

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

That the City Manager be authorized to sign Amendment # 8 to the Professional Services Contract, dated May 17, 2010, between the City of El Paso and Johnson Controls, Inc., a Wisconsin Corporation, to perform utility cost reduction measures, specifically LED Street Light Upgrades in downtown El Paso, to implement Phase VIII of the City-wide Energy Operational Savings, for an amount Of \$1,500,000.00, utilizing Downtown Tax Increment Reinvestment Zone (TIRZ) Improvement Funds. This authorization is 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 Eighth 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 is funded through \$1,500,000 in Downtown Tax Increment Reinvestment Zone (TIRZ) Improvement Funds..

Amendment #8 utilizes Downtown TIRZ Improvement funding to pay for this project over a 12-year period. Total guaranteed energy savings over the 12-year period are \$1,520,222. Total project costs over the 12-year period are \$1,500,000. These costs include annual Operating and Maintenance costs. Amendment #8 will reduce the total electric consumption of 920 street lights by 50%. Additionally, the new standards last 10 times longer than the current lamps reducing labor, material, and overhead costs throughout the payback period. Therefore, the program also includes \$43,710 in annual O&M savings that escalate at 3% annually.

Savings achieved are outlined in the table below:

Electricity Savings	410,710	kWh/year
Electricity Cost Savings	63,408	\$/year
O&M Cost Savings	43,710	\$/year
Total Cost Savings	107,118	\$/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 12 years. Amendment #8 is structured in a manner to minimize the program's financed capital needs and meet the Downtown TIRZ Improvement Fund guidelines 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.

The Seventh Amendment is in the amount of \$7,500,000 for the conversion of 10,600 streetlights to energy-efficient light-emitting diode standards.

**SELECTION SUMMARY:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

Department:	General Services Department
Amount	\$1,500,000
Funds Available:	Yes
Funds Source:	Downtown Tax Increment Reinvestment Zone (TIRZ) Improvement Funds

**BOARD / COMMISSION ACTION:**

N/A

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\*\*\*\*\*AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

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**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 # 8 to the Professional Services Contract, dated May 17, 2010, between the City of El Paso and Johnson Controls, Inc., a Wisconsin Corporation, to perform utility cost reduction measures, specifically LED Street Light Upgrades in downtown El Paso, to implement Phase VIII of the City-wide Energy Operational Savings, for an amount of \$1,500,000.00, utilizing Downtown Tax Increment Reinvestment Zone (TIRZ) Improvement Funds. This authorization is subject to final approval by the City Attorney's office of all necessary documents to effectuate the transaction.

ADOPTED THIS \_\_\_\_\_ DAY OF 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 #8 TO**  
**PROFESSIONAL SERVICES CONTRACT WITH**  
**JOHNSON CONTROLS INC.**

**THIS AMENDMENT TO THE PROFESSIONAL SERVICES CONTRACT** (the “Amendment #8”) 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 #8 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**, at or near the same time that this Amendment is being brought forth, the City and Contractor will be seeking to enter into Amendment #7 to the Contract, under which JCI will perform LED Street Light Upgrades (Phase VII); and

**WHEREAS**, the City and Contractor have agreed to have Contractor provide additional infrastructure improvements, specifically LED Street Light Upgrades in downtown El Paso utilizing Downtown Tax Increment Reinvestment Zone (TIRZ) Improvement Funds, as set forth in the Phase VIII Scope of Work, attached hereto as Schedule T-1, which was developed from the “Utility Assessment Report, ESPC Phase VIII, Downtown TIRZ Improvements, LED Street Light Upgrades,” submitted by Contractor to the City in November 2013, and incorporated herein by reference; and

**WHEREAS**, the City wishes to enter into this Amendment #8 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 T-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 “T” 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 “T” will apply to the Improvement Measures being implemented in Phase VIII of the Project, as particularly set forth in Schedule T-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 #8. To the extent that Schedules M-8 through M-16 make reference to “Improvement Measures #1,” these references are hereby substituted with “Phase VIII Improvement Measures.”
4. The parties agree that Section 2.2, subsections (A) and (B) only, Section 2.4, Section 3.1, including subsection (A) of the Contract are hereby deleted.
5. Consultant shall submit any requested reports, data, and information on the performance of this Agreement as may be required by the City’s lender and/or by the City, if and as applicable.
6. The services and work to be performed by Consultant set forth in Schedule T-1 for Phase VIII of the ESPC Project is estimated to take seven (7) months (210 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 #8 shall prevail.
2. This Amendment #8 is effective upon the date of execution by both parties.

**IN WITNESS WHEREOF**, the parties have caused this Amendment #8 to be duly executed by their duly authorized representatives on the dates written below:

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

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
 Elizabeth M. Ruhmann  
 Assistant City Attorney

\_\_\_\_\_  
 Stuart C. Ed, Director  
 General Services Department

# ATTACHMENT "T"

## ENERGY SAVINGS PERFORMANCE CONTRACT

### TERMS

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

**PRICE AND PAYMENT.** City shall make payments to CONSULTANT for the Work and the M&V Services in accordance with Schedule T-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 T-1	Scope of Work
Schedule T-2	Assured Performance Guarantee
Schedule T-3	City Responsibilities
Schedule T-4	Price and Payment Terms
Schedule T-5	Notice to Proceed
Schedule T-6	Change Order
Schedule T-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, Consultant shall commence performance of the Work within ten (10) business days of receipt of City's Notice to Proceed, a form of which is attached hereto as Schedule T-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 T-7; or
- (b) 7 months after Consultant's receipt of City's Notice to Proceed, subject to adjustments set forth in Section 4 and Section 5 below.

