

6502

**McDONALD LOCAL BOARD OF EDUCATION
SPECIAL BOARD MEETING
FRIDAY, JUNE 7, 2019 - 7:00 A.M.
M.H.S. LIBRARY
MCDONALD, OHIO 44437**

The McDonald Local Board of Education held a Special Meeting on Friday, June 7, 2019, in the library at McDonald High School, 600 Iowa Avenue, McDonald, OH 44437.

The Special Meeting was called to order at 7:02 a.m. by President John Saganich. Treasurer Megan Titus called the roll:

Members Present: Joseph Cappuzzello, Thomas Hannon, Jody Klase,
Wendy Higgins, John Saganich

“Notice of this meeting was given in accordance with the provisions of Section 1.450 of the O.R.C. and the Ohio Administrative Procedures Act.”

Pledge of Allegiance

Res. 19-120 Approve agenda for Special Meeting of June 7, 2019

Mrs. Klase moved and Mr. Cappuzzello seconded
Yeas: Klase, Cappuzzello, Higgins, Hannon, Saganich
Nays: None
President declared motion carried

New Business:

A. Finance Committee – Joseph Cappuzzello, Chairman

Res. 19-121 DONATIONS

Resolution to accept the following donations:

- \$1,000 donation from Don and Jane Thorpe, deposited into the Don & Jane Thorpe Scholarship fund 007 9002
- \$1,000 donation from Kyle Joynes, deposited into the Cindy Green Robinson Scholarship fund 007 9013.
- \$100 donation from Backdraft Screen Printing, sponsoring a golf hole in the Golf Outing scheduled for July 2019. The donation was provided by

- reducing the cost of invoice #4468 by \$100; invoice was for shirts ordered specifically for the golf clinic.

Upon the recommendation of the district treasurer I call for a motion to approve the above resolution.

Mr. Cappuzzello moved and Mrs. Klase seconded
Yeas: Cappuzzello, Klase, Higgins, Hannon, Saganich
Nays: None
President declared motion carried

Res. 19-122 COOPERATIVE PURCHASING PROGRAM

Resolution to join The Interlocal Purchasing System (TIPS) Cooperative Purchasing Program, which has no cost to the school district (See Exhibit A).

Upon the recommendation of the district treasurer I call for a motion to approve the above resolution.

Mr. Cappuzzello moved and Mrs. Klase seconded
Yeas: Cappuzzello, Klase, Higgins, Hannon, Saganich
Nays: None
President declared motion carried

Res. 19-123 PLUG SMART CONTRACT

Resolution to approve the contract with Plug Smart for the LED Lighting and Building Automation System Upgrade Project at the McDonald High School (See Exhibit B).

Upon the recommendation of the district treasurer I call for a motion to approve the above resolution.

Mr. Cappuzzello moved and Mrs. Klase seconded
Yeas: Cappuzzello, Klase, Higgins, Hannon, Saganich
Nays: None
President declared motion carried

B. Personnel Committee – Jody Klase, Chairman

Res. 19-124 CLASSIFIED SUBSTITUTES

Resolution to hire the following classified substitutes on a one (1) year limited contract for the 2018-2019 school year, pending certification and BCII/FBI background checks.

Patricia Postlethwait – Substitute Bus Driver

Brandon Jones – Substitute Domestic

Upon the recommendation of the district superintendent I call for a motion to approve the above resolution.

Mrs. Klase moved and Mrs. Higgins seconded

Yeas: Klase, Higgins, Cappuzzello, Hannon, Saganich

Nays: None

President declared motion carried

Res. 19-125 SUPPLEMENTAL CONTRACT – 2019/2020

Resolution to hire the following personnel on a one (1) year supplemental contract for the 2019-2020 school year, pending certification and BCII/FBI background checks. Salary will be as per negotiated agreement:

Jeff Rasile – Head Boys Basketball Coach

Upon the recommendation of the district superintendent I call for a motion to approve the above resolution.

Mrs. Klase moved and Mrs. Higgins seconded

Yeas: Klase, Higgins, Cappuzzello, Hannon, Saganich

Nays: None

President declared motion carried

Res. 19-126 SUPPLEMENTAL CONTRACTS – 2019/2020

Resolution to hire the following personnel on a one (1) year supplemental contract for the 2019-2020 school year, pending certification and BCII/FBI background checks:

Mike Klockner – Volunteer Volleyball Coach - \$0

Amy Harrison – Volunteer Volleyball Coach - \$0

Upon the recommendation of the district superintendent I call for a motion to approve the above resolution.

Mrs. Klase moved and Mrs. Higgins seconded

Yeas: Klase, Higgins, Cappuzzello, Hannon, Saganich

Nays: None

President declared motion carried

Res. 19-127 ADJOURNMENT

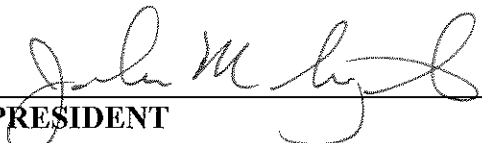
Mr. Cappuzzello moved and Mrs. Klase seconded to adjourn the Special Meeting at 7:09 a.m.

Yeas: Cappuzzello, Klase, Higgins, Hannon, Saganich

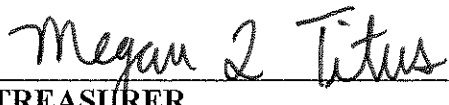
Nays: None

President declared motion carried

ATTEST:



PRESIDENT



TREASURER

RESOLUTION

STATE OF Ohio

COUNTY OF Trumbull

THE REGION VIII EDUCATION SERVICE CENTER for THE INTERLOCAL PURCHASING SYSTEM

And

McDonald Local Schools

(Name of Entity applying for Membership in TIPS)

WHEREAS, the McDonald Local School District, pursuant to the authority granted by the applicant's state purchasing requirements, desires to participate in The Interlocal Purchasing System (TIPS). TIPS is a National Cooperative Purchasing Program offered by Region VIII Education Service Center, located in Pittsburg, Texas, (Camp County). Participation, through membership and utilization of competitively bid and awarded vendor contracts in a cooperative purchasing program specializing in the management of high quality cooperative procurement solutions will be beneficial to the taxpayers through the anticipated savings to be realized by such entity listed above.

Therefore, be it RESOLVED, that the entity listed above has identified a stated need for participation in The Interlocal Purchasing System (TIPS) whereby the McDonald Board of Education is authorized and directed to sign and deliver any and all necessary documents herewith for and on behalf of above named entity requesting membership in TIPS. The McDonald Board of Education certifies that the foregoing is a true and correct original Resolution duly adopted by the McDonald Local Schools and is filed on record with TIPS.

In witness thereof, I have set my hand and signature this 22nd day of May, 2019.

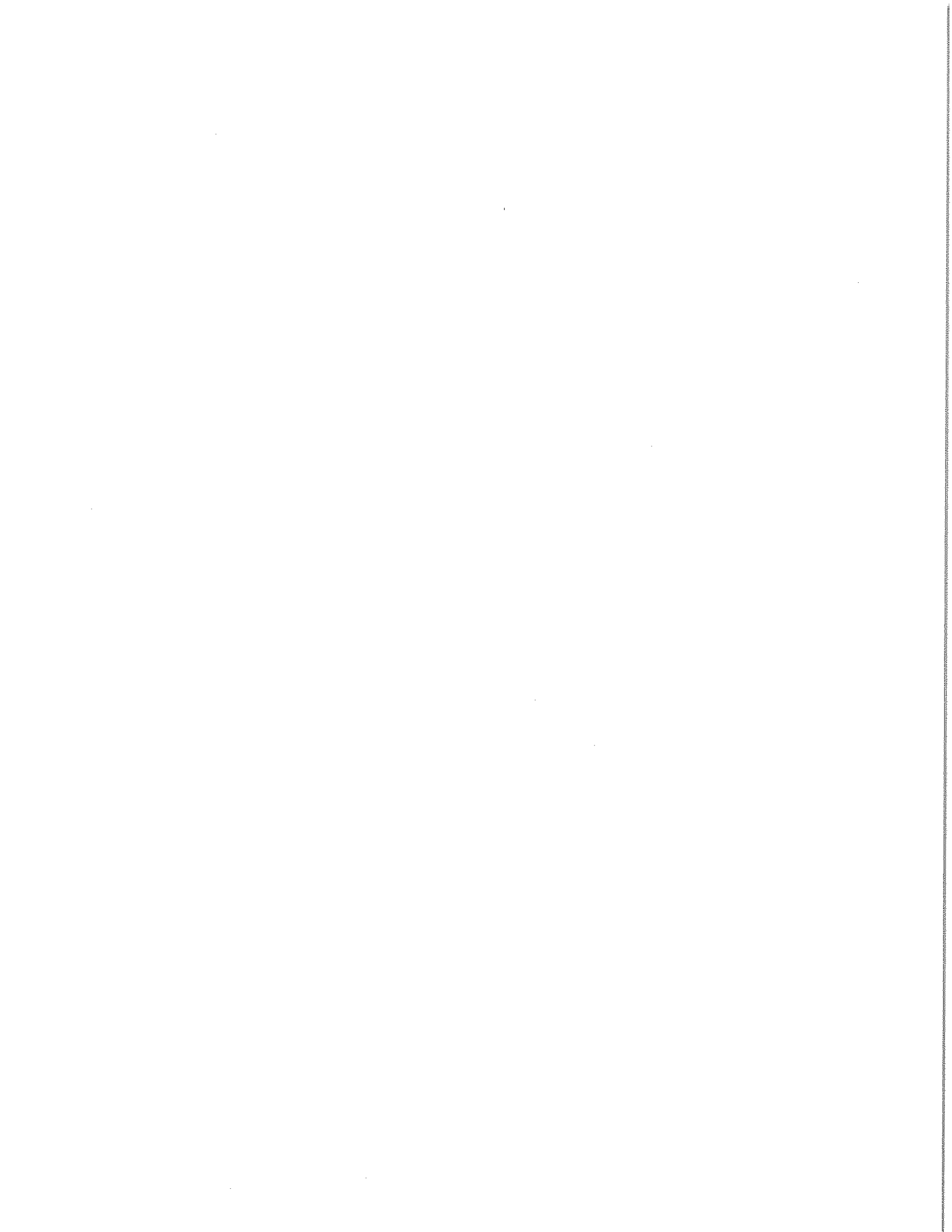
By: Megan Q Titus
(Authorized Signature of Entity)

Megan Q. Titus
(Printed Name)

Treasurer / CFO
(Title or Position)

titum@mcdonald.k12.oh.us
(Email Address)

This legal document will remain current on file until either party severs the agreement.



TIPS ENERGY SERVICES AGREEMENT

between

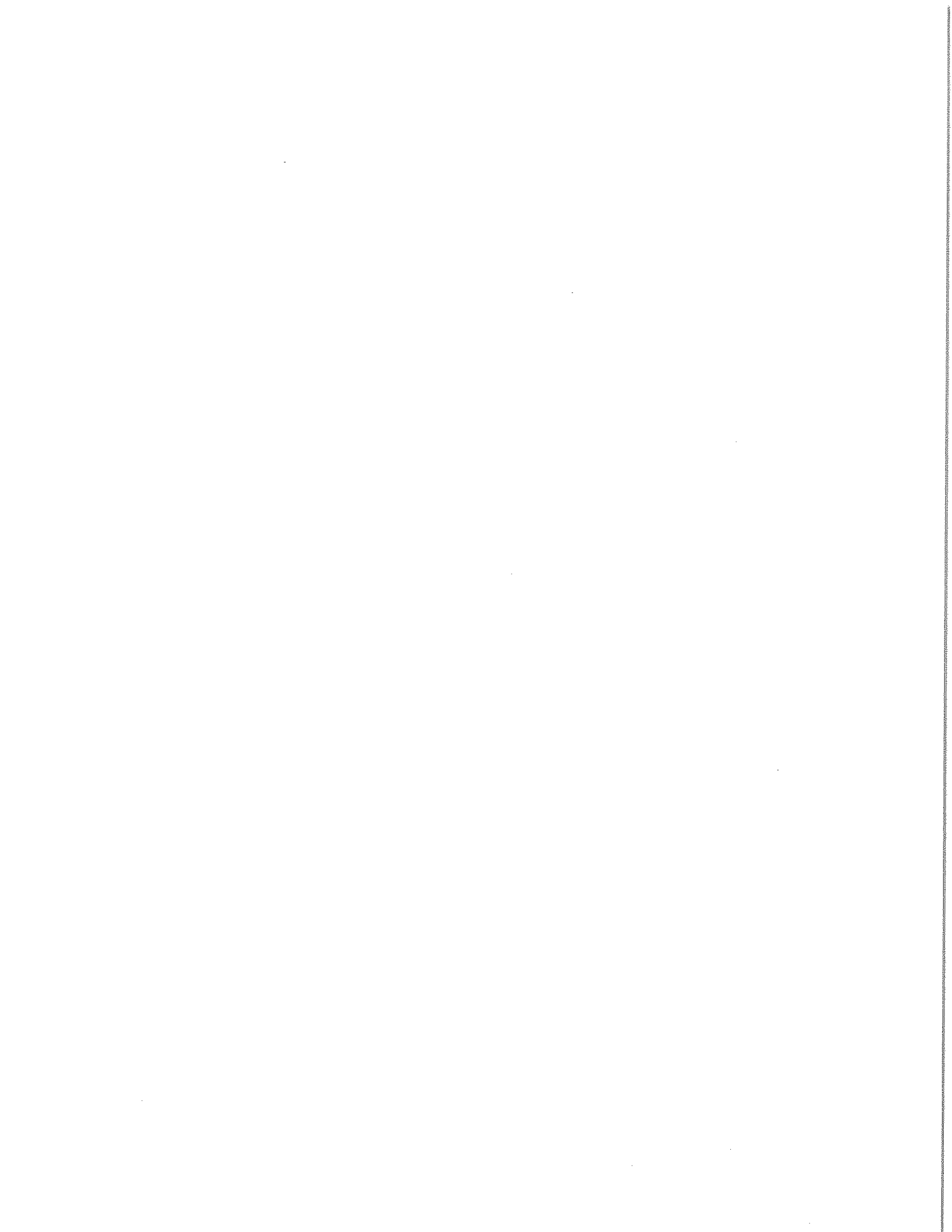
McDonald Local School District

and

Plug Smart

TABLE OF ARTICLES

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Article 2

Glossary

The following terms shall, for all purposes of the Contract Documents comprising this Agreement, have the meanings stated herein, unless the context otherwise specifies or requires or unless otherwise defined in the Contract Documents:

"Acceptance" means CLIENT has signed the Certificate of Substantial Completion and/or has beneficial use of the installed work.

"Acceptance Date" means the date on which CLIENT signs the Certificate of Substantial Completion.

"Construction Period" means the period between the Effective Contract Date and the Substantial Completion date.

"Effective Contract Date" is the date appearing at the top of this Agreement, unless specifically indicated otherwise.

"Equipment" means the installed products to be provided by PLUG SMART as described in the Scope of Work and Services, Exhibit A.

"Facilities" means those building(s) or structure(s) where Work will be installed or implemented. It shall have the same meaning as the term Site.

"Final Completion" means the project has achieved all the technical and performance requirements as set forth in the contract documents, including completion of the punch list (unless parties otherwise agree)

"Hazardous Materials" includes all of the following, whether naturally occurring or manufactured, in quantities, conditions or concentrations that have, are alleged to have, or are believed to have an adverse effect on human health, habitability of a Site or the environment: (a) any dangerous, hazardous or toxic pollutant, contaminant, chemical, material or substance defined as hazardous or toxic or as a pollutant or contaminant under state or federal law, and (b) any petroleum product, nuclear fuel or material, carcinogen, asbestos, urea formaldehyde, foamed-in-place insulation, polychlorinated biphenyl (PCBs), and (c) any other chemical or biological material or organism, that has, is alleged to have, or is believed to have an adverse effect on human health.

"Mold" means any type or form of fungus or biological material or agent, including mold, mildew, moisture, yeast and mushrooms, and any mycotoxins, spores, scents, or by-products produced or released by any of the foregoing.

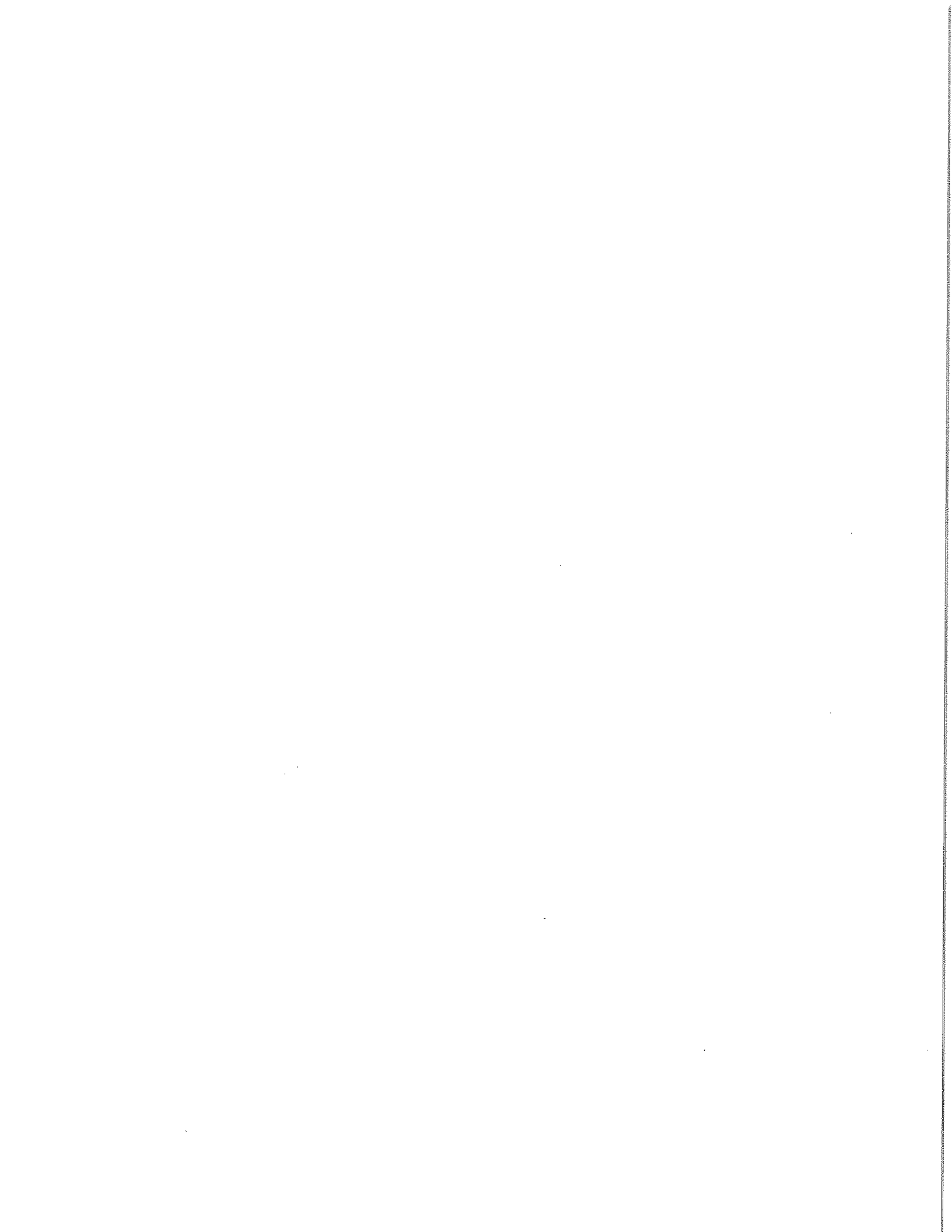
"Punch List" is a document prepared near the end of the project listing out work not conforming to contract specifications that PLUG SMART must complete prior to release of final payment.

