

AN ORDINANCE 2009-12-10-1036

**AUTHORIZING THE OFFICE OF ENVIRONMENTAL POLICY TO ENTER INTO A MEMORANDUM OF UNDERSTANDING AND A RELATED INTERLOCAL AGREEMENT FOR THE ESTABLISHMENT AND OPERATION OF THE MISSION VERDE CENTER, A PROJECT SUPPORTED BY ENERGY EFFICIENCY AND CONSERVATION BLOCK GRANT FUNDS, THAT WILL HELP ENABLE THE OPERATIONAL COSTS OF A MULTI-PURPOSE SUSTAINABILITY CENTER TO COORDINATE LOCAL AND REGIONAL SUSTAINABILITY EFFORTS WITH PARTNER AGENCIES.**

\* \* \* \* \*

**WHEREAS**, the Mission Verde Center is designed to promote awareness, education, training, green job creation and a new economic focus for San Antonio and the South Texas region and will implement initiative number nine of the January 2009 Mission Verde sustainability plan for the City of San Antonio; and

**WHEREAS**, this ordinance authorizes the Office of Environmental Policy (OEP) to enter into a memorandum of understanding (MOU) with the Alamo Colleges (AC), the San Antonio Youth Center (SAYC), the Texas Engineering Experiment Station (TEES), CPS Energy, and San Antonio Water System (SAWS) to identify the general partnership roles in establishing and operating the Mission Verde Center; and

**WHEREAS**, this ordinance also authorizes the OEP to enter into a related Interlocal Agreement with the San Antonio Independent School District (SAISD) and TEES for use of a closed SAISD campus for establishing grant funded improvements at the school campus which will provide demonstrations of energy efficiency improvements to help meet the Center's objectives of training and education and help reduce the costs of operating the Mission Verde Center and authorizes \$970,000.00 in funding from the Energy Efficiency and Conservation Block Grant (EECBG) to establish the energy efficiency improvements; and

**WHEREAS**, partnership with the proposed agencies is central to the implementation and success of the Mission Verde Center in order to maximize the sustainability center's potential for creating green jobs, training skilled laborers, educating youth and adults in sustainability, saving water and energy, and reducing greenhouse gases, the Mission Verde Center is part of the Energy Efficiency and Conservation Block Grant plan accepted by the U.S. Department of Energy; and

**WHEREAS**, in recognition of the fiduciary and economic benefits accrued to the taxpayers of the City of San Antonio, the proposed agreements will be created among the City of San Antonio, SAISD, AC, SAYC, TEES, CPS Energy, and SAWS for the purpose of establishing the Mission Verde Center and the execution of the proposed agreements will allow for the timely development of the Mission Verde Center and implementation of the activities and programs to

be located therein; the MOU and Interlocal Agreement will be finalized with all parties within sixty (60) days of passage of this ordinance; **NOW THEREFORE,**

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

**SECTION 1.** The City Manager or her designee is hereby authorized to enter into a Memorandum of Understanding (MOU) with the Alamo Colleges (AC), the San Antonio Youth Center (SAYC), the Texas Engineering Experiment Station (TEES), CPS Energy, and San Antonio Water System (SAWS). The MOU will be substantially in the form at **Attachment I**. The City Manager or her designee is hereby authorized to enter into an Interlocal Agreement with the San Antonio Independent School District (SAISD) and TEES. The Interlocal Agreement will be substantially in the form at **Attachment II**. The City Manager or her designee is further authorized to execute any and all necessary documents to effectuate said MOU and Interlocal Agreement. This authority shall expire 60 days after the effective date of this Ordinance.

**SECTION 2.** This ordinance authorizes a Memorandum of Understanding and a related Interlocal Agreement. Funding and payment is contingent upon award of the Energy Efficiency Conservation Block Grant from the Department of Energy.