For purposes of this Attachment, "Substantial Completion" means that Consultant has provided sufficient materials and services to permit City to operate all of the Improvement Measures. The M&V Services shall commence on the first day of the month following the month in which City executes a Certificate of Substantial Completion and shall continue throughout the Guarantee Term, subject to earlier termination of the Assured Performance Guarantee as provided herein. City acknowledges and agrees that if, for any reason, it (i) cancels or terminates receipt of M&V Services, (ii) fails to pay for M&V Services in accordance with Schedule T-4, (iii) fails to fulfill any of City's responsibilities necessary to enable Consultant to complete the Work and provide the M&V Services, or (iv) otherwise cancels, terminates or materially breaches this Attachment, the Assured Performance Guarantee shall terminate and Consultant shall have no liability thereunder, upon written notice from Consultant as set forth in Section 4.1 of that certain Professional Services Contract dated May 17, 2010 (the "Contract").

3.1 Final Acceptance - Upon due notice from the Consultant of completion of the entire Project and prior to the execution of the Certificate of Substantial Completion, the City may conduct a final inspection of all work. If all construction provided for and contemplated by the contract is found to be completed to the City's satisfaction, the City shall execute the Certificate of Final Completion (Schedule T-7).

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

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

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

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

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

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

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

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

## **10. ASBESTOS-CONTAINING MATERIALS AND OTHER HAZARDOUS MATERIALS.**

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

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

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

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

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

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

11.2.1 Unit Bid prices previously approved in this Attachment.

11.2.2 An agreed lump sum.

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

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

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

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

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

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

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

**13. INSURANCE AND CONTRACT SECURITY.**

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

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

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

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

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

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

13.3.3 Additional or Substitute Bond

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **28. REPORTS, RECORDS, DATA**

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

## **29. INSPECTION AND AUDIT.**

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

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

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

## **30. PROTECTION OF WORK AND PROPERTY**

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

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

## **31. PROTECTION OF WORK AND PROPERTY - EMERGENCY**

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

31.2 In case of an emergency which threatens loss or injury of property and/or safety of life, the Consultant will be allowed to act, without previous instructions from the City or City's designated representative, in a diligent manner. However, the Consultant shall notify the City or City's designated representative immediately thereafter. Any claim for compensation by the Consultant due to such extra work shall be promptly submitted to the City or City's designated representative for approval.

31.3 Inclusion of this paragraph in the Attachment, as well as any notice which may be given by the City or the City's designated representative concerning omissions under this paragraph as the work progresses, are intended as reminders to the Consultant of his duty and shall not be construed as any assumption of duty to supervise safety precautions by the Consultant or any of his subcontractors.

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

**33. PREVAILING WAGE RATES AND WAGE RATE PENALTY**

33.1 The Consultant and any subcontractor under him shall not pay less than the general prevailing wage rates contained in Schedule M-12 to Amendment #1, to all laborers, workmen and mechanics employed by them in the execution of this contract.

33.2 The general prevailing wage rates contained herein shall be posted at the construction work site in a prominent and accessible place where it can easily be seen by all laborers, workmen and mechanics employed on the project.

33.3 Pursuant to Chapter 2258, Texas Government Code, the Consultant shall forfeit (or pay to the City of El Paso), as a penalty to the City of El Paso, Sixty Dollars (\$60.00) for each laborer, workman or mechanic employed, for each calendar day, or portion thereof such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by him, or by any subcontractor under him.

33.4 No worker shall be discharged by the Consultant or Subcontractor or in any other manner discriminated against because such worker has filed an inquiry or complaint, has instituted or caused to be instituted any legal or equitable proceeding or has testified or is about to testify in any such proceeding under or relating to the prevailing wage rates for this project.

33.5 Withholding

33.5.1 The El Paso City Government, shall upon its own action withhold or cause to be withheld from the Consultant under this contract, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Consultant or any subcontractor the full amount of wages required by the contract.

33.5.2 In the event of failure to pay any laborer or mechanic including any apprentice, trainee, or helper, employed or working on the site of the work all or part of the wages required by the contract, the El Paso City Government, may, after written notice to the Consultant, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

## 34. APPRENTICESHIP PROGRAM

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

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

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

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

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

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

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

## 35. SUBCONTRACTING

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

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

### **36. RIGHT OF CITY TO TERMINATE CONTRACT**

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

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

## 37. RETAINAGE

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

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

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

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

**40. RETENTION OF PAYROLL AND BASIC RECORDS**

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

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

***(Signature Page to follow)***

**Attachment T: 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 T-1 TO T-7 SIGNATURE PAGE**

**CONSULTANT AND CITY WARRANT AND ACKNOWLEDGE THAT EACH HAS READ AND REVIEWED THE CONTENTS OF SCHEDULES T-1 THROUGH T-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: 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: \_\_\_\_\_

**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.
- 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.

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)**

<b>UCRM #</b>	<b>UCRM Description</b>
1	LED Street Light Upgrades

**UCRM #:** 1

**UCRM NAME:** LED Street Light Upgrades

**UCRM DESCRIPTION:**

This UCRM will include the replacement of existing decorative Metal Halide (MH) street light fixtures with new energy efficient Light Emitting Diode (LED) fixtures.

