

ENERGY EQUIPMENT INSTALLATION CONTRACT

This contract entered into this ____ day of _____, 2021 between Path Company LLC, hereinafter called the "ESCO" and Millington School District hereinafter called the "Owner" (collectively, "Parties" or individually, "Party").

WITNESSETH that the ESCO and the Owner, in consideration of the mutual covenants, promises and contracts herein contained agree as follows:

This Contract is for Professional Work for energy efficiency improvements ("Professional Work") hereinafter referred as Millington School District - Installation Contract 1241-C2. The parties have also entered into an Energy Savings Contract of even date here with (the "Energy Savings Contract"). ESCO and Owner agree each and all of the provisions of this Contract are hereby incorporated into the Millington School District - Energy Savings Guarantee Contract – 1241-E2, by this reference, so that each and all of such provisions shall constitute a part of the Millington School District - Energy Savings Guarantee Contract – 1241-E2.

ESCO will provide all Professional Work; engineering; design; procurement; and installation of the infrastructure improvements ("Equipment") (collectively, the "Program") indicated in Exhibit A - Scope of Work ("Work"), to deliver a complete installation. All Work will be subject to the terms and conditions herein and set forth in Exhibits A, B, C, D, E and F (collectively, the "Contract"). For purposes of this Contract, "Premises" shall include, but is not limited to, the buildings/facilities owned and operated by Owner listed in Exhibit A (Scope of Work) and located at Millington School District – 5020 Second Avenue, Millington, TN 38053.

The purchase price for the Work will be **\$2,438,185 (Two Million, Four Hundred Thirty Eight Thousand, One Hundred and Eighty Five)**.

The Work performed under this Contract will be substantially complete and ready for Owner's beneficial use within an estimated 12 months following Owner's acceptance and ESCO's approval of this Contract and signed notice to proceed (Exhibit B) has been received by ESCO. **The ESCO cannot proceed until a written Notice to Proceed (Exhibit B) is forwarded by the Owner.**

This Agreement is proprietary property of ESCO and is provided for Owner's use only. ESCO guarantees the price stated in this Contract for thirty (30) days from the written date above. The Agreement will become a binding Contract only after acceptance by Owner and approval by an officer of ESCO as authorized by their signatures below. This Contract, including all Exhibits and Attachments hereto, sets forth all the terms and conditions binding upon the parties hereto; and no person has authority to make any claim, representation, promise or condition on behalf of ESCO which is not expressed herein.

SCOPE OF CONTRACT: The ESCO shall provide the good/Work to the Owner as set forth in the Contract.

THE CONTRACT DOCUMENTS SHALL CONSIST OF:

- (1) This signed form
- (2) The following Exhibits:
 - a. Exhibit A – Scope of Work
 - b. Exhibit B – Notice to Proceed
 - c. Exhibit C – Substantial Completion Form
 - d. Exhibit D – Final Completion Form

ESCO Initials _____ Owner Initials _____

November 11, 2021

Installation Contract-Millington Schools Phase 2

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- e. Exhibit E – Hazardous Materials
- f. Exhibit F – IRS 179D Authorization Letter

OWNER’S AUTHORIZED REPRESENTATIVE(S): Owner designates the following individual(s), and any successors to the positions noted, as the representative(s) of Owner with authority to execute on behalf of the Owner (the “Authorized Representative”) the Certificate of Substantial Completion and Acceptance, any Zero Dollar Change Order, plus Certificate of Final Completion and Acceptance:

Authorized Representative

Position/Title

Authorized Representative

Position/Title

Authorized Representative

Position/Title

Owner may change any Authorized Representative(s) by providing written notice to ESCO at least fourteen (14) calendar days prior to the effective date of the change. Such change shall only be effective with respect to acts occurring after the required notice.

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TERMS AND CONDITIONS

SECTION 1.0 PAYMENTS TO ESCO

- Section 1.1** Construction Payments. Upon execution hereof, INITIAL PAYMENT of 10% of the Contract Price (for engineering, drafting, mobilization, and other costs) and Investment Grade Audit (IGA) fee shall be due. Owner agrees to make construction installment payments to ESCO, or its assignee, for the Work in accordance with the terms and conditions of this Contract. Payments shall be based on percentage of project completion. On a monthly basis, ESCO will present to Owner a statement of values that details the percentage of the Work completed to date. The invoiced amount shall then be based on the respective percentage of the Contract Price. Construction Payments shall be due thirty (30) days from the date of the invoice. Owner's obligation to make the Construction Payments shall be absolute and unconditional in all events except as expressly set forth. After acceptance of the Equipment, Owner covenants that it will not assert any right to set off, counterclaim, abate, or recoupment of the Payments.
- Section 1.2** If applicable and only to the extent permitted by applicable law, any tax benefits or deductibles related to the energy efficiency improvements such as, but not limited to, those under section 179D of the Internal Revenue Code, will be allocated or assigned to ESCO. For calendar tax year(s) in which (a) the provisions of Section 179D of the Internal Revenue Code are in effect and (b) the qualifying property installed as a part of the Work has been placed in service pursuant to Section 179D, Owner agrees to allocate the tax deduction available under Section 179D solely to ESCO pursuant to Section 179D(d)(4) and shall provide the written form (as Exhibit F attached) of allocation to ESCO that is required by the Internal Revenue Service.

SECTION 2.0 CONSTRUCTION SCHEDULE AND EQUIPMENT INSTALLATION APPROVAL

- Section 2.1** Construction Procedures and Changes to Work. ESCO shall supervise and direct the Work using qualified and lawfully licensed personnel. ESCO shall have exclusive control over construction means, methods, techniques, sequences and procedures. ESCO shall at all times have the right to replace, delete or substantially alter any item of equipment, subcontractor or part of the Work, correct any work, revise any procedures included in this Contract, or take any other actions, provided, however, that ESCO shall obtain Owner's prior written consent to material deviations from the original scope or item of equipment. Said consent shall not to be unreasonably withheld, conditioned or delayed. ESCO, in its sole discretion shall have the right to terminate and/or replace personnel performing the Work.
- Section 2.2** ESCO shall provide overall coordination, management, and responsibility, and shall assure that all Work is completed in a good and workmanlike manner. ESCO's Work shall include the following:
- a. Engineering Design: A survey of the Premises for purposes of designing the Program.
 - b. Procurement, Installation, Start-Up: Subject to other provisions of this Contract, ESCO will act as a turn-key general contractor assuming total responsibility for the procurement of labor and material for installation and start-up of Equipment, including: selecting subcontractors and suppliers in concert with Owner; awarding subcontracts; receiving and evaluating submitted drawings on the equipment; progress inspections during installation; developing and presenting subcontractor punch lists after each inspection; receiving and

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evaluating record drawings and providing same to Owner upon completion; obtaining and providing to Owner operation and maintenance manuals from subcontractors; providing for training of Owner personnel on proper operation of the newly installed Equipment; and final inspection and recommendation for approval to the Owner for acceptance of the equipment.

