

AN ORDINANCE

APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH JOHNSON CONTROLS, INC., IN AN AMOUNT NOT TO EXCEED \$145,000.00, FOR THE PURPOSE OF PERFORMING ENERGY AUDITS OF CITY FACILITIES IN ORDER TO MEET THE TECHNICAL REQUIREMENTS NEEDED TO QUALIFY FOR THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 FUNDED REVOLVING LOAN PROGRAM FROM THE STATE ENERGY CONSERVATION OFFICE.

* * * * *

WHEREAS, President Obama signed the American Recovery and Reinvestment Act of 2009 (ARRA) into law on February 17, 2009, which provides a total of \$787 billion in spending and tax cuts to preserve and create jobs, and make investments in infrastructure, energy and science, unemployment assistance, and State and local stabilization; and

WHEREAS, in order to take full advantage of the funding opportunities and additional services that may be provided to the City of San Antonio as a result of the ARRA, City staff has worked closely with City Council to strategize and align specific City Council ranked projects to individual Federal and State agency funded programs; and

WHEREAS, City Council adopted the *Funding Strategy for City Council Prioritized Federal Economic Stimulus Projects* on March 5, 2009 and amended on April 9, 2009 to reflect additional energy efficiency-related stimulus dollars and this item is consistent with City Council policy to maximize energy efficiency in all City facilities; and

WHEREAS, upon approval, a detailed energy assessment will be conducted by Johnson Controls, Inc. (JCI) to audit the energy needs of facilities operated by Fire, Police, Library, Community Initiatives, Parks and Recreation and Health Departments; this assessment will meet the technical requirements needed to qualify for the Revolving Loan Program from the State Energy Conservation Office (SECO); the City's Office of Environmental Policy will apply for SECO's LoanStar Revolving Loan Program and upon award of the loan, phase two of this project will commence by negotiating a subsequent performance contract with JCI to install energy-saving equipment and guarantee the utility savings; and

WHEREAS, the cost of the audit will not exceed \$145,000.00, if the City enters into an Energy Savings Performance Contract (ESPC) with JCI, the cost of the energy audit will be incorporated into the ESPC and in the event the City does not enter into an ESPC with JCI, the cost of the audit will be paid through the Office of Environmental Policy's "Revolving Loan Fund" within the FY 2009 Operating Budget; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, or the Director of Office of Environmental Policy Department, or his designee is authorized to execute a Professional Services Agreement

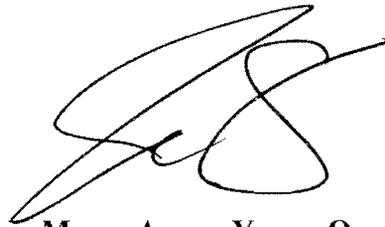
with Johnson Controls, Inc., in an amount not to exceed \$145,000.00 for the purpose of performing energy audits of City facilities in order to meet the technical requirements needed to qualify for the ARRA funded Revolving Loan Program from the State Energy Conservation Office (SECO). A copy of the Agreement is attached and incorporated herein verbatim for all purposes as **Attachment I**.

SECTION 2. If the City enters into an Energy Savings Performance Contract (ESPC) with JCI, the cost of the energy audit will be incorporated into the ESPC. In the event the City does not enter into an ESPC with JCI, the cost of the audit will be paid through the Office of Environmental Policy's "Revolving Loan Fund" within the FY 2009 Operating Budget. Payment is authorized to Johnson Controls, Inc., upon issuance of a Purchase Order and receipt of goods.

SECTION 3. The financial fiscal allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage.

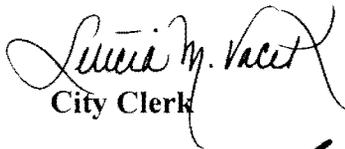
PASSED AND APPROVED this 3rd day of September, 2009.



M A Y O R

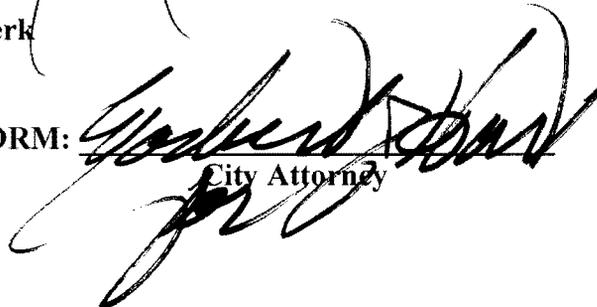
JULIÁN CASTRO

ATTEST:



Lucia M. Vaca
City Clerk

APPROVED AS TO FORM:



City Attorney

Agenda Item:	4I (in consent vote: 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I)						
Date:	09/03/2009						
Time:	10:20:52 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance approving a Professional Services Agreement with Johnson Controls, Incorporated in the amount of \$145,000.00 for the purpose of performing energy audits of City facilities in order to meet the technical requirements needed to qualify for the ARRA funded Revolving Loan Program from the State Energy Conservation Office (SECO).						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

CH
09/03/09
4-I

ATTACHMENT I

**PROFESSIONAL SERVICES AGREEMENT
FOR
PRIORITY FACILITIES ENERGY ASSESSMENT REPORT (EAR)**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This AGREEMENT 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 or her designee, and Johnson Controls, Inc. (JCI), (hereinafter referred to as “CONTRACTOR”) both referred to collectively herein as the “Parties”;

The Parties hereto agree to the contract provisions detailed below.

I. DEFINITIONS

As used in this Contract, the following terms shall have meanings as set out below:

1.1 “City” is defined in the preamble of this Contract and includes its successors and assigns.

1.2 “Facilities” includes the following buildings and locations, as applicable:

	Facility Name	Address		
1.2.1	FIRE STATION #04	1430	ST MARYS N.	San Antonio, TX
1.2.2	FIRE STATION #05	1011	MASON	San Antonio, TX
1.2.3	FIRE STATION #06	503	RUSSELL W.	San Antonio, TX
1.2.4	FIRE STATION #08	619	HAMILTON S.	San Antonio, TX
1.2.5	FIRE STATION #09	649	DELMAR	San Antonio, TX
1.2.6	FIRE STATION #10	1107	CULEBRA	San Antonio, TX
1.2.7	FIRE STATION #11	610	FRIO S.	San Antonio, TX
1.2.8	FIRE STATION #13	3203	PRESA S.	San Antonio, TX
1.2.9	FIRE STATION #14	2515	THOUSAND OAKS	San Antonio, TX
1.2.10	FIRE STATION #15	3150	RUIZ	San Antonio, TX
1.2.11	FIRE STATION #16	2110	NOGALITOS	San Antonio, TX
1.2.12	FIRE STATION #17	8545	JONES MALTSBERGER	San Antonio, TX
1.2.13	FIRE STATION #20	3347	W. W. WHITE S.	San Antonio, TX
1.2.14	FIRE STATION #21	5537	FLORES S.	San Antonio, TX
1.2.15	FIRE STATION #22	1100	MARCH	San Antonio, TX
1.2.16	FIRE STATION #24	1956	AUSTIN HIGHWAY	San Antonio, TX

	Facility Name	Address		
1.2.17	FIRE STATION #26	4140	CULEBRA	San Antonio, TX
1.2.18	FIRE STATION #29	827	HOT WELLS	San Antonio, TX
1.2.19	FIRE STATION #31	11802	WEST AVENUE	San Antonio, TX
1.2.20	FIRE STATION #33	2002	36TH S.W.	San Antonio, TX
1.2.21	FIRE STATION #34	15300	BABCOCK RD.	San Antonio, TX
1.2.22	FIRE STATION #35	7038	CULEBRA	San Antonio, TX
1.2.23	FIRE STATION #36	5826	RAY ELLISON DR.	San Antonio, TX
1.2.24	FIRE STATION #37	11011	VANCE JACKSON	San Antonio, TX
1.2.25	FIRE STATION #38	6000	DISTRIBUTION	San Antonio, TX
1.2.26	FIRE STATION #39	10750	NACOGDOCHES RD.	San Antonio, TX
1.2.27	FIRE STATION #40	14331	O'CONNOR RD.	San Antonio, TX
1.2.28	FIRE STATION #41	9146	DOVER RIDGE	San Antonio, TX
1.2.29	FIRE STATION #42	10400	HORN	San Antonio, TX
1.2.30	FIRE STATION #43	2055	BITTERS	San Antonio, TX
1.2.31	FIRE STATION #44	1351	HORAL	San Antonio, TX
1.2.32	FIRE STATION #45	3415	ROGERS RD	San Antonio, TX
1.2.33	FIRE STATION #46	1165	EVANS RD.	San Antonio, TX
1.2.34	POLICE TRAINING ACADEMY	12200	LOOP 410 S.E.	San Antonio, TX
1.2.35	CENTRAL SUBSTATION - PUBLIC SAFETY TECHNOLOGY CENTER	515	FRIO S.	San Antonio, TX
1.2.36	EAST SUBSTATION	3635	HOUSTON E	San Antonio, TX
1.2.37	NORTH SUBSTATION	13030	JONES MALTSBERGER	San Antonio, TX
1.2.38	NORTHWEST SUBSTATION	5020	PRUE	San Antonio, TX
1.2.39	SOUTH SUBSTATION	711	MAYFIELD W.	San Antonio, TX
1.2.40	WEST SUBSTATION	7010	CULEBRA	San Antonio, TX
1.2.41	DOWNTOWN FOOT & BICYCLE PATROL	240	HOUSTON E.	San Antonio, TX
1.2.42	LANDA LIBRARY	233	BUSHNELL	San Antonio, TX
1.2.43	CORTEZ LIBRARY	2803	HUNTER	San Antonio, TX
1.2.44	MEMORIAL LIBRARY	3222	CULEBRA	San Antonio, TX
1.2.45	COLLINS GARDEN LIBRARY	200	PARK BV N	San Antonio, TX
1.2.46	PAN AMERICAN LIBRARY	1122	PYRON W	San Antonio, TX
1.2.47	BAZAN LIBRARY	2200	COMMERCE W.	San Antonio, TX
1.2.48	CARVER LIBRARY	3350	COMMERCE E.	San Antonio, TX
1.2.49	LAS PALMAS LIBRARY	511	CASTROVILLE	San Antonio, TX
1.2.50	FOREST HILLS LIBRARY	5245	INGRAM	San Antonio, TX
1.2.51	JOHNSTON LIBRARY	6307	SUN VALLEY	San Antonio, TX
1.2.52	THOUSAND OAKS LIBRARY	4618	THOUSAND OAKS	San Antonio, TX
1.2.53	WESTFALL LIBRARY	6111	ROSEDALE	San Antonio, TX
1.2.54	TOBIN/OAKWELL LIBRARY	4134	HARRY WURZBACH	San Antonio, TX
1.2.55	MCCRELESS LIBRARY	1023	ADA	San Antonio, TX
1.2.56	BROOKHOLLOW LIBRARY	530	HEIMER	San Antonio, TX
1.2.57	GREAT NORTHWEST LIBRARY	9150	WELLWOOD	San Antonio, TX
1.2.58	CENTRAL LIBRARY	600	SOLEDAD	San Antonio, TX

