

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

DEPARTMENT: General Services

AGENDA DATE: December 10, 2013

CONTACT PERSON/PHONE: Stuart Ed, General Services Director, 621-6822
Bruce D. Collins, Purchasing Manager, 541-4313

DISTRICT (S) AFFECTED: ALL

SUBJECT:

Amendment #7 to the Energy Services Company (ESCO) Contract with Johnson Controls, Inc.

That the City Manager be authorized to sign Amendment #7 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 new LED street light upgrades, to implement Phase VII of the City-wide Energy Operational Savings, for an amount of \$7,500,000.00, which will be funded with a State Energy Conservation Office (SECO) Loan; and, that the City Manager, or her designee, be authorized to execute a State Energy Conservation Office Revolving Loan Agreement between the City of El Paso and the Texas State Comptroller of Public Accounts in an amount not to exceed \$7,500,000 in order to fund the subject energy efficiency project. These authorizations are subject to final approval by the City Attorney's office of all necessary documents to effectuate the transaction.

BACKGROUND / DISCUSSION:

The City is seeking continuation of its City-wide energy and operational efficiency initiatives. This action is the Seventh 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 \$7,500,000 loan program submitted by the City to the Texas State Energy Conservation Office.

Amendment #7 utilizes a 2 percent loan submitted to the State Energy Conservation Office (SECO) to pay for this project over an 10-year period. Total guaranteed energy savings over the 10-year period are \$8,447,950. Total project costs over the 10-year period are \$8,362,443. These costs include annual Operating and Maintenance costs. Amendment #7 will reduce the total electric consumption of 10,600 street lights by 66%. Savings achieved are outlined in the table below:

| | | |
|--------------------------|-----------|----------|
| Electricity Savings | 5,428,670 | kWh/year |
| Electricity Cost Savings | \$844,795 | \$/year |

JCI is providing a written contractual guarantee that all utility and operational cost reductions identified in the initial investment are completely recouped by the City in annual energy savings for a period not to exceed ten years. Amendment 7 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 and the provisions of the Energy Savings Performance Contracts for Local Government (Texas Local Government Code Chapter 302).

PRIOR COUNCIL ACTION:

The original Energy Services Company (ESCO) contract with Johnson Controls, Inc. was approved by Council on May 25, 2010 to act as the City's ESCO for the next 5 years. The original award amount totaled \$350,000 under Solicitation Number 2010-085R for Advanced Engineering and grant application support.

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

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

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

The Fourth Amendment was approved on January 10, 2012 in the amount of \$1,080,000 for the installation of solar PV power generation panels at the Municipal Service Center funded through a stimulus grant received from the State Energy Conservation Office (\$900,000 SECO, \$180,000 local cash match).

The Fifth Amendment was approved on January 22, 2013 in the amount of \$5,649,993 for lighting retrofits and controls, window film, Central Plant and AHU Upgrades, and a Facility Management System at 11 El Paso International Airport facilities.

The Sixth Amendment was approved on January 22, 2013 in the amount of \$247,300 to perform annual expanded measurement and verification (M&V) services of all City energy accounts over a three-year term. This Amendment outsourced the City's Energy Coordinator position.

SELECTION SUMMARY:

N/A

AMOUNT AND SOURCE OF FUNDING:

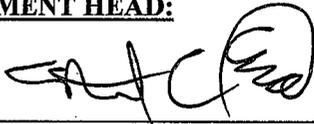
Department: General Services Department
Amount \$7,500,000
Funds Available: Yes
Funds Source: Texas State Energy Conservation Office (SECO) LoanSTAR Program

BOARD / COMMISSION ACTION:

N/A

*****AUTHORIZATION*****

DEPARTMENT HEAD:



Stuart Ed, General Services Director

RESOLUTION

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

That the City Manager be authorized to sign Amendment #7 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 new LED street light upgrades, to implement Phase VII of the City-wide Energy Operational Savings, for an amount of \$7,500,000.00, which will be funded with a State Energy Conservation Office (SECO) Loan; and, that the City Manager, or her designee, be authorized to execute a State Energy Conservation Office Revolving Loan Agreement between the City of El Paso and the Texas State Comptroller of Public Accounts in an amount not to exceed \$7,500,000 in order to fund the subject energy efficiency project. These authorizations are subject to final approval by the City Attorney's office of all necessary documents to effectuate the transaction.

ADOPTED THIS _____ DAY OF DECEMBER, 2013.

CITY OF EL PASO:

Oscar Leeser, 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 #7 TO
PROFESSIONAL SERVICES CONTRACT WITH
JOHNSON CONTROLS INC.

THIS AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT (the “Amendment #7”) is entered into as of the ___ day of December, 2013 by and between Johnson Controls, Inc., a Wisconsin corporation with offices located at 3021 West Bend Drive, Irving, Texas 75063 (hereinafter referred to as “Contractor” or “JCI” or “Consultant”) 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 Contractor 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 Contractor entered into a Professional Services Contract (the “Contract”) wherein Contractor 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 Contractor entered into Amendment #1 to the Contract wherein Phase II of the Project was initiated, and which was completed in February 2012;

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

WHEREAS, on or about January 10, 2012, the City and Contractor entered into Amendment #4 to the Contract wherein Phase IV was initiated, and which was completed in June 2012; and,

WHEREAS, on or about January 22, 2013, the City and Contractor entered into Amendments #5 and #6 to the Contract wherein Phases V and VI were initiated; and

WHEREAS, the City and Contractor have agreed to have Contractor perform additional infrastructure improvements, specifically LED Street Light Upgrades, as set forth in the Phase VII Scope of Work, attached hereto as Schedule S-1, which was developed from the “Utility Assessment Report, ESPC Phase VII, New LED Street Light Upgrades, SECO Project,” submitted by Contractor to the City in November 2013, and incorporated herein by reference; and

WHEREAS, the City wishes to enter into this Amendment #7 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 S-1 (Improvement Measures General 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, Contractor and the City agree as follows:

ARTICLE I. TERMS

1. The attached Energy Savings Performance Contract will be added as Attachment “S” 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 “S” will apply to the Improvement Measures being implemented in Phase VII of the Project, as particularly set forth in Schedule S-1.
3. Schedules M-8, M-9, M-10, M-11, M-12, M-13, M-14, M-15 and M-16 to Attachment “M” of Amendment #1 to the Contract are incorporated into and shall be deemed an integral part of this Amendment #7. To the extent that Schedules M-8 through M-16 make reference to “Improvement Measures #1,” these references are hereby substituted with “Phase VII 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. Contractor acknowledges that the City will utilize federal and/or state funds for the Improvement Measures. Contractor represents to the City that it is knowledgeable about the requirements imposed by the U.S. Department of Energy (DOE) for such funds administered by or through other federal or state agencies, as appropriate, including the State Energy Conservation Office (SECO). Contractor has reviewed and understands the federal and state requirements as set forth in Attachments A through L of the SECO Loan Agreement entered into by and between the Texas Comptroller of Public Accounts, through its State Energy Conservation Office, and the City, which attachments are incorporated herein by reference, regarding the SECO funds to be utilized to fund the Improvement Measures and will perform the services under this agreement in compliance thereto. Contractor acknowledges that performance under this Amendment will only proceed upon the SECO Loan being approved, and that the actual amount of the loan approved by SECO may require adjustments to the Improvement Measures to be implemented.
6. Contractor 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. Contractor hereby agrees to provide any and all documentation necessary to fulfill any and all grants requirements (federal, state, or local) pertaining hereto. Contractor 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, Contractor shall execute and submit to the City the certifications required by federal and state law and those included in Attachments A through L of the SECO Loan Agreement entered into by and between the Texas Comptroller of Public Accounts, through its State Energy Conservation Office, and the City, or will comply with any such requirements or execute any forms that may be required during the term of this agreement.

8. Contractor understands that the cost-benefit analysis is based on the proposed electricity rates set forth in Schedule S-2, which are currently not in effect. Contractor will not commence work on the project until the proposed rates are in effect.
9. The services and work to be performed by Contractor set forth in Schedule S-1 for Phase VII of the Project is estimated to take twelve (12) months (365 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 any and all subsequent Amendments shall remain in full force and effect through the term of the Contract and the Amendments. In the event of conflict between the terms and conditions of the Contract and/or any Amendment and the terms and conditions of this Amendment #7, the terms and conditions of this Amendment #7 shall prevail.
2. This Amendment #7 is effective upon the date of execution by both parties.

IN WITNESS WHEREOF, the parties have caused this Amendment #7 to be duly executed by their duly authorized representatives on the dates written below:

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

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

 Elizabeth M. Ruhmann
 Assistant City Attorney

 Stuart C. Ed, Director
 General Services Department

ATTACHMENT "S"

ENERGY SAVINGS PERFORMANCE CONTRACT

TERMS

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

PRICE AND PAYMENT. City shall make payments to CONTRACTOR for the Work and the M&V Services in accordance with Schedule S-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 S-1 | Scope of Work |
| Schedule S-2 | Assured Performance Guarantee |
| Schedule S-3 | City Responsibilities |
| Schedule S-4 | Price and Payment Terms |
| Schedule S-5 | Notice to Proceed |
| Schedule S-6 | Change Order |
| Schedule S-7 | Certificate of Substantial Completion/Certificate of Final Completion |

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, Contractor 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 S-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 S-7; or
- (b) 12 months after Contractor'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 Contractor 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 S-4, (iii) fails to fulfill any of City's responsibilities necessary to enable Contractor 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 Contractor shall have no liability thereunder, upon written notice from Contractor 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 Contractor 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 S-7).

If however, the inspection discloses any work, in whole or in part, as being unsatisfactory, the City will give the Contractor a punch list and the necessary instructions for correction of same, and the Contractor 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 Contractor and City's representative. In such event, the City may execute the Certificate of Substantial Completion but the Final Payment (or Retainage) due to Contractor shall not be paid until the Punch List has been completed as set forth herein and Schedule S-7. The City shall not unreasonably withhold final acceptance.

- 4. DELAYS AND IMPACTS.** If Contractor 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 Contractor 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 Contractor in the timely completion of the Work, Contractor 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 S-4 and an amendment or change order to this Contract shall be mutually executed by the parties, as appropriate. Should Contractor encounter concealed or unknown conditions in an existing structure, Contractor shall immediately give notice to the Customer's designated representative of such conditions before they are disturbed.
- 5. ACCESS.** City shall provide Contractor, 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 Contractor, its subcontractors, and its agents to gain access to facilities and properties that are not controlled by City but are necessary for Contractor 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 S-4 and an amendment to this Contract shall be mutually executed by the parties.
- 6. PERMITS, TAXES, AND FEES.** Unless otherwise specified in Schedule S-3 (City Responsibilities), Contractor shall be responsible for obtaining all building permits required for it to perform the Work. Unless otherwise specified in Schedule S-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. Contractor 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, Contractor'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 Contractor.
- 7. WARRANTY.** Contractor will perform the Work in a professional, workman-like manner. Contractor will promptly re-perform any non-conforming Work for no charge, as long as City provides written notice to Contractor within one (1) year following Substantial Completion or such other period identified in Schedule S-1. If Contractor installs or furnishes goods or equipment under this Attachment, and such goods or equipment are covered by an end-user warranty from their manufacturer, Contractor 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 S-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 Contractor 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 S-1. NO OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARE PROVIDED BY Contractor. 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 Contractor. Except with respect to goods or equipment manufactured by Contractor and furnished to City hereunder, for which Contractor shall provide its express written manufacturer's warranty, Contractor shall not be considered a merchant or vendor of goods or equipment.

8. CLEANUP. Contractor 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, Contractor shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials. The Contractor 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 Contractors;
- 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 Contractor.

9. SAFETY; COMPLIANCE WITH LAWS. Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor.
- 9.5. If the Contractor 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 CONTRACTOR 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 Contractor with any information in its possession relating to the presence of ACM in areas where Contractor undertakes any Work or M&V Services that may result in the disturbance of ACM. It is Contractor'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 Contractor in obtaining such certification from facility owners in the case of buildings that City does not own, if Contractor will undertake Work or M&V Services in the facility that could disturb ACM. If either City or Contractor becomes aware of or suspects the presence of ACM that may be disturbed by Contractor'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 Contractor, 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 Contractor continues with its Work or M&V Services, unless Contractor had actual knowledge that ACM was present and acted with intentional disregard of that knowledge, in which case (i) Contractor 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 Contractor's remediation has been completed.

Other Hazardous Materials: Contractor shall be responsible for removing or disposing of any Hazardous Materials (as defined below) that it uses in providing Work or M&V Services ("Contractor Hazardous Materials") and for the remediation of any areas impacted by the release of Contractor Hazardous Materials. For other Hazardous Materials that may be otherwise present at City's facilities ("Non-Contractor Hazardous Materials"), City shall supply Contractor with any information in its possession relating to the presence of such materials if their presence may affect Contractor's performance of the Work or M&V Services. If either City or Contractor becomes aware of or suspects the presence of Non-Contractor Hazardous Materials that may interfere with Contractor'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 Contractor, City shall be responsible at its sole expense for removing and disposing of Non-Contractor Hazardous Materials from its facilities and the remediation of any areas impacted by the release of Non-Contractor Hazardous Materials, unless Contractor had actual knowledge that Non-Contractor Hazardous Materials were present and acted with intentional disregard of that knowledge, in which case (i) Contractor shall be responsible at its sole expense for the remediation of any areas impacted by its release of such Non-Contractor Hazardous Materials, and (ii) City shall remain responsible at its sole expense for the removal of Non-Contractor Hazardous Materials that have not been released and for releases not resulting from Contractor'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. Contractor 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-Contractor 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, and as permitted by law. Contractor 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 Contractor 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 Contractor, 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 Contractor 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 Contractor 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 Contractor, 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 Contractor 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 Contractor 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 Contractor 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 Project |
| 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 Contractor 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 Contractor,

on all of the Contractor's Insurance policies, with the exception of Workers' Compensation Insurance, required by this Contract. All of the Contractor's Insurance Policies shall remain in effect until final payment and at all times thereafter when the Contractor 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 Contractor 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 Contractor 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 Contractor shall provide endorsements to the commercial general liability and vehicle liability insurance policies naming the city as an additional insured.
 - 13.1.5. Failure by the Contractor to provide timely proof of insurance coverage for itself will delay release of pending payments.
- 13.2 Texas Workers' Compensation Requirements. The Contractor 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 Contractor 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-iS-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 Contractor 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 Contractor 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 Contractor.