- Section 2.3** Systems Startup and Equipment Commissioning: The ESCO shall conduct a thorough and systematic performance test of each element and total system of the installed Equipment in accordance with the procedures specified by the manufacturer and prior to acceptance of the project by Owner. The ESCO shall provide notice to the Owner of the scheduled test(s) and the Owner and/or its designees shall have the right to be present at any or all such tests conducted by ESCO and/or manufacturers of the Equipment. The ESCO shall be responsible for correcting and/or assigning to third parties (including Equipment manufacturer) all deficiencies in systems and Equipment operations that may be observed during system commissioning procedures.
- Section 2.4** In order for ESCO to receive payments during the design/build stages of the Program, the Owner shall authorize disbursements from any escrow account established and maintained pursuant to any escrow Contract entered into between Owner and any third-party financing company based on monthly draw requests from the ESCO per Section 1.0 of this contract.
- Section 2.5** Substantial Completion. ESCO may provide written notice to Owner that one or more of the items described in Exhibit A (each, a "Service Element") is/are substantially complete and request that Owner issue a Certificate of Substantial Completion and Acceptance ("Certificate") with respect to such Service Elements, substantially in the form of Exhibit C. Substantial Completion with respect to a Service Element is the date when the specified Work has been performed or installed and are operating as required by this Contract, with only minor work remaining as may be specified on a punch list agreed to by Owner and ESCO and, if applicable, annexed to Certificate. Owner shall within fourteen (14) days following receipt of Certificate inspect the specified Service Element and either execute Certificate or reject such Certificate setting forth in detail the reasons for such rejection. If Owner fails to accept or reject the Certificate within such fourteen (14) day period, Owner shall be deemed to have accepted the Work outlined in Certificate and the Substantial Completion Date with respect to the applicable Service Element shall be deemed the date such certificate was issued. If Owner timely and properly rejects Certificate, ESCO will correct deficiencies in the Work and will issue another Certificate to Owner. The procedure set forth above shall be repeated until Certificate has been executed or deemed executed by the Owner. Owner's acceptance of Certificate shall not be unreasonably withheld, conditioned or delayed by Owner. Exhibit C may specify the responsibilities between Owner and ESCO for Energy Savings Contract and any adjustment of compensation therefor.
- Section 2.6** Final Completion. Upon Owner's receipt of written notice from ESCO that the Work are ready for final inspection and acceptance, Owner and ESCO shall inspect the Work and determine whether the same have been performed in accordance with this Contract. If Owner considers the Work complete and performed in accordance with this Contract, Owner shall issue a Certificate of Final Completion and Acceptance ("Final Certificate", substantially in the form attached hereto as Exhibit D, to be executed by the Authorized Representative(s) of Owner. In the event ESCO presents Final Certificate to Owner for execution and, within fourteen (14) calendar days from the date noted in Final

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Certificate as the date of such presentation, Owner fails to deliver an executed original of Final Certificate to ESCO and does not provide to ESCO written objections to issuance of Final Certificate, identifying the specific parts of Work the Owner believes have not been completed and providing specific facts in support of Owner's belief that Work have not been finally completed, the Date of Final Completion shall be the date noted in Final Certificate as the date Final Certificate was submitted to Owner.

- Section 2.7** Delays. If ESCO is delayed in the commencement or completion of any part of the Work due to an Event of Force Majeure, or due to the acts or omissions of Owner or any of its affiliates or any of their respective employees, representatives, agents, contractors, lenders, successors or assigns (each, an "Owner Representative, and collectively, "Owner Representatives") or failure of any Owner Representative to perform its obligations under this Contract or to cooperate with ESCO in the timely performance of the Work, then ESCO will notify Owner in writing of the existence, extent of, and reason(s) for such delay(s). ESCO shall be entitled to a change order to extend the time for completion of the Work or the cost for furnishing the Work to the extent reasonably affected by such delays.
- Section 2.8** Equipment Location and Access. Owner shall provide, without charge, a mutually satisfactory location or locations for the installation and operation of Equipment and the performance of the Work, including sufficient areas for staging, mobilization, and storage. Owner shall provide access to the Premises for ESCO and its contractors or subcontractors during regular business hours, or such other hours as may be requested by ESCO and acceptable to Owner, to perform the Work. ESCO's access to correct any emergency condition shall not be unreasonably restricted by Owner.
- Section 2.9** Permits and Governmental Fees. ESCO shall secure (with Owner's assistance) and pay for building and other permits and governmental fees, licenses, and inspections necessary for proper performance and completion of the Work and which are legally required to be obtained in ESCO's or its subcontractor's name. Owner is responsible for necessary private and governmental approvals, easements, assessments and charges for construction, use or occupancy of permanent structures or for permanent changes to existing facilities. In addition, Owner is responsible for the governmental or regulatory permits, if any, outlined in Exhibit A.
- Section 2.10** Utilities During Construction. Owner shall provide ESCO access to existing water, heat, and utilities and shall pay for such utilities consumed by ESCO during performance of the Work. ESCO shall install and pay the cost of any temporary facilities not already in existence that will be required during construction for accessing such water, heat, and utilities.
- Section 2.11** Concealed or Unknown Conditions. ESCO shall promptly notify Owner if it encounters the following conditions at the Premises: (i) subsurface or otherwise concealed physical conditions or (ii) unknown physical conditions of an unusual nature that differ from those conditions ordinarily found to exist in construction activities of the type and character as the Work and/or (iii) Asbestos, Lead Paint or any other Hazardous Material. If such conditions cause an increase in ESCO's cost of, or time required for, performance of any part of the Work, ESCO shall be entitled to an equitable adjustment to the Contract Price and/or the project schedule and ESCO and Owner shall agree, by change order, on how to proceed and the extent of any adjustment to the time required for performance of the Work and to the Contract Price, in light of the differing conditions and any adjustments that may be

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required to the Energy Savings Contract. If the parties are unable to reach agreement on an appropriate change order, either Party may terminate this Contract by delivery of written notice in accordance with Section 3.5.

Section 2.12 Equitable Adjustment

- (a) ESCO shall be entitled to an equitable adjustment to the Work, the Contract Price, the project schedule and/or the Energy Savings Contract (in each case, to the extent affected) upon occurrence of any of the following events:
1. the Work are delayed, suspended or accelerated by any Owner Representative;
 2. failure by Owner to timely perform its obligations hereunder;
 3. A Change in Law (as defined in Section 2.14), or a change in permitting requirements or other governmental approvals occurs after the date of this Contract;
 4. The occurrence of an Event of Force Majeure affecting the Work;
 5. Any change to the Work is requested or directed by Owner; or
 6. ESCO encounters a concealed or unknown condition as described in Section 2.11.
 7. Any Act of God such as a wind, hail, hurricane, tornado, storms (named and unnamed), war, strikes, riots and/or civil commotions.
- (b) Procedure. If ESCO is entitled to an equitable adjustment, ESCO shall submit a proposed change order to Owner for its review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Owner shall either (i) execute and deliver to ESCO such change order as provided by ESCO; or (ii) request that certain amendments or modifications be made to such change order. If Owner requests amendments or modifications to the change order, the Parties shall negotiate in good faith and shall promptly agree on and execute an amended change order. All executed change orders are hereby incorporated by reference into this Contract. If the parties are unable to agree on the terms and conditions of a change order, ESCO may either (i) perform the Work and Owner shall compensate ESCO for such performance on a time and material basis in accordance with ESCO's then current prices and procedures, or (ii) terminate this Contract by notice to Owner, which termination shall be deemed termination without cause pursuant to Section 3.5.

Section 2.13 Damage to Equipment; Casualty or Condemnation of Premises. Any fire, flood, other casualty or condemnation affecting any portion of the Premises shall permit ESCO to modify any affected Baseline applicable to the Energy Savings Contract to account therefor. If any fire, flood, other casualty, including Event of Force Majeure or condemnation renders a majority of the Premises incapable of being occupied or destroys a substantial part of the area(s) within which the Work is/are to be performed, ESCO may terminate this Contract, effective immediately, by delivery of a written notice to Owner, which termination shall be deemed termination pursuant to Section 3.5. If any significant item of Equipment furnished hereunder is destroyed, irreparably damaged or stolen by the negligence or willful misconduct of an employee, agent or invitee of Owner, and if Owner fails to repair or replace said item within a reasonable period of time agreed to by ESCO, ESCO may terminate this Contract, effective immediately, which termination shall be deemed a termination pursuant to Section 3.5.

