

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: General Services

AGENDA DATE: 1/10/12

CONTACT PERSON NAME AND PHONE NUMBER: Stuart Ed, Director, General Services, (915) 621-6822

DISTRICT(S) AFFECTED:

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

That the City Manager be authorized to sign Amendment # 4 to the Professional Services Contract, dated May 17, 2010, between the City of El Paso and Johnson Controls, Inc., a Wisconsin Corporation, to perform utility cost reduction measures, specifically a solar photovoltaic (PV) system at the City's Lafayette Municipal Service Center, to implement Phase IV of the City-wide Energy Operational Savings, for an amount of \$1,080,000.00, and that the City Manager be authorized to accept a State Energy Conservation Office (SECO) stimulus program grant in the amount of \$900,000 and allocate \$180,000 for the local cash match out of existing capital projects funds. This authorization is subject to final approval by the City Attorney's office of all necessary documents to effectuate the transaction.

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The City is seeking continuation of its City-wide energy and operational efficiency initiatives. This action is the Fourth Amendment of the initial contract award approved by Council to Johnson Controls, Inc. (JCI) on May 17, 2010 to act as the City's Energy Services Company (ESCO). Amendment 4 implements a \$1,080,000 stimulus grant from the State Energy Conservation Office (\$900,000 SECO, \$180,000 local cash match).

Amendment 4 will reduce the total electric consumption of the Lafayette Municipal Service Center by 35%. Savings achieved are outlined in the table below:

Electric Savings	269,324	kWh/year
Electric Cost Savings	\$25,295	Avg. \$/year
Electric kWh Reduction	35	%

JCI is providing a written contractual guarantee that all utility and operational cost reductions identified in the initial investment, including all measurement and verification services cost, are completely recouped by the City in annual energy savings. The City's cash match portion will be recouped in just over seven years. Furthermore, the viability of this guarantee has been verified by an independent third-party Engineering firm.

Above and beyond the guaranteed energy savings of \$25,295 annually, the City has already been approved to receive an additional \$87,500 Solar PV rebate from El Paso Electric Company for the work associated with Amendment 4. This additional rebate alone immediately recaptures a substantial portion (48.6 percent) of the initial cash match invested by the City.

Attached to this RCA is the documentation relating to the grant funding whereby the State Comptroller has awarded the City of El Paso a grant in the amount of \$900,000 for this project with the City providing a local match of \$180,000 for a total funding amount of \$1,080,000. Funds for the local match are being provided for out of available Facility Rehab capital projects funds.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

The original Energy Services Company (ESCO) contract with Johnson Controls, Inc. was approved by Council on May 25, 2010 in the amount of \$350,000 under Solicitation Number 2010-085R for Advanced Engineering and grant application support.

The First Amendment to the ESCO contract was approved by City Council on January 6, 2011 in the amount of \$3,626,770 for facility upgrades including lighting improvements, solar photovoltaic (PV) power generation panels, and HVAC equipment and control upgrades at 44 separate City facilities.

The Second Amendment was approved on October 25, 2011 in the amount of in the amount of \$2,824,000 for the conversion of 2,600 streetlights to energy-efficient light-emitting diode standards.

The Third Amendment was approved on October 25, 2011 in the amount of \$5 million for the conversion of 4,700 streetlights to energy-efficient light-emitting diode standards.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

This item, if approved, is funded by a State Energy Conservation Office (SECO) stimulus program grant of \$900,000 and a local cash match of \$180,000. Local match is located at Account number 508027 - Department number 14400500 - Fund number 27051- Project number PCP12MF01.

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign Amendment # 4 to the Professional Services Contract, dated May 17, 2010, between the City of El Paso and Johnson Controls, Inc., a Wisconsin Corporation, to perform utility cost reduction measures, specifically a solar photovoltaic (PV) system at the City's Lafayette Municipal Service Center, to implement Phase IV of the City-wide Energy Operational Savings, for an amount of \$1,080,000.00, and that the City Manager be authorized to accept a State Energy Conservation Office (SECO) stimulus program grant in the amount of \$900,000 and allocate \$180,000 for the local cash match out of existing capital projects funds. This authorization is subject to final approval by the City Attorney's office of all necessary documents to effectuate the transaction.

ADOPTED THIS _____ DAY OF _____ 2012.

CITY OF EL PASO:

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

Elizabeth M. Ruhmann
Assistant City Attorney

APPROVED AS TO CONTENT

Stuart C. Ed, Director
General Services Department

CITY OF EL PASO

AMENDMENT #4 TO
PROFESSIONAL SERVICES CONTRACT WITH
JOHNSON CONTROLS INC.

THIS AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT (the “Amendment #4”) is entered into as of the ___ day of _____, 20___ by and between Johnson Controls, Inc., a Wisconsin corporation with offices located at 3021 West Bend Drive, Irving, Texas 75063 (hereinafter referred to as “Consultant” or “JCI” or “Contractor”) and the City of El Paso (hereinafter referred to as “City” or “Customer” or “Owner”).

RECITALS

WHEREAS, the City issued a Request for Qualifications Solicitation No. 2010-085R and Consultant was selected to act as the City’s Energy Services Company and to perform services for developing a Detailed Evaluation Study (the “Study”), identify, engineer, design, install, maintain, monitor and facilitate a major energy and operational savings program, including Energy Conservation Measures, and to assist the City in obtaining grants for such program (hereinafter the “Services”); and,

WHEREAS, on or about May 17, 2010 the City and Consultant entered into a Professional Services Contract (the “Contract”) wherein Consultant was contracted to act as the City’s Energy Services Company (ESCO) for a City-wide Energy Operational Savings Program (the “Project”); and,

WHEREAS, on or about February 11, 2011, the City and Consultant entered into Amendment #1 to the Contract wherein Phase II of the Project was initiated and is being implemented; and,

WHEREAS, on or about October 25, 2011, the City and Consultant entered into Amendments #2 and #3 to the Contract wherein Phase III-A and III-B were initiated and are being implemented; and,

WHEREAS, the CITY and CONSULTANT have agreed to perform additional infrastructure improvements, specifically the installation of a roof-mounted Solar Photovoltaic (PV) system at the City’s Municipal Service Center, as set forth in the Phase IV Scope of Work, attached hereto as Schedule P-1; and,

WHEREAS, the City wishes to enter into this Amendment #4 pursuant to Section 2.4 of the Contract, in order to implement the utility cost reduction measures (hereinafter “UCRMs” or “Improvement Measures”) set forth in Schedule P-1 (Phase IV Scope of Work).

NOW THEREFORE, in consideration of the mutual covenants, agreements and conditions herein contained and for other and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Consultant and the City agree as follows:

ARTICLE I. TERMS

1. The attached Energy Savings Performance Contract will be added as Attachment "P" to the Contract and shall be incorporated by reference into this agreement for all purposes as if fully set forth herein.
2. The terms and conditions set forth in Attachment "P" will apply to the Improvement Measures being implemented in Phase IV of the ESPC Project, as particularly set forth in Schedule P-1.
3. Schedules M-8, M-9, M-10, M-11, M-12, M-13, M-14, M-15, M-16 and M-17 to Attachment "M" of Amendment #1 to the Contract are incorporated into and shall be deemed an integral part of this Amendment #4. To the extent that Schedules M-8 through M-17 make reference to "Improvement Measures #1," these references are hereby substituted with "Phase IV Improvement Measures."
4. The parties agree that Section 2.2, subsections (A) and (B) only, Section 2.4, Section 3.1, including subsection (A) of the Contract are hereby deleted.
5. Consultant acknowledges that the City will utilize federal funds, including American Recovery and Reinvestment Act (ARRA) funds, for the Improvement Measures. Consultant represents to the City that it is knowledgeable about the requirements imposed by the U.S. Department of Energy (DOE) for ARRA funds administered by or through other federal or state agencies, as appropriate, including the State Energy Conservation Office (SECO). Consultant has reviewed and understands the federal requirements as set forth in Schedule P-8 to Attachment P regarding the SECO ARRA funds (including, but not limited to, the flow through requirements set forth in the section entitled SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT) and will perform the services under this agreement in compliance thereto.
6. Consultant will comply with all regulations and requirements as may be promulgated by the federal, state or local governmental unit applicable to the services provided under this Agreement or the Improvement Measures. Consultant hereby agrees to provide any and all documentation necessary to fulfill any and all grants requirements (federal, state, or local) pertaining to this Agreement or the Improvement Measures. Consultant shall submit any requested reports, data, and information on the performance of this Agreement as may be required by DOE pursuant to 10 CFR 440.25, state law, or by the City.
7. To the extent required by state or federal law or by the City, Consultant shall execute and submit to the City the certifications required by federal law and those attached hereto in Schedule P-8, and/or will comply with any such requirements or execute any forms that may be required during the term of this Agreement.
8. The services and work to be performed by Consultant set forth in Schedule P-1 for Phase IV of the ESPC Project is to be completed by April 15, 2012 (hereinafter "term period").

ARTICLE II. MISCELLANEOUS

1. Except as modified or otherwise provided herein, the existing terms, covenants, agreements, responsibilities and obligations contained in the Contract and Amendments #1, #2 and #3 shall remain in full force and effect through the term of the Contract and said Amendments. In the event of conflict between the terms and conditions of the Contract and/or said Amendments and the terms and conditions of this Amendment #4, the terms and conditions of this Amendment #4 shall prevail.

2. This Amendment #4 is effective upon the date of execution by both parties.

IN WITNESS WHEREOF, the parties have caused this Amendment #4 to be duly executed by their duly authorized representatives on the dates written below:

CITY OF EL PASO	JOHNSON CONTROLS, INC.
By: _____ Joyce Wilson	By: _____ Name:
Title: <u>City Manager</u> _____	Title: _____
Date: _____	Date: _____

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

 Elizabeth M. Ruhmann
 Assistant City Attorney

 Stuart C. Ed, Director
 General Services Department

ATTACHMENT "P"

ENERGY SAVINGS PERFORMANCE CONTRACT

TERMS

1. **SCOPE OF THE ATTACHMENT.** Consultant shall perform the Work set forth in Schedule P-1. After the Work is Substantially Complete (as defined below) and the Certificate of Substantial Completion is executed by City and Consultant, Consultant shall provide the assured performance guarantee (the "Assured Performance Guarantee") and the measurement and verification services (the "M&V Services") set forth in Schedule P-2 (Assured Performance Guarantee).

City shall make payments to CONSULTANT for the Work and the M&V Services in accordance with Schedule P-4 (Price and Payment Terms).

2. **ATTACHMENT DOCUMENTS:** In addition to the terms and conditions of this Attachment, the following Schedules are incorporated into and shall be deemed an integral part of this Attachment:

Schedule P-1	Scope of Work
Schedule P-2	Assured Performance Guarantee
Schedule P-3	City Responsibilities
Schedule P-4	Price and Payment Terms
Schedule P-5	Notice to Proceed
Schedule P-6	Change Order
Schedule P-7	Certificate of Substantial Completion/Certificate of Final Completion
Schedule P-8	Attachments to SECO Stimulus Program Loan Agreement (consists of Attachments A through L)

3. **NOTICE TO PROCEED; SUBSTANTIAL COMPLETION; M&V SERVICES.** This Attachment shall become effective on the date of the last signature on the signature page below. Following the City's receipt and acceptance of the Performance Bond and Payment Bond (including Agent Resident Designations) substantially in the forms attached as Schedule M-8, M-9, M-10 to Amendment #1, the Insurance Certificate in accordance with Section 13 and Schedule M-11 to Amendment #1, the Statement of Incorporated Materials in the form attached hereto as Schedule M-14 to Amendment #1, and the Subcontractor and Supplier Identification form attached hereto as Schedule M-15 to Amendment #1, Consultant shall commence performance of the Work within ten (10) business days of receipt of City's Notice to Proceed, a form of which is attached hereto as Schedule P-5, and shall achieve Substantial Completion of the Work by the Substantial Completion date, which shall be the earlier of:

- (a) the date on which City executes a Certificate of Substantial Completion substantially in the form attached hereto as Schedule P-7; or
- (b) April 15, 2012, subject to adjustments set forth in Section 4 and Section 5 below.

For purposes of this Attachment, "Substantial Completion" means that Consultant has provided sufficient materials and services to permit City to operate all of the Improvement Measures. The M&V Services shall commence on the first day of the month following the month in which City executes a Certificate of Substantial Completion and shall continue throughout the Guarantee Term, subject to earlier termination of the Assured Performance Guarantee as provided herein. City acknowledges and agrees that if, for any reason, it (i) cancels or terminates receipt of M&V Services, (ii) fails to pay for M&V Services in accordance with Schedule P-4, (iii) fails to fulfill any of City's responsibilities necessary to enable Consultant to complete the Work and provide the M&V Services, or (iv) otherwise cancels, terminates or materially breaches this Attachment, the Assured Performance Guarantee shall terminate and Consultant shall have no liability thereunder, upon written notice from Consultant as set forth in Section 4.1 of that certain Professional Services Contract dated May 17, 2010 (the "Contract").

3.1 Final Acceptance - Upon due notice from the Consultant of completion of the entire Project and prior to the execution of the Certificate of Substantial Completion, the City may conduct a final inspection of all work. If all construction provided for and contemplated by the contract is found to be completed to the City's satisfaction, the City shall execute the Certificate of Final Completion (Schedule P-7).

If however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the City will give the Consultant a punch list and the necessary instructions for correction of same, and the Consultant shall immediately comply with and execute such instructions within the following twenty (20) work days, or another period as may be mutually agreed by the Consultant and City's representative. In such event, the City may execute the Certificate of Substantial Completion but the Final Payment (or Retainage) due to Consultant shall not be paid until the Punch List has been completed as set forth in Section 37 and Schedule P-7. The City shall not unreasonably withhold final acceptance.

- 4. DELAYS AND IMPACTS.** If Consultant is delayed in the commencement, performance, or completion of the Work and/or M&V Services by causes beyond its control and without its fault, including but not limited to inability to access property; concealed or unknown conditions encountered at the project, differing from the conditions represented by City in the bid documents or otherwise disclosed by City to Consultant prior to the commencement of the Work; a Force Majeure (as defined below) condition; failure by City to perform its obligations under this Attachment; or failure by City to cooperate with Consultant in the timely completion of the Work, Consultant shall provide written notice to City of the existence, extent of, and reason for such delays and impacts. Under such circumstances, an equitable adjustment in the time for performance, price and payment terms, and the Assured Performance Guarantee shall be made. If an adjustment to price and/or payment is required, the parties shall negotiate additional compensation as provided in Schedule P-4 and an amendment to this Contract shall be mutually executed by the parties. Should Consultant encounter concealed or unknown conditions in an existing structure, Consultant shall immediately give notice to the Customer's designated representative of such conditions before they are disturbed.
- 5. ACCESS.** City shall provide Consultant, its subcontractors, and its agents reasonable and safe access to all facilities and properties in City's control that are subject to the Work and M&V Services. City further agrees to assist Consultant, its subcontractors, and its agents to gain access to facilities and properties that are not controlled by City but are necessary for Consultant to complete the Work and provide the M&V Services. An equitable adjustment in the time for performance, price and payment terms, and Assured Performance Guarantee shall be made as a result of any failure to grant such access. If an adjustment to price and/or payment is required, the parties shall negotiate additional compensation as provided in Schedule P-4 and an amendment to this Contract shall be mutually executed by the parties.
- 6. PERMITS, TAXES, AND FEES.** Unless otherwise specified in Schedule P-3 (City Responsibilities), Consultant shall be responsible for obtaining all building permits required for it to perform the Work. Unless otherwise specified in Schedule P-1 (Scope of Work), City shall be responsible for obtaining all other permits, licenses, approvals, permissions and certifications, including but not limited to, all zoning and land use changes or exceptions required for the provision of the Work or the ownership and use of the Improvement Measures. Consultant shall not be obligated to provide any changes to or improvement of the facilities or any portion thereof required under any applicable building, fire, safety, sprinkler or other applicable code, standard, law, regulation, ordinance or other requirement unless the same expressly regulates the installation of the Improvement Measures. Without limiting the foregoing, Consultant's obligations with respect to the Work is not intended to encompass any changes or improvements that relate to any compliance matters (whether known or unknown) that are not directly related to the installation of the Improvement Measures or which have been imposed or enforced because of the occasion or opportunity of review by any governmental authority. The City is a tax-exempt entity and not subject to the payment of taxes and shall provide a copy of its tax-exempt certificate to Consultant.
- 7. WARRANTY.** Consultant will perform the Work in a professional, workman-like manner. Consultant will promptly re-perform any non-conforming Work for no charge, as long as City provides written notice to Consultant within one (1) year following Substantial Completion or such other period identified in Schedule P-1. If Consultant installs or furnishes goods or equipment under this Attachment, and such goods or equipment are covered by an end-user warranty from their manufacturer, Consultant will transfer the benefits of such warranty to City. The foregoing remedy with respect to the Work, together with any remedy provided by goods or equipment manufacturers, shall be City's sole and exclusive remedies for warranty claims. City agrees that the one (1) year period following Substantial Completion, or such other period identified in Schedule P-1, shall be a reasonable time for purposes of submitting valid warranty claims with respect to the Work. These exclusive remedies shall not have failed of their essential purpose so long as Consultant transfers the benefits of any goods or equipment end-user warranty to City and remains willing to re-perform any non-conforming Work for no charge within the one (1) year period described above or such other period identified in Schedule P-1. **NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF**

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE PROVIDED BY Consultant. This warranty does not extend to any Work that has been abused, altered, or misused, or repaired by City or third parties without the supervision or prior written approval of Consultant. Except with respect to goods or equipment manufactured by Consultant and furnished to City hereunder, for which Consultant shall provide its express written manufacturer's warranty, Consultant shall not be considered a merchant or vendor of goods or equipment.

8. CLEANUP. Consultant shall keep the premises and the surrounding area free from accumulation of waste materials or rubbish caused by the Work and, upon completion of the Work, Consultant shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials. The Consultant expressly undertakes at his/her own expense:

- 8.1. To take every precaution against injuries to persons or damage to property;
- 8.2. To store his/her apparatus, materials, supplies and equipment in such orderly fashion at the site of the work as will not unduly interfere with the progress of his/her work or the work of any other Consultants;
- 8.3. To place upon the work or any part thereof only such loads as are consistent with the safety of that portion of the work;
- 8.4. To clean up frequently all refuse, rubbish, scrap materials and debris caused by his/her operations, to the end that at all times the site of the work shall present a neat, orderly and workmanlike appearance;
- 8.5. Before final payment to remove all surplus material, false-work temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his/her operations, and to put the site in a neat, orderly condition;
- 8.6. To affect all cutting, fitting or patching of his/her work required to make the same to conform to the plans and specifications and except with the consent of the City's designated representative, not to cut or otherwise alter the work of any other Consultant.

9. SAFETY; COMPLIANCE WITH LAWS. Consultant shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work and M&V Services. Each of Consultant and City shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities (collectively, "Laws") in connection with its performance hereunder.

- 9.1. **Laws to be Observed.** The Consultant shall keep fully informed of all federal, state, and local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which any way affect the conduct of the work.
- 9.2. **Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction. City affirms that it is responsible for its compliance with all applicable laws, ordinances, regulations, order, and decrees.
- 9.3. **Patented Devices, Materials and Processes.** The Consultant shall indemnify and hold the City and its officers, agents, servants and employees harmless from liability of any nature or kind, including reasonable and direct costs and expenses for, or on account of, any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the contract, including its use by City, unless otherwise specifically stipulated in the contract documents.
- 9.4. **License or Royalty Fees** - License or royalty fees for the use of a process which is authorized by the City for the Project must be reasonable and must be paid to the holder of the patent, or to his/her authorized licensee by the Consultant.

