

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
URBAN ENERGY SOLUTIONS, INC.**

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is entered into as of August 18, 2011, between the Town of Fountain Hills, an Arizona municipal corporation (the "Town") and Urban Energy Solutions, Inc., an Arizona corporation (the "Contractor").

RECITALS

A. The Town issued a Request for Proposals entitled "Energy Management System" (the "RFP"), attached hereto as Exhibit A and incorporated herein by reference, seeking proposals from vendors for Energy Management System improvements.

B. The Contractor submitted a proposal in response to the RFP (the "Proposal"), attached hereto as Exhibit B and incorporated herein by reference, and the Town desires to enter into an Agreement with the Contractor for Energy Management System improvements (the "Services").

C. The Services procured pursuant to this Agreement are purchased with Energy Efficiency and Conservation Block Grant ("EECBG") Program funds under the American Recovery and Reinvestment Act of 2009 from the United States Government (Pub.L. 111-5). All applicable federal rules and regulations are incorporated by reference herein notwithstanding the fact that they may not be specifically referenced in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the Contractor hereby agree as follows:

1. Term of Agreement. This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until **June 30, 2011**, unless terminated earlier as otherwise provided herein.

2. Scope of Work. Contractor shall provide the Services as set forth in the Scope of Work, attached hereto as Exhibit C and incorporated herein by reference.

2.1 Reference Standards. Contractor shall perform the Services required in conformance with, as applicable, (A) the "Uniform Standard Specifications for Public Works Construction," current edition as of the date of award of this Agreement and the Uniform Standard Details for Public Works Construction," current edition as of the date of award of this Agreement, each of which are sponsored and distributed by the Maricopa Association of

Governments (“MAG”) (collectively, the “MAG Specifications”) and (B) any amendments, technical notes, regulatory codes, standards or supplements adopted by the Town (collectively, the “Town Specifications”), all of which are incorporated herein by reference. In the event of a conflict between the MAG Specifications and the Town Specifications, the Town Specifications shall prevail.

2.2 Traffic Control. If applicable, traffic control affected by the Services required pursuant to this Agreement shall be regulated in accordance with the then-current version of the City of Phoenix-Traffic Barricade Manual (the “Barricade Manual”) which is incorporated herein by reference. In the event of a conflict between the Barricade Manual and the U.S. Department of Transportation Manual on Uniform Traffic Control Devices, the Barricade Manual shall prevail.

3. Compensation. The Town shall pay Contractor an amount not to exceed \$59,582.26 for the Services as set forth in the Fee Proposal, attached hereto as Exhibit D and incorporated herein by reference.

4. Assurances. To the extent applicable, Contractor and its subcontractors warrant compliance with the flow down requirements for subrecipients specified in the “Special Provisions Relating to Work Funded under American Recovery and Reinvestment Act of 2009”, which apply to all EECBG awards. Additionally, as required by 10 CFR 600.2(b), 10 CFR 600.236, and 10 CFR 600.237, Contractor shall comply with any applicable federal statute, federal rule, Office of Management and Budget (OMB) Circular and Government-wide guidance in effect as of the date of such award. Contractor shall execute and submit certification of its compliance in the form set forth on Exhibit E, Assurances - Construction Programs, attached hereto and incorporated herein by reference. Contractor’s or its subcontractor’s failure to comply with such warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by the Town.

5. EECBG Requirements. The Contractor agrees to comply with all applicable federal rules and regulations which apply to projects funded with EECBG funds, including specifically the flow down requirements for subrecipients specified in the EECBG Special Terms and Conditions attached hereto as Exhibit F and incorporated herein by reference. For greater clarity, to the extent that there exists any inconsistency, conflict or ambiguity among the EECBG Special Terms and Conditions attached hereto as Exhibit F, and the terms of this Agreement, the documents shall govern in the order listed herein.

6. Prevailing Wages. The Contractor acknowledges that the Services shall be provided at the prevailing wages determined for Maricopa County, Arizona for all jobs required to perform the Services, as set forth in Wage Determination General Decision No. AZ100001, dated June 27, 2011 attached hereto as Exhibit G and incorporated herein by reference. If the Services require a particular job or specialty for which no wage has been determined and set forth in the Wage Determination, attached hereto as Exhibit G, then the Town or the Contractor, as determined by the Town in its sole discretion, shall contact the Arizona Department of Commerce, EECBG Grant Administration Office to request that a specific wage be determined.