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Section 2.14 Change in Law. The Parties agree that if any governmental authority or public utility enacts, promulgates, or otherwise makes effective any new applicable law or tariff or amends, modifies, or changes in any way the text, interpretation, or application of any existing applicable law or tariff, including, but not limited to any changes in the utility rate structure (collectively referred to herein as "Change in Law"), then (i) if such Change in Law occurs prior to Final Completion and renders it illegal, impracticable, or impossible for either Party to perform or comply with any material obligations of this Contract, either Party may terminate this Contract upon ten (10) business days notice to the other Party and such termination shall be deemed termination pursuant to Section 3.5 hereof, or (ii) if such Change in Laws occurs after Final Completion and renders it illegal, impracticable, or impossible for either Party to perform or comply with any material obligation under this Contract, then either Party shall be entitled to terminate this Contract (including the Energy Savings Contract) upon ten (10) business days' notice to the other Party without any liability to the other Party (except for payment by Owner of amounts due for any completed Work or Performance Period Work which remain unpaid as of the effective date of such termination). Notwithstanding anything to the contrary herein and to the fullest extent permitted by Tennessee state law, ESCO shall not be liable for any failure to meet the Energy Savings Contract or for any shortfall thereunder resulting, directly or indirectly, from a Change in Law.

SECTION 3.0 OWNER'S OBLIGATIONS

Section 3.1 Access to Premises. Owner shall provide ESCO with access to the Premises, with or without prior notice to Owner, to inspect for ESCO's benefit the Work and/or to validate Owner's performance of its responsibilities.

Section 3.2 Representations, Warranties and Covenants of Owner. Owner hereby represents, warrants, and covenants to ESCO that:

- (a) Owner has furnished, or caused others to furnish, and will continue to furnish to ESCO, promptly as information becomes available, accurate and complete data concerning energy usage for, and other information pertaining to, the Premises, including but not limited to the following:
 - i. utility records for the 24-month period preceding the date hereof and throughout the Term;
 - ii. occupancy and usage information, including current representative tenant leases, for the 24-month period preceding the date hereof and throughout the Term;
 - iii. written surveys or descriptions of heating, cooling, lighting or other systems or energy requirements and any changes thereto;
 - iv. descriptions of all energy consuming or saving equipment used on or affecting the Premises;
 - v. any energy or environmental audits relating to all or any part of the Premises;
 - vi. any service or maintenance agreement(s) regarding any heating, cooling, lighting or other building systems, or part thereof;
 - vii. construction drawings ("as-builts") in existence as of the date hereof or developed during the Term; and
 - viii. a description of energy management procedures presently utilized by Owner for the Premises and any revisions thereto throughout the Term.

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- (b) Owner has provided ESCO with all records heretofore requested by ESCO and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be, true and accurate in all material respects except as may be disclosed to ESCO by Owner in writing; and
- (c) Owner has not entered into any contracts or agreements with other persons or entities regarding the provision of energy management Work or with regard to any servicing of any of the energy related equipment located on the Premises, except as heretofore disclosed to ESCO in writing by Owner; and
- (d) Until the Date of Final Completion of this Contract, Owner will not enter into any contracts or agreements with other persons or entities regarding the provision of Professional Work or with regard to any servicing of any of Equipment furnished by ESCO hereunder, without prior written consent of ESCO; and
- (e) Owner presently intends to continue to use the Premises in a manner similar to its present use, except as may have been disclosed to ESCO by Owner in writing; and
- (f) No part of the Equipment controlled by ESCO will be placed in a permanent "on" operating mode or manually controlled and, until the Date of Final Completion, Owner shall permit only ESCO personnel or other qualified providers to repair, adjust or program Equipment installed or controlled by ESCO, except in the event of an emergency, in which event Owner may remedy the emergency and shall notify ESCO as soon as possible of the existence of the emergency and measures taken by Owner; and
- (g) Owner has disclosed in writing to ESCO the existence and location of all known or suspected asbestos and other Hazardous Materials included but not limited to the Premises; and
- (h) Owner will provide ESCO with copies of any successor or additional contracts for management or servicing of preexisting equipment that may be executed from time-to-time hereafter within ten (10) days after execution thereof and information or Work under Owner's control shall be furnished promptly by Owner; and
- (i) The execution, delivery and performance by Owner of this Contract does not violate any provision of law and does not conflict with or result in a breach of any order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or Owner's respective charter or by-laws or create a default under any agreement, bond, note or indenture to which Owner is a Party or by which Owner is bound or to which any of Owner's property is subject; and Owner has no knowledge of any facts or circumstances that, but for the passage of time, would materially, adversely affect either party's ability to perform its respective obligations hereunder and, if Owner is a governmental entity or instrumentality thereof, Owner has complied with all laws and regulations relative to bidding or procurement of the Work hereunder; and
- (j) the Contract has been duly authorized, executed and delivered by Owner, and constitutes the valid and legally binding obligation of Owner, enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization or other laws or equitable principles of general application relating to or affecting the enforcement of creditor's rights and remedies;
- (k) Owner shall notify ESCO within twenty-four (24) hours of Owner's receipt of actual or constructive notice of (1) any material malfunction in the operation of Equipment installed

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- or equipment affected by the Work provided pursuant to this Contract and/or (2) any interruption or alteration of the energy supply to the Premises; and
- (l) Owner acknowledges and agrees that the Performance Period Work will be performed by ESCO or on behalf of ESCO by a ESCO authorized service provider; and
 - (m) Owner is the fee owner of the Premises and the real estate upon which the Premises are located.

Section 3.3 Owner Default. Each of the following events or conditions shall constitute a default by Owner (each, an "Owner Default"):

- (a) Failure by Owner to timely pay or cause to be paid amounts due ESCO in accordance with the provisions of this Contract and applicable law;
- (b) Any representation or warranty furnished by Owner in this Contract is false or misleading in any material respect when made;
- (c) Any default by Owner under any instrument or agreement (i) related to the financing or leasing of all or any part of Work or Equipment hereunder and/or (ii) granting to any person or entity a security interest in and to Equipment to be installed or furnished hereunder without ESCO's express written consent;
- (d) Any failure by Owner to perform or comply with any material provision of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to Owner demanding that such failure be cured or, if cure cannot be effected in such thirty (30) days, Owner fails to promptly begin to cure and diligently proceed to completion thereof;
- (e) The commencement of any voluntary proceedings in bankruptcy or receivership by Owner, the commencement of any involuntary proceeding in bankruptcy or receivership against Owner which is not stayed or dismissed within ninety (90) days from the filing date thereof, Owner shall become insolvent, make a general assignment for the benefit of creditors, or Owner shall fail to pay its debts as and when they become due.

Section 3.4 ESCO Default. Each of the following events or conditions shall constitute a default by ESCO (each, a "ESCO Default"):

- (a) Any representation or warranty furnished by ESCO in this Contract is false or misleading in any material respect when made;
- (b) Any failure by ESCO to perform or comply with any material provision of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to ESCO demanding that such failure be cured or, if cure cannot be effected in such thirty (30) days, ESCO fails to promptly begin to cure and diligently proceed to completion thereof; or
- (c) The commencement of any voluntary proceedings in bankruptcy or receivership by ESCO, the commencement of any involuntary proceeding in bankruptcy or receivership against ESCO which is not stayed or dismissed within ninety (90) days from the filing date thereof, ESCO becomes insolvent, or ESCO makes a general assignment for the benefit of creditors.

Section 3.5 Termination Without Cause. Termination of this Contract without cause will be effectuated by delivery of at least ten (10) day advance written notice declaring termination, upon which event a)

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Owner shall be liable to ESCO for all Work furnished up to the effective date or termination and any damages sustained by ESCO, including the cost of terminating orders or subcontracts for labor or material and price of any specially manufactured items, whether in production or delivered; and b) ESCO shall have no further obligation to Owner under this Contract.

