Year Savings in any Guarantee Year exceed the Guaranteed Savings required for that Guarantee Year, such Excess Savings shall be a credit to VEREGY and any remaining Excess Savings shall be carried forward and applied against Guaranteed Savings shortfalls in any future Guarantee Year.

**3.1.5 Savings Shortfalls.** In the event that the Total Guarantee Year Savings in any Guarantee Year is less than the Guaranteed Savings required for that Guarantee Year, after giving credit for any Excess Savings carried forward from previous Guarantee Years pursuant to Section 3.1.4. VEREGY shall, upon receipt of written demand from CUSTOMER, compensate CUSTOMER the amount of any such shortfall, limited by the value of the guarantee, within thirty (30) days. Resulting compensation shall be VEREGY's sole liability for any short fall in the Guaranteed Savings. VEREGY shall, at no cost to CUSTOMER, have the option to make additional improvements or changes to the work to avoid future shortfalls.

**3.2 Savings Reconciliation Documentation.** VEREGY will provide CUSTOMER with a Guaranteed Savings Reconciliation Report after the first Guarantee Year and beyond as determined in this Agreement, if applicable. CUSTOMER will assist VEREGY in generating the Guaranteed Savings Reconciliation Report by providing VEREGY with copies of all bills pertaining to Energy Costs within two (2) weeks following CUSTOMER's receipt thereof, together with access to relevant records relating to such Energy Costs. CUSTOMER will also assist VEREGY by permitting access to any maintenance records, drawings, or other data deemed necessary by VEREGY to generate the said report. Data and calculations utilized by VEREGY in the preparation of its Guaranteed Savings Reconciliation Report will be made available to CUSTOMER along with such explanations and clarifications as CUSTOMER may reasonably request.

**3.2.1 Acceptance of Guarantee Reconciliation.** At the end of each Guarantee Year CUSTOMER will have forty-five (45) days to review the Guaranteed Savings Reconciliation Report and provide written notice to VEREGY of non-acceptance of the Guarantee Savings for that Guarantee Year. Failure to provide written notice within forty-five (45) days of the receipt of the Guaranteed Savings Reconciliation Report will deem it accepted by CUSTOMER. If the annual Guaranteed Savings have been met after the first year, the Guarantee will be deemed realized for the entire Guarantee Term.

**3.2.2 Guaranteed Savings Reconciliation.** Guaranteed Savings will be determined in accordance with the methodology(s), operating parameters, formulas, and constants as described below and/or defined in Appendix E and/or additional methodologies defined by VEREGY that may be negotiated with CUSTOMER at any time.

For reconciliation of Guaranteed Savings using the method consistent with I.P.M.V.P. and/or F.E.M.P. Options A and/or B:

For each ECM, VEREGY will employ an M&V Plan which may be comprised of any or all of the following elements:

1. Pre-retrofit measurement of energy consumption or demand
2. Post-retrofit measured energy consumption or demand
3. Post-retrofit measured hours of operation
4. Post-retrofit energy and demand charges
5. Sampling plan
6. Stipulated Values

The value of the Energy Savings during each Guarantee Year will be derived from the measured data and engineering formulae included herein, and the applicable energy charges as identified in Appendix E, as amended or adjusted by the execution of Appendix K, Desing Build Amendment. In some cases, energy usage and/or demand will be calculated from measured variables that directly relate to energy consumption, demand or cost, such as, but not limited to, measured flow, temperature, current, voltage, enthalpy or pressure.

For reconciliation of Guarantee Savings employing the method of utility bill analysis consistent with F.E.M.P. Option C:

Energy usage for the Facilities for such Guarantee Year will be summarized and compared with the adjusted Baseline Period energy usage for the Facilities through the use of energy accounting software. The difference between the adjusted Baseline Period energy usage and the Guarantee Year energy usage will be multiplied by the applicable Energy Rate as defined in Appendix E, as amended or adjusted by the execution of Appendix K, Desing Build Amendment, to calculate the Avoided Energy Cost. A Baseline Period will be specified in Appendix E for the purpose of utility bill analysis.

For reconciliation of Guarantee Savings verification employing the method consistent with I.P.M.V.P. and/or F.E.M.P. Option D:

For each ECM, VEREGY will employ an M&V Plan which may be comprised of any or all of the following elements:

The value of the Energy Savings will be derived from a calibrated simulation of either the whole building or of sub-systems in the building to determine the difference in the performance of the specific equipment being replaced. This method may entail as needed one-time measurements of the performance of the energy consuming systems in the building in order to calibrate the simulation model. Energy usage for the Facilities for such Guarantee Year will be derived through the use of simulation programs.

**3.3 Operational Cost Avoidance.** The agreed-upon Avoided Operational Cost as described in Appendix E, as amended or adjusted by the execution of Appendix K, Desing Build Amendment, will be deemed realized upon execution of this Agreement and will begin to accrue on the date of the completion and acceptance of each Retrofit improvement. These Savings are representative of information provided by CUSTOMER consisting of either whole or partial budgeted operational costs and as such, it is hereby understood and agreed that CUSTOMER is wholly responsible for assuring that these budgeted Operational Costs are accurate and achievable.

**3.4 Baseline Period Energy Use Adjustments.** Baseline Period Energy Use shall be adjusted to reflect: changes in occupied square footage; changes in energy-consuming equipment; changes in the operation of the Facilities; changes in Energy and Operational Cost Avoidance Guarantee Practices adversely affecting energy consumption and/or demonstrated operational changes; changes in weather between the Baseline Period and the Guarantee Year; and documented or otherwise conclusively established metering errors for the Baseline Period and/or any Guarantee Year adversely affecting energy usage measurement.

**3.4.1 Facility Operational Changes.** Except in the case of emergencies CUSTOMER agrees it will not, without the consent of an Authorized Representative of VEREGY: make any significant deviations from the applicable Energy and Operational Cost Avoidance Guarantee Practices; put any system or item of equipment in a permanent "on" position, if the same would constitute a deviation from the applicable Energy and Operational Cost Avoidance Guarantee Practices; or assume manual control of any energy management system or item of equipment, if the same would constitute a deviation from the applicable Energy and Operational Cost Avoidance Guarantee Practices.

**3.4.2 Hours and Practices.** To achieve these Energy Savings, VEREGY and CUSTOMER agree upon the operating practices listed in Appendix E.

**3.4.3 Activities and Events Adversely Impacting Savings.** CUSTOMER shall promptly notify VEREGY of any activities known to CUSTOMER which adversely impact: VEREGY's ability to realize the Guaranteed Savings and VEREGY shall be entitled to reduce its Guaranteed Savings by the amount of any such adverse impact to the extent that such adverse impact is beyond VEREGY's reasonable control.

**3.5 Guarantee Adjustment.** VEREGY's Guaranteed Savings obligations under this Agreement are contingent upon: (1) CUSTOMER following the Energy and Operational Cost Avoidance Guarantee Practices set forth herein and in Appendix E, as amended or adjusted by the execution of Appendix K, Desing Build Amendment; (2) no alterations or additions being made by CUSTOMER to any of the Covered systems and Equipment without prior notice to and Agreement by VEREGY; (3) CUSTOMER sending all current utility bills to VEREGY within two (2) weeks after receipt by CUSTOMER, if CUSTOMER fails to provide current utility bills for a period of time in excess of six (6) months VEREGY may, at its sole discretion, deem the Guarantee Savings obligation met during that period and any successive periods, and (4) VEREGY's ability to render services not being impaired by circumstances beyond its control. To the extent CUSTOMER defaults in or fails to perform fully any of its obligations under this Agreement, VEREGY may, in its sole discretion, adjust its Guaranteed Savings obligation; provided, however, that no adjustment hereunder shall be effective unless VEREGY has first provided CUSTOMER with written notice of CUSTOMER's default(s) or failure(s) to perform and CUSTOMER has failed to cure its default(s) to perform within forty-five (45) days after the date of such notice.