**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 10<sup>th</sup> day of December, 2009.

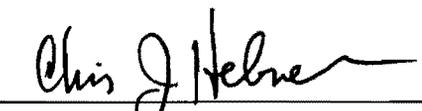
  
M A Y O R

**JULIAN CASTRO**

**ATTEST:**

  
City Clerk

**APPROVED AS TO FORM:**

  
for City Attorney

<b>Agenda Item:</b>	47						
<b>Date:</b>	12/10/2009						
<b>Time:</b>	03:37:03 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing the Office of Environmental Policy to enter into a memorandum of understanding and a related Interlocal Agreement for the establishment and operation of the Mission Verde Center, a project supported by Energy Efficiency and Conservation Block Grant funds that will help enable the operational costs of a multi-purpose sustainability center to coordinate local and regional sustainability efforts with partner agencies. [Richard Varn, Chief Information Officer; Laurence Doxsey, Director, Office of Environmental Policy]						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x			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				

**MISSION VERDE CENTER**  
**MEMORANDUM OF UNDERSTANDING**  
among  
**CITY OF SAN ANTONIO,**  
**ALAMO COMMUNITY COLLEGE DISTRICT,**  
**SAN ANTONIO YOUTH CENTERS,**  
**TEXAS ENGINEERING EXPERIMENT STATION,**  
**CPS ENERGY**  
and  
**SAN ANTONIO WATER SYSTEM**

**I. PURPOSE**

In recognition of the fiduciary and economic benefits accrued to the tax payers of the city of San Antonio, an agreement is created between City of San Antonio (CoSA), Alamo Community Colleges District (ACCD), hereinafter also referred to as Alamo Colleges, San Antonio Youth Centers (SAYC), Texas Engineering Experiment Station (TEES), CPS Energy (CPS) and San Antonio Water System (SAWS), for the purpose of establishing the Mission Verde Center – a green one-stop center to coordinate sustainability efforts and to provide information to residents and businesses. Aforementioned parties shall be referred to herein as members of the center.

Mission Verde Center promotes awareness, education, training, green job creation and a new economic focus for San Antonio and the South Texas region. The primary activities at Mission Verde Center will implement initiative #9 of the Mission Verde concept as developed by the City of San Antonio. As such, it will focus on:

1. ***Education*** for young and adult women and men that creates career pathways to connect students to higher education opportunities in Science, Technology, Engineering and Math (STEM) with a focus on the emerging green occupations.
2. ***Training*** that increases opportunities for well-paid green technical jobs in weatherization, energy & water conservation & efficiency, and alternative energies such as solar & wind.
3. ***Applied Research*** that builds on San Antonio's existing research, education & manufacturing base by creating a complex of activities focused on energy & water conservation & efficiency, and renewable-distributive-hybrid energy technologies, components, & systems. Some examples of such activities relate to photovoltaic, wind, fuel cell, micro-turbine, smart grid and onsite water reclamation & reuse technologies, as well as hybrids and variations thereof.
4. ***Economic Development*** programs that focus on creation of businesses with high wage local green job opportunities for area residents.

**II. GOALS**

The goals of the efforts outlined in this agreement are:

- To provide education opportunities for area residents to participate in energy and water-related dual credit courses.

- To provide training opportunities for area residents to participate in job training programs that prepare students for entry level employment in weatherization, energy & water conservation & efficiency, and alternative energies such as solar & wind.
- To establish a physical location to demonstrate innovation.
- To create a living laboratory that creates pathways among students, workforce, businesses and the community by positioning sustainable energy and water projects on site.
- To build a strong research and development consortium that will involve several higher education institutions and research centers in the region.
- To attract new, high profile research and development companies specializing in renewable-distributive-hybrid technologies, components and systems to San Antonio and the region.
- To develop a new type of economic cluster for the region centered on renewable-distributive- hybrid energy systems, sustainable development and green technologies.
- To spur the transformation of the region's economy into a Green Economy.
- To create a new economic focus for San Antonio and the region by facilitating new public/private investment in San Antonio/South Texas.
- To create an Advisory Board made up of the signatories of this agreement.

