

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

DEPARTMENT: General Services

AGENDA DATE: 10/25/11

CONTACT PERSON NAME AND PHONE NUMBER: Stuart Ed, Director, General Service, (915) 621-6822
Bruce D. Collins, Purchasing Manager, 544-4313

DISTRICT(S) AFFECTED: A11

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.

To authorize the City Manager to sign Amendment #2 to the Professional Services Contract, dated May 17, 2010, between the City of El Paso and Johnson Controls, Inc. to perform infrastructure improvements to City streetlights and implement the City-wide Energy Operational Savings Program in an amount of \$2,824,000.

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 Second 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). This amendment implements a \$2,824,000 loan program of federal American Recovery and Reinvestment Act received by the City from the Texas State Energy Conservation Office.

Amendment 2 totals \$2,824,000 utilizing a two percent ARRA loan from the State Energy Conservation Office (SECO) to pay for this project over a 10-year period. Total guaranteed energy savings over the 10-year period is \$3,291,990. Total project costs over the 10-year period are \$3,254,144. These costs include annual Operating and Maintenance costs as well as Measurement and Verification (M&V) services provided by JCI required in order to guarantee the savings. Amendment 2 will reduce the total electric consumption of 2,600 street lights by 66%. Savings achieved are outlined in the table below:

Electricity Savings	2,144,281	kWh/year
Electricity Cost Savings	\$329,199	Avg. \$/year

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 costs, are completely recouped by the City in annual energy savings for a period not to exceed ten years. Amendment 2 is structured in a manner to minimize the program's financed capital needs and meet the Texas State Energy Conservation Office (SECO) LoanSTAR Program requirements, the federal American Recovery and Reinvestment Act requirements, and the provisions of the Energy Savings Performance Contracts for Local Government (Texas Local Government Code Chapter 302).

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.

RESOLUTION

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

That the City Manager be authorized to sign Amendment # 2 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 LED Street Light Upgrades, to implement Phase III-A of the City-wide Energy Operational Savings, for an amount of \$2,824,000.00, which will be funded with a State Energy Conservation Office (SECO) Stimulus Program Loan. This authorization is subject to final approval by the City Attorney's office of the Attachments and Exhibits to Amendment #2.

ADOPTED THIS _____ DAY OF _____ 2011.

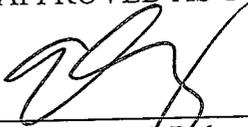
CITY OF EL PASO:

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 #2 TO
PROFESSIONAL SERVICES CONTRACT WITH
JOHNSON CONTROLS INC.

THIS AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT (the "Amendment #2") is entered into as of the ___ day of _____, 2011 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 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");

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");

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;

WHEREAS, the CITY and CONSULTANT have agreed to perform additional infrastructure improvements, specifically LED Street Light Upgrades, as set forth in the Phase III-A Scope of Work, attached hereto as Schedule N-1, which was developed from the "Utility Assessment Report, ESPC Phase III-A New LED Street Light Upgrades, SECO ARRA Project," submitted by Consultant to the City in September 2011; and

WHEREAS, the City wishes to enter into this Amendment #2 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 N-1 (Phase III-A 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 "N" 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 "N" will apply to the Improvement Measures being implemented in Phase III-A of the ESPC Project, as particularly set forth in Schedule N-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 #2. To the extent that Schedules M-8 through M-17 make reference to "Improvement Measures #1," these references are hereby substituted with "Phase III-A 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 N-8 to Attachment N 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 OF 2009) 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 hereto. 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 N-8 to Attachment N, 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 N-1 for Phase III-A of the ESPC Project is estimated to take six (6) months (180 calendar days) from the date that notice to proceed is given in writing by the City (hereinafter "term period"). The City Manager may, at her sole discretion and without further authorization from City Council, approve an extension of the term period for an additional thirty (30) days, but may not to exceed three (3) thirty-day extensions without City Council approval.

ARTICLE II. MISCELLANEOUS

1. Except as modified or otherwise provided herein, the existing terms, covenants, agreements, responsibilities and obligations contained in the Contract and Amendment #1 shall remain in full force and effect through the term of the Contract and Amendment #1. In the event of conflict between the terms and conditions of the Contract and/or Amendment #1 and the terms and conditions of this Amendment #2, the terms and conditions of this Amendment #2 shall prevail.
2. This Amendment #2 is effective upon the date of execution by both parties.

IN WITNESS WHEREOF, the parties have caused this Amendment #2 to be duly executed by their duly authorized representatives on the dates written below:

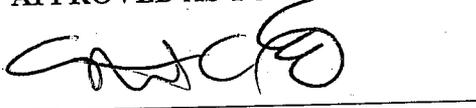
CITY OF EL PASO	JOHNSON CONTROLS, INC.
By: _____ Joyce Wilson	By:  Name: Michael Crowe
Title: <u>City Manager</u>	Title: <u>VP & GM Energy Solutions</u>
Date: _____	Date: 10/14/2011

APPROVED AS TO FORM:



 Elizabeth M. Ruhmann
 Assistant City Attorney

APPROVED AS TO CONTENT:



 Stuart C. Ed, Director
 General Services Department

ATTACHMENT "N"

ENERGY SAVINGS PERFORMANCE CONTRACT

TERMS

1. **SCOPE OF THE ATTACHMENT.** Consultant shall perform the Work set forth in Schedule N-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 N-2 (Assured Performance Guarantee).

City shall make payments to CONSULTANT for the Work and the M&V Services in accordance with Schedule N-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 N-1	Scope of Work
Schedule N-2	Assured Performance Guarantee
Schedule N-3	City Responsibilities
Schedule N-4	Price and Payment Terms
Schedule N-5	Notice to Proceed
Schedule N-6	Change Order
Schedule N-7	Certificate of Substantial Completion/Certificate of Final Completion
Schedule N-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 N-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 N-7; or
- (b) 6 months after Consultant's receipt of City's Notice to Proceed, 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 N-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 N-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 N-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 N-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 N-4 and an amendment to this Contract shall be mutually executed by the parties.
6. **PERMITS, TAXES, AND FEES.** Unless otherwise specified in Schedule N-3 (City Responsibilities), Consultant shall be responsible for obtaining all building permits required for it to perform the Work. Unless otherwise specified in Schedule N-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 N-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 N-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 N-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 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 non payment 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-in-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 N-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,
 - 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.
 - 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 HE/SHE WILL INDEMNIFY AND HOLD THE CITY HARMLESS 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 N: ENERGY SAVINGS PERFORMANCE CONTRACT

(Signature Page)

Johnson Controls, Inc.

Signature: _____



Printed Name: Michael Crowe

Title: VP & GM Energy Solutions

Date: 10/14/2011

City of El Paso

Signature: _____

Printed Name: Joyce Wilson

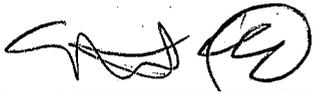
Title: City Manager

Date: _____

Approved as to Content:

City of El Paso

Signature: _____



Printed Name: Stuart Ed

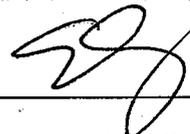
Title: Director, General Services
Department

Date: _____

Approved as to Form:

City of El Paso

Signature: _____



Printed Name: Elizabeth M. Ruhmann

Title: Assistant City Attorney

Date: _____

10/17/11

SCHEDULES N-1 TO N-8 SIGNATURE PAGE

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

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

Johnson Controls, Inc.