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. CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR 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 CONTRACTOR'S EXPRESS OBLIGATIONS UNDER THE ASSURED PERFORMANCE GUARANTEE, CONTRACTOR'S LIABILITY UNDER THIS ATTACHMENT, REGARDLESS OF THE FORM OF ACTION, SHALL IN NO EVENT EXCEED THE AMOUNT OF THE PAYMENTS ACTUALLY RECEIVED BY CONTRACTOR UNDER SCHEDULE S-4. If this Attachment covers fire safety or security equipment, City understands that Contractor is not an insurer regarding those services, and that Contractor 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 Contractor and City, and each party acknowledges that Contractor 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. CONTRACTOR'S PROPERTY. All materials furnished or used by Contractor personnel and/or Contractor subcontractors or agents at the installation site, including documentation, schematics, test equipment, software

and associated media remain the exclusive property of Contractor or such other third party. City agrees not to use such materials for any purpose at any time without the express authorization of Contractor. City agrees to allow Contractor personnel and/or Contractor 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 **Contractor's Title of Materials.** No materials or supplies for the work shall be purchased by the Contractor 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 Contractor 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 CONTRACTOR WHICH ARE IDENTIFIED TO THE CONTRACT.**

17.2 The Contractor 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 Contractor 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 Contractor may want to contact the office of the Texas Comptroller of Public Accounts at 1-800-252-5555. The Contractor 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.** Contractor 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 Contractor 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 Contractor in order to carry out Contractor's obligations hereunder, City agrees that it shall act in good faith and reasonably in so cooperating with Contractor and/or Contractor'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 of El Paso, ATTN: City Manager, P.O. Box 1890, El Paso, Texas 79950-1890, with a copy to the City of El Paso General Services Department, ATTN: Director, 1059 Lafayette, El Paso, Texas 79907.

28. REPORTS, RECORDS, DATA

The Contractor 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, personnel records, 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 Contractor'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 Contractor 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 Contractor 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 Contractor.

31. PROTECTION OF WORK AND PROPERTY - EMERGENCY

- 31.1 The Contractor shall at all times safely guard the City's property from injury or loss in connection with this contract. The Contractor 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 Contractor will be allowed to act, without previous instructions from the City or City's designated representative, in a diligent manner. However, the Contractor shall notify the City or City's designated representative immediately thereafter. Any claim for compensation by the Contractor 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 Contractor of his duty and shall not be construed as any assumption of duty to supervise safety precautions by the Contractor or any of his subcontractors.

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

33. PREVAILING WAGE RATES AND WAGE RATE PENALTY

- 33.1 The Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor, 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 Contractor/subcontractor as to the entire work force under the registered program.

34.4 The Contractor 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 Contractor 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 Contractor is mandatory on Building Structure Projects. The Contractor 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 Contractor 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 Contractor is for the acts and omissions of persons directly employed by him/her.
- 35.2 The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the this Attachment and other contract documents insofar as applicable to the work of subcontractors and to give the Contractor the same power as regards to the termination of any subcontract that the City may exercise over the Contractor 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 Contractor for performance of work on the Project contemplated by these contract documents, but said subcontractors will look exclusively to the Contractor for any payments due subcontractors.
- 35.5 The Contractor 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 Contractor, 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 Contractor, 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 Contractor 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 Contractor, 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 Contractor or remaining on the contract. If such expenses exceed the sum which would have been payable under the contract, the Contractor 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 Contractor. The City shall incur no liability to the Contractor by reason of such termination, except that the Contractor 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 Contractor 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 Contractor 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 Contractor'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 Contractor fails to begin the work under the contract within the time specified in the Notice to Proceed, or
 - 36.6.2 If the Contractor 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 Contractor 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 Contractor discontinues the prosecution of the work without cause, or
 - 36.6.4 If the Contractor fails to resume work that has been discontinued within a reasonable time after notice to do so, or
 - 36.6.5 If Contractor fails to complete any remaining punch list items for the project after notice to do so,
 - 36.6.6 If the Contractor becomes insolvent or is declared bankrupt, or commits any act of bankruptcy or insolvency, or
 - 36.6.8 If the Contractor allows any final judgment to remain unsatisfied for a period of 10 days, or
 - 36.6.9 If the Contractor 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 Contractor fails to comply with contract requirements regarding minimum wage payments or EEO requirements, or
 - 36.6.11 If the Contractor, for any other cause whatsoever, fails to carry on the work in an acceptable manner.
 - 36.6.12 If the Contractor 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 Contractor and the Surety of such delay, neglect, or default.
- 36.8 If the Contractor 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 Contractor. 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 Contractor 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 Contractor 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 Contractor 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 CONTRACTOR 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 CONTRACTOR, EITHER PAY UNPAID CLAIMS OF WHICH THE CITY HAS WRITTEN NOTICE THEREOF, OR DIRECT OR WITHHOLD FROM THE CONTRACTOR'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 CONTRACTOR 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 CONTRACTOR, AND ANY PAYMENT SO MADE BY THE CITY SHALL BE CONSIDERED AS A PAYMENT MADE UNDER THE CONTRACT BY THE CITY TO THE CONTRACTOR.

38. ASSIGNMENT. The Contractor 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 Contractor 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 Contractor 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 Contractor of final payment shall be, and shall operate as a release to the City of all claims and all liability to the Contractor 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 Contractor has provided the City prior notice. No payment, however, final or otherwise, shall operate to release the Contractor 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 Contractor 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 Contractor 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 Contractors 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 Contractor 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 Contractor 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 Contractor 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 Contractor or the Subcontractor to debarment.
- 40.4.3 The Contractor 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 Contractor or Subcontractor fails to submit the required records or to make them available, the City of El Paso may, after written notice to the Contractor, 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 S: ENERGY SAVINGS PERFORMANCE CONTRACT

(Signature Page)

Johnson Controls, Inc.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

City of El Paso

Signature: _____

Printed Name: Joyce Wilson

Title: City Manager

Date: _____

Approved as to Content:

City of El Paso

Signature: _____

Printed Name: Stuart Ed

Title: Director, General Services
Department

Date: _____

Approved as to Form:

City of El Paso

Signature: _____

Printed Name: Elizabeth M. Ruhmann

Title: Assistant City Attorney

Date: _____

SCHEDULES S-1 TO S-7 SIGNATURE PAGE

CONSULTANT AND CITY WARRANT AND ACKNOWLEDGE THAT EACH HAS READ AND REVIEWED THE CONTENTS OF SCHEDULES S-1 THROUGH S-7.

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

Johnson Controls, Inc.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

City of El Paso

Signature: _____

Printed Name: Joyce Wilson

Title: City Manager

Date: _____

Approved as to Content

City of El Paso

Signature: _____

Printed Name: Stewart 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: _____

IMPROVEMENT MEASURES

GENERAL SCOPE OF WORK:

Consultant will provide the City with the Scope of Work (Work) identified in 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.
- Where applicable for each UCRM, 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 (where applicable for each UCRM) will be submitted to City at completion of construction phase.
- Three (3) copies of electronic CAD as-built construction drawings (where applicable for each UCRM) 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.
- Electrical and mechanical systems not currently up to code, unless otherwise specified in other areas of this Schedule.
- ADA compliance issues, unless otherwise specified in other areas of this Schedule.
- Equipment that is broken or not functioning, unless otherwise specified in other areas of this Schedule.

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. Scope of work also includes a new ROAM wireless lighting control system for all new LED fixtures included in this agreement.

GOALS:

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

ASSUMPTIONS:

- New ROAM software system will reside on City IT network
- City will be responsible for monthly cellular gateway communication charges

FINAL ENGINEERING:

- Final equipment submittals & performance specifications
- Final new fixture locations
- Final ROAM wireless communication network layout

SCOPE OF WORK:

General Scope

- Three (3) copies of O&M manuals for each UCRM will be submitted to City at completion of construction phase.
- City retains the right to keep any removed equipment or material, unless specified differently in other areas of this Agreement.
- All work will be coordinated with City personnel to minimize interruptions, delays, or safety violations.
- All materials being installed shall be new.
- Necessary protection will be provided to avoid damage to adjacent services in the surrounding work areas.
- Work will be performed in accordance with all applicable codes and standards.
- The Johnson Controls Safety Specifications will be followed at all times. Any safety violations will be addressed immediately. Work will not continue until any unsafe conditions are corrected.
- 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 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 | Pre Fixture Owner | Pre Pole Owner | Post Description | Approx. Post Fixture Watts |
|---------------|--------------|----------------|------------------------|--------------------------|--------------------------|-----------------------|-------------------------|-----------------------------------|
| LED-1 | 7150 | 240 | 100W HPS | 124 | COEP | COEP | LED | 41 |
| LED-2 | 450 | 240 | 150W HPS | 193 | COEP | COEP | LED | 53 |
| LED-3 | 50 | 240 | 175W MV | 195 | COEP | COEP | LED | 41 |
| LED-4 | 370 | 240 | 250W HPS | 292 | COEP | COEP | LED | 101 |
| LED-5 | 2400 | 480 | 250W HPS | 313 | COEP | COEP | LED | 108 |
| LED-6 | 30 | 240 | 400W HPS | 460 | COEP | COEP | LED | 140 |
| LED-7 | 150 | 480 | 400W HPS | 485 | COEP | COEP | LED | 140 |
| Totals | 10600 | | | | | | | |

COEP – City of El Paso

All new LED fixtures will be "Dark Sky" compliant

The following are a few sample LED street light fixtures:



New ROAM Wireless Lighting Control System

The new ROAM wireless control system will included in the following:

- Enterprise Communication System
- 10,600 wireless controller nodes
- Eleven (11) gateways
- Two (2) activation kits
- Self-registering, self-healing mesh network
- Web based software that is accessible anywhere via internet
- Password protection

Photo Control-Communications Node

- Compatible with any NEMA twist-lock receptacle
- Self-registering, self-healing mesh network
- Patented diagnostics

Communications Gateway

- Manages up to 2,000 nodes
- Flexible, wireless communication to the NOC

Secure Web Portal

- Password-protected access to system information
- Full work order management suite

Additional Included Allowances

| Scope of Work | Cost Allowance |
|--|-----------------------|
| Pole arm adjustment & wiring modifications | \$ 76,000 |
| Pole arm adjustment | \$8,000 |
| Tree trimming | \$7,000 |

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.
- Cellular gateway communication charges.

COMMISSIONING:

- Sample light level readings will be conducted for each type of new lighting fixture and will be included in the O&M manuals
- All new light fixtures and new controls will be inspected and verified to be in good working condition prior to execution of Final Completion Certificate.
- Refer to General Work for all close-out document requirements.

TRAINING:

- Maximum of one (1) day training session for new LED fixtures
- Maximum of ten (10) day training session for new ROAM control system

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 ROAM control system. A 2% warranty stock of complete LED fixtures of each wattage type and a 2% stock of ROAM control nodes 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 only 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 \$8,447,950 in Measured Project Benefits during the term of this Attachment, for Total Project Benefits of \$8,447,950 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 | \$844,795 | \$0 | \$0 | \$844,795 |
| 2 | \$844,795 | \$0 | \$0 | \$844,795 |
| 3 | \$844,795 | \$0 | \$0 | \$844,795 |
| 4 | \$844,795 | \$0 | \$0 | \$844,795 |
| 5 | \$844,795 | \$0 | \$0 | \$844,795 |
| 6 | \$844,795 | \$0 | \$0 | \$844,795 |
| 7 | \$844,795 | \$0 | \$0 | \$844,795 |
| 8 | \$844,795 | \$0 | \$0 | \$844,795 |
| 9 | \$844,795 | \$0 | \$0 | \$844,795 |
| 10 | \$844,795 | \$0 | \$0 | \$844,795 |
| Totals | \$8,447,950 | \$0 | \$0 | \$8,447,950 |

*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 S-4, (iii) fails to fulfill any of its responsibilities necessary to enable Consultant to complete the Work and provide the M&V Services, or (iv) otherwise cancels, terminates or materially breaches this Attachment, the Assured Performance Guarantee shall automatically terminate and Consultant shall have no liability hereunder.