### **III. RESPONSIBILITIES**

The members agree to work cooperatively to fund – to the extent conditions herein are satisfied – design and/or deliver customized education, training, applied research and/or economic development programs in accordance with the timelines, goals and responsibilities (Considerations) outlined subsequently:

#### A. CoSA Considerations:

CoSA will

- provide \$970,000 in grant funds, as per separate agreement and through its Office of Environmental Policy (OEP), to conduct a comprehensive energy and water audit of the facility and to design and install energy efficiency and water conservation retrofits at the Mission Verde Center;
- look for opportunities to host sustainability-oriented events and programs at the Mission Verde Center;
- pursue additional funding opportunities to locate sustainability information for the public as well as sustainability-oriented activities and projects at the Mission Verde Center, including distributed renewable energy installations and transportation initiatives;
- support the mission of the center by providing an endorsement statement to be used in support of publications, proposals, hearings and the like; and
- reinforce the mission of the center by helping find additional members to locate at the facility whose visions align with that of the Mission Verde Center.

#### B. ACCD Considerations:

Alamo Colleges will

- customize job training programs for eligible area residents that prepare students for entry level employment in weatherization, energy conservation & efficiency and alternative energies, such as solar and wind;
- provide dual credit courses for SAYC students in approved Alamo Colleges energy related dual credit courses;
- assign qualified instructors to teach Alamo College dual credit and job training programs, as appropriate; and
- be responsible for management and operation of their allotted space in the facility as per separate agreement (Lease).

C. SAYC Considerations:

San Antonio Youth Centers (SAYC) will

- provide education and job training programs for eligible GED participants and eligible high school credit recovery participants;
- work with Alamo Colleges to provide dual credit and training programs for high school dropouts;
- share space and appropriate resources with Alamo Colleges and other members as available; and
- be responsible for the management and operation of its allotted space in the facility as per separate agreement (Lease).

D. TEES Considerations:

TEES will

- manage funds – provided by the City of San Antonio in the amount of \$970,000 – and the resulting projects for implementation of energy and water efficiency retrofits at the Mission Verde Center – per separate agreement;
- install and operate the *2007 TAMU Solar Decathlon House* (“Solar D”, a.k.a. SU CASA) at the Mission Verde Center – Texas *A&M University’s SU CASA* demonstrates sustainable energy and water systems for an emerging local, national and global market.
- assist in planning a joint (CPS, SAWS and TEES) technology demonstration and evaluation center for the unconditioned old primary gym. Until revenue sources are established for this work the use of gym is expected to be at no cost;
- implement, as allowed by its financial situation, applied research programs that build on San Antonio’s, Texas’, the nation’s and the world’s existing education, research and manufacturing base by creating a complex of demonstration and evaluation activities focused on technologies, components and systems in the areas of energy efficiency, renewable energy and distributed power generation. TEES expects to have the right of solicitation as well as first refusal for technology evaluation contracts from suppliers interested in exhibiting and evaluating their sustainable energy and water technologies at the Mission Verde Center;
- support the educational charters of the parties to this agreement by providing access (e.g. guided tours) for their students to retrofits, SU CASA and projects when and where beneficial to the students and in a manner that ensures personnel safety and equipment integrity;

- facilitate, where compatible with its core competencies, private and/or public investment in sustainable technologies, such as energy efficiency, renewable energy and distributed power generation;
- assist, to the best of its ability, the parties to this agreement in identifying and pursuing funding opportunities for capital, as well as operation and maintenance expenditures. As such, TEES expects to be part of proposals and/or projects in connection with the Mission Verde Center – where compatible with its core competencies. The objective is to obtain funding for equipment to be deployed at Mission Verde Center and for TEES personnel working on behalf of the Mission Verde Center; and
- be responsible for management and operation of their allotted space in the facility as per separate agreement (Dirt Lease).

