

# **CITY OF SAN ANTONIO**

Office of Environmental Policy



## **EXHIBIT A**

### **SAMPLE DOCUMENTS OF CONTRACT TEMPLATE**

#### **FOR**

Community-Based Organization(s) to Conduct  
Residential Energy Efficiency Outreach  
(RFA 11-073)

August 2011

## TABLE OF CONTENTS

<b>Section</b>	<b>Page</b>
Discretionary Contracts Disclosure Form	3
Litigation Disclosure Form	5
Contract Template	6
Insurance Requirement	17
Indemnification	19

City of San Antonio  
**Discretionary Contracts Disclosure**

For use of this form, see [Section 2-59 through 2-61 of the City Code \(Ethics Code\)](#)  
Attach additional sheets if space provided is not sufficient.

(1) Identify any individual or business entity<sup>1</sup> that is a **party** to the discretionary contract:

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(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

**No partner, parent or subsidiary; or**

**List partner, parent or subsidiary of each party to the contract and identify the corresponding party:**

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(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

**No subcontractor(s); or**

**List subcontractors:**

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(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

**No lobbyist or public relations firm employed; or**

**List lobbyists or public relations firms:**

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**(5) Political Contributions**

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

**No contributions made; If contributions made, list below:**

<b>By Whom Made:</b>	<b>To Whom Made:</b>	<b>Amount:</b>	<b>Date of Contribution:</b>

**(6) Disclosures in Proposals**

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question<sup>2</sup> as to whether any city official or employee would violate [Section 2-43 of the City Code \(Ethics Code\)](#), (“conflicts of interest”) by participating in official action relating to the discretionary contract.

**Party not aware of facts which would raise a “conflicts-of-interest” issue under Section 2-43 of the City Code; or**

**Party aware of the following facts:**

*This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.*

<b>Signature:</b>	<b>Title:</b> <b>Company or D/B/A:</b>	<b>Date:</b>
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## LITIGATION DISCLOSURE

**Respond to each of the questions below by checking the appropriate box. Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.**

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Yes  No

2. Have you or any member of your Firm or Team to be assigned to this engagement been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Yes  No

3. Have you or any member of your Firm or Team to be assigned to this engagement been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Yes  No

**If you have answered “Yes” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.**

**City of San Antonio**  
**PROFESSIONAL SERVICES AGREEMENT**  
**FOR**  
**COMMUNITY-BASED ORGANIZATIONS TO CONDUCT**  
**RESIDENTIAL ENERGY EFFICIENCY OUTREACH**

STATE OF TEXAS §

§

COUNTY OF BEXAR §

This CONTRACT is made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as “CITY”), a Texas municipal corporation, acting by and through its City Manager and [Organization’s name] by and through its [Name and title of responsible party] (hereinafter referred to as “CONSULTANT”), both of which may be collectively referred to as the “Parties”.

**WHEREAS**, on December 14, 2009, the City filed an application in response to the DOE’s Recovery Act: Energy Efficiency and Conservation Block Grants: Competitive Solicitation: Retrofit Ramp-Up and General Innovation Fund Programs Funding Opportunity Announcement which is designed to promote the development and implementation of innovative programs to promote energy efficiency; and

**WHEREAS**, the City recently qualified for ARRA grant funds associated with the Program in the amount of \$10 million in order to support, manage and implement a plan that meets the stated goals and objectives of and for the Program; and

**WHEREAS**, on June 17, 2010, the City Council passed Ordinance No. 2010-06-17-0565, authorizing acceptance and allocation of the Grant Funds; and

**WHEREAS**, a portion of the Grant Funds will be used to support Community-Based Organizations to Conduct Residential Energy Efficiency Outreach for the benefit of San Antonio area residents; and

**ACCORDINGLY**, the parties agree to the mutual obligations herein contained and to the performance and accomplishments of the tasks hereinafter described.

**NOW THEREFORE**, the Parties mutually agree to coordinate their efforts for the purpose of expending the Allocated Program Funds and implementing the following program.

**I. TERM**

The initial term of this CONTRACT is for twelve (12) months. This CONTRACT shall commence upon acceptance by all parties as signified by their signature below and shall

terminate upon the expiration of the twelve months unless earlier termination or extension shall occur pursuant to any provision hereof. At the City's sole option, this contract may be renewed for one additional 12 month term under identical terms and conditions.