- 9.5. If the Consultant uses any design, device or materials covered by letter, patent or copyright, he/she shall provide for such use by suitable agreement with the holder or City of such patented or copyrighted design, device or materials. It is mutually agreed and understood that without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials in any way involved in the work.
- 9.6. **THE CONSULTANT SHALL INDEMNIFY AND HOLD AND SAVE HARMLESS THE CITY OF THE PROJECT FROM ANY AND ALL CLAIMS FOR INFRINGEMENT UPON OR VIOLATION OF ANY PATENT, COPYRIGHT, TRADE SECRET OR OTHER PROPRIETARY RIGHT AT ANY TIME DURING THE PROSECUTION OF THE WORK OR AFTER COMPLETION OF THE WORK, AND SHALL PAY ANY JUDGMENT (INCLUDING ALL COURT COSTS, EXPERT FEES, AND ATTORNEYS FEES) RENDERED AGAINST THE CITY AS A RESULT OF SUCH CLAIMS.**

10. ASBESTOS-CONTAINING MATERIALS AND OTHER HAZARDOUS MATERIALS.

Asbestos-Containing Materials: Neither party desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of asbestos-containing materials ("ACM"). Consistent with applicable Laws, City shall supply Consultant with any information in its possession relating to the presence of ACM in areas where Consultant undertakes any Work or M&V Services that may result in the disturbance of ACM. It is Consultant's policy to seek certification for facilities constructed prior to 1982 that no ACM is present, and City shall provide such certification for buildings it owns, or aid Consultant in obtaining such certification from facility owners in the case of buildings that City does not own, if Consultant will undertake Work or M&V Services in the facility that could disturb ACM. If either City or Consultant becomes aware of or suspects the presence of ACM that may be disturbed by Consultant's Work or M&V Services, it shall promptly stop the Work or M&V Services in the affected area and notify the other. As between City and Consultant, City shall be responsible at its sole expense for addressing the potential for or the presence of ACM in conformance with all applicable Laws and addressing the impact of its disturbance before Consultant continues with its Work or M&V Services, unless Consultant had actual knowledge that ACM was present and acted with intentional disregard of that knowledge, in which case (i) Consultant shall be responsible at its sole expense for remediating areas impacted by the disturbance of the ACM, and (ii) City shall resume its responsibilities for the ACM after Consultant's remediation has been completed.

Other Hazardous Materials: Consultant shall be responsible for removing or disposing of any Hazardous Materials (as defined below) that it uses in providing Work or M&V Services ("Consultant Hazardous Materials") and for the remediation of any areas impacted by the release of Consultant Hazardous Materials. For other Hazardous Materials that may be otherwise present at City's facilities ("Non-Consultant Hazardous Materials"), City shall supply Consultant with any information in its possession relating to the presence of such materials if their presence may affect Consultant's performance of the Work or M&V Services. If either City or Consultant becomes aware of or suspects the presence of Non-Consultant Hazardous Materials that may interfere with Consultant's Work or M&V Services, it shall promptly stop the Work or M&V Services in the affected area and notify the other. As between City and Consultant, City shall be responsible at its sole expense for removing and disposing of Non-Consultant Hazardous Materials from its facilities and the remediation of any areas impacted by the release of Non-Consultant Hazardous Materials, unless Consultant had actual knowledge that Non-Consultant Hazardous Materials were present and acted with intentional disregard of that knowledge, in which case (i) Consultant shall be responsible at its sole expense for the remediation of any areas impacted by its release of such Non-Consultant Hazardous Materials, and (ii) City shall remain responsible at its sole expense for the removal of Non-Consultant Hazardous Materials that have not been released and for releases not resulting from Consultant's performance of the Work or M&V Services. For purposes of this Attachment, "Hazardous Materials" means any material or substance that, whether by its nature or use, is now or hereafter defined or regulated as a hazardous waste, hazardous substance, pollutant or contaminant under applicable Law relating to or addressing public or employee health and safety and protection of the environment, or which is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, mutagenic or otherwise hazardous or which is or contains petroleum, gasoline, diesel, fuel, another petroleum hydrocarbon product, or polychlorinated biphenyls. "Hazardous Materials" specifically includes mold and lead-based paint and specifically excludes ACM. Consultant shall have no obligations relating to the identification, abatement, cleanup, control, removal, or disposal of mold, regardless of the cause of the mold.

City shall be responsible for any costs, damages, claims directly or indirectly, relating to or arising from the City's use, or the storage, release, discharge, handling or presence of ACM, mold (actual or alleged and regardless of the cause of such condition) or Non-Consultant Hazardous Materials on, under or about the facilities, or City's failure to comply with this Section 10.

11. CHANGE ORDERS. The parties, without invalidating this Attachment, may request changes in the Work to be performed under this Attachment, consisting of additions, deletions, or other revisions to the Work ("Change Orders"). The price and payment terms, time for performance and, if necessary, the Assured Performance Guarantee, shall be equitably adjusted in accordance with the Change Order. Such adjustments shall be determined by mutual agreement of the parties. Consultant may delay performance until adjustments arising out of the Change Order are clarified and agreed upon. Any Change Order must be signed by an authorized representative of each party. If concealed or unknown conditions are encountered at the project, differing from the conditions represented by City in the bid documents or otherwise disclosed by City to Consultant prior to the commencement of the Work, price and payment terms, time for performance and, if necessary, the Assured Performance Guarantee shall be equitably adjusted. Claims for equitable adjustment may be asserted in writing within a reasonable time from the date a party becomes aware of a change to the Work by written notification. Failure to promptly assert a request for equitable adjustment, however, shall not constitute a waiver of any rights to seek any equitable adjustment with respect to such change.

11.1 Without invalidating the Contract and/or Agreements or the accompanying Payment or Performance Bond and without obtaining the consent of the Surety or Sureties, the City may, in accordance with applicable state law, order extra work or make changes by altering, adding to or deducting from the work, the contract sum being adjusted accordingly. Any changes in the work ordered and approved by the City shall become a part of the Contract work and shall be covered by the accompanying Payment and Performance Bonds. All the work of the kind bid upon shall be paid for at the price stipulated in the proposal and no claims for any extra work or materials shall be allowed unless the work is ordered in writing by the City or City's designated representative, acting officially for the City, in accordance with applicable state law, and the price is stated in such order. Additional time for change orders or delays, which affect the Consultant, shall be considered estimates upon their granting. If paid on a time and materials basis, the City reserves the right to review the actual time utilized by the Consultant in the completion of the additional work of the change order at the termination of the Project. City shall then adjust time granted per change order to reflect the actual time required by the Consultant for the completion of each change order.

11.2 NO CHANGES IN THE WORK COVERED BY THE APPROVED CONTRACT SHALL BE MADE WITHOUT HAVING PRIOR WRITTEN APPROVAL OF THE CITY OR CITY'S DESIGNATED REPRESENTATIVE AS AFORESAID. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

11.2.1 Unit Bid prices previously approved in this Attachment.

11.2.2 An agreed lump sum.

11.2.3 The actual cost of labor, including foreman; Materials and supplies, entering permanently into the work; ownership or rental cost of construction plant and equipment during the time of use on the extra work; Power and consumable supplies for the operation of power equipment; Public Liability and Property Damage, Worker's Compensation and all other insurances as may be required by law or ordinances, or directed by the City or the City's Representative, or by them agreed to, and; Social Security, Old Age, Unemployment Contributions and Maintenance Bonds

11.2.4 To the cost under subparagraph 11.2.3 above, there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of the work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

11.3 No claim for extra work or cost shall be allowed unless the same was done in pursuance of a written order of the City's designated representative, approved by the City, as aforesaid. Upon receipt of a change order cost proposal from the Consultant, the City shall have fourteen (14)

calendar days in which to respond to the proposal, provided that the additional cost does not have to be approved by the City's governing body; if the increased cost of the contract requires a written amendment approved by the governing body, the City shall have thirty (30) days to respond to the proposal. When work is performed under the terms of paragraph 11.2 above, the Consultant shall furnish satisfactory bills, payrolls and vouchers covering all items of cost and, when requested by the City, access to accounts relating thereto.

12. CITY FINANCING; TREATMENT; TAXES. The parties acknowledge and agree that Consultant is not making any representation or warranty to City with respect to matters not expressly addressed in this Attachment, including, but not limited to:

- (a) City's ability to obtain or make payments on any financing associated with paying for the Improvement Measures, related services, or otherwise;
- (b) City's proper legal, tax, accounting, or credit rating agency treatment relating to this Attachment; and
- (c) the necessity of City to raise taxes or seek additional funding for any purpose.

City is solely responsible for its obligations and determinations with respect to the foregoing matters. In addition, the parties acknowledge and agree that City shall be responsible to comply, at its cost and expense, with all Laws that may be applicable to it relating to performance contracting, including, without limitation, any requirements relating to the procurement of goods and/or services and any legal, accounting, or engineering opinions or reviews required or obtained in connection with this Attachment.

13. INSURANCE AND CONTRACT SECURITY.

13.1 Consultant shall maintain insurance in amounts no less than those set forth below in full force and effect at all times until the Work has been completed, and shall provide a certificate evidencing such coverage promptly following City's request there for.

COVERAGES	LIMITS OF LIABILITY
Workmen's Compensation Insurance or self insurance, including Employer's Liability	Statutory
Commercial General Liability Insurance	\$5,000,000 Per Occurrence \$5,000,000 Aggregate
Comprehensive Automobile Liability Insurance	\$5,000,000 Combined Single Limit
Builder's Risk	100% of Value of Attachment C
Professional Liability/Errors and Omissions	

The above limits may be obtained through primary and excess policies, and may be subject to self-insured retentions.

City shall also maintain insurance coverage, of the types and in the amounts customary for the conduct of its business, throughout the term of this Attachment. Until the project is completed and accepted by the City, the Contractor is required to maintain Builder's Risk Insurance (fire and extended coverage) on a one hundred percent (100%) of the value of this Attachment C for the benefit of the City, the Contractor and subcontractor, as their interests may appear. To the extent Consultant incurs additional costs, the parties will work to agree on a Change Order.

13.1.1 The City shall be named as an Additional Insured, but only with respect to liability arising out of this contract regarding operations performed for them by or on behalf of Consultant, on all of the Consultant's Insurance policies, with the exception of Workers' Compensation Insurance, required by this Contract. All of the Consultant's Insurance Policies shall remain in effect until final payment and at all times thereafter when the Consultant may be correcting, removing or replacing defective work in accordance with Section 7.

- 13.1.2 Subcontractor's Commercial General Liability and Vehicle Liability Insurance. The Consultant shall require each of his/her subcontractors to procure and to maintain during the life of his/her subcontract, Subcontractor's Commercial General Liability and Vehicle Liability Insurance in the amounts specified above.
- 13.1.3 Proof of Insurance. The Consultant shall furnish the City with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies.
- 13.1.4 ENDORSEMENTS The Consultant shall provide endorsements to the commercial general liability and vehicle liability insurance policies naming the city as an additional insured and naming the city as entitled to notice substantially as follows: "The insurance covered by this certificate will not be cancelled, except after thirty (30) consecutive calendar days written notice of the intent to cancel said insurance has been provided to the City and ten (10) days written notice for nonpayment of insurance policy premiums."
 - 13.1.4. Failure by the Consultant to provide timely proof of insurance coverage for itself will delay release of pending payments.
- 13.2 Texas Workers' Compensation Requirements. The Consultant shall furnish certificates of insurance to the City that complies with the provisions set forth in Schedule M-13 to Amendment #1.
- 13.3 Contract Security. In accordance with Chapter 2253, Texas Government Code and the terms of this contract, the Consultant shall provide the following:
 - 13.3.1 A performance bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the faithful performance of this contract.
 - 13.3.2 A payment bond in an amount not less than one hundred percent (100%) of the contract price, or in a penal sum not less than that prescribed by the state, territorial or local law, as security for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract.
 - 13.3.2.1 In accordance with Article 7.19-1 of the TEXAS INSURANCE CODE, if a Performance or Payment bond is in an amount of excess of ten percent (10%) of the surety's capital and surplus, the City of El Paso will require, as a condition to accepting the bond(s), a written certification from the surety that the surety has reinsured the portion of the risk that exceeds ten percent (10%) of the surety's capital and surplus with one or more reinsurers who are duly authorized, accredited or trusted to do business in the State of Texas. If any portion of the surety's obligation is reinsured, the amount reinsured may not exceed 10% of the reinsurer's capital and surplus.
 - 13.3.2.2 The performance bond and the payment bond shall be in a form approved by the City. A copy of the payment bond provided for the construction project in accordance with Chapter 2253, Texas Government Code, including the name, address, and phone number of the surety company shall be posted at the construction site. The surety company providing the payment bond shall designate an agent resident who resides within the County of El Paso and to whom any requisite notices may be delivered and with whom service of process may be rendered in matters arising out of suretyship. Attorneys-iP-Fact who sign contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.
 - 13.3.2.3 Should the surety exercise its right to take over and perform the contract in accordance with Section 37 of this Attachment, the surety shall submit or require the Consultant to submit, a payment bond and performance bond that satisfies the requirements set forth in this paragraph.

13.3.3 Additional or Substitute Bond

- 13.3.3.1 If at any time the City, for justifiable cause, shall be or become dissatisfied with any Surety or Sureties upon the Performance or Payment Bonds, the Consultant shall within thirty (30) consecutive work days after notice from the City to do so, substitute an acceptable bond (or bonds) in such form and sum and signed by such other Surety or Sureties as may be satisfactory to the City. The premiums on such bond (or bonds) shall be paid by the Consultant.
- 13.3.3.2 No further payments shall be deemed due nor shall be made until the new Surety or Sureties shall have furnished such an acceptable bond to the City.

14. INDEMNIFICATION. CONSULTANT WILL INDEMNIFY AND HOLD HARMLESS THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES, FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON TO THE EXTENT ARISING OUT OF THE NEGLIGENT ACTS OR OMISSIONS OF CONSULTANT, EVEN WHERE SUCH DAMAGE, INJURY, LOSS, ILLNESS, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH RESULTS FROM OR INVOLVES NEGLIGENCE OR ALLEGATIONS OF NEGLIGENCE ON THE PART OF THE CITY, ITS OFFICERS, AGENTS, OR EMPLOYEES.

15. LIMITATION OF LIABILITY. NEITHER CONSULTANT NOR CITY WILL BE RESPONSIBLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE, PUNITIVE, EXEMPLARY, LOSS OF PROFITS OR REVENUE, LOSS OF USE, OR SIMILAR DAMAGES, REGARDLESS OF HOW CHARACTERIZED AND REGARDLESS OF A PARTY HAVING BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSSES OR RELIEF, ARISING IN ANY MANNER FROM THIS ATTACHMENT, THE WORK, THE IMPROVEMENT MEASURES, THE PREMISES, THE M&V SERVICES, OR OTHERWISE. WITHOUT LIMITING CONSULTANT'S EXPRESS OBLIGATIONS UNDER THE ASSURED PERFORMANCE GUARANTEE, CONSULTANT'S LIABILITY UNDER THIS ATTACHMENT, REGARDLESS OF THE FORM OF ACTION, SHALL IN NO EVENT EXCEED THE AMOUNT OF THE PAYMENTS ACTUALLY RECEIVED BY CONSULTANT UNDER SCHEDULE P-4. If this Attachment covers fire safety or security equipment, City understands that Consultant is not an insurer regarding those services, and that Consultant shall not be responsible for any damage or loss that may result from fire safety or security equipment that fails to prevent a casualty loss. The foregoing waivers and limitations are fundamental elements of the basis for this Attachment between Consultant and City, and each party acknowledges that Consultant would not be able to provide the work and services contemplated by this Attachment on an economic basis in the absence of such waivers and limitations, and would not have entered into this Attachment without such waivers and limitations.

16. FORCE MAJEURE. Neither party will be responsible to the other for damages, loss, injury, or delay caused by conditions that are beyond the reasonable control, and without the intentional misconduct or negligence of that party. Such conditions (each, a "Force Majeure") include, but are not limited to: acts of God; acts of government agencies; strikes; labor disputes; fires; explosions or other casualties; thefts; vandalism; riots or war; acts of terrorism; electrical power outages; interruptions or degradations in telecommunications, computer, or electronic communications systems; changes in Laws; or unavailability of parts, materials or supplies.

17. CONSULTANT'S PROPERTY. All materials furnished or used by Consultant personnel and/or Consultant subcontractors or agents at the installation site, including documentation, schematics, test equipment, software and associated media remain the exclusive property of Consultant or such other third party. City agrees not to use such materials for any purpose at any time without the express authorization of Consultant. City agrees to allow Consultant personnel and/or Consultant subcontractors or agents to retrieve and to remove all such materials remaining after installation or maintenance operations have been completed. City acknowledges that

any software furnished in connection with the Work and/or M&V Services is proprietary and subject to the provisions of any software license agreement associated with such software.

17.1 **Consultant's Title of Materials.** No materials or supplies for the work shall be purchased by the Consultant or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Consultant warrants that he/she has good title to all materials and supplies used by him/her in the work, free from all liens, claims, or encumbrances. **PROVIDED, HOWEVER, NOTHING IN THIS PARAGRAPH SHALL PREVENT THE CITY FROM EXERCISING ALL LIEN RIGHTS THE CITY MAY HAVE IN GOODS PURCHASED BY THE CONSULTANT WHICH ARE IDENTIFIED TO THE CONTRACT.**

17.2 The Consultant may be required to pay state sales tax for the purchase, rental or lease of tools, machinery and equipment used in the performance of the awarded contract and for materials purchased which are not incorporated into the completed project. It is the obligation of the Consultant to ascertain the amount of state sales tax to be paid under Chapter 151 of the Texas Tax Code and to include this amount in his/her bid submitted to the City. For further information, the Consultant may want to contact the office of the Texas Comptroller of Public Accounts at 1-800-252-5555. The Consultant shall execute and provide to the City prior to the City's issuance of the Notice to Proceed a Statement of Incorporated Materials in the form attached as Schedule M-14 to Attachment #1.

18. **DISPUTES.** Consultant and City will attempt to settle any controversy, dispute, difference, or claim between them concerning the performance, enforcement, or interpretation of this Attachment (collectively, "Dispute") through direct discussion in good faith, but if unsuccessful, will submit any Dispute to non-binding mediation in El Paso County, Texas. If the parties are unable to agree on a mediator or a date for mediation, either party may request JAMS, Inc. to appoint a mediator and designate the time and procedure for mediation. Such mediator shall be knowledgeable, to each party's reasonable satisfaction, with respect to matters concerning construction law and municipal law. The parties shall have all rights available to it by law or equity. Neither Consultant nor City will file a lawsuit against the other until not less than sixty (60) days after the mediation referred to herein has occurred, unless one or both parties is genuinely and reasonably concerned that any applicable statute of limitations is on the verge of expiring.

19. **GOVERNING LAW.** This Attachment and the construction and enforceability thereof shall be interpreted in accordance with the laws of the state where the Work is conducted.

20. **CONSENTS; APPROVALS; COOPERATION.** Whenever City's consent, approval, satisfaction or determination shall be required or permitted under this Attachment, and this Attachment does not expressly state that City may act in its sole discretion, such consent, approval, satisfaction or determination shall not be unreasonably withheld, qualified, conditioned or delayed, whether or not such a "reasonableness" standard is expressly stated in this Attachment. Whenever City's cooperation is required by Consultant in order to carry out Consultant's obligations hereunder, City agrees that it shall act in good faith and reasonably in so cooperating with Consultant and/or Consultant's designated representatives or assignees or subcontractors. City shall furnish decisions, information, and approvals required by this Attachment in a timely manner so as not to delay the performance of the Work or M&V Services.

21. **FURTHER ASSURANCES.** The parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Attachment.

22. **INDEPENDENT CONTRACTOR.** The relationship of the parties hereunder shall be that of independent contractors. Nothing in this Attachment shall be deemed to create a partnership, joint venture, fiduciary, or similar relationship between the parties.

23. **POWER AND AUTHORITY.** Each party represents and warrants to the other that (i) it has all requisite power and authority to execute and deliver this Attachment and perform its obligations hereunder, (ii) all corporate, board, body politic, or other approvals necessary for its execution, delivery, and performance of this Attachment have been or will be obtained, and (iii) this Attachment constitutes its legal, valid, and binding obligation.

24. **SEVERABILITY.** In the event that any clause, provision, or portion of this Attachment or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the

validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or materially impair the benefits intended to inure to either party under this Attachment.

25. HEADINGS. The captions and titles in this Attachment are for convenience only and shall not affect the interpretation or meaning of this Attachment.

26. COUNTERPARTS. This Attachment may be executed in any number of counterparts, all of which when taken together shall constitute one single agreement between the parties.