#### E. CPS Considerations:

##### CPS

- recognizes Mission Verde Center as a significant step in CoSA's development and introduction of the Mission Verde concept's initiatives. In support of the Mission Verde Center goals of demonstrating and evaluating sustainable energy technologies and innovations and creating a living laboratory for educating students and training the current workforce, CPS plans to utilize Mission Verde Center to demonstrate and assess the value of various new and emerging energy-focused technologies, techniques and equipment, when such use is determined by CPS to be in the best interest of CPS ratepayers, may be accomplished in accordance with CPS' requirements and guidelines for funding and procurement, and supports the furtherance of the Mission Verde vision;
- will promote the Mission Verde Center to its customer base by enclosing notifications with existing mailings as appropriate, and by providing a link on the CPS web site; and
- the assumption of costs by CPS for equipment, services, materials etc. stated herein are provided for informational purposes only. The statements made above are non-binding and do not reflect a commitment by CPS to spend funds in any given amount and/or to assume any obligations on behalf of the stated project. Any binding terms between the parties shall be found in a separate agreement executed by authorized persons representing the appropriate parties.

#### F. SAWS Considerations:

##### SAWS

- recognizes Mission Verde Center as a significant step in CoSA's development and introduction of the Mission Verde concept's initiatives. In support of the Mission Verde Center goals of demonstrating and evaluating innovative new technology in water conservation and creating a living laboratory for educating students and training the current workforce, SAWS will utilize Mission Verde Center space when such use is determined by SAWS to be in the best interest of the SAWS ratepayers and supports the furtherance of the Mission Verde Center mission and vision;
- chooses to undertake programs and projects that may be identified in the future and clearly benefit both SAWS ratepayers and the Mission Verde Center mission and vision when this can be done in accordance with SAWS' requirements and guidelines for

funding, promote projects that achieve a “water balance” between available reclaim water and desired discretionary uses, including without limitation, performance based funding, and which programs and projects will be dependent on approval by the SAWS Board of Trustees, if applicable;

- will promote the Mission Verde Center to its customer base by (i) occasionally highlighting the Mission Verde Center in the “WaterNews” SAWS’ bill insert, (ii) provide a link to the Mission Verde website on the SAWS website, (iii) include a listing of special events that may take place at the Mission Verde Center on the SAWS event calendar, and in the SAWS weekly WaterSaver eNewsletter, all as SAWS may find reasonable and appropriate from time-to-time; and
- notwithstanding anything herein to the contrary, appropriation of funding for any program or project by SAWS under this agreement shall be subject to approval by the SAWS Board of Trustees, if applicable.

#### G. Joint Considerations:

All members will

- be active participants of the Mission Verde Center Advisory Board, and as such will monitor progress of the various programs and projects as appropriate;
- assist as best as possible in attaining the Mission Verde Center’s overall goals as set forth in this agreement; and
- be able to freely publish, unless otherwise arranged for by its clients, the findings on their individual programs and projects, using the Mission Verde Center name.

#### **IV. WEBSITE**

A Mission Verde Center website will be managed through CoSA’s Office of Environmental Policy (OEP), utilizing OEP servers and personnel. It will originally be a link under the overall Mission Verde website found at <http://www.sanantonio.gov/oep/SustainabilityPlan.asp>. All members are encouraged to post links to each other’s websites and to the Mission Verde Center websites on their respective website’s home pages or other suitable webpage. The website will be part of an overall marketing and publicity effort that will initially be coordinated by the Advisory Board.

#### **V. FRAMEWORK**

The effort outlined in this agreement will be directed by an Advisory Board. The board will comprise delegates of the members. Changes to this agreement can be initiated at any time by any member through its delegate, but must be adopted by all members through their delegates to take effect. The members shall designate their delegates. Future members may be incorporated by majority vote of existing members on a case by case basis. The Advisory Board will have a chairperson, who will be selected from among the delegates on an annual rotating basis.

Operating functions shall be the joined responsibility of the Advisory Board. These include marketing, publicity, funding, security beyond that already in place, signage, welcome center and the like.