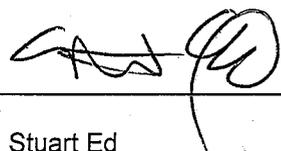
Signature: 
Printed Name: Michael Crowe
Title: VP & GM Energy Solutions
Date: 10/14/2011

City of El Paso

Signature: _____
Printed Name: Joyce Wilson
Title: City Manager
Date: _____

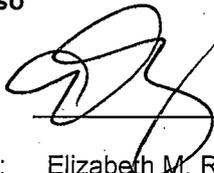
Approved as to Content:

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: 10/17/11

PHASE III-A GENERAL 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	LED Street Light Upgrades

UCRM #: 1

UCRM NAME: LED Street Light Upgrades

UCRM DESCRIPTION:

This UCRM will include the replacement of existing High Pressure Sodium Vapor (HPS) and Mercury Vapor (MV) street light fixtures with new energy efficient Light Emitting Diode (LED) fixtures.

GOALS:

- Improved light levels
- Improved reliability of lighting systems
- Reduced light pollution
- Utility savings
- Operation & maintenance savings
- Capital project savings

ASSUMPTIONS:

- City will provide pole locations for each upgrade
- No work will occur on interstates or freeways
- The goal will be to upgrade as many of the older, non-dark sky compliant fixtures as possible

FINAL ENGINEERING:

- Final equipment submittals & performance specifications
- Final pole locations

SCOPE OF WORK:

General Scope

- Consultant will follow ANSI/IESNA RP-8-00 American National Standard Practice for Roadway Lighting guidelines. Due to spacing between existing street light poles at some locations, it may not be feasible to meet all ANSI/IESNA RP-8-00 American National Standard Practice for Roadway Lighting guidelines.
- Perform all work in accordance with City traffic control requirements.

New LED Street Light Upgrades

The following new LED street light upgrades are included in this UCRM:

ID #	Qty	Voltage	Pre Description	Pre Fixture Watts	Post Description	Approx. Post Fixture Watts
LED-1	130	240	100W HPS	124	LED	65
LED-2	50	240	150W HPS	193	LED	95
LED-3	1300	240	175W MV	195	LED	65
LED-4	75	240	250W MV	292	LED	127
LED-5	400	480	250W HPS	313	LED	116
LED-6	145	240	400W MV	460	LED	127
LED-7	500	480	400W HPS	485	LED	159
Totals	2600					

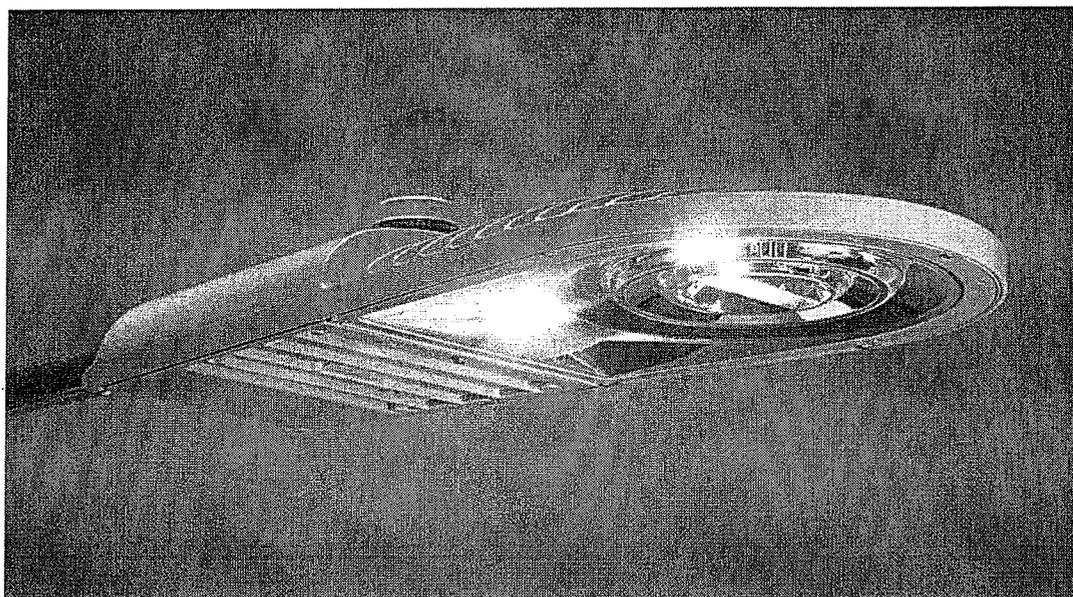
New LED fixtures shall be the following or equal:

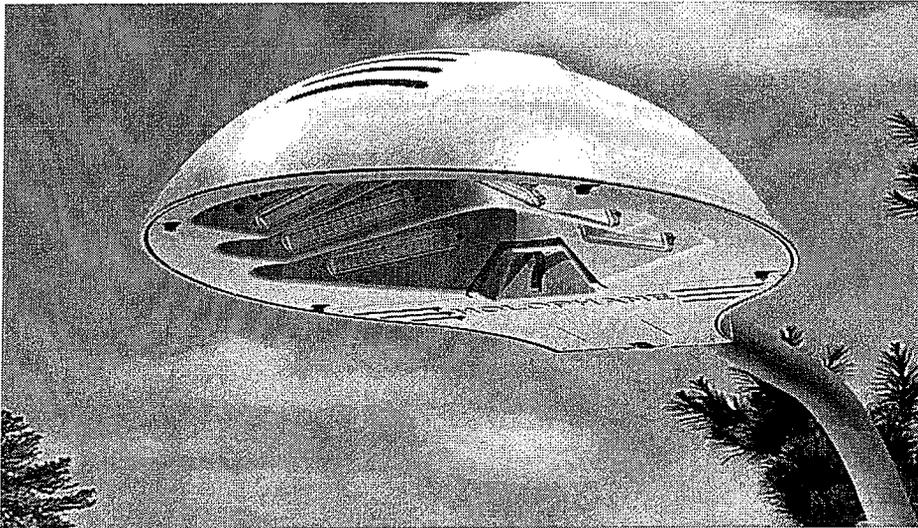
ID #	Voltage	Approx. Post Fixture Watts	Manuf.	Model #	Min. LED Qty	Max. Drive Current mA	Color Temp K
LED-1	240	65	GE	ERMC	36	467	4300
LED-2	240	95	GE	ERMC	48	467	4300
LED-3	240	65	GE	ERMC	36	467	4300
LED-4	240	127	GE	ERMC	72	467	4300
LED-5	480	116	Holophane	LEDG	108	350	4000
LED-6	240	127	GE	ERMC	72	467	4300
LED-7	480	159	Holophane	LEDG	96	525	4000

Notes:

1. New photocells will be included for the 240V fixtures only.
2. All new LED fixtures will be "Dark Sky" compliant.

The following are a few sample LED street light fixtures:





Additional Included Allowances

Scope of Work	Cost Allowance
Install conduit for exposed wiring at existing locations where separate photocells are mounted on opposite side of the poles	\$ 30,000
Pole arm adjustment	\$15,000
Tree trimming	\$9,000
Replace damaged wiring	\$9,000

DEMOLITION:

- All demolition will be conducted in conformance with applicable laws.
- Existing lamps, ballasts and other materials will be removed from the site by JCI in accordance with Federal, State, and Local regulations. It is also the responsibility of JCI, acting as an agent for the City of El Paso, to ensure the proper disposal of hazardous waste in accordance with the Federal, State, and Local laws and regulations. If PCB light ballasts are found, they will be disposed of accordingly listing the City of El Paso as the "City" and "Generator" of the ballast waste.

EXCLUSIONS:

- Unless specified to be replaced in this UCRM, all existing wiring to the fixtures are the responsibility of the City. If wiring and fixtures are not code compliant, it is the City's responsibility to bring them into compliance.
- Local governing code upgrades for existing infrastructure and equipment scheduled to remain.