## **II. CONTRACT PRICING AND BILLING**

- 2.1 CONSULTANT shall be paid for actual work performed in accordance with the schedule listed in Article III, Scope of Services, section COSA Compensation, below. The total of all payments and obligations made and incurred by CITY under this CONTRACT, in consideration for CONSULTANT's performance of services under this CONTRACT, shall be up to the total amount of Twenty-Five Thousand dollars (\$25,000.00) for this individual contract, unless approved by the City Manager, nor may all contracts in the program collectively exceed One-Hundred and Ten-Thousand dollars (\$110,000.00). This Agreement is funded by the American Recovery and Reinvestment Act of 2009 (ARRA), from the U.S. Department of Energy (DOE), under the BetterBuildings program. If this grant is terminated or funding is not provided by DOE during the term of this agreement, City retains the right to terminate this agreement with no liability to the City.
- 2.2 It is understood and agreed by the Parties that [Organization's name] will be paid for actual work performed and for allowable expenses, provided that CONSULTANT shall present City with an invoice for all expenses and services monthly by the 25<sup>th</sup> day of the month. Payment shall be made no more than 30 calendar days following receipt and approval of each invoice. Additionally, CONSULTANT shall submit with each invoice, utilizing Exhibit B "Reporting Metrics," a report for submission to the Department of Energy (these reporting metrics will be developed between the parties with direction from the Department of Energy and are subject to modification during the term of the contract).
- 2.3 CITY shall not be obligated or liable under the CONTRACT to any party, other than CONSULTANT, including any subcontractors, for payment of any monies for provision of any goods or services.
- 2.4 All expenses necessary to provide and complete the services required hereunder, including any travel, project related and administrative expenses, are included in the total costs of the CONTRACT referenced in Section 2.1 above.

## **III. SCOPE OF SERVICES**

- 3.1 The CONSULTANT will provide, oversee, administer, and carry out all activities and services in a manner satisfactory to the CITY and in compliance with the "Scope of Services" as outlined below, to implement and complete the tasks in the EECSBG grant's statement of work. Goals, objectives and performance standards for the Project will be established by the CITY'S OFFICE OF ENVIRONMENTAL POLICY and CONSULTANT agrees to comply with said goals, objectives and performance standards.

- 3.2 The City of San Antonio (COSA) BetterBuildings Program has contracted with non-profit or for profit community-based organizations (CONSULTANT) to provide support for community outreach and workshop presentation associated with the COSA BetterBuildings Program. CONSULTANT is responsible for the following:
- 3.2.1 Responsible for coordinating with COSA, CPS Energy, and Alamo Colleges staff on BetterBuildings programming efforts including but not limited to events, rebate programs and education programs.
  - 3.2.2 Responsible for providing a coordinator to recruit, train and inform targeted homeowners in BetterBuildings programs and events.
  - 3.2.3 Will follow guidelines to develop training programs and a support network for participants. Training will include education of energy efficiency-related topics such as efficient lighting, appliances, heating and cooling systems and building envelope. The support network will provide comprehensive contact information and printed resource material.
  - 3.2.4 Will be required at a minimum to participate in the following programs for the duration of the contract:
    - (a) *Conducting Public Workshops:*  
Conduct a minimum of four (4) special programs or workshops annually. Programs should be scheduled for times determined jointly between the contracted CONSULTANT and COSA as the most convenient to the public even if different from posted hours of operation. Topics must be pre-approved in writing by COSA for COSA payment. The CONSULTANT is responsible for all aspects of workshop planning and execution of workshops including audiovisual equipment for presentations. Substitute activities may be used to fulfill this requirement with pre-approval from COSA.
    - (b) *Program Advertising:*  
Include all scheduled workshops in all possible free/non-fee local "Event" calendars. This is including but not limited to the San Antonio Express News calendar, the Current, and local media including radio and television calendars. The CONSULTANT will notify COSA staff of calendar placement.
    - (c) *Events:*  
The selected CONSULTANT will participate in special events as determined by COSA, CPS Energy and Alamo Colleges.
- 3.3 CONSULTANT shall have a contact person available during regular business hours to facilitate communication among COSA, CPS Energy and Alamo Colleges. The CONSULTANT contact will also be obligated to be available after hours at the number provided to COSA. The CONSULTANT shall notify COSA in writing of any changes to the person or number to use for emergency contact.