	Facility Name	Address		
1.2.59	HARLANDALE COMMUNITY CENTER	300	SUSSEX	San Antonio, TX
1.2.60	JEAN YATES COMMUNITY CENTER	568	RASA DR.	San Antonio, TX
1.2.61	ROMAN, FATHER MANUEL COMM. CENTER	11030	RUIDOSA	San Antonio, TX
1.2.62	LINCOLN COMMUNITY CENTER	2915	COMMERCE E.	San Antonio, TX
1.2.63	DAWSON COMMUNITY CENTER	2500	COMMERCE E.	San Antonio, TX
1.2.64	SOUTHSIDE LIONS COMMUNITY CENTER	900	HIAWATHA	San Antonio, TX
1.2.65	HAMILTON COMMUNITY CENTER	10700	NACOGDOCHES	San Antonio, TX
1.2.66	MEADOWCLIFF COMMUNITY CENTER	1240	PINN	San Antonio, TX
1.2.67	DENVER HEIGHTS COMMUNITY CENTER	300	PORTER	San Antonio, TX
1.2.68	MILLER'S POND PARK COMMUNITY CENTER	6175	OLD PEARSALL ROAD	San Antonio, TX
1.2.69	WOODARD COMMUNITY CENTER	1011	LOCKE	San Antonio, TX
1.2.70	WARD COMMUNITY CENTER	455	SUNSHINE E.	San Antonio, TX
1.2.71	SOUTH SAN COMMUNITY CENTER	2021	QUINTANA RD.	San Antonio, TX
1.2.72	SAN JUAN BRADY COMMUNITY CENTER	2307	CALAVERAS SOUTH	San Antonio, TX
1.2.73	GARZA, GILBERT COMMUNITY CENTER	5803	SEACROFT	San Antonio, TX
1.2.74	COPERNICUS CENTER	5003	LORD	San Antonio, TX
1.2.75	PALM HEIGHTS PARK COMMUNITY CENTER	1201	MALONE W.	San Antonio, TX
1.2.76	TOBIN COMMUNITY CENTER	1906	MARTIN W.	San Antonio, TX
1.2.77	CUELLAR CENTER	400	36TH STREET	San Antonio, TX
1.2.78	MELENDREZ COMMUNITY CENTER - MONTERREY PARK	5906	COMMERCE W.	San Antonio, TX
1.2.79	VIRGINIA GILL COMMUNITY CENTER	7902	WESTSHIRE	San Antonio, TX
1.2.80	SOUTHEAST SERVICE CENTER	7402	NEW BRAUNFELS S.	San Antonio, TX
1.2.81	MUNICIPAL PLAZA	114	COMMERCE W.	San Antonio, TX
1.2.82	CITY HALL	100	MILITARY PLAZA	San Antonio, TX
1.2.83	FRANK WING BUILDING	401	FRIO S.	San Antonio, TX
1.2.84	MUNICIPAL RECORDS - GEORGE WHITFIELD RECORDS STORAGE FACILITY	719	SANTA ROSA	San Antonio, TX
1.2.85	MAIN HEALTH BUILDING	332	COMMERCE W.	San Antonio, TX

	Facility Name	Address		
1.2.86	BUENA VISTA ADMINISTRATION	2322	BUENA VISTA	San Antonio, TX
1.2.87	CENTER FOR ENVIRONMENTAL HEALTH	2513	KENNEDY CIRCLE, BLDG. 180 STE 105	San Antonio, TX
1.2.88	SOUTHWEST CLINIC	9011	POTEET HIGHWAY	San Antonio, TX
1.2.89	BUENA VISTA WIC CLINIC	2315	BUENA VISTA	San Antonio, TX
1.2.90	VECTOR CONTROL OFFICE	400	CULBERSON	San Antonio, TX
1.2.91	DORIE MILLER CLINIC	2802	MARTIN LUTHER KING, BLDG 3	San Antonio, TX
1.2.92	BOB ROSS SENIOR CENTER	2219	BABCOCK STE 114	San Antonio, TX
1.2.93	CARVER ANNEX	215	HACKBERRY N.	San Antonio, TX
1.2.94	FRANK GARRETT COMMUNITY CENTERS	1226	18TH N.W.	San Antonio, TX
1.2.95	BRADY CENTER	1227	BRADY	San Antonio, TX
1.2.96	COLUMBIA HEIGHTS LLDC	1502	FITCH	San Antonio, TX
1.2.97	BOB & JEANIE BILLA LLDC	1033	ADA	San Antonio, TX
1.2.98	BENAVIDES, FATHER ALBERT J. LLDC	515	CASTROVILLE	San Antonio, TX
1.2.99	ST. MARY'S LLDC	3141	CULEBRA	San Antonio, TX
1.2.100	WILLIE VELASQUEZ LLDC	1302	ZARZAMORA N.	San Antonio, TX
1.2.101	FERRARI CENTER	107	RAMPART DRIVE, W.	San Antonio, TX
1.2.102	CARVER CULTURAL CENTER	226	HACKBERRY N.	San Antonio, TX
1.2.103	LITTLE CARVER CIVIC CENTER	226	N. HACKBERRY	San Antonio, TX
1.2.104	PEARSALL PARK COMMUNITY CENTER	5102	PEARSALL OLD RD.	San Antonio, TX
1.2.105	CLAUDE W BLACK/EASTSIDE MSC	2805	COMMERCE E.	San Antonio, TX

1.2.1 "Revolving Loan Target Facilities" is a subset of "Facilities" and includes the following buildings and locations, as applicable:

	Facility Name	Address		
1.2.1.1	FIRE STATION #04	1430	ST MARYS N.	San Antonio, TX
1.2.1.2	FIRE STATION #05	1011	MASON	San Antonio, TX
1.2.1.3	FIRE STATION #06	503	RUSSELL W.	San Antonio, TX
1.2.1.4	FIRE STATION #08	619	HAMILTON S.	San Antonio, TX
1.2.1.5	FIRE STATION #09	649	DELMAR	San Antonio, TX
1.2.1.6	FIRE STATION #10	1107	CULEBRA	San Antonio, TX
1.2.1.7	FIRE STATION #11	610	FRIO S.	San Antonio, TX

	Facility Name	Address		
1.2.1.8	FIRE STATION #13	3203	PRESA S.	San Antonio, TX
1.2.1.9	FIRE STATION #14	2515	THOUSAND OAKS	San Antonio, TX
1.2.1.10	FIRE STATION #15	3150	RUIZ	San Antonio, TX
1.2.1.11	FIRE STATION #16	2110	NOGALITOS	San Antonio, TX
1.2.1.12	FIRE STATION #17	8545	JONES MALTSBERGER	San Antonio, TX
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1.2.1.14	FIRE STATION #21	5537	FLORES S.	San Antonio, TX
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1.2.1.23	FIRE STATION #36	5826	RAY ELLISON DR.	San Antonio, TX
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1.2.1.28	FIRE STATION #41	9146	DOVER RIDGE	San Antonio, TX
1.2.1.29	FIRE STATION #42	10400	HORN	San Antonio, TX
1.2.1.30	FIRE STATION #43	2055	BITTERS	San Antonio, TX
1.2.1.31	FIRE STATION #44	1351	HORAL	San Antonio, TX