COMMISSIONING:

- Sample light level readings will be conducted for all new lighting systems and included in the O&M manuals
- All fixtures will be tested and verified to be in good working conditions when the Substantial Completion Certificates are accepted by all parties.
- Refer to General Work for all close-out document requirements.

TRAINING:

- Maximum of four (4) half-day training sessions.

WARRANTIES:

- One (1) year warranty on material & labor beginning on the Substantial Completion Date(s). One (1) year after the Substantial Completion Date, City will be responsible for maintaining the new fixtures and photocells. A 2% warranty stock of complete LED fixtures of each wattage type and a 2% stock of each photocell type will be provided by JCI to help accommodate any warranty period failures. Consultant will be allowed to utilize the 2% warranty stock during the one (1) year warranty period.
- All new LED fixtures include a 10-year material & labor warranty. Labor warranty on the new fixtures will be a reimbursement of \$60 to \$75 per fixture. All new photocells include a 10-year material 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 \$3,291,990 in Measured Project Benefits during the term of this Attachment, for Total Project Benefits of \$3,291,990 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	\$329,199	\$0	\$0	\$329,199
2	\$329,199	\$0	\$0	\$329,199
3	\$329,199	\$0	\$0	\$329,199
4	\$329,199	\$0	\$0	\$329,199
5	\$329,199	\$0	\$0	\$329,199
6	\$329,199	\$0	\$0	\$329,199
7	\$329,199	\$0	\$0	\$329,199
8	\$329,199	\$0	\$0	\$329,199
9	\$329,199	\$0	\$0	\$329,199
10	\$329,199	\$0	\$0	\$329,199
Totals	\$3,291,990	\$0	\$0	\$3,291,990

*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 N-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

Schedule N-2

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 A

Partially Measured Retrofit Isolation

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.

New LED Street Light Upgrades

Pre-Retrofit:

- At each retrofit location, JCI will document the following
 1. Street light fixture type & manufacturer rated lamp wattage
 2. Pole type
 3. Pole owner
 4. Current monthly fixture charge

Post-Retrofit:

- At each retrofit location, JCI will document the new LED street light fixture manufacturer rated wattage
- For all LED street light electric accounts, quarterly verification of El Paso Electric Company monthly bills for proper charges

Note: For Pre-Retrofit and Post-Retrofit, JCI will document the street light lamp & fixture manufacturer rated wattages that were utilized in the savings calculations. JCI will not be conducting any fixture kW measurements.

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.

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 zero percent (0%).

Electric Utility Rate Schedule Analysis

Street light accounts are billed according to El Paso Electric Company - Rate Schedule 8, whereas the street lights are not metered. Fixture wattage and estimated operating hours are utilized to calculate the monthly kWh. Fixture wattage and estimated operating hours are determined by the local utility company. Monthly charges also vary depending on fixture watts, fixture owner, pole owner, and maintenance responsibilities.

Rate Tariff – Rate Schedule 8

Summary of Billing Component Charges

Number of Fixtures	Varies per account
Fixture Charge	Varies per fixture type, fixture owner, pole owner, maintenance owner
Run Hours	369 hrs/month
Fuel Charge	\$0.032787 per kWh
Fuel Surcharge/Refund	-\$0.0009 per kWh
Energy Efficiency Cost Recovery Factor (EECRF)	\$0.00053 per kWh
Military Base Discount Recovery Factor (MBDRF)	0.377% of total Fixture Charge
Applicable Taxes	Tax Exempt

Notes:

1. Fuel charge and fuel surcharge/refund amounts represent a 36-month average from July 2008 to June 2011
2. EECRF and MBDRF amounts represent current charges

Schedule N-2

Rate Schedule 8 is the governmental street lighting and signal service rate. This rate applies to Mercury Vapor and High Pressure Sodium Vapor Street lights, interstate or freeway lighting and for traffic signal lights.

Street Lights – Existing Fixtures – Monthly Rate

MERCURY VAPOR – OVERHEAD SYSTEM – COMPANY OWNED
35 FOOT MOUNTING HEIGHT – WOOD POLE

	Total Wattage	Per Lamp Charge
175W – 7,000 Lumen Single	195	\$15.22
250W – 11,000 Lumen Single	275	\$18.26
400W – 20,000 Lumen Single	460	\$21.66
400W – 20,000 Lumen Double	920	\$35.19

HIGH PRESSURE SODIUM VAPOR – DOWNTOWN EL PASO AREA
COMPANY OWNED - STEEL BASE STANDARD AND LUMINAIRE

	Total Wattage	Per Lamp Charge
1,000W – 119,500 Lumen Overhead System	1,102	\$54.81
1,000W – 119,500 Lumen Underground System	1,102	\$89.45

HIGH PRESSURE SODIUM VAPOR – DOWNTOWN EL PASO AREA
COMPANY OWNED - STEEL BASE STANDARD AND LUMINAIRE

	Total Wattage	Per Lamp Charge
450W – 50,000 Lumen Overhead System	485	\$47.87

MERCURY VAPOR – OVERHEAD SYSTEM – COMPANY OWNED
30 FOOT MOUNTING HEIGHT – STEEL POLE

	Total Wattage	Per Lamp Charge
400W – 20,000 Lumen Single	460	\$33.46
400W – 20,000 Lumen Double	920	\$46.99

MERCURY VAPOR – NON-COMPANY OWNED SYSTEMS
INTERSTATE OR FREEWAY LIGHTING

	Total Wattage	Per Lamp Charge
250W – 11,000 Lumen – Wall Mounted	292	\$8.78
400W - 20,000 Lumen - 40 Foot Maximum Mounting Height	460	\$12.08
1,000W – 60,000 Lumen – 50 Foot Maximum Mounting Height	1,102	\$31.67

MERCURY VAPOR – NON-COMPANY OWNED – WOOD POLE
UNDERGROUND OR OVERHEAD RESIDENTIAL SERVICE

	Total Wattage	Per Lamp Charge
175W – 7,000 Lumen – 35 Foot Maximum Mounting Height	195	\$6.68

Schedule N-2

**HIGH PRESSURE SODIUM VAPOR – NON-COMPANY OWNED SYSTEMS
INTERSTATE OR FREEWAY LIGHTING**

	Total Wattage	Per Lamp Charge
150W – 16,000 Lumen – Wall Mounted	193	\$7.00
250W – 23,200 Lumen – Wall Mounted	313	\$9.42
250W – 23,200 Lumen – 40 Foot Maximum Mounting Height	313	\$9.42
400W – 50,000 Lumen – 50 Foot Maximum Mounting Height	485	\$12.95
400W – 50,000 Lumen – Tower Structure 150 Foot-Climbing Maximum Mounting Height 10 Luminaries per Tower Rate per fixture	485	\$13.67
400W – 50,000 Lumen – Tower Structure 150 Foot-Lowering Maximum Mounting Height 10 Luminaries per Tower Rate per fixture	485	\$12.79
116W – Obstruction Lights Incandescent 40 Foot Maximum Mounting Height	116	\$4.47
116W – 150 Foot Tower	116	\$5.35

**HIGH PRESSURE SODIUM VAPOR – NON-COMPANY OWNED SYSTEMS
LARGE ARTERIAL LIGHTING**

	Total Wattage	Per Lamp Charge
150W – 16,000 Lumen Wall Mounted	193	\$7.11
250W – 23,200 Lumen Wall Mounted	313	\$10.24
250W – 23,200 Lumen 40 FT Maximum Mounting Height	313	\$10.24
400W – 50,000 Lumen 50 FT Maximum Mounting Height	485	\$14.73

**HIGH PRESSURE SODIUM VAPOR – NON-COMPANY OWNED
WOOD/STEEL POLE UG OR OH STANDARD RESIDENTIAL SERVICE**

	Total Wattage	Per Lamp Charge
100W – 8,500 Lumen – 30 Foot Maximum Mounting Height	124	\$5.32
150W – 14,400 Lumen – 30 Foot Maximum Mounting Height	193	\$6.21
250W – 23,200 Lumen – 30 Foot Maximum Mounting Height	313	\$9.59