C. Project Benefits Shortfalls or Surpluses.

- (i) ***Project Benefits Shortfalls.*** If an Annual Project Benefits Shortfall occurs for any one year of the Guarantee Term, Consultant shall, at its discretion and in any combination, (a) set off the amount of such shortfall against any unpaid balance City then owes to Consultant, (b) where permitted by applicable law, increase the next year's amount of Annual Project Benefits by the amount of such shortfall, (c) pay to City the amount of such shortfall, or (d) subject to City's agreement, provide to City additional products or services, in the value of such shortfall, at no additional cost to City.
- (ii) ***Project Benefits Surpluses.*** If an Annual Project Benefits Surplus occurs for any one year of the Guarantee Term, Consultant may, at its discretion and in any combination, (a) apply the amount of such surplus to set off any subsequent Annual Project Benefit Shortfall during the Guarantee Term, or (b) bill City for the amount of payments made pursuant to Section C(i)(c) above and/or the value of the products or services provided pursuant to clause C(i)(d) above, in an amount not to exceed the amount of such surplus.*

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

II. NON-MEASURED PROJECT BENEFITS

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

III. MEASUREMENT AND VERIFICATION METHODOLOGIES

The following is a brief overview of the measurement and verification (M&V) methodologies applicable to the Improvement Measures set forth below. Consultant shall apply these methodologies, as more fully detailed in the guidelines and standards of the International Measurement and Verification Protocol (IPMVP), 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

Schedule S-2

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 | 356 hrs/month |
| Fuel Charge | \$0.025277 per kWh |
| Fuel Surcharge/Refund | \$0.00 per kWh |
| Energy Efficiency Cost Recovery Factor (EECRF) | \$0.000021 per kWh |
| Military Base Discount Recovery Factor (MBDRF) | 1.154% of total Fixture Charge |
| Applicable Taxes | Tax Exempt |

Notes:

1. Fuel charge and fuel surcharge/refund amounts represent current charges as of November 1, 2013.
2. EECRF and MBDRF amounts represent current charges

Schedule S-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 |

**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 |

**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 the proposed monthly fixture charges provided by El Paso Electric Company.

LED – NON-COMPANY OWNED AND MAINTAINED SYSTEMS

| | Total Wattage | Per Lamp Charge |
|-----------|---------------|-----------------|
| 65W Lamp | 65 | \$1.07 |
| 95W Lamp | 95 | \$1.58 |
| 100W Lamp | 100 | \$1.67 |
| 116W Lamp | 116 | \$1.90 |
| 159W Lamp | 159 | \$2.65 |

CITY REPLACED, OWNED AND MAINTAINED MV TO LED FIXTURE – COMPANY OWNED AND MAINTAINED 35 FOOT MOUNTING HEIGHT WOOD POLE

| | Total Wattage | Per Lamp Charge |
|----------------------------|---------------|-----------------|
| 175W – 7,000 Lumen Single | 65 | \$12.35 |
| 250W – 11,000 Lumen Single | 100 | \$15.44 |
| 400W – 20,000 Lumen Single | 100 | \$18.30 |

CITY REPLACED, OWNED AND MAINTAINED HPSV TO LED FIXTURE – COMPANY OWNED AND MAINTAINED WOOD POLE

| | Total Wattage | Per Lamp Charge |
|---|---------------|-----------------|
| 100W – 8,500 Lumen – 35 Foot Maximum Mounting Height | 65 | \$12.06 |
| 150W – 14,400 Lumen – 35 Foot Maximum Mounting Height | 95 | \$13.77 |
| 250W – 23,200 Lumen – 35 Foot Maximum Mounting Height | 116 | \$16.47 |
| 400W – 50,000 Lumen – 35 Foot Maximum Mounting Height | 159 | \$23.88 |

All new lamps that do not fall into any of the above categories will be charged at the following monthly rate:

NON-COMPANY OWNED, OPERATED AND MAINTAINED FIXTURE, LAMP, AND POLE

| | |
|------------------------|-----------|
| Energy Charge, per kWh | \$0.04642 |
|------------------------|-----------|

NON-COMPANY OWNED FIXTURE AND LAMP ON COMPANY OWNED DISTRIBUTION POLE

| | |
|------------------------|-----------|
| Energy Charge, per kWh | \$0.04642 |
| Pole Attachment Fee | \$2.05 |

Schedule S-2

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

| | |
|--|--------------------------------|
| Run Hours | 356 hrs/month |
| Fuel Charge | \$0.025277 per kWh |
| Fuel Surcharge/Refund | \$0.00 per kWh |
| Energy Efficiency Cost Recovery Factor (EECRF) | \$0.000021 per kWh |
| Military Base Discount Recovery Factor (MBDRF) | 1.154% 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 | 100 | HPS | C | E | C | E | 5.35 | 116 | 124 | 16.05 | 3.13 | 0 | 0.00 | 0.19 | 1,487 | 232 |
| Obstacle Lites Lamps El Paso TX 79901 | 9756730000 | 6 | 100 | HPS | C | E | C | E | 4.47 | 116 | 248 | 26.82 | 6.26 | 0 | 0.01 | 0.31 | 2,973 | 401 |
| 100 W Epe Shps Pole Lamps El Paso TX 79905 | 6846730000 | 363 | 100 | HPS | E | E | E | E | 15.20 | 124 | 16,024 | 5,517.60 | 405.05 | 0 | 0.34 | 63.67 | 192,291 | 71,840 |
| l 10 & l 110 Lamps El Paso TX 79901 | 4556730000 | 1025 | 100 | HPS | C | E | E | E | 7.43 | 124 | 45,248 | 7,615.75 | 1,143.72 | 0 | 0.95 | 87.89 | 542,971 | 106,180 |
| City O H/U G Lamps El Paso TX 79901 | 5556730000 | 8690 | 100 | HPS | C | E | C | E | 5.32 | 124 | 383,611 | 46,230.80 | 9,696.54 | 0 | 8.06 | 533.50 | 4,603,336 | 677,627 |
| City Parks 100 El Paso TX 79907 | 5806830000 | 286 | 100 | HPS | C | E | C | E | 5.32 | 124 | 12,625 | 1,521.52 | 319.13 | 0 | 0.27 | 17.56 | 151,502 | 22,302 |
| lh-10/Patriot Fwy Lamps El Paso TX 79904 | 4946730000 | 198 | 150 | HPS | C | E | C | E | 7.00 | 193 | 13,604 | 1,386.00 | 343.87 | 0 | 0.29 | 15.99 | 163,250 | 20,954 |
| Sunset Heights Lamps El Paso TX 79901 | 6556730000 | 2586 | 150 | HPS | C | E | E | E | 8.99 | 193 | 177,679 | 23,248.14 | 4,491.19 | 0 | 3.73 | 268.28 | 2,132,147 | 336,136 |
| G Orr Ascar &tx Lamps El Paso TX 79901 | 3756730000 | 309 | 150 | HPS | E | E | E | E | 16.49 | 193 | 21,231 | 5,095.41 | 536.65 | 0 | 0.45 | 58.80 | 254,769 | 68,296 |
| l 10 Continus Lamps El Paso TX 79901 | 3856730000 | 1025 | 150 | HPS | C | E | C | E | 7.00 | 193 | 70,426 | 7,175.00 | 1,780.15 | 0 | 1.48 | 82.80 | 845,108 | 108,473 |
| City Ug St Lt Lamps El Paso TX 79901 | 3556730000 | 486 | 175 | MV | C | E | C | E | 6.68 | 195 | 33,738 | 3,246.48 | 852.80 | 0 | 0.71 | 37.46 | 404,857 | 49,649 |
| Epe Co Single Lamps El Paso TX 79901 | 2656730000 | 2518 | 175 | MV | E | E | E | E | 15.22 | 195 | 174,800 | 38,323.96 | 4,418.41 | 0 | 3.67 | 442.26 | 2,097,595 | 518,260 |
| Dudley Field Lamps El Paso TX 79905 | 2366730000 | 8 | 175 | MV | E | E | E | E | 15.22 | 195 | 555 | 121.76 | 14.04 | 0 | 0.01 | 1.41 | 6,664 | 1,647 |
| El Paso St Lamps El Paso TX 79902 | 5156730000 | 1,334 | 175 | HPS | C | C | C | C | 6.65 | 210 | 99,730 | 8,871.10 | 2,520.87 | 0 | 2.09 | 102.37 | 1,196,758 | 137,957 |
| Epe Co Single Lamps El Paso TX 79901 | 3656730000 | 151 | 250 | HPS | E | E | E | E | 19.18 | 313 | 16,826 | 2,896.18 | 425.30 | 0 | 0.35 | 33.42 | 201,908 | 40,263 |
| Psano l10 WI Mt Mt Lamps El Paso TX 79901 | 7656730000 | 26 | 250 | MV | C | E | C | E | 8.78 | 292 | 2,703 | 228.28 | 68.32 | 0 | 0.06 | 2.63 | 32,433 | 3,591 |
| Old San Francis Lamps El Paso TX 79901 | 6577830000 | 30 | 250 | HPS | C | C | C | C | 3.94 | 295 | 3,151 | 118.20 | 79.64 | 0 | 0.07 | 1.36 | 37,807 | 2,391 |
| South El Paso Lamps El Paso TX 79901 | 8556730000 | 940 | 250 | HPS | C | E | E | E | 11.41 | 313 | 104,742 | 10,725.40 | 2,647.57 | 0 | 2.20 | 123.77 | 1,256,908 | 161,987 |
| City O.h./U.g. Lamps El Paso TX 79901 | 9556730000 | 4,804 | 250 | HPS | C | E | C | E | 9.59 | 313 | 535,300 | 46,070.36 | 13,530.78 | 0 | 11.24 | 531.65 | 6,423,601 | 721,728 |
| 250 W Epe Owned SI El Paso TX 79901 | 1656730000 | 398 | 250 | HPS | E | E | E | E | 19.18 | 313 | 44,348 | 7,633.64 | 1,120.99 | 0 | 0.93 | 88.09 | 532,180 | 106,124 |
| 1010 8th St Lamp El Paso TX 79901 | 6946730000 | 96 | 250 | HPS | C | C | C | C | 5.08 | 313 | 10,697 | 487.68 | 270.39 | 0 | 0.22 | 5.63 | 128,365 | 9,167 |
| City Parks 250W El Paso TX 79907 | 4806830000 | 8 | 250 | HPS | C | E | E | E | 11.41 | 313 | 891 | 91.28 | 22.53 | 0 | 0.02 | 1.05 | 10,697 | 1,379 |
| City Parks 250WP El Paso TX 79907 | 3806830000 | 6 | 250 | HPS | C | E | C | E | 9.59 | 313 | 669 | 57.54 | 16.90 | 0 | 0.01 | 0.66 | 8,023 | 901 |
| Cotton Overpass Lamps El Paso TX 79901 | 7556730000 | 81 | 400 | MV | C | E | C | E | 12.08 | 460 | 13,265 | 978.48 | 335.29 | 0 | 0.28 | 11.29 | 159,175 | 15,904 |
| Epe Co O L Lamps El Paso TX 79901 | 6456730000 | 137 | 400 | MV | E | E | E | E | 21.66 | 460 | 22,435 | 2,967.42 | 567.09 | 0 | 0.47 | 34.24 | 269,221 | 42,831 |
| Mcrae Single Lamps El Paso TX 79925 | 5656730000 | 73 | 400 | MV | E | E | E | E | 33.46 | 460 | 11,954 | 2,442.58 | 302.17 | 0 | 0.25 | 28.19 | 143,454 | 33,278 |
| Aprt Fwlsn Mshl Lamps El Paso TX 79901 | 1756730000 | 2,441 | 400 | HPS | C | E | C | E | 12.95 | 485 | 421,463 | 31,610.95 | 10,653.32 | 0 | 8.85 | 364.79 | 5,057,557 | 511,655 |
| Rrdr Fwls Wd Pl Lamps El Paso TX 79901 | 2756730000 | 98 | 400 | HPS | E | E | E | E | 27.02 | 485 | 16,921 | 2,647.96 | 427.70 | 0 | 0.36 | 30.56 | 203,048 | 37,279 |
| l10 Twr Less 10 Lamps El Paso TX 79901 | 6756730000 | 113 | 400 | HPS | C | E | C | E | 13.67 | 485 | 19,511 | 1,544.71 | 493.17 | 0 | 0.41 | 17.83 | 234,127 | 24,673 |
| 400W HPS El Paso TX 79907 | 6487900066 | 89 | 450 | HPS | E | E | E | E | 47.87 | 485 | 15,367 | 4,260.43 | 388.43 | 0 | 0.32 | 49.17 | 184,401 | 56,380 |
| Epec-City Dbl Lamps El Paso TX 79901 | 5856730000 | 56 (2) at 250 | HPS | C | E | E | E | E | 18.65 | 626 | 12,480 | 1,044.40 | 315.46 | 0 | 0.26 | 12.05 | 149,759 | 16,466 |
| Epe Co Dbl Lamps El Paso TX 79901 | 0656730000 | 63 (2) at 400 | MV | E | E | E | E | E | 46.99 | 920 | 20,634 | 2,960.37 | 521.56 | 0 | 0.43 | 34.16 | 247,605 | 42,198 |

Schedule S-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 (\$) |
|--|------------|---------------|------------|-----------|---------------|---------------|------------|------------|--------------------------------------|-------------------------|-------------|--------------------------|--------------------------|--------------------------|---|--|-------------------|------------------|
| 400W Arterial Lighting El Paso, Tx 79907 | 9145912123 | 859 | 400 | HPS | C | E | C | E | 14.73 | 485 | 148,315 | 12,653.07 | 3,748.96 | 0 | 3.11 | 146.02 | 1,779,779 | 198,614 |
| Downtown U G Lamps El Paso TX 79901 | 7456730000 | 14 | 1,000 | HPS | E | E | E | E | 89.45 | 1,102 | 5,492 | 1,252.30 | 138.83 | 0 | 0.12 | 14.45 | 65,908 | 16,868 |
| Downtown O H Lamps El Paso TX 79901 | 8456730000 | 4 | 1,000 | HPS | E | E | E | E | 54.81 | 1,102 | 1,569 | 219.24 | 39.67 | 0 | 0.03 | 2.53 | 18,831 | 3,138 |
| Downtown U G Lamps El Paso, Tx 79901 | 4756730000 | 656 | 400 | HPS | C | E | C | E | 13.48 | 485 | 113,265 | 8,842.88 | 2,863.00 | 0 | 2.38 | 102.05 | 1,359,180 | 141,724 |
| 250W Arterial Lighting El Paso, Tx 79907 | 7124909840 | 603 | 250 | HPS | C | E | C | E | 10.24 | 313 | 67,191 | 6,174.72 | 1,698.39 | 0 | 1.41 | 71.26 | 806,293 | 95,349 |
| 150 W HPS El Paso, Tx 79907 | 4418665264 | 12 | 150 | HPS | C | E | E | E | 8.99 | 193 | 824 | 107.88 | 20.84 | 0 | 0.02 | 1.24 | 9,894 | 1,560 |
| 100W Energy El Paso, Tx 79907 | 2762248170 | 38 | 100 | HPS | C | E | C | E | 2.04 | 124 | 1,677 | 77.52 | 42.40 | 0 | 0.04 | 0.89 | 20,130 | 1,450 |
| Totals | | 30,633 | | | | | | | | | | | | | | | 31,935,994 | 4,406,853 |