7. Buy America. The Contractor agrees to comply with Section 1605 of American Recovery and Reinvestment Act of 2009 which provides that federal funds may not be obligated unless steel, iron, and manufactured products used in federally-funded projects are produced in the United States, unless a waiver has been granted by DOE or the product is subject to a general waiver. The Contractor must submit to the Town the Buy America Certification attached hereto as Exhibit H and incorporated herein by reference.

8. Payments. The Town shall pay the Contractor monthly, based upon work performed and completed to date, and upon submission and approval of invoices. All invoices shall document and itemize all work completed to date. The invoice statement shall include a record of time expended and work performed in sufficient detail to justify payment.

9. Ownership of Documents. All documents prepared and submitted to the Town by the Contractor pursuant to this Agreement shall be the property of the Town.

10. Contractor Personnel. Contractor shall provide adequate, experienced personnel, capable of and devoted to the successful completion of the Services to be performed under this Agreement. Contractor agrees to assign specific individuals to key positions. If deemed qualified, the Contractor is encouraged to hire Town residents to fill vacant positions at all levels. Contractor agrees that, upon commencement of the Services to be performed under this Agreement, key personnel shall not be removed or replaced without prior written notice to the Town. If key personnel are not available to perform the Services for a continuous period exceeding 30 calendar days, or are expected to devote substantially less effort to the Services than initially anticipated, Contractor shall immediately notify the Town of same and shall, subject to the concurrence of the Town, replace such personnel with personnel of substantially equal ability and qualifications.

11. Inspection; Acceptance. All work shall be subject to inspection and acceptance by the Town at reasonable times during Contractor's performance. The Contractor shall provide and maintain a self-inspection system that is acceptable to the Town.

12. Licenses; Materials. Contractor shall maintain in current status all federal, state and local licenses and permits required for the operation of the business conducted by the Contractor. The Town has no obligation to provide Contractor, its employees or subcontractors any business registrations or licenses required to perform the specific services set forth in this Agreement. The Town has no obligation to provide tools, equipment or material to Contractor.

13. Performance Warranty. Contractor warrants that the Services rendered will conform to the requirements of this Agreement and to the highest professional standards in the field.

14. Indemnification. To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings)

to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Contractor, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

15. Insurance.

15.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Contractor, Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town’s option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Contractor. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Agreement.

E. Primary Insurance. Contractor’s insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Town as an Additional Insured.

F. Waiver. All policies, except for Professional Liability, including Workers’ Compensation insurance, shall contain a waiver of rights of recovery (subrogation)

against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

G. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Contractor shall be solely responsible for any such deductible or self-insured retention amount.

H. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the Town and Contractor. Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

I. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Contractor will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Contractor's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. In the event any insurance policy required by this Agreement is written on a "claims made" basis, coverage shall extend for two years past completion of the Services and the Town's acceptance of the Contractor's work or services and as evidenced by annual certificates of insurance. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Contractor's responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the RFP number and title or this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without the appropriate RFP number and title or a reference to this Agreement, as applicable. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing the appropriate RFP number and title or a reference to this Agreement, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- (1) The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Contractor’s insurance shall be primary insurance as respects performance of the Agreement.

(3) All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

(4) A 30-day advance notice cancellation provision. If ACORD certificate of insurance form is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

15.2 Required Insurance Coverage.

A. Commercial General Liability. Contractor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Contractor’s owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for

claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Contractor engages in any professional services or work adjunct or residual to performing the work under this Agreement, the Contractor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Contractor, or anyone employed by the Contractor, or anyone for whose negligent acts, mistakes, errors and omissions the Contractor is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate. In the event the Professional Liability insurance policy is written on a “claims made” basis, coverage shall extend for two years past completion and acceptance of the Services, and the Contractor shall be required to submit certificates of insurance and a copy of the declaration page(s) of the insurance policies evidencing proper coverage is in effect as required above.

D. Workers’ Compensation Insurance. Contractor shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

15.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or materially changed without 30 days’ prior written notice to the Town.

16. Contract Bonds Required. Prior to issuance of the Notice to Proceed, the Contractor shall furnish the Town the following bonds, which shall become binding on the Contractor when delivered.