27. NOTICES. All notices or communications related to this Attachment shall be in writing and shall be deemed served if and when sent by facsimile or mailed by certified or registered mail: to Johnson Controls, Inc. at the address listed on the first page of this Attachment, ATTN: Regional Solutions Manager, with a copy to Johnson Controls, Inc., ATTN: General Counsel – Building Efficiency Americas, 507 East Michigan Street, Milwaukee, Wisconsin, 53202; and to City at the address listed in Section 9.9 of the original Contract.

28. REPORTS, RECORDS, DATA

The Consultant shall submit to the City or City's designated representative such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data as the City or City's designated representative may request concerning work performed or to be performed under this contract.

29. INSPECTION AND AUDIT.

29.1 The authorized representative and agents of the City, State or Federal agencies, if applicable, shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records. Additionally, authorized representatives and agents of the City, State or Federal agencies, if applicable, shall be permitted to interview any personnel performing work on behalf of or in relation to the project, including but not limited to, workers on the job site.

29.2 The City of El Paso, its authorized representative, and/or the appropriate State or Federal agency reserve the right to audit the Consultant's records pertaining to this project to verify the accuracy and appropriateness of all pricing data, including data used to negotiate any Change Orders. The City of El Paso reserves the right to decrease the contract amount and/or payments made on this contract, if upon audit of the project's records, the audit discloses that false, misleading or inaccurate cost and/or pricing data has been provided.

29.3 Additionally, authorized representatives and agents of the City, State or Federal agencies, if applicable, shall be permitted to interview any personnel performing work on behalf of or in relation to the project, including but not limited to, field and office personnel.

30. PROTECTION OF WORK AND PROPERTY

30.1 In the event of temporary suspension of work, or during inclement weather, or whenever the City or City's designated representative shall direct, the Consultant will, and will cause his/her subcontractors, to protect carefully his/her and their work and materials against damage or injury from the weather or any other cause.

30.2 If, in the opinion of the City or City's designated representative, any work or materials shall have been damaged or injured by reason of failure on the part of the Consultant or any of his/her subcontractors to so protect his work or materials, all such work or materials shall be removed or replaced at the expense of the Consultant.

31. PROTECTION OF WORK AND PROPERTY - EMERGENCY

31.1 The Consultant shall at all times safely guard the City's property from injury or loss in connection with this contract. The Consultant shall at all times safely guard and protect his/her own work and that of adjacent property from damage.

- 31.2 In case of an emergency which threatens loss or injury of property and/or safety of life, the Consultant will be allowed to act, without previous instructions from the City or City's designated representative, in a diligent manner. However, the Consultant shall notify the City or City's designated representative immediately thereafter. Any claim for compensation by the Consultant due to such extra work shall be promptly submitted to the City or City's designated representative for approval.
- 31.3 Inclusion of this paragraph in the Attachment, as well as any notice which may be given by the City or the City's designated representative concerning omissions under this paragraph as the work progresses, are intended as reminders to the Consultant of his duty and shall not be construed as any assumption of duty to supervise safety precautions by the Consultant or any of his subcontractors.

32. MUTUAL RESPONSIBILITY OF CONSULTANT. If, through acts of negligence on the part of the Consultant, any other Consultant or any subcontractor shall suffer loss or damage on the work, the Consultant agrees to settle with such other Consultant or subcontractor by agreement or arbitration if such other Consultant or subcontractor will so settle. If such other Consultant or subcontractor shall assert any claim against the City on account of any damage alleged to have been sustained, the City shall notify the Consultant, who shall indemnify and save harmless the City against any such claim.

33. PREVAILING WAGE RATES AND WAGE RATE PENALTY

- 33.1 The Consultant and any subcontractor under him shall not pay less than the general prevailing wage rates contained in Schedule M-12 to Amendment #1, to all laborers, workmen and mechanics employed by them in the execution of this contract.
- 33.2 The general prevailing wage rates contained herein shall be posted at the construction work site in a prominent and accessible place where it can easily be seen by all laborers, workmen and mechanics employed on the project.
- 33.3 Pursuant to Chapter 2258, Texas Government Code, the Consultant shall forfeit (or pay to the City of El Paso), as a penalty to the City of El Paso, Sixty Dollars (\$60.00) for each laborer, workman or mechanic employed, for each calendar day, or portion thereof such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by him, or by any subcontractor under him.
- 33.4 No worker shall be discharged by the Consultant or Subcontractor or in any other manner discriminated against because such worker has filed an inquiry or complaint, has instituted or caused to be instituted any legal or equitable proceeding or has testified or is about to testify in any such proceeding under or relating to the prevailing wage rates for this project.
- 33.5 Withholding
- 33.5.1 The El Paso City Government, shall upon its own action withhold or cause to be withheld from the Consultant under this contract, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Consultant or any subcontractor the full amount of wages required by the contract.
- 33.5.2 In the event of failure to pay any laborer or mechanic including any apprentice, trainee, or helper, employed or working on the site of the work all or part of the wages required by the contract, the El Paso City Government, may, after written notice to the Consultant, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

34. APPRENTICESHIP PROGRAM

34.1 The employment and use of apprentices to prosecute the completion of the work shall be governed by the Schedule M-16 to Amendment #1.

34.2 Prior to the start of the work of the applicable apprenticeable occupations listed below the contractor or the applicable subcontractor through the prime contractor shall provide written certification to the city that it is a sponsor or participant in a DOL approved apprenticeship program.

Apprenticeable Occupations: bricklayer, carpenter, drywall applicator, electrician, glazier, operating engineer, painter, pipefitter, plasterer, plumber, roofer, sheet metal worker, structural worker/ironworker, taper.

34.3 Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship & Training or a State Apprenticeship Agency (where appropriate) to be eligible for probation employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Consultant/subcontractor as to the entire work force under the registered program.

34.4 The Consultant shall furnish the City's Engineering Department with sufficient information, which demonstrates that apprentices are employed pursuant to and individually registered in a bona fide apprenticeship program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the City wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the City wage determination for the work actually performed. Every apprentice must be paid at not less than the rates specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the City wage determination.

34.5 Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the bureau of Apprenticeship Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship & Training, or a state apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Consultant will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

34.6 The employment of apprentices by the Consultant is mandatory on Building Structure Projects. The Consultant shall at all times employ apprentices in U.S. Department of Labor certified apprenticeship programs, in such amounts and trades, as are set forth in the Schedule of Categories of Apprentices, which Schedule is maintained by the Office of the City Engineer. See Addendum to the Contract "Apprenticeship Program", which is attached hereto and incorporated herein, for more details.

35. SUBCONTRACTING

35.1 The Consultant shall be as fully responsible to the City for the acts and omissions of his/her subcontractors, and of persons either directly or indirectly employed by them, as the Consultant is for the acts and omissions of persons directly employed by him/her.

- 35.2 The Consultant shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Consultant by the terms of the this Attachment and other contract documents insofar as applicable to the work of subcontractors and to give the Consultant the same power as regards to the termination of any subcontract that the City may exercise over the Consultant under any provisions of the contract documents.
- 35.3 Nothing contained in this contract shall create any contractual relation between any subcontractor and the City.
- 35.4 The City shall have no responsibility to any subcontractor employed by the Consultant for performance of work on the Project contemplated by these contract documents, but said subcontractors will look exclusively to the Consultant for any payments due subcontractors.
- 35.5 The Consultant shall provide to the City prior to the issuance of the City's Notice to Proceed the completed Subcontractor and/or Supplier Identification form attached hereto as Schedule M-15 to Amendment #1. Prior to performing any work under this Attachment, any person, firm, or other party to whom it is proposed to award a subcontract must be acceptable to the City after verification of the current eligibility status.

36. RIGHT OF CITY TO TERMINATE CONTRACT

- 36.1 In the event that any of the provisions of this contract are violated by the Consultant, or by any of his/her subcontractors, the City may serve written notice to contain the reasons for such intention to terminate the contract, and unless within ten (10) work days after the serving of such notice upon the Consultant, such violation or delay shall cease and satisfactory arrangement of correction be made, the contract shall, upon the expiration of said ten (10) work days, cease and terminate. The City shall have the right to immediately terminate the Contract for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Attachment.
- 36.2 In the event of such termination, the City shall immediately serve notice thereof upon the Surety and the Consultant, and the Surety shall have the right to take over and perform the contract, and shall execute a Take Over Attachment with the City evidencing such intention to take over and perform the contract. Provided, however, that if the surety does not commence performance thereof within ten (10) work days from the date of the mailing of such notice to surety of termination, the City may take over the work and prosecute the same to completion by contract or by force, and utilize in completing the work, such materials as may be on the site of the work and necessary therefore.
- 36.3 All direct and reasonable costs and charges incurred by the City, to complete the work under the contract, will be deducted from any monies due the Consultant or remaining on the contract. If such expenses exceed the sum which would have been payable under the contract, the Consultant and Surety shall be liable to the City for said amount.
- 36.4 The City may, at any time, at will and without cause, terminate any part of the work to be performed or all remaining work for any reason whatsoever by giving seven (7) days prior written notice to the Consultant. The City shall incur no liability to the Consultant by reason of such termination, except that the Consultant shall be entitled to payment for work properly completed, and materials ordered in accordance with this contract prior to the effective date of the termination. In the event that only part of the work is terminated, the Consultant shall continue in full force and effect as to all remaining work to be completed.
- 36.5 Upon a determination by a court of competent jurisdiction that a termination of the Consultant by the City pursuant to subparagraph (A) herein was wrongful, such termination will be deemed converted to a termination for convenience pursuant to subparagraph (B) herein and the Consultant's remedy for wrongful termination shall be limited to the recovery permitted for termination for convenience as set forth in subparagraph (B) herein.

- 36.6 **Default of Contract.** The following reasons shall constitute default of this contract:
- 36.6.1 If the Consultant fails to begin the work under the contract within the time specified in the Notice to Proceed, or
 - 36.6.2 If the Consultant fails to perform the work with sufficient workmen and equipment or with sufficient materials to assure the prompt completion of said work, or
 - 36.6.3 If the Consultant fails to perform the work in accordance with the contract requirements and/or refuses to remove and replace rejected materials or unacceptable work, or
 - 36.6.3 If the Consultant discontinues the prosecution of the work without cause, or
 - 36.6.4 If the Consultant fails to resume work that has been discontinued within a reasonable time after notice to do so, or
 - 36.6.5 If Consultant fails to complete any remaining punch list items for the project after notice to do so, or
 - 36.6.6 If the Consultant becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
 - 36.6.8 If the Consultant allows any final judgment to remain unsatisfied for a period of 10 days, or
 - 36.6.9 If the Consultant makes an assignment for the benefit of creditors, without obtaining the written consent of the City and the Surety or Sureties, or
 - 36.6.10 If the Consultant fails to comply with contract requirements regarding minimum wage payments or EEO requirements, or
 - 36.6.11 If the Consultant, for any other cause whatsoever, fails to carry on the work in an acceptable manner, or
 - 36.6.12 If the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Attachment.
- 36.7 The City's representative will give notice in writing to the Consultant and the Surety of such delay, neglect, or default.
- 36.8 If the Consultant or Surety, within a period of 10 days after such notice, does not proceed in accordance therewith, then the City will have full power and authority without violating the contract, to take the prosecution of the work out of the hands of the Consultant. The City may enter into an agreement for the completion of said contract according to the terms and provisions thereof, or use such other methods as in the opinion of the City will be required for the completion of said contract in an acceptable manner.
- 36.9 All direct and reasonable costs and charges incurred by the City to complete the work under the contract will be deducted from any monies due or remaining on the contract. If such expense exceeds the sum which would have been payable under the contract, then the Consultant and the Surety shall be liable to the City for said amount.

37. RETAINAGE

- 37.1 City shall retain five percent (5%) of the amount of each payment due to Consultant until final completion and acceptance of all work covered by this contract; provided that the City at any time after fifty percent (50%) of the work has been completed, and if satisfactory progress is being made, the City may make any of the remaining progress payments in full; provided, further, that on completion and acceptance of each separate building, public work or other division of the contract on which the price is stated separately in the contract, payment may be made in full, including retained percentage thereon, less authorized deductions.

- 37.2 All material and work covered by partial payments made shall thereupon become the sole property of the City, but this provision shall not be construed as relieving the Consultant from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or stored materials stolen, nor be construed as a waiver of the right of the City to require the fulfillment of all of the terms of the contract.
- 37.3 THE CONSULTANT AGREES THAT IT WILL INDEMNIFY AND HOLD HARMLESS THE CITY FROM ALL CLAIMS GROWING OUT OF THE LAWFUL MATERIALMEN AND FURNISHERS OF MACHINERY AND PARTS THEREOF, EQUIPMENT, POWER TOOLS, AND ALL SUPPLIES, INCLUDING COMMISSARY, INCURRED IN THE FURTHERANCE OF THE PERFORMANCE OF THIS CONTRACT. IN ACCORDANCE WITH TEX. PROP. CODE ANN. 53.231 ET. SEQ., WHEN THE AMOUNT OF THIS CONTRACT DOES NOT EXCEED \$25,000 AND WHEN THE CITY HAS RECEIVED A NOTICE OF AN UNPAID CLAIM(S) FROM A PERSON WHO HAS FURNISHED MATERIALS OR LABOR IN CONNECTION WITH THE PERFORMANCE OF A PUBLIC WORKS CONTRACT, THE CITY MAY, AFTER HAVING SERVED WRITTEN NOTICE ON SAID CONSULTANT, EITHER PAY UNPAID CLAIMS OF WHICH THE CITY HAS WRITTEN NOTICE THEREOF, OR DIRECT OR WITHHOLD FROM THE CONSULTANT'S UNPAID COMPENSATION A SUM OF MONEY DEEMED REASONABLY SUFFICIENT TO PAY ANY AND ALL SUCH LAWFUL CLAIMS UNTIL SATISFACTORY EVIDENCE IS FURNISHED THAT ALL LIABILITIES HAVE BEEN FULLY DISCHARGED, WHEREUPON PAYMENT TO THE CONSULTANT SHALL BE RESUMED. IN PAYING ANY UNPAID CLAIMS, IN ACCORDANCE WITH TEXAS PROPERTY CODE ANN. 53.231 ET SEQ., THE CITY SHALL BE DEEMED THE AGENT OF THE CONSULTANT, AND ANY PAYMENT SO MADE BY THE CITY SHALL BE CONSIDERED AS A PAYMENT MADE UNDER THE CONTRACT BY THE CITY TO THE CONSULTANT.

38. ASSIGNMENT. The Consultant shall not assign the whole or any part of the contract, or any monies due or to become due hereunder without written consent of the City and Surety. In case the Consultant assigns all or any part of any monies due or to become due under this contract, the instrument of assignments shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the Consultant shall be subject to prior claims of all persons, firms and corporations of services rendered or materials supplied for the performance of the work called for in this contract.

39. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE. The acceptance by the Consultant of final payment shall be, and shall operate as a release to the City of all claims and all liability to the Consultant for all things done or furnished in connection with this work and for every act and neglect of the City and others relating to or arising out of this work with the exceptions of outstanding claims or disputes for which the Consultant has provided the City prior notice. No payment, however, final or otherwise, shall operate to release the Consultant or his/her sureties from any obligations under this contract or from the Performance and Payment Bonds.

40. RETENTION OF PAYROLL AND BASIC RECORDS

- 40.1 Payrolls and basic records relating thereto shall be maintained by the Consultant during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, the workers correct classification, hourly rates of wages paid, including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof, daily and weekly number of hours worked, deductions made and actual wages paid.
- 40.2 Whenever the City of El Paso has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Consultant shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

- 40.3 Consultants employing apprentices and trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- 40.4 The Consultant shall submit weekly for each week in which any contract work is performed the original copy of all payrolls submitted shall set out accurately and completely all of the information required to be maintained. This information may be submitted in any form desired. Optional form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime Consultant is responsible for the submission of copies of payrolls by all subcontractors.
- 40.4.1 Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the Consultant or Subcontractor or the agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- 40.4.1.1 That the payroll for the payroll period contains the information required, and that such information is correct and complete.
- 40.4.1.2 That each laborer or mechanic (including each helper, apprentice, and trainee), employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned other than permissible deductions.
- 40.4.1.3 That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- 40.4.2 The falsification of any of the above certifications may subject the Consultant or the Subcontractor to debarment.
- 40.4.3 The Consultant or Subcontractor shall make the records required under this section available for inspection, copying or transcription by authorized representatives of the El Paso City Government and/or appropriate State or Federal agency, and shall permit such representatives to interview employees during working hours on the job. If the Consultant or Subcontractor fails to submit the required records or to make them available, the City of El Paso may, after written notice to the Consultant, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment.

(Signature Page to follow)

Attachment P: ENERGY SAVINGS PERFORMANCE CONTRACT

(Signature Page)

Johnson Controls, Inc.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

City of El Paso

Signature: _____

Printed Name: Joyce Wilson

Title: City Manager

Date: _____

Approved as to Content:

City of El Paso

Signature: _____

Printed Name: Stuart Ed

Title: Director, General Services
Department

Date: _____

Approved as to Form:

City of El Paso

Signature: _____

Printed Name: Elizabeth M. Ruhmann

Title: Assistant City Attorney

Date: _____

SCHEDULES P-1 TO P-8 SIGNATURE PAGE

CONSULTANT AND CITY WARRANT AND ACKNOWLEDGE THAT EACH HAS READ AND REVIEWED THE CONTENTS OF SCHEDULES P-1 THROUGH P-8.

IN LIEU OF INITIALING EACH OF THE SCHEDULES ATTACHED HERETO, CONSULTANT AND CITY EXECUTE THIS SIGNATURE PAGE.

Johnson Controls, Inc.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

City of El Paso

Signature: _____

Printed Name: Joyce Wilson

Title: City Manager

Date: _____

Approved as to Content:

City of El Paso

Signature: _____

Printed Name: Stuart Ed

Title: Director, General Services Department

Date: _____

Approved as to Form:

City of El Paso

Signature: _____

Printed Name: Elizabeth M. Ruhmann

Title: Assistant City Attorney

Date: _____

PHASE IV SCOPE OF WORK:

Consultant will provide the City with the Scope of Work (Work) identified on this Schedule. Consultant shall supervise and direct the Work and shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under this Attachment. Consultant shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. All completed work will be fully functional and installed and inspected as in compliance with all local governing codes.

General Work includes the following:

- Final engineering work for each Utility Cost Reduction Measure (UCRM). Once final engineering work is complete, some minor modifications to Work may be required. No modifications will be made to Work without prior acceptance of City.
- Three (3) copies of construction drawings, equipment inventories, equipment submittals, performance specifications and sequences of operation will be provided for City’s review and acceptance at the completion of the final engineering design phase.
- Three (3) copies of O&M manuals and as-built construction drawings will be submitted to City at completion of construction phase.
- Three (3) copies of electronic CAD as-built construction drawings will be provided to City at completion of construction phase.
- City retains the right to keep any removed equipment or material, unless specified differently in other areas of this Schedule.
- All work will be coordinated with City personnel to minimize interruptions, delays, or safety violations.
- All materials being installed shall be new.
- Necessary protection will be provided to avoid damage to adjacent services in the surrounding work areas.
- Work will be performed in accordance with all applicable codes and standards.

General Exclusions:

- HAZARDOUS MATERIALS. Unless specifically noted in this Schedule, Consultant’s obligations expressly exclude any Work or Services of any nature associated or connected with the identification, abatement, cleanup, control, removal, or disposal of hazardous materials or substances, including but not limited to asbestos or PCBs, in or on the premises.
- City permit fees.

UTILITY COST REDUCTION MEASURES (UCRMs)

UCRM #	UCRM Description
1	Solar PV System

UCRM #: 1

UCRM NAME: Solar PV System

UCRM DESCRIPTION:

This UCRM will include the installation of a new roof-mounted Solar Photovoltaic (PV) system at the Municipal Service Center.

GOALS:

- Utility savings
- On-site energy production
- Clean, renewable energy
- Greenhouse gas reduction

ASSUMPTIONS:

- City will expedite the execution of the Interconnection Agreement between the City & El Paso Electric Company.

FINAL ENGINEERING:

- Development of construction drawings and equipment submittals.