"Services" means those services to be provided by PLUG SMART as described in the Scope of Work and Services.

"Site" shall have the same meaning as Facilities.

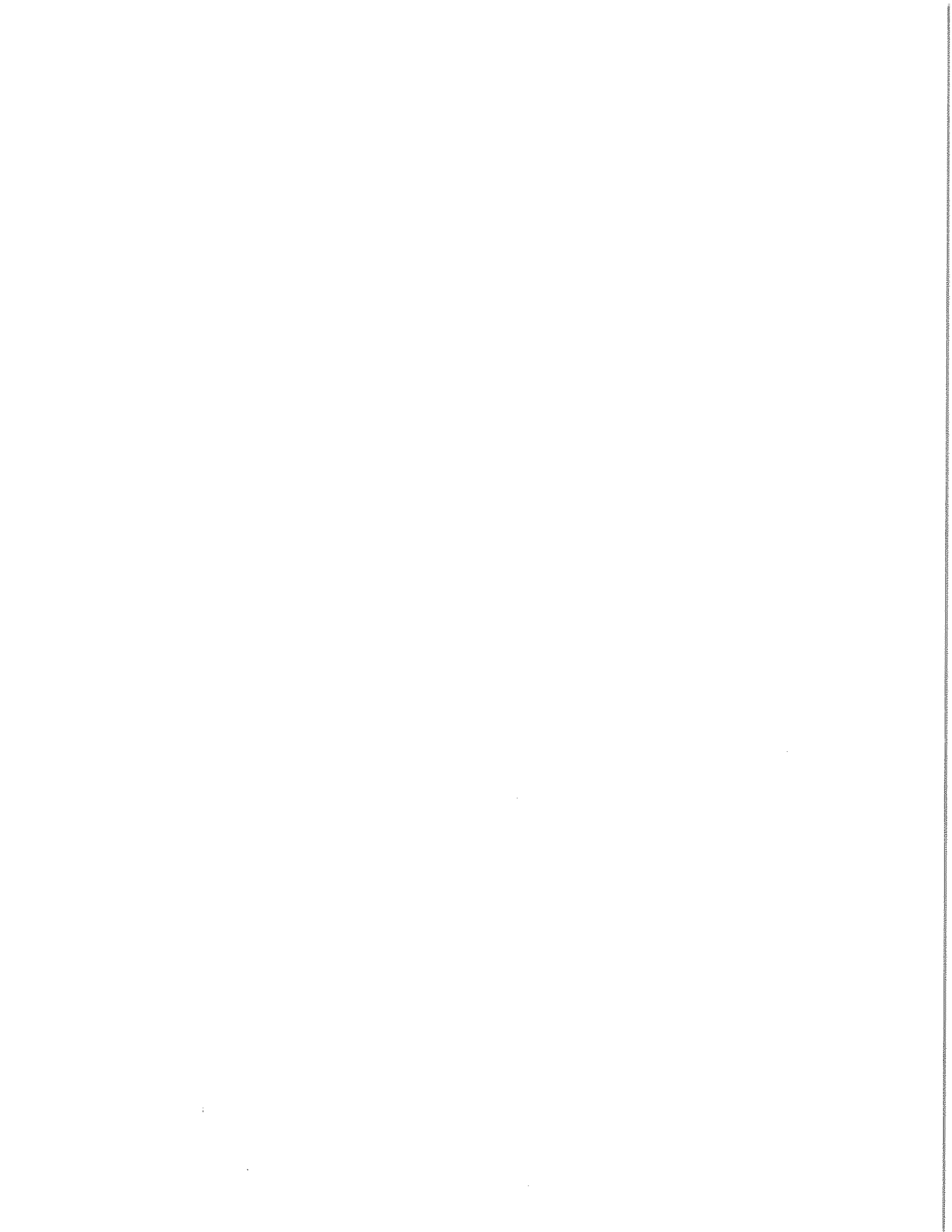
"Substantial Completion" means the first to occur of the following: (i) the Work, or any identifiable portion thereof, is sufficiently complete, in accordance with the provisions of this Agreement relating to the scope of the Work, that CLIENT will be able to realize from such Work substantially all of the practical benefits intended to be gained therefrom, including the energy savings, or otherwise to employ the Work or the ECMs associated therewith for their intended purposes subject only to minor Punch List items; or (ii) certificates of occupancy (or partial certificates of occupancy), if required, have been issued with respect to such portions of the Work by the appropriate public authority. The term "Substantially Complete" and "Substantially Completed" as applied to any portion or the whole of the Work, refers to the Substantial Completion thereof.

"Term" is a stipulated period of time starting on Effective Contract Date of this Agreement and ending at the



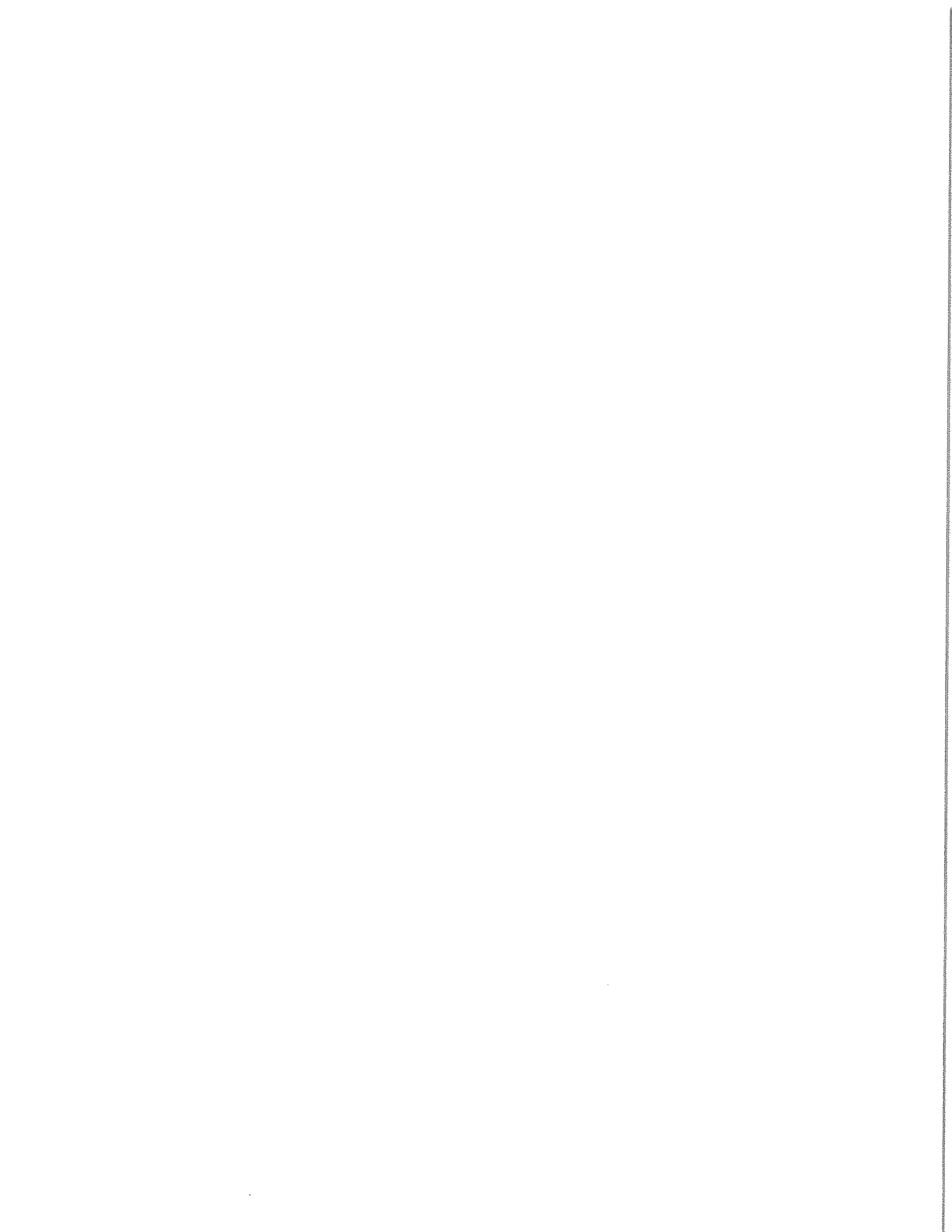
Order. To be effective, Change Orders must be signed by both the CLIENT and PLUG SMART, which signatures will not be unreasonably withheld or delayed. PLUG SMART shall not proceed with any change in the Work (emergencies excepted) without the appropriate written authorization which shall include a designation of the agreed upon adjustment to the Contract Sum. For each Change Order, PLUG SMART shall furnish a written proposal for the CLIENT's review and approval. Notwithstanding anything to the contrary in the Agreement, the CLIENT shall not be responsible to pay and PLUG SMART shall not be entitled to additional compensation or an extension of time if such Work is required due to the fault of PLUG SMART or PLUG SMART's failure to comply with the terms of this Agreement.

- 5.2 PLUG SMART and all subcontractors shall perform the Work during second or third shift working hours as allowed by the CLIENT, Monday through Friday and Saturday through Sunday when permitted by CLIENT, inclusive, excluding holidays, unless otherwise agreed herein. PLUG SMART shall perform the Work under the Installation Schedule set forth in Exhibit B. CLIENT will grant reasonable requests for additional project access provided reasonable notice is given by PLUG SMART.
- 5.3 PLUG SMART is not required to conduct safety, reacceptance or other tests, install new devices or equipment or make modifications to any Equipment beyond the Scope set forth in this Agreement except as may be reasonably inferable to fulfill PLUG SMART's obligations under this Agreement. Any CLIENT request to change the Scope or the nature of the Work must be in the form of a mutually agreed upon Change Order, effective only when executed by all parties hereto.
- 5.4 PLUG SMART will procure drawings, specifications and other documents necessary to perform the Work and will secure any and all necessary permits, fees, licenses and inspections by government agencies necessary for the performance and completion of the Work. CLIENT shall assist in securing such permits, fees, licenses and inspections necessary for the Work. All reports and drawings specifically prepared for and deliverable to CLIENT pursuant to this Agreement ("Deliverables") shall become CLIENT's property upon full payment of undisputed sums to PLUG SMART. PLUG SMART may retain file copies of such Deliverables. All other reports, notes, calculations, data, drawings, estimates, specifications, manuals, other documents and all computer programs, codes and computerized materials prepared by or for PLUG SMART are instruments of PLUG SMART's work ("Instruments") and shall remain PLUG SMART's property. Upon execution of this Agreement, PLUG SMART grants CLIENT a perpetual, non-revocable and non-exclusive license to retain, use and make copies, including reproducible copies, of PLUG SMART's Instruments in connection with the CLIENT's use and occupancy of the Project which shall include, but not be limited to, the right to provide the Instruments and other documents to another contractor or design professional for information and reference in preparing new drawings, specifications and other documents for subsequent improvements, additions or alterations to the Project. The CLIENT shall also be permitted to use the Instruments and other documents to proceed with Work on the Project in the event that PLUG SMART ceases for any reason to perform any of its obligations under this Agreement, provided that the CLIENT has paid to PLUG SMART all amounts due and payable as of the date of PLUG SMART's cessation of performance, provided, however, if an amount due is the subject of a bona fide dispute, the CLIENT shall nevertheless be entitled to so use the Instruments and other documents, provided that when the dispute with respect to the amount due is resolved, the parties promptly comply with the terms of the decision resolving the dispute. PLUG SMART shall not be liable for any claims or causes of action arising from such use by the CLIENT in a manner inconsistent with the license granted herein and without PLUG SMART's involvement.
- 5.5 PLUG SMART shall be responsible for any portion of the Work performed by any subcontractor of PLUG SMART. PLUG SMART shall not have any responsibility, duty or authority to direct, supervise or oversee any contractor of CLIENT or their work or to provide the means, methods or sequence of their work or to stop their work. PLUG SMART's work and/or presence at the Site shall not relieve others of their responsibility to CLIENT or to others.
- 5.6 PLUG SMART warrants that:
 - (a) PLUG SMART warrants to the CLIENT that materials and equipment furnished under this Agreement will be of good quality and new unless otherwise required or permitted by the Agreement. PLUG



Equipment or Services will be warranted hereunder only for the remaining portion of the original warranty period.

- 5.8 It is understood and agreed that the warranties and guarantees as provided in this Agreement are the sole warranties and guarantees provided by PLUG SMART and are given in lieu of any other express or implied warranties, including any and all warranties that are not provided by PLUG SMART in this Agreement.
- 5.9 PLUG SMART will not be responsible for the maintenance, repair or replacement of:
- (a) Non-maintainable, non-replaceable or obsolete parts of equipment already existing at the Facilities prior to commencement of the Services, including but not limited to ductwork, shell and tubes, heat exchangers, coils, unit cabinets, casings, refractory material, electrical wiring, water and pneumatic piping, structural supports, cooling tower fill, slats and basins, etc. unless otherwise specifically stated herein; or
 - (b) Negligence, abuse, misuse, improper or inadequate repairs or modifications, improper operation, lack of operator maintenance or skill, corrosion, erosion, improper or inadequate water treatment by others, electrolytic action, chemical action, failure to comply with manufacturer's operating and environmental requirements, Acts of God, or other reasons beyond its control. Unless expressly agreed in writing, PLUG SMART is not responsible for the removal or reinstallation of replacement valves, dampers, or waterflow and tamper switches with respect to pipes and ductwork, including vent or drain system. PLUG SMART assumes no responsibility for any service performed on any Equipment other than by PLUG SMART or its agents.
- 5.10 PLUG SMART shall provide through qualified personnel training to designated CLIENT officials on the use and operation of the Equipment installed under this Agreement. This will be scheduled between PLUG SMART and the CLIENT upon substantial completion.
- 5.11 PLUG SMART shall keep the premises in an orderly fashion and free from unnecessary accumulation of waste materials or rubbish caused by its operations.
- 5.12 If PLUG SMART damages property not needed for the Work, PLUG SMART shall repair the property to its pre-existing condition unless CLIENT directs otherwise. At the completion of the Work, PLUG SMART shall remove waste material supplied by PLUG SMART under this Agreement as well as all of its tools, construction equipment, machinery and surplus material. PLUG SMART shall dispose of all waste materials or rubbish caused by its operations; provided, that unless otherwise specifically agreed to in this Agreement, PLUG SMART shall not be responsible for disposal of Hazardous Materials removed from the facilities, such as asbestos.
- 5.13 PLUG SMART shall give all notices and comply with all laws, statutes, ordinances, codes, rules and regulations governing the execution of the Work, provided, however, that PLUG SMART shall not be responsible nor liable for the violation of any code, law or ordinance caused by CLIENT or existing in CLIENT's property prior to the commencement of the Work.
- 5.14 PLUG SMART 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 except with respect to PLUG SMART's responsibility for Subcontractors, PLUG SMART 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 that are not a Subcontractor, including CLIENT, CLIENT's contractors or subcontractors, CLIENT's tenants or CLIENT's visitors. CLIENT agrees to require 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 PLUG SMART for the elimination or abatement of any such health or safety hazards at the site of the Work.

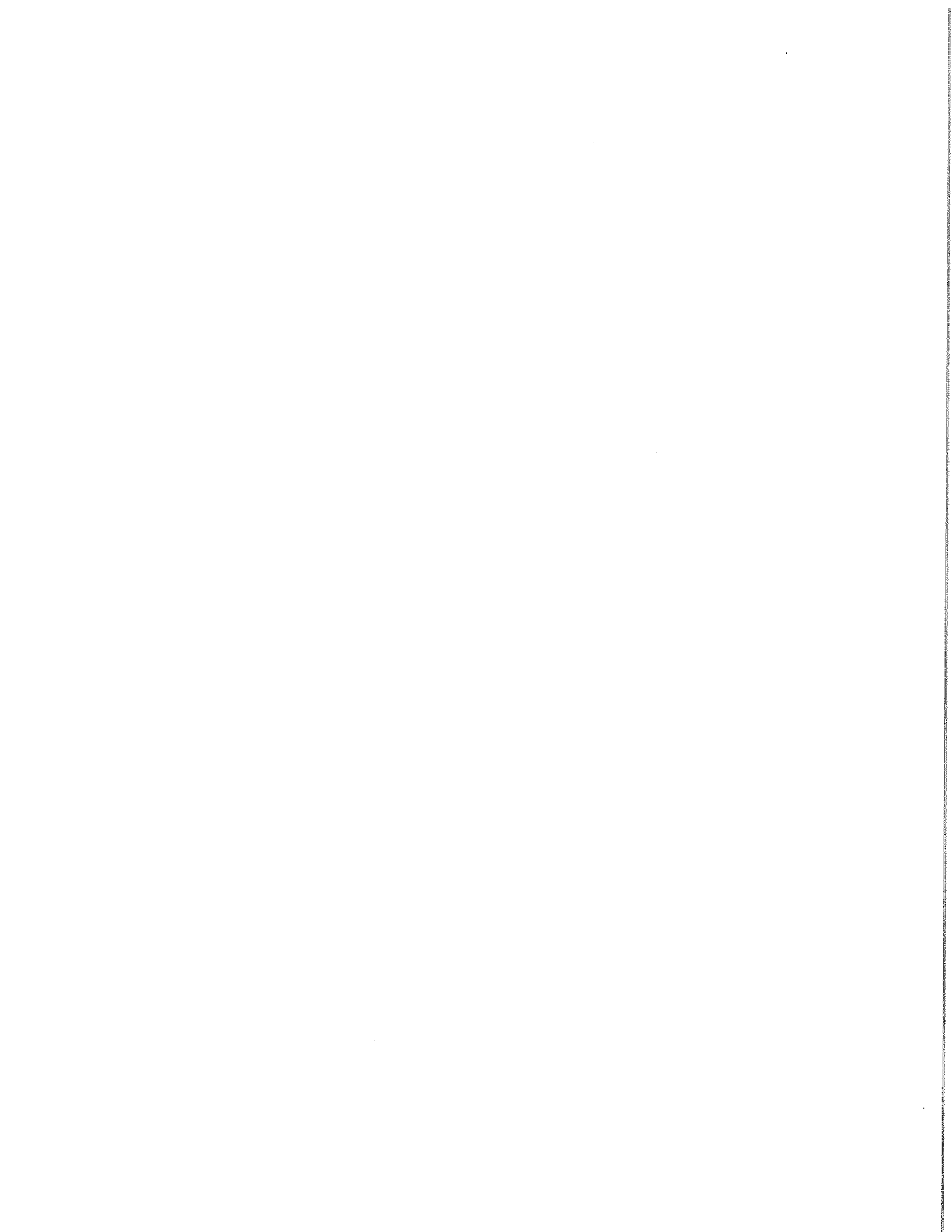


Article 6
Subcontractors

- 6.1 At its exclusive option, PLUG SMART may subcontract some or all of the Work or Services. The Contractor shall not permit employment of unfit Subcontractors or persons not properly skilled in tasks assigned to them and shall promptly remove and replace such Subcontractors and persons with competent Subcontractors and employees at no cost to CLIENT.
- 6.2 A Subcontractor is a person or entity who has a direct contract with PLUG SMART and/or any lower tier subcontractors related thereto to perform any effort in connection with the Work.
- 6.3 For the purposes of this Agreement, no contractual relationship shall exist between CLIENT and any Subcontractor. PLUG SMART shall be responsible for the management of its Subcontractors in their performance of their Work.
- 6.4 PLUG SMART shall require each Subcontractor to be bound to PLUG SMART by the terms of the Contract Documents, and to assume toward PLUG SMART all the obligations and responsibilities which PLUG SMART assumes toward CLIENT.
- 6.5 PLUG SMART is fully responsible for all acts and omissions of any Subcontractors and nothing contained within this Agreement shall be construed as limiting PLUG SMART's responsibility with respect to the acts and omissions of Subcontractors.
- 6.6 Where applicable, CLIENT shall prepare a notice of commencement for the Project, and PLUG SMART. PLUG SMART shall provide a copy of the notice to its Subcontractors.
- 6.7 In the event that the CLIENT receives a claim affidavit in accordance with Ohio Revised Code Chapter 1311 relating to amounts due and unpaid for labor and work performed and material furnished for the Work, the CLIENT shall detain the amount due and owing from PLUG SMART's subsequent invoices unless and until the claim is released and/or discharged as more particularly set forth in said Chapter 1311.