16.1 Performance Bond. The Contractor shall be required to furnish non-revocable security binding the Contractor to provide faithful performance of this Agreement in the amount of 100% of the total Agreement price payable to the Town. Performance security shall be in the form of a performance bond, certified check or cashier’s check. This security must be in the possession of the Development Services Department within the time specified or seven days after Notice of Award if no period is specified. If the Contractor fails to execute the security document as required, the Contractor may be found in default and the Agreement terminated by the Town. In case of default the Town reserves all rights. All performance bonds shall be executed in the form attached hereto as Exhibit I, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the Town and holding a Certificate of Authority to transact surety business in the State of Arizona, by the Arizona Department of Insurance. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the proposal and A.M. Best’s Key Rating Guide of “A-” or

better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

16.2 Payment Bond. The Contractor shall be required to furnish non-revocable security for the protection of all persons supplying labor and material to the Contractor or any subcontractor for the performance of any work related to this Agreement. Payment security shall be in the amount of 100% of the total Agreement price and be payable to the Town. Payment security shall be in the form of a payment bond, certified check or cashier's check. This security must be in the possession of the Development Services Department within the time specified or seven days after Notice of Award if no period is specified. If the Contractor fails to execute the security document as required, the Contractor may be found in default and the Agreement terminated by the Town. In case of default the Town reserves all rights. All payment bonds shall be executed in the form attached hereto as Exhibit J, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the Town and holding a Certificate of Authority to transact surety business in the State of Arizona, by the Arizona Department of Insurance. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the proposal and A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

17. Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in the State of Arizona.

18. Termination; Cancellation.

18.1 For Town's Convenience. This Agreement is for the convenience of the Town and, as such, may be terminated without cause after receipt by Contractor of written notice by the Town. Upon termination for convenience, Contractor shall be paid for all undisputed services performed to the termination date.

18.2 For Cause. This Agreement may be terminated by either party upon 30 days' written notice should the other party fail to substantially perform in accordance with this Agreement's terms, through no fault of the party initiating the termination. In the event of such termination for cause, payment shall be made by the Town to the Contractor for the undisputed portion of its fee due as of the termination date.

18.3 Due to Work Stoppage. This Agreement may be terminated by the Town upon 30 days' written notice to Contractor in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the Town to the Contractor for the undisputed portion of its fee due as of the termination date.

18.4 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the

Town or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the subject matter of the Agreement.

18.5 Gratuities. The Town may, by written notice to the Contractor, cancel this Agreement if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer, agent or employee of the Town for the purpose of securing this Agreement. In the event this Agreement is cancelled by the Town pursuant to this provision, the Town shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor an amount equal to 150% of the gratuity.

18.6 Agreement Subject to Appropriation. This Agreement is subject to the provisions of ARIZ. CONST. Art. IX, § 5 and ARIZ. REV. STAT. § 42-17106. The provisions of this Agreement for payment of funds by the Town shall be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The Town shall be the sole judge and authority in determining the availability of funds under this Agreement and the Town shall keep the Contractor fully informed as to the availability of funds for the Agreement. The obligation of the Town to make any payment pursuant to this Agreement is a current expense of the Town, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Town. If the Town Council fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of then-current fiscal year and the Town and the Contractor shall be relieved of any subsequent obligation under this Agreement.

19. Miscellaneous.

19.1 Independent Contractor. The Contractor acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Town. Contractor, its employees and subcontractors are not entitled to workers' compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of Contractor, its employees or subcontractors. The Contractor, and not the Town, shall determine the time of its performance of the services provided under this Agreement so long as Contractor meets the requirements of its agreed Scope of Work as set forth in Section 2 above. Contractor is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. Town and Contractor do not intend to nor will they combine business operations under this Agreement.

19.2 Laws and Regulations. The Contractor shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Contractor is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services, including, but not limited to, the following: (a) existing and future Town and County ordinances and regulations, (b) existing and future state and federal laws and (c) existing and future Occupational Safety and Health Administration ("OSHA") standards.

19.3 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Contractor.

19.4 Provisions Required by Law. Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.

19.5 Severability. The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

19.6 Relationship of the Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Contractor is advised that taxes or Social Security payments will not be withheld from any Town payments issued hereunder and Contractor agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.

19.7 Entire Agreement; Interpretation; Parol Evidence. This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

19.8 Assignment. No right or interest in this Agreement shall be assigned by Contractor without prior, written permission of the Town signed by the Town Manager and no delegation of any duty of Contractor shall be made without prior, written permission of the Town signed by the Town Manager. Any attempted assignment or delegation by Contractor in violation of this provision shall be a breach of this Agreement by Contractor.