- 3.4 Other Requirements: There are numerous opportunities to participate in a variety of community programs and a variety of topics. The selected CONSULTANT should indicate a willingness to participate in new program opportunities as they arise. It is understood that some opportunities will be extensive enough to require a contract; whereas other opportunities may be in line with the CONSULTANT mission, such that the CONSULTANT would participate as full partner(s) rather than on a contractor basis.
- 3.5 The Department of Energy BetterBuildings Program has a residential energy efficiency target to achieve 15% energy savings of a home's energy consumption baseline. The City has a retrofit target of 4,500 homes. Contracted CONSULTANT will be eligible to receive an incentive for each residence that achieves this 15% energy savings as certified by CPS Energy. This incentive will disburse approximately 1,000 payments to Community Entities and is available until funds are expended.

#### IV. COMPENSATION

- 4.1 *Program Administration Services* - In consideration for the Services, COSA agrees to pay to selected CONSULTANT a monthly program administration fee in the amount of \$800.00 per month. Such payments shall be made on a monthly basis.
- 4.2 *Conducting Public Workshops* - COSA will pay the CONSULTANT for Workshops conducted pursuant to Item 4a above. Workshops will be billed to COSA on a monthly invoice. Workshop participation for payment must be pre-approved in writing by COSA. CONSULTANT shall complete a workshop report and include it as back up material with the monthly invoice. Payment shall be made on the basis of the number of Workshops actually held for the public, the length of the Workshop, and the number of people (members of the public not including CONSULTANT staff or volunteers) in attendance at the Workshops at the following rates:

##### **General Public Workshops:**

Base rate: \$ 50.00

Workshops, 1 to 2 hours and 59 minutes: \$100.00

Workshops, 3-6 hours: \$200.00

Attendance, 1-10 people: \$ 25.00

Attendance, 1-20 people: \$ 50.00

Attendance, over 20 people: \$ 3.00 per additional person not to exceed \$300.00

**Example I:** A 2-hour Workshop with 13 people in attendance would be paid \$200.00 (\$50.00 base rate, plus \$100.00 hourly rate, plus \$50.00 attendance rate).

**Example II:** A 1-hour Workshop with 75 people in attendance would be paid \$365.00 (\$50.00 base rate, plus \$100.00 hourly rate, plus \$215.00 attendance rate @ \$50.00 for first 20 people and \$3.00 per each person above 20 (55) in attendance).

**Example III:** A 4-hour Workshop with 22 people in attendance would be paid \$306.00 (\$50.00 base rate, plus \$200.00 hourly rate, plus \$56.00 attendance rate- \$50.00 for the

first 20 people and \$3.00 each for two additional people).

**Example IV:** A 3-hour Workshop with 150 people in attendance would be paid \$600.00 (\$50.00 base rate, plus \$200.00 hourly rate, plus \$350.00 for attendance - \$50 for first 20 and \$300.00 for additional 130 people at \$3.00 each with the \$300 maximum cap).

COSA may assist in the advertising and have staff participation on a case-by-case basis in the Workshops.

- 4.3 *Special Events* - COSA will pay the CONSULTANT \$200.00 for each special event where the CONSULTANT provides at least two staff or volunteers to distribute COSA BetterBuildings material and provide information on energy conservation and other topics approved by COSA. Events will be billed to COSA on a monthly invoice. Event participation for payment must be pre-approved in writing by COSA. CONSULTANT shall complete an event report and include it as back up material with the monthly invoice.
- 4.4 *Incentive for Obtaining 15% Energy Savings* – COSA will pay a \$50 incentive fee, until designated funds are expended, for each residence that obtains 15% energy savings as determined by CPS Energy. (Baseline is relative to 12 months pre-retrofit energy consumption.) Community-Based Organizations receive the incentive when they recruit residents at any of their hosted events that focus specifically on progressing beyond Energy Savers enrollment and toward retro-fitting. These Residents must go on to complete the 15% energy savings and must indicate participation (through sign-in sheets, podcast sign-ins, etc) at the event. CPS Energy will administer the tracking of incentives.