**HIGH PRESSURE SODIUM VAPOR – OVERHEAD – NON-COMPANY OWNED
FIXTURE – COMPANY OWNED EXISTING WOOD POLE**

	Total Wattage	Per Lamp Charge
100W – 8,500 Lumen – 35 Foot Maximum Mounting Height	124	\$7.43
150W – 14,400 Lumen – 35 Foot Maximum Mounting Height	193	\$8.99
250W – 23,200 Lumen – 35 Foot Maximum Mounting Height	313	\$11.41
250W – 23,200 Lumen – Double 35 Foot Maximum Mounting Height	626	\$18.65
450W – 50,000 Lumen – 50 Foot Maximum Mounting Height	485	\$14.06

**OVERHEAD SYSTEM – HIGH PRESSURE SODIUM VAPOR
COMPANY OWNED – WOOD POLE**

	Total Wattage	Per Lamp Charge
100W – 8,500 Lumen – 35 Foot Maximum Mounting Height	124	\$15.20
150W – 14,400 Lumen – 35 Foot Maximum Mounting Height	193	\$16.49
250W – 23,200 Lumen – 35 Foot Maximum Mounting Height	313	\$19.18
400W – 50,000 Lumen – 50 Foot Maximum Mounting Height	485	\$27.02

Schedule N-2

**ORNAMENTAL HIGH PRESSURE SODIUM VAPOR –
NON-COMPANY OWNED, OPERATED AND MAINTAINED**

	Total Wattage	Per Lamp Charge
70W – 5,300 Lumen	82	\$1.67
150W – 14,400 Lumen	193	\$3.04
175W – 14,400 Lumen	210	\$6.65
250W – 16,000 Lumen	295	\$3.94

**HIGH PRESSURE SODIUM VAPOR –
ROADWAY ILLUMINATION- NON-COMPANY OWNED**

	Total Wattage	Per Lamp Charge
100W – HPS	124	\$2.04
150W – HPS	193	\$5.02
250W – HPS	313	\$5.08
400W – HPS	485	\$13.48

Street Lights – New Fixtures – Monthly Rate

The following are estimated monthly fixture charges provided by El Paso Electric Company (EPE).

LED – NON-COMPANY OWNED, OPERATED & MAINTAINED (ENERGY ONLY)

	Cost per Watt	Total Wattage	Per Fixture Charge
LED 65W	\$0.0165	65	\$1.07
LED 95W	\$0.0158	95	\$1.50
LED 125W	\$0.0172	125	\$2.15
LED 155W	\$0.0278	155	\$4.31

The following table represents the new LED fixture monthly charges (energy only) that will be utilized for savings calculations:

LED Fixture Wattage	Cost per Watt
< 81	\$0.0165
81 to 110	\$0.0158
111 to 140	\$0.0172
> 140	\$0.0278

Based on current Rate Schedule 08 charges, the following table estimates the average additional monthly charge at locations where El Paso Electric Company will continue to own & maintain the poles:

Existing Fixture	City Owned & Maintained Pole Monthly Charge	EPE Owned & Maintained Pole Monthly Charge	Monthly Pole Charge
100W HPS	\$2.04	\$7.43	\$5.39
150W HPS	\$3.04	\$8.99	\$5.95
250W HPS	\$5.08	\$11.41	\$6.33
		Average	\$5.89

As instructed by the City, for all locations where El Paso Electric Company will continue to own & maintain the poles, an additional monthly charge of \$5.89/fixture will be utilized in the savings calculations.

The following monthly run hours, fuel charge, fuel surcharge/refund, EECRF and MBDRF amounts will also be included in the savings calculations.

Run Hours	369 hrs/month
Fuel Charge	\$0.032787 per kWh
Fuel Surcharge/Refund	-\$0.0009 per kWh
Energy Efficiency Cost Recovery Factor (EECRF)	\$0.00053 per kWh
Military Base Discount Recovery Factor (MBDRF)	0.377% of total Fixture Charge