19.9 Subcontracts. No subcontract shall be entered into by the Contractor with any other party to furnish any of the material or services specified herein without the prior written approval of the Town. The Contractor is responsible for performance under this Agreement whether or not subcontractors are used.

19.10 Rights and Remedies. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town's acceptance of and payment for services, shall not release the Contractor from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

19.11 Attorneys' Fees. In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

19.12 Liens. All materials or services shall be free of all liens and, if the Town requests, a formal release of all liens shall be delivered to the Town.

19.13 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the Town may offset from any money due to the Contractor any amounts Contractor owes to the Town for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The Town may offset from any money due to the Contractor any amounts Contractor owes to the Town for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

19.14 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered to the party at the address set forth below, (b) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, (c) given to a recognized and reputable overnight delivery service, to the address set forth below or (d) delivered by facsimile transmission to the number set forth below:

If to the Town: Town of Fountain Hills
 16705 East Avenue of the Fountains
 Fountain Hills, Arizona 85268
 Facsimile: (480) 837-3145
 Attn: Julie Ghetti, Interm Town Manager

With copy to: GUST ROSENFELD, P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Facsimile: (602) 254-4878
Attn: Andrew J. McGuire, Esq.

If to Contractor: Urban Energy Solutions, Inc.
504 East Southern Avenue
Tempe, Arizona 85282
Facsimile: (480) 838-9445
Attn: Scott Copeland, President

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (a) when delivered to the party, (b) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, (c) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day, or (d) when received by facsimile transmission during the normal business hours of the recipient. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

19.15 Confidentiality of Records. The Contractor shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of ensuring that information contained in its records or obtained from the Town or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Contractor's duties under this Agreement. Persons requesting such information should be referred to the Town. Contractor also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Contractor as needed for the performance of duties under this Agreement.

19.16 Records and Audit Rights. Contractor's and its subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its subcontractors' employees who perform any work or services pursuant to this Agreement to ensure that the Contractor and its subcontractors are complying with the warranty under subsection 19.17 below (all of the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (a) evaluation and verification of any invoices, payments or claims based on Contractor's and its subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (b) evaluation of the Contractor's and its subcontractors' compliance with the Arizona employer sanctions laws referenced in subsection 19.17 below. To the extent necessary for the Town to audit Records as set forth in this

subsection, Contractor and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this subsection. The Town shall give Contractor or its subcontractors reasonable advance notice of intended audits. Contractor shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

19.17 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

19.18 Scrutinized Business Operations. Pursuant to ARIZ. REV. STAT. §§ 35-391.06 and 35-393.06, the Contractor certifies that it does not have scrutinized business operations in Sudan or Iran. For the purpose of this subsection the term "scrutinized business operations" shall have the meanings set forth in ARIZ. REV. STAT. § 35-391 or 35-393, as applicable. If the Town determines that the Contractor submitted a false certification, the Town may impose remedies as provided by law including terminating this Agreement pursuant to subsection 18.2 above.

19.19 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity among the terms of the EECBG Special Terms and Conditions, the Agreement, the Scope of Work, the Fee Proposal, the RFP, the Assurances – Construction Programs, the Wage Determination and the Contractor's Proposal, the documents shall govern in the order listed herein.

19.20 Non-Exclusive Contract. This Agreement is entered into with the understanding and agreement that it is for the sole convenience of the Town. The Town reserves the right to obtain like goods and services from another source when necessary.

19.21 Cooperative Purchasing. This Agreement shall be for the use of the Town. In addition, specific eligible political subdivisions and nonprofit educational or public health institutions may also participate, at their discretion and with the agreement of the awarded Contractor. In order to participate in this Agreement, a political subdivision or nonprofit educational or public health institution must agree to the terms and conditions in the solicitation and the Contractor must be in agreement with the cooperative transaction. Any orders placed to the successful Contractor will be placed by the specific agencies participating in this purchase. Payment for purchases made under this Agreement will be the sole responsibility of each participating agency. The Town shall not be responsible for any disputes arising out of transactions made by others.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

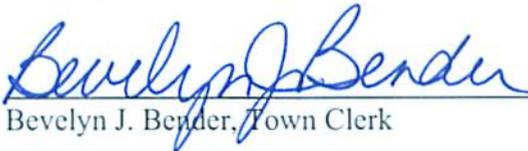
"Town"

TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation



Julie Ghetti, Interim Town Manager

ATTEST:



Bevelyn J. Bender, Town Clerk

"Contractor"

URBAN ENERGY SOLUTIONS, INC.,
an Arizona corporation

By: 

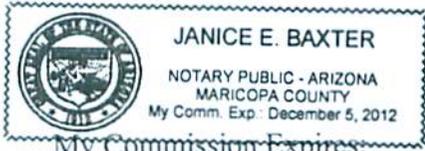
Name: SCOTT COPELAND

Title: PRESIDENT

(ACKNOWLEDGMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on August 22, 2011,
by Julie Ghetti, the Interim Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona
municipal corporation, on behalf of the Town of Fountain Hills.