**3.5.1 Guarantee Weather Adjustment.** Where applicable, VEREGY may, in its sole discretion, adjust the Guaranteed Savings obligation to correct for any energy production and/or system performance that has been negatively impacted as a result of weather including, but not limited to, Global Horizontal Irradiance and Insolation (GHI), Direct Normal Irradiance and Insolation (DNI), Diffuse Horizontal Irradiance and Insolation (DHI), temperature, Cooling Degree Day (CDD), Heating Degree Day (HDD), humidity, wind speed, etc.

**End of Appendix D**

## **APPENDIX E**

### **SCHEDULE OF SAVINGS (3 pages)**

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#### **1. Savings Summary**

The total Avoided Energy, Operational and Related Capital Expenditure Costs over the Term of the Agreement are \$[X] as defined by the following:

- Annual Avoided Energy Costs are not less than \$[X] as listed in 3.
- Annual Avoided Operational Costs are not less than \$[X] as listed in 3.
- Annual Avoided Related Capital Expenditure Costs are \$[X] as listed in 3.

The Term of this Agreement is for [XX] years from the first (1st) day of the month following the date of Final Project Acceptance of the Work.

#### **2. Energy Rates and Costs**

**2.1 Energy Rates.** Actual Energy Rates are determined by reviewing current Energy Costs per unit of energy. Historically, Energy Costs have increased an average of [X]% per year for CUSTOMER. VEREGY may escalate rates at an average of [X]% annually or use the actual rates, whichever is greater, to determine total Avoided Energy Costs over the Term of this Agreement. The rates used for this Agreement are detailed in the table below.

##### **Energy Rates**

[INSERT TABLES OF ACTUAL ENERGY RATES USED TO CALCULATE SAVINGS FOR EACH BUILDING]

**2.2 Baseline Period Energy Use and Costs.** The Baseline Period is defined as [X] to [X]. The Baseline Period Energy Use and Costs for the Facilities are:

[INSERT TABLES OF MONTHLY BASELINE ENERGY USE AND COSTS FOR EACH BUILDING]

#### **3. Guaranteed Savings**

VEREGY guarantees to CUSTOMER that the identified Facilities will realize the total Guaranteed Savings through the combined value of all ECMs over the Term of the Agreement. The total Guaranteed Savings in each Guarantee Year is verified as specified in this Agreement, and this verification method is agreed to by VEREGY and CUSTOMER. Avoided Operational and Future Costs as given below are calculated values based on industry standard information and information provided by CUSTOMER and are agreed to values. No verification of Operational and Future Cost Savings is performed.

Energy Conservation Measures Savings Guarantee Table

Facility	ECM #	ECM Description	Energy Savings				Avoided Energy Costs \$					Guarantee	
			kW	kWh	Gas	Water	kW \$	kWh \$	Gas \$	Water \$	Total Projected Energy Costs Savings \$	% Guarantee	Total Guaranteed Energy Costs Savings \$
Total													

VEREGY and CUSTOMER agree that the total Avoided Energy Costs for each ECM over the term of the Agreement will be based on an escalation factor for the costs of utilities as given in 2.1.

**Avoided Operational Cost Savings.** Operational Savings are based on the concepts given in the table below. The operational cost savings identified below are deemed satisfied upon Agreement execution. Avoided future cost savings are determined by the cost to implement this project over the term of the project.

Operational Savings Methodology Table

Facility	ECM #	ECM Description	Operational Savings Concept	Operational Savings \$
Total				

VEREGY and CUSTOMER agree that the total Operational Savings for each ECM over the term of the Agreement will be based on an escalation factor of [X%].

**Related Capital Expenditures.** Related capital expenditures have been calculated as follows, subject to such amendments and adjustments as are made upon the execution of Appendix K, Design Build Amendment:

Total Project Cost / Agreement Term

OR

Insert Cost estimate if required by the Jurisdiction



4. **Reporting.** VEREGY will provide CUSTOMER with a Guaranteed Savings Reconciliation Report(s) according to the schedule below. CUSTOMER will assist VEREGY in generating the savings reconciliation report by providing VEREGY with all information requested as identified in Section 3.2 of Appendix D. Data and calculations utilized by VEREGY in the preparation of its Guaranteed Savings Reconciliation Report will be made available to CUSTOMER along with such explanations and clarifications as CUSTOMER may reasonably request.

**Guaranteed Savings Reconciliation Report Schedule**

	<b>Report Delivered</b>	<b>Savings Represented</b>
Report 1	90 days following end of Guarantee Year	Year 1 Savings
<b>Subsequent Reporting Years</b>	<b>90 days following end of Guarantee Year</b>	<b>Subsequent Year Savings</b>

The fees associated with the Guaranteed Savings Reconciliation Report are given in Appendix C.

5. **Savings Measurement & Verification Plan**

VEREGY will verify the savings using the methodologies given in the table below. Calculation” means the savings have been calculated and agreed to by CUSTOMER and VEREGY. “Measurement” requires measurements to determine the actual retrofit performance. In the “Measurement” cases, the measured parameters, time of measurement and quantity of equipment to be measured are identified. The actual operation of the Facility is the responsibility of CUSTOMER. This includes properly maintaining the equipment, the future hours of operation based on a change in mission, or capacity and variations in weather or unit energy costs.

After review of the measurement and verification protocol options, CUSTOMER and VEREGY have agreed that measurements noted in this attachment meet CUSTOMER’S needs for verification of Energy Savings.

**Measurement and Verification Methodology for Energy Conservation Measures**

Facility	ECM #	ECM Description	IPMVP Option	Measurement and Verification Procedures		
				Method	Measured Parameter	Measurement Interval

The following describes the Measurement and Verification procedures, formulas, and estimated values which may be used in the calculation of the Energy Savings. % of calculated savings that are guaranteed are given in the Energy Conservation Measures Savings Guarantee Table.

**End of Appendix E**

**APPENDIX F (8 pages)**

**MANDATORY FEDERAL PROVISIONS**

1. Contractor confirms that it is in compliance with the following federal requirements for the Work:
    - (a) The Civil Rights Act of 1964;
    - (b) The Civil Rights Act of 1968;
    - (c) The Civil Rights Act of 1866;
    - (d) The Civil Rights Act of 1870;
    - (e) The Civil Rights Act of 1871;
    - (f) The Civil Rights Attorneys' Fees Awards Act of 1976;
    - (g) The Equal Pay Act of 1963;
    - (h) The Age Discrimination in Employment Act;
    - (i) Executive Orders 11246, 11375, 11478, 11126, 12050, 12067, 12086, 12144, 12068, 11141, 11701, 12138, 11625, and 13496;
    - (j) Any and all regulations implementing any Federal Requirements;
    - (k) Any and all successor Federal Requirements and/or implementing regulations regarding the foregoing; and
    - (l) All standards and regulations which have been or shall be promulgated by the parties or agencies administering any of the foregoing statutes or orders found in subparagraphs (a), (b) or (c) (above herein after collectively referred to as EEO laws). ("Federal Requirements")
  2. In addition, Contractor shall comply with all applicable federal equal employment statutes and regulations, including but not limited to:
    - (a) The Equal Opportunity Clause found at 41 CFR §60-1.4;
    - (b) The listing of employment opening (Veterans) clause found at 41 CFR § 60-250.3;
    - (c) The affirmative action compliance program clause found at 41 CFR §60-1.7;
    - (d) The employment of the handicapped clause found at 41 CFR §60-711.3; and
    - (e) The minority business enterprises subcontracting program, the small business subcontracting program, the women-owned business enterprises program and the construction contractors affirmative action requirements found at 41 CFR §60-4.1, et seq., ("EEO Requirements").
- The promulgated contract clauses for each EEO Requirement are incorporated herein by reference and made a part hereof for all purposes as more specifically described below.
3. Contractor shall have and exercise full responsibility for compliance with applicable Federal Requirements and the EEO Requirements for itself, its agents, employees, material suppliers and subcontractors with respect to any and all portions of the Work.
  4. Contractor will furnish all information and reports required by such Requirements and will permit Customer reasonable access to its books, records, and accounts directly related to the Project for the purpose of auditing and investigation to ascertain compliance with such Requirements.
  5. Contractor shall include such Requirements in every contract or purchase order, binding each and every one of its subcontractors and vendors to all applicable Federal Requirements and EEO Requirements.
  6. Contractor shall be bound by the following EEO Requirements:
    - (a) Equal Opportunity Clause.
      - (1) **Contractor shall comply with the equal opportunity clause promulgated in 41 CFR § 60-1.4(a).** 41 CFR § 60-1.4(a) is incorporated herein by reference and made a part hereof for all purposes pursuant to 41 CFR § 60-1.4(d). Contractor shall include the equal opportunity clause in each of its nonexempt subcontracts pursuant to 41 CFR § 60-1.4(c).