**Proposed Program Budget:**

ITEM	UNIT OF MEASURE	UNIT PRICE	TOTAL ANNUAL COST
Program Administration*	Per month	\$800.00	\$9,600.00
General Public Workshops	4 workshops 3-6 hours maximum	\$200.00	\$800.00
Workshop Attendance	20 people maximum	\$300.00	\$1,200.00
Special Events	Per Event (2) maximum	\$200.00	\$400.00
<b>TOTAL for Admin, Workshops &amp; Events</b>			<b>\$12,000.00</b>

\*program administration services must be inclusive of: program tracking, program marketing and quarterly grant program reporting

**Incentive Fee Information:**

Incentive for 15% Energy Savings	Per Residence	\$50.00	\$50,000.00**
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\*\* Additional Incentive Information

- The total incentive amount available to all Community-Based Organizations is currently \$50,000;
- This amount is subject to change;
- Disbursement of incentives to Organizations is based on a first-come, first-served basis;
- The maximum amount of incentive fees available to individual Organizations is \$13,000

**V. TERMINATION**

- 5.1 For purposes of this CONTRACT, “termination” of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.
- 5.2 **TERMINATION WITHOUT CAUSE:** The CONTRACT may be canceled by the City upon thirty (30) calendar days written notice, evidenced by a U. S. Postal Mail Return Receipt Requested for certified delivery, or an affidavit of personal delivery, provided such notice specifies an effective date of termination, which termination date shall be not less than thirty (30) calendar days nor more than ninety (90) calendar days from the date such notice is actually received by the other party or the certified mail receipt evidences delivery. If the notice does not specify a date of termination, the effective date of termination shall be thirty (30) calendar days after receipt of the notice by the other party or evidence of certified mailing as described above. All files are the property of the CITY and, at the CITY’S request, will be delivered at no cost to the CITY or its designated recipient at the effective date of termination. Any CITY funds held in any escrow account(s) shall be returned to the CITY within thirty (30) calendar days after the effective termination date.
- 5.3 **TERMINATION FOR CAUSE:** Should either party default in the performance of any of the terms or conditions of this CONTRACT, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten (10) day period, this CONTRACT shall terminate at 11:59 p.m. on the tenth day after the receipt of the notice by the defaulting party.
- 5.4 **TERMINATION BY LAW:** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein or if any law is interpreted to prohibit such performance, this CONTRACT shall automatically terminate as of the effective date of such prohibition.
- 5.5 **EFFECT OF TERMINATION:** The period between notice of termination and the effective date of termination shall be used to effect an orderly transfer of records and funds, if any, from the CONSULTANT to the CITY or to such person(s) as the CITY

may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at the CONSULTANT'S sole cost and expense.

- 5.6 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the CITY), the CONSULTANT shall submit to the CITY, its claim, in detail, for the monies owed by the CITY for services performed under this CONTRACT through the effective date of termination.
- 5.7 Upon termination or cancellation of this CONTRACT, the CITY may immediately commence an audit of the CONSULTANT'S books, accounts, and records. Within thirty (30) calendar days after being notified by the CITY of the results of said audit, the CONSULTANT shall pay the CITY any amount shown by said audit to be owed the CITY or its employees. No waiver of existing default shall be deemed to waive any subsequent default.
- 5.8 In the event that through action or no action initiated by the CITY of San Antonio, the CITY'S legislative body does not appropriate funds for the continuation of a CONTRACT and has no funds to do so from other sources, the CONTRACT may be terminated. To effect this termination, the CITY shall, 30 days prior to the period for which funds are not appropriated, send the CONSULTANT written notice stating that the City of San Antonio failed to appropriate funds.
- 5.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies, nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue CONSULTANT for any default hereunder or other action.

## **VI. INDEPENDENT CONTRACTOR**

- 6.1 It is expressly understood and agreed that the CONSULTANT is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the CITY shall in no way be responsible therefore, and that neither party hereto has authority to bind the other nor to hold out to third parties that it has the authority to bind the other.
- 6.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint venture, or any other similar such relationship, between the parties hereto.
- 6.3 Any and all of the employees of the CONSULTANT, wherever located, while engaged in the performance of any work required by the CITY under this CONTRACT shall be considered employees of the CONSULTANT only, and not of the CITY, and any and all claims that may arise from the Workers' Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of the CONSULTANT.