Base Year Energy Consumption & Costs – Street Lights

Service Address	Account #	Fixture Qty	Lamp Watts	Lamp Type	Fixture Owner	Fixture Maint	Pole Owner	Pole Maint	Monthly Lamp Charge per Fixture (\$)	Total Watts per Fixture	Monthly kWh	Monthly Lamp Charge (\$)	Monthly Fuel Charge (\$)	Monthly Fuel Refund (\$)	Monthly EE Cost Recovery Factor Charge (\$)	Monthly Military Base Discount Recovery Factor Charge (\$)	Annual kWh	Annual Cost (\$)
Obstruction Lgh Lamps El Paso TX 79901	7756730000	3		HPS	C	E	C	E	5.35	116	128	16	4	0	0	0	1,541	243
Obstacle Lites Lamps El Paso TX 79901	9756730000	6		HPS	C	E	C	E	4.47	116	257	27	8	0	0	0	3,082	423
100 W Epe Slhps Pole Lamps El Paso TX 79905	6846730000	66	100	HPS	E	E	E	E	15.20	124	3,020	1,003	99	-3	2	4	36,239	13,259
I 10 & I 110 Lamps El Paso TX 79901	4556730000	1082	100	HPS	C	E	E	E	7.43	124	49,508	8,039	1,623	-45	26	30	594,096	116,094
City O H/U G Lamps El Paso TX 79901	5556730000	7708	100	HPS	C	E	C	E	5.32	124	352,687	41,007	11,564	-317	187	155	4,232,247	631,131
City Parks 100 El Paso TX 79907	5806830000	258	100	HPS	C	E	C	E	5.32	124	11,805	1,373	387	-11	6	5	141,661	21,125
Ih-10/Patriot Fwy Lamps El Paso TX 79904	4946730000	11	150	HPS	C	E	C	E	7.00	193	783	77	26	-1	0	0	9,401	1,232
City Ug St Lite Lamps El Paso TX 79901	2556730000	2	150	HPS	C	E	E	E	8.99	193	142	18	5	0	0	0	1,709	272
Sunset Heights Lamps El Paso TX 79901	6556730000	2597	150	HPS	C	E	E	E	8.99	193	184,951	23,347	6,064	-166	98	88	2,219,407	353,167
G Orr Ascar &tx Lamps El Paso TX 79901	3756730000	199	150	HPS	E	E	E	E	16.49	193	14,172	3,282	465	-13	8	12	170,066	45,040
I 10 Continus Lamps El Paso TX 79901	3856730000	183	150	HPS	C	E	C	E	7.00	193	13,033	1,281	427	-12	7	5	156,393	20,500
City Ug St Lt Lamps El Paso TX 79901	3556730000	501	175	MV	C	E	C	E	6.68	195	36,049	3,347	1,182	-32	19	13	432,593	54,335
Epe Co Single Lamps El Paso TX 79901	2656730000	2854	175	MV	E	E	E	E	15.22	195	205,360	43,438	6,733	-185	109	164	2,464,315	603,105
Dudley Field Lamps El Paso TX 79905	2366730000	8	175	MV	E	E	E	E	15.22	195	576	122	19	-1	0	0	6,908	1,691
Missouri@santaf &KANS El Paso TX 79901	7577830000	48	175	HPS	C	C	C	C	6.65	210	3,720	319	122	-3	2	1	44,634	5,292
Paisano & Eight Lamps El Paso TX 79901	7977830000	23	175	HPS	C	C	C	C	6.65	210	1,782	153	58	-2	1	1	21,387	2,536
El Paso St Lamps El Paso TX 79902	5156730000	53	175	HPS	C	C	C	C	6.65	210	4,107	352	135	-4	2	1	49,284	5,843
Memorial Park Light El Paso TX 79930	6056730000	16	175	HPS	C	C	C	C	6.65	210	1,240	106	41	-1	1	0	14,878	1,764
Epe Co Single Lamps El Paso TX 79901	3656730000	275	250	MV	E	E	E	E	18.26	275	27,906	5,022	915	-25	15	19	334,868	71,341
Psano I10 Wl Mt Mt Lamps El Paso TX 79901	7656730000	26	250	MV	C	E	C	E	8.78	292	2,801	228	92	-3	1	1	33,617	3,839
9300 Diana Dr Lamp El Paso TX 79924	3266730000	1	250	MV	E	E	E	E	18.26	275	101	18	3	0	0	0	1,218	259
Old San Francis Lamps El Paso TX 79901	6577830000	81	250	HPS	C	C	C	C	3.94	295	8,817	319	289	-8	5	1	105,807	7,274
Cont Lighting Lamps El Paso TX 79936	9660730000	765	250	HPS	C	E	C	E	9.42	313	88,355	7,206	2,897	-80	47	27	1,060,262	121,172
South El Paso Lamps El Paso TX 79901	8556730000	1,145	250	HPS	C	E	E	E	11.41	313	132,244	13,064	4,336	-119	70	49	1,586,929	208,808
City O.h./U.g. Lamps El Paso TX 79901	9556730000	1,005	250	HPS	C	E	C	E	9.42	313	116,074	9,467	3,806	-104	62	36	1,392,894	159,177
I10/Zar Safety Lamps El Paso TX 79907	8656730000	39	250	HPS	C	E	C	E	9.42	313	4,504	367	148	-4	2	1	54,053	6,177
I 110 Kenworthy St Lamps El Paso TX 79924	9656730000	42	250	HPS	C	E	C	E	9.42	313	4,851	396	159	-4	3	1	58,210	6,653
Zaragoza Rd Lamps El Paso TX 79901	0756730000	50	250	HPS	C	E	C	E	9.42	313	5,775	471	189	-5	3	2	69,298	7,920
I 10 Continus Lamps El Paso TX 79901	4856730000	2,065	250	HPS	C	E	C	E	9.42	313	238,501	19,452	7,820	-215	126	73	2,862,016	327,086
250 W Epe Owned Sl El Paso TX 79901	1656730000	17	250	HPS	E	E	E	E	19.18	313	1,963	326	64	-2	1	1	23,561	4,691
1010 8th St Lamp El Paso TX 79901	6946730000	56	250	HPS	C	C	C	C	5.08	313	6,468	284	212	-6	3	1	77,614	5,943
City Parks 250W El Paso TX 79907	4806830000	8	250	HPS	C	E	E	E	11.41	313	924	91	30	-1	0	0	11,088	1,459
City Parks 250WP El Paso TX 79907	3806830000	3	250	HPS	C	E	C	E	9.42	313	346	28	11	0	0	0	4,158	475
Cotton Overpass Lamps El Paso TX 79901	7556730000	82	400	MV	C	E	C	E	12.08	460	13,919	991	456	-13	7	4	167,024	17,346
Epe Co O L Lamps El Paso TX 79901	6456730000	384	400	MV	E	E	E	E	21.66	460	65,180	8,317	2,137	-59	35	31	782,162	125,541
Mcrae Single Lamps El Paso TX 79925	5656730000	75	400	MV	E	E	E	E	33.46	460	12,731	2,510	417	-11	7	9	152,766	35,180
1059 Lafayette Dr El Paso TX 79907	0366730000	5	400	MV	E	E	E	E	21.66	460	849	108	28	-1	0	0	10,184	1,635
Zaragoza Monttwo Lamps El Paso TX 79927	3164730000	93	400	HPS	C	E	C	E	12.95	485	16,644	1,204	546	-15	9	5	199,725	20,981
Pol Sta Sn Paul Lamps El Paso TX 79901	9456730000	20	400	HPS	E	E	E	E	27.02	485	3,579	540	117	-3	2	2	42,952	7,902
N Yarbrough/Carol Lamps El Paso TX 79915	1556730000	17	400	HPS	E	E	E	E	27.02	485	3,042	459	100	-3	2	2	36,509	6,716
Apnt Fwlsn Mshl Lamps El Paso TX 79901	1756730000	3,007	400	HPS	C	E	C	E	12.95	485	538,148	38,941	17,644	-484	285	147	6,457,773	678,391
Rrdr Fwls Wd Pl Lamps El Paso TX 79901	2756730000	14	400	HPS	E	E	E	E	27.02	485	2,506	378	82	-2	1	1	30,066	5,531

Schedule N-2

Service Address	Account #	Fixture Qty	Lamp Watts	Lamp Type	Fixture Owner	Fixture Maint	Pole Owner	Pole Maint	Monthly Lamp Charge per Fixture (\$)	Total Watts per Fixture	Monthly kWh	Monthly Lamp Charge (\$)	Monthly Fuel Charge (\$)	Monthly Fuel Refund (\$)	Monthly EE Cost Recovery Factor Charge (\$)	Monthly Military Base Discount Recovery Factor Charge (\$)	Annual kWh	Annual Cost (\$)
110 Twr Less 10 Lamps El Paso TX 79901	6756730000	69	400	HPS	C	E	C	E	13.67	485	12,349	943	405	-11	7	4	148,183	16,165
110 Twr Over 10 Lamps El Paso TX 79901	8756730000	44	400	HPS	C	E	C	E	13.67	485	7,874	601	258	-7	4	2	94,494	10,308
110/Lp 375 Sfty Lamps El Paso TX 79901	0856730000	49	400	HPS	C	E	C	E	12.95	485	8,769	635	288	-8	5	2	105,231	11,055
400W HPS El Paso TX 79907	6487900066	1	450	HPS	E	E	E	E	47.87	485	179	48	6	0	0	0	2,148	646
Epec-City Dbl Lamps El Paso TX 79901	5856730000	63	(2) at 250	HPS	C	E	E	E	18.65	626	14,553	1,175	477	-13	8	4	174,631	19,814
Epe Co Dbl Lamps El Paso TX 79901	0656730000	158	(2) at 400	MV	E	E	E	E	46.99	920	53,638	7,424	1,759	-48	28	28	643,654	110,294
Rr & Alabama Lamps El Paso TX 79901	5756730000	39	(2) at 400	MV	E	E	E	E	35.19	920	13,240	1,372	434	-12	7	5	158,877	21,681
North South Saf Lamps El Paso TX 79901	6656730000	305	1,000	MV	C	E	C	E	31.67	1,102	124,025	9,659	4,066	-112	66	36	1,488,295	164,595
Downtown U G Lamps El Paso TX 79901	7456730000	187	1,000	HPS	E	E	E	E	89.45	1,102	76,041	16,727	2,493	-68	40	63	912,496	231,063
Downtown O H Lamps El Paso TX 79901	8456730000	12	1,000	HPS	E	E	E	E	54.81	1,102	4,880	658	160	-4	3	2	58,556	9,821
Totals		25,820															29,941,157	4,303,998

Summary of other monthly charges:

Fuel Charge	\$0.032787 per kWh
Fuel Surcharge/Refund	-\$0.0009 per kWh
Energy Efficiency Cost Recovery Factor (EECRF)	\$0.00053 per kWh
Military Base Discount Recovery Factor (MBDRF)	0.377% of total Fixture Charge

Notes:

- Fuel charge and fuel surcharge/refund amounts represent a 36-month average from July 2008 to June 2011
- EECRF and MBDRF amounts represent current charges
- Fixture quantities based on April 2011 electric bills
- Owner & Maintenance: C – City, E – El Paso Electric Company

V. PRIMARY OPERATIONS SCHEDULE PRE & POST RETROFIT

New LED street light savings calculations can be found on the following page.