	Facility Name	Address		
1.2.1.32	FIRE STATION #45	3415	ROGERS RD	San Antonio, TX
1.2.1.33	FIRE STATION #46	1165	EVANS RD.	San Antonio, TX
1.2.1.34	POLICE TRAINING ACADEMY	12200	LOOP 410 S.E.	San Antonio, TX
1.2.1.35	CENTRAL SUBSTATION - PUBLIC SAFETY TECHNOLOGY CENTER	515	FRIIO S.	San Antonio, TX
1.2.1.36	EAST SUBSTATION	3635	HOUSTON E	San Antonio, TX
1.2.1.37	NORTH SUBSTATION	13030	JONES MALTSBERGER	San Antonio, TX
1.2.1.38	NORTHWEST SUBSTATION	5020	PRUE	San Antonio, TX
1.2.1.39	SOUTH SUBSTATION	711	MAYFIELD W.	San Antonio, TX
1.2.1.40	WEST SUBSTATION	7010	CULEBRA	San Antonio, TX
1.2.1.41	DOWNTOWN FOOT & BICYCLE PATROL	240	HOUSTON E.	San Antonio, TX
1.2.1.42	MUNICIPAL RECORDS - GEORGE WHITFIELD RECORDS STORAGE FACILITY	719	SANTA ROSA	San Antonio, TX
1.2.1.43	BENAVIDES, FATHER ALBERT J. LLDC	515	CASTROVILLE	San Antonio, TX
1.2.1.44	HARLANDALE COMMUNITY CENTER	300	SUSSEX	San Antonio, TX
1.2.1.45	VIRGINIA GILL COMMUNITY CENTER	7902	WESTSHIRE	San Antonio, TX
1.2.1.46	LAS PALMAS LIBRARY	511	CASTROVILLE	San Antonio, TX
1.2.1.47	JEAN YATES COMMUNITY CENTER	568	RASA DR.	San Antonio, TX
1.2.1.48	COPERNICUS CENTER	5003	LORD	San Antonio, TX
1.2.1.49	CITY HALL	100	MILITARY PLAZA	San Antonio, TX
1.2.1.50	CLAUDE W BLACK/EASTSIDE MSC	2805	COMMERCE E.	San Antonio, TX
1.2.1.51	SOUTHWEST CLINIC	9011	POTEET HIGHWAY	San Antonio, TX
1.2.1.52	MILLER'S POND PARK COMMUNITY CENTER	6175	OLD PEARSALL ROAD	San Antonio, TX
1.2.1.53	CARVER LIBRARY	3350	COMMERCE E.	San Antonio,

	Facility Name		Address	
				TX
1.2.1.54	GARZA, GILBERT COMMUNITY CENTER	5803	SEACROFT	San Antonio, TX
1.2.1.55	GREAT NORTHWEST LIBRARY	9150	WELLWOOD	San Antonio, TX
1.2.1.56	LAS PALMAS CLINIC	911	CASTROVILLE	San Antonio, TX
1.2.1.57	MCCRELESS LIBRARY	1023	ADA	San Antonio, TX
1.2.1.58	BROOKHOLLOW LIBRARY	530	HEIMER	San Antonio, TX
1.2.1.59	ST. MARY'S LLDC	3141	CULEBRA	San Antonio, TX
1.2.1.60	FRANK WING BUILDING	401	FRIO S.	San Antonio, TX
1.2.1.61	FOREST HILLS LIBRARY	5245	INGRAM	San Antonio, TX
1.2.1.62	DENVER HEIGHTS COMMUNITY CENTER	300	PORTER	San Antonio, TX
1.2.1.63	DORIE MILLER CLINIC	2802	MARTIN LUTHER KING, BLDG 3	San Antonio, TX

With written consent from the City, Contractor shall have the right to remove buildings and locations specified as Revolving Loan Target Facilities in section 1.2.1 in order to ensure completion of services described in Article III by the deadlines specified therein; however, buildings and locations 1.2.1.1 through 1.2.1.41 must not be removed.

1.2.2 "Balance of Facilities" is a subset of Facilities and is defined as all buildings and locations specified as Facilities but not as Revolving Loan Target Facilities.

1.3 "Contractor" is defined in the preamble of this Contract and includes its successors.

1.4 "Energy Assessment Report (EAR)" is defined as a finance-quality, investment-grade audit and detailed engineering and financial technical report, prepared and sealed by a qualified Technical Analyst, which identifies and documents proposed ECRMs at the Facilities to improve the infrastructure, reduce energy consumption, reduce utility and other operating costs, reduce and defer maintenance costs, defray future capital costs, and increase revenues, if applicable.

1.5 "Energy Cost Reduction Measures (ECRMs)" are defined as individual improvements, upgrades, and retrofits of energy efficient equipment, services and measures that reduce, or are expected to reduce, energy consumption and/or utility operating costs in such areas as lighting, HVAC, environmental system controls, motors, domestic water heating, fuel switching, air distribution systems, or other

energy/utility conservation-related improvements or equipment, including improvements or equipment related to renewable energy. Examples of specific measures include, but are not limited to: 1) energy-efficient lighting systems; 2) high-efficiency HVAC systems; 3) energy/utility management systems; 4) energy/utility recovery systems; 5) building shell or envelope improvements; 6) load management projects, and; 7) third party system(s) commissioning.

1.6 "Energy Savings Performance Contract (ESPC)" is defined as a contract that provides ECRMs in which the estimated utility cost savings resulting from the ECRMs is guaranteed by the Contractor to offset the cost of the ECRMs over the term of the contract, or other specified period. An ESPC ensures utility cost performance in accordance with Texas Local Government Code 302. The ESPC consists of two parts, the EAR and the project proposal (i.e. general terms and conditions, scope of work, budget) for the Contractor to proceed with implementing the project and ECRMs. The EAR and the project proposal are attachments to the ESPC providing the detail of equipment installed, services engaged, project costs, and utility savings to be expected.

1.7 "Technical Analyst" is defined as a professional engineer(s) performing the EAR who is: 1) licensed as a Texas professional engineer and works for a firm that is registered with the Texas Board of Professional Engineers; 2) has extensive knowledge of energy/utility-using systems found in institutional and commercial buildings, a working knowledge of energy-efficient retrofits utilizing state-of-the art technologies, and a specific understanding of building operation and maintenance procedures; 3) experienced in conducting energy/utility analyses identifying energy-efficient retrofit projects in institutional or commercial buildings and in preparing comprehensive reports on the findings; 4) involved in on-site work to gather project data; have a working knowledge of the building(s) and its energy/utility-using systems; direct or perform all aspects of the data collection, project selection, analysis, cost estimation; and provide final recommendations for the project, and; 5) knowledgeable in International Performance Measurement & Verification Protocol (IPMVP) techniques and protocols.

II. TERM

2.1 Unless sooner terminated in accordance with the provisions of this Contract, the term of this Contract shall commence upon the date of execution of this Contract as indicated herein and terminate no later than one-hundred twenty (120) days, or upon completion of all of the services described in Article III, whichever shall occur earlier.

2.2 If funding for the entire Contract is not appropriated at the time this Contract is entered into, City retains the right to terminate this Contract at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

3.1 Contractor agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV Compensation.

3.1.1 Collect General Information For Facilities. Contractor shall provide a team consisting primarily of the project and engineering staff identified in its proposal submission to examine the existing Facilities. Contractor will supplement its field examination by using City-provided building and equipment records and utility data as described herein. Site examination by the Contractor shall begin within 30 days of execution of this Contract.

3.1.1.1 The Contractor shall collect detailed Facility information such as: size, age, construction type, condition and general use of each Facility except as provided below. The Contractor shall also collect and summarize Facility utility cost and consumption data for the most recent three year period. If after reasonable inquiry, the Contractor can demonstrate that less than three years of data is available, the Contractor with the written approval of the City may collect such data that is available, but in any event not less than two years of data. The Contractor shall evaluate the impact on utility cost and consumption for any measures or improvements currently being installed or currently contemplated to be installed by the City in the Facilities, which will remain separate from the ESPC throughout the duration of the EAR.

3.1.1.2 City agrees to provide its reasonable cooperation in the conduct and completion of the EAR. During the EAR, City shall furnish, to the best of its ability, and upon Contractor's request, accurate and complete data, concerning operational expenditures and revenues for the Facilities, including the following data for the most recent three years from the effective date of this Contract:

3.1.1.2.1 Occupancy and usage information;

3.1.1.2.2 Descriptions of any changes in the Facility structure or its heating, cooling, lighting, or other systems;

3.1.1.2.3 Actual utility bills supplied by the utility and other relevant utility records, to the extent that the City receives utility statements; otherwise, utility costs in the form as provided to the City by utility providers. City shall furnish, and/or cause its utility companies C.P.S. Energy (CPS) and San Antonio Water System

(SAWS) to furnish, available records and data concerning energy and water usage for the Facilities. Contractor shall coordinate with SAWS and CPS to ensure accurateness in the City's data and shall temporarily meter when necessary to determine and/or confirm usage;

3.1.1.2.4 Electric, natural gas, water and sewer records billed to City customers, if applicable, upon receiving permission from the customer;

3.1.1.2.5 Electric, natural gas and water purchased or produced for resale, if applicable;

3.1.1.2.6 Descriptions of relevant operational or maintenance procedures utilized at the Facilities, if such description exists;

3.1.1.2.7 Summary of annual expenditures for operating the Facilities, limited to those relevant to this project, including utility, operational and maintenance costs;

3.1.1.2.8 Excerpts of relevant terms of representative current tenant leases, if any;

3.1.2 Analyze Existing Systems and Equipment. This analysis shall address the following considerations:

3.1.2.1 The systems and equipment, which shall be evaluated by the Contractor, include but are not necessarily limited to, those identified in Exhibit A – Systems and Equipment attached.