**VI. TERMS OF AGREEMENT**

This agreement shall begin as of the date of the last signature and endure indefinitely. Any member reserves the right to withdraw from this agreement at any time for reasonable cause or if it is determined the goals of the project cannot be accomplished. The member wishing to withdraw from this agreement must notify the other members in writing ninety (90) days in advance.

**VII. APPROVALS**

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for <b>City of San Antonio (CoSA)</b>	Name (Print)	Date
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for <b>Alamo Community College District (ACCD)</b>	Name (Print)	Date
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for <b>San Antonio Youth Centers (SAYC)</b>	Name (Print)	Date
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for <b>Texas Engineering Experiment Station (TEES)</b>	Name (Print)	Date
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for <b>CPS Energy (CPS)</b>	Name (Print)	Date
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for <b>San Antonio Water System (SAWS)</b>	Name (Print)	Date
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**INTERLOCAL AGREEMENT  
BETWEEN  
THE CITY OF SAN ANTONIO,  
THE SAN ANTONIO INDEPENDENT SCHOOL DISTRICT  
AND  
TEXAS ENGINEERING EXPERIMENT STATION  
FOR THE  
MISSION VERDE CENTER**

This agreement is entered into by and between the TEXAS ENGINEERING EXPERIMENT STATION, an agency of the State of Texas and a member of The Texas A&M University System, having a place of business at 1470 William D. Fitch Parkway, College Station, Texas 77845-4645, hereinafter referred to as “TEES”, the SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, by and through its Board of Trustees, having a place of business at 141 Lavaca, San Antonio, Texas 78210, hereinafter referred to as the “School District” and the CITY OF SAN ANTONIO, a Texas Municipal Corporation, through its Office of Environmental Policy, hereinafter referred to as “City”, each of the aforementioned being referred to individually as the “Party” or collectively as the “Parties”;

**WHEREAS**, the Mission Verde Center Retrofit Project (the “Project”) is designed to create a regional multi-purpose demonstration and sustainability training center with the following objectives: 1) the accelerated development and deployment of existing and new sustainable energy and water technologies; 2) creation of new business and job opportunities centered on sustainable technologies and practices; and 3) facilitation of private/public investment to build new economic generators driving job growth;

**WHEREAS**, in support of the Project and its objectives, the City wishes to pledge funding it receives under the Federal Energy Efficiency and Conservation Block Grant (EECBG) with the Department of Energy (DOE) Grant No. \_\_\_\_\_;

**WHEREAS**, in support of the Project and its objectives, the School District has offered use of its facility located at Cooper Middle School, hereinafter the “Facility”, for operation and use in a manner consistent with the ideas and objectives the Project; and

**WHEREAS**, in support of the Project and its objectives, TEES has agreed to complete the Project by retrofitting the Facility in a manner consistent with the ideas and objectives the Project; and

**WHEREAS**, the parties desire to enter into this agreement in accordance with the provisions of the Interlocal Cooperation Act, being Chapter 791 of the Texas Government Code.

**NOW THEREFORE**, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. City Participation

(a) The City shall compensate TEES for the performance of this Agreement. The City agrees to pay TEES the fixed price of Nine Hundred Seventy Thousand Dollars and No Cents (\$970,000.00) in accordance with the budget attached hereto and hereby made a part of this Agreement as Attachment 2 for completing the Statement of Work set forth in Attachment 1 hereto.

TEES shall invoice the City for all incurred allowable expenses associated with completion of the statement of work outline in Attachment 1, including personnel costs, on a monthly basis or as required by DOE. The City will request a draw down on EECBG grant funds for the invoiced amount and make payment to TEES as soon as requested funds are transferred to the City from the DOE.

(b) The City shall not be obligated, nor liable, under this Agreement to any other party for payment of any monies, or provision of any goods or services.