New LED Street Lights – Annual Savings Calculations

Monthly Hours 369
 Fuel Charge \$/kWh 0.032787
 Fuel Refund \$/kWh -0.000900
 EECRF \$/kWh 0.000530
 MBDRF \$/Lamp Charge 0.003770

Pre-Retrofit														Post-Retrofit																	
ID #	Pre Description	Pre Watts	Pre Qty	Fixture Owner	Pole Owner	Pole Type	Monthly Lamp Charge per Fixture	Total Watts per Fixture	Total Monthly kWh	Monthly Lamp Charge	Monthly Fuel Charge	Monthly Fuel Refund	Monthly EE Cost Recovery Factor Charge	Monthly Military Base Discount Recovery Factor Charge	Annual kWh	Annual Cost	Average Post Watts	Post Qty	Monthly Lamp Charge per Fixture	Total Watts per Fixture	Total Monthly kWh	Monthly Lamp Charge	Monthly Fuel Charge	Monthly Fuel Refund	Monthly EE Cost Recovery Factor Charge	Monthly Military Base Discount Recovery Factor Charge	Annual kWh	Annual Cost	Annual kWh Savings	Annual Savings	
LED-1	100W HPS	100	110	C	C	W/S	5.32	124	5,033	585	165	-5	3	2	60,598	9,007	65	110	1.07	65	2,638	118	87	-2	1	0	31,660	2,447	26,738	6,559	
LED-2	100W HPS	100	0	C	E	W	7.43	124	0	0	0	0	0	0	0	0	65	0	6.96	65	0	0	0	0	0	0	0	0	0	0	0
LED-3	100W HPS	100	20	E	E	W	15.20	124	915	304	30	-1	0	1	10,981	4,018	65	20	6.96	65	480	139	16	0	0	1	5,756	1,864	5,225	2,154	
LED-4	150W HPS	150	0	C	E	W	8.99	193	0	0	0	0	0	0	0	0	65	0	6.96	65	0	0	0	0	0	0	0	0	0	0	0
LED-5	150W HPS	150	50	E	E	W	16.49	193	3,581	825	117	-3	2	3	42,730	11,316	65	50	6.96	65	1,199	348	39	-1	1	1	14,391	4,660	28,339	6,857	
LED-6	175W MV	175	100	C	C	W	6.68	195	7,199	668	236	-6	4	3	86,346	10,845	65	100	1.07	65	2,399	107	79	-2	1	0	28,782	2,225	57,564	8,626	
LED-7	175W MV	175	1200	E	E	W	15.22	195	86,346	18,264	2,831	-7	4	5	91,328	253,583	65	1,200	6.96	65	28,782	8,355	944	-26	15	31	345,394	111,834	690,768	141,749	
LED-8	250W MV	250	75	E	E	W	18.26	275	7,511	1,370	250	-7	4	14	554,366	84,177	116	400	2.00	116	17,122	798	561	-15	9	3	205,459	16,273	348,926	47,804	
LED-9	250W HPS	250	400	C	C	W/S	9.59	313	46,199	3,836	1,515	-42	24	1	0	0	116	0	7.89	116	0	0	0	0	0	0	0	0	0	0	0
LED-10	250W HPS	250	0	C	E	W	11.41	313	0	0	0	0	0	0	0	0	116	0	7.89	116	0	0	0	0	0	0	0	0	0	0	0
LED-11	400W MV	400	15	C	C	W/S	12.08	460	2,546	181	83	-2	1	1	30,553	3,173	127	15	2.18	127	703	33	23	-1	0	0	8,435	668	22,118	2,505	
LED-12	400W MV	400	130	E	E	W	21.66	460	22,066	2,816	723	-20	12	11	264,794	42,501	127	130	8.07	127	6,082	1,050	200	-5	3	4	73,106	15,013	191,688	27,487	
LED-13	400W MV	400	0	E	E	S	33.46	460	0	0	0	0	0	0	0	0	127	0	8.07	127	0	0	0	0	0	0	0	0	0	0	0
LED-14	400W HPS	400	500	C	C	W/S	12.95	485	89,483	6,475	2,934	-81	47	24	1,073,790	112,802	159	500	4.42	159	29,336	2,210	962	-26	16	8	352,026	38,833	721,764	74,769	
Totals			2,698												3,251,458	530,879		2,698									1,107,177	201,680	2,144,281	328,139	

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 10. Reporting shall include the following:
 - Energy savings calculations for period compared to targets. Energy savings calculations will be based upon Pre-Retrofit and Post-Retrofit electric utility monthly charges as shown in Section V.
 - Status of energy and operational savings strategies implemented by Consultant.

Performance Assurance Services

1. For all LED street light electric accounts, quarterly verification of El Paso Electric Company monthly bills for proper charges.

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 N-1;
7. Obtaining any permits, approvals, and licenses that are necessary for the performance of the Work and that are not Consultant's responsibility to obtain as set forth in Schedule N-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 N-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 N-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 N-4.

1. Work. The price to be paid by City for the Work shall be \$2,824,000.00. 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 N-2 of this Attachment, is \$22,928. 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	Measurement & Verification Annual Services
1	\$ 2,000
2	\$ 2,060
3	\$ 2,122
4	\$ 2,185
5	\$ 2,251
6	\$ 2,319
7	\$ 2,388
8	\$ 2,460
9	\$ 2,534
10	\$ 2,610
Totals	\$ 22,928

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 III-A)

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 III-A)

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 III-A)

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 N-8

**Attachments to SECO Stimulus
Program Loan Agreement
(Consists of Attachments A
through L)**

**ATTACHMENT A
LOAN APPROVAL STATEMENT
For Energy Conservation Measures**

Agency: The City of El Paso
 Address: 2 Civic Center Plaza
 City: El Paso, Texas 79901
 Loan: Ed Stuart
 Coordinator: _____
 Title: General Services Director
 Phone: 915-621-6821

Building (a)	ECM	Description of Energy Conservation Measure (ECM) (b)	Estimated ECM Cost (c)	Annual Energy Cost Savings	Pay-back (yrs)	ECM Loan Amount (d)
Exterior	1	Retrofit 3,000 Street Lights with Induction Technology	\$2,360,000.00	\$283,000.00	10.	\$2,360,000.00
			\$2,360,000.00	\$283,000.00	8.3	\$2,360,000.00

Engineering Audit Expense	\$215,000.00
Metering and Monitoring	\$249,000.00

Escalation Cost	\$ 0.00
TOTAL LOAN	\$2,824,000.00

Anticipated Substantial Completion Time
 Payback (with allowance)

@ 2% Interest
12 months
 10. years

Additional Loan Agreement Requirements:

1.	Borrower shall provide a copy of the contract between the City of El Paso and the Energy Service Company (ESCO) for construction and M&V Services.	Upon Contracting with ESCO
2.	Borrower shall submit an approved UAR prior to project commencement.	As Soon As UAR Completed
3.	Borrower shall submit an approved Sample Annual Savings Report.	Submit with approved UAR
4.	Borrower shall provide project administrative and financial data as requested.	As Requested
5.	Borrower shall provide maintenance program information as requested.	As Requested
6.	Borrower shall submit Annual Savings Reports with quarterly updates following construction completion and continuing through the contract loan period. The Annual Savings Reports shall be accompanied by a third-party review report for the term of the loan or for four years, whichever is shortest.	For the Term of the Loan

7.	Borrower shall have all projects, commissioning and close out completed.	On or Before 12/31/2011
8.	Borrower shall provide a Monthly Progress Report as provided in Attachment K, ARRA Reporting Requirements.	On or before the last day of each month

Comments: _____

- a) A description of the building/facility and individual ECM is contained in the engineering report which is incorporated herein by reference and included as a part of this Attachment A.
- b) No ECMs may be canceled after loan is granted without prior written Lender/Prime Recipient approval.
- c) ECM includes cost of detail engineering design, labor, and materials to implement retrofit.
- d) Cost of individual ECM projects may not exceed 120% of approved loan amount. Any individual variance exceeding this amount must be submitted in a change of scope and receive written approval from Lender/Prime Recipient.