Section 3.6 Termination by ESCO Due to Owner Default. If an Owner Default has occurred and is continuing, ESCO may immediately suspend all or a portion of the Work at ESCO's discretion and/or terminate this Contract by ten (10) day written notice to Owner. In the event ESCO terminates this Contract for an Owner Default, ESCO shall be entitled to any damages sustained by ESCO, including the cost of terminating orders or subcontracts for labor or material and the price of any specially manufactured items, whether in production or delivered. In addition, ESCO may exercise any right or remedy available to ESCO at law or in equity. In the event ESCO terminates this Contract for an Owner Default, ESCO shall be entitled to any damages sustained by ESCO, including attorney fees and costs incurred by ESCO as a result of Owner's default. In addition, ESCO may exercise any right or remedy available to ESCO at law or in equity

Section 3.7 Termination by Owner Due to ESCO Default. If an ESCO Default has occurred and is continuing, Owner may terminate this Contract by ten (10) day written notice to ESCO. In the event Owner terminates this Contract for an ESCO Default, Owner may take possession of the Premises together with all materials thereon and move to complete the Work itself expediently. In completing the Work, Owner shall use its commercially reasonable efforts to minimize its damages and to utilize (and pay for) any materials or equipment or any specially manufactured or fabricated equipment delivered by ESCO to the Premises or which are in the process of being manufactured, fabricated and/or delivered (provided that ESCO shall not be obligated to ship any such equipment unless Owner provides ESCO adequate assurance of payment therefor). If the unpaid balance of the Contract Price exceeds the expense of finishing the Work, the excess shall be paid to ESCO, but if the expense exceeds the unpaid balance, ESCO shall pay the difference to Owner as Owner's sole and exclusive remedy hereunder in connection with the ESCO Default upon demand by Owner.

SECTION 4.0 INSURANCE

Section 4.1 ESCO's Liability Insurance. ESCO shall purchase and maintain without interruption, from the commencement of the Work until the Date of Final Completion, the following policies with the following minimum limits

Workers' Compensation: Statutory

Comprehensive General Liability: \$1,000,000 per occurrence
\$2,000,000 in the aggregate

Section 4.2 Title and Risk of Loss. Title to Equipment comprising the Work shall pass to Owner upon payment to ESCO by Owner for Work corresponding to such Equipment.

Section 4.3 Owner's Liability and Property Insurance.

(a) Owner shall be responsible for purchasing and maintaining Commercial General Liability Insurance of the type and amount Owner deems necessary and appropriate.

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- (b) Owner shall purchase and maintain Property Insurance policy covering the materials, supplies, equipment, etc. while being stored, installed and at final acceptance. Owner hereby agrees that ESCO is not responsible for purchasing or maintaining Builder's Risk / Property Insurance on behalf of Owner, nor will ESCO purchase or maintain such insurance on behalf of Owner. Further, Owner agrees that ESCO is not responsible for purchasing and maintaining the Builder's Risk / Property Insurance, and that once materials, supplies, equipment, etc. are delivered to Owner's construction site (or any site belonging to Owner, even if not the exact installation site), that Owner is fully responsible for materials, supplies, equipment, etc. from that point forward in regard to any form of loss or peril.

Section 4.4 Owner's Loss of Use/Business Interruption Insurance. Owner may purchase and maintain insurance to protect against loss of use of Owner's property or business interruption due to fire or other commonly insured hazards, however such fire or hazards may be caused. Owner acknowledges that ESCO is not required to purchase or maintain such insurance against the loss of use of Owner's business interruption. OWNER HEREBY WAIVES ALL CLAIMS AND CAUSES OF ACTION IT MAY HAVE AGAINST ESCO AND ANY OF ITS SUBCONTRACTORS, AGENTS, EMPLOYEES, AND OFFICERS FOR LOSS OF USE OF OWNER'S PROPERTY OR BUSINESS INTERRUPTION, WHETHER INSURED OR NOT, INCLUDING CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR OTHER DAMAGES DUE TO SUCH HAZARDS, REGARDLESS OF CAUSE.

Section 4.5 Evidence of Insurance. Owner and ESCO shall furnish to the other certificate(s) of insurance prior to commencement of performance of any Work, evidencing the coverages and limits required to be maintained under Sections 4.1 and 4.3 of this Contract. The certificate(s) shall name the other Party as an "additional insured" to the extent of the indemnity obligation assumed by the insured Party under this Contract. Each Party shall provide 30 days written notice to the other Party in the event any insurance policy required hereunder is to be cancelled, terminated or is allowed to expire. Neither the procurement nor maintenance of any type of insurance by Owner shall in any way be construed or deemed to limit, waive, or release Owner from any of the obligations and risks of Owner under this Contract, or to be a limitation on the nature and extent of such obligations and risks.

Section 4.6 If applicable, the payment and performance bonds provided in accordance with Tennessee state law by ESCO shall specifically exclude coverage for those portions of the Energy Equipment Installation Contract pertaining to Energy Savings Contract, design services, energy cost savings guarantees, maintenance guarantees, utility incentives and any other clauses which do not relate specifically to procurement and installation of the infrastructure improvements, construction or construction management and supervision of the work for purchasing and installing ESCO Equipment, or for work to be accomplished by the Owner.

SECTION 5.0 HAZARDOUS MATERIALS

Section 5.1 Asbestos and Hazardous Materials. Except as expressly stated, ESCO's Work expressly exclude any work connected or associated with Hazardous Materials. Hazardous Material means any pollutant, contaminant, toxic or hazardous substance, material or waste, any dangerous, potentially dangerous, noxious, flammable, explosive, reactive or radioactive substance, lead based paint, material or waste, urea formaldehyde, asbestos, asbestos-containing materials ("ACM's"), polychlorinated

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biphenyl ("PCB"), mold, fungus, bacteria, microbial growth, or other contaminants or airborne biological agents, and any other substance, the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transport, disposal, handling, or ownership of which is regulated, restricted, or prohibited, by any federal, state, or local statute, law, ordinance, code, rule or regulation now or at any time hereafter in effect, and as may be amended from time to time, including but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Clean Air Act (42 U.S.C. §§ 7401 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 et seq.), and the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.).

ESCO shall not perform any identification, abatement, remediation, cleanup, removal, transport, treatment, storage or disposal of Hazardous Materials on Owner's premises. Owner warrants and represents that, except as expressly, and by reference to this Section, set forth in Exhibit E (Hazardous Materials), there are no Hazardous Materials on the Premises in areas within which ESCO will be performing any part of the Work or Owner has disclosed to ESCO the existence and location of any Hazardous Materials in all areas within which ESCO will be performing any part of the Work. ESCO's responsibility, if any, for any Hazardous Materials, shall be limited to and as expressly set forth in Exhibit E and Owner shall, at all times, be and remain the owner and generator of any and all Hazardous Materials on the Owner's premises and responsible for compliance with all laws and regulations applicable to such Hazardous Materials.

Should ESCO become aware of or suspect the presence of Hazardous Materials in the course of performing the Work that are not disclosed in Exhibits E, or which present or may present a hazard to or endanger health welfare or safety, ESCO shall have the right to immediately stop work in the affected area and shall notify Owner. Owner will be responsible for taking any and all action necessary to remove or render harmless the Hazardous Materials in accordance with all applicable laws and regulations. ESCO shall be required to resume performance of the Work in the affected area only in the absence of Hazardous Materials or when the affected area has been rendered harmless; if the area has not been or cannot be rendered harmless within thirty (30) days of discovery of the Hazardous Material, ESCO may terminate this Contract pursuant to Section 3.5. Owner shall compensate ESCO for any additional costs incurred by ESCO as a result of work stoppage, including demobilization and remobilization. In addition to any other indemnity obligation of Owner to ESCO, to the maximum extent permitted by law, Owner shall indemnify, defend, and hold harmless ESCO, its officers, directors, beneficiaries, shareholders, partners, agents, representatives, and employees (collectively referred to as "ESCO" for purposes of this Article 5) and ESCO's subcontractors from all fines, suits, actions, claims, penalties, and proceedings of every kind, and all costs associated therewith (including attorneys' and consultants' fees) arising out of or in any way connected with or related to: (1) the presence or any leak, deposit, spill, discharge, or release or disposal of Hazardous Materials in connection with the performance of this Contract, except to the extent such Hazardous Materials were brought onto the Premises by ESCO; and/or (2) Owner's failure to identify and disclose Hazardous Materials and to fully comply with all federal, state, and local statutes, laws ordinances, codes, rules and regulation now or at any time hereafter in effect regarding Hazardous Materials. To the extent permitted by Tennessee state law, ESCO shall not have

ESCO Initials _____ Owner Initials _____

any liability (whether direct or indirect and regardless of cause) relating to or arising from mold, fungus, bacteria, microbial growth, or other contaminants or airborne biological agents.