3.1.2.2 The loads, proper sizing, efficiencies or hours of operation for each system (where measurement costs, Facility operating or climatic conditions necessitate, engineering estimates may be used, but for large fluctuating loads with high potential savings, appropriate measurements are required unless waived by the City).

3.1.2.3 Current operating condition for each system.

3.1.2.4 Remaining useful life of each system, identifying or describing the method used to determine that remaining useful life.

3.1.2.5 Feasible replacement systems.

3.1.2.6 Hazardous materials and other environmental concerns.

The Contractor shall use data loggers and or other measurement and recording devices and conduct interviews with Facility operation and maintenance staff regarding the Facility's system operation, occupancy patterns and problems with comfort levels or equipment reliability.

3.1.3 Establish Baseline Energy Consumption and Reconcile with End Use Consumption Estimates. The Contractor shall examine the most recent three years of energy costs, except as previously noted herein, and establish baseline consumption; or selecting the most representative consecutive three-year period. Contractor shall provide a detailed description of all existing baseline conditions, development methods, calibration procedures, adjustments, and assumptions for each Facility.

3.1.3.1 The Contractor shall estimate loading, usage and/or hours of operation for all major end uses representing more than 5% in aggregate of total Facility consumption, taking into account the unique energy usage patterns of these Facilities. Where loading or usage is highly uncertain the Contractor shall employ spot measurement and/or short term monitoring at its discretion, or at the request of City. Reasonable applications of measurement typically include variable loads that are likely candidates for ECRMs, such as cooling equipment. The Contractor shall consult with Facility staff and account for any unusual or anomalous utility costs which may skew base year consumption from a reasonable representation.

3.1.3.2 The Contractor shall develop the Facilities' baseline energy consumption as part of the EAR. The City and the Contractor shall mutually agree on the baseline consumption prior to final acceptance and approval of the EAR by the City. The baseline consumption shall represent pre-existing energy consumption for all end uses within the Facilities, not just those end uses affected by the Contractor's proposed ECRMs, and shall account for the unique energy usage patterns at these Facilities.

3.1.3.3 The baseline consumption shall be developed with a whole-building simulation approach using a City- and Texas State Energy Conservation Office (SECO)-approved, energy simulation method or program. The Contractor shall use the same method or program to develop the projected energy cost savings that was used to develop the baseline consumption. Projected energy consumption must be modeled using the same weather and operating conditions as the established baseline consumption. Upon request by the

City, the Contractor shall provide access to the method or program utilized to establish the baseline consumption and to develop projected energy cost savings, as well as all inputs and assumptions used.

3.1.3.4 The baseline consumption shall reflect all energy-related effects of the current design features of the Facilities such as, but not limited to, quantity and type of glass, building orientation with respect to the physical site, overall wall and roof thermal resistance values, ventilation air requirements, humidity level, occupancy, actual operating schedules, the scale and types of events held in the Facilities, and the unique energy usage patterns of the Facilities. The baseline consumption shall incorporate the energy-related effects of all renovations and/or modifications to the building envelope, internal spaces, and energy-consuming systems subsequent to the date of original construction.

3.1.3.5 The baseline consumption shall be developed in accordance with recommendations and methods promulgated by professional societies and governmental organizations such as SECO and IPMVP.

3.1.3.6 The annual end use estimated consumption shall be reconciled with the annual base year consumption to within 5% for electricity (kWh), fossil fuels and water. The contribution to electric peak demand for each end use shall also be reconciled to within 5% of the annual base year peak. The "miscellaneous" category shall not be more than 10% and each component shall be separately set forth. The purpose of this is to place reasonable limits on potential savings.

3.1.3.7 Once the baseline consumption is developed, Contractor shall adjust the baseline consumption as necessary throughout the term of this Contract to account for projects which are not included in any resulting ESPC that are completed prior to or during the term of this Contract and whose energy impact has not been captured in the existing utility data, as well as for projects required to bring a Facility into compliance with current codes or correct a deficiency prior to the implementation of an ECRM.

3.1.4 Develop List of Potential ECRMs. The Contractor shall:

3.1.4.1 Comply with any design standards and/or construction specifications as may be promulgated and/or amended by the

City of San Antonio prior to or during the term of this Contract and any resulting ESPC.

- 3.1.4.2 Participate in standard municipal contract type and will be required to provide ordinary commercial or institutional quality elements and workmanship.
- 3.1.4.3 Identify and propose potential ECRMs for installation or implementation at the Facilities, including cut sheets on all proposed equipment and materials. For non-standard ECRMs Contractor shall provide information regarding product site installations. Contractor shall identify all features and options on the cut sheets that are above and beyond the manufacturer's standard offering.
- 3.1.4.4 Provide a detailed estimate of the cost, savings and life expectancy of each proposed ECRM. Projected energy cost savings shall be calculated as the difference between baseline consumption and the costs that are expected to result from the proposed ECRMs. Prepare a life cycle cost analysis in accordance with City guidelines as directed by the City.
- 3.1.4.5 Specify operations and maintenance procedures of the Facility which will be affected by the installation/implementation of the proposed ECRMs.
- 3.1.4.6 Provide analysis methodology, supporting calculations and assumptions used to estimate savings, which shall be based on the life cycle cost analysis. Manual calculations should disclose essential data, assumptions, formulas, etc. in order for reviewers to replicate the calculations based on the data provided.
- 3.1.4.7 Provide a detailed preliminary commissioning plan for the proposed ECRMs. Contractor acknowledges and agrees that City reserves the right to utilize an independent third party commissioning agent or to require Contractor to utilize an independent third party commissioning agent approved by City, such approval not to be unreasonably withheld.
- 3.1.4.8 Provide detailed calculations for any rate-saving proposals.
- 3.1.4.9 Provide detailed supporting calculations for any proposed maintenance, material or other operational savings. Describe annual variances in savings from year to year (e.g. lighting,

warranties). Operating and maintenance savings cannot be included in financing and payback.

- 3.1.4.10 Estimate any environmental costs or benefits of the proposed ECRMs (e.g. disposal costs, avoided emissions, water conservation, etc.). Provide emissions reductions data for NO_x, CO₂ and SO₂. Segregate emissions data for direct site emissions reductions (e.g. fossil fuels) and indirect emissions reduction data (e.g. electricity/water).
- 3.1.4.11 For all proposed ECRMs, the Contractor shall comply with all applicable state, federal and local codes and regulations in effect at the time of this analysis.
- 3.1.5 Select Final Recommended ECRMs. The Contractor shall, in consultation with the City, recommend specific ECRMs from its preliminary compilation for installation and implementation at the Facilities.
- 3.1.6 Establish Measurement & Verification Plan (M&VP). The Contractor shall develop a detailed preliminary M&VP for each ECRM to measure and account for actual savings after the implementation and installation of ECRMs. Actual savings are to be measured and verified against baseline consumption. The M&VP shall be developed in accordance with recommendations and methods promulgated by professional societies and governmental organizations such as the SECO and IPMVP.
- 3.1.7 Provide Cost and Fee Estimates. The Contractor shall provide detailed cost estimates associated with the installation and implementation of each of the ECRMs proposed in the EAR, including: i) engineering/design for individual ECRMs; ii) contractor/vendor estimates for individual ECRMs, materials, equipment and labor; iii) Contractor construction management fees; iv) Contractor overhead and profit; v) independent third party commissioning for individual ECRMs; vi) contingencies; vii) initial training; viii) annual service including measurement and verification, maintenance, performance monitoring, and ongoing training, and; ix) other specified costs.
- 3.1.8 Develop Savings Estimates. The City has endeavored to provide the Contractor with sufficient general and specific guidance herein to develop the savings estimates for the EAR. In the event that questions arise as to the calculation of savings or whether certain items will be allowed as savings, the Contractor should seek a written opinion from the City. The City reserves the right to reject items claimed as savings which are not actual costs in the Facility's utility operating budget or

which have been claimed in conflict with the terms of this Contract or conflict with a subsequent written opinion provided to the Contractor by the City. The City also reserves the right to reject the Contractor's calculations of savings when it determines that there is a more appropriate method of determining or calculating such savings.

3.1.8.1 The following items may be allowed as savings or in the development of savings; however the City reserves the right to determine allowable savings:

3.1.8.1.1 City material/commodity cost;

3.1.8.1.2 Outside maintenance labor cost, if applicable;

3.1.8.2 The following items will not typically be credited as savings derived from a proposed ECRM:

3.1.8.2.1 City's in-house labor cost;

3.1.8.2.2 City's deferred maintenance cost;

3.1.8.2.3 City's defrayed future capital cost;

3.1.8.2.4 Escalation rates for natural gas, oil, electricity, domestic and irrigation water, gasoline and other fuels, chilled water, and steam; and

3.1.8.2.5 Escalation rates for material/commodity cost savings and allowable labor savings.

The Contractor may seek permission in writing to include such items from the City on a case-by-case basis. Unless otherwise agreed in writing, projected escalation rates, if permitted by City, shall tie to the Consumer Price Index (CPI). The value of fuel and water unit savings shall be escalated using actual rate increases as they occur over the term of the Contract. The base rate value for each fuel and water unit shall not devalue in the event of any rate decrease. The City reserves the right to impose ceiling rates for any permitted energy cost escalations used in calculating project savings and payback.

