

Dakota County, Minnesota Investment Grade Audit

This Investment Grade Audit (the "Agreement") is made and entered into as of September____ 2025, between MCKINSTRY ESSENTION, LLC ("McKinstry") and Dakota County ("Owner"), 1590 Highway 55, Hastings, MN, 55033.

WITNESSETH

WHEREAS, McKinstry is a company with experience and technical and management capabilities to provide for the discovery, engineering, packaging, procurement, installation, financing, maintenance and monitoring of energy and water saving measures at facilities similar in size, function and system type to Owner's facilities; and

WHEREAS, Dakota County selected McKinstry to implement a "Guaranteed Energy Savings Agreement" project on February 5, 2024; and

WHEREAS, McKinstry conducted a Preliminary Energy/ Sustainability Evaluation for a Phase 2 project that was presented to Dakota County on April 24, 2025; and

WHEREAS, Dakota County desires to enter into an agreement to have MCKINSTRY perform an Investment Grade Audit to determine the feasibility of entering into an Energy Savings Project, as well as other professional services; and

WHEREAS, McKinstry enters into this Contract in reliance on Dakota County's representations concerning the appropriateness and validity of the procurement mechanism(s) under which this contract is procured, and Dakota County as a fiduciary acknowledges such reliance by McKinstry, and

WHEREAS, Dakota County has reviewed the Minnesota Statute 471.345 – Uniform Municipal Contracting Law and Subd. 13 – Energy Efficiency Projects and has selected McKinstry to provide these services described herein.

THEREFORE, the parties agree as follows:

1. Investment Grade Audit

McKinstry agrees to complete the Investment Grade Audit and present, to Dakota County (the "Owner"), a final deliverable within 90 calendar days from the execution of this Agreement. However, McKinstry and the Owner may mutually agree to extend the dates on all associated deadlines for this Agreement in the event the Owner wishes to expand the scope of work to a degree sufficient enough to warrant an extension.

The Investment Grade Audit will further the development of selected sites per the Preliminary Energy/ Sustainability Evaluation and may include additional energy saving, HVAC and solar PV generation opportunities within the County based on mutual agreement by McKinstry and the Owner. McKinstry will evaluate, develop, specify, and price the following energy efficiency, HVAC, solar PV energy systems, and other project opportunities as mutually agreed upon by McKinstry and the Owner that meet a cost effective / self-funding format. Dakota County has reviewed the benefits of the project and understands that the addition of CIP/capital dollars further enhances the project outcomes for Dakota County.

The following summarizes the opportunities identified in the Preliminary Energy/ Sustainability Evaluation for further development in the IGA.

	Base Project					
Facility Assessment	Mechanical	Building Envelope	Destrat Fans	RCx	RT Solar	Water
Administration Center	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Burnhaven Library	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Kaposia Library	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Lawshe Museum	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Empire Maintenance Facility	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Farmington Library	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Heritage Library	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Inver Glen Library	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judicial Center	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Juvenile Services Center	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Law Enforcement Center	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Lebanon Hills Visitor Center	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Northern Service Center	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Pleasant Hill Library	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Schaars Bluff Gathering Center	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SMART Center	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Wentworth Library	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wescott Library	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Western Service Center	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
911 Center	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Parks	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Solar PV

Solar PV design/engineering will be completed on the following buildings:

Kaposia Library	Juvenile Services Center	Heritage Library
Farmington Library	Law Enforcement Center	

Solar PV design/engineering will include the following services:

- Full design/engineering package of Solar PV electrical drawings/specifications for each site.
- Solicit/manage RFP/bidding/qualifying process with multiple contractors.
- Develop/submit interconnection application(s) to utility for approval.
- Solar PV financial analysis with Energy Tool base and PvSyst.
- Explore/assist with potential local, state and federal grants and incentives.
- Work with Owner to include Solar Data systems capturing key data indicators for Owner's curriculum.

Energy Efficiency

Energy Efficiency Technical Audits will include the following buildings:

Administration Center	Inver Glen Library	Schaar's Bluff Gathering Center
Burnhaven Library	Judicial Center	SMART Center
Kaposia Library	Juvenile Services Center	Wentworth Library
Lawshe Museum	Law Enforcement Center	Wescott Library
Empire Maintenance Facility	Lebanon Hills Visitor Center	Western Service Center
Farmington Library	Northern Service Center	911 Center
Heritage Library	Pleasant Hill Library	Parks

The Energy Efficiency Technical Audits will include the following services:

- Measures to be evaluated are retro-commissioning, building envelope, mechanical and controls upgrades, water conservation, and destratification fans.
- Conduct site visits to gather pertinent information, perform staff interviews and applicable data logging.
- Perform utility data analysis/benchmarking in support of generating savings calculations.
- Solicit/manage RFP/bidding/qualifying process with multiple contractors.
- Explore/assist with potential grants and incentives.

Deliverable

The Investment Grade Audit will result in the following deliverables:

- An Investment Grade Audit report summarizing project implementation recommendations.
- Presentations to County staff and leadership.

- Presentations to County Commissioners – as needed.

The Owner agrees to assist McKinstry in performing the Investment Grade Audit. The Owner agrees to work diligently to provide full and accurate information. McKinstry agrees to work diligently to assess validity of information provided and to confirm or correct the information as needed.

2. Agreement with MCKINSTRY

Except, as provided for below, within 60 days after McKinstry's submission of the final Investment Grade Audit deliverable, the Owner shall compensate McKinstry for performance of the Audit by payment to McKinstry of no more than \$155,500 (one-hundred fifty-five thousand, five hundred dollars).