SECTION 6.0 INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 6.1 Indemnification. To the maximum extent permitted by Tennessee state law, ESCO and Owner shall indemnify and hold each other and all respective officers, directors, affiliates, shareholders, and employees of each other harmless from any and all third party actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to property, to the extent arising out of or resulting from the negligence of its employees, agents, subcontractors or other authorized agents in connection with the Work to be performed on the Premises. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination of this Contract, with respect to any claims based on facts or conditions that occurred prior to expiration or termination. In the event one Party hereto knows or has reason to believe that the other Party will be required, in connection with this Contract, by any court or governmental administrative Owner to respond to any legal action or other directive by such authorities, such Party shall immediately notify the other in writing of the same.

Section 6.2 **LIMITATION OF LIABILITY: RECOGNIZING THE LIMITATIONS AND IMMUNITIES ALLOWED TO GOVERNMENTAL ENTITIES UNDER THE TENNESSEE GOVERNMENTAL TORT LIABILITY ACT AND OTHER APPLICABLE LAW, AND WITHOUT WAIVER OF ANY RIGHTS, PRIVILEGES OR IMMUNITIES THEREUNDER, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOST REVENUE AND LOST PROFITS) OR PUNITIVE DAMAGES REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM BREACH OF CONTRACT, TORT OR ANY OTHER THEORY.**

SECTION 7.0 WARRANTY

Section 7.1 General. Should any item of Equipment be found to be defective within one (1) year from the date of Substantial Completion, ESCO agrees to repair such item or, if necessary, furnish and install, without charge, similar items to replace it; provided, however, that the original item is returned to ESCO and inspection by the manufacturer establishes the claim. All shipping and transportation costs involved in the repair or replacement of the defective Equipment shall be paid by ESCO.

On all systems installed pursuant to this Contract, ESCO shall provide, at no charge during the warranty period, any labor required to repair or replace defective Equipment or parts. Such labor shall include adjustment of controls, air balancing, and correction of mechanical difficulties if such adjustments are due to defective equipment or improper installation.

If the Equipment fails to fulfill the performance Energy Savings Contracts, ESCO shall have the opportunity, at its sole cost and expense, to make such changes as it deems necessary to fulfill such Energy Savings Contracts. If a demonstration is required, ESCO shall be given the opportunity to test the equipment under requisite conditions.

The warranty provisions under this Section 7.1 are in addition to and not in lieu of any warranties made by equipment or component manufacturers. After installation of all ECMs, ESCO shall deliver

ESCO Initials _____ Owner Initials _____

to the Owner all manufacturer warranty certificates, documents, operation and maintenance instructions and manuals, and similar documents.

Section 7.2

Equipment Warranties. ESCO covenants and agrees that all Equipment installed as part of this Contract is new, in good and proper working condition and protected by appropriate written warranties covering all parts and equipment performance. ESCO further agrees to deliver to the Owner for inspection and approval, all such written warranties and which shall be attached, to pursue rights and remedies against manufacturer of the Equipment under the warranties in the event of Equipment malfunction or improper or defective function, and defects in parts, workmanship and performance (provided, however, that ESCO shall have no obligation to incur costs to legally enforce any such rights or remedies), to notify the Owner whenever defects in Equipment parts or performance occur which give rise to such rights and remedies and those rights and remedies are exercised by ESCO. The cost of any risk of damage or damage to the Equipment and its performance, including damage to property and Equipment of the Owner or the Premises, due to ESCO's failure to exercise its warranty rights shall be borne solely by ESCO.

All warranties shall be transferable and extend to the Owner. ESCO shall use commercially reasonable efforts to have the warranties specify that only new, and not reconditioned parts, may be used and installed when repair is necessitated by malfunction.

All ESCO warranties required hereunder shall be in force for a minimum of one year from the Substantial Completion date.

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

Section 7.3

THE WARRANTY, LIABILITY AND REMEDIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, LIABILITIES, OR REMEDIES, WHETHER IN CONTRACT OR IN NEGLIGENCE, EXPRESS OR IMPLIED, IN LAW OR IN FACT, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL ESCO BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING WITHOUT LIMITATION LOST PROFITS), OR PUNITIVE DAMAGES. NO REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS OF PURPOSE IS MADE REGARDING PREVENTION BY THE SCOPE OF WORK, OR ANY COMPONENT THEREOF, OF MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR ANY OTHER CONTAMINATES. ESCO SPECIFICALLY DISCLAIMS ANY LIABILITY IF THE SCOPE OF WORK OR ANY COMPONENT THEREOF IS USED TO PREVENT OR INHIBIT THE GROWTH OF SUCH MATERIALS.

SECTION 8.0 REPRESENTATIONS

Each Party warrants and represents to the other that:

- i. It has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

ESCO Initials _____ Owner Initials _____

- ii. Its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;
- iii. Its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
- iv. It has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.
- V. ESCO AND ALL RESPECTIVE OFFICERS, DIRECTORS, AFFILIATES, MEMBERS, AND EMPLOYEES HAVE NOT MADE ANY SCOPE OR PROMISES TO OWNER EMPLOYEES, BOARD MEMBERS, OFFICIALS, AND/OR RELATED PARTIES UNLESS SPECIFICALLY DOCUMENTED IN THIS CONTRACT.

SECTION 9.0 SPECIAL PROVISIONS

Section 9.1 For future Energy Savings Performance Contracting (ESPC) work, [ENTITY], and their funded entities reserves the right to conduct future phases of work with Path Company LLC as their ESCO partner.

SECTION 10.0 CONFIRMATION OF FUNDING

☐ If this box is checked, Owner will not finance with third parties any portion of the Contract Price. Accordingly, upon execution of this Contract by ESCO, Owner's execution of this Contract shall constitute the Notice to Proceed to ESCO.

☒ If this box is checked, Owner intends to utilize federal monies ("ESSER III Funding") for a portion of the Contract Price. Accordingly, ESCO shall not be required to commence any of the Work listed under Exhibit A, Phase 2B (Equipment Installation) until and unless Owner has received appropriate approval and has access to ESSER III Funding. Owner shall provide ESCO, upon request, copies of the ESSER III Funding approval documentation. Owner represents that it will receive ESSER III Funding approval on or before December 6, 2021. Within five (5) calendar days of the ESSER III Funding approval, Owner shall execute and issue a written Notice to Proceed (substantially in the form of Exhibit B, Phase 2B (Equipment Installation) hereto) to ESCO. In the event Owner does not achieve ESSER III Funding approval on or before the date specified in the preceding sentence, or such later date as may be agreed to in writing by ESCO, ESCO and Owner agree to, in good faith, renegotiate the Scope of Work and Contract price. If ESCO and Owner cannot come to an agreement on an amended Scope of Work and Contract Price, ESCO shall not be required to perform any portion of the Scope of Work listed under Phase 2B (Equipment Installation).