**GOALS:**

- Improved lighting distribution of Downtown TIRZ store fronts
- Improved reliability of lighting systems
- Reduced citizen complaints
- Utility savings
- Operation & maintenance savings
- Capital project savings

**FINAL ENGINEERING:**

- Final equipment submittals & performance specifications
- Final new fixture locations

**SCOPE OF WORK:**

**General Scope**

- Consultant will follow ANSI/IESNA RP-8-00 American National Standard Practice for Roadway Lighting guidelines. Due to spacing between existing street light poles at some locations, it may not be feasible to meet all ANSI/IESNA RP-8-00 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	Fixture Color	Voltage	Pre Description	Pre Fixture Watts	Pre Fixture Owner	Pre Pole Owner	Post Description	Approx. Post Fixture Watts
LED-1A	850	Green	480	175W MH	210	COEP	COEP	LED	100
LED-1B	70	Black	480	175W MH	210	COEP	COEP	LED	100
<b>Totals</b>	<b>920</b>								

COEP – City of El Paso

- New antique style post top fixtures with glass optics and asymmetric wide distribution without a reflector
- Aluminum gold trim and gold finial tops

The following is a sample of the decorative LED street light fixture:



**DEMOLITION:**

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

**EXCLUSIONS:**

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

**COMMISSIONING:**

- Sample light level readings will be conducted for each type of new lighting fixture and will be included in the O&M manuals
- All new light fixtures 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

**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. A 1% warranty stock of complete LED fixtures of each wattage type will be provided by JCI to help accommodate any warranty period failures. Consultant will be allowed to utilize the 1% 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 \$1,520,222 in Measured Project Benefits during the term of this Attachment, for Total Project Benefits of \$1,520,222 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	\$63,408	\$43,710	\$0	\$107,118
2	\$65,310	\$45,021	\$0	\$110,332
3	\$67,270	\$46,372	\$0	\$113,641
4	\$69,288	\$47,763	\$0	\$117,051
5	\$71,366	\$49,196	\$0	\$120,562
6	\$73,507	\$50,672	\$0	\$124,179
7	\$75,712	\$52,192	\$0	\$127,904
8	\$77,984	\$53,758	\$0	\$131,742
9	\$80,323	\$55,371	\$0	\$135,694
10	\$82,733	\$57,032	\$0	\$139,765
11	\$85,215	\$58,743	\$0	\$143,958
12	\$87,772	\$60,505	\$0	\$148,276
<b>Totals</b>	<b>\$899,888</b>	<b>\$620,334</b>	<b>\$0</b>	<b>\$1,520,222</b>

\*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 (3%).

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 T-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**

The sources of non-measured project benefits stem from items that are in the ongoing operating budget that will no longer need to be required. The cost avoidance for O&M is based upon materials and labor for maintaining the existing downtown decorative street lights.

Source of Non-Measured Project Benefits	First Year Project Benefits	Escalation
Operations and Maintenance - Lighting	\$43,710	3%

**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 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 three percent (3%).

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

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

## Schedule T-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 T-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
<b>Totals</b>		<b>30,633</b>															<b>31,935,994</b>	<b>4,406,853</b>

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	Monthly Military Base Discount Recovery Factor	Annual kWh	Annual Cost	Average Post Watts	Post Qty	Monthly Lamp Charge per Fixture	Total Watts per Fixture	Total Monthly kWh	Monthly Lamp Charge	Monthly Fuel Charge	Monthly Fuel Refund	Monthly EE Cost Recovery Factor	Monthly Military Base Discount Recovery Factor	Annual kWh	Annual Cost	Annual kWh Savings	Annual Savings
LED-1	175W MH	175	480	920	C	C	M	6.65	210	68,779	6,118	1,739	0	1	71	825,350	95,143	100	920	1.65	100	32,752	1,520	828	0	1	18	393,024	28,397	432,326	66,746

Guaranteed Safety Factor = 95%

Guaranteed Annual Electric Savings:

Annual kWh Savings	Annual Electric Cost Savings
410,710	\$ 63,408

## 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 T-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 T-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 T-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 T-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 T-4.

1. Work. The price to be paid by City for the Work shall be \$1,500,000.00. 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 T-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 VIII)

Dear Mr. Carlisle:

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

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

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

**CITY OF EL PASO**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**ACKNOWLEDGED & AGREED TO:**

**JOHNSON CONTROLS, INC.**

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**CHANGE ORDER**

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

**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: \_\_\_\_\_