- (2) Contractor shall comply with the equal opportunity clauses promulgated in 48 CFR §§ 52.222.26, 52.222.27, and 52.222-21. Said sections are duplicated and incorporated herein, made a part hereof for all purposes. Contractor shall include the equal opportunity clauses in each of its nonexempt subcontracts as required in said sections.
- (3) (3) EEO-1 Report. Contractor shall file annually, on or before September 30, complete and accurate reports on Standard Form 100 (EEO-1) promulgated jointly by the Office of Federal Contract Compliance Programs, the Equal Employment Opportunity Commission and Plans for Progress or such form as may hereafter be promulgated in its place if Contractor (i) is not exempt in accordance with 41 CFR § 60-1.5; (ii) has 50 or more employees; (iii) is a prime contractor or first tier subcontractor; and (iv) has a contract, subcontract or purchase order amounting to \$50,000 or more or serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: Provided, That any subcontractor below the first tier which performs Work pursuant to a subcontract with Contractor shall be required to file such a report if it meets requirements of (i), (ii), and (iv) above.
- (4) Each subcontractor required above to submit reports shall file such a report with the contracting or administering agency within 30 days after the award to it of a contract or subcontract, unless such subcontractor has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually, or at such other intervals as the Director, Office of Federal Contract Compliance Programs (OFCCP) of the United States Department of Labor, or his or her designee, may require. The Director may extend the time for filing any report.
- (5) Failure to file timely, complete and accurate reports as required constitutes noncompliance under the equal opportunity clause and is grounds for the imposition by the Director of sanctions as authorized.

(c) Equal Opportunity for Workers with Disabilities. Contractor shall comply with the equal opportunity clause promulgated in 41 CFR § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities. 41 CFR § 60-741.5(a) is incorporated herein by reference and made a part hereof for all purposes pursuant to 41 CFR § 60-741.5(d). Contractor shall include the equal opportunity clause in each of its nonexempt subcontracts pursuant to 41 CFR § 60-741.5(b).

(d) Employment of Veterans. Contractor shall comply with the equal opportunity clause promulgated in 41 CFR § 60-250.5(a). 41 CFR § 60-250.5(a) is incorporated herein by reference and made a part hereof for all purposes pursuant to 41 CFR § 60-250.5(d). Contractor shall include the equal opportunity clause in each of its nonexempt subcontracts pursuant to 41 CFR § 60-250.5(b).

(e) Utilization of Minority Business Enterprises. 41 CFR § 1-1 1310-2 requires, if the value of this contract is \$10,000 or more, that (1) be included; if the value is \$500,000 or more, that (2) be included: 1. It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts and 2. The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of the contract. As used in the contract, the term "Minority Business Enterprise" means a business, at least 50-percent of which is owned by minority group members or, in the case of the publicly owned business, at least 51-percent of the stock of which is owned by minority group members.

(f) Disabled Veterans, Recently Separated Veterans, Active Duty Wartime or Campaign Badge Veterans, And Armed Forces Service Medal Veterans. Contractor shall comply with the employee notice clause requirement promulgated in 41 CFR § 60-300.5(a). 41 CFR § 60-300.5(a) is incorporated herein by reference and made a part hereof for all purposes pursuant to 41 CFR § 60-300.5(d). Contractor shall include this same provision in each of its subcontracts.

(g) Notification of Employee Rights Under the National Labor Relations Act. Contractor shall comply with the employee notice clause requirement promulgated in 29 CFR § 471.2 and set forth in 29 CFR part 471, appendix A to subpart A. 29 CFR part 471, appendix A to subpart A is incorporated herein by reference and made a part hereof for all purposes pursuant to 29 CFR 471.2(b). Contractor shall include this same provision in each of its subcontracts other than those exempted pursuant to 29 CFR § 471.3.

7. Compliance with Inflation Reduction Act. The Department of the Treasury (“Department”) and the Internal Revenue Service (“IRS”) plan—but have yet—to issue guidance regarding the provisions of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E, and 179D of the Internal Revenue Code (“Code”), as amended or added by Public Law 117-169, 136 Stat. 1818 (August 16, 2022), commonly known as the Inflation Reduction Act of 2022 (“IRA”). The Department and IRS have issued a notice requesting comments on general as well as specific questions pertaining to the prevailing wage, apprenticeship, domestic content, and energy community requirements for increased or bonus credit (or deduction) amounts under those respective provisions of the Code. See Notice 2022-51, “Request for Comments of Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022,” dated October 5, 2022.

Customer may seek to qualify for increased credit amounts under §§ 30C, 45, 45Q, 45V, 45Y, 45Z, 48, 48C, and 48E, or an increased deduction amount under § 179D, if certain prevailing wage and apprenticeship requirements are satisfied. In addition, Customer may seek to claim an increased credit amount under §§ 45L and 45U for satisfying prevailing wage requirements. Further, Customer may seek to qualify for bonus credit amounts under §§ 45, 48, 45Y, and 48E if certain domestic content requirements are satisfied. Finally, Customer may seek to qualify for increased credit amounts under §§ 45, 48, 45Y, and 48E for investment in energy communities.

Contractor shall use its best effort to comply with the guidance provided by the Department and IRS as identified in this section 6(h). To the extent, such guidance is identical to the Requirements to which Contractor has otherwise affirmed compliance within this Exhibit H, Contractor reaffirms its compliance with such Requirements for purposes of the IRA. Contractor shall consult with Customer regarding its ability to comply with such guidance as the guidance becomes available. However, Contractor does not and shall not affirm compliance with such guidance which may be in conflict with or in excess of the Requirements previously identified in this Exhibit H. Contractor shall not be responsible for any representation made by Customer on its application for or any other communication with the Department or IRS regarding a credit or increased credit and shall not be liable for any penalty or loss of credit due to Contractor’s failure to comply with such guidance which is in conflict with or in excess of the Requirements otherwise provided for herein.

### **Davis Bacon Labor Standards Provisions / Contractor Requirements**

#### **SECTION 29 CFR 5.5 – Contract Provisions and Related Matters**

(1) **Minimum wages.** (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the

work in a prominent and accessible place where it can be easily seen by the workers. Local Borrowers may obtain wage determinations from the U. S. Department of Labor's web site, [www.wdol.gov](http://www.wdol.gov).