SCOPE OF WORK:

General Scope

- Three (3) copies of O&M manuals for each UCRM will be submitted to City at completion of construction phase.
- City retains the right to keep any removed equipment or material, unless specified differently in other areas of this Agreement.
- All work will be coordinated with City personnel to minimize interruptions, delays, or safety violations.
- All materials being installed shall be new.
- Necessary protection will be provided to avoid damage to adjacent services in the surrounding work areas.
- Work will be performed in accordance with all applicable codes and standards.
- The Johnson Controls Safety Specifications will be followed at all times. Any safety violations will be addressed immediately. Work will not continue until any unsafe conditions are corrected.
- Equipment & installation procedures will meet ARRA requirements.

New Solar PV System

- Scope of work for new Solar PV system will include all materials & labor required for a complete working system. New system will include the following:
 - Solar panel modules
 - Inverters
 - Roof mounting system (minimum 18" clearance between roof deck & new panels)
 - AC disconnects
 - Conduit, subpanels, wiring
 - Utility production meter
 - Monitoring system that will be tied into City Hall kiosk

- The following are additional system specifications:

Module manufacturer	Sunpower
Rated capacity	167.6 kW DC
Approx. number of modules	544
Approx. roof area needed	9,500 SF
Module type	Monocrystalline
Module rating (each)	308W
Module efficiency	18.9%
Performance output warranty	90% 12-yrs, 80% 25-yrs
Annual projected degradation	0.50%

DEMOLITION:

- Not Applicable

EXCLUSIONS:

- Any necessary roof repairs prior to the installation of new Solar PV system.
- Any new structural steel roof supports required to support the weight of the new Solar PV system, if necessary.

COMMISSIONING:

- Refer to General Work for all close-out document requirements.

TRAINING:

- Four (4) hours of on-site training will be provided to designated City personnel.

WARRANTIES:

- One (1) year warranty on material & labor beginning on the Substantial Completion Date(s).
- All new panels, inverters and roof mounting systems include a limited 10-year material & labor warranty. Specific details for each extended warranty will be provided in the O & M manuals.

ASSURED PERFORMANCE GUARANTEE

I. PROJECT BENEFITS

A. Certain Definitions. For purposes of this Attachment, the following terms have the meanings set forth below:

Annual Project Benefits are the portion of the projected Total Project Benefits to be achieved in any one year of the Guarantee Term.

Annual Project Benefits Realized are the Project Benefits actually realized for any one year of the Guarantee Term.

Annual Project Benefits Shortfall is the amount by which the Annual Project Benefits exceed the Annual Project Benefits Realized in any one year of the Guarantee Term.

Annual Project Benefits Surplus is the amount by which the Annual Project Benefits Realized exceed the Annual Project Benefits in any one year of the Guarantee Term.

Baseline is the mutually agreed upon data and/or usage amounts that reflect conditions prior to the installation of the Improvement Measures as set forth in Section IV below.

Guarantee Term will commence on the first day of the month next following the Substantial Completion date and will continue through the duration of the M&V Services, subject to earlier termination as provided in this Attachment.

Installation Period is the period beginning on Consultant's receipt of City's Notice to Proceed and ending on the commencement of the Guarantee Term.

Measured Project Benefits are the utility savings and cost avoidance calculated in accordance with the methodologies set forth in Section III below.

Non-Measured Project Benefits are identified in Section II below. The Non-Measured Project Benefits have been agreed to by City and will be deemed achieved in accordance with the schedule set forth in the Total Project Benefits table below. City and Consultant agree that: (i) the Non-Measured Project Benefits may include, but are not limited to, future capital and operational costs avoided as a result of the Work and implementation of the Improvement Measures, (ii) achievement of the Non-Measured Project Benefits is outside of Consultant's control, and (iii) City has evaluated sufficient information to conclude that the Non-Measured Project Benefits will occur and bears sole responsibility for ensuring that the Non-Measured Project Benefits will be realized. Accordingly, the Non-Measured Project Benefits shall not be measured or monitored by Consultant at any time during the Guarantee Term, but rather shall be deemed achieved in accordance with the schedule set forth in the Total Project Benefits table below.

Project Benefits are the Measured Project Benefits plus the Non-Measured Project Benefits to be achieved for a particular period during the term of this Attachment.

Total Project Benefits are the projected Project Benefits to be achieved during the entire term of this Attachment.

B. Project Benefits Summary. Subject to the terms and conditions of this Attachment, Consultant guarantees that City will achieve a total of \$358,987 in Measured Project Benefits during the term of this Attachment, for Total Project Benefits of \$358,987 as set forth in the Total Project Benefits table below.

Total Project Benefits

Year	Utility Cost Avoidance*	Operation & Maintenance Cost Avoidance**	Future Capital Cost Avoidance**	Annual Project Benefits
Installation Period	\$0	\$0	\$0	\$0
1	\$25,295	\$0	\$0	\$25,295
2	\$26,054	\$0	\$0	\$26,054
3	\$26,835	\$0	\$0	\$26,835
4	\$27,641	\$0	\$0	\$27,641
5	\$28,470	\$0	\$0	\$28,470
6	\$29,324	\$0	\$0	\$29,324
7	\$30,204	\$0	\$0	\$30,204
8	\$31,110	\$0	\$0	\$31,110
9	\$32,043	\$0	\$0	\$32,043
10	\$33,004	\$0	\$0	\$33,004
11	\$33,994	\$0	\$0	\$33,994
12	\$35,014	\$0	\$0	\$35,014
Totals	\$358,987	\$0	\$0	\$358,987

*Utility Cost Avoidance is a Measured Project Benefit. Utility Cost Avoidance figures in the table above are based on anticipated increases in unit energy costs as set forth in the table in Section IV below.

** Operations & Maintenance Cost Avoidance and Future Capital Cost Avoidance are Non-Measured Project Benefits. Operations & Maintenance Cost Avoidance and Future Capital Cost Avoidance figures in the table above are based on a mutually agreed fixed annual escalation rate of zero percent (0%).

Within sixty (60) days of the commencement of the Guarantee Term, Consultant will calculate the Measured Project Benefits achieved during the Installation Period plus any Non-Measured Project Benefits applicable to such period and advise City of same. Any Project Benefits achieved during the Installation Period may, at Consultant's discretion, be allocated to the Annual Project Benefits for the first year of the Guarantee Term. Within sixty (60) days of each anniversary of the commencement of the Guarantee Term, Consultant will calculate the Measured Project Benefits achieved for the applicable year plus any Non-Measured Project Benefits applicable to such period and advise City of same.

City acknowledges and agrees that if, for any reason, it (i) cancels or terminates receipt of M&V Services, (ii) fails to pay for M&V Services in accordance with Schedule P-4, (iii) fails to fulfill any of its responsibilities necessary to enable Consultant to complete the Work and provide the M&V Services, or (iv) otherwise cancels, terminates or materially breaches this Attachment, the Assured Performance Guarantee shall automatically terminate and Consultant shall have no liability hereunder.

C. Project Benefits Shortfalls or Surpluses.

- (i) ***Project Benefits Shortfalls.*** If an Annual Project Benefits Shortfall occurs for any one year of the Guarantee Term, Consultant shall, at its discretion and in any combination, (a) set off the amount of such shortfall against any unpaid balance City then owes to Consultant, (b) where permitted by applicable law, increase the next year's amount of Annual Project Benefits by the amount of such shortfall, (c) pay to City the amount of such shortfall, or (d) subject to City's agreement, provide to City additional products or services, in the value of such shortfall, at no additional cost to City.
- (ii) ***Project Benefits Surpluses.*** If an Annual Project Benefits Surplus occurs for any one year of the Guarantee Term, Consultant may, at its discretion and in any combination, (a) apply the amount of such surplus to set off any subsequent Annual Project Benefit Shortfall

during the Guarantee Term, or (b) bill City for the amount of payments made pursuant to Section C(i)(c) above and/or the value of the products or services provided pursuant to clause C(i)(d) above, in an amount not to exceed the amount of such surplus.*

- (iii) Additional Improvements. Where an Annual Project Benefits Shortfall has occurred, Consultant may, subject to City's approval (which approval shall not be unreasonably withheld, conditioned, or delayed), implement additional Improvement Measures, at no cost to City, which may generate additional Project Benefits in future years of the Guarantee Term.

II. NON-MEASURED PROJECT BENEFITS

There are no non-measured project benefits as part of this Agreement.

III. MEASUREMENT AND VERIFICATION METHODOLOGIES

The following is a brief overview of the measurement and verification (M&V) methodologies applicable to the Improvement Measures set forth below. Consultant shall apply these methodologies, as more fully detailed in the guidelines and standards of the International Measurement and Verification Protocol (IPMVP) and/or the Federal Energy Management Program (FEMP), in connection with the provision of M&V Services hereunder.

Option B

Partially Measured Retrofit Isolation

Measured Project Benefits are determined by partial field measurement and verification of the energy use of the system(s) to which an Improvement Measure was applied separate from the energy use of the rest of the facility or system(s).

Partial measurement means that some but not all parameters will be measured. Careful review of the design and installation of Improvement Measures is intended to demonstrate that the stipulated values fairly represent the probable actual values. Agreed-upon values will be shown in the Performance Contract Agreement. Engineering calculations which include pre-retrofit and post-retrofit measurements and stipulations are used to calculate Measured Project Benefits for the duration of the Guarantee Term.

Solar PV

Pre-Retrofit:

- No pre-retrofit measurements are required.

Post-Retrofit:

- Utility production sub-meter will be continuously monitored through the FMS. Adjustments will be made based on compliance with the preventative maintenance schedule.
- Post-Installation trends of solar insolation and energy output (KWh) will be used in accordance with FEMP M&V Guidelines. Trend data will be used to capture changes in efficiency and performance. City will be notified if it is determined the equipment is not performing as specified or if the trends indicate the Solar PV systems are not operating as intended. Any notifications and resolutions will be included in the annual M&V report.

**CHANGES IN USE OR CONDITION; ADJUSTMENT TO BASELINE
AND/OR ANNUAL PROJECT BENEFITS**

City agrees to notify Consultant, within fourteen (14) days, of (i) any actual or intended change, whether before or during the Guarantee Term, in the use of any facility, equipment, or Improvement Measure to which this Schedule applies; (ii) any proposed or actual expansions or additions to the premises or any building or facility at the premises; (iii) a change to utility services to all or any portion of the premises; or (iv) any other change or condition arising before or during the Guarantee Term that reasonably could be expected to change the amount of Project Benefits realized under this Attachment.

Such a change, expansion, addition, or condition would include, but is not limited to: (a) changes in the primary use of any facility, Improvement Measure, or portion of the premises; (b) changes to the hours of operation of any facility, Improvement Measure, or portion of the premises; (c) changes or modifications to the Improvement Measures or any related equipment; (d) changes to the M&V Services provided under this Attachment; (e) failure of any portion of the premises to meet building codes; (f) changes in utility suppliers, utility rates, method of utility billing, or method of utility purchasing; (g) insufficient or improper maintenance or unsound usage of the Improvement Measures or any related equipment at any facility or portion of the premises (other than by Consultant); (h) changes to the Improvement Measures or any related equipment or to any facility or portion of the premises required by building codes or any governmental or quasi-governmental entity; or (i) additions or deletions of Improvement Measures or any related equipment at any facility or portion of the premises.

Such a change or condition need not be identified in the Baseline in order to permit Consultant to make an adjustment to the Baseline and/or the Annual Project Benefits. If Consultant does not receive the notice within the time period specified above or travels to either City's location or the project site to determine the nature and scope of such changes, City agrees to pay Consultant, in addition to any other amounts due under this Attachment, the applicable hourly consulting rate for the time it took to determine the changes and to make any adjustments and/or corrections to the project as a result of the changes, plus all reasonable and documented out-of pocket expenses, including travel costs. Upon receipt of such notice, or if Consultant independently learns of any such change or condition, Consultant shall calculate and send to City a notice of adjustment to the Baseline and/or Annual Project Benefits to reflect the impact of such change or condition, and the adjustment shall become effective as of the date the change or condition first arose. Should City fail to promptly provide Consultant with notice of any such change or condition, Consultant may make reasonable estimates as to the impact of such change or condition and as to the date on which such change or condition first arose in calculating the impact of such change or condition, and such estimates shall be conclusive.

There must be mutual agreement between the City and Consultant before baseline adjustments are determined to be conclusive.

IV. BASELINE CALCULATIONS AND UTILITY RATES

The unit utility costs for the Baseline period are set forth below as “Base Utility Cost” and shall be used for all calculations made under this Schedule. The Base Utility Cost shall be escalated annually by the actual utility cost escalation but such escalation shall be no less than the mutually agreed “floor” escalation rate of three percent (3%).

Baseline period for this Attachment is January 2010 to December 2010.

Electric Meters

Facility Name	Billing Address	Electric Meter Account
Municipal Service Center	7969 San Paulo Dr.	8927830000

Electric Utility Rate Schedule Analysis

Avoided cost for electric savings was determined by dividing the total annual electric cost (minus standard monthly meter charges) by the total electric usage.

The following table indicates electric \$/kWh charges which were utilized for savings calculations at the MSC facility.

Electric \$/kWh Charges

FACILITY	ANNUAL UTILITY CHARGES (\$)	ANNUAL STANDARD CUSTOMER CHARGES (\$)	ANNUAL UTILITY USAGE (KWH)	TOTAL CHARGES (\$/KWH)
Municipal Service Center (MSC)	\$73,116.99	\$198	776,400	\$0.09392

The following is the applicable electric rate tariff applied to this account:

El Paso Electric Energy City and County Service Rate – Schedule 41 – Primary Service

Table IV-2
Schedule 41 Rate Schedule

Type of Charge	Amount	Applicability
Standard Meter Charge	\$16.50	per meter
Energy Cost (Summer)		
Block 1	\$ 0.09484 / kWh	First 3,000 kWh
Block 2	\$0.02592/ kWh	All remaining kWh
Energy Cost (Winter)		
Block 1	\$0.07953/ kWh	First 3,000 kWh
Block 2	\$0.01061/ kWh	All remaining kWh
Secondary Fuel Charge	\$0.025274/ kWh	
Demand Charge (Summer)	\$17.67/kW	Monthly Maximum Demand
Demand Charge (Winter)	\$14.67/kW	Monthly Maximum Demand

Monthly Demand

The Demand will be the KW as determined from the reading of the El Paso electric demand meter for the 30 minute period of the Customer's greatest Demand reading during the month.

Energy Cost Calculations

Average Charge per kWh

$$= \frac{\text{Annual Utility Charges (\$)} - \text{Annual Standard Customer Meter Charge (\$)}}{\text{Annual Electrical Usage (kWh)}}$$

$$\text{Average Charge per kWh} = \frac{\$73,116.99 - \$198.00}{776,400}$$

$$\text{Average Charge per kWh} = \$0.09392 /kWh$$

Base Year Energy Consumption & Costs – MSC

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov*	Dec	Totals
KW Usage	144	134	132	165	203	230	236	239	230	194	140	143	2,190
kWh Usage	50,100	50,100	44,400	61,350	65,550	79,650	81,600	88,350	79,350	64,650	52,650	58,650	776,400
KW Charge	\$2,096	\$1,934	\$1,901	\$2,438	\$3,055	\$3,494	\$3,905	\$3,958	\$3,799	\$2,965	\$1,834	\$1,878	\$33,257
KWh Charge	\$2,627	\$2,627	\$2,366	\$3,143	\$3,335	\$3,683	\$4,076	\$4,394	\$4,756	\$4,019	\$2,420	\$2,414	\$39,860
Total Charge	\$4,723	\$4,561	\$4,267	\$5,581	\$6,390	\$7,177	\$7,981	\$8,352	\$8,555	\$6,984	\$4,254	\$4,292	\$73,117

* - Nov charges do not include one-time fuel refund of \$1,741

V. PRIMARY OPERATIONS SCHEDULE PRE & POST RETROFIT

Facility Occupancy Hours

Facility	Area	Weekday Hours	Saturday Hours	Sunday Hours	Weeks per Year	Annual Hours
Municipal Service Center	Entire Facility	7:00 a.m. - 5:00 p.m.	closed	closed	52	2600

Solar PV Savings Calculations

The following is the Base Year Incident Radiation Values for El Paso Airport (EPA):

Base Year Incident Radiation

Month	Base Year Incident Radiation (KWH/m ²) *
January	173.6
February	168.5
March	218.5
April	221.4
May	224.5
June	214.8
July	205.9
August	205.3
September	200.2
October	194.9
November	175.6
December	163.5
Annual	2,366.7

* Reference - National Renewable Energy Lab, average from 1991 - 2005

PVWATTS software was used to determine projected solar energy production and corresponding savings. Calculations are shown on the following pages.

PVSYST V5.52		30/11/11	Page 1/3
Grid-Connected System: Simulation parameters			
Project :	TX_EIPaso_SUNY		
Geographical Site	TX_EIPaso_SUNY	Country	USA
Situation	Latitude 31.8°N	Longitude	106.3°W
Time defined as	Legal Time Time zone UT-7	Altitude	1163 m
	Albedo 0.20		
Meteo data :	TX_EIPaso_SUNY, NREL US TMY2		
Simulation variant :	TX_EIPaso_SUNY_SPWR308_Satcon75_15deg		
	Simulation date	30/11/11 17h24	
Simulation parameters			
Collector Plane Orientation	Tilt 15°	Azimuth	0°
10Sheds	Pitch 1.55 m	Collector width	1.05 m
Inactive band	Top 0.00 m	Bottom	0.00 m
Shading limit angle	Gamma 26.90 °	Occupation Ratio	67.7 %
Horizon	Free Horizon		
Near Shadings	No Shadings		
PV Array Characteristics			
PV module	SI-mono	Model SPR-308E-WHT-D	
	Manufacturer	SunPower	
Number of PV modules	In series	8 modules	In parallel 68 strings
Total number of PV modules	Nb. modules	544	Unit Nom. Power 308 Wp
Array global power	Nominal (STC)	168 kWp	At operating cond. 152 kWp (50°C)
Array operating characteristics (50°C)	U mpp	387 V	I mpp 392 A
Total area	Module area	887 m ²	Cell area 801 m ²
Inverter	Model	PowerGate Plus PVS-75-480	
	Manufacturer	Satcon	
Characteristics	Operating Voltage	315-600 V	Unit Nom. Power 75 kW AC
Inverter pack	Number of Inverter	2 units	Total Power 150 kW AC
PV Array loss factors			
Thermal Loss factor	Uc (const)	28.8 W/m ² K	Uv (wind) 0.0 W/m ² K / m/s
	-> Nominal Oper. Coll. Temp. (G=800 W/m ² , Tamb=20°C, Wind=1 m/s.)		NOCT 45 °C
Wiring Ohmic Loss	Global array res.	17 mOhm	Loss Fraction 1.5 % at STC
Array Soiling Losses			Loss Fraction 3.0 %
Module Quality Loss			Loss Fraction 2.0 %
Module Mismatch Losses			Loss Fraction 2.0 % at MPP
Incidence effect, ASHRAE parametrization	IAM = 1 - bo (1/cos i - 1)	bo Parameter	0.05
User's needs :	Unlimited load (grid)		

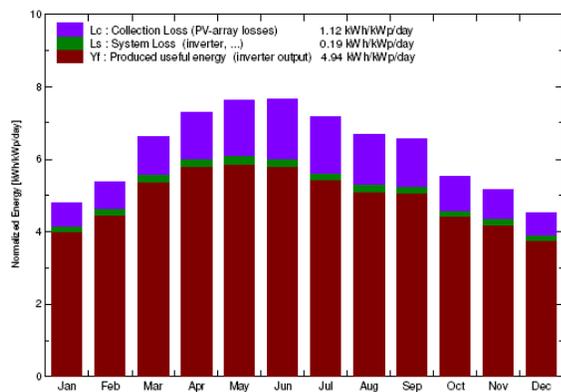
Grid-Connected System: Main results

Project : TX_EIPaso_SUNY
Simulation variant : TX_EIPaso_SUNY_SPWR308_Satcon75_15deg

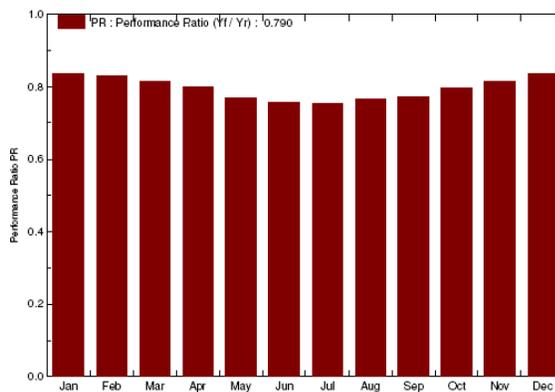
Main system parameters	System type Grid-Connected
PV Field Orientation	Sheds disposition, tilt 15° azimuth 0°
PV modules	Model SPR-308E-WHT-D Pnom 308 Wp
PV Array	Nb. of modules 544 Pnom total 168 kWp
Inverter	Model PowerGate Plus PVS-75-48P Pnom 75.0 kW ac
Inverter pack	Nb. of units 2.0 Pnom total 150 kW ac
User's needs	Unlimited load (grid)