Article 7
CLIENT's Responsibilities

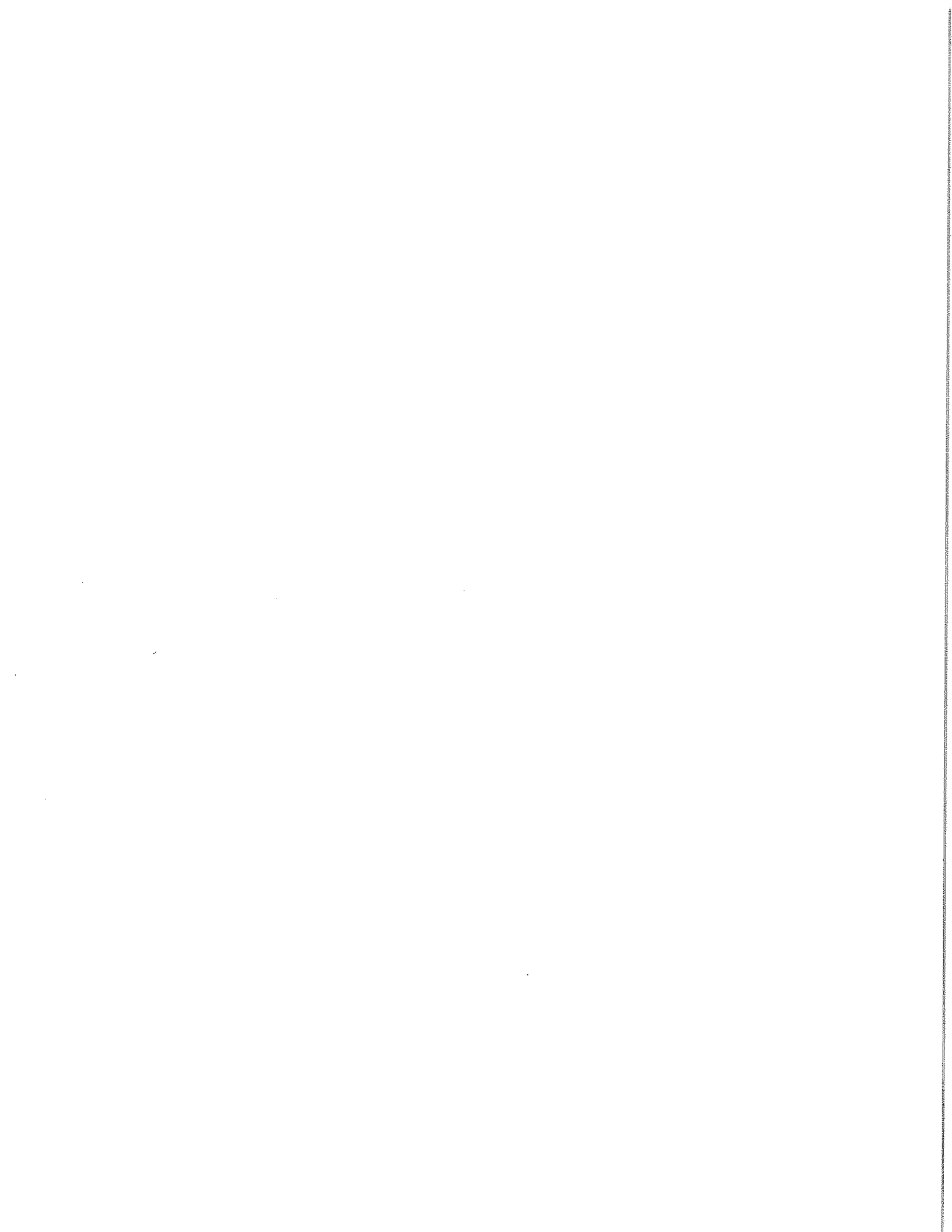
- 7.1 CLIENT, without cost to PLUG SMART, shall:
- (a) Designate a contact person with authority to make decisions for CLIENT regarding the Work and provide PLUG SMART with information sufficient to contact such person in an emergency;
 - (b) Provide or arrange for, upon reasonable notice, 24 hour, 7 day per week access and make all reasonable provisions for PLUG SMART to enter any Site where Work is to be performed;
 - (c) Permit PLUG SMART to control and/or operate all building controls, systems, apparatus, equipment and machinery necessary to perform the Work;
 - (d) Furnish PLUG SMART with blueprints, surveys, legal descriptions, waste management plans and all other information pertinent to the Work and any Site where the Work is to be performed that are known to be existing and available to CLIENT and as may be reasonably requested by PLUG SMART;
 - (e) Provide reasonably timely cooperation to PLUG SMART in obtaining permits and consents from government authorities and others as may be required by PLUG SMART for performance of the Work so as not to affect the timelines set forth in this Agreement;
 - (f) Notify PLUG SMART promptly of all known or suspected Hazardous Materials, asbestos or Mold at the Site, of any contamination of the Site by Hazardous Materials or Mold, and of any other conditions requiring special care or which may reasonably be expected to affect the Work, and provide PLUG SMART with any available documents describing the quantity, nature, location and extent of such materials, contamination or conditions;
 - (g) Comply with all laws and provide any notices required to be given to any government authorities in connection with the Work, except such notices PLUG SMART has expressly agreed in writing to give;
 - (h) Provide PLUG SMART with legally required materials and information (including but not limited to



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- 8.4 If PLUG SMART wishes to make a claim for increase in Contract Sum or an extension in the Installation Schedule it shall give CLIENT twenty-one (21) days after the occurrence of the event giving rise to such claim. This notice shall be given by PLUG SMART before proceeding to execute the Work, except in an emergency endangering life or property, in which case PLUG SMART shall have the authority to act, in its discretion, to prevent threatened damage, injury or loss. Claims arising from delay shall be made within twenty-one (21) days after the delay. Increases based upon design and estimating costs with respect to possible changes requested by CLIENT shall be made within twenty-one (21) days after the decision is made not to proceed with the change. No such claim shall be valid unless so made. If CLIENT and PLUG SMART cannot agree on the amount of adjustment in the Contract Sum, or the Installation Schedule, it shall be determined to the provisions in Section 13.7. However, pending final resolution of a claim, PLUG SMART shall proceed diligently with performance of the Agreement and CLIENT shall make payments in accordance with the Agreement. Any change in Contract Sum or the Installation Schedule resulting from such claim shall be authorized by a Change Order.
- 8.5 In any emergency affecting the safety of persons or property, PLUG SMART shall act, at its sole discretion, to prevent threatened damages, injury or loss. Any increase in the Contract Sum or extension of time claimed by PLUG SMART on account of the emergency shall be determined as provided in Section 8.4.
- 8.6 The parties acknowledge that CLIENT may request the use of certain equipment. PLUG SMART may, upon reasonable notice and at no additional cost to CLIENT, substitute alternative parts, goods or equipment in the performance of the Work, provided that any such substitution shall be of an equal or better quality and shall not cause a reduction in the total Energy Cost Avoidance. In the event that there is a failure of such alternative parts, goods or equipment, CLIENT may pursue PLUG SMART for damages arising out of such substitution if it is determined that the substitution was not, in fact, equal or better.
- 8.7 PLUG SMART shall not be responsible for loss, delay, injury, damage or failure of performance caused by circumstances beyond its control, including but not restricted to acts or omissions by CLIENT or its employees, agents or contractors, Acts of God, war, civil commotion, acts or omissions of government authorities, fire, theft, corrosion, flood, water damage, lightning, freeze-ups, strikes, lockouts, differences with workmen, riots, explosions, quarantine restrictions, delays in transportation, or shortage of vehicles, fuel, labor or materials. In the event of such delay or failure, the time for performance shall be extended by a period equal to the time lost. If any delay, or cumulative delays, within CLIENT's control, extends beyond thirty (30) days, PLUG SMART may be entitled to an equitable adjustment of the Contract Sum if PLUG SMART submits a claim in accordance with Section 8.4 herein and demonstrates to the CLIENT that a direct increase in PLUG SMART's costs has been incurred.

Article 9 Compensation

- 9.1 The Contract Sum for the Work and/or Services is Two Hundred Twenty Eight Thousand Ninety Four and 00/100 Dollars (\$228,094.00), subject to the adjustments in accordance with the Contract Documents. A breakdown of the schedule of payments is detailed in Exhibit C. It is understood and agreed that in the event that the aggregate total amounts of the price proposals submitted by PLUG SMART'S Subcontractors for performing the Work are less than the estimated labor and material cost, savings shall be passed on to the CLIENT as a credit to the total Contract Sum due, and in such event, the schedule of payments as detailed in Exhibit C shall be correspondingly adjusted. In this event, it is also understood that all other costs (e.g. engineering, project management, etc.) will remain the same. In retaining Subcontractors to perform any portion of the work, PLUG SMART shall solicit competitive pricing proposals using an open book pricing method in which PLUG SMART provides to the CLIENT all books, records, documents and other data pertaining to the solicitation of the Subcontractor pricing proposals and award of Subcontracts.
- 9.2 Not Used



10.4 When the Work is Substantially Complete, the CLIENT shall execute the Certificate of Substantial Completion, provided that a failure of the CLIENT to specify a deficiency or Punch List item shall not excuse PLUG SMART from remedying the deficiency in accordance with this Agreement, and provided further that any deficiency that arises after Final Completion and final payment shall be corrected in accordance with Section 5.6 herein.

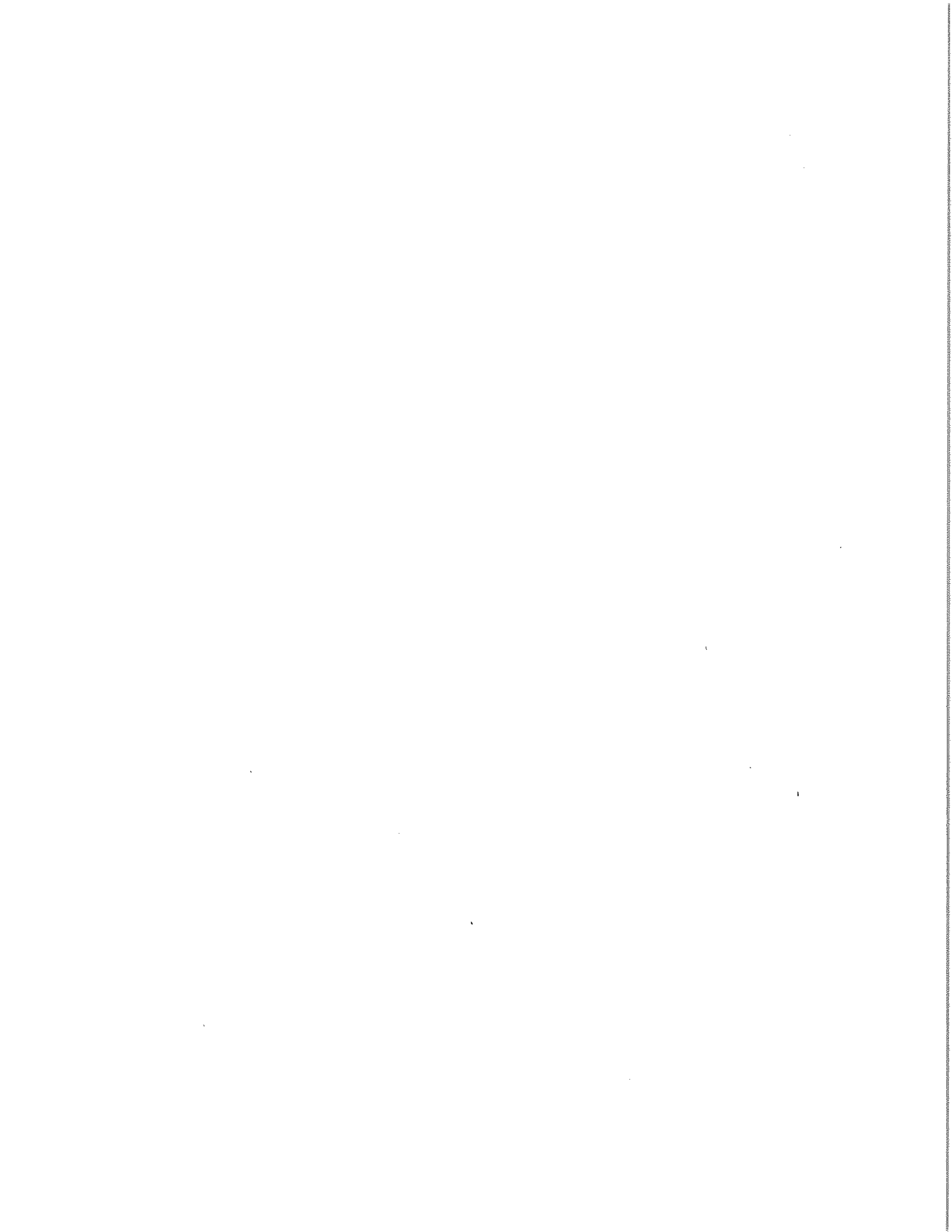
Article 11

Insurance and Allocation of Risk

11.1 PLUG SMART shall, without interruption, maintain all forms of insurance as required by law as well as the following insurances while performing the Work:

- (a) Workers' Compensation at the statutory amounts and limits as prescribed by applicable Ohio law.
- (b) Employer's Liability insurance (and, where applicable, Stop Gap extended protection endorsement) limits of liability shall be \$1,000,000 per occurrence/aggregate.
- (c) PLUG SMART shall carry, in the Occurrence Coverage Form, Comprehensive General Liability or Commercial General Liability, insurance covering PLUG SMART's operations and providing insurance for bodily injury and property damage with limits of liability stated below and including coverage for:
 - Products and Completed Operations
 - Contractual Liability insuring the obligations assumed by PLUG SMART in this Agreement
 - Broad Form Property Damage (including Completed Operations)
 - Fire Legal Liability
 - Personal Injury Liability
 - Medical Payments—Limits of liability shall be:
 - \$1,000,000 per occurrence/aggregate
- (d) PLUG SMART shall carry Automobile Liability Insurance in the Occurrence Coverage Form covering all owned, hired and non-owned automobiles and trucks used by or on behalf of PLUG SMART providing insurance for bodily injury liability and property damage liability for the limits of:
 - \$500,000 per occurrence/aggregate
- (e) PLUG SMART shall carry Umbrella or Excess Liability Insurance in the Occurrence Coverage Form with limits of:
 - \$3,000,000 per occurrence/aggregate

PLUG SMART shall not cancel or allow to expire a policy of insurance without first securing a replacement policy so as to ensure the continuation of coverage. Promptly following execution of this Agreement, PLUG SMART shall provide the CLIENT with certificates of insurance evidencing the required coverages and amounts, including without limitation any certificates of renewal of insurance. Each policy of insurance required to be purchased and maintained by PLUG SMART shall name the CLIENT as a Certificate Holder, and, with the exception of worker's compensation and professional liability insurance, shall name the CLIENT as an additional insured. When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, PLUG SMART shall supply the CLIENT with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, PLUG SMART shall also furnish the CLIENT with a copy of the renewal or replacement policy unless the CLIENT provides PLUG SMART with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the CLIENT and written by carriers acceptable to the CLIENT. PLUG SMART shall immediately provide notice to CLIENT of the cancellation of a policy of insurance by PLUG SMART's insurer, and PLUG SMART shall immediately thereafter use best faith efforts to procure a replacement policy



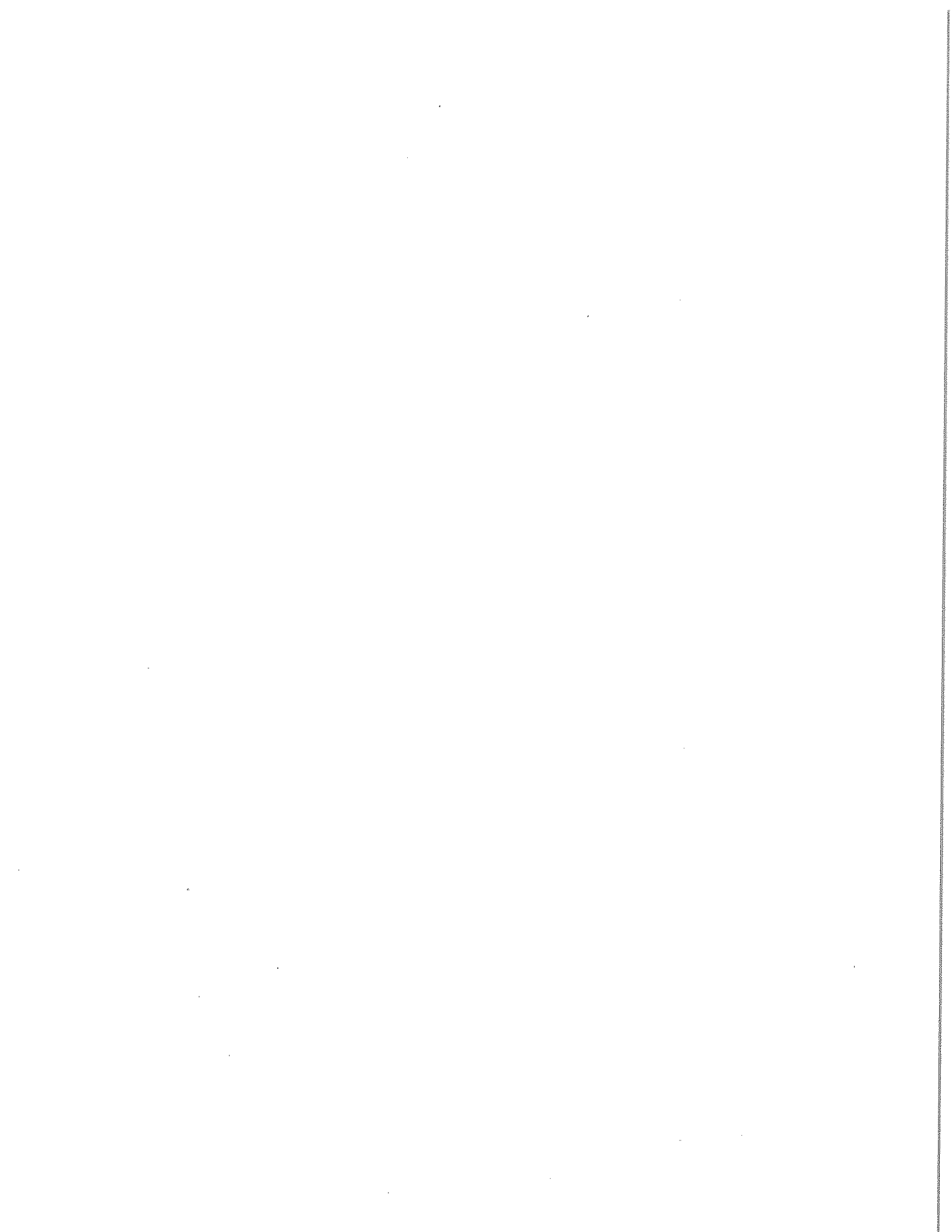
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- relating thereto; and
- (c) CLIENT shall reasonably cooperate with PLUG SMART in the defense of such action and all negotiations for its settlement or compromise.