(ii)(A) The Local Borrower, on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The WIFA award official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Local Borrower agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Local Borrower to the WIFA award official. The WIFA award official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA Davis Bacon Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the WIFA award official or will notify the WIFA award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Local Borrower do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the WIFA award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) **Withholding.** The Local Borrower shall upon its own action or upon written request of WIFA, EPA award official or an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written

notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records.** (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Local Borrower. Such documentation shall be available on request of WIFA or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5 (a)(1) based on the most recent payroll copies for the specified week. **The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number).** The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Local Borrower for transmission to WIFA or EPA, if requested by EPA, WIFA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the Local Borrower.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of WIFA, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or WIFA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on

the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the Local Borrower, WIFA, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility.** (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) **Contract Work Hours and Safety Standards Act.** The Local Borrower shall insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) **Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done



under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Local Borrower, upon its own action or upon written request of the EPA Award Official or an authorized representative of the Department of Labor shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR Sec. 5.1, the Local Borrower shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Local Borrower shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of WIFA, EPA and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job

**END OF APPENDIX F**

**APPENDIX G**  
**GUARANTEED ENERGY COST SAVINGS AMENDMENT (2 pages)**

**PIMA COUNTY REGIONAL WASTEWATER RECLAMATION DEPARTMENT**

**PROJECT:** Guaranteed Energy Cost Savings Services – Pima County - Veregy

**CONTRACTOR:** Veregy West, LLC  
3312 East Broadway Road  
Phoenix, Arizona 85040

**CONTRACT NO.:** PO2500012265

**AMENDMENT:**

**AMOUNT:**

**FUNDING:** RWRD RESERVE FUNDS – 50010FD

This Guaranteed Energy Cost Savings Amendment (the "Amendment") is incorporated into the accompanying Guaranteed Energy Cost SAVINGS Contract between VEREGY and CUSTOMER and dated \_\_\_\_\_, \_\_\_\_\_ (the "Agreement").

1. CUSTOMER shall pay VEREGY the Contract Price in current funds for VEREGY's performance of the Work after the execution of the Amendment. The Contract Price shall be \$\_\_\_\_\_, subject to authorized adjustments as provided for in the Agreement.
2. Attached hereto and incorporated herein by reference is a revised Appendix E, Schedule of Savings, that has been revised by the Parties to reflect the anticipated savings as a result of the finalized scope of work and agreed upon Contract Price. This revised Appendix E replaces in its entirety the prior Appendix E, which was prepared based upon the anticipated scope of work and Contract Price.

**SIGNATURE BLOCKS ON NEXT PAGE**

APPROVED:

\_\_\_\_\_  
Rex Scott, Chairman, Board of Supervisors

\_\_\_\_\_  
Date

DESIGN-BUILDER:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Clayton Boop, Vice-President West

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Melissa Manriquez, Clerk of the Board

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy County Attorney

\_\_\_\_\_  
Name (Please Print)

\_\_\_\_\_  
Date

**END OF APPENDIX G**

**APPENDIX H**

**FINAL DELIVERY AND ACCEPTANCE CERTIFICATE**

Project Name \_\_\_\_\_

Agreement Effective Date: \_\_\_\_\_

Scope-of-Work (SOW) Item/Energy Conservation Measure (ECM):  
\_\_\_\_\_

To: VEREGY

Reference is made to the above listed Agreement between the undersigned and VEREGY and to the Scope of Work as defined in Attachment A herein. In connection therewith, we confirm to you the following:

1. The Scope of Work (SOW) Item/ Energy Conservation Measure (ECM) referenced above and also listed in Attachment A of the Agreement has been demonstrated to the satisfaction of the Owner's Representative as being substantially complete, including all punch list items generated during the Project Acceptance Procedure.
2. All of the Work has been delivered to and received by the undersigned and that said Work has been examined and /or tested and is in good operating order and condition and is in all respects satisfactory to the undersigned and as represented, and that said Work has been accepted by the undersigned and complies with all terms of the Agreement. Consequently, you are hereby authorized to invoice for the Final Payment, as defined in Attachment C, The Payment Schedule.

Owner Name: \_\_\_\_\_

By: \_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Printed Name and Title)

\_\_\_\_\_  
(Date)

**END OF APPENDIX H**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/2/2025

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION** IS **WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh & McLennan Agency LLC company - St. Louis 825 Maryville Centre Dr. Suite 200 Chesterfield MO 63017	<b>CONTACT</b> <b>NAME:</b> Tamara Torbit, CIC, CISR <b>PHONE</b> (A/C, No. Ext): 314-594-2618 <b>E-MAIL</b> ADDRESS: tamara.torbit@marshmma.com	<b>FAX</b> (A/C, No): 888-307-1561
<b>INSURED</b> Veregy West, LLC (f/k/a Midstate Energy, L.L.C., d/b/a Veregy) 3312 East Broadway Phoenix AZ 85040	<b>VEREGINTER</b>	
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A:</b> Travelers Casualty and Surety Company		19038
<b>INSURER B:</b> Continental Insurance Company		35289
<b>INSURER C:</b> Tokio Marine Specialty Insurance Co.		23850
<b>INSURER D:</b> Zurich American Insurance Company		16535
<b>INSURER E:</b> American Guarantee and Liability Ins Co		26247
<b>INSURER F:</b>		

**COVERAGES****CERTIFICATE NUMBER:** 1744695857**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
D	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			GLO416584400	9/10/2024	9/10/2025	EACH OCCURRENCE \$2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS - COMP/OP AGG \$4,000,000 \$
D	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BA391951500	9/10/2024	9/10/2025	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
E	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			AUC3949244	9/10/2024	9/10/2025	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000 \$
D	<input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N	N/A	WC328914100	9/10/2024	9/10/2025	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A	Excess Liability			EX6S43761824	9/10/2024	9/10/2025	Aggregate Limit \$10,000,000
B	Excess Liability			7015619228	9/10/2024	9/10/2025	\$5,000,000
C	Prof & Poll Liability			PPK2602399	9/10/2024	9/10/2025	\$10,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Leased &amp; Rented Equipment - \$300,000

Pollution/Professional Liability - Tokio Marine Specialty Insurance Company  
Limit: \$10,000,000 per incident with \$10,000,000 Total Policy Aggregate LimitBuilders Risk  
Atlantic Specialty Insurance Company  
7900261400006  
See Attached...**CERTIFICATE HOLDER****CANCELLATION**Pima County Procurement, Design & Construction Division  
150 W. Congress St., 5th Floor  
Tucson AZ 85701

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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# **ADDITIONAL REMARKS SCHEDULE**

Page 1 of 1

<b>AGENCY</b> Marsh & McLennan Agency LLC		<b>NAMED INSURED</b> Veregy West, LLC (f/k/a Midstate Energy, L.L.C., d/b/a Veregy) 3312 East Broadway Phoenix AZ 85040
<b>POLICY NUMBER</b>		
<b>CARRIER</b>	<b>NAIC CODE</b>	<b>EFFECTIVE DATE:</b>

## **ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**

**FORM NUMBER:** 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

Effective: 9/10/24 to 9/10/25  
 Limit - \$8,000,000 for all but Frame  
 Frame limit - \$1,000,000  
 Installation Floater - \$2,500,000

Cyber Insurance  
 Coalition Insurance Solutions, Inc.  
 Policy #C4MK1098964  
 Effective: 9/10/24 to 9/10/25  
 Limits: \$5,000,000 with \$250,000 retention