Main simulation results
 System Production **Produced Energy 302.2 MWh/year** Specific prod. 1804 kWh/kWp/year
 Performance Ratio PR **79.0 %**

Normalized productions (per installed kWp): Nominal power 168 kWp



Performance Ratio PR



TX_EIPaso_SUNY_SPWR308_Satcon75_15deg
Balances and main results

	GlobHor	T Amb	GlobInc	GlobEff	EArray	E_Grid	EffArrR	EffSysR
	kWh/m ²	°C	kWh/m ²	kWh/m ²	MWh	MWh	%	%
January	114.3	8.63	148.6	141.8	21.55	20.79	16.34	15.76
February	124.8	9.85	150.7	144.3	21.73	20.93	16.26	15.66
March	182.7	14.09	205.0	197.7	29.01	27.95	15.95	15.37
April	209.6	17.35	218.2	210.6	30.29	29.18	15.65	15.07
May	239.1	24.55	236.7	228.4	31.64	30.48	15.07	14.51
June	237.7	28.55	229.7	221.5	30.18	29.08	14.81	14.27
July	227.3	29.96	222.7	214.9	29.25	28.18	14.81	14.26
August	202.9	28.29	207.0	199.7	27.54	26.53	15.00	14.45
September	180.5	26.84	196.8	189.7	26.41	25.45	15.13	14.58
October	145.4	19.96	171.4	164.8	23.77	22.90	15.63	15.06
November	119.9	14.00	154.6	147.3	21.87	21.09	15.95	15.37
December	104.2	7.35	140.3	132.6	20.37	19.63	16.36	15.77
Year	2088.5	19.17	2281.8	2193.3	313.63	302.19	15.49	14.93

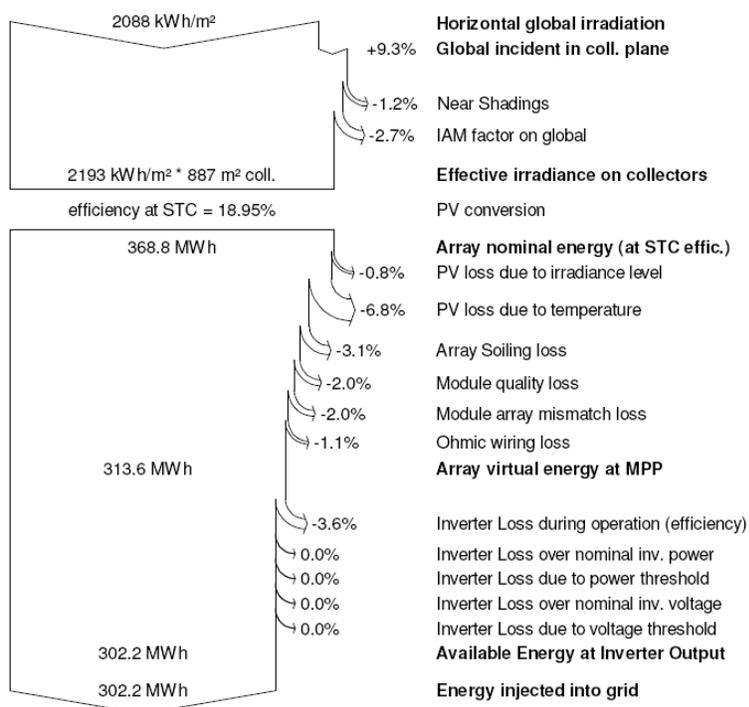
Legends: GlobHor Horizontal global irradiation EArray Effective energy at the output of the array
 T Amb Ambient Temperature E_Grid Energy injected into grid
 GlobInc Global incident in coll. plane EffArrR Effic. Eout array / rough area
 GlobEff Effective Global, corr. for IAM and shadings EffSysR Effic. Eout system / rough area

Grid-Connected System: Loss diagram

Project : TX_EIPaso_SUNY
Simulation variant : TX_EIPaso_SUNY_SPWR308_Satcon75_15deg

Main system parameters	System type	Grid-Connected	
PV Field Orientation	Sheds disposition, tilt	15°	azimuth 0°
PV modules	Model	SPR-308E-WHT-D	Pnom 308 Wp
PV Array	Nb. of modules	544	Pnom total 168 kWp
Inverter	Model	PowerGate Plus PVS-75-48P	Pnom 75.0 kW ac
Inverter pack	Nb. of units	2.0	Pnom total 150 kW ac
User's needs	Unlimited load (grid)		

Loss diagram over the whole year



TX EIPaso PV Output Model

Outputs based on PVSyst runs plus additional loss assumptions

Racking	Fixed, 15 degrees, due south
Module	Sunpower E18 308
Inverter	Satcon PVS 75-480
Modeling Software	PVSyst V5.52
Weather Data	NREL SUNY data for site
Losses accounted for in the PVSyst program: DC wiring losses (1.5% at STC), inverter efficiency, inter-row shading, module mismatch (2% at STC), soiling (3% annual loss), module quality (2% annual loss Sunpower). Other losses are accounted for below.	
Notes	
PVSyst result (kWh/kWp/year)	1804 from PVSyst simulation
Snow Shading	1 assume negligible
Soiling	1 accounted for in PVSyst
Availability	0.995 downtime for repairs and maintenance
Other Obstacle Shading	1 not modeled -- trees, power poles, unusual rack-rack shading, etc.
MPPT Error	1 assume negligible
Module STC Tolerance	1 accounted for in PVSyst
AC Wiring	0.995 JCI estimate
Nighttime Tare Loss	1 assume negligible
LV-MV Xfmr	1 n/a
MV-HV Xfmr	1 n/a
Net Output (kWh/kWp/year)	1786
System Rating in kW DC	167.552
Total kWh estimated, Year 1	299,249

Guaranteed Annual Savings: 299,249 kWh x 0.90 Safety Factor = 269,324 kWh

VI. MEASUREMENT & VERIFICATION SERVICES

Consultant will provide the M&V Services set forth below in connection with the Assured Performance Guarantee.

Performance Reporting Services

1. Provide annual savings reports for years 1 through 12. Reporting shall include the following:
 - Energy savings calculations for period compared to targets.
 - Status of energy and operational savings strategies implemented by Consultant.

Performance Assurance Services

1. Remote monitoring of facility management system
 - Review of status and operation of energy and operational savings measures implemented by Consultant. Implement corrective actions as needed.
 - Review Run Time Totalization for period on selected equipment.
 - Review Trending of selected equipment for period.
 - Report any operational or retrofit opportunities that would increase energy savings.
2. Training
 - City consultation.
 - Telephone support as required.

Solar PV System Preventative Maintenance Services**Annual Preventative Maintenance:**

- Vacuum cleaning, visual inspection and infrared scanning of combiner boxes, disconnect switches and inverters
- Clean and wash modules to remove surface dust once yearly
- Clean/change air filters as required to maintain factory maintenance requirements
- Check, measure and record phase-to-phase input voltages and currents
- Check for integrity of roof penetration and present findings (roof)
- Check for torque of racking system, present findings and document actions (racking)
- Submit report of maintenance performed

Semi-Annual Preventative Maintenance:

- Check appearance/cleanliness of the cabinet, ventilation system and insulated surfaces
- Inspect subassemblies, cabling, wiring harnesses, contacts and major components
- Torque terminals, connectors and bolts
- Check for corrosion on all terminals and cables
- Check the condition of both the AC & DC surge suppressors
- Measure and record all low-voltage power supply levels
- Check cable entry plates
- Check fan for correct rotation, blades and bearings
- Check inverter transformer cooling fans
- Check anti-condensation heaters
- Inspect air filter elements
- Record ambient and operating temperature
- Check that sensors are securely attached and reading correct temperatures
- Perform temperature checks on all breakers, connections, and associated controls
- Record HMI voltage and current readings
- Check fuses for open or signs of heating (Inverter & Combiner)
- Submit report of maintenance performed

CITY RESPONSIBILITIES

In order for Consultant to perform its obligations under this Attachment with respect to the Work, the Assured Performance Guarantee, and the M&V Services, City shall be responsible for:

1. Providing Consultant, its subcontractors, and its agents reasonable and safe access to all facilities and properties that are subject to the Work and/or M&V Services;
2. Providing for shut down and scheduling of affected locations during installation as needed to accomplish the Work and/or M&V Services;
3. Providing timely reviews and approvals of design submissions, proposed change orders, and other project documents;
4. Providing the following information with respect to the project and project site as soon as practicable following Consultant's request:
 - a. surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
 - b. geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the project site;
 - c. temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the project and enable Consultant to perform the Work;
 - d. a legal description of the project site;
 - e. as-built and record drawings of any existing structures at the project site; and
 - f. environmental studies, reports and impact statement describing the environmental conditions, including hazardous conditions or materials, in existence at the project site.
5. Securing and executing all necessary agreements with adjacent land or property City's that are necessary to enable Consultant to perform the Work;
6. Providing assistance to Consultant in obtaining any permits, approvals, and licenses that are Consultant's responsibility to obtain as set forth in Schedule P-1;
7. Obtaining any permits, approvals, and licenses that are necessary for the performance of the Work and are not Consultant's responsibility to obtain as set forth in Schedule P-1;
8. Properly maintaining, and performing appropriate preventative maintenance on, all equipment and building systems affecting the Assured Performance Guarantee in accordance with manufacturers' standards and specifications;
9. Providing the utility bills, reports, and similar information reasonably necessary for administering Consultant's obligations under the Assured Performance Guarantee within five (5) days of City receipt and/or generation or Consultant's request therefore;
10. Providing all records relating to energy and/or water usage and related maintenance of the premises and relevant equipment requested by Consultant;

Schedule P-3

11. Providing and installing utility sub-meters on all new construction and/or additions built during the Guarantee Term as recommended by Consultant or, alternatively, paying Consultant's applicable fees for calculating necessary adjustments to the Assured Performance Guarantee as a result of the new construction;
12. Providing and maintaining a dedicated telephone line and/or TCP/IP remote connection to facilitate remote monitoring of relevant equipment;
13. Promptly notifying Consultant of any change in use or condition described in Section III of P-2 or any other matter that may impact the Assured Performance Guarantee;
14. Taking all actions reasonably necessary to achieve the Non-Measured Project Benefits;

PRICE AND PAYMENT TERMS

City shall make payments to Consultant pursuant to this Schedule P-4.

1. *Work.* The price to be paid by City for the Work shall be **\$1,080,000**. Payment for all work authorized by the City's representative shall be made no more than once a month during the implementation term. Payment shall be due and payable each month following issuance of the City's Notice to Proceed. The City shall make payments upon presentation of the Consultant's detailed Invoice and accompanying Summary and Progress Report and the City's written approval. Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date.

The City agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from the date of receipt. The total amount paid to Consultant shall not exceed amount set forth herein, except by written amendment to this Agreement, executed by both parties.

2. *M&V Services.* The total price for Consultant's M&V Services, as detailed on Schedule P-2 of this Attachment, is \$187,832. This amount will be paid to Consultant in annual installments. These payments will be due and payable when City receives Consultant's invoice and shall continue throughout the Guarantee Term. Consultant will bill City for services rendered. The City agrees to pay invoices for all services performed as soon as reasonably possible, but not later than thirty (30) days from the date of receipt. The total amount paid to Consultant shall not exceed amount set forth herein, except by written amendment to this Agreement, executed by both parties.

Year	Performance Reporting & Assurance Services	Solar PV System Preventative Maintenance Services	Total Services
1	\$ 7,435	\$ 5,800	\$ 13,235
2	\$ 7,658	\$ 5,974	\$ 13,632
3	\$ 7,888	\$ 6,153	\$ 14,041
4	\$ 8,124	\$ 6,338	\$ 14,462
5	\$ 8,368	\$ 6,528	\$ 14,896
6	\$ 8,619	\$ 6,724	\$ 15,343
7	\$ 8,878	\$ 6,926	\$ 15,803
8	\$ 9,144	\$ 7,133	\$ 16,277
9	\$ 9,418	\$ 7,347	\$ 16,766
10	\$ 9,701	\$ 7,568	\$ 17,269
11	\$ 9,992	\$ 7,795	\$ 17,787
12	\$ 10,292	\$ 8,029	\$ 18,320
Totals	\$ 105,518	\$ 82,314	\$ 187,832

NOTICE TO PROCEED

Johnson Controls, Inc.
3021 W Bend Dr
Irving, TX 75063
ATTN: Gary Carlisle

Re: Notice to Proceed for Energy Operational Savings Program Performance Contract (Phase IV)

Dear Mr. Carlisle:

This Notice to Proceed is being issued by City of El Paso ("City") to Johnson Controls, Inc. ("Consultant") pursuant to that certain Performance Contract entered into between City and Consultant for the purpose of notifying Consultant to commence work under such contract.

Consultant and City agree that the City shall not issue the Notice to Proceed unless and until the execution of the Performance Contract by City and Consultant, the delivery of Performance and Payment Bonds

By signing and dating this Notice to Proceed, the parties hereto agree to these terms and represent and warrant they have the authority to execute this Notice to Proceed on behalf of their respective organizations.

CITY OF EL PASO

Signature: _____

Printed Name: _____

Title: _____

Date: _____

ACKNOWLEDGED & AGREED TO:

JOHNSON CONTROLS, INC.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

CHANGE ORDER

Performance Contract dated _____, 20____ between Johnson Controls, Inc. and City. Contract No. _____	Change Order No. _____	Date (mo/day/yr) _____
City City of El Paso	Dept. ID# _____	Fund: Account: _____
The above referenced Performance Contract is hereby modified to the extent described below in accordance with the Terms and Conditions of the CHANGE ORDERS section thereof.		
Scope of Work changed as follows: 		
Total amount of this Change Order	\$	
Total Performance Contract amount as revised by this Change Order	\$	
The time for completion is: <input type="checkbox"/> increased, <input type="checkbox"/> decreased, <input type="checkbox"/> unchanged. The new completion date resulting from this Change Order is:	(mo, day, yr)	
[check if applicable] Assured Performance Guarantee changed as follows: 		
Unless specifically changed by this Change Order, all terms, conditions and provisions of the above referenced Performance Contract remain unchanged and in full effect.		
JOHNSON CONTROLS, INC.	CITY	
Signature:	Signature:	
Printed Name:	Printed Name:	
Title:	Title:	
	Approved as to Legal Form:	
	Signature	
	Printed Name:	
	Assistant City Attorney	

CERTIFICATE OF SUBSTANTIAL COMPLETION

PARTIES: JOHNSON CONTROLS, INC. ("Consultant")
3021 West Bend Dr
Irving, TX 75063

CITY OF EL PASO ("City")
Two Civic Center Plaza
El Paso, TX 79901-1196

PROJECT: Energy Operational Savings Program; Performance Contract dated _____, 20__
between Consultant and City (Phase IV)

By executing this Certificate of Substantial Completion, City acknowledges the following:

- a. The work set forth in the Performance Contract is substantially complete.
- b. City has received the manuals, warranty information, and training required under the Performance Contract.
- c. The following punch list items must be completed by Consultant (check as applicable):

- punch list attached
- punch list complete

- d. Upon completion of the punch list items, or if such punch list items are complete, Consultant and City shall sign the Certificate of Final Completion attached hereto.

Dated _____, 20__ .

CITY:

Signature: _____

Printed Name: _____

Title: _____

JOHNSON CONTROLS, INC.

Signature: _____

Printed Name: _____

Title: _____

Distribution:
Contractor
Consultant
Applicable City Department(s)
Engineering Department
Contract Compliance

CERTIFICATE OF FINAL COMPLETION

PARTIES: JOHNSON CONTROLS, INC. ("Consultant")
3021 West Bend Dr
Irving, TX 75063

CITY OF EL PASO ("City")
Two Civic Center Plaza
El Paso, TX 79901-1196

PROJECT: Energy Operational Savings Program; Performance Contract dated _____, 20__
between Consultant and City (Phase IV)

By executing this Certificate of Final Completion, City acknowledges the following:

- a. The work set forth in the Performance Contract has been reviewed and determined by City to be fully complete.
- b. City accepts the work as complete and hereby releases Consultant's obligations under any performance and payment bonds posted for the project as of the date set forth below.

Dated _____, 20__ .

CITY:
Signature: _____
Printed Name: _____
Title: _____

JOHNSON CONTROLS, INC.
Signature: _____
Printed Name: _____
Title: _____

Distribution:
Contractor
Consultant
Applicable City Department(s)
Engineering Department
Contract Compliance

SCHEDULE P-8

Attachments to SECO Stimulus
Program Loan Agreement –
“Comptroller of Public
Accounts Grant Agreement
[ARRA] for Distributed
Renewable Energy Program”
(Consists of Attachments
A through K)

COMPTROLLER OF PUBLIC ACCOUNTS GRANT AGREEMENT [ARRA]

FOR

DISTRIBUTED RENEWABLE ENERGY PROGRAM

STATE OF TEXAS

COUNTY OF TRAVIS

Recitals

Whereas, the United States Congress enacted and the President signed the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (2009) (ARRA) to promote economic recovery, investment and creation of new jobs and opportunities for all Americans including Texans in the form of stimulus grant funds for projects that meet the requirements of both ARRA and Texas Comptroller of Public Accounts' (Comptroller) State Energy Conservation Office SECO programs, funded through the United States Department of Energy (DOE); and

Whereas, Comptroller's Stimulus Program (Program) has applied for and the Comptroller has been awarded ARRA funds to support Comptroller's State Energy Program for energy efficiency, renewable energy, energy assurances and other initiatives, which are managed by SECO; and

Whereas, Chapters 403, 447, and 2305, Texas Government Code; 42 U.S.C. §§ 6321, *et seq*, and the Act, P.L. 111-5, (2009), authorize Comptroller and SECO to consider applications for and award ARRA stimulus funds to local governments, municipalities, and other governmental organizations to fund approved grant-funded projects and activities; and

Whereas, Comptroller published a Notice of Availability and Request for Applications (RFA) for ARRA grant funding in order to make competitive awards of grants; and

Whereas, the City of El Paso is eligible to receive an award of ARRA grant funding as a result of the RFA process to be utilized for purposes authorized by ARRA; and

Whereas, the Comptroller wishes to award ARRA grant funding to the City of El Paso (Subrecipient) and Comptroller and Subrecipient wish to enter into this Grant Agreement (Agreement); and

Whereas, under this Agreement, Subrecipient shall fully comply with all terms, conditions, requirements, and other requirements of the Program and this Agreement, including those set forth in the Attachments attached to and incorporated in this Agreement; and

Whereas, in consideration of Subrecipient's compliance with all eligibility and other requirements of the Program and this Agreement, Comptroller agrees to award ARRA funds to Subrecipient on a cost reimbursement basis in an amount not to exceed \$900,000.00; and

Whereas, the foregoing grant amount shall be utilized by Subrecipient solely for the purposes of the Program and Comptroller's requirements regarding same, in addition to requirements as may be provided by Comptroller throughout the term of this Agreement.

Now, therefore, in consideration of all of the foregoing, the parties hereby agree as follows:

I. Parties

This Agreement is made and entered into by the following parties:

Comptroller: **Comptroller of Public Accounts,
LBJ State Office Building
111 E. 17th Street
Austin, Texas 78774**

Subrecipient: **City of El Paso
2 Civic Center Plaza
El Paso, TX 79901**

II. Authority

This Agreement is entered into pursuant to Chapters 403, 447, and 2305, Texas Government Code; 42 U.S.C. §§6321, *et seq.*, and the American Recovery and Reinvestment Act of 2009, P.L. 111-5 (2009) (ARRA). Funding of this grant is provided by Comptroller via the DOE.