2. School District Participation.

(a) In consideration for the benefits conferred on the School District by this Agreement, the School District offers use of the Facility or portions thereof, under separate agreements with TEES and other lessees/licensees, for purposes of Project objectives.

(b) In the event that the School District terminates this Agreement within the initial five-year term pursuant to section 4(b) herein, the School District will reimburse the City the amortized remaining value of improvements installed at the Facility pursuant to this Agreement. Such amortization shall be calculated at a rate of 20% per year. For purposes of this section 2(b), (1) "improvements" means fixtures and equipment properly installed at the Facility pursuant to the Statement of Work (Attachment 1 hereto) that School District agrees to accept when School District terminates this Agreement; and (2) "value" means the actual market value of the improvements on the date termination by School District becomes effective.

3. TEES Participation.

(a) TEES agrees to use its reasonable efforts to perform the Statement of Work attached hereto and services subject to the terms and conditions of this Agreement as described in Attachment 1.

(b) TEES activities will be supervised by the Director and and Senior Research Engineer of San Antonio Operations of the Texas Center for Applied Technology, which positions are currently filled by Mr. William "Skip" Mills and Dr. Matt Koch, respectively. The City Office of Environmental Policy will coordinate all activities with TEES.

4. Term of Agreement

(a) This agreement shall be effective immediately upon signature(the “Effective Date”) and shall remain in force for five (5) years after signature unless terminated by any Party. With consent of all Parties, this agreement may be renewed after the initial five (5) years term, on a yearly basis for up to five (5) more years.

(b) Any Party may terminate this Agreement for convenience upon sixty (60) days written notice to the other Parties.

(c) This agreement may be terminated by a party upon ten (10) days' written notice should the another party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination and such failure is not fully cured prior to the expiration of such ten-day period. The notice required hereunder shall specify the deficiency.

(d) Upon termination of this agreement, whether for cause, force majeure or other basis set forth herein, after the initial five-year term, the improvements made to the Facility shall become fully owned by School District.

(e) Upon termination, the City shall utilize all funding available from the \$970,000 block grant described herein to reimburse TEES for costs and non-cancelable commitments made by TEES in accordance with the budget set forth in Attachment 2 for completing the Statement of Work set forth in Attachment 1.

5. Intellectual Property

Any intellectual property first developed or reduced to practice during the performance of this agreement shall belong to The Texas A&M University System. City shall have an unrestricted unlimited license to use any intellectual property so developed or reduced to practice as a result of the performance of this agreement.

6. LIMITATION OF LIABILITY. TEES MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR DOES TEES ASSUME ANY OBLIGATIONS WITH RESPECT TO INFRINGEMENT OF ANY PATENT RIGHTS OR OTHER RIGHTS RELATING TO THE INFORMATION DELIVERED AND/OR THE ACTIVITIES UNDER THIS AGREEMENT.

4. Notices To be effective, notices provided under this agreement must be in writing, and shall be deemed to have been received for all purposes upon the earlier to occur of (a) actual receipt, or (b) three (3) days after the same are mailed by U.S. certified or registered mail, return receipt requested, and addressed as follows:

If to the City:

City Clerk  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

If to the School District:

San Antonio Independent School District  
ATTN: Superintendent of Schools  
141 Lavaca  
San Antonio, Texas 78210

With copy to:  
SAISD Facilities Services Dept.  
ATTN: Kamal Elhabr  
1702 N. Alamo  
San Antonio, Texas 78215

If to TEES:

Contractual Contact:

Vicki Marvin  
Sr. Contract Negotiator  
1470 William D. Fitch Parkway  
College Station, TX 77845-4645  
Telephone: 979-458-7629  
Email: v-marvin@tamu.edu

Technical Contact:

Mr. William "Skip" Mills, Director  
Texas Center for Applied Technology  
9350 South Presa  
San Antonio, Texas 78223  
Telephone: 210-633-2427 ext 229  
Email: skip-mills@tamu.edu

or addressed to such other address as is provided by written notice from one party to the other.