The County and McKinstry will work cooperatively to explore all possible grant, rebate and incentive programs available.

- a. The Owner shall have no payment obligations at the time of execution of this Agreement, but acknowledges that the fee indicated above shall be incorporated into McKinstry's project costs, in the event McKinstry and Owner execute an Energy Savings Project within 60 days, or such longer period as the parties may mutually agree upon in the form of an executed contract, after submission of the final Investment Grade Audit deliverable by McKinstry to Owner.
- b. Should the Owner opt not to proceed with the Energy Savings Project Contract, even after McKinstry has met the financial and energy savings requirements mutually agreed to by both parties, the Owner shall then compensate McKinstry for performance of the Investment Grade Audit by payment to McKinstry of no more than the above negotiated audit fee. The negotiated audit fee above does not represent the true cost of executing the audit analysis and is, in effect, a "walk-away" fee. McKinstry reserves the right to include the actual development costs into the overall project. The Investment Grade Audit does not include the actual construction design cost portion of the project. The cost for construction design will be included in the final contract. McKinstry may opt to perform, at their own risk, some of the construction design during the Investment Grade Audit phase as a way to expedite the development of the project. This design cost is separate from the Investment Grade Audit and will be included in the final Energy Efficiency Project Contract's total implemented cost.
- c. The Owner, in collaboration with McKinstry and documented in writing, may elect to procure McKinstry's design and project development services, in addition to the scope of the technical energy audit, for pending capital infrastructure improvements that are slated to be incorporated into the overall Energy Savings Project. In this event, the cost of associated design and project development will be rendered by McKinstry on a cost-plus basis, and will be included in the total project design cost. However, should the Owner elect not to implement the Energy Savings Project, the Owner agrees to pay for said additional design and project development services costs as part of the Audit Agreement project termination compensation.
- d. The Owner acknowledges that this Agreement is the governing agreement for each additional engineering scope sufficient for subsequent phases of the Energy Efficiency Project Contract. Each additional engineering study or audit sufficient for subsequent phases will incur a compensation requirement for each additional audit.

Persuant to the work above and the terms following:

MCKINSTRY ESSENTION, LLC

Name: _____

Title: _____

Signature _____

Date: _____

DAKOTA COUNTY, MN

Name: _____

Title: _____

Signature: _____

Date: _____

TERMS & CONDITIONS

PERFORMANCE OF WORK. McKinstry shall perform the scope of work ("Work") specified herein. McKinstry shall furnish all services necessary to perform the Work and perform the Work to completion diligently, expeditiously and with adequate forces. Customer shall use its best efforts to provide all information, materials, documents, and assistance that is reasonably required for McKinstry to perform any and all aspects of the Work.

PAYMENTS. Customer shall pay McKinstry the compensation specified herein ("Price") for the value of Work that McKinstry has completed, as the Work is completed. Customer shall pay McKinstry within thirty (30) days of receiving an invoice. McKinstry will be entitled to interest at the maximum rate allowed by law on all sums overdue and unpaid from the date due.

WARRANTIES. Customer shall receive a one (1) year warranty that covers labor and materials provided by McKinstry as part of the Work. This warranty commences on the date that the portion of the Work warranted is substantially complete. However, McKinstry makes no warranty whatsoever regarding components of the Work provided by third parties, and in such case the terms of the third party's warranty, including manufacturers' warranties, if any, shall apply between Customer and the third party. The warranties in this section are exclusive and in lieu of all other warranties, whether express or implied.

TERMINATION. Either Party may terminate this agreement upon fifteen (15) days written notice to the other Party. In such case the rights and obligations of each Party that arose prior to the termination date shall survive such termination, except that McKinstry shall have no obligation to perform Work after termination.

DISPUTES. In case of dispute between the Parties, the Parties will attempt to negotiate a resolution. If a dispute remains unresolved more than thirty (30) calendar days after the commencement of negotiation, then the Parties shall pursue mediation. If any dispute remains unresolved more than sixty (60) calendar days after the commencement of mediation, then either Party may commence binding arbitration. No litigation will be commenced by either Party unless all of the foregoing steps have been pursued to completion.

CHOICE OF LAW, VENUE. The validity, interpretation, and performance of this agreement shall be governed by the laws of the state in which the Work is performed. The venue for resolving any dispute shall be the county in which the Work is performed.

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

NO WAIVER. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver.

INTELLECTUAL PROPERTY. Intellectual property provided by McKinstry to Customer as part of the Work are instruments of service owned by McKinstry and are not "work made for hire" as such term is defined under U.S. copyright law. When the Work is performed to completion, McKinstry grants to Customer a limited license to use the Intellectual Property to operate, maintain, renovate, and manage the subject matter of the Work.

DAMAGES LIMITATION. Neither party shall be liable for any consequential, indirect, special, incidental, exemplary, or similar, damages or losses, including loss of profits, whether based in contract or tort or any other theory, even if a party has been advised of the possibility of such damages. Furthermore, the total aggregate liability of either party, under any theory, is limited to the agreement Price.

INDEMNIFICATION. Each party shall indemnify and hold harmless the other party from and against all third party claims, damages, losses and expenses for bodily injury, sickness, disease, or death or destruction of tangible property but only to the extent directly caused by the negligent acts or omissions of the indemnitor.

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

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

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

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