III. Services

Subrecipient shall utilize the grant funds solely for the purposes authorized by Comptroller and Program and shall maintain full compliance with all terms and conditions described in the Grant Application and all Attachments to this Agreement, in Section X, below which are attached hereto and incorporated herein for all purposes. In addition, Subrecipient shall fully comply with all special provisions of this Agreement and reporting requirements and with Comptroller directives throughout the term of this Agreement.

Subrecipient shall retain full control over the personnel, equipment, supplies, and other items Subrecipient selects as necessary to comply with the terms of this Grant and as described in Attachment A. This Agreement does not involve proprietary rights or intellectual property issues.

Subrecipient shall submit such records, information, and reports in such form and at such times as may be required by Comptroller; these reports shall include, but are not limited to, the reports specified in Attachments A and L

IV. Payments

Total payments to Subrecipient under this Agreement shall not exceed **Nine Hundred Thousand Dollars and No Cents (\$900,000.00)**. Subrecipient's payments under this Agreement are limited to reimbursements of actual authorized costs incurred pursuant to the budget provided in Attachment A, which is attached to and incorporated into this Agreement for all purposes. No other amounts shall be paid. Each month, Subrecipient shall submit each request for payment by submitting a detailed invoice, listing expenses by budget categories to Comptroller. Subrecipient shall submit invoices that are fully supported by receipts and such other documentation as may be required by Comptroller. Comptroller reserves the right, in its sole discretion, to withhold payment of invoices for which Subrecipient does not submit documentation acceptable to Comptroller. Subrecipient shall submit monthly invoices for services performed and costs incurred in the prior month.

Title to and control over equipment or license of any software so purchased for Subrecipient's performance under this Agreement shall remain with Subrecipient so long as it is being used for the purpose for which it was intended under the terms of this Agreement.

Comptroller reserves the right, in its sole discretion, to authorize revisions to budgeted amounts to provide for flexibility within budget categories. Comptroller must give prior approval of all such revisions through execution of a written amendment to this Agreement.

V. Inspection, Monitoring and Records

Subrecipient shall permit Comptroller to inspect and shall make available to Comptroller for inspection any and all pertinent records, files, information and other written material pertaining to the operation of programs and expenditure of funds under this Agreement. This information includes, but is not limited to, all information maintained by Subrecipient or any of its agents, employees or other parties. Subrecipient shall maintain, keep and preserve at its principal office all such records for a period of four (4) years and make the same available to Comptroller, other state or federal agencies for auditing or other purposes authorized by applicable federal or state law or guidelines. Comptroller may also carry out monitoring and evaluation activities to ensure Subrecipient's compliance with the Program that is the subject of this Agreement and to make available copies of all financial audits and related management letters of Subrecipient, if any, as required under any applicable federal or state law or guidelines. Subrecipient shall also comply with the inspection, monitoring and records requirements of this Agreement.

VI. Termination

Comptroller reserves the right, in its sole discretion, to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Subrecipient.

Upon receipt of notice of termination from Comptroller, Subrecipient shall immediately cease to submit monthly statements or requests for reimbursement and shall cancel, withdraw or otherwise terminate any outstanding orders or commitments under this Agreement as of the effective date of such termination and shall otherwise cease to incur any costs; Comptroller shall have no liability whatsoever for any costs incurred after such termination date. Upon termination of this Agreement for any reason, all grant funds may be subject to refund and immediate return to Comptroller.

VII. Indemnification

TO THE EXTENT PERMITTED UNDER THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, SUBRECIPIENT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS COMPTROLLER, ITS OFFICERS, AND EMPLOYEES AND SUBRECIPIENTS, AND THE STATE OF TEXAS, ITS OFFICERS, AND EMPLOYEES AND SUBRECIPIENTS, FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES, AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF SUBRECIPIENT, OR ANY AGENT, EMPLOYEE, SUBSUBRECIPIENT, OR SUPPLIER OF SUBRECIPIENT IN THE EXECUTION OR PERFORMANCE OF THIS AGREEMENT. SUBRECIPIENT SHALL COORDINATE ITS DEFENSE WITH THE TEXAS ATTORNEY GENERAL AS REQUESTED BY COMPTROLLER.

THIS SECTION IS NOT INTENDED TO AND SHALL NOT BE CONSTRUED TO REQUIRE SUBRECIPIENT TO INDEMNIFY OR HOLD HARMLESS COMPTROLLER OR THE STATE OF TEXAS FROM ANY CLAIMS OR LIABILITIES RESULTING FROM THE NEGLIGENT ACTS OR OMISSIONS OF COMPTROLLER OR ITS EMPLOYEES.

VIII. Subcontracting

Subrecipient may subcontract or sub-grant for the purposes of this Agreement as specifically authorized by Comptroller pursuant to the terms and subject to compliance with the flow down provisions of Attachment I of this Agreement.

IX. Amendments

This Agreement may only be amended upon the written agreement of the parties by executing an amendment to this Agreement; however, Comptroller may unilaterally amend this Agreement as provided in Paragraph XVIII.

X. Incorporation of Attachments; Incorporation by Reference

This Agreement consists of all of the following documents which are attached to and incorporated in this Agreement for all purposes:

This Agreement;	
The Comptroller's RFA; Official Questions & Answers	
Attachment A:	Deliverables and Budget
Attachment B:	Application
Attachment C:	DOE Required Special Terms & Conditions;
Attachment C-1:	DOE Assurance of Compliance with Nondiscrimination Laws-Subrecipient;
Attachment C-2:	DOE Assurance of Compliance with Nondiscrimination Laws-Subcontractor
Attachment D:	Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion;
Attachment E:	Certification Regarding Lobbying, Debarment, Suspension; and other Responsibility Matters; and Drug-Free Workplace Requirements;
Attachment F:	Disclosure of Lobbying Activities;
Attachment G:	National Policy Assurances to be Incorporated as Award Terms;
Attachment H:	Intellectual Property Provisions;
Attachment I:	Subcontracting Provision; Mandatory Flowdown Provisions;
Attachment J-1:	American Recover & Reinvestment Act – Subrecipient Affidavit;
Attachment J-2:	American Recovery & Reinvestment Act – Subrecipient's Contractor Affidavit;
Attachment K:	ARRA Reporting Requirements

In the event of a conflict, the documents shall control in the following order of precedence:

1. **This Agreement and its Attachments;**
2. **Comptroller's RFA and Official Questions & Answers;**
3. **Agreed Project Work Plan, if any; and**
4. **The Subrecipient's Application**

All applicable rules, regulations and all other requirements imposed by law, including, but not limited to, those pertinent rules and regulations of Comptroller and the State of Texas, are incorporated into this Agreement by reference as if specifically written herein.

XI. Funding

Comptroller's performance of its obligations under this Agreement is contingent upon and subject to availability of and actual receipt by Comptroller of sufficient and adequate funds from the sources contemplated by this Agreement. This Agreement is subject to immediate cancellation or termination, without penalty to Comptroller, subject to the availability and receipt of these funds. In addition, Comptroller's authority and appropriations are subject to the actions of the Texas Legislature. If Comptroller becomes subject to a legislative change, revocation of statutory authority or lack of funds that would render the services to be provided under this Agreement impossible or unnecessary, Comptroller may terminate this Agreement without penalty to Comptroller or the State of Texas. In the event of a termination or cancellation under this Paragraph, Comptroller shall not be required to give notice and shall not be liable for damages or losses caused or associated with such termination or cancellation.

XII. Term of Agreement

The term of this Agreement shall begin on the date executed by all parties and be effective until **April 30, 2012**, unless terminated earlier in accordance with other provisions of this Agreement. Comptroller shall have the right, in its sole judgment and discretion, to renew this Agreement for one (1) one-year term. The provisions of the following shall survive the termination or expiration of this Agreement: Paragraphs V, VII, XV, XVI, XVII; Sections 20.2, 20.3, 20.6; Attachment C; and Attachment K.

XIII. Force Majeure

Except as otherwise provided, neither Subrecipient nor Comptroller shall be liable to the other for any delay in, or failure of performance of any requirement contained in this Agreement caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, terrorist attacks, fires, explosions, earthquakes, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing with proof of receipt within three (3) business days of the existence of such force majeure or otherwise waive this right as a defense.

XIV. Assignment

Subrecipient shall not transfer or assign any rights or duties under or any interest in this Agreement. Subrecipient shall not delegate its responsibilities or duties under the terms of this Agreement.

XV. Property Rights

The parties to this Agreement agree that this Grant does not involve proprietary rights or intellectual property rights issues.

No later than the first calendar day after the termination or expiration of this Agreement or at Comptroller's request, Subrecipient shall deliver to Comptroller all completed, or partially completed work and any and all documentation or other products and results of the Subrecipient's Project(s). Failure to timely deliver such work and any and all documentation or other products and results of results of the Subrecipient's Project(s) shall be considered a material breach of this Agreement. Subrecipient shall not make or retain any copies of the work or any and all documentation or other products and results of the Subrecipient's Project(s) without the prior written consent of Comptroller, except to the extent necessary in the ordinary course of business.

In the event of any conflicting provisions between this Paragraph and Attachment H, Attachment H shall control.

XVI. Severability Clause

In the event that any provision of this Agreement is later determined to be invalid, void, or unenforceable, then the remaining provisions of this Agreement shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

XVII. Dispute Resolution Process

Chapter 2260 of the Texas Government Code (Chapter 2260) prescribes dispute resolution processes for certain breach of contract claims applicable to certain contracts for goods and services. As required by Chapter 2260, Comptroller has adopted rules under Chapter 2260, codified at 34 Texas Administrative Code §§1.360 – 1.387, and may adopt revisions to these rules throughout the term of this Agreement, including any extensions. Subrecipient shall comply with such rules.

The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, by Comptroller and Subrecipient to attempt to resolve any claim for breach of contract made by Subrecipient under this Agreement:

- (A) Subrecipient's claim for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Subrecipient shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. Said notice shall also be given to all other representatives of Comptroller and Subrecipient otherwise entitled to notice under this Agreement. Compliance by Subrecipient with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

- (B) The contested case process provided in Chapter 2260 is Subrecipient's sole and exclusive process for seeking a remedy for an alleged breach of contract by Comptroller if the parties are unable to resolve their disputes under subparagraph (A) of this Section.
- (C) Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civ. Prac. and Rem. Code. Neither the execution of this Agreement by Comptroller nor any other conduct of any representative of Comptroller relating to this Agreement shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Agreement, the following shall apply: Should a dispute arise out of this Agreement, Comptroller and Subrecipient shall first attempt to resolve it through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by Comptroller and Subrecipient within fifteen (15) days after written notice by one of them demanding mediation under this Section. Subrecipient and Comptroller shall pay all costs of the mediation equally. By mutual agreement, Comptroller and Subrecipient may use a non-binding form of dispute resolution other than mediation. The purpose of this Section is to reasonably ensure that Comptroller and Subrecipient shall in good faith utilize mediation or another non-binding dispute resolution process before pursuing litigation. Comptroller's participation in or the results of any mediation or another non-binding dispute resolution process under this Section or the provisions of this Section shall not be construed as a waiver by Comptroller of (1) any rights, privileges, defenses, remedies or immunities available to Comptroller as an Comptroller of the State of Texas or otherwise available to Comptroller; (2) Comptroller's termination rights; or (3) other termination provisions or expiration dates of this Agreement.

XVIII. Applicable Law and Conforming Amendments

Subrecipient shall comply with all state and federal laws, regulations, requirements and guidelines applicable to a Subrecipient providing services to the State of Texas, as these laws, regulations, requirements and guidelines currently exist and as they are amended throughout the term of this Agreement. Comptroller reserves the right, in its sole discretion, to unilaterally amend this Agreement prior to award and throughout the term of this Agreement to incorporate any modifications necessary for Comptroller's or Subrecipient's compliance with all applicable state and federal laws, regulations, requirements and guidelines. Other than this provision, this Agreement may only be amended by the written agreement of the parties.

XIX. ARRA Reporting Requirements

Subrecipient Reporting. The Prime Recipient shall require that the Subrecipient with whom it sub-contracts or sub-grants, submit monthly Use of Funds Reports containing the data elements described in Section 1512(c) of the Act in addition to other federal and state reporting. In compliance with this requirement, the Subrecipient shall provide the reports as set forth in Attachment K attached hereto and incorporated herein. These reports shall be due on or before the last day of each month, with the first report due to the Prime Recipient on or before the last day of each month of this Agreement. Failure to submit a Monthly Progress Report may be grounds for termination of the Agreement.

XX. Additional Provisions

20.1 Time Limits

Time is of the essence in the performance of this Agreement and accordingly all time limits shall be strictly construed and rigidly enforced.

20.2 No Waiver

This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Comptroller or the State of Texas or otherwise available to Comptroller. The failure to enforce or

any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Comptroller under this Agreement or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Comptroller does not waive any privileges, rights, defenses, or immunities available to Comptroller or the State of Texas, or otherwise available to Comptroller, by entering into this Agreement or by its conduct prior to or subsequent to entering into this Agreement. **The modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller must be in writing, must reference this section, and must be signed by Comptroller to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to Comptroller shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Agreement or under applicable law.**

20.3 No Liability Upon Termination

If this Agreement is terminated for any reason, neither the Comptroller nor the State of Texas shall be liable for any damages, claims, losses, expenses, costs or any other amounts of any kind whatsoever arising from or related to any such termination.

20.4 Limitation on Authority; No Other Obligations

Subrecipient shall have no authority to act for or on behalf of Comptroller or the State of Texas except as expressly provided for in this Agreement; no other authority, power, use, or joint enterprise is granted or implied. Subrecipient may not incur any debts, obligations, expenses or liabilities of any kind on behalf of Comptroller.

20.5 No Other Benefits

Subrecipient shall have no exclusive rights or benefits other than those set forth herein.

20.6 Supporting Documents; Right to Audit; Independent Audits

Subrecipient shall maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with applicable Comptroller and State of Texas requirements. Subrecipient shall maintain all such documents and other records relating to this Agreement and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Subrecipient shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this Agreement, for purposes of inspecting, monitoring, auditing, or evaluating by Comptroller, the State of Texas or their authorized representatives. Subrecipient shall cooperate with auditors and other authorized Comptroller and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by Comptroller or the State of Texas. By example and not as exclusion to other breaches or failures, Subrecipient's failure to comply with this Section shall constitute a material breach of this Agreement and shall authorize Comptroller to immediately terminate this Agreement. Comptroller may require, at Subrecipient's sole cost and expense, independent audits by a qualified certified public accounting firm of Subrecipient's books and records or the State's property. The independent auditor shall provide Comptroller with a copy of such audit at the same time it is provided to Subrecipient. Comptroller retains the right to issue a request for proposals for the services of an independent certified public accounting firm under this Agreement. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.003, Tex. Gov't Code, the state auditor may conduct an audit or investigation of the Subrecipient or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by the Subrecipient or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Subrecipient or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Agreement may be amended unilaterally by the Comptroller to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.003. The Subrecipient understands that (1) the acceptance of funds under this Agreement acts as acceptance of the authority of the state auditor

to conduct an audit or investigation in connection with those funds; (2) the Subrecipient further agrees to cooperate fully with the state auditor in the conduct of the audit or investigation, including providing all records requested; (3) the Subrecipient shall ensure that this paragraph concerning the authority to audit funds received indirectly by Subrecipients through the Subrecipient and the requirement to cooperate is included in any subcontract it awards; and (4) the state auditor shall at any time have access to and the right to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Subrecipient relating to this Agreement.

20.7 Davis Bacon Act

Subrecipient shall comply, as applicable, with the provisions of the Davis-Bacon Act, as amended (40 U.S.C. § 3142)

<http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+1723+1++%28%29%20%20A> ;

The Contract Work Hours & Safety Standards Act (40 U.S.C. § 3702)

<http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+1765+1++%28%29%20%20> ;

The Copeland "Anti-Kickback" Act (18 U.S.C. § 874) [http://uscode.house.gov/uscode-](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t17t20+514+0++%28%29%20%20AND%20%28%2818%29%20ADJ%20USC%29%3)

[cgi/fastweb.exe?getdoc+uscview+t17t20+514+0++%28%29%20%20AND%20%28%2818%29%20ADJ%20USC%29%3ACITE%20AND%20%28USC%20w%2F10%20%28874%29%29%3ACITE%20%20%20%20%20%20%20%20%20%20%20%20%20](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t17t20+514+0++%28%29%20%20AND%20%28%2818%29%20ADJ%20USC%29%3ACITE%20AND%20%28USC%20w%2F10%20%28874%29%29%3ACITE%20%20%20%20%20%20%20%20%20%20%20%20%20)

20.9 Buy American Act – ARRA 1606

Subrecipients shall comply with the Buy American Act as applicable under – 41. U.S.C. 10a-10d ARRA located at:

http://www.acquisition.gov/FAR/current/html/subpart%2025_6.html

20.10 Federal Funding Accountability and Transparency Act (P.L. 109-282).

P.L. 109-282 requires a reduction in “wasteful and unnecessary spending” by the federal government, including spending on funds earmarked for special projects. The legislation requires the Office of Management and Budget (OMB) to establish a publicly available, online database containing information about entities that are awarded federal grants, loans, and contracts. Subrecipient shall comply with this provision as applicable. <http://www.pubklaw.com/legis/pl109-282.pdf>

20.11 Data Management

In compliance with OMB Circular A-123, it is essential for Subrecipients to apply appropriate internal controls to effectively manage the accuracy, integrity, timeliness, and appropriate privacy of all data submitted to <http://www.USAspending.gov>.

20.12 National Environmental Policy Act

The Subrecipient shall assume the environmental responsibilities for projects and in doing so shall comply with the provisions of the National Environmental Policy Act of 1969, as amended and the Council on Environmental Quality regulations contained in 40 C.F.R. parts 1500 through 1508. http://www.access.gpo.gov/nara/cfr/waisidx_07/40cfr1501_07.html ; (44 C.F.R. 10.1)

20.13 National Historic Preservation Act of 1966

Subrecipient shall comply with the National Historic Preservation Act of 1966 (§§16 U.S.C. 470 et seq) and shall not take any action that will affect any district, site, building, structure, or object that is included in the National Register without prior notification to and concurrence of DOE and the State Historic Preservation Office (SHPO) which in Texas is the Texas Historical Commission. Subrecipient shall identify any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and comply with or assist with the compliance of §16 U.S.C. 470f and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C.469a-1, et seq.). Compliance with Section 106 of the NHPA occurs only after Subrecipient has submitted adequate background documentation to the SHPO for its review, and the SHPO has provided written concurrence to the Subrecipient that it does not object to its Section 106 finding or determination. Subrecipient shall provide a copy of this concurrence to the Contracting Officer. <http://www.achp.gov/docs/nhpa%202008-final.pdf>

20.14 Solid Waste Disposal Act

Prior to the expenditure of Federal funds to store, process, or dispose of hazardous materials Subrecipient shall comply with the Solid Waste Disposal Act, Texas Health & Safety Code, Chapter 361, and Title 30, Texas Administrative Code Chapter 335 "Industrial Solid Waste and Municipal Hazardous Waste" administered by the Texas Commission on Environmental Quality. Sanitary or hazardous waste is defined in 40 CFR Part 260 and 30 TAC Chapter 335 to include, but not be limited to, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos. Subrecipient shall obtain any required permit and retain all compliance documentation related to the project.

<http://www.statutes.legis.state.tx.us/docs/HS/htm/HS.361.htm>

20.15 Report of Fraud, Waste and Abuse: Texas Government Code, Section 321.022

If the administrative head of a department or entity that is subject to audit by the Texas State Auditor has reasonable cause to believe that money received from the State by the Subrecipient or by a client or contractor of the Subrecipient may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the Subrecipient, the administrative head shall report the reason and basis for the belief to the Texas State Auditor. The Texas State Auditor may investigate the report or may monitor any investigation conducted by the Subrecipient. See <http://sao.fraud.state.tx.us/>

XXI. Signatories

The undersigned signatories represent and warrant that they have full authority to enter into this Agreement on behalf of the respective parties.

XXII. Merger

This Agreement contains the entire agreement between the parties relating to the rights granted and the obligations assumed in it. Any oral representations or modifications concerning this Agreement shall be of no force or effect unless contained in a subsequent writing, signed by both parties.