ESCO Initials _____ Owner Initials _____

ARTICLE 11.0 GENERAL PROVISIONS

- Section 11.1** Assignment. Owner may not assign, transfer, or convey this Contract, or any part hereof, or its right, title or interest herein, without the written consent of ESCO, which consent shall not be unreasonably withheld or delayed. Subject to the foregoing, this Contract shall be binding upon and inure to the benefit of the parties' respective successors and assigns.
- Section 11.2** Applicable Law and Jurisdiction. This Contract is made and shall be interpreted and enforced in accordance with the laws of the state in which the Premises are located. Owner hereby consents and submits to the personal jurisdiction of the courts of the state where the Premises are located and of the United States District Court in such state.
- Section 11.3** Complete Contract. This Contract and the Exhibits attached hereto, together with any documents expressly incorporated herein by reference, shall constitute the entire Contract between the parties regarding the subject matter hereof. There are no other agreements, understandings, or covenants between the parties of any kind, expressed or implied, oral or otherwise pertaining to the Services. Any Proposals furnished by ESCO prior to execution of this Contract were for negotiation purposes only and shall not constitute legally binding commitments. This Contract may not be amended, modified or supplemented except by a writing signed by the parties hereto. The energy audit authored by ESCO and/or its consultant(s), including any summaries, excerpts, and abstracts thereof (collectively, the "Energy Audit"), are used to demonstrate operational and consumption data and calculations and projections regarding savings, but do not reflect the savings guaranteed by ESCO; in the event of any conflict or contradiction between the Energy Audit and the provisions of this Contract and its Exhibits, the provisions of this Contract and its Exhibits shall govern.
- Section 11.4** Force Majeure. Neither Party shall be considered to be in default hereunder when a failure of performance (other than Owner's obligation to make payment to ESCO) is due to an Event of Force Majeure. An "Event of Force Majeure" shall mean any cause or event beyond the control of the party. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; hurricane; earthquake; tornado; storm; fire; civil disobedience; pandemic; insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by any governmental authority or utility or the inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals, in each case if not caused by the fault of the affected party. If either Party is rendered unable to fulfill any of its obligations under this Contract by reason of an Event of Force Majeure it shall give prompt written notice of such fact to the other Party and the affected party's obligations shall be suspended during the pendency of the Event of Force Majeure. If either Party shall be unable to carry out any material obligation under this Contract due to Event of Force Majeure, this Contract shall, at the election of either party: (i) remain in effect but the parties' obligations shall be suspended until the uncontrollable event terminates; or (ii) be terminated upon ten (10) calendar days notice to the other party, which termination shall be deemed termination pursuant Section 3.5.
- Section 11.5** Further Documents. The parties shall timely execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

ESCO Initials _____ Owner Initials _____

- Section 11.6** Severability. The invalidity or unenforceability of any portion or provision of this Contract shall in no way affect the validity or enforceability of any other portion or provision hereof effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any Party hereto. Upon any such determination of invalidity, illegality or unenforceability, the parties hereto shall negotiate in good faith to modify this Contract so as to affect the original intent of the parties as closely as possible in an acceptable manner, to the end that the transactions contemplated by this Contract are consummated to the extent possible.
- Section 11.7** Signatures in Counterpart. This Contract may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute one and the same Contract. A facsimile copy hereof shall suffice as an original.
- Section 11.8** Neutral Interpretation. This Contract shall not be construed to have originated by either party, but as prepared equally and jointly by both parties. The fact that ESCO has drafted the initial form of this Contract shall not affect the interpretation of any provision of the Contract in a manner adverse to ESCO or otherwise prejudice or impair ESCO's rights.
- Section 11.9** COVID-19 LIMITATION ON LIABILITY. The transmission of COVID-19 may occur in a variety of ways and circumstances, many of the aspects of which are currently not known. HVAC systems, products, services and other offerings have not been tested for their effectiveness in reducing the spread of COVID-19, including through the air in closed environments. IN NO EVENT WILL ESCO BE LIABLE UNDER THIS CONTRACT OR OTHERWISE FOR ANY ACTION OR CLAIM, WHETHER BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE, FOR ANY BODILY INJURY (INCLUDING DEATH) OR ANY OTHER LIABILITIES, DAMAGES OR COSTS RELATED TO COVID-19 (INCLUDING THE SPREAD, TRANSMISSION OR CONTAMINATION THEREOF) (COLLECTIVELY, "COVID-19 LIABILITIES") AND OWNER HEREBY EXPRESSLY RELEASES ESCO FROM ANY SUCH COVID-19 LIABILITIES.
- The parties agree that they are entering into this Contract while the nation is in the midst of a national emergency due to the Covid-19 pandemic ("Covid-19 Pandemic"). With the continued existence of Covid-19 Pandemic and the evolving guidelines and executive orders, it is difficult to determine the impact of the Covid-19 Pandemic on ESCO's performance under this Contract. Consequently, the parties agree as follows: Each Party shall use commercially reasonable efforts to perform its obligations under the Contract, subject to provisions below; Each Party will abide by any federal, state (US), provincial (Canada) or local orders, directives, or advisories regarding the Covid-19 Pandemic with respect to its performance of its obligations under this Contract and each shall have the sole discretion in determining the appropriate and responsible actions such Party shall undertake to so abide or to safeguard its employees, subcontractors, agents and suppliers; Each Party shall use commercially reasonable efforts to keep the other Party informed of pertinent updates or developments regarding its obligations as the Covid-19 Pandemic situation evolves; and If ESCO's performance is delayed or suspended as a result of the Covid-19 Pandemic, ESCO shall be entitled to equitable adjustment.
- Section 11.10** The execution of this Contract and performance of the Work is authorized under Tennessee Code § 12-4-110.

ESCO Initials _____ Owner Initials _____

IN WITNESS WHEREOF, the duly authorized representatives of the parties have each executed this Contract, effective as of the date first above written.

ESCO:

By: _____
(Signature in Ink)

Name: _____

Title: _____

Date: _____

OWNER:

By: _____
(Signature in Ink)

Name: _____

Title: _____

Date: _____

Schedules, Exhibits, Attachments

ESCO Initials _____ Owner Initials _____

Exhibit A – Scope of Work

Building	Area	Description of Work	# of Units
High School	Main Building (Image 1)	<u>High School – Main Building</u> <ul style="list-style-type: none"> • Replace RTU 1-70 (Existing Aeon and York Units) • New Niagara Controls System • Engineered Drawings • Install MERV-13 Filters 	70
High School	Cafeteria/Kitchen (Image 2)	<u>High School – Cafeteria/Kitchen</u> <ul style="list-style-type: none"> • New Niagara Controls System 	14
High School	Gym (Image 3)	<u>High School – Gym</u> <ul style="list-style-type: none"> • Replace (8) Packaged Units and (5) DSS • New Niagara Controls System • Engineered Drawings • Install MERV-13 Filters • Includes HGRH 	13
Middle School	Phase 2 Scope Only (Image 4)	<u>Middle School - Phase 2 Scope Only</u> <ul style="list-style-type: none"> • Replace RTUs 36, 37, 28, 39 • Add to Niagara Controls System • Engineered Drawings • Install MERV-13 Filters 	4
PAC	PAC Controls	<u>PAC Controls</u> <ul style="list-style-type: none"> • Integrate (2) Greenheck units, (2) JCI Packaged Units, and (3) building exhaust fans into the Niagara Control System 	N/A