11.7 The parties acknowledge that the Contract Sum for which PLUG SMART has agreed to perform the Work and obligations under this Agreement was calculated based upon the foregoing allocations of risk, and that each party has expressly relied on, and would not have entered into this Agreement but for, such allocations of risk.

Article 12

Hazardous Material Provisions

- 12.1 PLUG SMART will not be responsible for directly or indirectly performing or arranging for the detection, testing, handling, storage, removal, treatment, transportation, disposal, monitoring, abatement or remediation of any contamination of any Site at which Work is performed and any soil or groundwater at the Site by Hazardous Materials, including without limitation ionization smoke detectors, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, and refrigerant. Except as expressly disclosed pursuant to Section 12.2, CLIENT represents that to the best of its knowledge there are no Hazardous Materials, or Mold, either airborne or on or within the walls, floors, ceilings, heating, ventilations and air conditioning systems, plumbing systems, structure, and other components of the Site, or within furniture, fixtures, windows, equipment, containers or pipelines present at CLIENT's locations where the Work is to be performed. PLUG SMART will notify CLIENT immediately if it discovers or reasonably suspects the presence of any previously undisclosed Hazardous Material. All Services have been priced and agreed to by PLUG SMART in reliance on CLIENT's representations as set forth in Article 12. The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at a Site where PLUG SMART is to perform Work or of contamination of the Site by Hazardous Materials not previously disclosed pursuant to Section 12.2 shall entitle PLUG SMART to suspend the Work immediately, subject to mutual agreement of terms and conditions applicable to any further Work, or to terminate the Work and to be paid for Work previously performed. Notwithstanding the foregoing, PLUG SMART will remove to a certified disposal company all lighting tubes, ballasts and other materials and shall provide the CLIENT with a disposal receipt from the disposal company noting all materials so delivered including any possible PCB latent materials
- 12.2 CLIENT represents to the best of its knowledge and belief that, prior to the execution of the Agreement, it notified PLUG SMART in writing of any and all Hazardous Materials or Mold present, potentially present or likely to become present at the Site and provided a copy of any Site safety policies and information, including but not limited to lock-out and tag procedures, chemical hygiene plan, material safety data sheets, and other items covered or required to be disclosed or maintained by federal, state, or local laws, regulations or ordinances.
- 12.3 Regardless of whether or not the Hazardous Materials or Mold was disclosed pursuant to Section 12.2, CLIENT shall be solely responsible for properly testing, abating, encapsulating, removing, disposing, remediating or neutralizing such Hazardous Materials, or Mold and for the costs thereof. Even if an appropriate Change Order has been entered into pursuant to Section 12.1, PLUG SMART shall have the right to stop the Work until the Site is free from Hazardous Materials, or (ii) the CLIENT and PLUG SMART, by written agreement, decide to resume performance of the Work; or (iii) the Work may safely and lawfully proceed, as determined by an appropriate governmental authority or as evidenced by a written report to both the CLIENT and PLUG SMART, which is prepared by a qualified environmental engineer. In such event, PLUG SMART will receive an equitable extension of time to complete the Work, and compensation for delays caused by Hazardous Materials remediation. In no event shall PLUG SMART be required or construed to take title, ownership or responsibility for such Hazardous Materials. CLIENT shall sign any required waste manifests in conformance with all government regulations, listing CLIENT as the generator of the waste. If someone other than CLIENT is the generator of the waste, CLIENT shall arrange for such other person to sign such manifests.



obtained drugs while on or about the Project or use tobacco or bring firearms, ordnance or other dangerous materials onto the property of the CLIENT. CLIENT reserves the right to require PLUG SMART's employees and Subcontractors to wear identification (subject to applicable safety standards) and stay in designated work areas at all times while on CLIENT's property. PLUG SMART shall use only such restrooms, parking areas and entrances/exits as designated by CLIENT. CLIENT shall have the right to effect through PLUG SMART the immediate removal of a PLUG SMART employee or Subcontractor from the premises for failure to wear identification, for being outside the designated work area, for fraternizing with or engaging in any improper behaviors directed toward or in the vicinity of students, employees or guests of the CLIENT or for other good cause.

- 13.10 PLUG SMART hereby warrants and represents that neither it nor any person, company, affiliated group or organization that holds, owns or otherwise has a controlling interest in PLUG SMART has provided material assistance to an organization listed on the United States Department of State Terrorist exclusion list. PLUG SMART acknowledges receipt of a current version of the U.S. Department of State Terrorist exclusion list, and PLUG SMART shall provide to CLIENT a fully completed and executed Declaration Regarding Material Assistance/Nonassistance to a Terrorist Organization.
- 13.11 Risk of loss for all equipment and materials provided by PLUG SMART hereunder shall transfer to CLIENT contemporaneous with title transfer for such items from PLUG SMART or its Subcontractor. PLUG SMART and its Subcontractors shall be responsible for the proper storage of all equipment and materials brought to the CLIENT's facilities.

Article 14 Termination

- 14.1 If CLIENT fails to make payments as they become due, or otherwise defaults or breaches its obligations under this Agreement, PLUG SMART may give written notice to CLIENT of PLUG SMART's intention to terminate this Agreement. If, within seven (7) days follow receipt of such notice, CLIENT fails to make payments then due, or otherwise fails to cure or perform its obligations, PLUG SMART may, by written notice to CLIENT, terminate this Agreement and recover from CLIENT payment for Work executed and for losses sustained for materials, tools, construction equipment and machinery, including but not limited to, reasonable profit and applicable damages.
- 14.2 In the event a receiver is appointed on account of the insolvency of PLUG SMART and/or in the event that PLUG SMART is adjudged a bankrupt; makes a general assignment for the benefit of creditors; files for voluntary dissolution; is involuntarily dissolved; sells, transfers or conveys the ownership of PLUG SMART; or transfers, assigns or conveys any of the rights or obligations of PLUG SMART under this Agreement, then the CLIENT may terminate this Agreement immediately upon written notice to PLUG SMART.

This Agreement, including all attachments hereto when accepted in writing by CLIENT and approved by an authorized representative of PLUG SMART, constitutes the entire, complete and exclusive agreement between the parties and supersede all prior and contemporaneous negotiations, statements, representations, agreements, letters of intent, awards, or proposals, either written or oral relative to the same. In the event of inconsistencies between this Agreement and any attachments and exhibits to this Agreement, then this Agreement shall control, provided that if there is any inconsistencies among the attachments and exhibits that are not resolved by this Agreement, then PLUG SMART shall provide the better quality or greater quantity of services and shall comply with the more strict requirement, except as subsequently otherwise agreed upon in writing by the parties or as may be subsequently reflected in the drawings and Instruments. Only a written instrument signed by both parties may modify this Agreement.

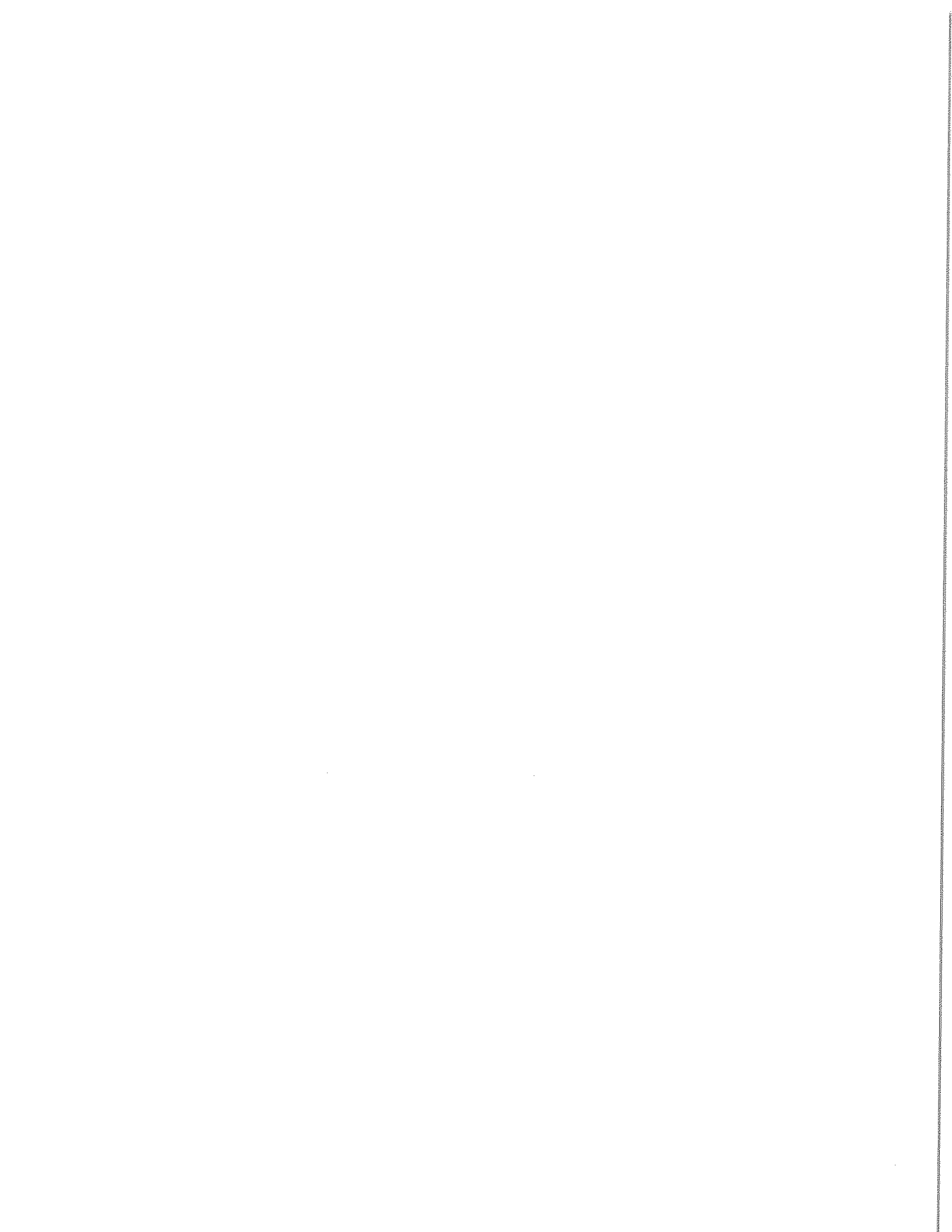


Exhibit A – Scope of Work and Services – TIPS Energy Services Contract

ECM 1: LED Lighting

Plug Smart audited over 1,300 light fixtures at McDonald Local Schools. 73% are T8 linear fluorescent, 9% are CFL, 7% are T5 linear fluorescent, 5% are metal halide, 5% are Incandescent, 1% are T12 linear fluorescent, and less than 1% are LED. We estimated the following run-hours for the lights:

- HS Classroom : 2,500 hrs/yr
- Offices: 2,500 hrs/yr
- Hallways and exterior: 2,500-4,380 hrs/yr,
- Storage and maintenance closets: 500 hrs/yr,
- Restrooms: 2,437 hrs/yr (average from data loggers)
- Auditorium: 1,000 hrs/yr

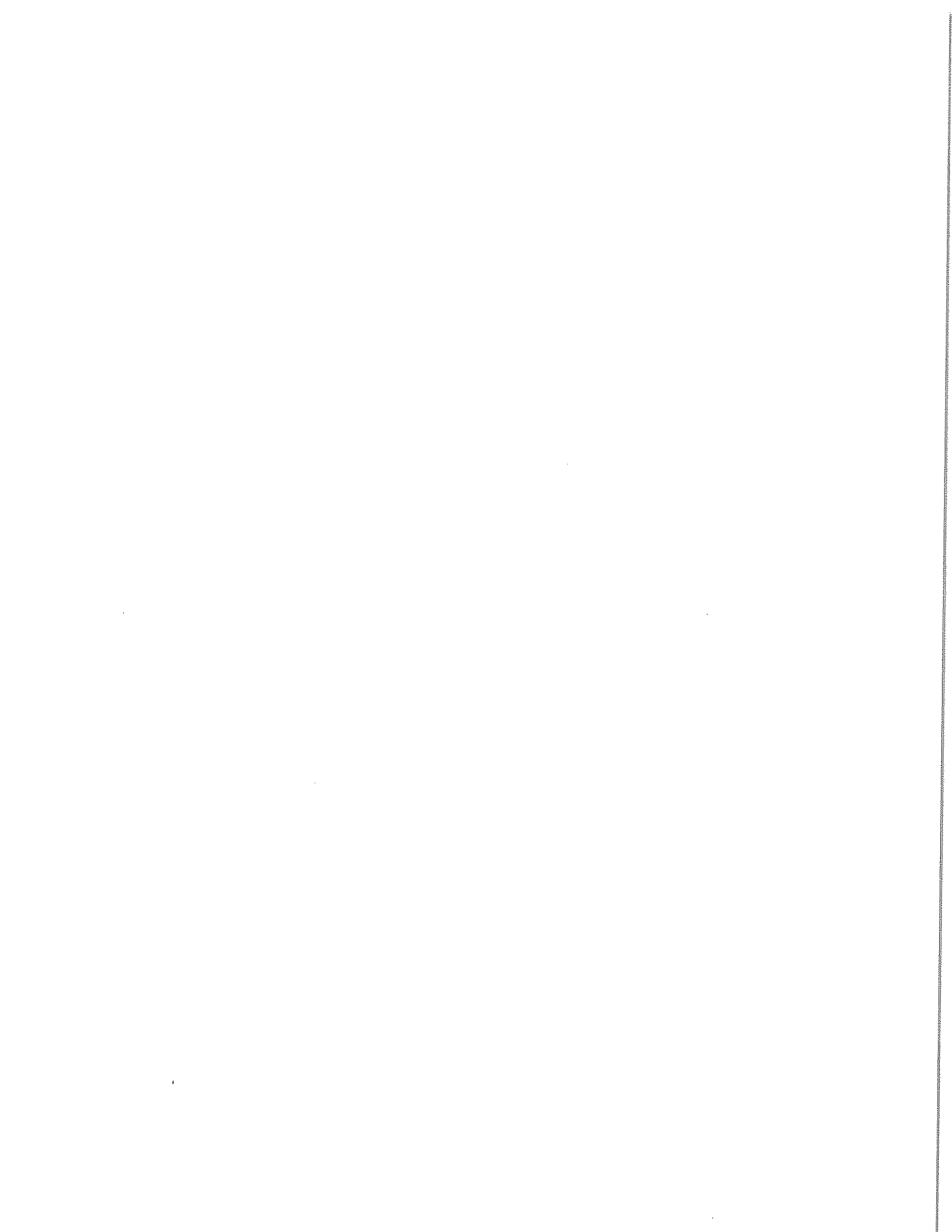
Scope of work includes retrofitting all lighting to LED. Retrofit linear fluorescent fixtures with 11w LED, direct-wired tubes. Install new LED fixtures in the HS gym, which will be equipped with advanced lighting controls that consist of occupancy sensors and fixture by fixture control. Relamp auditorium fixtures to keep aesthetics and to work with existing dimming system. Retrofit all recessed can lights with LED can retrofits that look like new fixtures. Exterior wallpacks will be replaced with new LED wallpacks. Decorative exterior fixtures will be retrofitted or relamped in order to keep aesthetics. Install Occupancy sensors in all student restrooms (8 spaces). Install (3) vending machine occupancy sensors (located in the cafeteria). Scope does not include a new dimming system in the auditorium and pool lights. Plug Smart will also complete any necessary rebate documentation to acquire rebate monies for McDonald Local Schools.

ECM 2: Controls Upgrade

The existing building controls, at McDonald High School, are an Alerton BACNet system, circa 2005. The Alerton program is becoming obsolete and the computer, that the software is on, has no replacement if it fails. Scope of work includes a full integration to a web-based, non-proprietary, BACNet control system would allow for remote diagnostics, e-mail/text alarms and control strategies. Scope includes a graphical interface and staff training on the operation of system. Maintaining the BACnet/fully-open protocol gives McDonald Schools the ability to obtain price competitive parts when needed, rather than a proprietary system, where only one manufacturer of parts can be installed. Per our on-site assessment, there are 18 types of systems, 132 controllers to integrate, and 1,161 points to integrate and create graphics.

General Conditions and Project Warranty:

1. **PLUG SMART is not responsible for bringing existing lighting/electrical/plumbing/piping systems up to code. Non-compliant lighting/electrical systems will be brought to the CLIENT's attention IF and WHEN they are discovered. The included SOW does NOT include any provisions to upgrade non code compliant systems.**
2. If PLUG SMART encounters any materials or substances classified as toxic or hazardous in performance of the Work associated with the mechanical systems, including asbestos, PLUG SMART will notify CLIENT and will stop work in that area until such area has been made safe by the CLIENT, or CLIENT'S Representative, at CLIENT'S expense. In the event such conditions cause a delay in PLUG SMART'S performance, PLUG SMART shall be entitled to recovery of all costs associated with such delay, as well as an extension of time of performance.
3. Electrical: Should a problem with the existing wiring system occur, PLUG SMART will be limited to electrical wiring modifications (repairs) within two feet (24 inches) of the device or the nearest wall or ceiling penetration, whichever is smaller.