COMPTROLLER OF PUBLIC ACCOUNTS**SUBRECIPIENT:
City of El Paso**

By: _____
Martin A. Hubert
Deputy Comptroller

By: _____
Joyce Wilson
City Manager

Date: _____

Date: _____

**ATTACHMENT A
DELIVERABLES AND BUDGET**

A. Subrecipient shall provide the following services during the period of this Agreement and all services reasonably related to them. The Comptroller may request additional records, information or reports related to the services hereinafter described and funded by the Comptroller pursuant to this Attachment A.

The minimum deliverables and milestones are summarized as follows:

Deliverables and Milestones	Schedule
1. Subrecipient shall oversee the installation of a 200kW roof mounted solar PV array at Building 2 of the El Paso Water Utilities site. Subrecipient shall ensure implementation and infrastructure site is in compliance with all state, federal and local laws. Subrecipient shall coordinate with subcontractors to oversee the permitting, site preparation and installation activity	Upon Contract Execution - March 2012
2. Subrecipient shall oversee the installation of a data monitoring system which will collect, record and display system performance. The data monitoring system will gather energy performance and savings (pre- and post-installation). The monitoring system will track real time power output and store data to allow the display of hourly, daily, monthly and yearly totals as well as to date totals.	December 2011-Ongoing
3. Subrecipient shall promote awareness of the project to increase understanding among the general public and staff of the benefits of renewable energy.	Upon Contract Execution - Ongoing
4. Subrecipient shall prepare and submit an online Monthly Progress Report in accordance with Attachment K, ARRA Reporting Requirements as outlined in the Application.	On or by the last day of each month
5. Subrecipient shall prepare and submit a Final Project Report.	April 30, 2012

B. Budget

Personnel¹	\$ 0.00
Subcontract	\$900,000.00
Total	\$900,000.00
Leveraged Funds / Match	\$180,000.00

¹ Marty Howel, Sustainability Manager, shall be Project Director for this project and shall be responsible for the overall supervision and conduct of the project on behalf of Contractor. Any Change of Project Director shall be subject to the prior written approval of Agency.

CS#

CFDA Number 81.041

Federal Award Number: DE-EE0000116

ATTACHMENT B

APPLICATION

Subrecipient's Application is hereby attached to and incorporated into this Attachment B of this Agreement for all purposes.

ATTACHMENT C

**DOE SPECIAL TERMS AND CONDITIONS REQUIRED
IN GRANT TO THE COMPTROLLER OF PUBLIC ACCOUNTS
AND FLOW DOWN TO ARRA GRANTS AND COOPERATIVE AGREEMENTS**

A. Site Visits. DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Subrecipients must provide, and must require Subcontractors to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

B. Decontamination and/or Decommissioning (D&D) Costs. Notwithstanding any other provisions of this Agreement, the DOE or the Recipient shall not be responsible for or have any obligation to the Subrecipient for (i) D&D of any of the Subrecipient's facilities, or (ii) any costs which may be incurred by the Subrecipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER ARRA (May 2009)

A. Flow Down Requirement. Subrecipient understands that Comptroller/Recipient is subject to the following provisions. Subrecipient shall cooperate with Comptroller/Recipient relevant to such compliance. Subrecipient must include these special terms and conditions in any subcontracts.

B. Segregation of Costs. Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds. None of the funds provided under this agreement derived from ARRA, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records. With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

(1) to examine any records of the Subrecipient or Subrecipient Subcontractor any of its subcontractors or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the grant or subcontract; and

(2) to interview any officer or employee of the Subrecipient or Subrecipient Subcontractor agency regarding such transactions.

E. Publication. An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the Subrecipient or Subrecipient Subcontractor does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the Subrecipient or Subrecipient Subcontractor should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this Subrecipient or Subrecipient Subcontractor receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the Subrecipient or Subrecipient Subcontractor.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers. The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the ARRA, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any pre-dispute arbitration agreement. No pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under ARRA, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of ARRA, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.)

G. Reserved

H. False Claims Act. Recipient and Subrecipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, Subrecipient Subcontractor, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in Support of ARRA Reporting. Subrecipient may be required to submit backup documentation for expenditures of funds under the ARRA including such items as timecards and invoices. Subrecipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds. Funds obligated to this award are available for reimbursement of costs as provided in Exhibit G.

L. Certifications. With respect to funds made available to State or local governments for infrastructure investments under ARRA, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF ARRA

Recipients and their first-tier Subrecipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with ARRA funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

DOE ASSURANCE OF COMPLIANCE, NON DISCRIMINATION IN STATE ASSISTED PROGRAMS

Subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1977 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10 Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Subrecipient agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Subrecipient receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation. In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance funding extended to Subrecipient by the Department of Energy, this assurance obligates Subrecipient for the period during which the Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so

provided, this assurance obligates Subrecipient for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates Subrecipient for the period during which the Federal assistance is extended to Subrecipient by the Department of Energy.

Employment Practices. Where a primary objective of the Federal assistance is to provide employment or where Subrecipient's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, Subrecipient agrees not to discriminate on the ground of race, color, national origin, sex, and disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

Subrecipient Assurance. Subrecipient shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, Subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and Subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records. Subrecipient agrees to compile and maintain information pertaining to programs or activities developed as a result of Subrecipient's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be serviced by race, color, national origin, sex, and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by Subrecipients with laws cited in the first paragraph of this assurance.

Subrecipient agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Subrecipient from the use of Federal funds extended by the Department of Energy. Facilities of Subrecipient (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to Subrecipient's compliance with the civil rights laws shall be made available for inspection during normal business hours of request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to Subrecipients by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. Subrecipient recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on Subrecipient, its successors, transferees, and assignees, as well as the person(s) whose signature appears below and who is authorized to sign this assurance on behalf of Subrecipient.

Subrecipient Certification. Subrecipient certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to Subrecipient upon written request to DOE.)

RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING CONTRACTORS

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A--102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and response of Recovery Act funds. OMB Circular A--102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.

(c) Recipients agree to separately identify to each Contractor and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to Contractors shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their Contractors to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor Contractor expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

As the duly authorized representative of the Contractor, I hereby certify that Contractor will comply with the above requirements.

ATTACHMENT C-1

DOE F 1600.5
(06-94)
All Other Editions Are Obsolete**U.S. DEPARTMENT OF ENERGY**
Assurance of Compliance
Nondiscrimination in State Assisted Programs
OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422-GTN, Paperwork Reduction Project (1910-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1910-0400), Washington, DC 20503.

City of El Paso (Hereinafter called the "Applicant") HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1977 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10 Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance funding extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which the Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, and disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be serviced by race, color, national origin, sex, and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours of request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, as well as the person(s) whose signature appears below and who is authorized to sign this assurance on behalf of the Applicant.

Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE.)

Designated Responsible Employee

Marty Howel, Sustainability Manager

Name and Title (Printed or Typed)

(915) 541-4925

Telephone Number

Signature

Date

Contractor

City of El Paso

Name of Organization

2 Civic Center Plaza El Paso, TX 79901

Address

(915) 541-4925

Telephone Number

Authorized Official:

Joyce Wilson, City Manager

Name and Title (Printed or Typed)

(915) 541-4925

Telephone Number

Signature

Date

ATTACHMENT C-2 Contract No. _____

DOE F 1600.5
(06-94)
All Other Editions Are Obsolete

OMB Control No.
1910-0400

U.S. DEPARTMENT OF ENERGY
Assurance of Compliance
Nondiscrimination in State Assisted Programs

OMB Burden Disclosure Statement

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Information Resources Management Policy, Plans, and Oversight, Records Management Division, HR-422-GTN, Paperwork Reduction Project (1910-0400), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (1910-0400), Washington, DC 20503.

_____ (Hereinafter called the "Subcontractor") HEREBY AGREES to comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), Section 16 of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), Section 401 of the Energy Reorganization Act of 1974 (Pub. L. 93-438), Title IX of the Education Amendments of 1972, as amended (Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482), Section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), the Age Discrimination Act of 1977 (Pub. L. 94-135), Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), the Department of Energy Organization Act of 1977 (Pub. L. 95-91), the Energy Conservation and Production Act of 1976, as amended, (Pub. L. 94-385) and Title 10 Code of Federal Regulations, Part 1040. In accordance with the above laws and regulations issued pursuant thereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal assistance from the Department of Energy.

Applicability and Period of Obligation

In the case of any service, financial aid, covered employment, equipment, property, or structure provided, leased, or improved with Federal assistance funding extended to the Applicant by the Department of Energy, this assurance obligates the Applicant for the period during which the Federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which Federal assistance is extended. If any personal property is so provided, this assurance obligates the Applicant for the period during which it retains ownership or possession of the property. In all other cases, this assurance obligates the Applicant for the period during which the Federal assistance is extended to the Applicant by the Department of Energy.

Employment Practices

Where a primary objective of the Federal assistance is to provide employment or where the Applicant's employment practices affect the delivery of services in programs or activities resulting from Federal assistance extended by the Department of Energy, the Applicant agrees not to discriminate on the ground of race, color, national origin, sex, and disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs, or other forms of compensation and use of facilities.

Subrecipient Assurance

The Applicant shall require any individual, organization, or other entity with which it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with laws cited above. To this end, the subrecipient shall be required to sign a written assurance form; however, the obligation of both recipient and subrecipient to ensure compliance is not relieved by the collection or submission of written assurance forms.

Data Collection and Access to Records

The Applicant agrees to compile and maintain information pertaining to programs or activities developed as a result of the Applicant's receipt of Federal assistance from the Department of Energy. Such information shall include, but is not limited to the following: (1) the manner in which services are or will be provided and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination; (2) the population eligible to be serviced by race, color, national origin, sex, and disability; (3) data regarding covered employment, including use or planned use of bilingual public contact employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English; (4) the location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any person on the basis of prohibited discrimination; (5) the present or proposed membership by race, color, national origin, sex, and disability, in any planning or advisory body which is an integral part of the program; and (6) any additional written data determined by the Department of

CS#

CFDA Number 81.041
Federal Award Number: DE-EE0000116

Energy to be relevant to the obligation to assure compliance by recipients with laws cited in the first paragraph of this assurance.

The Applicant agrees to submit requested data to the Department of Energy regarding programs and activities developed by the Applicant from the use of Federal funds extended by the Department of Energy. Facilities of the Applicant (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Applicant's compliance with the civil rights laws shall be made available for inspection during normal business hours of request of an officer or employee of the Department of Energy specifically authorized to make such inspections. Instructions in this regard will be provided by the Director, Office of Civil Rights, U. S. Department of Energy.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts (excluding procurement contracts), property, discounts or other Federal assistance extended after the date hereto, to the Applicants by the Department of Energy, including installment payments on account after such date of application for Federal assistance which are approved before such date. The Applicant recognizes and agrees that such Federal assistance will be extended in reliance upon the representations and agreements made in this assurance and that the United State shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, as well as the person(s) whose signature appears below and who is authorized to sign this assurance on behalf of the Applicant.

Applicant Certification

The Applicant certifies that it has complied, or that, within 90 days of the date of the grant, it will comply with all applicable requirements of 10 C.F.R. § 1040.5 (a copy will be furnished to the Applicant upon written request to DOE.)

Designated Responsible Employee

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

Contractor

Name of Organization

Telephone Number

Address

Authorized Official:

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

ATTACHMENT D
Certification Regarding Debarment, Suspension, Ineligibility,
and Voluntary Exclusion-Lower Tier Covered Transactions

Instructions for Certification

1. The prospective lower tier participant is required to sign the attached certification.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this application is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principle," "application," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the person to which this application is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this application that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this application that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
 - (1) The prospective lower tier participant certifies, by submission of this application, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this application.

City of El Paso
 Organization Name

Joyce Wilson, City Manager
 Name and Title of Authorized Representative

 Signature

 Date

ATTACHMENT E
CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Energy determines to award the covered transaction, grant, or cooperative agreement.

LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this

transaction was made or entered into. Submission of this certification is a prerequisite

for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for

each such failure.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective

participant shall attach an explanation to this proposal.

3. DRUG-FREE WORKPLACE

This certification is required by the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D) and is implemented through additions to the Debarment and Suspension regulations, published in the Federal Register on January 31, 1989, and May 25, 1990.

**ALTERNATE I
(SUBRECIPIENTS OTHER THAN
INDIVIDUALS)**

- (1) The Subrecipient certifies that it will or will continue to provide a drug-free workplace by:
 - (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Subrecipient's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - (b) Establishing an ongoing drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The Subrecipient's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
 - (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
 - (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer in writing, of

- his or her conviction for a violation of criminal drug statute occurring in the work-place not later than five calendar days after such conviction;
- (e) Notifying the agency, in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to energy grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
 - (1) Taking appropriate actions against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act 9f 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
- (2) The Subrecipient may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance:
(Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

CS#

CFDA Number 81.041
Federal Award Number: DE-EE0000116

ALTERNATE II (SUBRECIPIENTS WHO ARE INDIVIDUALS)

(1) The Subrecipient certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substances in conducting any activity with the grant.

(2) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

4. LOBBYING DISCLOSURE ACT OF 1995, SIMPSON-CRAIG AMENDMENT

Applicant organization which are described in section 501 (c)(4) of the Internal Revenue Code of 1986 and engage in lobbying activities after December 31, 1995, shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan. Section 501(c)(4) of the Internal Revenue Code of 1986 covers:

Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated persons or person in a particular municipality, and the net earnings of which are devoted

exclusively to charitable, educational, or recreational purposes.

As set forth in the Lobbying Disclosure Act of 1995 (Public Law 104-65, December 19, 1995), as amended ["Simpson-Craig Amendment," see Section 129 of The Balanced Budget Down payment Act, I (Public Law 104-99, January 26, 1996)], lobbying activities is defined broadly. (See section 3 of the Act.)

The undersigned certifies, to the best of his or her knowledge and belief, that: it IS NOT an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986: OR that it IS an organization described in section 501 (c)(4) of the Internal Revenue Code of 1986, which, after December 31, 1995, HAS NOT engaged in any lobbying activities as defined in the Lobbying Disclosure Act of 1995, as amended.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

City of El Paso
Name of Applicant

Pre/Award Number and/or Project Name

Joyce Wilson, City Manager
Printed Name and Title of Authorized Representative

Signature

Date

**ATTACHMENT F
DISCLOSURE OF LOBBYING ACTIVITIES**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: _____ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: _____ a. bid/offer/application b. initial award c. post award	3. Report Type: _____ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: Name _____ Address _____ _____ Prime _____ Subawardee Tier, if known: _____		5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: _____
6. Federal Department/Agency: _____	7. Federal Program Name/Description CFDA Number, if applicable: _____	
8. Federal Action Number, If known: _____	9. Award Amount, if known: _____	
10.a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLL-A, if necessary)	10.b. Individual Performing Services (including address if different from No. 10A) (last name, first name, MI): _____	
11. Amount of Payment (check all that apply): \$ _____ actual _____ _____ planned _____	12. Form of Payment (check all that apply): a. cash _____ b. in-kind; specify: nature _____ value _____	
13. Type of Payment (check all that apply): _____ a. retainer _____ c. commission _____ e. deferred _____ b. one-time fee _____ d. contingent fee _____ f. other; specify _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11: _____		
15. Continuation Sheet(s) SF-LLL-A attached: _____ Yes _____ No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annual and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure	Authorized Representative: <u>Joyce Wilson</u> Title: <u>City Manager</u> Signature: _____ Telephone: <u>(915) 541-4925</u> Date: _____	

ATTACHMENT G
National Policy Assurances to be Incorporated as Award Terms
(Version August 2008)

- To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.
- The term "You" refers to Subrecipients and subcontractors of Subrecipients.
- The term "We" or "Us" refers to the Department of Energy and the Comptroller of Public Accounts.

To the extent that a term does not apply to a particular type of activity or award, it is self-deleting.

I. Nondiscrimination Policies

You must comply with applicable provisions of the following national policies prohibiting discrimination:

- 1 On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by DOE regulations at 10 CFR part 1040;
- 2 On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DOE regulations at 10 CFR parts 1041 and 1042;
- 3 On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C.6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90 and DOE regulations at 10 CFR part 1040;
- 4 On the basis of disability, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.794), as implemented by Department of Justice regulations at 28 CFR part 41 and DOE regulations at 10 CFR part 1041;
- 5 On the basis of race, color, national origin, religion, disability, familial status, and sex under Title VIII of the Civil Rights Act (42 U.S.C. 3601 et seq.) as implemented by the Department of Housing and Urban Development at 24 CFR part 100; and
- 6 On the basis of disability in the Architectural Barriers Act of 1968(42 U.S.C. 4151 et seq.) for the design, construction, and alteration of buildings and facilities financed with Federal funds.

II. Environmental Policies

You must:

- 1 Comply with applicable provisions of the Clean Air Act (42 U.S.C.740 I, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR,1971-1975 Comp., p. 799] and Environmental Protection Agency rules at 40 CFR part 32, Subpart J.
- 2 Immediately identify to us, as the awarding agency, any potential impact that you find this award may have on:
 - a. The quality of the human environment, including wetlands, and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et. seq.) and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives until we provide written notification of Federal compliance with NIEPA, as implemented by DOE at 10 CFR part 1021.
 - b. Flood-prone areas, and provide any help we may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas, as implemented by DOE at 10 CFR part 1022.
 - c. Use of land and water resources of coastal zones, and provide any help we may need to comply with the Coastal Zone Management Act of 1972(16 U.S.C. 1451, et. seq.).
 - d. Coastal barriers along the Atlantic and Gulf coasts and Great Lakes' shores, and provide help we may need to comply with the Coastal Bathers Resource Act (16 U.S.C. 3501 et. seq.), concerning preservation of barrier resources.

e. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

f. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide any help we may need to comply with the Safe Drinking Water Act(42 U.S.C. 300h-3).

3 Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in housing owned by the Federal Government or receiving Federal assistance.

4 Comply with section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962), and implementing regulations of the Environmental Protection Agency, 40 CFR Part 247, which require the purchase of recycled products by States or political subdivision of States.

III. Live Organisms

1 **Human research subjects.** You must protect the rights and welfare of individuals that participate as human subjects in research under this award in accordance with the Common Federal Policy for the Protection of Human Subjects (45 CFR part 46), as implemented by DOE at 10 CFR part 745.

2 **Animals and plants.**

a. You must comply with applicable provisions of Department of Agriculture rules at 9 CFR parts 1-4 that implement the Laboratory Animal Welfare Act of 1966(7 U.S.C. 2131-2156) and provide for humane transportation, handling, care, and treatment of animals used in research, experimentation, or testing under this award.

b. You must follow the guidelines in the National Academy of Sciences(NAS) Publication "Guide for the Care and Use of Laboratory Animals"(1996, which may be found currently at <http://www.nap.edu/readingroom/books/labrats/>) and comply with the Public Health Service Policy and Government principles Regarding the Care and use of animals (included as Appendix D to the NAS Guide).

c. You must immediately identify to us, as the awarding agency, any potential impact that you find this award may have on endangered species, as defined by the Endangered Species Act of 1973, as amended ("the Act," 16 U.S.C. 1531-1543), and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). You also must provide any help we may need to comply with 16 U.S.C. 1536(a)(2). This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving this award.

IV. Other National Policies

1. **Debarment and suspension.** You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR parts 180 and 901.

2. **Drug-free workplace.** You must comply with drug-free workplace requirements in Subpart B of 10 CFR part 607, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

3. **Lobbying.**

a. You must comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DOE at 10 CFR part 601, and submit all disclosures required by that statute and regulation.

b. If you are a nonprofit organization described in section 501(c)(4)of title 26, United States Code (the Internal Revenue Code of 1968),you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., Chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminates the awards unilaterally for material failure to comply with the award terms and conditions. By submitting an application and accepting fluids under this agreement, you assure that you are not an organization described in section 501(c)(4) that has engaged in any lobbying activities described in the Lobbying Disclosure Act of 1995 (2 U.S.C. 1611).

c. You must comply with the prohibition in 18 U.S.C. 1913 on the use of Federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

4. **Officials not to benefit.** You must comply with the requirement that no member of Congress shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41U.S.C. 22.

5. **Hatch Act.** If applicable, you must comply with the provisions of the Hatch Act (5U.S.C. 1501-1508 and 7324-7326), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

6. **Native American graves protection and repatriation.** If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native

American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

7. **Fly America Act.** You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the "Fly America Act," and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require air transport of people or property to, from, between or within a country other than the United States, the cost of which is supported under this award, to be performed by or under a cost-sharing arrangement with a U.S. flag carrier, if service is available.