3.1.9 Arrange Financing (if requested by City). It is the City's intention to utilize the SECO ARRA Revolving Loan program for financing of the ECRMs at the Revolving Loan Target Facilities. However, if requested by the City, the Contractor shall assist in the identification, recommendation, analysis and arranging of alternate and/or additional

project financing for the Revolving Loan Target Facilities or the Balance of Facilities. Examples of alternate or additional financing could include the issuance of bonds, municipal lease/purchase, and contractual obligations. In addition, the Contractor is expected to identify, recommend and apply for eligible energy/utility reduction financing programs and rebates offered through CPS and SAWS. No matter the financing mechanism(s), the City intends to structure the program's implementation schedule to minimize its financed capital needs. Operational and maintenance savings will not be allowed as part of annual energy/utility savings financing or payback.

3.1.10 Delivery of EAR. At least 10 days prior to the close of the SECO ARRA Revolving Loan Program proposal period, Contractor shall prepare and submit to the City three (3) copies of the EAR for the Revolving Loan Target Facilities along with a draft ESPC to implement the mutually agreed upon ECRMs and a completed draft SECO ARRA Revolving Loan application. The draft ESPC shall serve as a template for the negotiation of an ESPC to implement the EAR. Within 30 days after the completion of the EAR for the Balance of Facilities, Contractor shall prepare and submit to the City three (3) copies of the EAR for the Balance of Facilities.

3.1.10.1 The EAR shall be prepared in the format contained in Exhibit B – Texas LoanSTAR Energy Assessment Report Template, provided in the Texas LoanSTAR Program Guidebook. The prescribed format is intended to speed the review process as well as the report writing process. All numbers, titles, etc. should be in the location indicated in the format.

3.1.10.2 The EAR format shall be modified, as necessary, to meet the SECO ARRA Revolving Loan Program requirements, as described on the SECO website (<http://www.seco.cpa.state.tx.us/>) and as will be advertised on the Texas Electronic State Business Daily website (<http://esbd.cpa.state.tx.us/>).

3.1.10.3 The EAR shall contain detailed projections of energy and cost savings to be obtained at the Facilities as a result of the installation and implementation of the proposed ECRMs. The savings calculations must utilize assumptions, projections and baseline utility cost information that best represents the true value of future energy savings for the Facilities, including accurate marginal cost for each unit of savings at the time the audit is performed; adjustments to baseline utility cost information to reflect current conditions at the Facilities,

compared to historical costs, and; calculations which account for the interactive effects of the proposed ECRMs.

- 3.1.10.4 The EAR shall clearly describe how utility tariffs were used to calculate savings for all ECRMs. The EAR shall describe in detail the Contractor's plan for the installation and implementation of the proposed ECRMs, including all anticipated costs associated with such installation and implementation.
- 3.1.10.5 Equipment and material descriptions should be sufficiently complete and clear for reviewers to verify the reasonableness of claimed ECRM costs.
- 3.1.10.6 For simple projects (lighting retrofits, for example) which could possibly be implemented by City's personnel, sufficient detail about equipment, material, and locations of the proposed installations should be given so that the City could accomplish the project based on information contained in the EAR alone.
- 3.1.10.7 Recommendations for additional design/engineering should be clearly indicated as a project cost.
- 3.1.10.8 Final report copies must be printed in no less than 12 pt. font on 8 ½" by 11" white paper, double-sided, and bound on the left-hand side in three-ring binders with the title and date of the report on the spine. Contractor shall also deliver to City a compact disc with the entire EAR in a single Portable Document Format (PDF) file, the format of which exactly matches the copies provided to the City.
- 3.1.11 City Review. City shall have a maximum of 120 days from its receipt of the EAR to conduct and complete a technical review. The City shall accept and approve the EAR in writing if the recommended ECRMs are feasible and the projected energy cost savings are equal to or greater than the total projected cost of the design and installation of the recommended ECRMs. Should City require, Contractor agrees to allow review of Contractor's documents related to this Agreement including the project financials and payback, included embedded overhead and project management costs, subcontractor markup. If the City determines that one or more of the recommended ECRMs is not feasible, the City shall give the Contractor written notice of any and all said objections, in detail, within 14 days after completing its technical review of the EAR. The Contractor shall correct the EAR and submit a revised draft within 21 days of said notification. The City shall have 14 days from receipt of the revised EAR to notify the Contractor if any

objections have not been corrected. This 14/21-day re-submission cycle shall continue until: a) the date all material concerns are resolved and the EAR is accepted and approved by the City, or; b) the dispute is otherwise resolved.

3.2 Contractor may combine all facilities into one (1) EAR, however, each facility must be independently analyzed, detailed in the report and must individually constitute a viable project.

3.3 All work performed by Contractor hereunder shall be performed to the satisfaction of Director of the Office of Environmental Policy (Director). The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Contractor, which is not satisfactory to Director. The Director's approval shall not be unreasonably withheld. Objections shall be provided to Contractor in writing and in detail.

IV. COMPENSATION TO CONTRACTOR

4.1 The Contractor is performing services under this Contract in consideration of the City's good faith intention to negotiate an ESPC with the Contractor in Revolving Loan Target Facilities. The Contractor understands and agrees that payment to Contractor for services rendered for Revolving Loan Target Facilities is contingent upon realization of energy cost savings being equal to or greater than the total cost of the design and installation of the Contractor's recommended ECRMs. The Contractor further understands that the City may implement all or part of a recommended ECRM without liability to the Contractor (or its subcontractors or suppliers) if there are extenuating circumstances (i.e. sudden or imminent equipment failure, separate City contract for the same or similar service or equipment) and the City would have taken similar measures regardless of the Contractor's recommendation.

4.2 In consideration of Contractor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Contract, City agrees to pay Contractor an amount not to exceed one hundred forty-five thousand dollars (\$145,000.00) (Revolving Loan Target Facilities \$75,028.00; Balance of Facilities \$69,972.00) as total compensation upon completion of all services specified in the Agreement. In the event that the Contractor removes buildings or locations from the specified Revolving Loan Target Facilities, the portion of the payment dedicated to the Revolving Loan Target Facilities shall be reduced to be proportional to the square footage of revised Revolving Loan Target Facilities list and the portion on the funds dedicated toward the Balance of Facilities shall be increased accordingly.

4.2.1 Should the energy cost savings described in the EAR, including renewable energy systems, not offset the total cost of the installation and implementation of the ECRMs within a term of 15 years or less, City shall have no obligation to enter into an ESPC with Contractor nor

pay any amounts owed under this Contract. City and Contractor must mutually agree that energy cost savings offset the total cost of the ECRMs (i.e. that the project is viable). Additionally, each facility must present a viable project.

4.2.2 Should City and Contractor successfully negotiate and execute an ESPC as a result of the EAR, this Contract shall automatically terminate and City shall have no obligation to pay for services rendered for Revolving Loan Target Facilities under this Contract. Further, any compensation due to Contractor under the terms of this Contract rendered for Revolving Loan Target Facilities shall be transferred to the total cost of the ESPC and be subject to the payment terms outlined in the ESPC. City shall pay Contractor the portion of the invoiced amount for the Balance of Facilities in accordance with Section 4.2.

4.2.3 Should City and Contractor not enter into an ESPC within 120 days following the approval of the EAR by the City, City shall pay Contractor the total invoiced amount in accordance with Section 4.2.

4.3 No additional fees or expenses of Contractor shall be charged by Contractor nor be payable by City. The Parties hereby agree that all compensable expenses of Contractor have been provided for in the total payment to Contractor as specified in Section 4.2 above. Total payments to Contractor cannot exceed that amount set forth in Section 4.2 above, without prior approval and agreement of all Parties, evidenced in writing and approved by the Director.

4.4 Contractor shall deliver invoice for payment to:

Liza Meyer, Special Projects Manager
Office of Environmental Policy
P.O. Box 839966
San Antonio, TX 78283-3966

V. RECORDS RETENTION

5.1 Contractor and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives. All documents shall be provided to the City in an editable electronic format and hard copy.

5.2 Contractor shall retain any and all documents produced as a result of services provided hereunder for a period of four (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Contractor shall retain the records until the resolution of such litigation or other such questions. Contractor acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Contractor to return said documents to City prior to, or at the conclusion of, said retention period.

5.3 Contractor shall immediately notify City in the event Contractor receives any requests for information from a third party which pertain to the documentation and records referenced herein. Contractor understands and agrees that City will process and handle all such requests.

VI. OWNERSHIP OF DOCUMENTS

All writings, documents or information in any form and character produced by Contractor under 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 Contractor. City may, at its election require Contractor to return all documents to City prior to or at the conclusion of the project.

VII. TERMINATION

7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.

7.2 Termination Without Cause. This Agreement may be terminated by City upon delivery of written notice to Contractor by Director, or his designee.

7.3 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 Agreement shall automatically terminate as of the effective date of such prohibition.

7.4 Regardless of how this Agreement is terminated, Contractor shall affect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Contractor, or provided to Contractor, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by

Contractor in accordance with Article V. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Contractor's sole cost and expense. Payment of compensation due or to become due to Contractor is conditioned upon delivery of all such documents, if requested.

7.5 Upon the effective date of expiration or termination of this Agreement, Contractor shall cease all operations of work being performed by Contractor or any of its subcontractors pursuant to this Agreement.