## **VII. CONFIDENTIALITY**

- 7.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by CONSULTANT under this CONTRACT shall be disclosed or made available to any individual or organization by CONSULTANT without the express prior written approval of CITY. In the event CONSULTANT receives any such request, CONSULTANT shall forward such request to CITY immediately.
- 7.2 CONSULTANT shall establish a method to secure the confidentiality of records and information that CONSULTANT may have access to, in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting CITY's right of access to records or other information under this CONTRACT.
- 7.3 CONSULTANT shall comply with the confidentiality procedures pertaining to records and other information in accordance with the applicable Federal laws, State laws, the San Antonio City Charter, City ordinance, rules and regulations.
- 7.4 If the CONSULTANT receives inquiries regarding documents within their possession pursuant to the CONTRACT, the CONSULTANT shall immediately forward such request to the CITY for disposition.

## **VIII. INDEPENDENT CONTRACTOR**

- 8.1 Any and all writings, documents or information in whatsoever form and character produced by CONSULTANT pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by CONSULTANT.
- 8.2 CONSULTANT understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.
- 8.3 In accordance with Texas law, CONSULTANT acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for by public funds are declared to be public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on behalf of CONSULTANT pursuant to this CONTRACT shall be the subject of any copyright or proprietary claim by CONSULTANT.

The term “*local government record*” as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officers or employees pursuant to law, including an ordinance, or in the transaction of public business.

- 8.4 The intellectual work products, if any, that result from this CONTRACT shall be owned by the CITY, and as such are public property.

## **IX. INTELLECTUAL PROPERTY**

- 9.1 CONSULTANT shall pay all royalties and licensing fees. CONSULTANT shall hold the CITY harmless and indemnify the CITY from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if CONSULTANT has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the CITY.

- 9.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, CONSULTANT will immediately:

9.2.1 Either:

a) obtain, at CONSULTANT 's sole expense, the necessary license(s) or rights that would allow the CITY to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,

b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and

(c) reimburse the CITY for any expenses incurred by the CITY to implement emergency backup measures if the CITY is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

9.2.2 CONSULTANT further agrees to:

a) assume the defense of any claim, suit, or proceeding brought against the CITY for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this CONTRACT,

b) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and

c) indemnify the CITY against any monetary damages and/or costs awarded in such suit;

Provided:

- CONSULTANT is given sole and exclusive control of all negotiations relative to the settlement thereof, but that CONSULTANT agrees to consult with the CITY Attorney of the CITY during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the CITY,
- that the Software or the equipment is used by the CITY in the form, state, or condition as delivered by CONSULTANT or as modified without the permission of CONSULTANT, so long as such modification is not the source of the infringement claim,
- that the liability claimed shall not have arisen out of the CITY's negligent act or omission, and
- that the CITY promptly provides CONSULTANT with written notice within **15** days following the formal assertion of any claim with respect to which the CITY asserts that CONSULTANT assumes responsibility under this section.

## **X. RECORDS RETENTION**

- 10.1 Upon completion of the Project, all records, data, finished or unfinished documents, reports, charts, schedules, or other appended documentation pertaining to the Project, and any related responses, inquiries, correspondence and material, shall become the property of the CITY, and CITY shall be entitled to utilize the work product for appropriate purposes without further compensation to CONSULTANT.
- 10.2 CONSULTANT shall deliver all documents to the CITY, upon termination of the CONTRACT, in a timely and expeditious manner, at CONSULTANT's sole cost and expense.
- 10.3 The CONSULTANT shall retain all records owned by or to which the CITY has the legal right of access to satisfy the City's obligations for a retention period required by the Texas Local Government Records Act, being five years from date of CONTRACT termination, and in the event of litigation or claims, whatever additional time is necessary to resolve all litigation or claims.
- 10.4 CITY shall be notified immediately by CONSULTANT of any requests, by a third party, for information pertaining to documentation and records obtained and/or generated under the CONTRACT. As such, CONSULTANT understands and agrees that CITY will process and handle all such open records requests.