8. **Use of United States-flag vessels.**

a. Pursuant to Pub. L. 664 (43 U.S.C. 1241(b)), at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds under this award, and which may be transported by ocean vessel, must be transported on privately owned United States-flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 9.a of this section shall be furnished to both our award administrator (through you in the case of your contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9. **Research misconduct.** You must comply with the government-wide policy on research misconduct issued by the Office of Science and Technology Policy (available in the Federal Register at 65 FR 76260, December 6,2000, or on the Internet at www.ostp.gov), as implemented by DOE at 10 CFR part 733 and 10 CFR 600.31.

10. **Requirements for an Institution of Higher Education Concerning Military recruiters and Reserve Officers Training Corps (ROTC).**

a. As a condition for receiving funds under an award by the National Nuclear Security Administration of the Department of Energy, you agree that you are not an institution of higher education that has a policy or practice placing any of the restrictions specified in 10 U.S.C. 983. as implemented by 32 CFR part 216, on:

i. Maintenance, establishment, or operation of Senior ROTC units, or student participation in those units; or

ii. Military recruiters' access to campuses, students on campuses, or information about students.

b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this award, we:

i. Will cease all payments to you of funds under this award and all other awards subject to the requirements in 32 CFR part 216; and

ii. May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. Historic preservation. You must identify to us any:

- a. Any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and provide any help we may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, "Identification and Protection of Historic Properties," [3 CFR, 1971-1975 Comp., p. 559].
- b. Potential under this award for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to this award, to comply with the Archaeological and Historic Preservation Act of 1974 (16 U.S.C.469a-1, et seq.).

12. Relocation and real property acquisition. You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970(42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13. Confidentiality of patient records. You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under this award, in accordance with 42 U.S.C. 290dd-2.

14. Constitution Day. You must comply with Public Law 108-447, Div. J, Title I, Sec. 111(36 U.S.C. 106 note), which requires each educational institution receiving Federal funds in a Federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

15. Trafficking in Persons

a. Provisions applicable to a recipient that is a private entity.

1. You as the recipient, your employees, subrecipients under this award, and subrecipient's employees may not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect;
- or
- iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —

i. Is determined to have violated a prohibition in paragraph a. 1 of this award term;

or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1. of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," as implemented by our agency at 2 CFR part 901.

b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a. 1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a. 1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180,

"OMB Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," as implemented by our agency at 2 CFR part 901.

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1. of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 orb. of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TWA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a. 1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. "Private entity":
 - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - ii. Includes:
 - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - B. A for-profit organization.
4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TWA, as amended (22 U.S.C. 7102).

V. National Policy Requirements for Subawards.

Recipient responsibility. You must include in any subaward you make under this award the requirements of the national policy requirements in Sections I through IV of this document that apply, based on the type of subawardee organization and situation.

As the duly authorized representative of the Subrecipient, I hereby certify that Subrecipient will comply with the above requirements.

SUBRECIPIENT: City of El Paso

By: _____
Joyce Wilson, City Manager

Date: _____

ATTACHMENT H

Intellectual Property Provisions

AUTHORIZATION AND CONSENT (41 CFR 9-9.102-1)

The Government hereby gives its authorization and consent (without prejudice to any rights of indemnification) for all use and manufacture, in the performance of this grant or any part hereof or any amendment hereto or any subcontract hereunder (including all lower-tier subcontracts hereunder), of any invention described in and covered by a patent of the United States.

- (a) embodied in the structure or composition of any article, the delivery of which is accepted by the Government under this grant, or
- (b) utilized in the machinery, tools, or methods, the use of which necessarily results from compliance by the Subrecipient or the using subcontractor with
 - (i) specifications or written provisions now or hereafter forming a part of this grant, or
 - (ii) specific written instructions given by the Contracting Officer directing the manner of performance.

The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clauses, if any, included in this grant or any subcontract hereunder (including all lower-tier subcontracts hereunder), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

PATENT INDEMNITY (41 CFR 9-9.103-1)

If the amount of this contract is in excess of \$10,000 the contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States letters patent (except U.S. letters patent issued upon an application which is now or may hereafter be kept secret or otherwise withheld from issue by order of the Government) arising out of the manufacture or delivery of supplies or out of construction, alteration, modification, or repair of real property (hereinafter referred to as "construction work") under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work. The foregoing indemnity shall not apply unless the contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and further, such indemnity shall not apply to: (a) an infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the contractor; (b) an infringement resulting from addition to or change in, such supplies or components furnished or construction work performed which addition or change was made subsequent to delivery or performance by the contractor; or (c) a claimed infringement which is settled without the consent of the contractor, unless required by final decree of a court of competent jurisdiction.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (41 CFR 9-9.104(b))

The provisions of this clause shall be applicable only if the amount of this grant exceeds \$10,000.

- (a) The Subrecipient shall report to the Contracting Officer, promptly and in reasonable written detail, each notice of claim of patent or copyright infringement based on the performance of this grant of which the Subrecipient has knowledge.
- (b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this grant or out of the use of any supplies furnished or work or services performed hereunder, the Subrecipient shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Subrecipient pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Subrecipient has agreed to indemnify the Government.
- (c) This clause shall be included in all contracts and subgrants under this grant.

REPORTING OF ROYALTIES (41 CFR 9-9.110)

If this grant is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the grant or are reflected in the grant price to the Government, the Subrecipient agrees to report in writing to the Patent Counsel (with notification by Patent

Counsel to the Contracting Officer) during the performance of this grant and prior to its completion of final settlement the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this grant together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which the royalties are to be paid. The approval of DOE of any individual payments or royalties shall not stop the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

RIGHTS IN TECHNICAL DATA (SHORT FORM)

(a) Definitions. The definitions of terms set forth in DEAR 927.401 apply to the extent these terms are used herein.

(b) Allocation of Rights.

(1) The Government shall have:

- (i) Unlimited rights in technical data first produced or specifically used in the performance of this grant;
- (ii) The right of the Contracting Officer or his representatives to inspect, at all reasonable times up to three years after final payment under this grant, all technical data first produced or specifically used in the grant (for which inspection the Subrecipient or its contractor or Subrecipient shall afford proper facilities to DOE); and
- (iii) The right to have any technical data first produced or specifically used in the performance of this grant delivered to the Government as the Contracting Officer may from time-to-time direct during the progress of the work, or in any event as the Contracting Officer shall direct upon completion or termination of this grant.

(2) The Subrecipient shall have:

The right to use for its private purposes, subject to patent, security or other provisions of this grant, technical data it first produces in the performance of this grant provided the date requirements of this grant have been met as of the date of the private use of such data. The Subrecipient agrees that to the extent it receives or is given access to proprietary data or other technical, business or financial data in the form of recorded information from DOE or a DOE contractor or subcontractor, the Subrecipient shall treat such data in accordance with any restrictive legend contained thereon, unless use is specially authorized by prior written approval of the Contracting Officer.

(c) Copyrighted Material.

(1) The Subrecipient agrees to, and does hereby grant to the Government, and to others acting on its behalf:

- (i) A royalty-free, nonexclusive, irrevocable, worldwide license for Governmental purposes to reproduce, distribute, display, and perform all copyrighted material first produced or composed in the performance of this grant by the Subrecipient, its employees or any individual or concern specifically employed or assigned to originate and prepare such material and to prepare derivative works based thereon; and
- (ii) A license as aforesaid under any and all copyrighted or copyrighted work not first produced or composed by the Subrecipient in the performance of this grant but which is incorporated in the material furnished under the grant, provided that such license shall be only to the extent the Subrecipient now has, or prior to completion or close-out of the grant, may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(2) The Subrecipient agrees that it will not knowingly include any material copyrighted by others in any written or copyrighted material furnished or delivered under this grant without a license as provided for in subparagraph (c) (1) (ii) of this section, or without the consent of the copyright owner, unless it obtains specific written approval of the Contracting Officer for the inclusion of such copyrighted material.

RIGHTS TO PROPOSAL DATA (TECHNICAL) (48 CFR 52.227-23)

It is agreed that as a condition of award of this grant or modification and notwithstanding the conditions of any notice appearing on the proposal(s), the Government shall have the right to use, duplicate, and disclose and have others to do so for any purpose whatsoever, the technical data contained in the proposal(s) upon which the grant or modification is based.

City of El Paso
Organization Name

Joyce Wilson, City Manager
Name and Title of Authorized Representative

Signature

Date

ATTACHMENT I

SUBCONTRACTING PROVISIONS; MANDATORY FLOWDOWN PROVISION

Subrecipient, if subcontracting any of its performance hereunder, shall legally bind Subrecipients to perform and make such Subrecipients subject to all the duties, requirements, and obligations of Subrecipient under this Agreement. Subrecipient shall be jointly and severally liable for all performances under this Agreement, including, but not limited to, the performance of its Subrecipients to the extent permitted under the Constitution and laws of the State of Texas, as well as full compliance with all reporting requirements set forth in Section XIX of the Agreement.

Subrecipient represents and warrants that it has obtained all necessary permits, licenses, easements, waivers and permissions of whatsoever kind required for its performance and the performance of its Subrecipients under this Agreement. In no event shall any provision of this Paragraph, including, but not limited to, the requirement that Subrecipient obtain the prior approval of Agency on Subrecipient's proposed subcontracts, be construed as relieving Subrecipient of the responsibility for ensuring that all services rendered under any subcontracts comply with all the terms and provisions of this Agreement as if they were rendered by Subrecipient. Subrecipient shall, upon request, furnish Agency with copies of all proposed subcontracts and all proposed amendments, assignments, cancellations or terminations of said subcontracts no later than thirty (30) days prior to the proposed effective date of such contracts, amendments, assignments, cancellations or terminations; provided, however, that this thirty (30) day period may be shortened by written agreement of the parties. Upon request from the Comptroller, Subrecipient shall provide any and all documentation deemed necessary by the Comptroller to evidence Subcontractors compliance with all terms, conditions and performance pertaining to the Agreement and all applicable law.

As the duly authorized representative of the Subrecipient and the Subrecipient/Subrecipient, I hereby certify that Subrecipient and Subrecipient/Subrecipient will comply with the above requirements.

SUBRECIPIENT: City of El Paso

SUBRECIPIENT

By: _____
Joyce Wilson
City Manager

Date: _____

ATTACHMENT J-1

AMERICAN RECOVERY & REINVESTMENT ACT--RECIPIENT AFFIDAVIT

This Affidavit must be signed and sworn (notarized)

I, _____, an authorized representative of: _____, a [person, sole proprietorship, partnership, corporation, limited liability company, nonprofit organization, governmental entity, political subdivision, or other entity] (circle one) that is receiving American Recovery and Reinvestment Act of 2009 (ARRA or the Act) funding, hereby swear and affirm that, to the best of my knowledge, internal controls, processes and procedures have been designed and implemented to help ensure that the recipient and its use of these funds complies with the following: applicable state law; federal law, including federal reporting requirements under Section 1512 of the Act, if applicable; rules; regulations; and other relevant guidance. I further swear and affirm that all of the statements made and information provided herein, including statements made and information provided in any attachments are true, complete, and correct, to the best of my knowledge.

I understand that I am receiving ARRA funding from _____, a [state agency, institution of higher education, governmental entity, political subdivision, or other entity] (circle one).

I understand that non-compliance with reporting requirements could be treated as a violation of the award agreement resulting in the withholding of funds, debarment, or award termination or suspension, as appropriate.

I understand that it is a federal crime under 18 U.S.C. Section 1001 to, in any matter within the jurisdiction of the executive branch of the U.S. Government, knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation, or to make or use any false writing or document knowing that it contains the same.

I understand that presenting a false or fraudulent claim, in whole or in part, or causing same, may subject me to civil penalties as provided for in 31 U.S.C. Section 3729.

I understand that it is a felony offense under Section 37.10, Texas Penal Code, to knowingly make a false entry in, or false alteration of, a governmental record, or to make, present, or use a governmental record with knowledge of its falsity, when the actor has the intent to harm or defraud another.

I understand that the offense of perjury, under Section 37.02, Texas Penal Code, is committed when a person, with intent to deceive and with knowledge of the statement's meaning, makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath.

I understand my obligation to track all ARRA funds and that ARRA funds cannot be comingled with Non-ARRA funds. I also understand my obligation to immediately report any known or suspected waste, fraud, and abuse of funds received under the Act to the United States Government Accountability Office at (800) 424-5454 and the Texas State Auditor's Office at (800) 892-8348. I further understand that I will require all Subrecipients with whom I contract using funds made available under the Act to sign a similar affidavit swearing to all of the above. I hereby swear and affirm that I have read the entire affidavit, and I understand its contents.

City of El Paso

Recipient Name

Affiant Signature

Full Name

Title

Date

Sworn and subscribed before me by the said

(Printed Name of Recipient's Authorized Representative)

this ____ day of _____, 20 ____.

Notary Public, State of Texas

Notary's printed name: _____ My commission expires: _____ (Seal)

ATTACHMENT J-2

American Recovery & Reinvestment Act – Subrecipient’s Contractor Affidavit

This Affidavit must be signed and sworn (notarized)

I, _____, an authorized representative of: _____, a [person, sole proprietorship, partnership, corporation, limited liability company, nonprofit organization, governmental entity, political subdivision, or other entity] (circle one) that is receiving ARRA funding, hereby swear and affirm that, to the best of my knowledge, internal controls, processes and procedures have been designed and implemented to help ensure that the Subrecipient Subcontractor and its use of these funds complies with the following: applicable state law; federal law, including federal reporting requirements under Section 1512 of the Act, if applicable; rules; regulations; and other relevant guidance. I further swear and affirm that all of the statements made and information provided herein, including statements made and information provided in any exhibits are true, complete, and correct, to the best of my knowledge.

I understand that I am receiving ARRA funding from a governmental entity [city or county] through CPA, a Texas state agency. I understand that non-compliance with reporting requirements could be treated as a violation of the award agreement resulting in the withholding of funds, debarment, or award termination or suspension, as appropriate.

I understand that it is a federal crime under 18 U.S.C. Section 1001 to, in any matter within the jurisdiction of the executive branch of the U.S. Government, knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation, or to make or use any false writing or document knowing that it contains the same.

I understand that presenting a false or fraudulent claim, in whole or in part, or causing same, may subject me to civil penalties as provided for in 31 U.S.C. Section 3729.

I understand that it is a felony offense under Section 37.10, Texas Penal Code, to knowingly make a false entry in, or false alteration of, a governmental record, or to make, present, or use a governmental record with knowledge of its falsity, when the actor has the intent to harm or defraud another. I understand that the offense of perjury, under Section 37.02, Texas Penal Code, is committed when a person, with intent to deceive and with knowledge of the statement’s meaning, makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath.

I understand my obligation to track all ARRA funds and that ARRA funds cannot be comingled with Non-ARRA funds. I also understand my obligation to immediately report any known or suspected waste, fraud, and abuse of funds received under the Act to the United States Government Accountability Office at (800) 424-5454 and the Texas State Auditor’s Office at (800) 892-8348. I further understand that I will require all subcontractors with whom I contract using funds made available under the Act to sign a similar affidavit swearing to all of the above. I hereby swear and affirm that I have read the entire affidavit, and I understand its contents.

City of El Paso
Recipient Name

Affiant Signature

Full Name

Title

Date

Sworn and subscribed before me by the said

(Printed Name of Recipient’s Authorized Representative)

this _____ day of _____, 20_____.

Notary Public, State of Texas

Notary’s printed name: _____ My commission expires: _____ (Seal)

ATTACHMENT K
ARRA REPORTING REQUIREMENTS

1. Subrecipient shall submit to the Comptroller the following reports:

A. INITIAL INFORMATION REPORT. The Subrecipient shall submit the following information upon the execution of the Grant Agreement and return this report when the executed Grant Agreement is submitted to the Agency:

I. Subrecipient Identification:

a. Subrecipient name: Provide the following information for the Subrecipient;

- (i) the official name of the Subrecipient as it appears on the Grant Agreement and DUNS #;
- (ii) the street address, city, and county of the official place of business;
- (iii) City, County, and U.S. Postal Zip Code + four digits;
- (iv) the URL designation or address of any official web site for the Subrecipient;
- (v) U.S. Congressional District;
- (vi) the state senatorial district;
- (vii) the state house district;
- (viii) a copy of the minutes or resolution by which the Subrecipient approved the Grant agreement and designated an authorized representative for the Subrecipient;
- (ix) the grant/award number assigned to the Subrecipient by the Agency;
- (x) the date the Grant Agreement was signed (mm/dd/yyyy); and
- (xi) the performance period established in the Grant Agreement during which sponsorship begins and ends.

b. Authorized Representative: Provide the following information for the person designated by the Subrecipient to represent the Subrecipient in the performance of the Grant Agreement:

- (i) the name of the authorized representative and official title, if any;
- (ii) the street address, city, and county of the primary business location;
- (iii) City, County, and U.S. Postal Zip Code + four digits;
- (iv) area code and telephone number; and
- (v) email address.

c. Key Personnel: Provide the following information for each employee or agent designated by the Subrecipient or the Authorized Representative that may assist or serve as a representative for the Subrecipient in the performance of the Grant Agreement:

- (i) the name of the key personnel and official title, if any;
- (ii) primary role served for the Subrecipient with respect to the Grant;
- (iii) the street address, city, and county of the primary business location;
- (iv) City, County, and U.S. Postal Zip Code + four digits;
- (v) area code and telephone number; and
- (vi) email address.

d. Five most highly compensated individuals: The information required in this subsection is ONLY required when the reporting entity (A) received 80 percent or more of its annual gross revenues in Federal awards the recipient in its preceding fiscal year, and (B) received \$ 25,000,000 or more in annual gross revenues from Federal awards; and (C) the public does not have access to information about the compensation of the senior executives of the entity through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 [26 USC §6104]. If this subsection is applicable, the report shall include:

- (i) the names and total compensation for the five most highly compensated officers of the entity;
- (ii) "Total compensation" means the cash and noncash dollar value earned by the executive during the subrecipient's past fiscal year of the following: Salary and bonus; Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R; Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees; Change in pension value. This is the change in present value of defined benefit and actuarial pension plans; Above-market earnings on deferred compensation which are not tax-qualified. Other compensation, for example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

II. Project Identification:

a. Project Name: Provide the brief descriptive title of the project or activity as identified in the Grant Agreement.

b. Primary Performance Location: Provide physical location of primary place of performance by:

- (i) street address,
- (ii) City, County, and U.S. Postal Zip Code + four digits
- (iii) U.S. Congressional District;
- (iv) the state senatorial district; and
- (v) the state house district;

c. Project Objective: A description of the overall purpose and expected outputs and outcomes or results of the Grant Agreement, including significant deliverables and, if appropriate, units of measure.

B. MONTHLY REPORT. On the last day of each calendar month, the Subrecipient shall submit an electronic performance report found at <https://fmx.cpa.state.tx.us/fmx/index.php> (click on SECO Stimulus Reporting Tool).

In order to access the reporting tool the Subrecipient must first receive a User ID from the SECO Stimulus Grant Manager. The web reporting tool will capture project status and Department of Energy and ARRA performance metrics, including jobs created and jobs retained.

All reporting must be completed through the web reporting system. In rare situations that the web reporting tool is not available or the subrecipient is unable to access the system, a faxed, scanned or emailed report will be acceptable upon notification and approval.

C. FINAL REPORT.

1. No later than 30 days following the grant ending date, the Subrecipient shall submit an electronic Final Report via the web reporting tool at <https://fmx.cpa.state.tx.us/fmx/index.php> (click on SECO Stimulus Reporting Tool) through the last day of the grant performance period. All reporting must be completed through the web reporting system. In rare situations that the web reporting tool is not available or the subrecipient is unable to access the system, a faxed, scanned or emailed report will be acceptable upon notification and approval.

2. Subrecipient is required to collect and report required project information from any of its vendors or subcontractors that are remitted any funds provided under this agreement.

3. Failure to comply with the requirements of this attachment may result in termination of the grant award and the Subrecipient being ineligible for future grants.

4. The form and substance of these reporting requirements may be amended by the Comptroller at any time.

As the duly authorized representative of the Subrecipient, I hereby certify that Subrecipient will comply with the above requirements.

City of El Paso
SUBRECIPIENT

By: _____
Joyce Wilson
City Manager

Date: _____