Janice E. Baxter
Notary Public in and for the State of Arizona

My Commission Expires:
12/05/2012

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on _____, 2011,
by _____ as _____ of URBAN ENERGY
SOLUTIONS, INC., an Arizona corporation, on behalf of the corporation.

Notary Public in and for the State of Arizona

My Commission Expires:

Notarized in error
Paula L Woodward
8/11/11

(ACKNOWLEDGMENTS)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on August 9, 2011,
by Julie Ghetti, the Interim Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona
municipal corporation, on behalf of the Town of Fountain Hills.

Paula L. Woodward
Notary Public in and for the State of Arizona

My Commission Expires:

August 18, 2014



STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

This instrument was acknowledged before me on 8/9/, 2011,
by Scott Conrad as PRESIDENT of URBAN ENERGY
SOLUTIONS, INC., an Arizona corporation, on behalf of the corporation.

Paula L. Woodward
Notary Public in and for the State of Arizona

My Commission Expires:

August 18, 2014

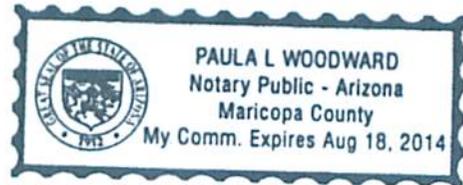


EXHIBIT A
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
URBAN ENERGY SOLUTIONS, INC.

[RFP]

See following pages.



**TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT**

**REQUEST FOR PROPOSALS
FOR
ENERGY MANAGEMENT SYSTEM**

Town of Fountain Hills
16705 East Avenue of the Fountains
Fountain Hills, Arizona 85268

SOLICITATION INFORMATION AND SELECTION SCHEDULE

Solicitation Title: **Energy Management System**
Release Date: **July 1, 2011**
Advertisement Dates: **June 29, 2011 – Fountain Hills Times**
June 30, 2011 – Arizona Business Gazette

NON-MANDATORY

Pre-Submittal Conference: **NOT APPLICABLE FOR THIS SOLICITATION**
Final Date for Inquiries: **July 13, 2011**
Proposal Due Date and Time: **July 18, 2011**
3:00 p.m. (local time, Phoenix, Arizona)
Oral Interviews (if necessary): **July 20, 2011**
Target Town Council Award Date: **August 18, 2011**
Anticipated Agreement Start Date: **September 1, 2011**
Town Representatives: **Raymond Rees** rrees@fh.az.gov
480-816-5180
Paul Mood pmood@fh.az
480-816-5129

- * In the event that a Vendor can not be selected based solely on Proposals submitted, Oral Interviews may be conducted at the Town's sole discretion.
- ** The Town of Fountain Hills reserves the right to amend the solicitation schedule as necessary.

**TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT**

SECTION A

Table of Contents

<u>Section A</u>	<u>Page</u>
I. RFP Process, Award of Agreement	A-1
II. Proposal Format; Scoring	A-7
III. Oral Interviews; Scoring	A-10
IV. Vendor Information Form	A-11
 <u>Section B</u>	
Sample Professional Services Agreement	B-1

**TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT**

SECTION A

I. RFP PROCESS; AWARD OF AGREEMENT

1. Purpose; Scope of Work. The Town of Fountain Hills (the “Town”) is issuing this Request For Proposals (this “RFP”) seeking proposals (“Proposals”) from qualified, licensed firms (“Vendors”) to expand the existing Metasys Energy Management System (“EMS”) currently installed in the four buildings of the Town Hall Complex, including Town Hall, the Community Center, the Library/Museum and the Chiller Central Plant (the “Project”), as more particularly described in the Scope of Work attached to the sample Professional Services Agreement as Exhibit C (the “Services”), and incorporated herein by reference. In accordance with the Town’s Procurement Code, the Town will accept sealed Proposals for the Services specified in the Scope of Work in the sample Professional Services Agreement.