ESCO Initials _____ Owner Initials _____

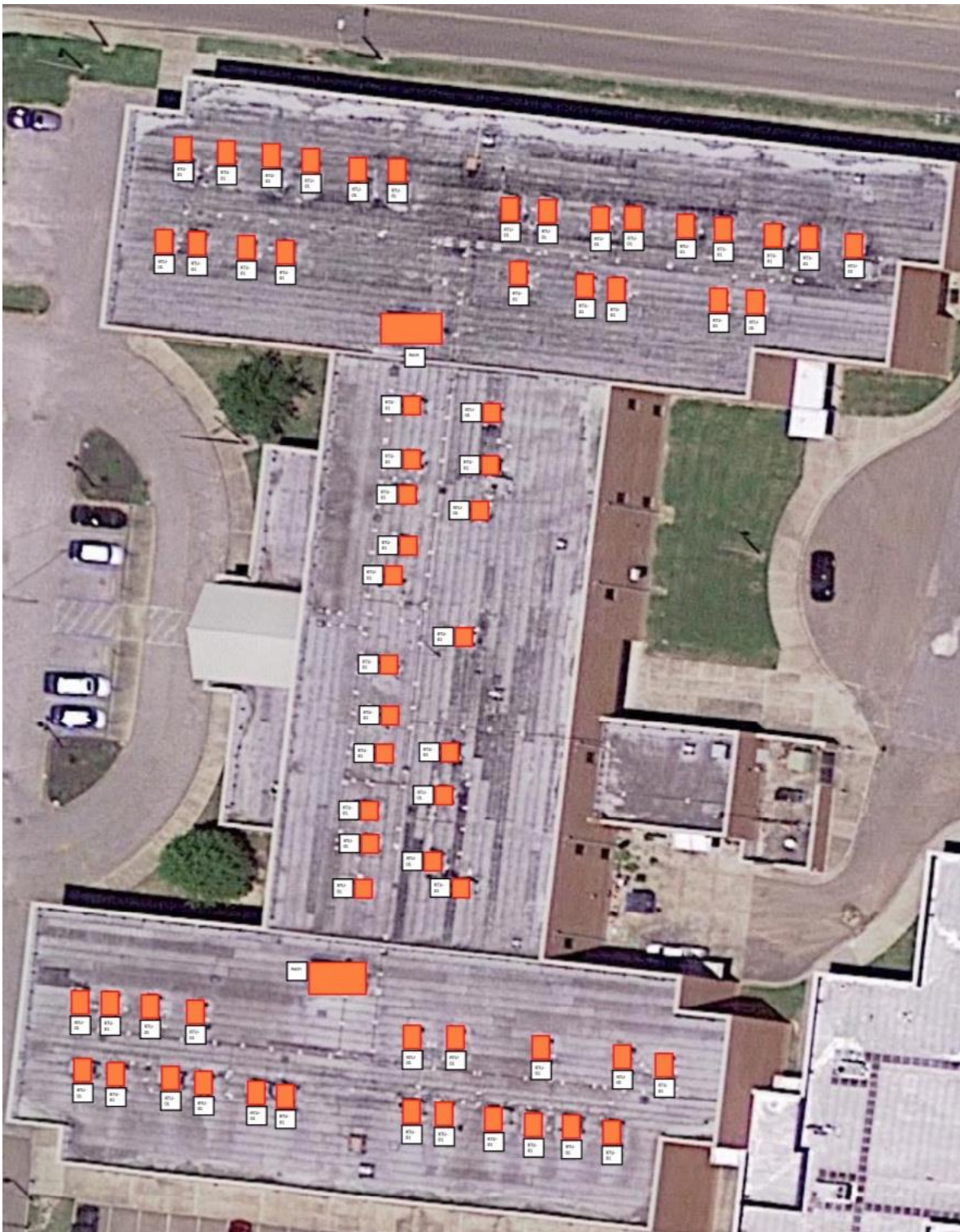
November 11, 2021

Installation Contract-Millington Schools Phase 2

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Image 1:



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Image 2:



ESCO Initials _____ Owner Initials _____

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Image 3:



ESCO Initials _____ Owner Initials _____

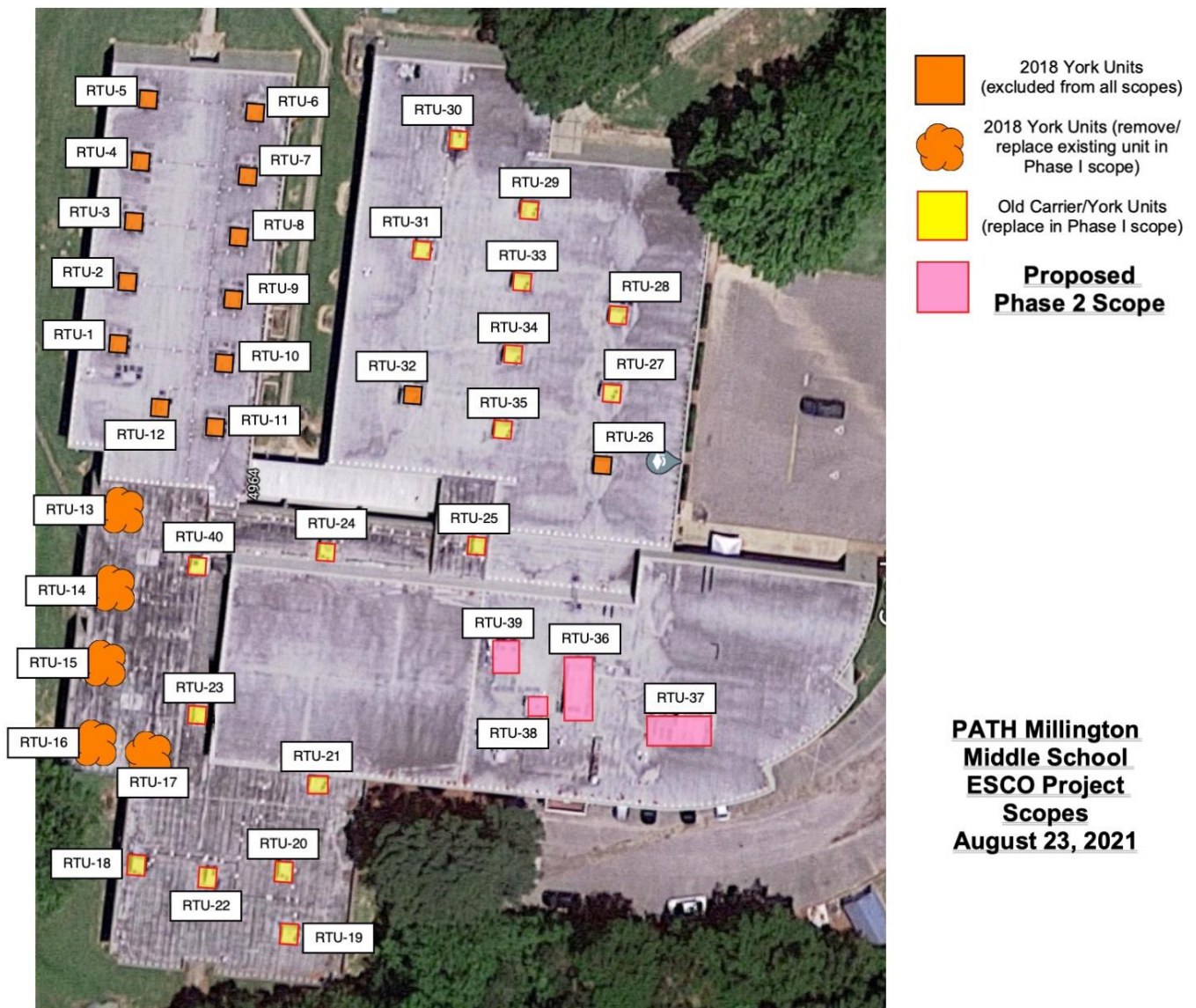
November 11, 2021

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Image 4:



Phasing of Work to be Completed:

Phase 2A: Equipment Procurement

- Procurement of all equipment associated with the above-listed scope of work

Phase 2B: Equipment Installation

- Mobilization and Installation of the above-listed scope of work

ESCO Initials _____ Owner Initials _____

November 11, 2021

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Exhibit B – Notice to Proceed 1: Phase 2A (Equipment Procurement)

This **Notice to Proceed 1** for Scope per Exhibit A, Phase 2A (Equipment Procurement) is attached to and made an integral part of that certain Millington School District Installation Agreement 1241- C2 dated _____, 2021 by and between Path Company LLC (the "ESCO") and Millington School District, (the "Owner") which provides as follows:

1. With regards to section 10.0 – Confirmation of Funding stating that “This contract is contingent upon Owner confirmation of funding”, Owner hereby confirms that project funding has been appropriated for Phase 2A (Equipment Procurement) in the amount of \$1,170,328 towards the total project cost of \$2,438,185. The contingency requiring evidence that funding acceptable for Phase 2A has been allocated is hereby satisfied.
2. All other terms and conditions of the Contract shall remain the same and in full force and effect.