Plug Smart Services	Professional Fee (\$/Hr)
Project Support	
Principal/Partner	\$ 275.00
Senior Program Manager	\$ 190.00
Program Manager	\$ 180.00
Sr. Project Manager	\$ 160.00
Project Manager	\$ 130.00
Administrative Assistant 2	\$ 52.50
Administrative Assistant 1	\$ 42.00
Energy Services	
Sr. Energy Manager	\$ 190.00
Energy Manager	\$ 185.00
Sr. Energy Engineer	\$ 180.00
Energy Engineer	\$ 155.00
Associate Energy Engineer	\$ 135.00
Technician Level 3	\$ 120.00
Technician Level 2	\$ 105.00
Technician Level 1	\$ 80.00
Commissioning Services	
Sr. Commissioning Manager	\$ 180.00
Commissioning Manager	\$ 155.00
Sr. Commissioning Engineer	\$ 175.00
Commissioning Engineer	\$ 165.00
Commissioning Technician Level 2	\$ 105.00
Commissioning Technician Level 1	\$ 80.00
Design Services	
Sr. Project Design Manager	\$ 190.00
Project Design Manager	\$ 175.00
Senior Design Engineer	\$ 160.00
Design Engineer	\$ 110.00
CAD Designer	\$ 95.00
Other Services/Fees	
Construction Management	Cost plus 15%
Travel, Lodging, & Other Expensed	Billed at Cost

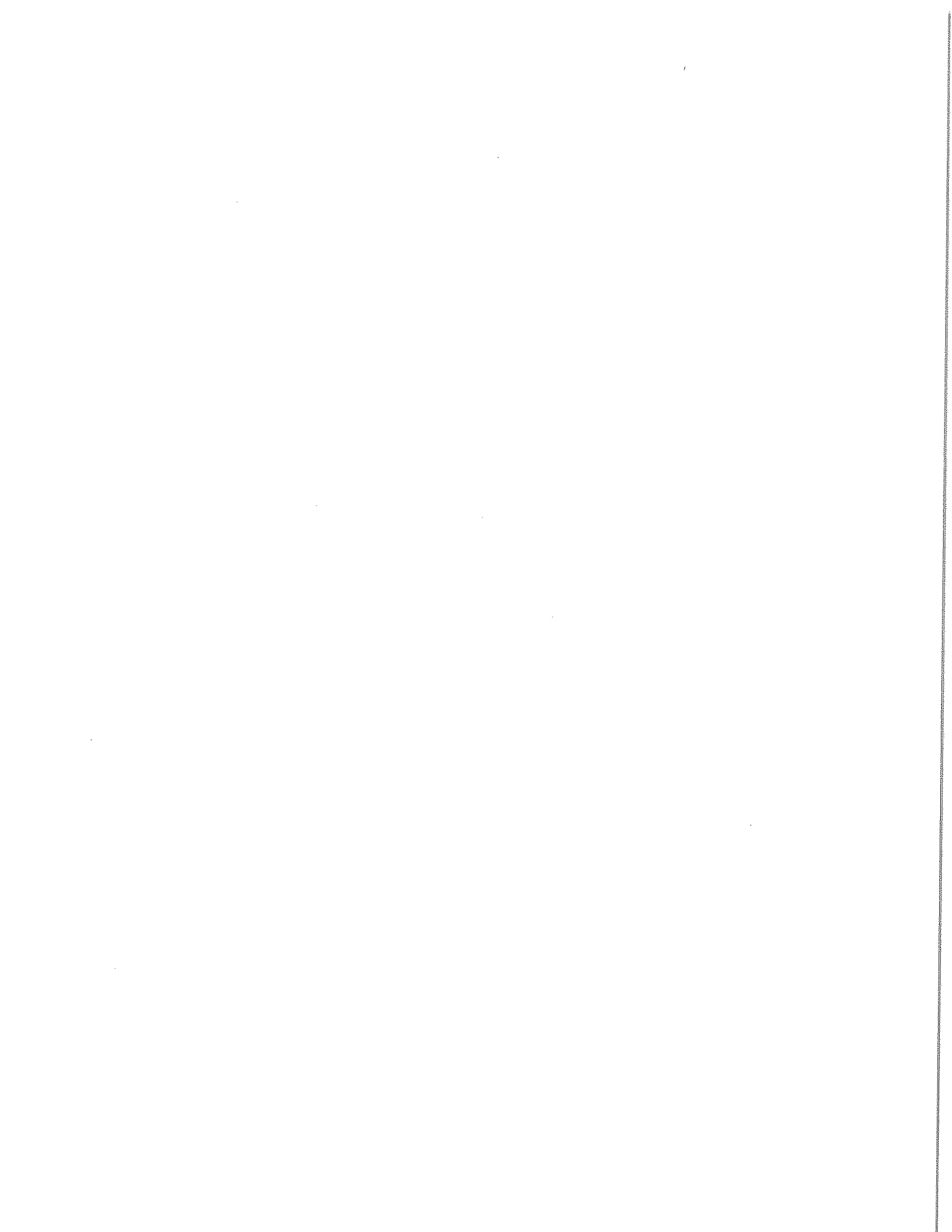
This Exhibit is attached to and made a part of the Agreement between PLUG SMART and CLIENT.

CLIENT:

Signature: Megan Q Titus
 Printed Name: Megan Q Titus
 Title: Treasurer / CFO
 Date: 6/7/19

PLUG SMART:

Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____



for such proper execution and results. Failure of PLUG SMART so to report shall constitute an acknowledgment that the CLIENT's or separate contractors completed or partially completed construction is fit and proper to receive PLUG SMART's Work, except as to defects not then reasonably discoverable.

CLIENT:

Signature: Megan Q. Titus
Printed Name: Megan Q. Titus
Title: Treasurer/CFO
Date: 6/7/19

PLUG SMART:

Signature: _____
Printed Name: _____
Title: _____
Date: _____

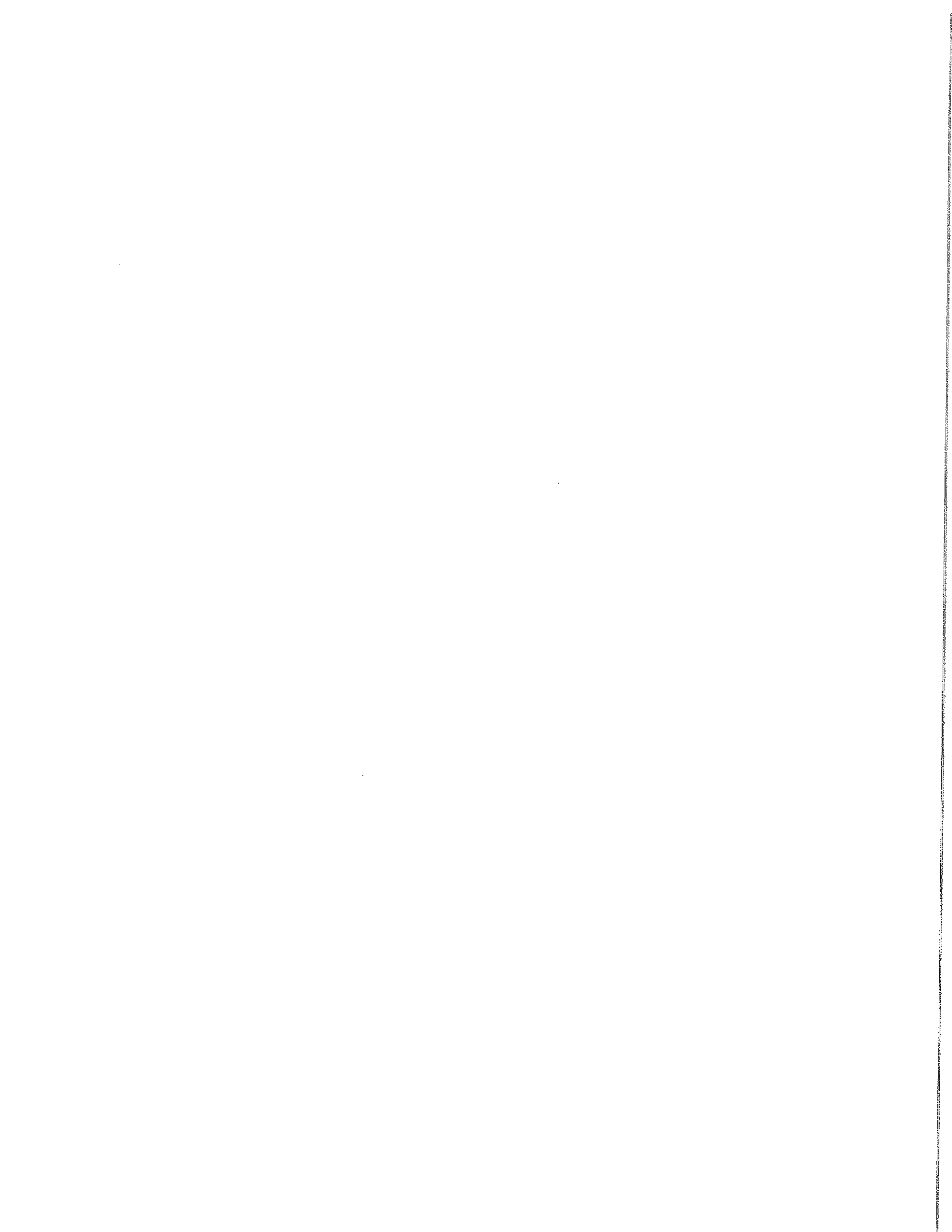
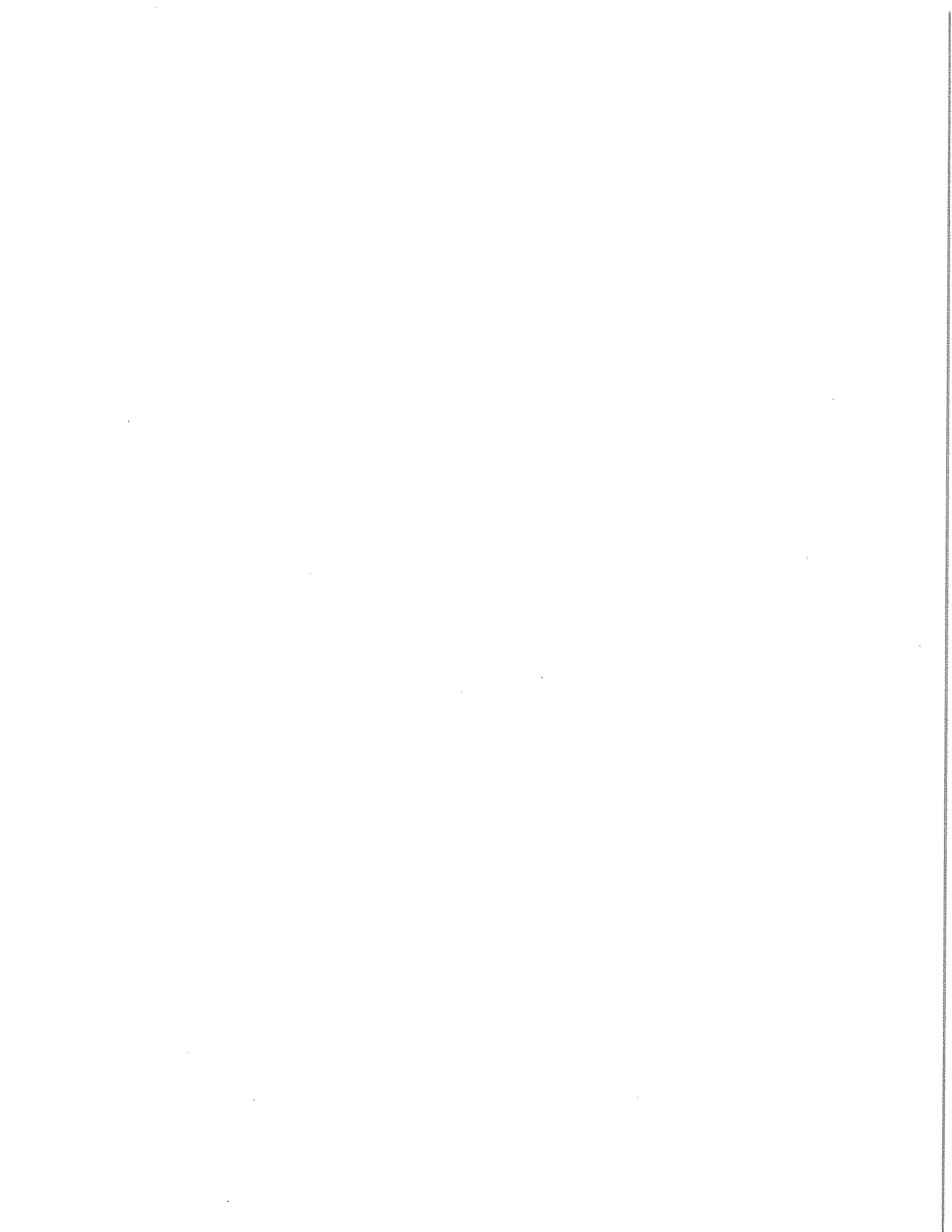


EXHIBIT D --Savings Guarantee

Article I

Scope of Energy Guarantee Services Agreement

- 1.1 Service/Project Location Name: McDonald Local School District
- 1.2 Service Location Address: 600 Iowa Avenue, McDonald, Ohio 44437
- 1.3 Scope of Work: PLUG SMART shall provide Energy Guarantee Services (“the Energy Guarantee Services”) in accordance with the Energy Guarantee Services Agreement, which form a part of the Agreement. Services PLUG SMART will provide under the Agreement specifically exclude inspection, investigation, discovery, identification, prevention or remediation of Hazardous Substances or Mold (as defined in Article 2 of the Agreement), conditions caused by Hazardous Substances or Mold, or conditions that might cause or promote the accumulation, concentration, growth or dispersion of Hazardous Substances or Mold subject to the terms and conditions herein.
- 1.4 Contract Term: The Term of the Energy Guarantee Services Agreement shall be one year from the effective date set forth in Section 1.5 of this Exhibit D. Additional years may be added at the district’s discretion and in accordance with Article 1.6 of this exhibit.
- 1.5 Contract Effective Date: Services shall commence upon Substantial Completion of the Work outlined in this contract. If full scope is not implemented within 36-months of this agreement, then services shall commence at a date no later than 36 months from the effective date of the Energy Services Agreement and savings shall be adjusted based on the final scope that was implemented.
- 1.6 Price: The cost of the first year of Energy Guarantee Services are included in the Contract Sum, and are offered at no additional cost to McDonald Local Schools. The price for additional energy guarantee service years is \$5,000 per year
- 1.7 Payment Terms: Annually in advance. Payment shall be made net twenty days of invoice date.



Article 2:
Energy Guarantee Special Provisions

These Special Provisions are incorporated herein by reference and made a part of the Energy Guarantee Services.

2.1 Glossary

The following terms shall, for all purposes of Exhibit D and all other Attachments associated with the Agreement, have the meanings stated herein, unless the context otherwise specifies or requires or unless otherwise defined in the Exhibits.

“Baseline” means the annual period or multiple annual periods prior to Project commencement which has been agreed upon and are stated in Exhibit D. The energy usage, operating practices, and facility and equipment in place prior to Energy Conservation Measure implementation represent the basis on which all future energy and operating usage will be compared for the determination of savings.

“Baseline Period” is the period of time (specified in Article 1 of Exhibit G) coordinated with the Baseline usage for the purpose of utility bill analysis (see “Option C”) to allow the comparison of a Guarantee Year against a Baseline. The Baseline Period may not always be one contiguous element of time and may be different from a 365-day annual period. Baseline information from non-contiguous elements of time may be normalized and assigned to a specified Baseline Period.

“Base Year” means the equivalent to “Baseline” and may not always be one contiguous element of time and may be different from a 365-day annual period.

“Contracted Baseline” means the future annual period or multiple annual periods, post Energy Conservation Measure implementation agreed upon and stated in Exhibit D that define the energy usage, operating practices, and facility and equipment in place post Energy Conservation Measure implementation and represent the basis on which the guaranteed savings are calculated.

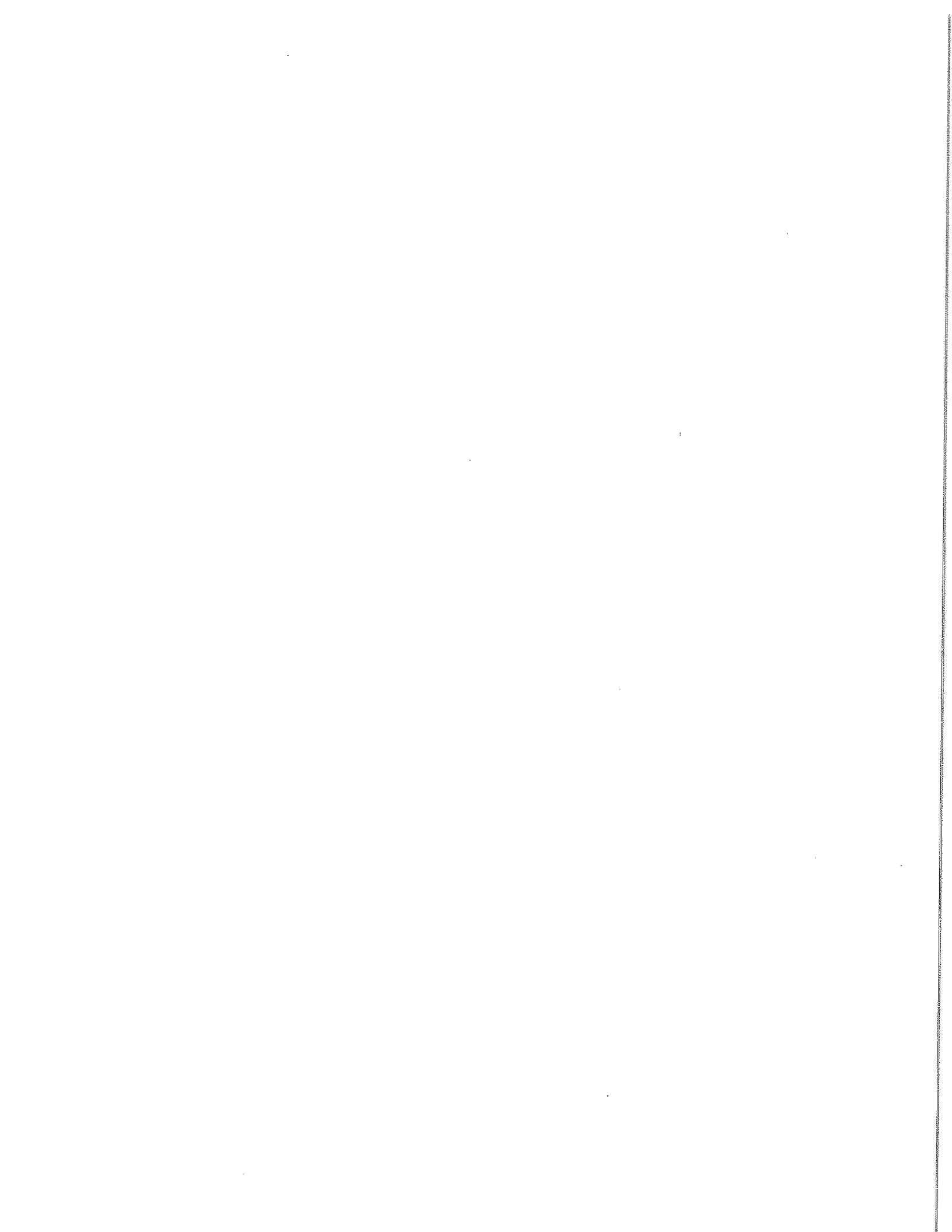
“Cost Avoidance” means the difference between the actual cost incurred during a selected time period versus what the cost *would have been* had the cost avoidance strategy not been implemented.

“Covered Systems and Equipment” means the systems and equipment identified in Exhibit A (Scope of Work) and Exhibit D (Energy Guarantee Services).

“Energy and Operational Cost Avoidance Guarantee Practices” are those practices identified in Exhibit G, intended to achieve avoided costs in energy and/or operating expenses.

“Energy Guarantee Performance Period Auditing Activities” means, in coordination with, or in addition to, any Energy Guarantee Service, PLUG SMART will perform Measurement & Verification (M&V) activities as described in Exhibit G.

“Energy Purchasing Alternatives” means that there is no requirement for PLUG SMART perform evaluations of energy purchasing alternatives or perform rate negotiations under this contract. Switching from the respective electric and natural gas local distribution companies (LDCs) to the respective marketers/brokers/suppliers (SUPPLIERS) for the commodity portion of gas and electricity will be the result of Contract(s) between CLIENT and SUPPLIER(s). PLUG SMART does not assure the provision of gas or electricity, and all incentives and payments associated with the Contract(s) between CLIENT and SUPPLIER(s) are the responsibility of the Parties to that Contract.