Summary of other monthly charges:

| | |
|--|--------------------------------|
| Fuel Charge | \$0.025277 per kWh |
| Fuel Surcharge/Refund | \$0.00 per kWh |
| Energy Efficiency Cost Recovery Factor (EECRF) | \$0.000021 per kWh |
| Military Base Discount Recovery Factor (MBDRF) | 1.154% of total Fixture Charge |

Notes:

1. Fuel charge and fuel surcharge/refund amounts are current as of November 1, 2013.
2. EECRF and MBDRF amounts represent current charges
3. Fixture quantities based on October 2013 electric bills
4. Owner & Maintenance: C – City, E – El Paso Electric Company (per utility bills)
5. Total Watts per Fixture includes ballast energy use

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

| | Pre-Retrofit | | | | | | | | | | | | | | | Post-Retrofit | | | | | | | | | | | | | | | |
|---------------|-----------------|-----------|---------|---------------|---------------|------------|-----------|---------------------------------|-------------------------|-------------------|---------------------|---------------------|---------------------|--|---|------------------|------------------|------------|----------|---------------------------------|-------------------------|-------------------|---------------------|---------------------|---------------------|--|---|----------------|------------------|--------------------|----------------|
| ID# | Pre Description | Pre Watts | Voltage | 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 | 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 | 240 | 7150 | C | C | W/S | 5.32 | 124 | 315,630 | 38,038 | 7,978 | 0 | 7 | 439 | 3,787,555 | 557,541 | 41 | 7,150 | 0.68 | 41 | 104,361 | 4,844 | 2,638 | 0 | 2 | 56 | 1,252,337 | 90,486 | 2,535,218 | 467,055 |
| LED-2 | 150W HPS | 150 | 240 | 450 | C | C | W/S | 6.21 | 193 | 30,919 | 2,795 | 782 | 0 | 1 | 32 | 371,023 | 43,307 | 53 | 450 | 0.88 | 53 | 8,491 | 394 | 215 | 0 | 0 | 5 | 101,887 | 7,362 | 269,136 | 35,945 |
| LED-3 | 175W MV | 175 | 240 | 50 | C | C | W | 6.68 | 195 | 3,471 | 334 | 88 | 0 | 0 | 4 | 41,652 | 5,108 | 41 | 50 | 0.68 | 41 | 730 | 34 | 18 | 0 | 0 | 0 | 8,758 | 633 | 32,894 | 4,475 |
| LED-4 | 250W HPS | 250 | 240 | 370 | C | C | W/S | 9.59 | 313 | 41,228 | 3,548 | 1,042 | 0 | 1 | 41 | 494,740 | 55,587 | 101 | 370 | 1.67 | 101 | 13,304 | 618 | 336 | 0 | 0 | 7 | 159,645 | 11,535 | 335,096 | 44,052 |
| LED-5 | 250W HPS | 250 | 480 | 2400 | C | C | W/S | 9.59 | 313 | 267,427 | 23,016 | 6,760 | 0 | 6 | 266 | 3,209,126 | 360,564 | 108 | 2,400 | 1.78 | 108 | 92,275 | 4,283 | 2,332 | 0 | 2 | 49 | 1,107,302 | 80,007 | 2,101,824 | 280,557 |
| LED-6 | 400W HPS | 400 | 240 | 30 | C | C | W/S | 12.95 | 485 | 5,180 | 389 | 131 | 0 | 0 | 4 | 62,158 | 6,288 | 140 | 30 | 2.31 | 140 | 1,495 | 69 | 38 | 0 | 0 | 1 | 17,942 | 1,296 | 44,215 | 4,992 |
| LED-7 | 400W HPS | 400 | 480 | 150 | C | C | W/S | 12.95 | 485 | 25,899 | 1,943 | 655 | 0 | 1 | 22 | 310,788 | 31,441 | 140 | 150 | 2.31 | 140 | 7,476 | 347 | 189 | 0 | 0 | 4 | 89,712 | 6,482 | 221,076 | 24,959 |
| Totals | | | | 10,600 | | | | | | | | | | | | 8,277,043 | 1,059,836 | | | 10,600 | | | | | | | 2,737,583 | 197,800 | 5,539,460 | 862,036 | |

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 S-1;
7. Obtaining any permits, approvals, and licenses that are necessary for the performance of the Work and are not Consultant's responsibility to obtain as set forth in Schedule S-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 S-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. Allowing the new ROAM software system to reside on the City IT network;
14. Monthly cellular gateway communication charges for the new ROAM control system;
15. Promptly notifying Consultant of any change in use or condition described in Section III of S-2 or any other matter that may impact the Assured Performance Guarantee;
16. 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 S-4.

1. Work. The price to be paid by City for the Work shall be \$7,500,000.00. 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 in Schedule S-2 of this Attachment, is \$0.

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 VII)

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 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")
300 N. Campbell
El Paso, TX 79901

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

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: **JOHNSON CONTROLS, INC.**

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

CERTIFICATE OF FINAL COMPLETION

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

CITY OF EL PASO ("City")
300 N. Campbell
El Paso, TX 79901

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

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: **JOHNSON CONTROLS, INC.**

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

SECO LoanSTAR Application – RFA# BE-G10-2013

Attachment A

1. General Information

| Part 1A: Applicant (Borrower) | | | |
|--------------------------------------|------------------------|-------------------|------------------|
| Name of Eligible Public Entity | | Federal Tax ID | Application Date |
| City of El Paso | | 74-6000749 | 12/13/13 |
| Mailing Address | | City | State Zip Code |
| 300 N. Campbell | | El Paso | TX 79901 |
| County Name | Total Amount Requested | | |
| El Paso County | \$7,500,000 | | |

| Part 1B: Chief Executive Officer (Signing Authority) | | | |
|---|-----------|---------------------|---------------------------------|
| First Name | Initial | Last Name | Title |
| Joyce | | Wilson | City Manager |
| Telephone | Extension | Fax | Email Address |
| 915-212-0023 | | 915-212-0025 | wilsonja@elpasotexas.gov |

| Part 1C : Applicant Primary Contact (Project Director) | | | |
|---|-----------|----------------|----------------------------------|
| First Name | Initial | Last Name | Title |
| Larry | | Nichols | Project Director |
| Telephone | Extension | Fax | Email Address |
| 915-621-6787 | | | nicholslf@elpasotexas.gov |

| Part 1D : Applicant Secondary Contact (Energy Manager) | | | |
|---|-----------|-------------------------|-----------------------------------|
| First Name | Initial | Last Name | Title |
| Eloisa | | Portillo-Morales | Energy Manager |
| Telephone | Extension | Fax | Email Address |
| 915-541-4468 | | | portilloec@elpasotexas.gov |

| Part 1E: Administrative Contact for Accounting (Financial Contact) | | | |
|---|-----------|----------------|--------------------------------|
| First Name | Initial | Last Name | Title |
| Mark | | Sutter | Comptroller |
| Mailing Address | | City | State Zip Code |
| 300 N. Campbell | | El Paso | TX 79901 |
| Telephone | Extension | Fax | Email Address |
| 915-212-1145 | | 915-541 | sutterm@elpasotexas.gov |

| Part 1F: Signature and Certification by Applicant Chief Executive Officer or Chief Financial Officer | | |
|--|--|---------|
| I certify that I am the Chief Executive Officer and that I have reviewed this application and that I will agree to abide by the terms of the contract. | | |
| Signature | Printed Name and Title | Date |
|  | Carmen Arrieta-Candelaria, Chief Financial Officer | 12/3/13 |

2. Project Information

PART 2: PROJECT INFORMATION

2A. Place a check on the type of report that is submitted with the application. One (1) original and five (5) bound copies of the report are required.

- Energy Assessment Report (EAR) for design-bid-build or design-build projects
- Utility Assessment Report (UAR) for Energy Savings Performance Contracts
- Commissioning Report
- Preliminary Energy Assessment (PEA)
 - o EAR/UAR to be completed in less than 100 days
 - o EAR/UAR to be completed in less than 120 days
 - o EAR/UAR to be completed in less than 140 days
- Project Assessment Commitment
 - o EAR/UAR to be completed in less than 100 days
 - o EAR/UAR to be completed in less than 120 days
 - o EAR/UAR to be completed in less than 140 days

If EAR/UAR cannot be completed in less than 140 days after notice is received that funding is committed from project, do not proceed. The project is disqualified from further loan consideration.

2B. Do you agree to accept the terms and conditions of the sample contract.

Yes No

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PART 3: PROJECT FINANCIAL INFORMATION

3B. Complete the following table for Energy Savings Performance Projects. If any information changes in the table prior to loan document preparation, an updated table is required in order to complete the loan application.

| UCRM No. | UCRM Title | Annual Savings | | | | | | | Project Cost (\$) | Payback (yrs.) | Estimated Project Useful Life (yrs.) |
|--|---------------------------|--------------------------|----------------|------------------|----------------------|---------------------|-----------------|---------------|-------------------|----------------|--------------------------------------|
| | | Electric Energy (kWh/yr) | Demand (kW/yr) | Electric (\$/yr) | Natural Gas (Mcf/yr) | Natural Gas (\$/yr) | Water (kGal/yr) | Water (\$/yr) | | | |
| 1 | LED Street Light Upgrades | 5,428,670 | 0 | 844,795 | 0 | 0 | 0 | 0 | 6,970,770 | 8.3 | 15.0 |
| 2 | | | | | | | | | | | |
| 3 | | | | | | | | | | | |
| 4 | | | | | | | | | | | |
| 5 | | | | | | | | | | | |
| 6 | | | | | | | | | | | |
| 7 | | | | | | | | | | | |
| 8 | | | | | | | | | | | |
| Utility Assessment Report Cost | | | | | | | | | 464,780 | | |
| Initial Measurement & Verification Cost | | | | | | | | | 0 | | |
| Construction Bonding Cost | | | | | | | | | 64,450 | | |
| Owner's Administration, Management, Training & Other Costs | | | | | | | | | 0 | | |
| Buy Down | | | | | | | | | 0 | | |
| TOTAL LOAN AMOUNT (IMPLEMENTATION TOTAL) (Simple Payback) | | | | | | | | | 7,500,000 | 8.9 | 15.0 |
| Required On-going Monitoring Service Cost | | | | | | | | | 0 | | |
| Guaranteed Rebate Savings | | | | | | | | | 0 | | |
| Financing Cost | | | | | | | | | 793,660 | | |
| TOTAL PROJECT PAYBACK (Project Payback) | | | | | | | | | 8,293,660 | 10.0 | |

* Individual energy efficiency measure payback must be less than or equal estimated useful life of the measure.

How long will it take to complete the project? 12 (months)

Is the **TOTAL PROJECT PAYBACK** less than 10 years? (Total Project Payback / Annual Savings (\$)) Yes No
If No, then project is disqualified from further loan consideration.

Is the simple payback for each UCRM less than the Estimated Useful Life (EUL) of the UCRM? Yes No
If No, then project is disqualified from further loan consideration.

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PART 4: PUBLIC VIEWING

Describe where monthly energy savings information will be made available for public viewing.

Monthly and annual energy savings for this project will be displayed on City Energy Kiosk located in the reception lobby of City Hall.