Having read all of the foregoing, we, the undersigned, hereby ratify, approve, accept, confirm and acknowledge the same to be part of the contract and hereby authorize the ESCO to proceed with Scope per Exhibit A, Phase 2A: Equipment Procurement.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have each executed this Agreement, effective as of the date first above written.

ESCO:

By: _____
(Signature in Ink)

Name: _____

Title: _____

Date: _____

OWNER:

By: _____
(Signature in Ink)

Name: _____

Title: _____

Date: _____

ESCO Initials _____ Owner Initials _____

Exhibit B – Notice to Proceed 2: Phase 2B (Equipment Installation)

This **Notice to Proceed 2** for Scope per Exhibit A, Phase 2B (Equipment Installation) is attached to and made an integral part of that certain Millington School District Installation Agreement 1241- C2 dated _____, 2021 by and between Path Company LLC (the "ESCO") and Millington School District, (the "Owner") which provides as follows:

1. With regards to section 10.0 – Confirmation of Funding stating that “This contract is contingent upon Owner confirmation of funding”. Owner hereby confirms that the remaining project funding has been appropriated for Phase 2B (Equipment Installation) in the amount of \$1,267,857 towards the total project cost of \$2,438,185. The contingency requiring evidence that funding acceptable for the project has been allocated is hereby satisfied.
2. All other terms and conditions of the Contract shall remain the same and in full force and effect.

Having read all of the foregoing, we, the undersigned, hereby ratify, approve, accept, confirm and acknowledge the same to be part of the contract and hereby authorize the ESCO to proceed with the installation of all ECM's listed in Scope per Exhibit A, Phase 2B: Equipment Installation.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have each executed this Agreement, effective as of the date first above written.

ESCO:

By: _____
(Signature in Ink)

Name: _____

Title: _____

Date: _____

OWNER:

By: _____
(Signature in Ink)

Name: _____

Title: _____

Date: _____

ESCO Initials _____ Owner Initials _____

Exhibit C – Substantial Completion Form

This **Substantial Completion Form** is attached to and made an integral part of that certain Millington School District Installation Agreement 1241- C2 dated _____, 2021 by and between Path Company LLC (the "ESCO") and Millington School District, (the "Owner") which provides as follows:

The Work performed has been inspected by the undersigned Owner, have been determined to be substantially complete, and Owner accepts the same.

The Date(s) of Substantial Completion for the Services noted below is/are hereby established as the earlier of (i) the date Owner executes this Certificate, as noted below, or (ii) fourteen (14) calendar days after the warranty commencement date noted below as the date this Certificate is submitted to Owner.

The Warranty Period, pursuant to Section 7.0 of the Contract, commences as of the Warranty Commencement Date stated below with respect to the following corresponding equipment or work:

Services: Description of Equipment or Work	Warranty Commencement Date

IN WITNESS WHEREOF, the duly authorized representatives of the parties have each executed this Contract, effective as of the date first above written.

ESCO:

By: _____
(Signature in Ink)

Name: _____

Title: _____

Date: _____

OWNER:

By: _____
(Signature in Ink)

Name: _____

Title: _____

Date: _____

ESCO Initials _____ Owner Initials _____

Exhibit D – Final Completion and Acceptance

This **Final Completion and Acceptance Form** is attached to and made an integral part of that certain Millington School District Installation Agreement 1241- C2 dated _____, 2021 by and between Path Company LLC (the "ESCO") and Millington School District, (the "Owner") which provides as follows:

The Work performed has been inspected by the undersigned Owner, have been determined to be substantially complete, and Owner accepts the same.

The Date(s) of Final Completion for the Services noted below is/are hereby established as the earlier of (i) the date Owner executes this Certificate, as noted below, or (ii) fourteen (14) calendar days after the latest warranty commencement date noted below as the date this Certificate is submitted to Owner.

The Warranty Period, pursuant to Section 7.0 of the Contract, commences as of the Date of Final Completion, except as noted below with respect to the following corresponding equipment or work:

Services: Description of Equipment or Work	Warranty Commencement Date

IN WITNESS WHEREOF, the duly authorized representatives of the parties have each executed this Contract, effective as of the date first above written.

ESCO:

By: _____
(Signature in Ink)

Name: _____

Title: _____

Date: _____

OWNER:

By: _____
(Signature in Ink)

Name: _____

Title: _____

Date: _____

ESCO Initials _____ Owner Initials _____

Exhibit E – Hazardous Materials

Pursuant to Section 5.0 of the Contract, the existence of the following Hazardous Materials has been disclosed by Owner and/or otherwise identified prior to the execution of the Contract:

1. PCB-containing ballasts and mercury-containing lamps which shall be replaced by and disposed of by ESCO and shall be disposed of in name of the Owner as owner/generator of the Hazardous Material
2. Abatement of all asbestos containing materials is the sole responsibility of the Owner and asbestos containing materials shall be removed and disposed of by the Owner in accordance with all Federal, State, and Local codes and ordinances prior to commencement of work by Path Company LLC under this project in accordance with this Article 5 of the Contract. All asbestos abatement shall be contracted separately at the Owner's expense. To the maximum extent permitted by Tennessee state law, Owner agrees that ESCO is in no way liable for any damage (bodily injury or property damage) caused by Asbestos or Asbestos containing materials.
3. Lead paint, or any other material classified as hazardous or that requires special testing, handling, abatement and/or disposal that is not specifically addressed is the responsibility of the Owner.

ESCO Initials _____ Owner Initials _____

Exhibit F – IRS 179D Authorization Letter

November 11, 2021

Millington School District
Phil LeBlanc
5020 Second Ave
Millington, TN 38053

RE: Millington School District Installation Agreement 1241- C2
Subject: 179D Tax Deduction Form of Allocation

Dear Teresa:

Path Company is requesting permission for allocation of the tax deduction incentives allowable under Section §179D of the Internal Revenue Code regarding the Energy Policy Act of 2005. These incentives allow government building owners to allocate potential Section 179D deductions, that are otherwise of no value to tax-exempt entities, to project designers including contractors, consultants, and energy service providers.

Per the definitions in Notice 2008-40 and the fact that Millington School District is tax-exempt, tax deduction incentives can be allocated to the person primarily responsible for the design of this project. We are requesting you verify we are those responsible persons by the execution of your signature on the attached allocation form. After your review, please notify us of any clarification or corrections you may require otherwise please sign and date where indicated.

It was a pleasure partnering with you in the successful implementation of energy-savings measures throughout your facilities and we look forward to furthering this effort in the future. If you have any other questions, please feel free to contact me.

Sincerely,

Russ Phillips
Co-Founder & Principal

ESCO Initials _____ Owner Initials _____

November 11, 2021

Installation Contract-Millington Schools Phase 2

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SECTION 179D ALLOCATION

As part of the Energy Policy Act of 2005, Congress enacted Section 179D of the Internal Revenue Code to encourage the design and construction of energy efficient properties. This program allows government building owners to allocate potential Section 179D deductions for the installation of energy efficient building envelope, HVAC and hot water systems, and interior lighting systems. Taxpayers eligible to receive an allocation may include architects, engineers, contractors, environmental consultants, or energy service providers. Millington School District hereby allocates the Section 179D deduction for the property(ies) described below to Path Company.

GOVERNEMENT BUILDING OWNER

Millington School District
Phil LeBlanc
5020 Second Ave
Millington, TN 38053

DESIGNER

Path Company
Russ Phillips, PE
1775 Moriah Woods, Suite #1
Memphis, TN 38117

Property Name	Property Address	Cost of Property	Date Placed in Service	179D Deduction Allocated to Designer

Under penalties of perjury, I declare that I have examined this allocation, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of this allocation are true, correct, and complete.

Signature of Government Representative

Date

Signature of Designer

Date

ESCO Initials _____ Owner Initials _____