**Additional Named Insureds:**

Veregy Consolidated, Inc.  
 CTS Midco, LLC  
 CTS Holdco, LLC  
 Midstate Holding Corp.  
 Veregy Central, LLC (f/k/a Control Technology & Solutions L.L.C., d/b/a Veregy), a Missouri Limited Liability Company  
 Veregy IN, LLC (f/k/a, Johnson-Melloh Solutions LLC, d/b/a Veregy), a Delaware Limited Liability Company  
 Veregy East, LLC (f/k/a Dynamix Energy Services Company, LLC, d/b/a Veregy), an Ohio Limited Liability Company  
 Dynamix Engineering Ltd.  
 Veregy West, LLC (f/k/a Midstate Energy, L.L.C., d/b/a Veregy), an Arizona Limited Liability  
 Veregy DER & Electrical, LLC (f/k/a Urban Energy Solutions, LLC, d/b/a Veregy), an Arizona Limited Liability Company  
 Four Star Mechanical, LLC  
 Veregy TX, LLC (f/k/a, Four Star Fabricators And Service Company, LLC, d/b/a Veregy), a Texas Limited Liability Company  
 Veregy Pacific, LLC (f/k/a Empowered Solutions, LLC), a California Limited Liability Company

Re: PROJECT: Guaranteed Energy Cost Savings Services – Pima County - Veregy

Pima County, its departments, districts, boards, commissions, officers, officials, agents, and employees are included as Additional Insured(s) for General Liability and Automobile Liability with respect to work performed by the Named Insured, if required by written contract, agreement or permit and subject to the provisions and limitations of the policy.

General Liability and Automobile Liability coverages are considered primary and non-contributory, if required by written contract, agreement or permit and subject to the provisions and limitations of the policy.

A waiver of subrogation is granted for General Liability, Automobile Liability and Workers Compensation coverages where permitted by law and if required by written contract, agreement or permit and subject to the provisions and limitations of the policy.

# Coverage Extension Endorsement



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Policy No. BAP 3919515 - 00

Effective Date: 09/10/2024

This endorsement modifies insurance provided under the:

**Business Auto Coverage Form**  
**Motor Carrier Coverage Form**

## A. Amended Who Is An Insured

1. The following is added to the **Who Is An Insured** Provision in **Section II – Covered Autos Liability Coverage**:

The following are also "insureds":

- a. Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow for acts performed within the scope of employment by you. Any "employee" of yours is also an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.
- b. Anyone volunteering services to you is an "insured" while using a covered "auto" you don't own, hire or borrow to transport your clients or other persons in activities necessary to your business.
- c. Anyone else who furnishes an "auto" referenced in Paragraphs **A.1.a.** and **A.1.b.** in this endorsement.
- d. Where and to the extent permitted by law, any person(s) or organization(s) where required by written contract or written agreement with you executed prior to any "accident", including those person(s) or organization(s) directing your work pursuant to such written contract or written agreement with you, provided the "accident" arises out of operations governed by such contract or agreement and only up to the limits required in the written contract or written agreement, or the Limits of Insurance shown in the Declarations, whichever is less.

2. The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary and Excess Insurance Provisions Condition** in the Motor Carrier Coverage Form:

Coverage for any person(s) or organization(s), where required by written contract or written agreement with you executed prior to any "accident", will apply on a primary and non-contributory basis and any insurance maintained by the additional "insured" will apply on an excess basis. However, in no event will this coverage extend beyond the terms and conditions of the Coverage Form.

## B. Amendment – Supplementary Payments

Paragraphs **a.(2)** and **a.(4)** of the **Coverage Extensions** Provision in **Section II – Covered Autos Liability Coverage** are replaced by the following:

- (2) Up to \$5,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$500 a day because of time off from work.

## C. Fellow Employee Coverage

The **Fellow Employee** Exclusion contained in **Section II – Covered Autos Liability Coverage** does not apply.

#### **D. Driver Safety Program Liability and Physical Damage Coverage**

1. The following is added to the **Racing** Exclusion in **Section II – Covered Autos Liability Coverage**:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

2. The following is added to Paragraph **2.** in **B. Exclusions** of **Section III – Physical Damage Coverage** of the Business Auto Coverage Form and Paragraph **2.b.** in **B. Exclusions** of **Section IV – Physical Damage Coverage** of the Motor Carrier Coverage Form:

This exclusion does not apply to covered "autos" participating in a driver safety program event, such as, but not limited to, auto or truck rodeos and other auto or truck agility demonstrations.

#### **E. Lease or Loan Gap Coverage**

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

##### **Lease Or Loan Gap Coverage**

In the event of a total "loss" to a covered "auto", we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

- a. Any amount paid under the **Physical Damage Coverage** Section of the Coverage Form; and
- b. Any:
  - (1) Overdue lease or loan payments at the time of the "loss";
  - (2) Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
  - (3) Security deposits not returned by the lessor;
  - (4) Costs for extended warranties, credit life insurance, health, accident or disability insurance purchased with the loan or lease; and
  - (5) Carry-over balances from previous leases or loans.

#### **F. Towing and Labor**

Paragraph **A.2.** of the **Physical Damage Coverage** Section is replaced by the following:

We will pay up to \$75 for towing and labor costs incurred each time a covered "auto" that is a "private passenger type", light truck or medium truck is disabled. However, the labor must be performed at the place of disablement.

As used in this provision, "private passenger type" means a private passenger or station wagon type "auto" and includes an "auto" of the pickup or van type if not used for business purposes.

#### **G. Extended Glass Coverage**

The following is added to Paragraph **A.3.a.** of the **Physical Damage Coverage** Section:

If glass must be replaced, the deductible shown in the Declarations will apply. However, if glass can be repaired and is actually repaired rather than replaced, the deductible will be waived. You have the option of having the glass repaired rather than replaced.

#### **H. Hired Auto Physical Damage – Increased Loss of Use Expenses**

The **Coverage Extension** for **Loss Of Use Expenses** in the **Physical Damage Coverage** Section is replaced by the following:

##### **Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or written rental agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";



- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".
- However, the most we will pay for any expenses for loss of use is \$100 per day, to a maximum of \$3000.

#### **I. Personal Effects Coverage**

The following is added to the **Coverage** Provision of the **Physical Damage Coverage** Section:

##### **Personal Effects Coverage**

- a. We will pay up to \$750 for "loss" to personal effects which are:
- (1) Personal property owned by an "insured"; and
  - (2) In or on a covered "auto".
- b. Subject to Paragraph a. above, the amount to be paid for "loss" to personal effects will be based on the lesser of:
- (1) The reasonable cost to replace; or
  - (2) The actual cash value.
- c. The coverage provided in Paragraphs a. and b. above, only applies in the event of a total theft of a covered "auto". No deductible applies to this coverage. However, we will not pay for "loss" to personal effects of any of the following:
- (1) Accounts, bills, currency, deeds, evidence of debt, money, notes, securities, or commercial paper or other documents of value.
  - (2) Bullion, gold, silver, platinum, or other precious alloys or metals; furs or fur garments; jewelry, watches, precious or semi-precious stones.
  - (3) Paintings, statuary and other works of art.
  - (4) Contraband or property in the course of illegal transportation or trade.
  - (5) Tapes, records, discs or other similar devices used with audio, visual or data electronic equipment.

Any coverage provided by this Provision is excess over any other insurance coverage available for the same "loss".

#### **J. Tapes, Records and Discs Coverage**

1. The Exclusion in Paragraph B.4.a. of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph B.2.c. of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply.
2. The following is added to Paragraph 1.a. **Comprehensive Coverage** under the **Coverage** Provision of the **Physical Damage Coverage** Section:
- We will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:
- (a) Are the property of an "insured"; and
  - (b) Are in a covered "auto" at the time of "loss".

The most we will pay for such "loss" to tapes, records, discs or other similar devices is \$500. The **Physical Damage Coverage Deductible** Provision does not apply to such "loss".