5. Governing Law. This agreement shall be governed by, and construed in accordance with, the laws of the State of Texas, and shall be fully performable and enforceable in Bexar County, Texas.

6. Formal Matters. The relationship between TEES, the School District and the City under this agreement shall be that of independent contractors, and not that of partners, joint venturers, or any other relationship. No party shall have authority to make any statements, representations nor commitments of any kind, or to take any action which shall be binding on the other party, except as may be explicitly provided for herein or authorized in writing. This agreement, the requirements of the EECGB grant as outlined in the DOE Funding Assistance Funding Opportunity Announcement included as Attachment 3, and the Statement of Work incorporated hereto as Attachment 1, set out the entire agreement of the parties in connection with the subject matter addressed herein, and may be modified or amended only in a writing executed by TEES, the School District and the City.

7. Force Majeure. Notwithstanding any provision herein to the contrary, if any Party fails to fulfill its obligations hereunder (other than an obligation for payment), which such failure is due to an act of God, or other circumstance beyond its reasonable control, including but not limited to fire, flood, civil commotion, riot, war (declared or undeclared), revolution, acts of foreign or domestic terrorism, or embargos, then said failure shall be excused for the duration of such event and for such a time thereafter as is reasonable to enable the parties to resume performance under this agreement, provided however, that in no event shall such time extend for a period of more than thirty (30) days.

8. Dispute Resolution. The City must use the dispute resolution process provided in Chapter 2260 of the Texas Government Code to attempt to resolve a dispute with TEES arising under this agreement and such process is a required prerequisite to suit in accordance with Chapter 107, Texas Civil Practice and Remedies Code. The City must submit written notice of a claim of breach of contract under this chapter to Deena J. Wallace, Associate Vice Chancellor for Administration and Legal Affairs & Associate Agency Director. The Parties waive no legal rights or remedies under this agreement otherwise applicable to their status as governmental entities of the State of Texas.

9. Miscellaneous Terms and Conditions

a. Extent of Agreement/Amendment. This agreement supersedes all prior agreements, written or oral, among School District, City and TEES and shall constitute the entire Agreement and understanding between the parties with respect to the subject matter hereof. This Agreement and each of its provisions shall be binding upon the parties and may not be waived, modified, amended or altered except by a subsequent writing signed by authorized representative for School District, City and TEES.

b. No Waiver. No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party hereto of any of the provisions of this agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by any of the parties hereto of any of the covenants, conditions or agreements hereof to be

performed by the other party hereto shall not be construed to be a waiver of any subsequent breach thereof or of any other covenant, condition or agreement herein contained.

- c. If any clause or provision of this agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this agreement, including any renewals, then and in that event, it is the intent of the parties hereto that the remainder of this agreement shall not be affected thereby, and it is also the intent of the parties to this agreement that, in lieu of each clause or provision of this agreement that is illegal, invalid, or unenforceable, there be added as a part of this agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.
- d. Attorneys' Fees. In action in a court of law to enforce or construe this agreement, the prevailing party(ies) shall be entitled to its reasonable and necessary attorneys' fees and costs of court, in accordance with, as applicable, Texas Local Government Code §271.159.
- e. No Waiver of Immunities. By entering this agreement and performing hereunder, School District, City and TEES do not intend, and this agreement shall not be construed, to (1) waive any immunities, defenses or limits of liability to which said party is entitled under law, and (2) establish a joint enterprise or venture for purposes of determining liability.
- f. This agreement, and its rights or obligations, shall not be subcontracted, licensed or assigned by any party hereto, unless express written authorization is first obtained from the other parties.
- g. This agreement, any exhibit hereto and the obligations contained herein, shall not be covenants running with the property. No party hereto shall record this agreement with the real property records of Bexar County, Texas, and any such recordation (including recordation of this Agreement as an exhibit or attachment to another document) shall automatically render this Agreement and the rights of TEES and City hereunder null and void.