7.6 Termination not sole remedy. In no event shall City's action of terminating this Agreement 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 Contractor for any default hereunder or other action.

VIII. INSURANCE

8.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Office of Environmental Policy, which shall be clearly labeled "Priority Facilities Energy Assessment Report" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Office of Environmental Policy. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

8.2 The 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.

8.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted 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>AMOUNT</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000 per category and in the aggregate
3. Broad Form Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises and Operations * b. Independent Contractors c. Personal Injury Liability d. Contractual Liability e. Products/completed operations * f. Explosion, Collapse, Underground * where the exposure exists	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 per occurrence \$2,000,000 per occurrence and in the aggregate or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-Owned vehicles c. Hired vehicles	<u>Combined Single Limit for Bodily Injury and Property Damage</u> of \$1,000,000 each accident
5. Professional Liability	\$1,000,000 per claim and in the aggregate, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, error, or omission in professional services.

8.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the CITY as additional insureds. Contractor shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this Contract. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

8.5 The City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto as they apply to the limits required by the City, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Contractor shall be required to comply with any

such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes.

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

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

- Name the 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;
- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.
- Provide thirty (30) calendar days 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.

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

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

8.8 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or

property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

8.9 It is agreed that Contractor's insurance shall be deemed primary and noncontributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

8.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement.

8.11 Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

IX. INDEMNIFICATION

9.1 CONTRACTOR 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 or 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 CONTRACTOR's activities under this AGREEMENT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, consultant or subcontractor of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT.

9.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by CONTRACTOR to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the City is the sole cause of the resultant injury, death, or damage. CONTRACTOR further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND

IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

9.3 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. CONTRACTOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CONTRACTOR known to CONTRACTOR related to or arising out of CONTRACTOR's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CONTRACTOR's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR of any of its obligations under this paragraph.

9.4 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by CONTRACTOR in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. CONTRACTOR 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 Agreement. If CONTRACTOR fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and CONTRACTOR 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.

9.5 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of CONTRACTOR, 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 CONTRACTOR or any subcontractor under worker's compensation or other employee benefit acts.

X. ASSIGNMENT AND SUBCONTRACTING

10.1 Contractor shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees of Contractor. Contractor and its employees shall perform all necessary work.

10.2 Before utilizing any subcontractor to perform any part of the work identified in this Agreement, the Contractor shall seek written authorization from the Director, who shall have the sole discretion to approve or reject such a request. Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract

and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Contractor. City shall in no event be obligated to any third party, including any subcontractor or employee of Contractor, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City.

10.3 Except as otherwise stated herein, Contractor may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the Director. As a condition of such consent, if such consent is granted, Contractor shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Contractor, assignee, transferee or subcontractor.

10.4 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Contractor assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Contractor shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release Contractor from the payment of any damages to City, which City sustains as a result of such violation.

XI. SBEDA AND DISAVANTAGED BUSINESS REQUIREMENTS

11.1 **SBEDA Program.** City has adopted a Small Business Economic Development Advocacy Ordinance (the "SBEDA Program"), which is posted on the City's Economic Development Department website and is also available in hard copy form upon request to City. In addition to the definitions provided in the SBEDA Program, the following definitions will apply pursuant to SBEDA Program requirements and this Contract:

11.1.1 **SBEDA Enterprise ("SE")** – A corporation, limited liability company, partnership, individual, sole proprietorship, joint stock company, joint venture, professional association or any other legal entity operated for profit that is properly licensed, as applicable, and otherwise authorized to do business in the state of Texas and certified pursuant to SBEDA Program requirements.

11.1.2 **Commercially Useful Function** – A function performed by an SE when it is responsible for supplying goods or for execution of a distinct element of the work of a contract and carrying out its responsibilities

by actually performing, managing and supervising the work involved. To determine whether an SE is performing a Commercially Useful Function, the amount of work subcontracted, industry practices and other relevant factors shall be evaluated. Commercially Useful Function is measured for purposes of determining participation on a contract, not for determination of certification eligibility.

11.1.3 Conduit – An SE that knowingly agrees to pass the scope of work for which it is listed for participation, and is scheduled to perform or supply on the contract, to a non-SE firm. In this type of relationship, the SE has not performed a Commercially Useful Function and the arranged agreement between the two parties is not consistent with standard industry practice. This arrangement does not meet the Commercially Useful Function requirement and therefore the SE's participation does not count toward the SE utilization goal.

11.1.4 SBEDA Plan – The Good Faith Effort Plan ("GFEP"), SBEDA Narrative, List of Subcontractors/Suppliers and executed Letters of Intent (all as applicable) that are submitted with Contractor's Proposal for this Contract, attached hereto and incorporated herein as Attachment B.

11.2 For this Contract, the Parties agree that:

11.2.1 The terms of City's SBEDA Ordinance, as amended, together with all requirements and guidelines established under or pursuant to the Ordinance (collectively, the "SBEDA Program") are incorporated into this Contract by reference; and

11.2.2 The failure of Contractor or any applicable SE to comply with any provision of the SBEDA Program shall constitute a material breach of the SBEDA Program and this Contract.

11.2.3 Failure of Contractor or any applicable SE to provide any documentation or written submissions required by City or SBEDA Program Office pursuant to the SBEDA Program, within the time period set forth by the SBEDA Program Office, shall constitute a material breach of the SBEDA Program and this Contract.

11.2.4 During the Term of this Contract, and any renewals thereof, any unjustified failure to utilize good faith efforts to meet, and maintain, the levels of SE participation identified in Contractor's SBEDA Plan shall constitute a material breach of the SBEDA Program and this Contract.

11.2.5 Contractor shall pay all suppliers and subcontractors identified in its SBEDA Plan in a timely manner for satisfactory work, pursuant to and

as outlined in Section VII, Paragraph F(2)(e) of the SBEDA Ordinance, as amended. Documentation of all billing and payment information applicable to SBEDA Plan suppliers and subcontractors shall be submitted by Contractor to City. Failure to pay SEs in a timely manner or submit the required billing and payment documentation shall constitute a material breach of this Contract.

11.3 The Parties also agree that the following shall constitute a material breach of the SBEDA Program and this Contract:

11.3.1 Failure of Contractor to utilize an SE that was originally listed at bid opening or proposal submission to satisfy SBEDA Program goals in order to be awarded this Contract, or failing to allow such SE to perform a Commercially Useful Function; or

11.3.2 Modification or elimination by Contractor of all or a portion of the scope of work attributable to an SE upon which the Contract was awarded; or

11.3.3 Termination by Contractor of an SE originally utilized as a Subcontractor, Joint Venturer, Supplier, Manufacturer or Broker in order to be awarded the Contract without replacing such SE with another SE performing the same Commercially Useful Function and dollar amount, or without demonstrating each element of Modified Good Faith Efforts to do so; or

11.3.4 Participation by Contractor in a Conduit relationship with an SE scheduled to perform work that is the subject of this Contract.

11.4 Remedies for Violation of SBEDA Program. The Parties further agree that in addition to any other remedies City may have at law or in equity, or under this Contract for material breach, including the specified remedies available under the SBEDA Program for Alternative Construction Delivery Method, City shall be entitled, at its election, to exercise any one or more of the following remedies if Contractor materially breaches the requirements of the SBEDA Program:

11.4.1 Terminate this Contract for default;

11.4.2 Suspend this Contract for default;

11.4.3 Withhold all payments due to Contractor under this Contract until such violation has been fully cured or the Parties have reached a mutually agreeable resolution; and/or

11.4.4 Offset any amounts necessary to cure any material breach of the requirements of the SBEDA Program from any retainage being held by the City pursuant to this Contract, or from any other amounts due to the Contractor under this Contract.

11.4.5 Suspension, Revocation or Modification of SE Certification: The SBEDA Program Office may suspend or revoke an offending SE's eligibility for Certification, and may suspend its participation from counting toward a project goal, based upon such SE's acting as a Conduit, failing to comply with the provisions of the SBEDA Program, failing to perform a Commercially Useful Function on a project, failing to submit information as required by the SBEDA Program Office, submitting false, misleading or materially incomplete statements, documentation or records, or failing to cooperate in investigations. The SBEDA Program Office may further modify the list of areas for which an SE is certified, if the SE is routinely failing to submit bids or proposals for work in a particular area, or if it becomes apparent that the SE is not qualified to perform work in a particular area.

11.5 The Parties agree that nothing in the SBEDA Program or that any action or inaction by the SBEDA Program Office or the SBEDA Program Manager shall be deemed a representation or certification that an SE is qualified to perform work in a particular area for the purposes of this Contract.

11.6 ***The remedies set forth herein shall be deemed cumulative and not exclusive and may be exercised successively or concurrently, in addition to any other available remedy.***

11.7 City Process For Exercising SBEDA Program Remedies. The SBEDA Program Manager shall make all decisions regarding the suspension or revocation of an SE's certification as well as the duration of such suspension or revocation. The SBEDA Program Manager shall make a recommendation to the City regarding appropriate remedies for the City to exercise in the event a Contractor violates the SBEDA Program. City shall make a recommendation regarding appropriate remedies to the City Manager or designee, who shall have final approval regarding the remedy to be exercised except for termination of the Contract. If the recommended remedy is to terminate this Contract, then City or City Manager, or her designee, shall bring forward the recommendation to City Council for final determination.