ATTACHMENT B

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.

BORROWER/SUBRECIPIENT:

By: _____
[Printed Name]
[Title]

Date: _____

ATTACHMENT B-1

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.

The 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

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

The City of El Paso

2 Civic Center Plaza

El Paso, Texas 79901

Address

Telephone Number

Authorized Official:

Patricia Duran Adauto, Deputy City Manager

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

ATTACHMENT B-2

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

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_____ (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

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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

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 C

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.

The City of El Paso
Organization Name

Joyce Wilson, City Manager
Name and Title of Authorized Representative

Signature

Date

ATTACHMENT D
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.

1. 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 sub-recipients 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 (SUB-RECIPIENTS OTHER THAN INDIVIDUALS)

- (1) The Sub-recipient 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 Sub-recipient'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 Sub-recipient'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;

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

(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 of 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 Sub-recipient 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)

ALTERNATE II (SUB-RECIPIENTS WHO ARE INDIVIDUALS)

(1) The Sub-recipient 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

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.

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.

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.

The 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 E
DISCLOSURE OF LOBBYING ACTIVITIES**

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

<p>1. Type of Federal Action: _____</p> <p>a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance</p>	<p>2. Status of Federal Action: _____</p> <p>a. bid/offer/application b. initial award c. post award</p>	<p>3. Report Type: _____</p> <p>a. initial filing b. material change For Material Change Only: _____ year _____ quarter _____ date of last report _____</p>
<p>Name and Address of Reporting Entity:</p> <p>Name _____ Address _____ _____ Prime _____ Subawardee Tier, if known: _____</p>		<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: _____</p>
<p>6. Federal Department/Agency: _____</p>	<p>7. Federal Program Name/Description CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, If known: _____</p>	<p>9. Award Amount, if known: _____</p>	
<p>10.a. Name and Address of Lobbying Entity: (if individual, last name, first name, MI): (attach Continuation Sheet(s) SF-LLL-A, if necessary)</p>	<p>10.b. Individual Performing Services (including address if different from No. 10A) (last name, first name, MI):</p>	
<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ actual _____ planned</p>	<p>12. Form of Payment (check all that apply):</p> <p>a. cash b. in-kind; specify: nature _____ value _____</p>	
<p>13. Type of Payment (check all that apply):</p> <p>_____ a. retainer _____ c. commission _____ e. deferred _____ b. one-time fee _____ d. contingent fee _____ f. other; specify _____</p>		
<p>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: _____</p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached: _____ Yes _____ No</p>		
<p>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</p>		<p>Authorized Representative: <u>Patricia Duran Aduato</u></p> <p>Title: <u>Deputy City Manager</u></p> <p>Signature: _____</p> <p>Telephone: _____</p> <p>Date: _____</p>

ATTACHMENT F
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 subrecipients' 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.i. 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:

By: _____ Date: _____

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

ATTACHMENT G

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.

The City of El Paso

Organization Name

Patricia Duran Aduato, Deputy City Manager

Name and Title of Authorized Representative

Signature

Date

ATTACHMENT H

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 Attachment K of this 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.

BORROWER/SUBRECIPIENT: _____

SUB-SUBRECIPIENT

By: _____

Date: _____

ATTACHMENT I-1
AMERICAN RECOVERY & REINVESTMENT ACT—BORROWER/SUBRECIPIENT
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.

Borrower/Subrecipient 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 I-2

American Recovery & Reinvestment Act – Borrower/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.

Borrower/Subrecipient 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
NONDISCLOSURE AGREEMENT

In consideration of the Comptroller retaining the services of The City of El Paso, (Contractor) and because of the sensitivity of certain information which may come under the care and control of Contractor, both parties agree that all information regarding Comptroller, or gathered, produced, or derived from or accessed as a result of the Agreement (Confidential Information) must remain confidential subject to release only by written permission of Comptroller, and more specifically agree as follows:

1. The Confidential Information may be used by Contractor only to assist Contractor in connection with its engagement with Comptroller.
2. Contractor shall not, at any time, use the Confidential Information in any fashion, form, or manner except in its capacity as independent contractor to Comptroller.
3. Contractor shall maintain the confidentiality of any and all deliverables resulting from the Agreement in the same manner that it protects the confidentiality of its own proprietary products of like kind.
4. The Confidential Information may not be copied or reproduced without Comptroller's written consent.
5. All Confidential materials made available to Contractor, including copies thereof, must be returned to Comptroller upon the first to occur of; (a) completion of the project, or (b) request by Comptroller.
6. The foregoing must not prohibit or limit Contractor use of the information (including, but not limited to, ideas, concepts, know-how, techniques and methodologies) (a) previously known to it, (b) independently developed by it, (c) acquired by it from a third party, or (d) which is or becomes part of the public domain through no breach to Contractor of this agreement.
7. This agreement shall become effective as of the date Confidential Information is first made available to Contractor and must survive the Agreement and be a continuing requirement.
8. The breach of this Nondisclosure Agreement by Contractor shall entitle Comptroller to immediately terminate the Agreement upon written notice to Contractor for such breach. The parties acknowledge that the measure of damages in the event of a breach of this Nondisclosure Agreement may be difficult or impossible to calculate, depending on the nature of the breach. Regardless of whether Comptroller elects to terminate the Agreement upon the breach hereof, Comptroller may require Contractor to pay to Comptroller the sum of \$1,000 for each breach as liquidated damages. This amount is not intended to be in the nature of a penalty, but is intended to be a reasonable estimate of the amount of damages to Comptroller in the event of a breach hereof by Contractor. Comptroller does not waive any right to seek additional relief, either equitable or otherwise, concerning any breach of this Agreement.

The City of El Paso

By: _____
Signature

Title: Deputy City Manager

Date: _____

ATTACHMENT K
ARRA REPORTING REQUIREMENTS

Subrecipient shall submit to the Comptroller the following reports:

I. 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:

A. Subrecipient Identification:

1. **Subrecipient name:** Provide the following information for the Subrecipient;
 - a. the official name of the Subrecipient as it appears on the Grant Agreement and DUNS #;
 - b. the street address, city, and county of the official place of business;
 - c. City, County, and U.S. Postal Zip Code + four digits;
 - d. the URL designation or address of any official web site for the Subrecipient;
 - e. U.S. Congressional District;
 - f. the state senatorial district;
 - g. the state house district;
 - h. a copy of the minutes or resolution by which the Subrecipient approved the Grant agreement and designated an authorized representative for the Subrecipient;
 - i. the grant/award number assigned to the Subrecipient by the Agency;
 - j. the date the Grant Agreement was signed (mm/dd/yyyy); and
 - k. the performance period established in the Grant Agreement during which sponsorship begins and ends.

2. **Authorized Representative:** Provide the following information for the person designated by the Subrecipient to represent the Subrecipient in the performance of the Grant Agreement:
 - a. the name of the authorized representative and official title, if any;
 - b. the street address, city, and county of the primary business location;
 - c. City, County, and U.S. Postal Zip Code + four digits;
 - d. area code and telephone number; and
 - e. email address.

3. **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:
 - a. the name of the key personnel and official title, if any;
 - b. primary role served for the Subrecipient with respect to the Grant;
 - c. the street address, city, and county of the primary business location;
 - d. City, County, and U.S. Postal Zip Code + four digits;
 - e. area code and telephone number; and
 - f. email address.