“Option B” is for projects in which the potential to perform and generate Savings needs to be verified; and actual performance needs to be measured (verified). Option B involves procedures for verifying the same items as Option A plus verifying actual performance of equipment component or system. Performance verification techniques involve engineering calculations with metering and monitoring for verifying that:

- The installed equipment components or systems at the end of the construction period meet the specifications of the contract in terms of quantity, quality and rating, and operation and functional performance.

“Option C” is also for projects in which the potential to perform needs to be verified and actual performance during the term of the contract needs to be verified. Option C involves procedures for verifying the same items as Option A plus verifying actual achieved energy savings during the term of the contract. Performance verification techniques involve utility whole building meter analysis.

“Option D” is a verification technique where calibrated simulations of the baseline energy use and/or calibrated simulations of the post-installation energy consumption are used to measure Savings from the Energy Conservation Measures. 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.

“Potential to Save” means verification of an ECM’s potential to generate the proposed Cost Avoidance is satisfied upon CLIENT’s signing of Exhibit J or an equivalent Certificate of Substantial Completion. “Potential-to-Save” or “Potential-to-Perform” by an ECM is satisfied when a measure is properly installed and has the potential to generate predicted levels of Cost Avoidance provided that it is understood that the Potential to Save does not constitute the actual Cost Avoidance itself. Verification of an ECM’s “potential to save” is satisfied upon CLIENT’s signing of Exhibit J or an equivalent certificate establishing Substantial Completion and Acceptance.

“Recommendations” means that PLUG SMART will use its best professional judgment in evaluating energy use characteristics, but assumes no responsibility for financial performance related to any recommendations except when such Recommendations are contrary to PLUG SMART’S obligations under the Agreement.

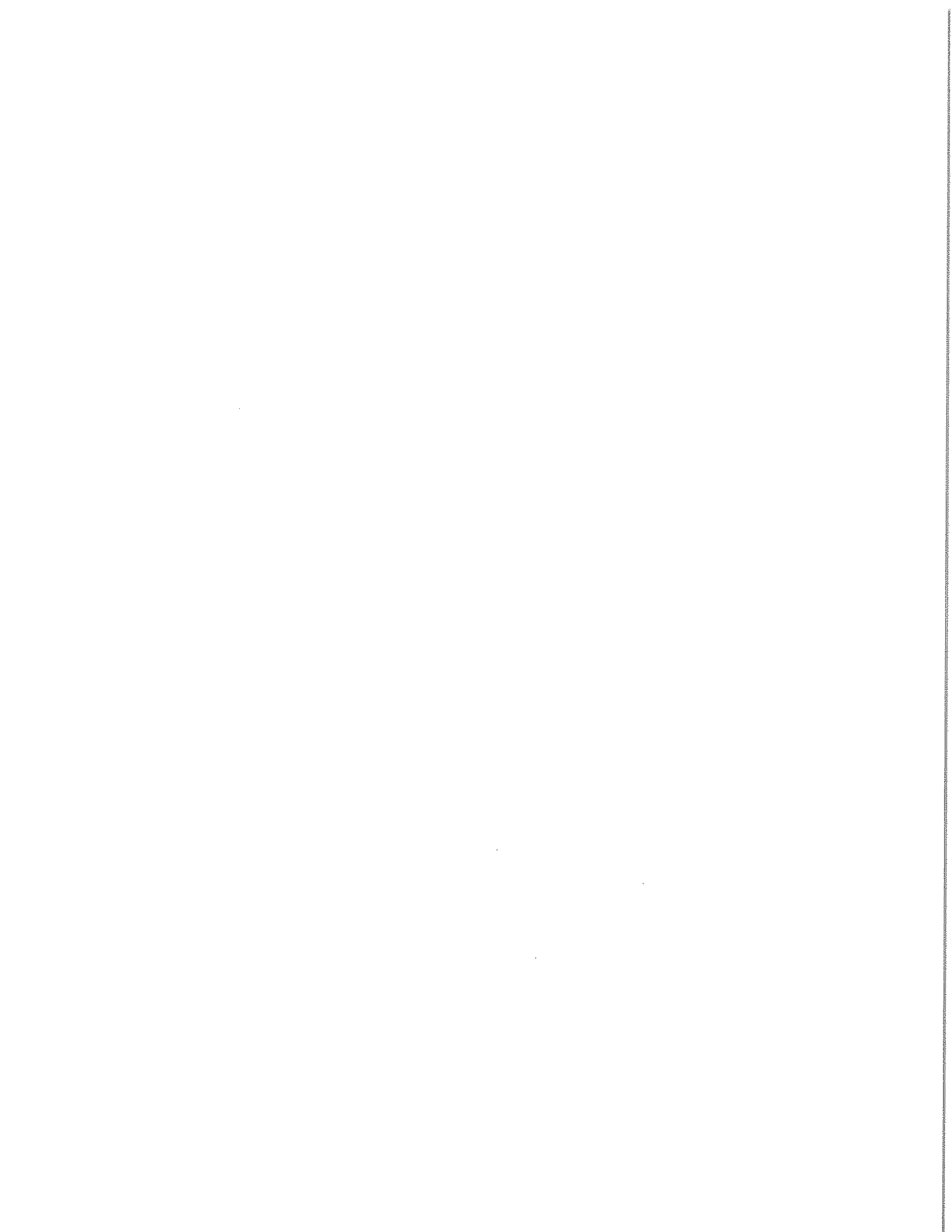
“Remote Diagnostics” means CLIENT shall allow PLUG SMART to perform remote diagnostics on all equipment associated with the Energy Savings Guarantee for operational compliance with manufacturer’s specifications, PLUG SMART specifications, requirements of Exhibit F, and requirements of Exhibit G. PLUG SMART may install diagnostic devices at PLUG SMART’s expense to monitor and/or enhance system operation and support. Upon termination of the Energy Services Guarantee Agreement, PLUG SMART may remove these devices and return the system to original operation.

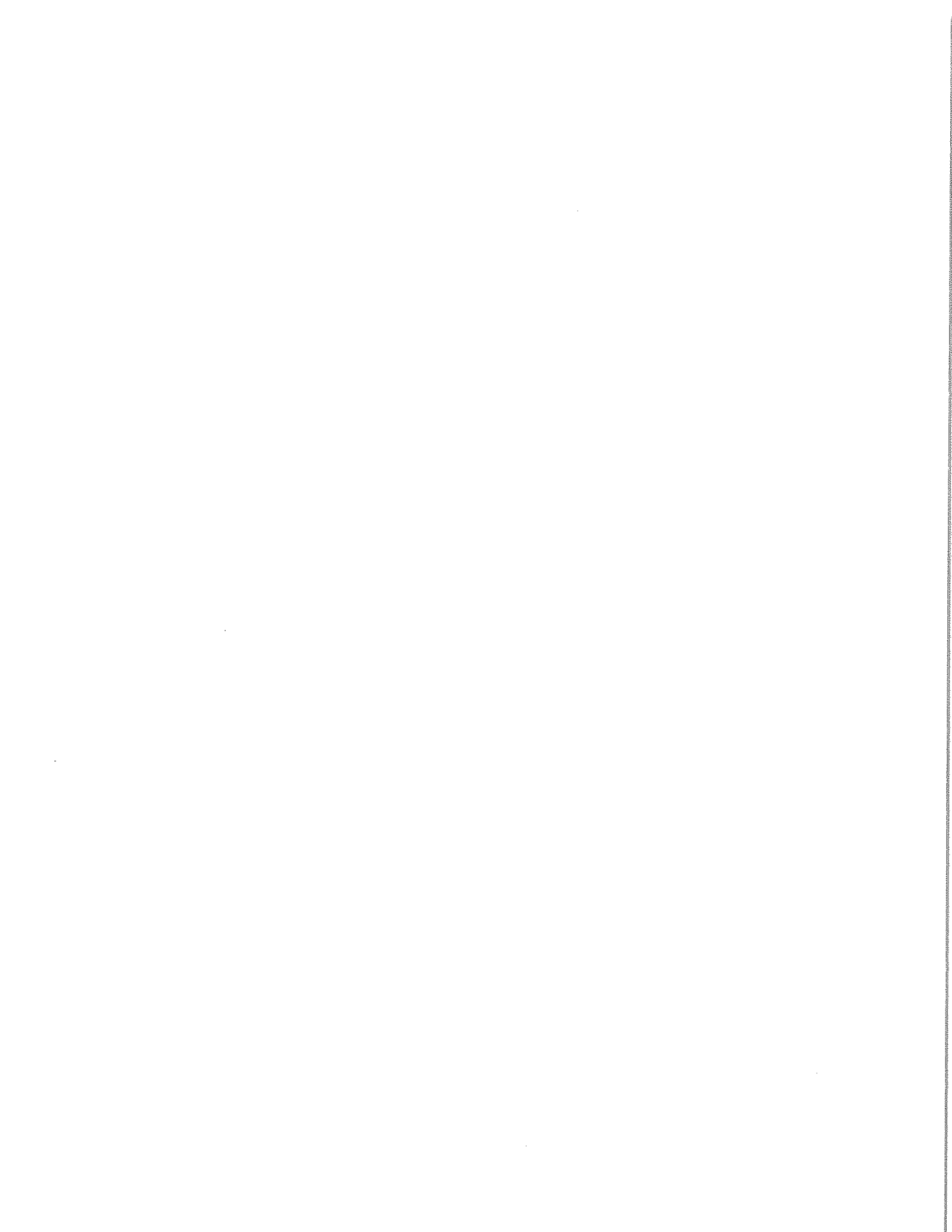
“Retrofit” is the work provided by PLUG SMART as defined by the “ECMs.”

“Retrofit and Support Costs” are the sum of the (i) the financing payments required to be made by CUSTOMER pursuant to the Financing Document; and (ii) the payments required to be made by CLIENT for Energy Guarantee Services.

“Savings” is defined as avoided, defrayed, or reallocated costs.

“Utility Rebates” means that all utility rebates and/or refunds are the result of an agreement between CLIENT and the utility company and PLUG SMART assumes no responsibility for either obtaining said rebates and/or refunds for the quantity of said rebates and/or refunds. It is further understood that any evaluation and presentation of options by PLUG SMART for potential utility rebates and credits available to CLIENT from utility companies is limited to those identified during contract negotiation and during installation. Assisting the CLIENT in securing identified rebates is understood to be a construction and installation task and is not part of these on-going services.





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- b. **Option B – Retrofit Isolation.** The techniques used in Option B are very similar to those of Option A except that no stipulations are allowed under Option B. Short term or continuous metering is used to provide further insights into the equipment usage. This method is intended for equipment with performance factors that may be difficult to stipulate and where more certainty is needed than with Option A. The measurements will be applied on an Energy Conservation Measure specific basis and the calculations for energy consumption will be defined in the Measurement and Verification section in this Exhibit G, Article 2. It is agreed that the potential to save is proven if the reduction of energy is achieved. Periodic inspections and consumption measurements of the equipment or systems may be necessary to verify the on-going efficient operation of the equipment and savings attainment. This method provides an effective reconciliation method and it minimizes the interactive effects on the determination of utility savings due to changes to the facilities from the baseline conditions.

Applicable Coverage: NOT USED.

Applicable Term: Year 1.

Baseline Period: Baseline will be based on actual, on-site measurements prior to commencement of work.

- c. **Option C – Whole Facility Energy Use.** This option is intended for Energy Conservation Measures where savings are based on overall energy use in a facility as measured by the utility meter(s) and compared to an established baseline energy consumption. The evaluation of facility-level metered data is completed using techniques ranging from simple billing comparison to multivariate regression analysis. PLUG SMART will analyze the CLIENT'S monthly energy bills to track facility consumption and to quantify changes in energy usage due to external variables. PLUG SMART will adjust for changes in energy usage due to changes in variables including, but not limited to weather, billing periods, occupancy, building load, conditioned building area, equipment operation, and scheduling methodologies etc. using a regression analysis. Option C can verify the performance of individual measures but can verify the total performance of all measures including interactions.

Applicable Coverage: ECMs listed in Table 3.1 under Option C.

Applicable Term: Year 1.