11.8 **Special Provisions for Extension of Contracts.** In the event City extends this Contract without a competitive Bid process, City shall establish the following, subject to review and approval by the SBEDA Program Manager:

11.8.1 a SBEDA Utilization Goal for the extended period; and

11.8.2 a modified version of the Good Faith Efforts (“Modified Good Faith Efforts Plan”) set forth in the SBEDA Program Ordinance, as amended, if Contractor does not meet the SBEDA Utilization Goal; and

11.8.3 the required minimum Good Faith Efforts outreach attempts that Contractor shall be required to document in attempting to meet the SBEDA Utilization Goal. The SBEDA Utilization Goal, Modified Good Faith Efforts Plan and the required number of minimum Good Faith Efforts outreach attempts shall be added into the Contract extension document. Contractor entering into the extension shall either meet the SBEDA Utilization Goal or document that it has made the Good Faith Efforts to meet the SBEDA Utilization Goal. Failure to do so shall:

11.8.3.1 subject Contractor to any of the remedies listed above; and/or

11.8.3.2 result in rebid of the Contract to be extended.

XII. INDEPENDENT CONTRACTOR

Contractor covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Contractor shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of respondent superior shall not apply as between City and Contractor, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between City and Contractor. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Contractor under this Agreement and that the Contractor has no authority to bind the City.

XIII. CONFLICT OF INTEREST

13.1 Contractor 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 Section 2.43 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the 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 Pursuant to the subsection above, Contractor warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Contractor further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIV. AMENDMENTS

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Contractor, and subject to approval by the OEP Director.

XV. 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.

XVI. LICENSES/CERTIFICATIONS

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

XVII. COMPLIANCE

Contractor shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

XVIII. NONWAIVER OF PERFORMANCE

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 Director, as described in Article XIV. Amendments. 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.

XIX. LAW APPLICABLE

19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

19.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

XX. LEGAL AUTHORITY

The signer of this Agreement for Contractor represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Contractor and to bind Contractor to all of the terms, conditions, provisions and obligations herein contained.

XXI. PARTIES BOUND

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

XXII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:	If intended for Contractor, to:
City of San Antonio Attn: W. Laurence Doxsey Director, Office of Environmental Policy P.O. Box 839966 San Antonio, Texas 78283-3966	Johnson Controls Attn: A. Denise Malloy Solutions Account Executive, Local Government Building Efficiency 10644 West Little York Road, Suite 200 Houston, Texas 77041

XXIII. ENTIRE AGREEMENT

This Agreement, together with its exhibits constitutes the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XIV. Amendments.

XXIV. INCORPORATION OF EXHIBITS

Each of the exhibits listed below, collectively the Priority Facilities Energy Assessment Reports Proposed Work Plan, is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be fully incorporated into this agreement:

- Exhibit A: Systems and Equipment
- Exhibit B: Texas LoanSTAR Energy Assessment Report Template

EXECUTED and AGREED to as of the dates indicated below. This Agreement may be executed in multiple copies, each of which shall constitute an original.

[Signatures on following page]

CITY OF SAN ANTONIO

JOHNSON CONTROLS, INC.

W. Laurence Doxsey
Director, Office of Environmental
Policy
Date:

Lisa Loupe
Regional Solutions Manager
Date:

Approved as to Form:

City Attorney

JCI Counsel

EXHIBIT A: SYSTEMS AND EQUIPMENT

1	Water Production, if applicable, and Water Distribution and Meters
2	Heating, Ventilation and Air Conditioning (HVAC) and Mechanical System and Controls, including Air Distribution and Heat Recovery
3	Interior and Exterior Electrical and Lighting Systems and Controls, including Street and Parking Lot/Structure Lighting (not including video screens and scoreboards, televisions, audio/visual equipment, computers, telecommunications equipment, or advertising)
4	Plumbing Systems and Fixtures, and Water Conservation, including Toilets, Urinals, Sinks, Showers, Water Fountains, and Irrigation
5	Building Envelope, including Windows and Doors
6	Electric Motors (min. 5 Hp), Transmissions and Drive Systems
7	Domestic Water Heating
8	Other Energy, Environmental, Water Management, and Life Safety Systems and Controls (not specified herein)
9	Utility Rate Modifications, if requested (may be dependent upon whether SECO funding can be used)
10	Outdoor Ventilation Systems and Equipment
11	Exhaust Systems and Equipment
12	Catering and Concessions Equipment, including Kitchen and Dining Equipment
13	Laundry Equipment
14	Wastewater Treatment, if applicable
15	Other Major Energy Utilizing Systems and Equipment (not specified herein)
16	Operation and Maintenance (O&M) Practices (cannot be incorporated into savings and payback)
17	Renewable Energy (if requested, but shall be alternates to project, unless utility savings can offset cost within specified payback period)
18	Leadership in Energy and Environmental Design (LEED) certification, if requested (that in conjunction with additional improvements or not, would make Facilities eligible for certification, but said additional improvements shall be alternates to project, unless utility savings can offset additional cost within specified payback period)

EXHIBIT B: TEXAS LOANSTAR ENERGY ASSESSMENT REPORT
TEMPLATE

TEXAS LoanSTAR PROGRAM

ENERGY ASSESSMENT REPORT

FOR

(Name of Facility)
(Street Address)
(City, TX, Zip)
(Agency # if applicable)

Conducted by:

(Name of Firm)
(Address, Phone Number)
(Date of Analysis)

Number of Buildings:

Total Gross Square Footage:

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BACKGROUND

(Provide a brief narrative description of this program, note the location/description of the facilities studied and address any significant circumstances concerning the facilities which have a bearing on energy consumption).

SUMMARY NARRATIVE

This study was performed under the Texas LoanSTAR Program guidelines as administered by the State Energy Conservation Office. The purpose is to identify energy cost reduction measures (ECRMs) which, when implemented, will result in significant utility cost savings for (the Borrower). The savings calculations are made using sound, accepted fundamentals of engineering and current utility rate schedules.

ACKNOWLEDGMENTS

The staff of _____ would like to extend its thanks and appreciation to (the Borrower) and its staff for assistance on the procurement of building data and operation schedules. Special thanks to *(names and titles)* for devoting time, insight and resources. Further thanks are extended to other operation and maintenance personnel for their support and helpfulness.

(Note helpful individuals and mention areas where the Borrower's personnel are doing a good job in existing energy management and projects.)

TEXAS LoanSTAR PROGRAM

Energy Assessment Report of
 (Name of Borrower)
 (Street Address)
 (City, TX, Zip)
 Contact Person: (Project Manager, Title)
 Phone:

EXECUTIVE SUMMARY

BUILDINGS/FACILITIES ANALYZED

(Identify name(s) of building(s)/facilities analyzed and their use, type of construction and total square footage.)

COMPOSITE PROJECT SUMMARY

(Provide a summary listing of all recommended ECRMs, along with the buildings to which they apply.)

SUMMARY OF PROJECT (including simplified report projects)					
	Cat. I	Cat. II	Cat. III	Total ¹	
kWh Savings:					kWh/yr
Demand Savings:					kW/yr
Gas Savings:					Mcf/yr
Btu Savings: ²					MMBtu/yr
Cost Savings:					\$/yr
Base Year Cost Reduction:					%
Implementation Cost:					\$
Simple Payback:					Yrs

This report identifies capital-intensive projects which, if implemented in the form recommended, will result in the savings and costs summarized above. The savings for the recommended composite project listed above account for interdependence of savings of individual ECRMs. Costs for the project likewise account for savings which accrue from installing several ECRMs at once and for utility rebates which will lower project cost.

SPECIAL CONSIDERATIONS (Provide a description of any special considerations for the Borrower's benefit, including possible utility rebates. Also, detail actions and costs the Borrower will likely incur in operating and maintaining all ECRMs included in the Report.)

¹ Building O&M Savings identified in the appendix **should not** be included in the total.
² Btu savings should be calculated on the basis of source Btus (11,600 Btu/kWh and 1,030,000 Btu/Mcf). See Volume I, Appendix D for a sample Btu savings calculation for Category I Projects.

TABLE 1. SUMMARY OF INDIVIDUAL ENERGY COST REDUCTION MEASURES¹

ECRM No.	ECRM Title	Annual Savings				Implementation Cost (\$)	Simple Payback (yrs.)	Estimated Project Lifetime (yrs.)
		Electric Energy (kWh/yr)	Demand (kW/yr)	Natural Gas (Mcf/yr)	Cost (\$/yr)			
TOTAL								

¹Paybacks may reflect utility rebates which will lower the total project cost (Borrower's Option).

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TABLE 2. BASE YEAR UTILITY CONSUMPTION DATA

Bldg. ID : _____
 Gross Square Footage: _____
 EUI : _____
 ECI : _____

For prior 12 month period beginning _____, _____ and ending _____, _____

Month	Electrical							Natural Gas		Other	
	Consumption (kWh)	Demand Metered (kW or kVA)	Demand Charged (kW or kVA)	Power Factor	Fuel Adjustment (\$/kWh)	PCRF or Cogeneration (\$/kWh)	*Total Cost (\$)	Consumption (Mcf)	Cost (\$)	Consumption Unit	Cost (\$)
January											
February											
March											
April											
May											
June											
July											
August											
September											
October											
November											
December											
Total											

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	Electricity	Natural Gas	Other
Company Name:			
Company Rate Schedule			

*Certification:
 Charges have been recomputed and are correct _____, P.E.