4. **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:
 - a. the names and total compensation for the five most highly compensated officers of the entity;
 - b. "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.

5. 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.

II. 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.

III. FINAL REPORT.

1. No later than 30 days prior to 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.

The City of El Paso

By: _____
Signature

Title: Deputy City Manager

Date: _____

ATTACHMENT L
CONSULTATION LIST
FOR ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANTS &
THE STATE ENERGY PLAN PROGRAMS

The work items and undertakings listed herein qualify for assistance from the U.S. Department of Energy's (DOE) Energy Efficiency and Conservation Block Grants (EECBG) or the State Energy Plan (SEP) implemented by the Texas State Energy Conservation Office (SECO) of the Comptroller of Public Accounts (CPA). By memorandum dated August 28, 2009 (Attachment B), the DOE has delegated limited authority for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (Section 106), to CPA and SECO or its subrecipients for purposes of the EECBG program. This document, known as the Consultation List, shall assist the parties in carrying out the reviews and consultation between CPA or its subrecipients and the Texas Historical Commission (THC), acting as the Texas State Historic Preservation Officer (SHPO), for Section 106 compliance.

TERMS OF USE

Any work item in the EECBG or SEP program that is not addressed in this list shall be subject to THC consultation under Category B. This Consultation List applies only to projects funded through the EECBG or SEP programs as part of the DOE's Energy Efficiency and Renewable Energy Program (EERE), part of the American Recovery and Reinvestment Act (ARRA) and set to expire in 2012. The terms of this Consultation List shall then terminate unless otherwise agreed to by the THC and CPA. This Consultation List is for the exclusive use of CPA and the EECBG and SEP programs and shall not apply to any other federally-funded program. CPA is advised to document all points of its decision-making in order to demonstrate proper compliance with Section 106.

The following categories apply to any structure or building that is forty-five (45) years of age or older, that is listed in or eligible for listing in the National Register of Historic Places, that is located in a National Register listed or eligible historic district, or that is in a locally designated historic district. Please note that consultation with THC will be required for all State Archeological Landmarks designated under the Antiquities Code of Texas and all current and former county courthouses protected by Chapter 442.008 of the Texas Government Code. Ground-disturbing activity, regardless of the age of structures on the property, will also require consultation with THC in most cases.

Category A No SHPO Consultation Required:

THC as SHPO has concluded that the following work items do not meet the definition of undertaking since they do not have the potential to cause effects on historic properties per 36 CFR § 800.3(a) and thus *no historic properties will be affected* per 36 CFR § 800.4(d), or they have limited potential to affect historic properties per 36 CFR § 800.5 and will have *no adverse effect* upon historic properties if carried out as described. CPA and subrecipients are not required to consult further with THC for work in this category. CPA and its delegated entities are responsible for ensuring that work is carried out as described and for documenting their compliance.

Building energy audits and retrofits:

- Energy audits and feasibility studies.

Heating, ventilation, and air conditioning (HVAC):

- Routine maintenance or retrofits to existing mechanical equipment, provided there is no physical impact on the building;
- Replacement of existing mechanical equipment or installation of supplemental equipment, provided that exterior equipment is installed within the same footprint on the same pad, and interior equipment is installed within an existing mechanical closet;
- Upgrading existing facility and infrastructure-related pumps and motors, including those for HVAC systems, to variable-speed or premium efficiency standards;
- Sealing, restoring, or insulating HVAC ducts, provided that the ducts are not visible in occupied spaces of the building and access to the ducts does not require demolition of walls or ceilings in occupied spaces of the building; and
- Adding or replacing existing building controls systems including HVAC control systems and the replacement of building-wide pneumatic controls with digital controls, thermostats, dampers, and other individual sensors like smoke detectors or carbon monoxide detectors (wired or non-wired).

Roofing:

- Installation of new roofing, including white roofs or cool roofs, on a flat-roofed building with a parapet, such that the roofing material is not visible from any public right-of-way.

Windows and doors:

- Weatherstripping around windows and doors; and
- Caulking around windows and doors, provided that the color of the sealant matches adjacent materials.

Lighting and appliances:

- Installation of compact fluorescent or LED bulbs in existing fixtures;
- Replacement of fluorescent bulbs, ballasts, and/or wiring in existing fixtures;
- Replacement of existing fluorescent fixtures with new fixtures, provided that the fixtures are not original to the building;
- Installation of motion/occupancy sensors for lighting control;
- Replacement of existing lighting in street lighting fixtures with high efficiency lighting; and
- Replacement of existing appliances with "EnergyStar"™ appliances.

Insulation:

- Attic insulation with proper ventilation, provided that insulation is fiberglass batt or loose fill only;
- Under-floor insulation in basements or crawl spaces, provided that insulation is fiberglass batt or loose fill only, and ventilation of crawl spaces;
- Exterior blown-in wall insulation where holes are not drilled through exterior wall material or decorative plasterwork on the interior, and result in no permanent visible alteration to the structure;
- Water heater tank and pipe insulation; and
- Radiant barriers in unoccupied attic spaces.

Water conservation:

- Water conservation measures, such as installation of low-flow faucets, toilets, showerheads, urinals, or distribution device controls, provided that plumbing fixtures to be replaced are not original to the building;
- Upgrading existing facility and infrastructure-related pumps and motors, including those water/wastewater facilities, to variable-speed or premium efficiency standards;
- Hot water tank replacement that does not require a visible new supply or venting; and
- Repairing plumbing systems in a manner that does not affect the interior or exterior of the building.

Electrical:

- Repairing or upgrading electrical systems in a manner that does not affect the interior or exterior of the building.

Ground-disturbing activity and site work:

- Repairing or replacing in-kind existing driveways, parking areas, and walkways with materials of similar appearance; and
- Excavating to gain access to existing underground utilities to repair or replace them, in a manner that does not disturb historic exterior building or landscape materials or features, and where all construction occurs within existing trenches.

Category B SHPO Consultation Required:

The following undertakings may affect historic properties per 36 CFR § 800.5 and will always require Section 106 review if they involve a structure that is forty-five (45) years of age or older, under the terms of Stipulation III (B) of this Agreement. Any work item or undertaking in the EECBG or SEP program that is not described in Category A or Category B of this Consultation List will also require THC review. **In addition, consultation with THC will be required for all State Archeological Landmarks designated under the Antiquities Code of Texas, all current and former county courthouses protected by Chapter 442.008 of the Texas Government Code, and most ground-disturbing activity, regardless of the age of structures on the property.**

Building energy audits and retrofits:

- Implementation of any energy audit recommendations that do not fall within the types of work described in Category A.

Heating, ventilation, and air conditioning (HVAC):

- Construction of new district heating and cooling systems;
- Construction of new combined heat and power systems, if construction requires ground disturbance;
- Installation of geothermal heating systems; and
- Installation of biomass thermal systems.

Roofing:

- Replacement of visible roofing materials; and
- Installation of green or sod roofs.

Windows and doors:

- Installation of window treatments such as awnings, solar deflection screens, double pane insulation, or solar film or glazing;
- Installation of storm windows or doors; and
- Replacement of windows or doors.

Lighting and appliances:

- Replacement of non-fluorescent light fixtures, or replacement of fluorescent light fixtures that are original to the building.

Insulation:

- Use of spray foam insulation products;
- Wall insulation that does not comply with the conditions described in Category A; and
- Roof insulation during roof replacement, especially exterior rigid insulation.

Water conservation:

- Replacement of original plumbing fixtures.

Renewable energy technologies:

- Solar photovoltaic systems;
- Solar hot water systems; and
- Wind turbines.

Ground disturbing activity:

- New construction or additions; and
- Trenching for utilities where work does not occur in an existing trench.