PART 5: PROJECT GEOGRAPHIC LOCATION AND POPULATION

Use the following URL to determine the county population, <http://quickfacts.census.gov/qfd/states/480001k.html>

| | |
|-------------|-------------------------|
| County Name | County Population |
| El Paso | 827,398 (2012 estimate) |

PART 6: SIGNATURE AND CERTIFICATION

Signature and Certification by Applicant Chief Financial Officer

I certify that I am the Chief Financial Officer and that I have reviewed this application, including commitment of “buy-down” funds. The information provided is accurate to the best of my knowledge and in my best professional judgment.

| | | |
|---|--|---------|
| Signature | Printed Name and Title | Date |
|  | Carmen Arrieta-Candelaria, Chief Financial Officer | 12/3/13 |

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Attachment B – Evaluation Form

Applications will be evaluated under the general criteria outlined below. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all applications submitted. The Comptroller is not obligated to execute a loan agreement on the basis of this NOLFA / RFA. The Comptroller shall not pay for any costs incurred by any entity in responding to this NOLFA / RFA. Comptroller and SECO may request additional information at any time if deemed necessary for further evaluation. General evaluation criteria are as follows and as set forth in the application instructions:

| Qualification Requirements | |
|---|--|
| 1. Has the applicant stated they agree to the terms and conditions of the sample contract? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| 2. This question relates only to <u>Design-Build (DB) and Design-Bid-Build (DBB) projects</u> : Is the Total Loan payback for the project energy cost reduction measures (ECRMs) less than ten years? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Not a DB or DBB |
| 3. This question relates only to <u>Energy Savings Performance Contracts (ESPCs)</u> : Is the Total Project Payback less than ten years? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not an ESPC |
| 4. Is the simple payback for each ECRM/UCRM less than Estimated Useful Life (EUL) of that measure? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |
| If the answer to any of the questions is "No", do not proceed. Project is disqualified from further loan consideration. Either Question 2 or 3 must have a "Yes" response to be considered for loan consideration. | |

| Description | Possible Base Points | Applicant Self-Score |
|--|-----------------------------|-----------------------------|
| <p>5. Which of the following reports are submitted with this application?</p> <ul style="list-style-type: none"> <input type="checkbox"/> Energy Assessment Report (EAR) for design-bid-build or design-build projects – 45 points <input checked="" type="checkbox"/> Utility Assessment Report (UAR) for Energy Savings Performance Contracts – 45 points <input type="checkbox"/> Commissioning Report – 45 points <input type="checkbox"/> Preliminary Energy Assessment (PEA) (Maximum 40 points) If EAR/UAR can be completed in less than: <ul style="list-style-type: none"> • 100 days after MOU execution – 40 points • 120 days after MOU execution – 35 points • 140 days after MOU execution – 30 points <input type="checkbox"/> Project Assessment Commitment (PAC) (Maximum 40 points) If EAR/UAR can be completed in less than: <ul style="list-style-type: none"> • 100 days after MOU execution – 40 points • 120 days after MOU execution – 35 points • 140 days after MOU execution – 30 points <p>Do not proceed, if EAR/UAR cannot be completed in less than 140 days after notice is received that funding is committed from project (Memorandum of Understanding (MOU)). The project is disqualified from further loan consideration.</p> <p>Do not proceed, if no EAR/UAR/PEA/PAC is submitted, the project is disqualified from further loan consideration.</p> | 45 | <u>45</u> |

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| Description | Possible Base Points | Applicant Self-Score |
|--|----------------------|----------------------|
| <p>6. What is the name of the county and the county population (http://quickfacts.census.gov/qfd/states/480001k.html) where project retrofit activities will take place?</p> <p>County Name: <u>El Paso</u> County Population: <u>827,398</u></p> <ul style="list-style-type: none"> • County population less than 10,000 - 2 points • County population between 10,001 to 100,000 – 1 point <input checked="" type="radio"/> County population greater than 100,000 – 0 points | 2 | <u>0</u> |
| <p>7. Will the energy savings information, updated monthly, be available for public viewing?</p> <ul style="list-style-type: none"> • If yes, how will the applicant make this information available for public viewing <ul style="list-style-type: none"> <input checked="" type="radio"/> Via an internet portal or <u>Via detailed signage at the facility entrance - 1 point</u> • If this information will not be made available for public viewing- 0 points | 1 | <u>1</u> |
| <p>8. In the previous (last announced) NOLFA/RFA, did you submit a NOLFA/RFA application which was <u>not</u> funded due to lack of available funding?</p> <ul style="list-style-type: none"> • Yes (Insert date of application _____) - 2 points <input checked="" type="radio"/> No - 0 points | 2 | <u>0</u> |
| Applicant Self-Score Total | 50 max | <u>46</u> |

(Not applicable)

SECO MEMORANDUM OF UNDERSTANDING

RFA# BE-G10-2013

(To be used only when submitting a Preliminary Energy Assessment or Project Assessment Commitment)

Subject to the conditions listed below, execution of this Memorandum of Understanding (MOU) reserves

\$ _____ of LoanSTAR Funding for _____.
(Amount) (Borrower)

The dollar amount listed above is the borrower's estimated cost based on the Preliminary Energy Assessment (PEA) or Project Assessment Commitment to analyze and implement energy efficiency projects which will be financed through the LoanSTAR Program.

The funds are reserved subject to the following conditions:

- (1) Upon written NOLFA selection, the borrower's CFO signs and inserts dates on this MOU, which certifies that the borrower has retained a Professional Engineer to prepare an Energy Assessment Report (EAR) or Utility Assessment Report (UAR). The EAR shall be prepared in accordance with the guidelines and formats provided in the Texas LoanSTAR Program Guidebook: Guidelines, Formats, Program Requirements and Documents (<http://seco.cpa.state.tx.us/lis/guidelines/>). The UAR shall be prepared in accordance with the SECO Performance Contracting Guidelines (http://seco.cpa.state.tx.us/perf-contract/docs/ESPC_Guidelines_Part5_UTILITYAssessmentReport.pdf).
- (2) The applicant's CFO certifies by signature of this document that three (3) original hard copies and one (1) electronic copy of the completed reports referenced in item 1 will be delivered to the State Energy Conservation Office for review. If these items are not submitted by the date above, the reserved funds will be released to other applicants.
- (3) The sole purpose of this MOU is to reserve LoanSTAR funds for an applicant during the period that its EAR or UAR is being prepared. This document should not be construed as a loan agreement and does not authorize the expenditure of funds for LoanSTAR projects. LoanSTAR project expenditures cannot be incurred before the effective date cited in the fully executed loan agreement.

Applicant

State Energy Conservation Office

Applicant Name (printed)

SECO Program Manager Name (printed)

Title

SECO Program Manager Signature

Applicant Signature

Date

Date

End Date for Commitment

(Not applicable)

RFA# BE-G10-2013

TEXAS LoanSTAR PROGRAM

PROJECT ASSESSMENT COMMITMENT

_____ (Applicant) requests that \$_____ of LoanSTAR Funding be reserved for a proposed energy efficiency, commissioning project or energy savings performance contract (ESPC).

The Applicant certifies that the energy efficiency or commissioning project shall comply with LoanSTAR Technical Guidelines (<http://seco.cpa.state.tx.us/ls//guidelines/>) and that the ESPC shall comply with the Performance Contracting Guidelines (<http://seco.cpa.state.tx.us/perf-contract/>). The Applicant dollar amount listed above is the borrower's estimated cost to analyze and implement energy efficiency projects which will be financed through the LoanSTAR Program.

LoanSTAR funds, if reserved, will be subject to the following conditions:

- (1) Applicant agrees to retain a Professional Engineer, licensed in the State of Texas, to prepare an Energy Assessment Report (EAR), a Commissioning Report, or an Utility Assessment Report (UAR) that complies with the LoanSTAR Technical Guidelines (<http://seco.cpa.state.tx.us/ls//guidelines/>) or with Performance Contracting Guidelines (<http://seco.cpa.state.tx.us/perf-contract/>). The Professional Engineer shall meet the technical analyst qualifications listed in Volume I, Section I, Paragraph C of the LoanSTAR Technical Guidelines Program Guidebook.
- (2) Applicant agrees to complete an EAR for design-bid-build or design-build contracts, a Commissioning Report for commissioning projects, or an UAR for ESPCs within Application calendar. On or before the date listed below the applicant agrees to submit three (3) original hard copies and one (1) electronic copy of the completed EAR, Commissioning Report, or UAR to the State Energy Conservation Office (SECO). If reports are not received by SECO by the date below, the funds may be released to other applicants.

Place "x" in box below for latest date of report submittal:

- EAR/UAR can be completed in less than 100 days after Memorandum of Understanding (MOU) execution
 - EAR/UAR to be completed in less than 120 days after MOU execution
 - EAR/UAR to be completed in less than 140 days after MOU execution
- (3) The sole function of a Project Assessment Commitment (PAC) is to request reservation of LoanSTAR funds for an applicant during the period that the EAR, Commissioning Report, UAR are being prepared. This document shall not be construed as a loan agreement and does not authorize the expenditure of funds for LoanSTAR projects. LoanSTAR project expenditures cannot be incurred before the effective date cited in the fully executed loan agreement.

Applicant

Applicant Name (printed)

Title

Applicant Signature

Date

**STATE ENERGY CONSERVATION OFFICE
LOAN AGREEMENT**

1. Parties; Effective Date

This Loan Agreement (hereinafter, "Agreement") is entered into by and between the Texas Comptroller of Public Accounts, through its State Energy Conservation Office ("Lender"), and _____ ("Borrower"). The Effective Date of this Agreement shall be the date this Agreement is signed by Lender, after having first been signed by the Borrower.

2. Loan of Funds

The Borrower hereby requests Lender and Lender hereby agrees, on the terms and conditions set forth in this Agreement, to establish a loan for the benefit of Borrower in an amount not to exceed _____ (\$ _____) (hereinafter, "Loan"). Borrower shall expend all funds received from Lender pursuant to this Agreement only for the purpose of completion of the project (hereinafter, "Project") described in the Loan Approval Statement attached hereto as Attachment A, the Engineering Report, and Borrower's Loan Application. The Project shall be completed within 12 months of the Effective Date ("Project Completion Date"). Lender reserves the right, in its sole discretion, to approve an extension requested by Borrower to extend the Project Completion Date for the Project; the Project Completion Date may be extended only on Lender's prior written approval as provided in Section 13 of this Agreement.

3. Authority

This Loan is authorized pursuant to: (1) the LoanSTAR Revolving Loan Program of the Texas State Energy Plan ("SEP") in accordance with the Energy Policy and Conservation Act (42 U.S.C. 6321, et seq.) as amended by the Energy Conservation and Production Act (42 U.S.C. 6326, et seq.); (2) the Oil Overcharge Restitutionary Act, Chapter 2305, Texas Government Code § 2305.0322; and (3) Title 1, Texas Administrative Code, Chapter 5.401, Loan Program for Energy Retrofits.

4. Term and Termination

The term of this Agreement shall begin on the Effective Date and shall terminate upon repayment, in full, of the Loan. The provisions of Sections 8, 9, 11, 12, 17, 19, 25, 26, 31, 33, 34 and 35; and Attachments B-1, B-2, and J shall survive the termination or expiration of this Agreement.

5. Payments

Borrower shall repay the Loan, in full, in accordance with the promissory note issued by Borrower (the "Note") and the terms specified in the Loan Payment Schedule at Lender's principal place of business in Austin, Texas, or at such other place as Lender may designate, the principal sum _____ **DOLLARS** (\$ _____) or such lesser amount as shall equal the aggregate amount disbursed to Borrower by Lender under the terms of this Agreement **together with interest on the unpaid principal amount computed from the date of each disbursement to Borrower until repaid in full** at the rate of ~~two and one-half percent (2.5%)~~ ^(2.0%) interest per annum. (all)

6. Disbursements

The Loan shall be disbursed in installments, no more frequently than monthly, following Lender's receipt of Borrower's requests for disbursement to pay the costs of goods purchased and services performed. Each request for disbursement shall be made on a form or voucher approved by Lender and the State of Texas, and supported by bills,

statements or invoices for the goods or services to be paid and such other documentation that in Lender's sole discretion allows for full substantiation of the costs incurred by Borrower. Borrower's requests for disbursement must be received by Lender not later than sixty days (60) after Borrower pays for or authorizes payment for the goods and services, and Lender shall have no obligation to make disbursements for the costs of goods and services if Borrower fails to comply with this requirement. Notwithstanding any other provision of this Agreement or any other document to the contrary, the total of all installments disbursed by Lender to Borrower shall not exceed the amount of the Loan set forth in Section 2 of this Agreement.

7. Contingency of Funding

Lender's performance of its obligations under this Agreement is contingent upon and subject to availability of and actual receipt by Lender of sufficient and adequate funds from the sources contemplated by this Agreement. This Agreement is subject to immediate termination or cancellation without penalty to Lender or the State of Texas, subject to such availability and receipt of these funds. In addition, Lender is a state agency whose authority and appropriations are subject to the actions of the Texas Legislature. If Lender becomes subject to a legislative change, revocation of statutory authority or lack of funds that would render Lender's performance under this Agreement impossible or unnecessary, Lender may terminate or cancel this Agreement without penalty to Lender or the State of Texas. In the event of a termination or cancellation under this Section, Lender shall not be required to give notice and shall not be liable for any damages, losses or any other amounts caused or associated with such termination or cancellation. Lender acknowledges and agrees the terms of this Section 6 equally apply to Borrower if Borrower is an agency of the State of Texas.

8. Accounts; Audits

If requested by Lender, Borrower shall deposit disbursements of the Loan into an account with an institution the deposits of which are insured by the federal government. Borrower shall establish on its books of account an account specifically for the Loan and maintain the same until the Loan is fully repaid. Such account shall accurately and fully show all deposits attributable to disbursements of the Loan and all expenditures of the Loan. Upon Lender's request, Borrower shall promptly acquire and submit to an independent audit of such account and all funds received from Lender. All costs related to Borrower's compliance with this Section shall be borne solely by Borrower. In addition to and without limitation on the other audit provisions of this Agreement, pursuant to Section 2262.003, Texas Government Code, the state auditor may conduct an audit or investigation of the Borrower or any other entity or person receiving funds from the state directly under this Agreement or indirectly through a subcontract under this Agreement. The acceptance of funds by the Borrower or any other entity or person directly under this Agreement or indirectly through a subcontract under this Agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, the Consultant or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. This Agreement may be amended unilaterally by the Comptroller to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.003. Under procedures provided by the state auditor on September 5, 2003, in addition to the above, (1) the Borrower understands that the acceptance of funds under this Agreement acts as acceptance of the authority of the state auditor to conduct an audit or investigation in connection with those funds; (2) the Borrower further agrees to cooperate fully with the state auditor in the conduct of the audit or investigation, including providing all records requested; (3) the Borrower shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the Borrower and the requirement to cooperate is included in any subcontract it awards; and (4) the state auditor shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of the Borrower relating to this Agreement.