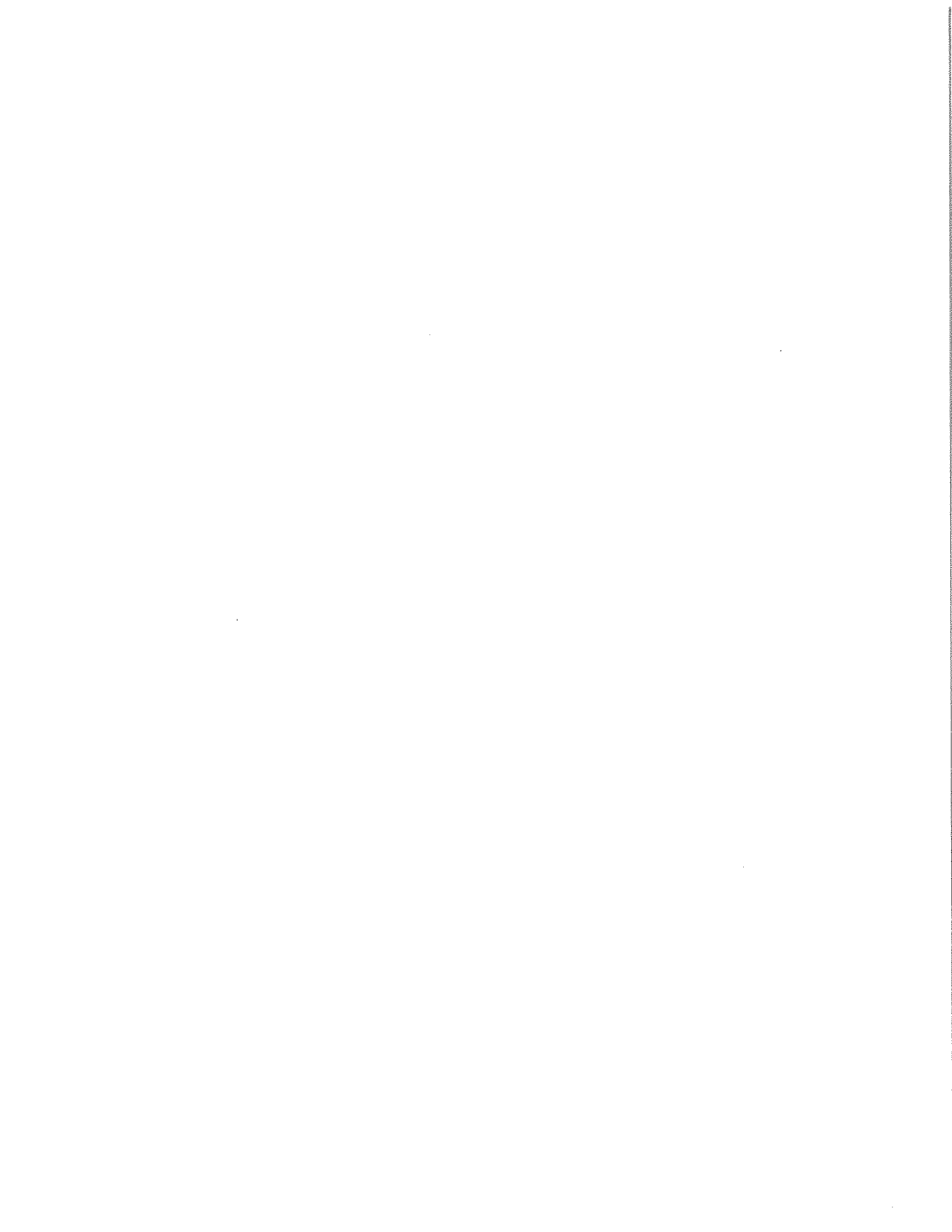


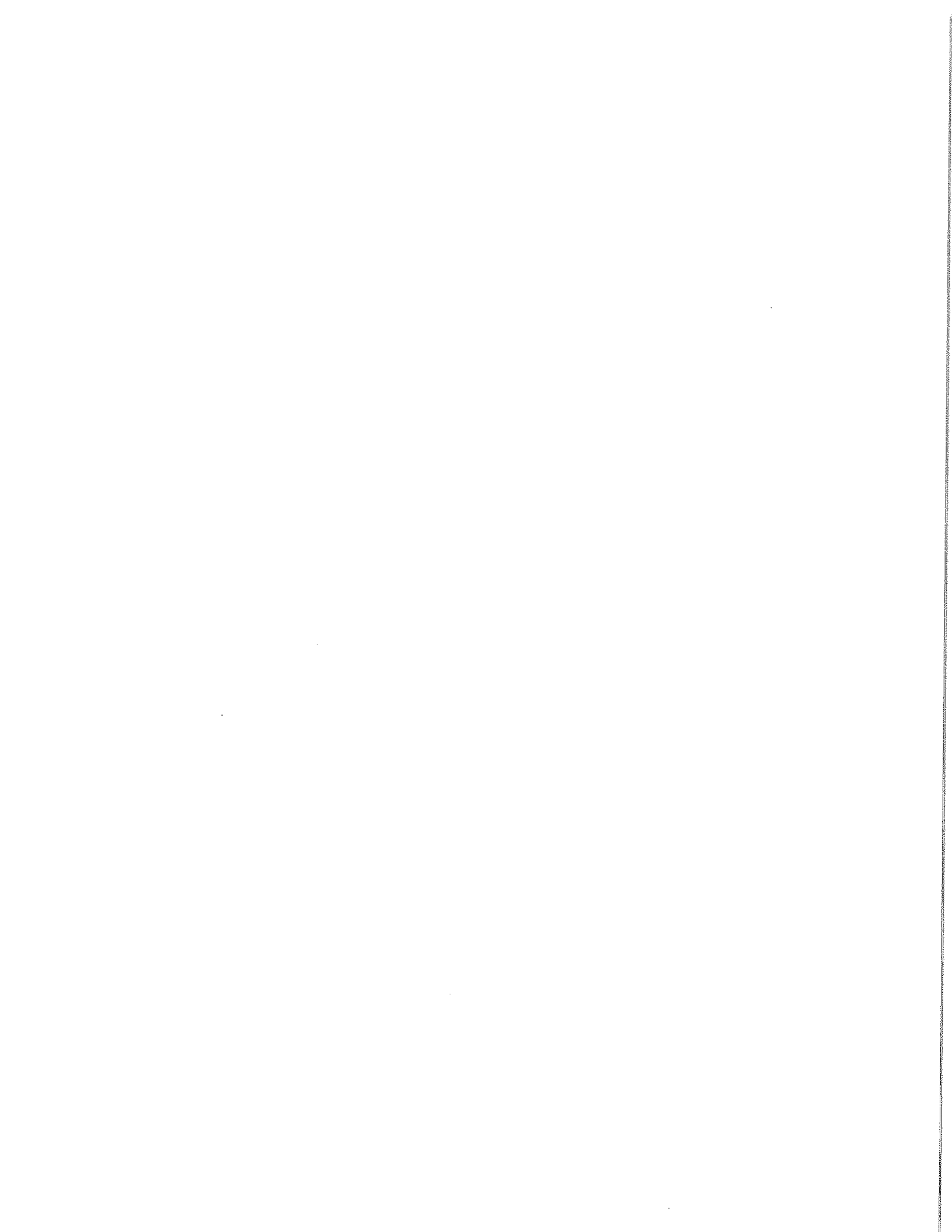
Exhibit F - Energy Guarantee

Article 1

Term and Termination

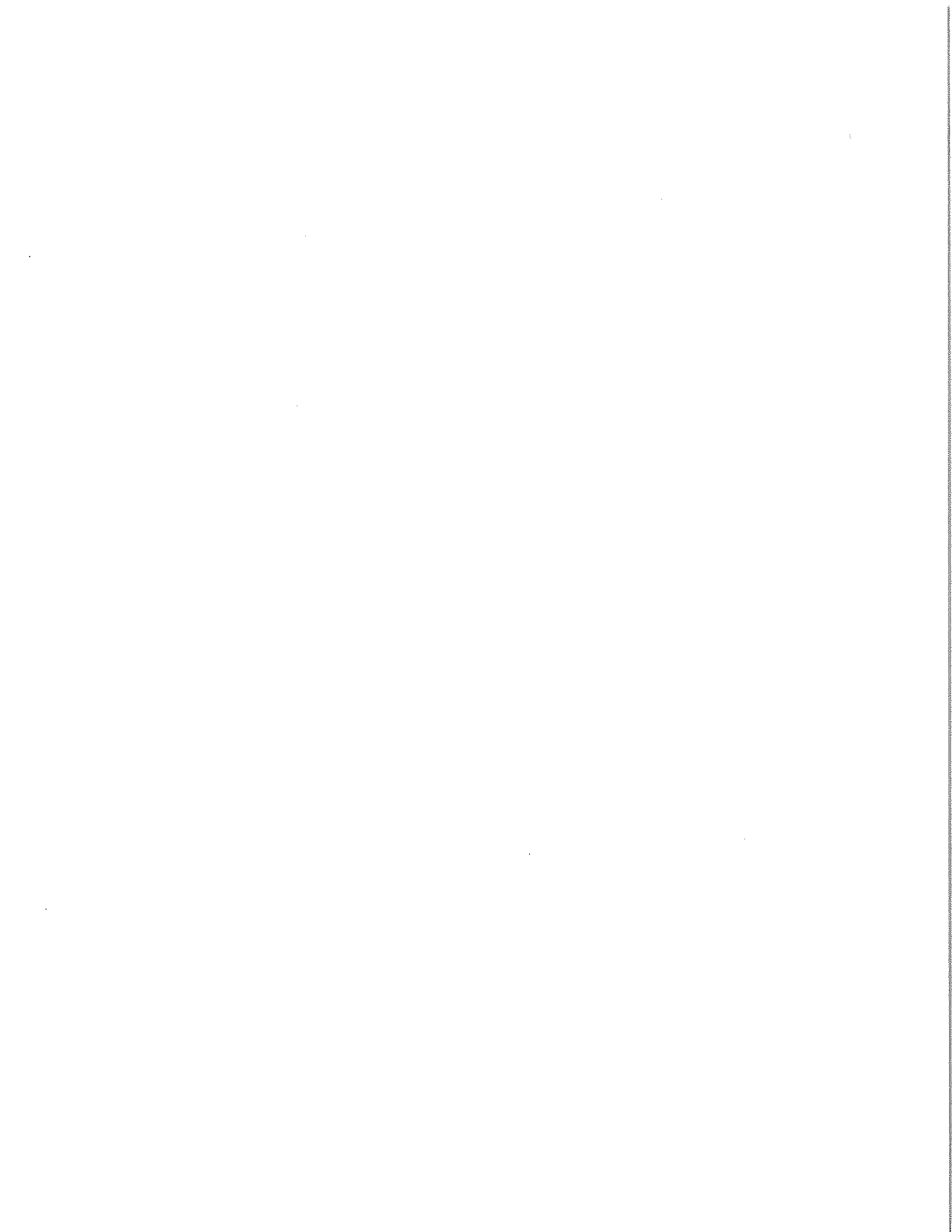
- 1.1 Guarantee Term. The Term of the Guarantee Period shall be in accordance with sections 1.4 and 1.5 of Exhibit D to the Agreement.

- 1.2 Guarantee Termination. Given that both parties recognize that the energy and operational savings can only be achieved if the systems and equipment are properly maintained throughout the Guarantee Term, CLIENT agrees that the savings guarantee set forth herein is dependent upon the continuation of any existing Energy Guarantee Services Agreements by PLUG SMART or by OTHERS. CLIENT shall continue to contract with PLUG SMART for the Energy Guarantee Services set forth in the Agreement for the entire term of the savings guarantee term. Should the Energy Guarantee Services Agreement, or other existing provisions set forth in the Agreement be terminated (including, as applicable, the Energy Guarantee Services – Exhibit E) in whole or in part for any reason prior to the end of the Term, the Guarantee 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 Guarantee for all subsequent Guarantee Years shall be null and void.

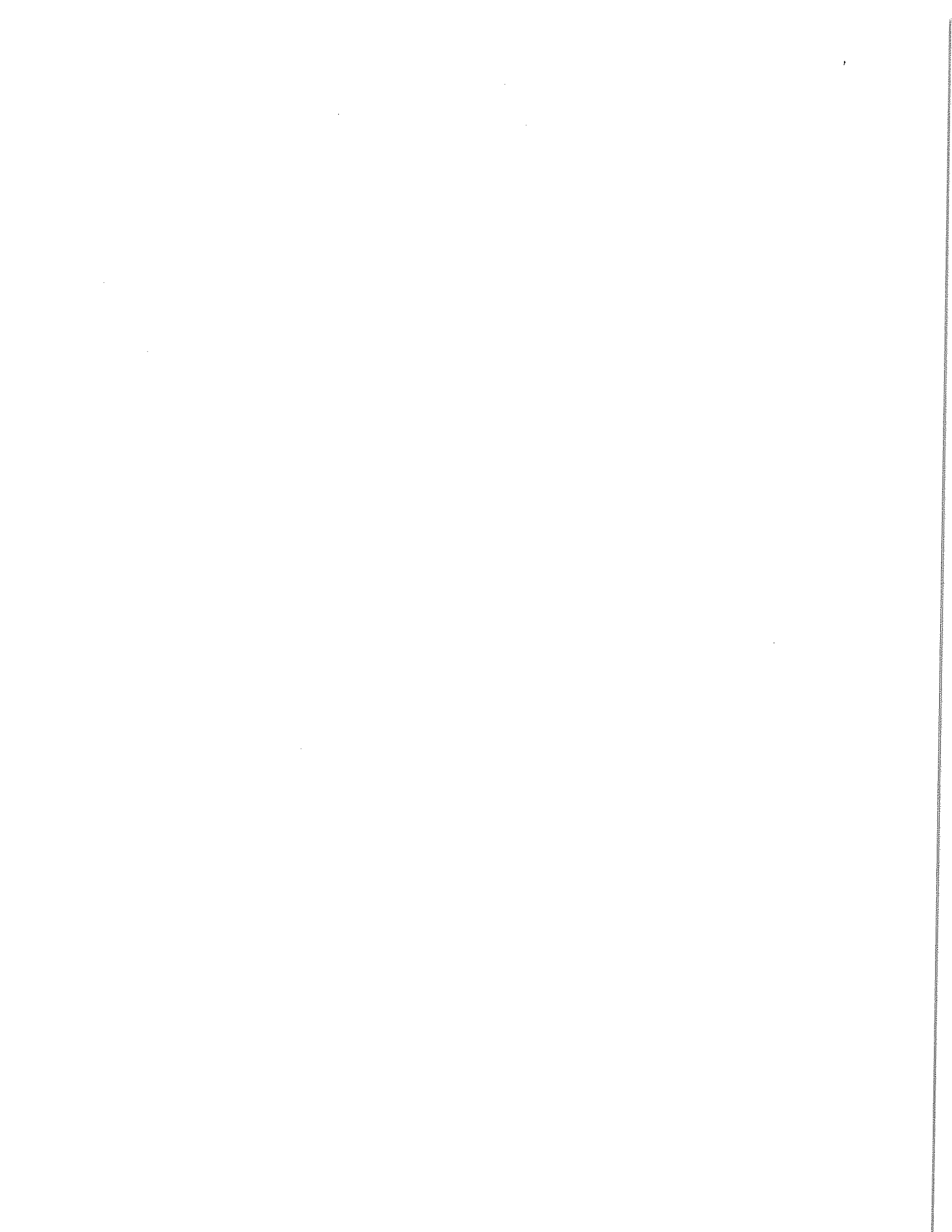


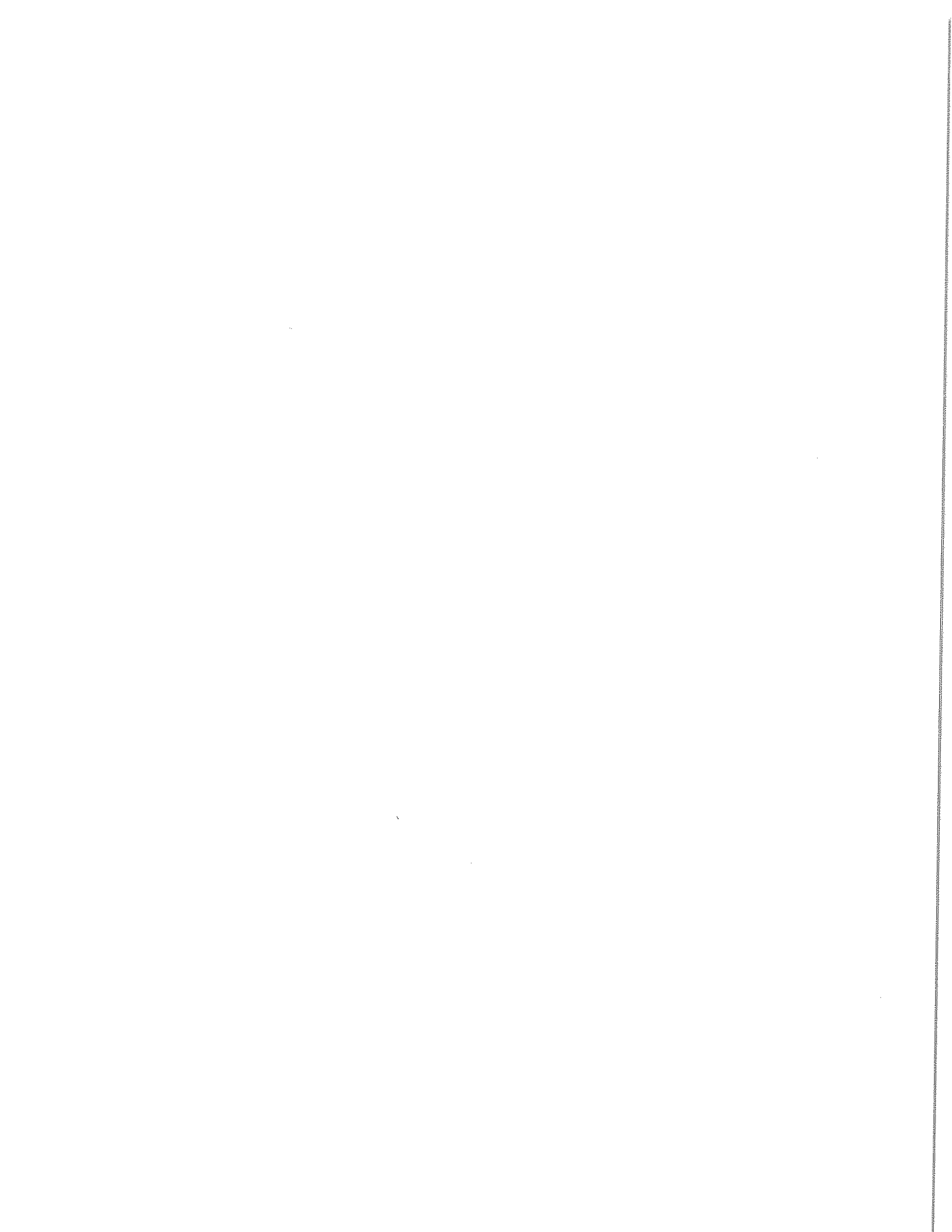
Article 2
Savings Guarantee

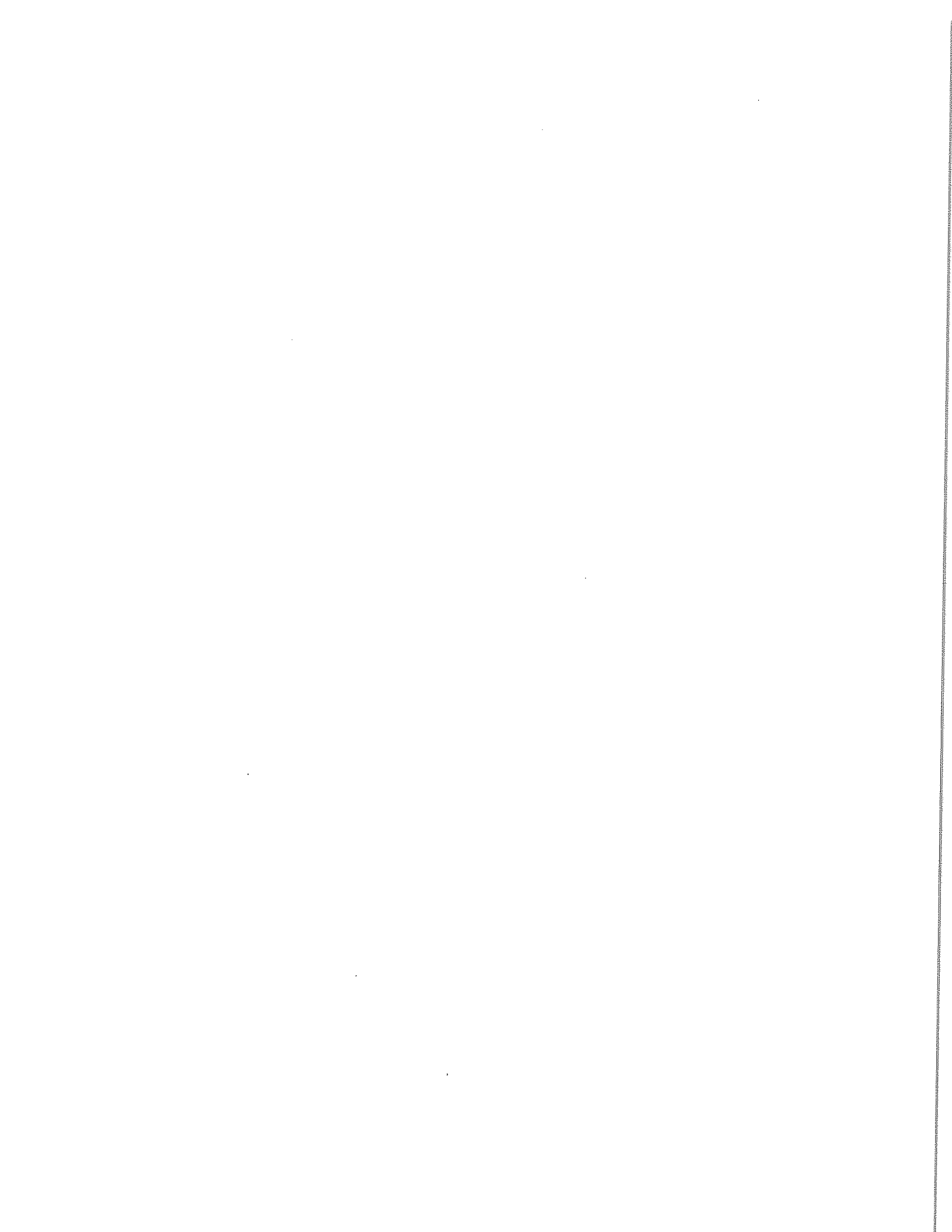
- 2.1 Guarantee Savings. PLUG SMART guarantees to CLIENT that the identified Facilities will realize the total Guaranteed Savings and energy Cost Avoidance through the combined value of the ECMs over the Term of the contract as defined in Article 1 of Exhibit G. In no event shall the savings guarantee provided herein exceed the total installation and financing costs for the Work under the Agreement.
- 2.2 Additional Savings Before Acceptance. All energy and operational cost avoidance realized by CLIENT that result from activities undertaken by PLUG SMART at or subsequent to Substantial Completion of the Work or any portion thereof but prior to Final Completion, including any utility rebates or other incentives earned as a direct result of the installed Energy Conservation Measures or Energy Guarantee Services provided by PLUG SMART, will be applied toward the Guaranteed Savings for the First Guarantee Year.
- 2.3 Additional Savings After Acceptance. Additional energy and/or operational cost avoidance, including any utility rebates or other incentives, that can be demonstrated, or earned, as a result of PLUG SMART's efforts that result in no additional costs to CLIENT beyond the costs identified in the Agreement will be included in the guarantee savings reconciliation report for the applicable Guarantee Year(s).
- 2.4 Accumulation 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 Article 1 of Exhibit G hereto.
- 2.5 Excess Savings. In the event that the Total Guarantee Year Savings in any Guarantee Year exceed the Guaranteed Savings required for that Guarantee Year ("Excess Savings"), such Excess Savings shall be carried forward and applied against Guaranteed Savings shortfalls in any future Guarantee Year. In the event PLUG SMART has previously paid CLIENT for a Guaranteed Savings shortfall in a past Guarantee Year, pursuant to Section 2.6, then Excess Savings in current Guarantee Year shall be billed to CLIENT (but only up to any amounts previously paid by PLUG SMART for a shortfall and CLIENT, subject to appropriation and certification of available funds, shall pay PLUG SMART within thirty (30) days after receipt of such bill, and any remaining Excess Savings shall be carried forward and applied against Guaranteed Savings shortfalls in any future Guarantee Year.
- 2.6 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 2.5, PLUG SMART shall compensate CLIENT the amount of any such shortfall, in such form as agreed to by the parties, limited by the value of the guarantee, within forty-five (45) days. Resulting compensation shall be PLUG SMART's sole liability for any shortfall in the Guaranteed Savings.
- 2.7 Aggregation of Savings. The parties mutually agree that the Guarantee Savings for the Agreement and the Guarantee Savings for all previous active Energy and Operational Guaranteed Cost Avoidance projects for CLIENT shall be combined each year until the end of the original Guarantee Period for each project. Throughout the duration of the term for the each specific phase the total savings will be utilized as an aggregate in satisfying the sum of the respective guarantees.
- 2.8 Savings Reconciliation Documentation. PLUG SMART will provide CLIENT with a guarantee savings reconciliation report after each Guarantee Year. CLIENT will assist PLUG SMART in generating the savings reconciliation report by providing PLUG SMART with information in accordance with the timelines and requirements of Section 2.2 of Exhibit E to the Agreement and Section 5.6 of Exhibit G to the Agreement. CLIENT will also assist PLUG SMART by permitting access to any maintenance records, drawings, or other data deemed necessary by PLUG SMART to generate the said report. Data and calculations utilized by PLUG