IN WITNESS WHEREOF, the undersigned have executed this agreement by their duly authorized representatives.

CITY OF SAN ANTONIO

SAN ANTONIO INDEPENDENT  
SCHOOL DISTRICT

By \_\_\_\_\_

Robert J. Duron, President of the Board of Trustees

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

TEXAS ENGINEERING EXPERIMENT  
STATION

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mark S. Smock, Chief Financial Officer

**Approved as to Form:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
**City Attorney**

## Attachment 1

### STATEMENT OF WORK

Texas Engineering Experiment Station (TEES), member of the Texas A&M University System, under direction of City of San Antonio, Office of Environmental Policy will perform the following at the Facility upon consent by an authorized representative for the San Antonio Independent School District:

- Phase One
  - Complete an analysis of the Cooper Middle School buildings and campus to include:
    1. Identifying the key stakeholders and associated utility usage patterns
    2. Determine stakeholders operations at the Center:
    3. square footage requirements by function
    4. unique facility requirements (i.e. communications, utility reliability, energy usage, peak demands and storage)
  - Enact a short and long term timeline and objectives for Center's financial sustainability
  - Complete a comprehensive energy audit and create energy/conservation strategy and implementation plan
  - Identify a suitable site for the A&M SU CASA and install
- Phase Two
  - Develop and execute Request For Proposals (RFPs) based on recommendations from the comprehensive energy efficiency retrofits.
    1. Execute necessary contracts to other entities for retrofits and upgrades as stipulated by The State of Texas' acquisition/procurement rules
    2. Provide engineering managerial oversight of these subcontractors in their activities related to this grant.
    3. Identify, arrange for, and supervise qualified contractors to install energy retrofits, upgrades and necessary verification and measurement protocol
    4. Provide technical support for the continued development and vitality of the Center
  - Assemble technical support team,
    1. Establish process to evaluate and test different
    2. Provide technical assistance to additional projects
    3. Consider user-fees for technical support
- Phase Three
  1. Measure and verify results from retrofits and generation upgrades
  2. Project support with the development of decision-support tools, identifications of high-profile and high-need projects, advising on design specs and demonstrating, evaluating and promoting high profile technologies and practices successfully employed on projects

3. Build library of data results from testing and evaluation of energy efficiency technologies by benchmarking at the component level

## SCHEDULE

Task	Completion Date
Project Start	Upon signature of contract, with 90-day pre-award costs
Project Plan	30 days after project start
Building energy audit/assessment	60 days after project start
Review and approve energy efficiency upgrades	30 days after assessment
RFPs and awards for the above items	60-120 days after assessment
Start installation of upgrades	Based upon vendor acceptance and receipt of equipment
Engineering oversight	Continuous through project completion

## DELIVERABLES

- **Deliverable 1:** Quarterly Report – Due on the 10<sup>th</sup> day of each calendar quarter or as required by the US DOE . The report will describe progress to date, anticipated activities for the next reporting period, and any issues that have arisen.
- **Deliverable 2:** Building Energy Assessment Report (60 days after Project start)
- **Deliverable 3:** Completion of bids for retrofits and other improvements (60 -120 days after assessment)
- **Deliverable 4:** Contract awards and start (30 days after completion of bids or upon satisfactory negotiation of awards)
- **Deliverable 5:** Annual Report

**PROJECT BUDGET**

**Cost Breakdown**

Energy Assessment and engineering support for retrofits, management, monitoring, preliminary design and construction oversight, operations and evaluation, travel, TEES (Priced at 1 FTE and includes 46.5% university indirect charge (IDC) on TEES labor)	\$ 175,806
Equipment and Materials - comprehensive energy efficiency retrofit installations, Vendors – TBD (TEES IDC is included in the total amount – Proposal costing assumes 5 subcontracts – TEES indirect charges only applied to first \$25,000 of each subcontract (a total of \$58,125) – Equipment purchases over \$5,000 is not subject to IDC)	\$ 794,194
Total Budget	\$ 970,000