## **XI. RIGHT OF REVIEW AND AUDIT**

CONSULTANT and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to this CONTRACT and shall make such materials available to CITY, at the City's Office of Environmental Policy, 111 Soledad, Suite 725, San Antonio, Texas, or successor local address, at all reasonable times and as often as CITY may deem necessary during the CONTRACT term, including any renewal and extension hereof, for the purpose of auditing, examining and making copies by CITY, and any of its authorized representatives.

## **XII. LICENSES AND CERTIFICATIONS**

CONSULTANT warrants and certifies that CONSULTANT and any other person designated by it to provide services hereunder has the requisite training, license and/or certification to provide said services and meets all competence standards applicable to the services provided herein.

## **XIII. CONFLICT OF INTEREST AND ETHICS**

- 13.1 CONSULTANT acknowledges that it is informed that the Charter of the CITY of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any CONTRACT with CITY or any CITY agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a CONTRACT with CITY or in the sale to CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the CONTRACT or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY CONTRACT, a partner or a parent or subsidiary business entity.
- 13.2 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of CITY. CONSULTANT further warrants and certifies that it has tendered to CITY a Discretionary Contracts Disclosure Statement in compliance with CITY's Ethics Code.
- 13.3 CONSULTANT warrants and certifies, and this CONTRACT is made in reliance thereon, that it, its officers, employees and agents performing on this CONTRACT is not a City officer nor an employee as defined by Section 2-52 (e) of the City Ethics Code. CONSULTANT further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.
- 13.4 **Additional Ethics Form Filing: Texas Local Government Code.** Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with

the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7<sup>th</sup> business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at [www.ethics.state.tx.us](http://www.ethics.state.tx.us). Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk, if mailing a completed conflict of interest questionnaire, mail to Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2<sup>nd</sup> floor, 100 Military Plaza, San Antonio, TX 78205. CONSULTANT must confer with its own legal advisor if you have questions regarding the statute or form.

#### **XIV. INSURANCE**

- 14.1 Prior to the commencement of any work under this Agreement, Respondent shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to CITY's Office of Environmental Policy, which shall be clearly labeled "Green Retrofit Ramp-Up Program" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to CITY. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY's Office of Environmental Policy. No officer or employee, other than CITY's Risk Manager, shall have authority to waive this requirement.
- 14.2 CITY reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by CITY's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.
- 14.3 Respondent's financial integrity is of interest to CITY; therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by CITY, Respondent shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Respondent's sole expense, insurance coverage written on an occurrence basis, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
Broad Form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> <li>a. Premises operations</li> <li>b. Independent Contractors</li> <li>c. Products/completed operations</li> <li>d. Personal Injury</li> <li>e. Contractual Liability</li> </ul>	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

14.4 Respondent agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name CITY, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- General liability policies will provide a waiver of subrogation in favor of CITY.
- Provide advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

14.5 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Respondent shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend Respondent's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

14.6 In addition to any other remedies CITY may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order Respondent to stop work hereunder, and/or withhold any payment(s) which become due to Respondent hereunder until Respondent demonstrates compliance with the requirements hereof.

14.7 Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under this Agreement.

- 14.8 It is agreed that Respondent's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- 14.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of CITY shall be limited to insurance coverage provided.
- 14.10 Respondent and any Subcontractors are responsible for all damage to their own equipment and/or property.

## **XV. INDEMNIFICATION**

**CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **CONSULTANT** shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or **CONSULTANT** known to **CONSULTANT** related to or arising out of **CONSULTANT** 's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at **CONSULTANT** 's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving **CONSULTANT** of any of its obligations under this paragraph.

Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by **CONSULTANT** in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. **CONSULTANT** shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Contract. If **CONSULTANT** fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and **CONSULTANT** shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of **CONSULTANT**, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for **CONSULTANT** or any subcontractor under worker's compensation or other employee benefit acts.