#### **K. Airbag Coverage**

The Exclusion in Paragraph B.3.a. of **Section III – Physical Damage Coverage** in the Business Auto Coverage Form and the Exclusion in Paragraph B.4.a. of **Section IV – Physical Damage Coverage** in the Motor Carrier Coverage Form does not apply to the accidental discharge of an airbag.

#### **L. Two or More Deductibles**

The following is added to the **Deductible** Provision of the **Physical Damage Coverage** Section:

If an accident is covered both by this policy or Coverage Form and by another policy or Coverage Form issued to you by us, the following applies for each covered "auto" on a per vehicle basis:

1. If the deductible on this policy or Coverage Form is the smaller (or smallest) deductible, it will be waived; or
2. If the deductible on this policy or Coverage Form is not the smaller (or smallest) deductible, it will be reduced by the amount of the smaller (or smallest) deductible.

#### **M. Temporary Substitute Autos – Physical Damage**

1. The following is added to **Section I – Covered Autos**:

##### **Temporary Substitute Autos – Physical Damage**

If Physical Damage Coverage is provided by this Coverage Form on your owned covered "autos", the following types of vehicles are also covered "autos" for Physical Damage Coverage:

Any "auto" you do not own when used with the permission of its owner as a temporary substitute for a covered "auto" you do own but is out of service because of its:

1. Breakdown;
  2. Repair;
  3. Servicing;
  4. "Loss"; or
  5. Destruction.
2. The following is added to the Paragraph **A. Coverage** Provision of the **Physical Damage Coverage** Section:

##### **Temporary Substitute Autos – Physical Damage**

We will pay the owner for "loss" to the temporary substitute "auto" unless the "loss" results from fraudulent acts or omissions on your part. If we make any payment to the owner, we will obtain the owner's rights against any other party.

The deductible for the temporary substitute "auto" will be the same as the deductible for the covered "auto" it replaces.

#### **N. Amended Duties In The Event Of Accident, Claim, Suit Or Loss**

Paragraph **a.** of the **Duties In The Event Of Accident, Claim, Suit Or Loss** Condition is replaced by the following:

- a.** In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident", claim, "suit" or "loss". However, these duties only apply when the "accident", claim, "suit" or "loss" is known to you (if you are an individual), a partner (if you are a partnership), a member (if you are a limited liability company) or an executive officer or insurance manager (if you are a corporation). The failure of any agent, servant or employee of the "insured" to notify us of any "accident", claim, "suit" or "loss" shall not invalidate the insurance afforded by this policy.

Include, as soon as practicable:

- (1) How, when and where the "accident" or "loss" occurred and if a claim is made or "suit" is brought, written notice of the claim or "suit" including, but not limited to, the date and details of such claim or "suit";
- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

If you report an "accident", claim, "suit" or "loss" to another insurer when you should have reported to us, your failure to report to us will not be seen as a violation of these amended duties provided you give us notice as soon as practicable after the fact of the delay becomes known to you.

#### **O. Waiver of Transfer Of Rights Of Recovery Against Others To Us**

The following is added to the **Transfer Of Rights Of Recovery Against Others To Us** Condition:

This Condition does not apply to the extent required of you by a written contract, executed prior to any "accident" or "loss", provided that the "accident" or "loss" arises out of operations contemplated by such contract. This waiver only applies to the person or organization designated in the contract.

#### **P. Employee Hired Autos – Physical Damage**

Paragraph **b.** of the **Other Insurance** Condition in the Business Auto Coverage Form and Paragraph **f.** of the **Other Insurance – Primary and Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are replaced by the following:

For Hired Auto Physical Damage Coverage, the following are deemed to be covered "autos" you own:

- (1) Any covered "auto" you lease, hire, rent or borrow; and
- (2) Any covered "auto" hired or rented under a written contract or written agreement entered into by an "employee" or elected or appointed official with your permission while being operated within the course and scope of that "employee's" employment by you or that elected or appointed official's duties as respect their obligations to you.

However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

#### **Q. Unintentional Failure to Disclose Hazards**

The following is added to the **Concealment, Misrepresentation Or Fraud** Condition:

However, we will not deny coverage under this Coverage Form if you unintentionally:

- (1) Fail to disclose any hazards existing at the inception date of this Coverage Form; or
- (2) Make an error, omission, improper description of "autos" or other misstatement of information.

You must notify us as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to the acceptance of this policy.

#### **R. Hired Auto – World Wide Coverage**

Paragraph **7.b.(5)** of the **Policy Period, Coverage Territory** Condition is replaced by the following:

- (5) Anywhere else in the world if a covered "auto" is leased, hired, rented or borrowed for a period of 60 days or less,

#### **S. Bodily Injury Redefined**

The definition of "bodily injury" in the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease, sustained by a person including death or mental anguish, resulting from any of these at any time. Mental anguish means any type of mental or emotional illness or disease.

#### **T. Expected Or Intended Injury**

The **Expected Or Intended Injury** Exclusion in Paragraph **B. Exclusions** under **Section II – Covered Auto Liability Coverage** is replaced by the following:

##### **Expected Or Intended Injury**

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured". This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

#### **U. Physical Damage – Additional Temporary Transportation Expense Coverage**

Paragraph **A.4.a.** of **Section III – Physical Damage Coverage** is replaced by the following:

##### **4. Coverage Extensions**

###### **a. Transportation Expenses**

We will pay up to \$50 per day to a maximum of \$1,000 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

## **V. Replacement of a Private Passenger Auto with a Hybrid or Alternative Fuel Source Auto**

The following is added to Paragraph **A. Coverage** of the **Physical Damage Coverage** Section:

In the event of a total "loss" to a covered "auto" of the private passenger type that is replaced with a hybrid "auto" or "auto" powered by an alternative fuel source of the private passenger type, we will pay an additional 10% of the cost of the replacement "auto", excluding tax, title, license, other fees and any aftermarket vehicle upgrades, up to a maximum of \$2500. The covered "auto" must be replaced by a hybrid "auto" or an "auto" powered by an alternative fuel source within 60 calendar days of the payment of the "loss" and evidenced by a bill of sale or new vehicle lease agreement.

To qualify as a hybrid "auto", the "auto" must be powered by a conventional gasoline engine and another source of propulsion power. The other source of propulsion power must be electric, hydrogen, propane, solar or natural gas, either compressed or liquefied. To qualify as an "auto" powered by an alternative fuel source, the "auto" must be powered by a source of propulsion power other than a conventional gasoline engine. An "auto" solely propelled by biofuel, gasoline or diesel fuel or any blend thereof is not an "auto" powered by an alternative fuel source.

## **W. Return of Stolen Automobile**

The following is added to the **Coverage Extension** Provision of the **Physical Damage Coverage** Section:

If a covered "auto" is stolen and recovered, we will pay the cost of transport to return the "auto" to you. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage.

All other terms, conditions, provisions and exclusions of this policy remain the same.