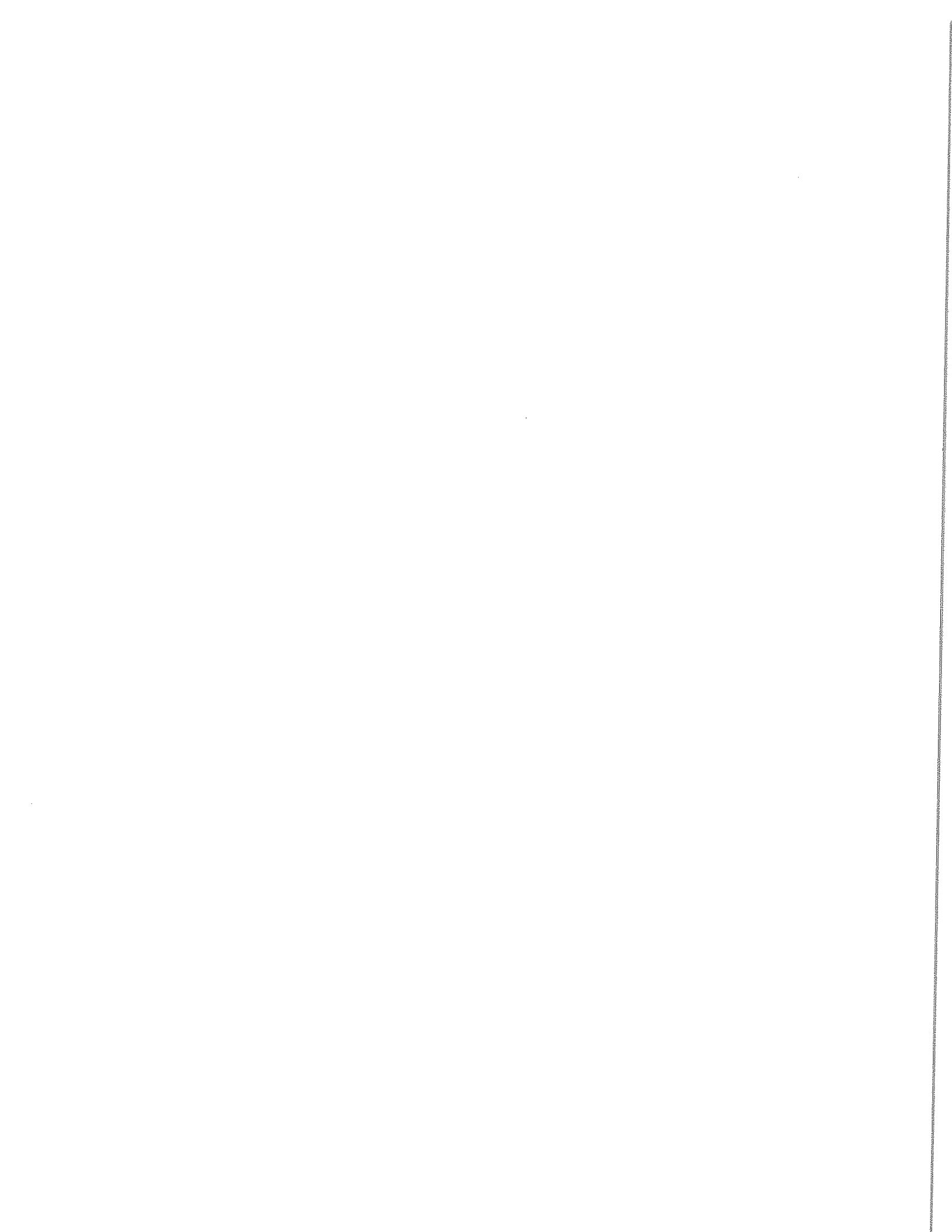


costs stated in Exhibit G per year over the life of the contract. The CLIENT agrees that, by entering into the Agreement, it will avoid future operational costs in at least this amount.

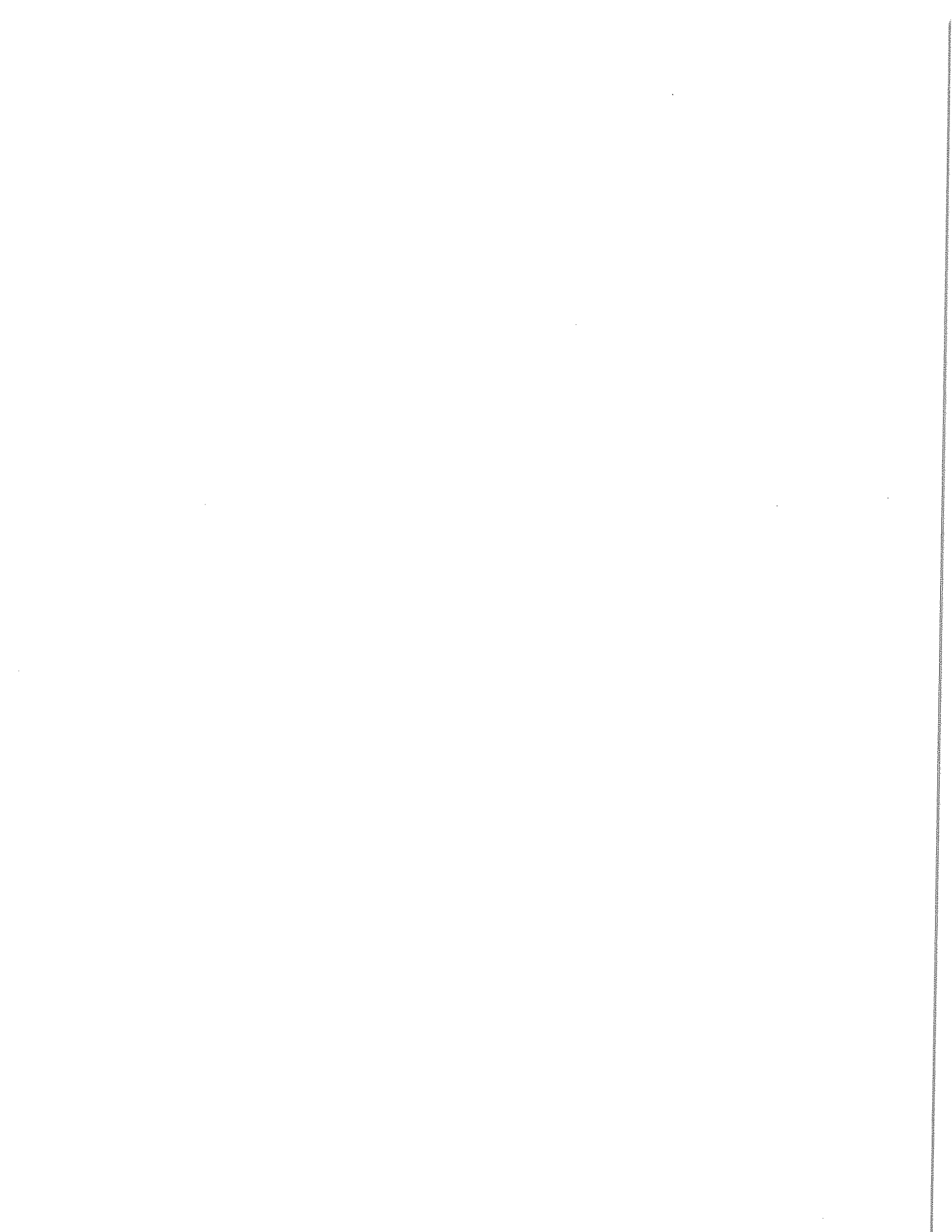








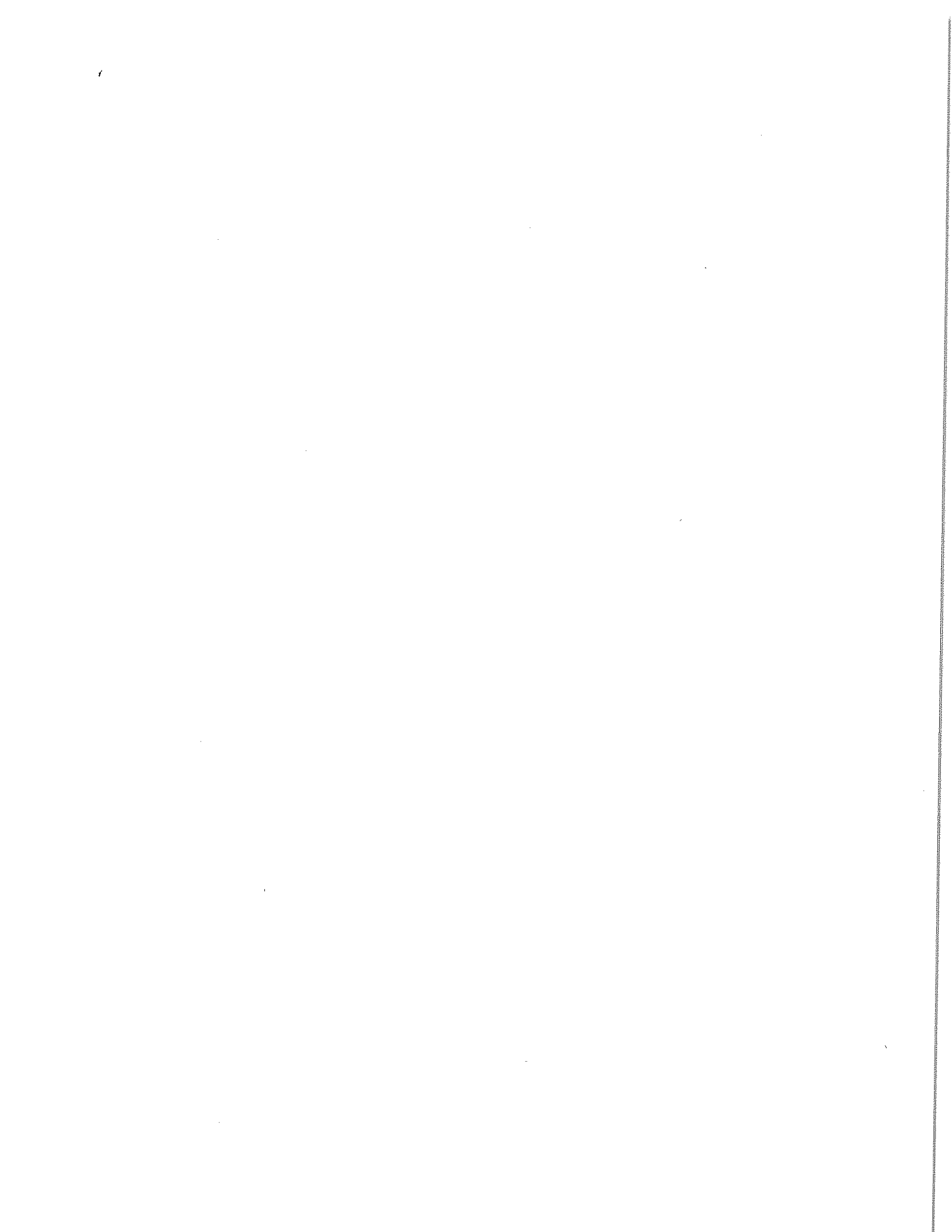
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- 5.5. CLIENT Governmental Unit Reporting Responsibilities. CLIENT is solely responsible for reports to be submitted to the Department of Commerce, Public Utilities/Services Commission, or any other governmental agency or governmental unit.
- 5.6. CLIENT Provided Documentation. It will be the responsibility of the CLIENT to provide to the M&V specialist on a monthly basis (unless noted otherwise):
- (a) Verification that equipment installed to perform the ECMs has been properly maintained, including but limited to provision of maintenance records.
 - (b) Current status of the buildings (i.e., occupancy level and use, hours of operation, etc.).
 - (c) Records of CLIENT initiated changes in equipment setpoints, start/stop conditions, usage patterns.
 - (d) Records of CLIENT initiated changes in operation of mechanical systems, which may impact the ECMs.
 - (e) Records regarding addition or deletion of equipment or building structure, which may impact the ECMs or the building energy consumption.
 - (f) Copies of monthly utility bills and utility summary data and access to utility accounts through an authorization by the CLIENT to the Utility to allow the release of data to a PLUG SMART representative.
- 5.7. CLIENT Rebate Responsibilities. It is understood that all energy rebates and/or refunds are the result of an agreement between CLIENT and the utility company and PLUG SMART assumes no responsibility for obtaining said rebates and/or refunds. It is understood that said rebates and/or refunds are not included in the Guarantee.



Article 6

Material Changes in Energy Units & Cost Avoidance.

- 6.1. Reported Material Changes. CLIENT shall deliver to PLUG SMART a written notice describing and explaining all actual or proposed Material Changes in the Premises or in the operations in the Premises and their anticipated effect on energy use. Said Notice must be delivered to PLUG SMART no less than seven (7) days before any actual or proposed Material Change occurs.
- (a) For purposes of this provision, a "Material Change" is defined as any change in the following which reasonably could be expected to increase or decrease energy used at the Premises by a value more than five percent (5%) of the Guaranteed energy Savings per utility meter or submeter:
- (i) Manner of use of the Premises by Client;
 - (ii) Hours of operation of any equipment or facilities or energy systems contained in the Premises;
 - (iii) Occupancy of the Premises;
 - (iv) Structure of the Premises;
 - (v) Types of equipment used in the Premises; or
 - (vi) Conditions affecting energy use in the Premises.
- 6.2. Unreported Material Changes. In the absence of any Material Changes in the Facilities or in their operations, energy consumption and demand should not change from year to year. Therefore, if energy consumption and demand per utility meter or submeter for any month increases by five percent (5%) of the Guaranteed Savings per meter or more from the energy consumption and demand for the same month of the preceding contract year after adjustment for changes to climactic conditions, then such increase shall be deemed to have resulted from a Material Change, except where such increase is due to equipment malfunction, faulty repair or other acts of negligence by PLUG SMART.
- 6.3. Adjustments for Material Changes. In the event of any increase or decrease in energy consumption and demand for any month resulting from a reported or unreported Material Change, the amount of that increase shall be subtracted from or that decrease shall be added to the total energy consumption and demand for that month prior to the calculation of energy savings pursuant to Exhibits G and H.
- 6.4. If a reported or unreported Material Change affected energy consumption and demand in the same calendar month in the preceding year, the next preceding contract year where a Material Change has not occurred will be used to compute the value of the Material Change and the energy savings for the current month.



**Article 2
Energy Savings**

2. PLUG SMART will conduct Measurement and Verification of the ECMs under one of the following method as outlined in Exhibit D, Article 3:

Option C – Whole Facility Energy Use

The Energy Cost Avoidance is broken out by Energy Conservation Measure and utility type in Table 2.1 below.

Table 2.1: Annual Energy Cost Avoidance by Energy Conservation Measure Type and Utility Type

<i>ECM#</i>	<i>ECM Description</i>	<i>Utility Type</i>	<i>M&V Method</i>	<i>Energy Savings</i>
1	LED Lighting	Electric	Option C	\$20,962
2	Controls Upgrade	Electric	Option C	\$2,335
TOTAL:				\$23,297

Option C: Whole Facility Energy Use

The Energy Conservation Measures will be analyzed using the Whole Facility Energy Use method which is further described below. In the event that Option C yields a utility bill curve that does not possess a high percentage statistical fit, Plug Smart reserves the right to take sample power draw measurements of the effected equipment circuit breakers to verify a reduction in load and calculate savings.

Baseline (Pre-Retrofit) Efficiency:

PLUG SMART will use a utility baseline for each of the facilities. The baseline period for each facility is defined in Exhibit G, Table 1.2.

Post Retrofit Efficiency:

PLUG SMART will use the actual utility bills for the Guarantee Year to determine the post retrofit usage for each of the facilities.

Savings:

The Energy Cost Avoidance is the difference between the baseline energy consumption and the post retrofit energy consumption multiplied by the applicable utility rate. Regression analysis can be used for adjusting the data to account for varying factors such as weather not reasonably anticipatable, billing periods, occupancy, building load, conditioned building area, equipment operation, and scheduling methodologies etc. PLUG SMART and the CLIENT agree that the proposed operating parameters specified in this contract are representative of equipment operating characteristics during the Guarantee Period. If an energy change occurs due to a building expansion, extended usage, or other owner operations changes, it is up to the CLIENT to make PLUG SMART aware so that adjustments can be made to account for the change and keep the energy guarantee relevant to current conditions. The utility savings assume that the operational conditions used in the engineering calculations are maintained throughout the duration of the contract. PLUG SMART reserves the right to analyze specific Energy Conservation Measures should there be an anomaly in the data or if PLUG SMART feels the operational conditions have changed.

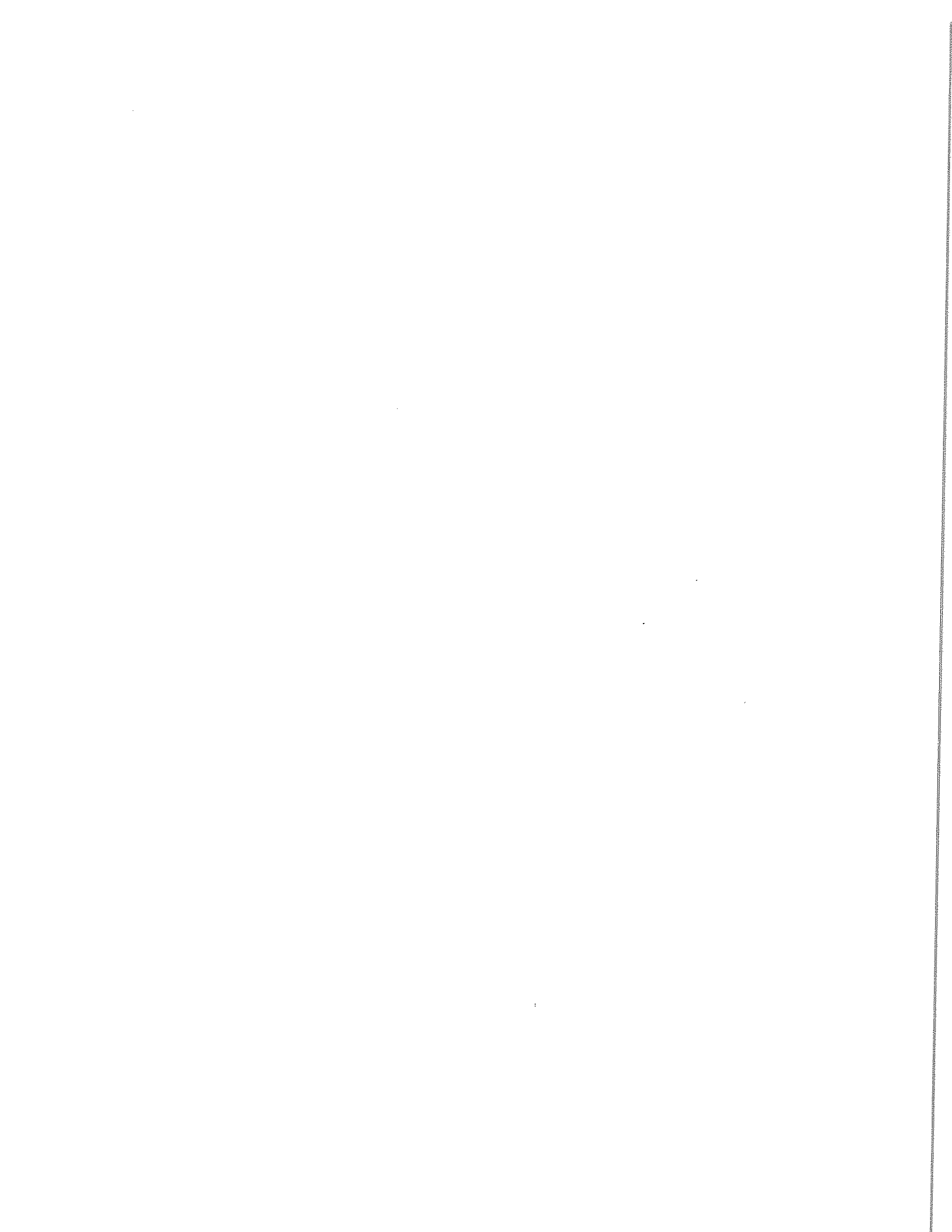


EXHIBIT I – Not Used