1.1 Objectives; Background. The Town desires to select a Vendor to improve the existing EMS equipment and to make changes that will maximize energy savings and improve the automatic operation of the Heating, Ventilating and Air Conditioning equipment (“HVAC”) that does not manually make continuous changes, as more particularly described in the Scope of Work in the sample Professional Services Agreement. The selected Vendor will have experience with Johnson Control Systems equipment. The existing EMS equipment located at the Community Center, Library/Museum and Chiller Central Plant has been in operation for approximately ten years. The EMS serving the Town Hall has been in operation for approximately five years. In November 2010, Energy Design & Consulting, LLC, conducted a detailed energy audit of the Town’s EMS, including the HVAC equipment (the “Energy Audit”). The HVAC section of the Energy Audit is provided as a portion of the Scope of Work in the sample Professional Services Agreement. The Town anticipates that the Project will be funded through grant funds awarded by the Federal Department of Energy (“DOE”) and will be subject to applicable Federal regulations including, but not limited to, areas of labor standards, equal opportunity and audits. The Town’s desired budget through completion of the Project is \$80,000.00; however, the Town will review and consider Proposal(s) offering alternative pricing options if the proposed alternative(s) more effectively meet the Town’s objectives for the Project. Vendors submitting Proposal(s) for consideration which contain offer prices in excess of \$80,000.00 for the completed Project must provide sufficient detail to permit complete evaluation by the Selection Committee (as defined herein). The Project **MUST** be completed by September 30, 2011. Prior to award of any resulting Agreement, SRP/Nexant must review the winning Proposal.

2. Preparation/Submission of Proposal. Vendors are invited to participate in the competitive selection process for the Services outlined in this RFP. Responding parties shall review their Proposal submissions to ensure the following requirements are met.

2.1 Irregular or Non-responsive Proposals. The Town shall consider as “irregular” or “non-responsive” and reject any Proposal not prepared and submitted in accordance with this RFP, or any Proposal lacking sufficient information to enable the Town to make a reasonable determination of compliance to the minimum qualifications. Unauthorized conditions, limitations, or provisions shall be cause for rejection. Proposals may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the Town:

**TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT**

SECTION A

A. Vendor does not meet the minimum required skill, experience or requirements to perform or provide the Service.

B. Vendor has a past record of failing to fully perform or fulfill contractual obligations.

C. Vendor cannot demonstrate financial stability.

D. Vendor's Proposal contains false, inaccurate or misleading statements that, in the opinion of the Town Manager or authorized designee, is intended to mislead the Town in its evaluation of the Proposal.

2.2 Submittal Quantities. Interested Vendors must submit **one (1) original and four (4) copies (five (5) total submittals)** of the Proposal. In addition, interested parties must submit **one (1) original copy** of the Proposal on a CD-ROM (or electronic media approved by the Town) in printable Adobe or Microsoft Word format (or other format approved by the Town). Failure to adhere to the submittal quantity criteria shall result in the Proposal being considered non-responsive.

2.3 Required Submittal. The Proposal shall be submitted with a cover letter with an **original ink** signature by a person authorized to bind the Vendor. Proposals submitted without a cover letter with an **original ink signature** by a person authorized to bind the Vendor shall be considered non-responsive. The Proposal shall be a maximum of **fifteen (15)** pages to address the Proposal criteria (excluding resumes and the Vendor Information Form, but including the materials necessary to address Project understanding, general information, organizational chart, photos, tables, graphs, and diagrams). Each page side (maximum 8 1/2" x 11") with criteria information shall be counted. However, one page may be substituted with an 11" x 17" sheet of paper, folded to 8 1/2" x 11", showing a proposed Project schedule or organizational chart and only having information on one side. Cover, back, table of contents and tabs may be used and shall not be included in the page count, unless they include additional project-specific information or Proposal criteria responses. The minimum allowable font for the Proposal is **11 pt, Arial or Times New Roman**. Failure to adhere to the page limit, size and font criteria and shall result in the Proposal being considered non-responsive. Telegraphic (facsimile), electronic (e-mail) or mailgram Proposals will not be considered.

2.4. Vendor Responsibilities. All Vendors shall (A) examine the entire RFP, (B) seek clarification of any item or requirement that may not be clear, (C) check all responses for accuracy before submitting a Proposal and (D) submit the entire Proposal by the Proposal Due Date and Time. Late Proposals will not be considered. A Vendor submitting a late Proposal shall be so notified. Negligence in preparing a Proposal confers no right of withdrawal after the Proposal Due Date and Time.