METERING INFORMATION

TABLE 3. METER DATA

Meter Number	Area Served
<u>Electric</u>	
<u>Natural Gas</u>	

UTILITY RATE SCHEDULE ANALYSIS

ELECTRIC UTILITY RATE SCHEDULE ANALYSIS

NAME OF UTILITY/PROVIDER:

RATE SCHEDULE ANALYZED:

SUMMARY OF BILLING COMPONENT CHARGES:

AVOIDED COST OF ENERGY TO BE USED IN CALCULATIONS:

AVOIDED COST OF DEMAND TO BE USED IN CALCULATIONS:

COMMENTS:

GAS UTILITY RATE SCHEDULE ANALYSIS

NAME OF UTILITY/PROVIDER:

RATE SCHEDULE ANALYZED:

SUMMARY OF BILLING COMPONENT CHARGES:

AVOIDED COST OF ENERGY TO BE USED IN CALCULATIONS:

AVOIDED COST OF DEMAND TO BE USED IN CALCULATIONS:

COMMENTS:

OTHER UTILITY RATE SCHEDULE ANALYSIS

NAME OF UTILITY/PROVIDER:

RATE SCHEDULE ANALYZED:

SUMMARY OF BILLING COMPONENT CHARGES:

AVOIDED COST OF ENERGY TO BE USED IN CALCULATIONS:

COMMENTS:

FACILITY DESCRIPTIONS

FACILITY DESCRIPTION

(Provide a limited description of the facility including its size and use. Include a suitable facility map indicating the location of buildings analyzed. A copy of an 8 1/2 x 11 layout obtained from facility personnel should be used or adapted. In the absence of such a layout a sketch should be used.)

BUILDING DESCRIPTIONS

(List the name and/or number of each building and, under the listing, provide the following information:

- (1) Building Construction Description - foundation, structure, walls, windows, roof, insulation, physical condition, etc.*
- (2) Building Use - general functions, operating hours, etc.*
- (3) Building Energy-Using Systems - types, sizes, and present condition of equipment such as boilers, hot water systems, chillers, cooling towers, air handling units, heat pumps, DX units, lighting, kitchen equipment, laboratory equipment, etc.*
- (4) Building Energy-Using System Controls - manual practices and/or condition and type of automatic controls, including thermostats (with setpoints), hot water setpoints, boiler pressures and controls, chilled water setpoints, lighting controls, ventilation controls, calibration conditions and practices, etc.*

For similar buildings provide the listing and, under the listing, indicate to which building it is similar and only provide exceptions to the similarity. Tables 4 and 5 should be used for compiling this information.)

TABLE 5. EQUIPMENT LIST

Required for buildings housing Category III ECRMs. Optional for buildings housing only Category I or II ECRMs. **Include only the equipment that affects the calculations in the Energy Assessment Report.**

Building Name: _____

Equipment Name	Quantity	Nameplate Data	Field Measurements	Efficiency	Load Factor	Annual Operation Hours	Area Served & Sq. Ft.

E = estimated, M = measured, D = from manufacturer's data. (Use E, M, or D as a suffix where needed, particularly to indicate estimated load factors or efficiencies where no other data exists.)

ENERGY COST REDUCTION MEASURES (ECRMs)

(List the ECRMs applicable to this facility.)

COST SAVINGS

Estimate the annual cost savings for Category I ECRMs by dividing the Implementation Cost obtained above by the Simple Payback. Paybacks for Category I ECRMs are found in Volume I, Section II, Paragraph D.

CATEGORY II ECRMs - SIMPLIFIED CALCULATIONS

ECRM NO.:

ECRM NAME:

SUMMARY DATA

kWh Savings:	_____	kWh/yr
Demand Savings:	_____	kW/yr
Gas Savings:	_____	Mcf/yr
Cost Savings:	\$ _____	/yr
Implementation Cost:	\$ _____	
Simple Payback:	_____	Yrs
Estimated Useful Life:	_____	Yrs

ECRM DESCRIPTION

*Provide a narrative stating what the ECRM will accomplish, what buildings it applies to, and how it is to be implemented. **This description must be provided in detail.** The operating hours, load on the equipment, methods of control, size and location of equipment, etc. must also be described. The analyst should keep in mind that the reviewer and the future design engineer must be able to read the ECRM description and understand the logic of the measure. Include clarifying sketches as necessary.*

ASSUMPTIONS

Summarize all assumptions which affect project implementation, cost estimates and cost savings. These assumptions will include, but not be limited to, the availability of the building for project completion, equipment run times and set backs, and any extended hours of building operation. See Volume I, Section II (General Instructions).

IMPLEMENTATION COSTS

Use the following format and refer to Volume I, Section II, Paragraph I of the General Instructions for more details. These costs should be based on the amount of equipment to be replaced, modified, or removed.

Equipment:	\$ _____
Materials:	\$ _____
Labor:	\$ _____
Contractor Markup:	\$ _____
Additional design/engineering/administration:	\$ _____
Escalation 15% max.:	\$ _____
TOTAL	\$ _____

COST SAVINGS

Include the QuickCalc printouts and forms used (see Volume II of these Technical Guidelines) or SimpCalc printouts. Any additional calculations for which software has not been provided should also be included in this section.

QUICKCALC/SIMPCLALC ECRM FORMS

Include supporting data, calculations, costs, and simple payback.

TECHNICAL ANALYSIS

CATEGORY III ECRMs – DETAILED CALCULATIONS

ECRM NO.:

ECRM NAME:

SUMMARY DATA (DEPENDENT)

All projects are to be analyzed in the dependent mode and in the following sequence: building loads, distribution systems, primary equipment, energy management systems. All Simplified Report ECRMs are assumed to be installed for dependency purposes.

kWh Savings:		kWh/yr
Demand Savings:		kW/yr
Gas Savings:		Mcf/yr
Cost Savings:	\$ 	/yr
Implementation Cost:	\$ 	
Simple Payback:		Yrs
Estimated Useful Life:		Yrs

ECRM DESCRIPTION

*Provide a narrative stating what the ECRM will accomplish, what buildings it applies to and how it is to be implemented. **This description must be provided in detail.** The operating hours, load on the equipment, methods of control, size and location of equipment, etc. must also be described. The analyst should keep in mind that the reviewer must be able to read the ECRM description and understand the logic of the measure. Include clarifying sketches as necessary.*

ASSUMPTIONS

Summarize all assumptions which affect project implementation, cost estimates and cost savings. These assumptions will include, but not be limited to, the availability of the building for project completion, equipment run times and set backs, and any extended hours of building operation (see Volume I, Section II, General Instructions).

EQUIPMENT & ENVIRONMENTAL DESCRIPTIONS

Provide narrative and/or listings of all pertinent existing conditions; including, as applicable, items such as: equipment/efficiency changes, light level readings, amperage readings, temperature readings, equipment efficiencies, operating hours, existing controls and/or operating procedures, estimated loads, estimated duty cycles, etc. In other words, backup equation inputs and provide assurance that codes, standards, and comfort will not be violated by implementation of this ECRM.

COST SAVINGS CALCULATIONS

Show detailed utility cost savings calculations. Show all formulas, conversion factors and equations used to determine savings. All calculations must include units. Clearly state any assumptions. Use proper utility rates. If computer programs are used, refer to Volume I, Section III, Paragraph A (Use of Computer Programs for Energy Savings Calculations).

IMPLEMENTATION COSTS

Use the following format.

Design & Administration:	\$ _____
Material:	\$ _____
Equipment:	\$ _____
Labor:	\$ _____
Contractor Mark-up:	\$ _____
Escalation 15% max.:	\$ _____
TOTAL	\$ _____

COST BACKUP

Provide unit pricing on all major pieces of equipment and material. Provide contractor estimates on all major installations that clearly break out material, equipment and labor. Where contractor estimates are not available use a reputable pricing source such as Means. Include all reasonable markups. Provide hours and rates for all labor not included in contractor estimates. Use state contract pricing of materials where applicable. Refer to Volume I, Section II, Paragraph I (Estimating Implementation Costs).

SIMPLE PAYBACK

Provide simple payback calculation.

ANALYST CERTIFICATION

The undersigned certifies that this report has been conducted in accordance with the requirements of the Texas LoanSTAR Program Technical Guidelines and Format as administered by the State Energy Conservation Office. The undersigned also certifies that the data and the cost reduction estimates presented are factual, accurate, reasonable and in accordance with generally accepted engineering practices to the best of the analyst's knowledge and that this knowledge is based on the analyst's on-site investigation of the facilities involved. The undersigned further certifies that the analyst has no undisclosed, conflicting financial interest in the recommendations of this report.

The undersigned also agrees that if a recommendation of this or any other report generated under this program is implemented, that no company or association that the analyst owns or has a financial interest in, will provide products or construction for this project.

Analyst's Signature

Date

Title

(Affix Official P.E. Seal)

Texas P.E. Registration No.

APPENDIX

SUPPORTING DOCUMENTATION

(Include supporting documentation, equipment cut sheets, pricing backup, utility rate schedules, lighting readings, etc.)

OPERATION AND MAINTENANCE RECOMMENDATIONS

(Refer to Volume I, Section II, Paragraph B and Appendix C for further instructions.)