9. Inspections; Monitoring

Borrower shall provide Lender, its authorized employees, agents and representatives, and authorized State of Texas and federal employees, agents and representatives, with access to the Project site and all Project records. Borrower

shall permit such persons to make physical inspections of any and all books, reports, documents, files, workpapers, work products, receipts, documentation, applications, data, accounts, or any other information or items pertaining to the Loan Application, the Project, the Loan, the Note or this Agreement, regardless of media ("Records") at reasonable times during the Project design process, before work on the Project commences, during the construction, installation, and implementation of the Project, and after work on the Project is completed and shall advise Borrower's project engineers and other employees, agents, and representatives of this requirement. Such authorized persons may monitor Project construction and review and audit financial documents and Project records. Borrower shall ensure that such documents are consistent with the project descriptions as detailed in Attachment A to this Agreement. Borrower shall in each of its contracts with a supplier of goods and services for the Project provide the same rights of access and inspection with respect to the Project and Records in the possession of the supplier. In addition, Lender reserves the right, in its sole discretion, to make copies of, reproduce, distribute, monitor and inspect all Records to comply with requirements of the United States Department of Energy, the Texas Legislature, federal and state courts, and to publicly demonstrate the energy savings achieved by the Project.

Borrower shall permit such persons to make final physical inspections of the Project and Project records to verify the Project's completion in accordance with this Agreement and other State of Texas requirements. Lender may withhold from disbursement to Borrower ten percent (10%) of the amount of the Loan pending Lender's final inspection. Lender shall make reasonable efforts to coordinate site visits with Borrower; however, Lender and other authorized persons reserve the right to make unscheduled visits for any of the purposes described in this Agreement; however, Lender reserves the right, in its sole discretion, to extend the date for final inspection or to waive the final inspection. Without limiting Lender's right to make inspections at any time, Lender will physically inspect the project at the fifty percent (50%) and one hundred (100%) completion periods; provided, however, that Lender, may determine, in sole discretion, to limit this construction monitoring to one site visit to reduce costs on smaller projects.

10. Design Review

Lender's written approval will be required at the fifty percent (50%) and one hundred percent (100%) completion periods before Borrower proceeds to the next phase of the project. Construction shall not begin until Lender has approved all design and specification documents.

11. Records Retention

Borrower shall maintain all Records supporting its Loan Application until the Loan is fully repaid and for a period of four (4) years thereafter and shall maintain copies of all Records under this Agreement for a period of four (4) years after the date of submission; however, if at the conclusion of any audit of Borrower or audit of such Records, Lender determines that specific Records are no longer required to be maintained, Lender shall advise Borrower in writing and the obligation imposed on Borrower by this Section shall be terminated with respect to such specific Records only.

12. Borrower Representations and Warranties

To induce Lender to enter into this Agreement, extend the Loan and make the advances, Borrower represents and warrants to Lender that:

- a) Borrower has full power and authority to enter into this Agreement and this Agreement has been duly and validly authorized, executed and delivered by Borrower.
- b) This Agreement does not violate any limitation on the indebtedness of Borrower imposed by any statute, ordinance, charter, bylaw, or other agreement or instrument applicable to Borrower and this Agreement will not be rescinded at any time by any action of Borrower.

- c) Borrower is not in default in the performance or fulfillment of any of the obligations, covenants or conditions contained herein or in any other resolution, agreement, or instrument to which Borrower is a party which would have a material adverse effect on the ability of Borrower to perform its obligations hereunder or would adversely affect the enforceability hereof.
- d) Borrower has, or will have prior to commencing work on the Project, obtained all necessary federal, state and local licenses, permits and approvals required to construct, install, implement and operate the Project and shall comply with all federal, state and local laws, codes, rules and regulations applicable to the Project.
- e) Any written information, reports and other paper or data prepared by Borrower and furnished to Lender by Borrower pursuant to this Agreement were, at the time they were so furnished, complete and correct in all material respects to the extent necessary to give Lender a true and accurate knowledge of the subject matter thereof.
- f) Borrower shall maintain the Project in good working order and shall ensure that adequate personnel are fully instructed in the proper use and care of the Project.
- g) Borrower shall execute and deliver to Lender all such documents and instruments as may be necessary or reasonably required by Lender to enable Lender to exercise and enforce its rights under this Agreement, the Loan and any related transaction documents.
- h) Borrower shall to the extent permitted by law, and upon three (3) business days prior notice, permit Lender, from time to time during normal business hours, as often as may be reasonably requested, to inspect its books and records and make copies from such books and records which relate to its performance under this Agreement.

13. Extension

To request an extension, Borrower shall submit to Lender a letter describing in detail the reasons for requesting the extension. With the letter, Borrower shall submit documentation to support the request. Lender reserves the right, in its sole discretion, to disapprove requests that do not include acceptable documentation or that are otherwise not submitted in compliance with this Section 13.

Lender may approve a properly requested and documented extension of the Project Completion Date for the Project if Borrower has complied with all requirements of this Agreement, other than completion of the Project by the original Project Completion Date, and any one of the following apply:

- 1) Borrower has recently discovered unforeseen circumstances during design or construction that prevent completion of the Project by the original Project Completion Date and that must be resolved to complete the Project as designed;
- 2) Borrower is required to rebid, delete, or propose an alternative to the Project; or
- 3) A force of nature created a delay in completing the Project.

In order to qualify for an extension, Borrower may not have been assessed more than two (2) late payment penalties under Section 21 during the term of this Agreement.

Lender shall not approve extensions under this Section 13 unless Borrower agrees to make and Borrower makes loan repayments on the previously completed portion of the Project as specified in the Loan Repayment Schedule provided by Lender. Any extension must be documented through an Amendment to this Agreement.

14. Events of Default

The occurrence of any of the following shall constitute a default by Borrower:

- a) The failure of Borrower to make a payment due and payable under this Agreement within the time specified in this Agreement; or
- b) A breach or failure of performance by Borrower or any covenant, condition, or provision of this Agreement; or
- c) The expenditure of Loan funds by Borrower for purposes other than the implementation of the Project as provided in this Agreement; or
- d) Borrower's entry into any agreement whereby any person, corporation, business, or similar entity, other than Borrower, benefits directly or indirectly from utility savings resulting from the Loan or this Agreement, without the Lender's prior written approval, until such time as the Loan is repaid in full as determined by Lender; or
- e) Without the prior written consent of Lender, the sale, transfer or other disposition by Borrower of any equipment or material constituting part of the Project, all or any part of the cost of which was paid with the Loan, or the sale, transfer or other disposition of, or the termination of the lease with respect to, the building or facility in which the Project is located, until such time as the Loan is repaid in full; or
- f) The expenditure of Loan funds by Borrower to reimburse itself for funds expended by Borrower on the Project prior to the effective date of the Loan and this Agreement; or
- g) The expenditure of Loan funds for the purpose of supplanting funds appropriated to the Borrower by the Texas Legislature; or
- h) Borrower's default under any other agreement between Borrower and Lender.

In the event of Borrower's default, Lender shall notify Borrower of the default and Borrower shall have a reasonable opportunity, not to exceed twenty (20) days, to cure Borrower's default. If Borrower fails to cure the default, Lender shall be released from all of its obligations under this Agreement and shall have the right to declare the Loan in default and all amounts loaned to Borrower under this Agreement and earned interest shall become immediately due. Borrower waives all demands for payment, presentations for payment, and notices of intention to accelerate maturity, notices of acceleration of maturity, protest, and notices of protest, to the extent permitted by law. Upon receipt of notice of default from Lender, Borrower shall cancel or otherwise terminate any contract, agreement or order relating to the Project and cease to incur any cost or expense relating to the Project.

If Borrower is a state agency, department or entity, or an institution of higher education or junior college funded in whole or in part by the State of Texas and Borrower has failed to repay the Loan within ninety (90) days of Lender's declaration of default under this Section, Lender may notify the Office of the Governor, Legislative Budget Board and the Texas Higher Education Coordinating Board of Borrower's breach of this Agreement and the amount owing by Borrower under this Agreement and recommend to the Legislative Budget Board that Borrower's appropriation of funds for the next succeeding biennium be reduced by an amount equal to the total amount due under this Agreement.

If Borrower is a school district organized under the laws of the State of Texas and has failed to repay the Loan within ninety (90) days of Lender's declaration of default under this Section, Lender may notify the Texas Education Agency of Borrower's breach of this Agreement and the amount owing by Borrower under this Agreement and

recommend to the Texas Education Agency that funds to be allocated to Borrower by the Texas Education Agency for the next succeeding year be reduced by an amount equal to the total amount due under this Agreement.

15. Amendments

Any amendment, modification or alteration of the terms of this Agreement shall be in writing and executed by both parties; however, Lender may unilaterally amend this Agreement as provided in Section 26 below. Oral agreements or understandings not incorporated into this Agreement shall not be binding on the parties.

16. Notices

All notices and other communications required or permitted under this Agreement shall be in writing (including required copies) and delivered by registered or certified United States mail or by a recognized commercial courier or delivery service as follows:

If to Lender: Texas Comptroller of Public Accounts
State Energy Conservation Office
LBJ State Office Building
111 East 17th Street, Room 1118
Austin, Texas 78774-0100

If to Borrower: _____

17. Indemnification

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

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

18. Assignment

This Agreement and the rights and obligations of Borrower hereunder are not assignable or transferable by Borrower, in whole or in part, without the prior written consent of Lender.

19. No Waiver

This Agreement shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to Lender, as an agency of the State of Texas, or otherwise available to Lender or Borrower. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities available to Lender or Borrower under this Agreement or under applicable law shall not constitute a waiver of such

privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. Lender and Borrower do not waive any privileges, rights, defenses, remedies or immunities available to Lender and Borrower by entering into this Agreement or by their conduct prior to or subsequent to entering into this Agreement. **The modification of any privileges, rights, defenses, remedies, or immunities available to Lender and Borrower must be in writing, must reference this section, and must be signed by Lender or Borrower to be effective, and such modification of any privileges, rights, defenses, remedies, or immunities available to Lender and Borrower shall not constitute waiver of any subsequent privileges, rights, defenses, remedies, or immunities under this Agreement or under applicable law.**

20. Discrimination

During the term of this Agreement, Borrower shall not engage in any discriminatory practice with respect to any activity funded in whole or in part under this Agreement or by the Loan or with respect to any recipients of services, employees or applicants for employment based upon race, creed, color, handicap, national origin, gender, religion, political affiliation or age. Borrower shall in each contract with a person providing goods or services for the Project require the same agreement as to non-discrimination. By signing this agreement, Borrower certifies that it will comply with all HUB requirements, as applicable.

21. Default Rate

All past-due principal of, and, to the extent permitted by applicable law, past-due interest on, any Notes issued under this Loan Agreement shall bear interest at ten percent (10%) (the "Default Rate") until the Loan paid in full. In its sole discretion, Lender may waive the Default Rate upon Borrower's acceptable written justification for such waiver.

22. Maximum Interest

Interest on the Loan evidenced by this Agreement shall not exceed the maximum amount of non-usurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited on the principal of the Loan or, if that has been paid, refunded. On any acceleration required or permitted prepayment, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the Loan or, if the principal of the Loan has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the Loan.

23. Governing Law

This Agreement and the rights and duties of the parties hereunder shall be governed by the laws of the State of Texas.

24. Taxes

Borrower is solely responsible for all state, federal and local taxes of any kind resulting from this Agreement. Lender shall have no liability for any such taxes. Borrower represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under the Texas Tax Code, Chapter 171. In addition, if Borrower is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, Borrower certifies that it holds a permit issued by the Comptroller of Public Accounts to collect or remit all state and local sales and use taxes that become due and owing as a result of the individual's or entity's business in Texas or certifies that it does not sell tangible personal property or services that are subject to the state and local sales and use tax.

Under the Texas Government Code, Section 2155.004, Borrower certifies that the individual or business entity named in this Agreement is not ineligible to receive the specified contract and acknowledges that this Agreement may be terminated and payment withheld if this certification is inaccurate.

25. Disputes

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

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

- a) Borrower's claim for breach of this Agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Borrower shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee. Said notice shall also be given to all other representatives of Lender and Borrower otherwise entitled to notice under this Agreement. Compliance by Borrower with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
- b) The contested case process provided in Chapter 2260 is Borrower's sole and exclusive process for seeking a remedy for an alleged breach of contract by Lender if the parties are unable to resolve their disputes under subparagraph (A) of this Section.
- c) Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civ. Prac. and Rem. Code. Neither the execution of this Agreement by Lender nor any other conduct of any representative of Lender relating to this Agreement shall be considered a waiver of sovereign immunity to suit.

For all other specific breach of contract claims or disputes under this Agreement, the following shall apply:

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

Notwithstanding any other provision of this Agreement to the contrary, Contractor shall continue performance and shall not be excused from performance during the period any breach of Contract claim or dispute is pending under either of the above processes; however, Contractor may suspend performance during the pendency of such claim or dispute if Contractor has complied with all provisions of §2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

26. Compliance

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

27. Time

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

28. No Conflicts

Borrower represents and warrants that Borrower has no actual or potential conflicts of interest in entering into this Agreement with Lender and that Borrower's receipt of disbursements under this Agreement would not reasonably create an appearance of impropriety. Borrower represents and warrants that neither Borrower nor any person or entity that will participate financially in this Agreement has received compensation from Lender for participation in preparation of specifications for this Agreement.

29. DTPA

Borrower represents and warrants that Borrower has not been the subject of a Deceptive Trade Practices Act or any unfair business practice, administrative hearing, or court suit and that Borrower has not been found to be guilty of such practices in such proceedings. Borrower represents and warrants that it has no officers who have served as officers of other entities who have been the subject of a Deceptive Trade Practices Act or any unfair business practice, administrative hearing, or court suit and that such officers have not been found guilty of such practices in such proceedings.

30. Antitrust

Borrower represents and warrants that neither Borrower nor any firm, corporation, partnership, or institution represented by Borrower, nor anyone acting for such firm, corporation, partnership, or institution, has violated Texas antitrust laws or federal antitrust laws.