## Additional Insured – Automatic – Owners, Lessees Or Contractors

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Policy No. GLO416584400

Effective Date: 9/10/2024

This endorsement modifies insurance provided under the:

### **Commercial General Liability Coverage Part**

**A. Section II – Who Is An Insured** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured under a written contract or written agreement executed by you, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" and subject to the following:

1. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

a. The Insurance Services Office (ISO) ISO CG 20 10 (10/01 edition); or

b. The ISO CG 20 37 (10/01 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" arises out of:

(1) Your ongoing operations, with respect to Paragraph 1.a. above; or

(2) "Your work", with respect to Paragraph 1.b. above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph 1., insurance afforded to such additional insured:

(a) Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and

(b) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

2. If such written contract or written agreement specifically requires that you provide that the person or organization be named as an additional insured under one or both of the following endorsements:

a. The Insurance Services Office (ISO) ISO CG 20 10 (07/04 edition); or

b. The ISO CG 20 37 (07/04 edition),

such person or organization is then an additional insured with respect to such endorsement(s), but only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part, by:

(1) Your acts or omissions; or

(2) The acts or omissions of those acting on your behalf,

in the performance of:

- (a)** Your ongoing operations, with respect to Paragraph **2.a.** above; or
- (b)** "Your work" and included in the "products-completed operations hazard", with respect to Paragraph **2.b.** above,

which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **2.**, insurance afforded to such additional insured:

- (i)** Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement; and
  - (ii)** Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.
- 3.** If neither Paragraph **1.** nor Paragraph **2.** above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

- a.** Under the ISO CG 20 10 (04/13 edition, any subsequent edition or if no edition date is specified); or
- b.** With respect to ongoing operations (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury", "property damage" or "personal and advertising injury" is caused, in whole or in part by:

- (1)** Your acts or omissions; or
- (2)** The acts or omissions of those acting on your behalf,

in the performance of your ongoing operations, which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **3.**, insurance afforded to such additional insured:

- (a)** Only applies to the extent permitted by law;
  - (b)** Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured; and
  - (c)** Only applies if the "bodily injury", "property damage" or "personal and advertising injury" offense occurs during the policy period and subsequent to your execution of the written contract or written agreement.
- 4.** If neither Paragraph **1.** nor Paragraph **2.** above apply and such written contract or written agreement requires that you provide that the person or organization be named as an additional insured:

- a.** Under the ISO CG 20 37 (04/13 edition, any subsequent edition or if no edition date is specified); or
- b.** With respect to the "products-completed operations hazard" (if no form is specified),

such person or organization is then an additional insured only to the extent that "bodily injury" or "property damage" is caused, in whole or in part by "your work" and included in the "products-completed operations hazard", which is the subject of the written contract or written agreement.

However, solely with respect to this Paragraph **4.**, insurance afforded to such additional insured:

- (1)** Only applies to the extent permitted by law;
- (2)** Will not be broader than that which you are required by the written contract or written agreement to provide for such additional insured;
- (3)** Only applies if the "bodily injury" or "property damage" occurs during the policy period and subsequent to your execution of the written contract or written agreement; and

- (4) Does not apply to "bodily injury" or "property damage" caused by "your work" and included within the "products-completed operations hazard" unless the written contract or written agreement specifically requires that you provide such coverage to such additional insured.

**B.** Solely with respect to the insurance afforded to any additional insured referenced in Section **A.** of this endorsement, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or failure to render, any professional architectural, engineering or surveying services including:

1. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

**C.** Solely with respect to the coverage provided by this endorsement, the following is added to Paragraph **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** of Section **IV – Commercial General Liability Conditions**:

The additional insured must see to it that:

- (1) We are notified as soon as practicable of an "occurrence" or offense that may result in a claim;
- (2) We receive written notice of a claim or "suit" as soon as practicable; and
- (3) A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured may be an insured in any capacity. This provision does not apply to insurance on which the additional insured is a Named Insured if the written contract or written agreement requires that this coverage be primary and non-contributory.

**D.** Solely with respect to the coverage provided by this endorsement:

1. The following is added to the **Other Insurance** Condition of Section **IV – Commercial General Liability Conditions**:

**Primary and Noncontributory insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured provided that:

- a. The additional insured is a Named Insured under such other insurance; and
- b. You are required by written contract or written agreement that this insurance be primary and not seek contribution from any other insurance available to the additional insured.

2. The following paragraph is added to Paragraph **4.b.** of the **Other Insurance** Condition under Section **IV – Commercial General Liability Conditions**:

This insurance is excess over:

Any of the other insurance, whether primary, excess, contingent or on any other basis, available to an additional insured, in which the additional insured on our policy is also covered as an additional insured on another policy providing coverage for the same "occurrence", offense, claim or "suit". This provision does not apply to any policy in which the additional insured is a Named Insured on such other policy and where our policy is required by a written contract or written agreement to provide coverage to the additional insured on a primary and non-contributory basis.

**E.** This endorsement does not apply to an additional insured which has been added to this Coverage Part by an endorsement showing the additional insured in a Schedule of additional insureds, and which endorsement applies specifically to that identified additional insured.

- F. Solely with respect to the insurance afforded to an additional insured under Paragraph **A.3.** or Paragraph **A.4.** of this endorsement, the following is added to Section **III – Limits Of Insurance**:

**Additional Insured – Automatic – Owners, Lessees Or Contractors Limit**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the written contract or written agreement referenced in Section **A.** of this endorsement; or
  2. Available under the applicable Limits of Insurance shown in the Declarations,
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

All other terms, conditions, provisions and exclusions of this policy remain the same.



# Contractors Liability Supplemental Coverages and Conditions



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

Policy No. GLO 4165844 - 00

Effective Date: 09/10/2024

This endorsement modifies insurance provided under the:

## **Commercial General Liability Coverage Part**

### **NON-OWNED WATERCRAFT SCHEDULE**

Watercraft Length: 51 feet

(If no amount is shown above, 51 feet applies.)

#### **A. Non-owned Watercraft Liability Extended Coverage**

Paragraph (2) of Exclusion **2.g. Aircraft, Auto Or Watercraft** under Section **I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

(2) A watercraft you do not own that is:

- (a) Less than the length shown in the Non-Owned Watercraft Schedule of this endorsement; and
- (b) Not being used to carry persons or property for a charge;

#### **B. Damage To Premises Rented Or Occupied By You**

1. The last paragraph under Paragraph **2. Exclusions** of Section **I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

Exclusions **c.** through **n.** do not apply to damage by "specific perils" to premises while rented to you or temporarily occupied by you with permission of the owner. A separate Damage to Premises Rented To You Limit of Insurance applies to this coverage as described in Section **III – Limits Of Insurance**.

2. The paragraph directly following Paragraph (6) in Exclusion **j.** of Section **I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" to premises (other than damage by "specific perils"), including "property damage" to the contents of such premises, rented to you under a rental agreement for a period of 14 or fewer consecutive days. A separate Limit of Insurance applies to Damage to Premises Rented to You as described in Section **III – Limits Of Insurance**.

3. Paragraph **6.** of Section **III – Limits Of Insurance** is replaced by the following:

**6.** Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises while rented to you, or in the case of damage by one or more "specific perils" to any one premises, while rented to you or temporarily occupied by you with permission of the owner.

4. Paragraph **a.** of the "insured contract" definition under the **Definitions** Section is replaced by the following:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by "specific perils" to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

5. Paragraph (ii) under Paragraph 4.b.(1) of the **Other Insurance** Condition under Section IV – **Commercial General Liability Conditions** is replaced by the following:

- (ii) That is property insurance providing coverage for "specific perils" for premises rented to you or temporarily occupied by you with permission of the owner;

6. The following definitions are added to the **Definitions** Section:

"Specific perils" means fire, lightning, explosion, windstorm or hail, smoke, aircraft or vehicles, riot or civil commotion, vandalism, leakage from fire extinguishing equipment, weight of snow, ice or sleet or "water damage".

"Water damage" means accidental discharge or leakage of water or steam as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam.

**C. Additional Insured – Lessor Of Leased Equipment – Automatic Status When Required In Lease Agreement With You**

1. Section II – **Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) from whom you lease equipment when you and such person(s) or organization(s) have agreed in a written contract or written agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However, the insurance afforded to such additional insured:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

2. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.
3. With respect to the insurance afforded to these additional insureds, the following is added to Section III – **Limits of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the written contract or written agreement you have entered into with the additional insured; or
  - b. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

The insurance provided by this Paragraph C. shall not increase the applicable Limits of Insurance shown in the Declarations.