## **XVI. AMENDMENT**

- 16.1 This CONTRACT, together with its authorizing ordinance and exhibits shall constitute the full and final agreement between the parties hereto.
- 16.2 Except where the terms of this CONTRACT expressly provide otherwise, any amendment to this CONTRACT shall not be binding on the parties unless such amendment be in writing, executed by both CITY and **CONSULTANT** and dated subsequent to the date hereof. Material amendments that adjust compensation or performance periods must be approved by the City Council.
- 16.3 It is understood and agreed by parties hereto, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this CONTRACT and that any such changes shall be incorporated into this CONTRACT with notice and written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law. The **CONSULTANT** expressly agrees to comply with all applicable federal, state, and local laws.

## **XVII. NOTICE**

Any notice required, permitted or appropriate under this CONTRACT shall be deemed sufficient if in writing and sent certified mail, return receipt requested, postage prepaid, to CITY or CONSULTANT at the respective address set forth below or to any other address of which written notice of change is given:

### **CITY**

City of San Antonio  
Attn: W. Laurence Doxsey,  
Director  
Office of Environmental Policy  
P.O. Box 839966  
San Antonio, Texas 78283-3966

### **CONSULTANT**

[Name and Address]

## **XVIII. LEGAL AUTHORITY**

The person signing on behalf of CONSULTANT represents and warrants and certifies that he has full legal authority to execute this CONTRACT on behalf of CONSULTANT and has authority to bind CONSULTANT to all the terms, conditions, provisions and obligations contained herein.

## **XIX. SUBCONTRACTING AND ASSIGNING INTEREST**

- 19.1 Any subcontracts or assignments of interests entered into by CONSULTANT concerning work tasks for this CONTRACT shall be communicated in writing to CITY prior to the effective date of this CONTRACT and prior to commencement of any work subsequent to this CONTRACT's effective date. CONSULTANT shall not assign, sell, pledge, transfer or convey any interest in this CONTRACT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of CITY. Any such attempt at an assignment will be void *ab inito*, and shall confer no rights on the purported assignee. Should CONSULTANT assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this CONTRACT, the CITY may, at its option, cancel this CONTRACT and all rights, titles and interest of CONSULTANT shall thereupon cease and terminate, notwithstanding any other remedy available to CITY under this CONTRACT. The violation of this provision by CONSULTANT shall in no event release CONSULTANT from any obligation under the terms of this CONTRACT, nor shall it relieve or release CONSULTANT from the payment of any damages to CITY which CITY sustains as a result of such violation.

- 19.2 CONSULTANT's subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any CONTRACT with CONSULTANT arising from or in relation to this CONTRACT, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this CONTRACT. CONSULTANT shall indicate this limitation in all Contracts with approved subcontractors.
- 19.3 CONSULTANT agrees to notify CITY of any changes in ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to CITY under this CONTRACT, any such change of ownership interest or control of its business entity may be grounds for termination of this CONTRACT at the sole discretion of the CITY.
- 19.4 In no event shall such written consent, if obtained, relieve CONSULTANT from any and all obligations hereunder or change the terms of this CONTRACT.
- 19.5 CITY must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

## **XX. SUCCESSORS AND ASSIGNS**

This CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, however, CONSULTANT may not assign this CONTRACT without prior written consent of CITY in accordance with Article XVIII hereof.

## **XXI. NONWAIVER OF PERFORMANCE**

- 21.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required herein will not operate as a release to the CONSULTANT from any covenants and conditions required in this CONTRACT.
- 21.2 Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XV. Amendment. No act or omission by a Party shall in any manner impair or prejudice any right, power,

privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

## **XXII. COMPLIANCE**

- 22.1 CONSULTANT shall provide and perform all services under this CONTRACT in compliance with all applicable federal, state, local laws, rules and regulations.
- 22.2 As required by the terms of the EECBG, CONSULTANT agrees that compliance with all the terms and requirements of the Grant shall be required by CONSULTANT and subconsultants, including all reporting requirements and attachments.
- 22.3 The CONSULTANT certifies that it will provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988 and the Drug-Free Workplace Rules established by the Texas Worker's Compensation Commission effective April 17, 1991. Failure to comply with the above referenced law and regulations could subject the CONSULTANT to suspension of payments, termination of CONTRACT, and debarment and suspension actions.
- 22.4 CONSULTANT shall not engage in employment practices which have the effect of discriminating against any employee or applicant for employment, and, will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation. Specifically, CONSULTANT agrees to abide by all applicable provisions of San Antonio City ordinance number 69403 on file in the City Clerk's Office. Additionally, Contractor certifies that it will comply fully with the following nondiscrimination and equal opportunity provisions:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
  - b. Section 504 of the Rehabilitation Act of 1973, as amended;
  - c. The Age Discrimination Act of 1975, as amended;
  - d. Title IX of the Education Amendments of 1972, as amended; and
  - e. All applicable regulations implementing foregoing laws.