31. Confidentiality

Borrower, its employees and contractors shall not disclose to anyone, directly or indirectly, any information designated by Lender as confidential or information accessed as a result of this Agreement without prior written consent of Lender. Notwithstanding any other provisions of this Agreement to the contrary, Borrower understands that Lender is bound by provisions of the Texas Public Information Act (formerly the Texas Open Records Act) and Attorney General Opinions issued under the statute. If Borrower is not also subject to the Texas Public Information Act, Borrower shall, within three (3) days of receipt, refer to Lender any third party requests, received directly by it, for information to which Borrower has access as a result of or in the course of performance under this Agreement.

32. Other Rights

Borrower shall have no exclusive rights or benefits other than those set forth in this Agreement.

33. Certain Claims

Borrower shall, to the extent authorized by the Constitution and laws of the State of Texas, defend and indemnify Lender and the State of Texas against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from or related to this Agreement, provided that Lender shall notify Borrower of any such claim within a reasonable time of Lender's receiving notice of any such claim. Borrower shall pay all reasonable costs of Lender's counsel. If Borrower is notified of any claim subject to this Section, Borrower shall notify Lender of such claim within five (5) working days of such notice. If Lender determines that a conflict exists between its interests and those of Borrower or if Lender is required by applicable law to select separate counsel, Lender shall be permitted to select separate counsel and the reasonable costs of such Lender's counsel shall be paid by Borrower. No settlement of any such claim shall be made by Borrower without Lender's prior written approval. . Borrower represents that it has determined what licenses; patents and permits are required under this Agreement and has acquired or will acquire all such licenses, patents and permits prior to commencement of the Project.

34. Statements

By signature to this Agreement, Borrower makes all of the representations, warranties, covenants and certifications included in this Agreement. Notwithstanding any other provision of this Agreement to the contrary, if Borrower signs this Agreement with a false statement or it is subsequently determined that Borrower has violated any of the representations, warranties, covenants or certifications included in this Agreement, Borrower shall be in default under this Agreement and Lender may terminate or void this Agreement for cause and pursue other remedies available to Lender under this Agreement and applicable law.

35. Debts or Delinquencies to State

Borrower acknowledges and agrees that, to the extent Borrower owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Borrower is otherwise owed under or related to this Agreement may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Borrower owes the State of Texas until the debt or delinquent taxes are paid in full. These provisions are effective at any time Borrower owes any such debt or delinquency. Borrower shall comply with rules adopted by the Comptroller under §§403.055, 403.0551, 2252.903, Texas Government Code, and other applicable laws and regulations regarding satisfaction of debts or delinquencies to the State of Texas.

Furthermore, Borrower acknowledges and agrees that any obligation to refund or return contract funds based on termination or breach of this Agreement entered into by Borrower and Comptroller creates "a debt to the state" for purposes of Section 403.055 of the Texas Government Code. Borrower further acknowledges and agrees that the terms of this Agreement are sufficient to create a debt by agreement between the Borrower and Comptroller. Comptroller agrees that it shall provide Borrower the opportunity to contest the amount due or the existence of a breach through an internal administrative review process which shall be determined by Comptroller. Borrower's failure to return any amount owed upon conclusion of Comptroller's administrative review process shall allow Comptroller to use the warrant-hold process under Section 403.055 of the Texas Government Code as a means of enforcing Borrower's compliance with the terms of the Grant Agreement or to recover grant funds required to be returned by Borrower under the terms of this Agreement.

If Borrower is a "local government entity" as defined under Section 271.151 of the Texas Local Government Code, Borrower acknowledges and agrees that this Agreement is a written contract stating the essential terms for providing services to Borrower, and therefore, this Agreement is subject to Chapter 271, Subchapter I, of the Local Government Code which waives sovereign immunity for certain breach of contract claims.

36. Incorporation

All of the following attachments are attached hereto and incorporated into this Agreement for all purposes:

- Attachment A:** Loan Approval Statement
- Attachment A-1:** Promissory Note
- Attachment B-1:** DOE Assurance of Compliance Nondiscrimination in State Assisted Programs, as completed by Borrower
- Attachment B-2:** DOE Assurance of Compliance Nondiscrimination in State Assisted Programs, as completed by each Borrower subcontractor
- Attachment C:** Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions, as completed by Borrower
- Attachment D:** Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements, as completed by Borrower
- Attachment E:** Disclosure of Lobbying Activities, as completed by Borrower
- Attachment F:** Assurances – Non Construction Programs, as completed by Borrower
- Attachment G:** Intellectual Property Provisions, as completed by Borrower
- Attachment H:** Subcontracting Provisions; Mandatory Flowdown Provision, as completed by the Borrower
- Attachment I:** Consultation List for Energy Efficiency and Conservation Block Grants & the State Energy Plan Programs
- Attachment J:** Execution of Application
- Attachment K:** Lender’s NOLFA/RFA and Official Responses to Questions
- Attachment L:** Borrower’s Application

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

1. This Agreement, excluding its attachments;
2. Attachments A through A-1;
3. Attachments B-1 through J;
4. Attachment K; and
5. Attachment L.

Borrower represents and warrants that it completed and provided the following Attachments to Lender prior to executing this Agreement: B-1, C, D, E, F, G, H, and J. In addition, Borrower represents and warrants that each of its contractors completed and provided an Attachment B-2 to Borrower and Lender prior to Borrower executing this Agreement.

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

37. Successors and Assigns

This Agreement is binding upon Borrower and its successors and assigns and upon Lender and its successors and assigns.

38. Severability

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

39. Merger

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

40. Signatories

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

LENDER:

BORROWER:

Texas Comptroller of Public Accounts

By: _____

By: _____

Martin A. Hubert
Deputy Comptroller

(Name)
(Title)

Date: _____

Date: _____

DRAFT

ATTACHMENT A, Loan No. _____

**LOAN APPROVAL STATEMENT
For Energy Conservation Measures**

Agency: _____
 Address: _____
 City: _____
 Loan Coordinator: _____
 Title: _____
 Phone: _____

| Building | (E/U) C R M | Description of Energy/Utility Cost Reduction Measure (E/U)CRM | Estimated (E/U)CRM Cost (\$) | Annual Energy Cost Savings (per yr) | Pay- back (yrs) | (E/U)CRM Loan Amount (\$) |
|----------|----------------------|--|---------------------------------------|--|-----------------------|------------------------------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |

| | |
|------------------------------|--|
| Engineering Audit Expense | |
| Measurement and Verification | |
| Escalation Cost | |
| TOTAL LOAN | |

Anticipated Substantial Completion Time
 Payback (with allowance)

Comments: _____

NOTE: The final Loan Repayment Schedule will be sent to Borrower after construction has been completed and the Borrower's Final Report is accepted by Lender and SECO. The outstanding loan balance on the Loan Repayment Schedule is the principal plus accrued interest at the time of the first loan repayment. The loan repayment term is equal to the simple payback shown on this Attachment A, above.

Loan Statement Definitions

- a) **Building** - A description of the building/facility and individual ECM is contained in the engineering report that is incorporated herein by reference and included as a part of this Attachment A.
- b) **(E/U)CRM** - No (E/U)CRMs may be canceled after loan is granted without prior written Lender approval.
- c) **Estimated (E/U)CRM Cost (\$)** - includes cost of detail engineering design, labor, and materials to implement retrofit. The cost of an individual ECM may not exceed 120% of approved ECM amount without a contract amendment and update to the Energy Assessment Report (Utility Assessment Report). Increases in individual ECM costs must be offset with equivalent decreases in different ECM(s) costs. Variances will be documented in the LoanSTAR Change in Scope Review and receive written approval from the LoanSTAR Program Administrator.
- d) **Annual Energy Cost Savings (\$/yr)** - Energy Retrofit Savings and/or Avoided Costs of Electrical Energy and Demand, Oil or Natural Gas. Does not include Operations and Maintenance Savings.
- e) **(E/U)CRM Loan Amount (\$)** - 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.
- f) **Project Simple Payback (yrs)** - The **TOTAL LOAN** divided by the **Annual Energy Cost Savings (\$/yr)**.

ATTACHMENT A-1

PROMISSORY NOTE

\$ _____

1. FOR VALUE RECEIVED, _____ (“Maker”), hereby unconditionally promises to pay to the _____ DOLLARS (\$ _____), or, if less, the unpaid principal amount of the Loan, together with accrued interest thereon, in lawful money of the United States of America. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Loan Agreement (as defined below).
2. The unpaid principal amount of this promissory note (this “Note”) shall be payable in accordance with the terms of the Loan Payment Schedule and Sections 5, 21 and 22 of the Loan Agreement. The Loan Payment Schedule will be finalized once the Project is complete.
3. The unpaid principal amount of this Note shall bear interest from the date of borrowing until the Loan is repaid in full, whether at maturity or by acceleration, in accordance with Sections 5, 21 and 22 of the Loan Agreement.
4. All borrowings hereunder, and all payments made with respect thereto, may be recorded by Payee from time to time on the Loan Payment Schedule(s), or Payee may record such information by such other method as Payee may generally employ; *provided, however*, that failure to make any such entry shall in no way reduce or diminish Maker’s obligations hereunder. The aggregate unpaid amount of all borrowings set forth on the Loan Payment Schedule(s) which may be attached hereto shall be rebuttably presumptive evidence of the unpaid principal amount of this Note.
5. This Note has been executed and delivered pursuant to that certain Loan Agreement (as amended, modified, supplemented, or restated from time to time, the “*Loan Agreement*”), by and among Maker, as the borrower thereunder, and Payee as lender. This Note evidences borrowings made under the Loan Agreement, and the holder of this Note shall be entitled to the benefits provided in the Loan Agreement. Reference is hereby made to the Loan Agreement for a statement of: (a) the obligation of Payee to make advances hereunder; (b) the prepayment rights and obligations of Maker; (c) the collateral for the repayment of this Note; and (d) the events upon which the maturity of this Note may be accelerated.
6. Provided Maker is not in default under the terms of this Note, the Loan Agreement or any other document evidencing, governing or securing the loan evidenced by this Note (collectively, the “*Loan Documents*”), Maker may prepay the principal of this Note in whole or in part, at any time, or from time to time, without penalty or premium, and interest shall immediately cease to accrue on any amount so prepaid.
7. If this Note, or any installment or payment due hereunder, is not paid when due, whether at maturity or by acceleration, Maker agrees to pay all out-of-pocket costs of collection, including, but not limited to, attorneys’ fees incurred by the holder hereof. All past-due principal of, and, to the extent permitted by applicable law, past-due interest on, this Note shall bear interest until paid at the Default Rate as provided in Section 21 of the Loan Agreement.
8. The laws of the State of Texas, and the applicable federal laws of the United States of America, shall govern the validity, construction, enforcement and interpretation of this Note.

BORROWER:

By: _____ (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.

_____(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 |
| _____ | _____ |
| _____ | Telephone Number |
| _____ | |

LOAN # _____

Address _____

Authorized Official:

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

DRAFT

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

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.

(Enter name of Borrower's Subcontractor) _____ (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 of Subcontractor

Name and Title (Printed or Typed)

(_____
Telephone Number

Signature

Date

Subcontractor:

Telephone Number

Address

Authorized Official of Subcontractor:

Name and Title (Printed or Typed)

Telephone Number

Signature

Date

DRAFT

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.

Organization Name

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 1 (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;
- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:
- (1) Taking appropriate actions against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act 9f 1973, as amended; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
- (2) The 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)

-

-

-

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

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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 resulting from a violation occurring during

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.

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.

Name of Applicant

Pre/Award Number and/or Project Name

Printed Name and Title of Authorized Representative

Signature

Date

DRAFT

ATTACHMENT F, Loan No. _____
ASSURANCES -- NON-CONSTRUCTION PROGRAMS
OMB Approval No. 0348-0040

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller, the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction sub-agreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93- 234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in flood plains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469 a-1 et seq.)
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

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 loan exceeds \$10,000.

- (a) The Borrower 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 Borrower shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Borrower pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Borrower 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 Borrower 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 Borrower or its contractor 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 Borrower 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 loan provided the date requirements of this loan have been met as of the date of the private use of such data. The Borrower 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 Borrower 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 Borrower 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 loan by the Borrower, 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 Borrower in the performance of this loan but which is incorporated in the material furnished under the loan, provided that such license shall be only to the extent the Borrower now has, or prior to completion or close-out of the loan, may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.
 - (2) The Borrower agrees that it will not knowingly include any material copyrighted by others in any written or copyrighted material furnished or delivered under this loan 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 loan 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 loan or modification is based.

Organization Name

Name and Title of Authorized Representative

Signature

Date

DRAFT

ATTACHMENT H

SUBCONTRACTING PROVISIONS: MANDATORY FLOWDOWN PROVISION

Borrower, if subcontracting any of its performance hereunder, shall legally bind subcontractors to perform and make such Subcontractors subject to all the duties, requirements, and obligations of Borrower under this Agreement. Borrower shall be jointly and severally liable for all performances under this Agreement, including, but not limited to, the performance of its Subcontractors to the extent permitted under the Constitution and laws of the State of Texas.

Borrower 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 Subcontractors under this Agreement. In no event shall any provision of this Attachment H, including, but not limited to, the requirement that Borrower obtain the prior approval of Comptroller on Borrower's proposed subcontracts, be construed as relieving Borrower 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 Borrower. Borrower shall, upon request, furnish Comptroller 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, Borrower 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.