**D. Additional Insured – Managers Or Lessors Of Premises**

1. Section II – **Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) that you have agreed in a written contract or written agreement to name as an additional insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of premises leased to you and subject to the following additional exclusions:

This insurance does not apply to:

- a. Any "occurrence" which takes place after you cease to be a tenant in that premises.
- b. Structural alterations, new construction or demolition operations performed by or on behalf of the additional insured manager or lessor of the premises leased to you.

However, the insurance afforded to such additional insured:

- a. Only applies to the extent permitted by law; and



- (a) The liability pertains to your business and is assumed in a contract or agreement that is an "insured contract"; and
- (b) The "personal and advertising injury" occurs subsequent to the execution of the contract or agreement.

Solely for the purposes of liability so assumed in such "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "personal and advertising injury", provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same contract or agreement; and
- (ii) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

**2. For purposes of this "personal and advertising injury" coverage only:**

Paragraph **d.** and the second to last paragraph under Paragraph **2. of Supplementary Payments – Coverages A and B** are replaced by the following:

- d.** The allegations in the "suit" and the information we know about the "occurrence" or offense are such that no conflict appears to exist between the interests of the insured and the interest of the indemnitee;

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Such payments will not be deemed to be damages for "bodily injury", "property damage" or "personal and advertising injury" and will not reduce the limits of insurance.

**G. Insured Contract Amendment**

Paragraph **f.** and **f.(1)** through **f.(3)** of the "insured contract" definition under the **Definitions** Section is replaced by the following:

- f.** That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury", "property damage" or "personal and advertising injury" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

- (1)** That indemnifies a railroad for "bodily injury", "property damage" or "personal and advertising injury" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2)** That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a)** Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b)** Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (3)** Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in **(2)** above and supervisory, inspection, architectural or engineering activities;
- (4)** That indemnifies a person or organization for "personal and advertising injury":
  - (a)** Arising out of advertising, publishing, broadcasting or telecasting done for you or on your behalf; or
  - (b)** To an "employee" of such person or organization that does advertising, publishing, broadcasting or telecasting for you or on your behalf; or
- (5)** That indemnifies a labor leasing firm for "bodily injury" to "leased workers".

## **H. Medical Payments – Increased Reporting Period**

Paragraph **a.** of Section **I – Coverage C – Medical Payments** is replaced by the following:

**a.** We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1)** On premises you own or rent;
- (2)** On ways next to premises you own or rent; or
- (3)** Because of your operations;

provided that:

- (a)** The accident takes place in the "coverage territory" and during the policy period;
- (b)** The expenses are incurred and reported to us within three years of the date of the accident; and
- (c)** The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

## **I. Broad Bail Bond Coverage**

Paragraph **1.b.** under **Supplementary Payments – Coverages A And B** is replaced by the following:

**b.** The cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

## **J. Amendment – Duties In The Event of Occurrence, Offense, Claim or Suit**

The following paragraphs are added to Paragraph **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** of Section **IV – Commercial General Liability Conditions**:

Notice of an "occurrence" or of an offense which may result in a claim under this insurance or notice of a claim or "suit" shall be given to us as soon as practicable after knowledge of the "occurrence", offense, claim or "suit" has been reported to your officer, manager, partner or an "employee" authorized by you to give or receive such notice. Knowledge by "employees" other than your officer, manager, partner or "employee" authorized by you to give or receive such notice of an "occurrence", offense, claim or "suit" does not imply that you also have such knowledge.

In the event that an insured reports an "occurrence" to your workers compensation carrier and this "occurrence" later develops into a General Liability claim, covered by this Coverage Part, the insured's failure to report such "occurrence" to us at the time of the "occurrence" shall not be deemed to be a violation of this Condition. You must, however, give us notice as soon as practicable after being made aware that the particular claim is a General Liability rather than a Workers Compensation claim.

## **K. Unintentional Failure To Disclose Or Describe Hazards**

Paragraph **6. Representations** of Section **IV – Commercial General Liability Conditions** is replaced by the following:

### **6. Representations**

By accepting this policy, you agree:

- a.** The statements in the Declarations are accurate and complete;
- b.** Those statements are based upon representations you made to us; and
- c.** We have issued this policy in reliance upon your representations.

Coverage will continue to apply if you unintentionally:

- (1)** Fail to disclose all hazards existing at the inception of this policy; or
- (2)** Make an error, omission or improper description of premises or other statement of information stated in this policy.

You must notify us in writing as soon as possible after the discovery of any hazards or any other information that was not provided to us prior to inception of this Coverage Part.

## **L. Bodily Injury Redefined**

The "bodily injury" definition under the **Definitions** Section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. This includes mental anguish, mental injury, shock or fright resulting from bodily injury, sickness or disease.

## **M. Two Or More Of Our Coverage Parts/Policies**

The following is added to Section III – Limits of Insurance:

1. Subject to Paragraph 2. or 3. above, whichever applies, if this Coverage Part and any other Commercial General Liability Coverage Part or policy providing Commercial General Liability insurance issued to you by us or any other Zurich underwriting company affiliated with us apply to the same "occurrence", only the highest available Each Occurrence Limit under any such Coverage Part or policy applies to such "occurrence".
2. Subject to Paragraph 2. above, if this Coverage Part and any other Coverage Part or policy providing Commercial General Liability insurance issued to you by us or any other Zurich underwriting company affiliated with us apply to the same offense, only the highest available Personal And Advertising Injury Limit under any such Coverage Part or policy applies to such offense.
3. Under this Coverage Part and all other Zurich underwriting company Coverage Parts or policies to which Paragraphs 1. and 2. above combined apply, the most we will pay for all injury or damage because of "bodily injury" or "property damage" "occurrences", "personal and advertising injury" offenses and medical expenses is:
  - a. The single highest Coverage Part or policy General Aggregate Limit; or
  - b. The single highest Coverage Part or policy Products-Completed Operations Aggregate Limit,whichever applies, whether such "occurrence", offenses or medical expenses are covered by one or more than one Zurich underwriting company policy.
4. Any existing provisions under Paragraph 4. **Other Insurance** under Section IV – **Commercial General Liability Conditions** that may be contrary to the provisions of this endorsement are amended to comply with the changes in coverage as stipulated in Paragraphs 1., 2., and 3. above.

This provision does not apply to any Coverage Part or policy issued by us or any other Zurich underwriting company affiliated with us specifically to apply as excess insurance over this Coverage Part or to any endorsement to this policy which specifically provides any coverage for a wrap-up or other consolidated insurance program project if this policy is not for a wrap-up or other consolidated insurance program.

All other terms, conditions, provisions and exclusions of this policy remain the same.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
ELECTRONIC DATA LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART DESIGNATED SITES  
POLLUTION LIABILITY LIMITED COVERAGE PART DESIGNATED SITES  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK POLICY DESIGNATED TANKS

<b>SCHEDULE</b>
<b>Name Of Person(s) Or Organization(s):</b>
Any Person or Organization that requires You to waive your Rights of Recovery, in a written contract or agreement with the Named Insured that is executed prior to the accident or loss.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph **8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV – Conditions**:

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

ALL PERSONS AND/OR ORGANIZATIONS THAT ARE REQUIRED BY WRITTEN CONTRACT OR AGREEMENT WITH THE INSURED, EXECUTED PRIOR TO THE ACCIDENT OR LOSS, THAT WAIVER OF SUBROGATION BE PROVIDED UNDER THIS POLICY FOR WORK PERFORMED BY YOU FOR THAT PERSON AND/OR ORGANIZATION.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 09/10/2024Policy No. WC 3289141 - 00Endorsement No.

Insured VEREGY INTERMEDIATE, INCPremium \$

Insurance Company Zurich American Insurance CompanyCountersigned by\_\_\_\_\_