## **XXIII. ARRA PROVISIONS**

- 23.1 **Source of Funds – American Recovery & Reinvestment Act:** Funds for this contract come in whole or in part from a grant made available through the American Recovery and Reinvestment Act of 2009 (“ARRA”). Respondent and any subcontractors, as subrecipients of ARRA funds, must comply with all terms, conditions and requirements of the Act as it currently exists and as they may be changed or supplemented during the term of this contract. Respondent and any subcontractors shall comply with all special provisions as specified in the Act and current and future Department of Energy guidance.

- 23.2 **Job Creation and Retention:** Pursuant to section 1512c of the ARRA, not later than 5 days after the end of each calendar quarter, you must submit a report to the City that contains an estimate of the number of jobs created and the number of jobs retained as a result of your receiving ARRA funds pursuant to this contract. Include a brief description of the types of jobs created and jobs retained. This description may rely on job titles, broader labor categories, or your existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work. “Jobs created” means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter. “Jobs retained” means an estimate of those previously existing filled positions that are retained as a result of funding by the ARRA. This definition covers only prime contractor positions established in the United States and outlying areas. The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.
- 23.3 **Access to Contractor Records:** Inspectors General, the Accountability and Transparency Board, and the Government Accountability Office are granted authority to examine any records of the contractor regarding ARRA transactions as required by ARRA Sections 902, 1514 and 1515. You acknowledge this requirement and agree to grant such access to these entities and the City, if requested. You shall maintain documentation of your purchases of materials or goods furnished hereunder that are sufficient to demonstrate that they are U.S.-made. You must retain this documentation for the duration of this contract, and for four years after the expiration or termination of this contract. You shall permit inspection and copying of such documents to these parties and the City at no cost.
- 23.4 **Anti-discrimination and Equal Opportunity Provisions:** All anti-discrimination and equal opportunity statutes, regulations, and Executive Orders that apply to the expenditure of funds under Federal contracts, grants, cooperative agreements, loans, and other forms of Federal assistance shall apply here. You shall comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975. Generally applicable civil rights laws apply, including (but not limited to) the Fair Housing Act, the Fair Credit Reporting Act, the Americans With Disabilities Act Title VII of the Civil Rights Act of 1964, the Equal Educational Opportunities Act, the Age Discrimination in Employment Act, and the Uniform Relocation Act. You agree that you will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

**XXIV. VENUE AND GOVERNING LAW**

**THIS CONTRACT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. VENUE FOR ANY LEGAL ACTION, CLAIM OR DISPUTE ARISING DIRECTLY OR INDIRECTLY AS A RESULT OF THIS CONTRACT SHALL BE IN BEXAR COUNTY, TEXAS.**

**ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

**XXV. SEVERABILITY**

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

**XXVI. GENDER**

Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

**XXVII. CAPTIONS**

The captions contained in this CONTRACT are for convenience of reference only and shall in no way limit or enlarge the terms and conditions of this CONTRACT.

**XXVIII. ENTIRE AGREEMENT**

This CONTRACT, together with its authorizing ordinance and exhibit A, "Scope of Work: [Name of Organization]" embodies the final and entire agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties unless same be executed in accordance with Section XV.

**EXECUTED** this the \_\_\_\_\_ day of XXX, 2011.

**CITY**

**City of San Antonio, Texas**

**CONSULTANT**

**[Organization's name]**

\_\_\_\_\_  
W. Laurence Doxsey  
Director

\_\_\_\_\_  
[Name]  
[Position]

**APPROVED AS TO FORM:**  
[Name]  
**City Attorney**

\_\_\_\_\_  
By: [Name]  
Assistant City Attorney

**EXHIBIT A**  
**Reporting Metrics**

DRAFT