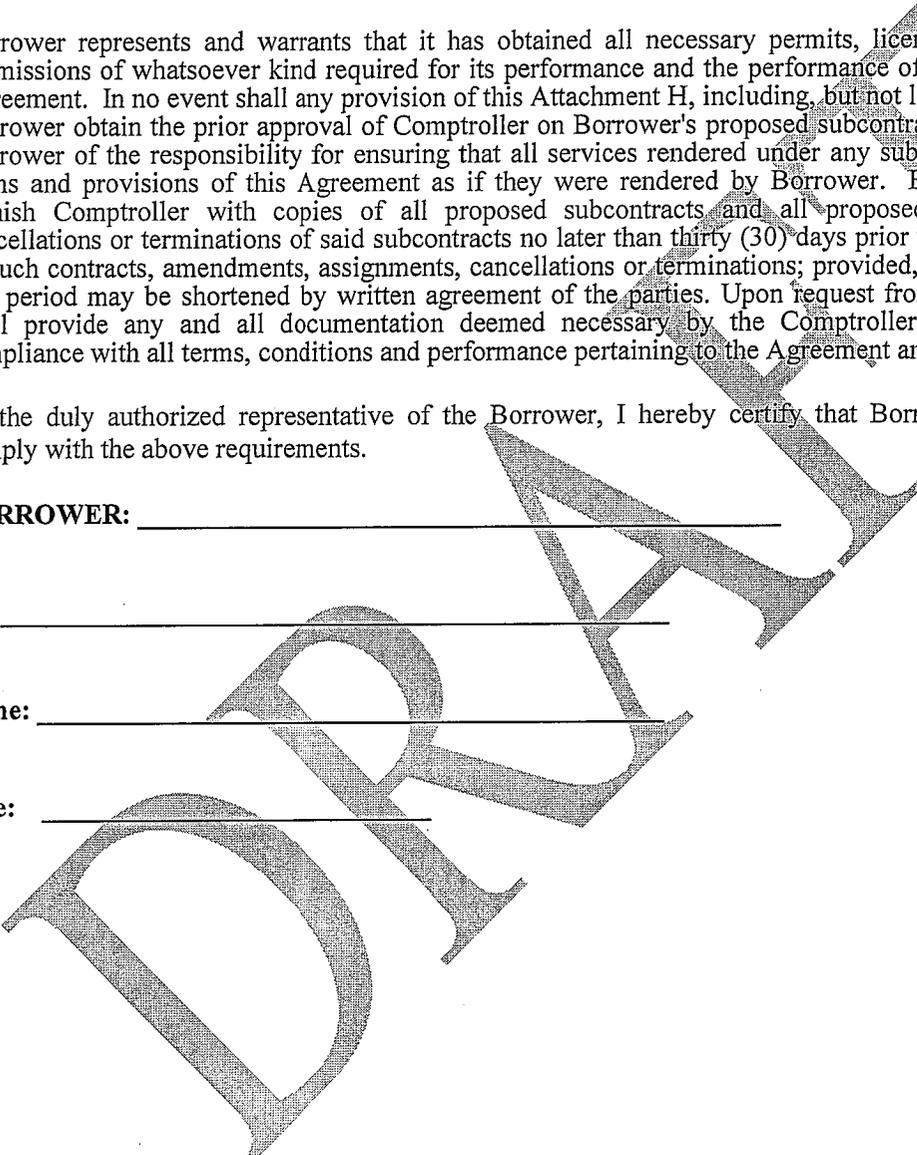
As the duly authorized representative of the Borrower, I hereby certify that Borrower and subcontractor will comply with the above requirements.

BORROWER: _____

By: _____

Name: _____

Date: _____



ATTACHMENT I
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.

ATTACHMENT J
EXECUTION OF APPLICATION

1. By signature hereon, Applicant represents and warrants that the provisions in this Execution of Application apply to Applicant and all of Applicant's principals, officers, directors, shareholders, partners, owners, agents, employees, subcontractors, independent contractors, and any other representatives who may provide services under, who have a financial interest in, or otherwise are interested in this RFA or any contract resulting from it.
2. By signature hereon, Applicant represents and warrants its intent to furnish the requested items at the prices quoted in its Application.
3. By signature hereon, Applicant represents and warrants that it has read and understood and shall comply with Comptroller's Anti-Fraud Policy, located on Comptroller's website at <http://www.window.state.tx.us/ssv/ethics.html> or <http://www.window.texas.gov/ssv/ethics.html> as such Policy currently reads and as it is amended throughout the term of any resulting contract.
4. By signature hereon, Applicant represents and warrants that its prices include all costs of Applicant in providing the requested items that meet all specifications of this RFA and that its prices will remain firm for acceptance for a minimum of one hundred twenty (120) days from deadline for submission of Application.
5. By signature hereon, Applicant represents and warrants that each employee, including "replacement employees", will possess the qualifications, education, training, experience and certifications necessary to perform the services in the manner required by this RFA.
6. By signature hereon, Applicant represents and warrants that it has no actual or potential conflicts of interest in providing the requested items to Comptroller under the RFA and any resulting contract, if any, and that Applicant's provision of the requested items under the RFA and any resulting contract, if any, would not reasonably create an appearance of impropriety.
7. By signature hereon, pursuant to Section 2155.003 of the Texas Government Code, Applicant represents and warrants that it has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with the submitted Application.
8. By signature hereon, Applicant represents and warrants that it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171 of the Texas Tax Code.
9. By signature hereon, Applicant hereby represents and warrants that, pursuant to 15 U.S.C. Sec. 1, *et seq.* and Tex. Bus. & Comm. Code Sec. 15.01, *et seq.*, neither Applicant nor the firm, corporation, partnership, or institution represented by Applicant, nor anyone acting for such a firm, corporation or institution has violated the antitrust laws of this state, federal antitrust laws or communicated directly or indirectly the Application made to any competitor or any other person engaged in such line of business.
10. By signature hereon, Applicant represents and warrants that all statements and information prepared and submitted in response to this RFA are current, complete, and accurate.
11. By signature hereon, Applicant represents and warrants that the individual signing this document and the documents made part of this RFA and Application is authorized to sign such documents on behalf of the company and to bind the company under any contract which may result from the submission of this Application.
12. By signature hereon, Applicant represents and warrants that if a Texas address is shown as the address of Applicant, Applicant qualifies as a Texas Bidder as defined by 34 Texas Administrative Code §20.32(68).

13. Check below if preference claimed under 34 Texas Administrative Code §20.38:

- Goods produced or offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Goods produced in Texas or offered by a Texas bidder that is not owned by a Texas resident service-disabled veteran
- Agricultural products grown in Texas
- Agricultural products offered by a Texas bidder
- Services offered by a Texas bidder that is owned by a Texas resident service-disabled veteran
- Services offered by a Texas bidder that is not owned by a Texas resident service disabled veteran
- Texas Vegetation Native to the Region
- USA produced supplies, materials or equipment
- Products of persons with mental or physical disabilities
- Products made of recycled, remanufactured, or environmentally sensitive materials including recycled steel
- Energy Efficient Products
- Rubberized asphalt paving material
- Recycled motor oil and lubricants
- Products produced at facilities located on formerly contaminated property
- Products and services from economically depressed or blighted areas
- Vendors that meet or exceed air quality standards
- Recycled or Reused Computer Equipment of Other Manufacturers
- Foods of Higher Nutritional Value
- Commercial production company or advertising agency located in Texas

14. By signature hereon, under Section 231.006, Texas Family Code, regarding child support, Applicant certifies that the individual or business named in the Application is not ineligible to receive the specified payment and acknowledges that the contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Applicant subject to Section 231.006 of the Texas Family Code must include names and Social Security numbers of each person with at least 25% ownership of the business entity submitting the Application. This information must be provided prior to award. Enter the Name and Social Security Number for each person below:

Name: _____ SSN: _____
Name: _____ SSN: _____
Name: _____ SSN: _____

FEDERAL PRIVACY ACT NOTICE: This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2), Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

15. By signature hereon, Applicant represents and warrants that no relationship, whether by relative, business associate, capital funding contract or by any other such kinship exists between Applicant and an employee of any Comptroller component, and Applicant has not been an employee of any Comptroller component within the immediate twelve (12) months prior to Applicant's Application. By signature hereon, Applicant certifies that it is in compliance with Section 669.003 of the Texas Government Code, relating to contracting with executive head of a state agency. Enter the name of any current or former executive head of a Texas State Agency that is currently employed by Applicant below:

Name of Former Executive: _____
Name of State Agency: _____
Date of Separation from State Agency: _____
Position with Applicant: _____
Date of Employment with Applicant: _____

All such disclosures will be subject to administrative review and approval prior to Comptroller entering into any contract with Applicant. Applicant acknowledges that any contract resulting from this RFA may be terminated at any time, and payments withheld, if this information is false.

16. By signature hereon, pursuant to Section 2155.004(a) of the Texas Government Code, Applicant represents and warrants that neither it nor any person or entity which will participate financially in any contract resulting from this RFA has received compensation for participation in the preparation of specifications for this RFA. Further, under Section 2155.005(b) of the Texas Government Code, Applicant certifies that the individual or business entity named in this Application or any contract resulting from this RFA is not ineligible to receive the specified contract and acknowledges that the contract may be terminated and payment withheld if this certification is inaccurate.
17. By signature hereon, Applicant represents and warrants that all articles and services quoted in response to this RFA meet or exceed the safety standards established and promulgated under the *Federal Occupational Safety and Health Law* and its regulations in effect or proposed as of the date of this solicitation.
18. By signature hereon, Applicant represents and warrants its compliance with all federal laws and regulations pertaining to Equal Employment Opportunities and Affirmative Action.
19. By signature hereon, Applicant represents and warrants its compliance with the requirements of the Americans With Disabilities Act (ADA). Applicant further represents and warrants that it will comply with all applicable Texas Accessibility requirements.
20. By signature hereon, in accordance with Section 2155.4441 of the Texas Government Code, Applicant agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.
21. By signature hereon, Applicant represents and warrants that Comptroller's payments to Applicant and Applicant's receipt of appropriated or other funds under any contract resulting from this RFA are not prohibited by Sections 556.005, 556.0055, or 556.008 of the Texas Government Code.
22. By signature hereon, Applicant represents and warrants that the offering entity and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity and that Applicant is in compliance with the State of Texas statutes and rules relating to procurement and that Applicant is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.
23. Under Section 2155.006(b) of the Texas Government Code, a state agency may not accept a bid or award a contract, including a contract for which purchasing authority is delegated to a state agency, that includes proposed financial participation by a person who, during the five (5) year period preceding the date of the bid or award, has been: (i) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459 of the Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (ii) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459 of the Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Under Section 2155.006 of the Texas Government Code, Applicant certifies that the individual or business entity named in the Application is not ineligible to receive the specified contract and acknowledges that any contract resulting from this RFA may be terminated and payment withheld if this certification is inaccurate.
24. By signature hereon and by checking or initialing **either** Subsection (a) or Subsection (b), as applicable, Applicant represents and warrants the following:
 - a. _____ Applicant represents and warrants that it is not aware of and has received no notice of any court or governmental agency actions, proceedings or investigations, etc., pending or threatened against Applicant or any of the individuals or entities included in Section 1 of this document that would or could

impair Applicant's performance under any contract resulting from this RFA, relate to the solicited or similar goods or services, or otherwise be relevant to the agency's consideration of Applicant's Application. Applicant represents and warrants that it is not aware of any such court or governmental agency actions, proceedings or investigations, etc. against Applicant or any of these individuals or entities within the five (5) calendar years immediately preceding the submission of Applicant's Application in response to this RFA. In addition, Applicant represents and warrants that it shall notify Comptroller in writing within five (5) business days of any changes to the representations or warranties in this Subsection (a) and understands that failure to so timely update Comptroller shall constitute breach of contract and may result in immediate termination of the contract.

- b. _____ Applicant is unable to make the representation and warranty in Subsection (a) above and instead represents and warrants that it has included as a detailed attachment in its Application, which expressly references this Subsection (b), a complete disclosure of any such court or governmental agency actions, proceedings or investigations, etc., and specifically addresses whether any of such past, pending or threatened actions, proceedings or investigations, etc. would or could (i) impair Applicant's performance under any contract resulting from this RFA; (ii) relate to the solicited or similar goods or services; or (iii) be otherwise relevant to the agency's consideration of Applicant's Application. In addition, Applicant represents and warrants that it shall notify Comptroller in writing within five (5) business days of any changes to the representations or warranties in this Subsection (b) or attachments in response to Subsection (b) and understands that failure to so timely update Comptroller shall constitute breach of contract and may result in immediate termination of the contract.

Applicant understands that an Application returned without the appropriate checked or initialed representation and warranty and the detailed attachment required in Subsection (b), when applicable, may be automatically disqualified.

25. By signature hereon, Applicant represents and warrants that it has read and agrees to all terms and conditions of this RFA, unless Applicant specifically takes an exception and offers an alternative provision in Applicant's Application as provided in Part III, Section 3.2. (Transmittal Letter) of this RFA.

Authorized signatory on behalf of Applicant must complete and sign the following:

| | |
|---|------------------------------|
| _____ | _____ |
| Authorized Signature | Date Signed |
| _____ | _____ |
| Printed Name and Title of Authorized Signatory | Phone Number |
| _____ | _____ |
| Company Name | Fax Number |
| _____ | _____ |
| Federal Employer Identification Number | Email Address |
| _____ | _____ |
| Physical Street Address | City, State, Zip Code |
| _____ | _____ |
| Mailing Address, if different | City, State, Zip Code |

**ATTACHMENT K
COMPTROLLER'S RFA AND OFFICIAL RESPONSES TO QUESTIONS**

Comptroller's Notice of Loan Funding Availability/Request for Applications (NOLFA/RFA) BE-G10-2013, issued on October 18, 2013, and the Official Responses to Questions dated _____, are incorporated by reference for all purposes into this Agreement as Attachment K.

DRAFT

**ATTACHMENT L
BORROWER'S APPLICATION**

The Application signed and dated by Borrower on _____, is incorporated by this reference into the Agreement as Attachment L.

DRAFT