2.5. Sealed Submittals. All Proposals shall be sealed and clearly marked with the RFP title, **Energy Management Systems**, on the lower left hand corner of the mailing

**TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT**

SECTION A

envelope. A return address must also appear on the outside of the sealed Proposal. The Town is not responsible for the pre-opening of, post-opening of, or the failure to open, any Proposals not properly addressed or identified.

2.6. Pricing. The Vendor shall submit the same number of copies of the Fee Proposal as described in Section I, 2.2 in a separate, sealed envelope enclosed with the Vendor's Proposal. Pricing shall be inclusive of all of the Services in the Scope of Work as described in the Professional Service Agreement in Exhibit C. The Fee Proposal will be attached to the Professional Service Agreement as Exhibit D.

2.7. Address. All Proposals shall be directed to the following address: Town Clerk, 16705 East Avenue of the Fountains, Fountain Hills, Arizona 85268, or hand-delivered to the Town Clerk's office by the Proposal Due Date and Time indicated on the cover page of this RFP.

2.8. Pricing Errors. If price is a consideration and in case of error in the extension of prices in the Proposal, the unit price shall govern. Periods of time, stated as number of days, shall be calendar days.

2.9. Proposal Irrevocable. In order to allow for an adequate evaluation, the Town requires the Proposal to be valid and irrevocable for **90** days after the Proposal Due Date and Time indicated on the cover of this RFP.

2.10 Amendment/Withdrawal of Proposal. At any time prior to the specified Proposal Due Date and Time, a Vendor (or designated representative) may amend or withdraw its Proposal. Any erasures, interlineations, or other modifications in the Proposal shall be initialed in **original ink** by the authorized person signing the Proposal. Facsimile, electronic (e-mail) or mailgram Proposal amendments or withdrawals will not be considered. No Proposal shall be altered, amended or withdrawn after the specified Proposal Due Date and Time.

3. Cost of Proposal Preparation. The Town does not reimburse the cost of developing, presenting or providing any response to this solicitation. Proposals submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The Vendor is responsible for all costs incurred in responding to this RFP. All materials and documents submitted in response to this RFP become the property of the Town and will not be returned.

4. Inquiries.

4.1 Written/Verbal Inquiries. Any question related to the RFP shall be directed to one of the Town Representatives whose names appear on the cover page of this RFP. Questions shall be submitted in writing or via e-mail by the close of business on the Final Date for Inquiries indicated on the cover page of this RFP or submitted verbally (A) at the Pre-Submittal Conference on the date indicated on the cover page of this RFP (if such Pre-Submittal Conference is held) or (B) after the Pre-Submittal Conference but before the Final Date for

**TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT**

SECTION A

Inquiries indicated on the cover page of this RFP. In the event the Town is closed on the Final Date for Inquiries, the Vendor shall submit the question(s) to one of the Town Representatives via e-mail or voicemail. Any inquiries related to this RFP shall refer to the RFP title, page and paragraph. However, the Vendor shall not place the RFP title on the outside of any envelope containing questions, because such an envelope may be identified as a sealed Proposal and may not be opened until after the Proposal Due Date and Time.

4.2 Inquiries Answered. Written questions will be read and answered at the Pre-Submittal Conference on the date indicated on the cover page of this RFP. Verbal or telephone inquiries directed to Town staff **will not be answered**. Within two (2) business days following the Pre-Submittal Conference, answers to all questions received in writing or via e-mail or verbally at the Pre-Submittal Conference will be mailed, sent via facsimile and/or e-mailed to all parties who obtained an RFP package from the Town and who legibly provided their mailing address, facsimile and/or e-mail address to the Town. No questions, submitted in any form, will be answered after the Final Date for Inquiries listed on the cover of this RFP.

5. Pre-Submittal Conference. A Pre-Submittal Conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this RFP. This conference may be designated as mandatory or non-mandatory on the cover page of this RFP. Additionally, if the Pre-Submittal Conference is designated as mandatory, failure to attend shall render that Vendor's Proposal non-responsive. Vendors are strongly encouraged to attend those Pre-Submittal Conferences designated as non-mandatory. The purpose of this conference will be to clarify the contents of this RFP in order to prevent any misunderstanding of the Town's requirements. Any doubt as to the requirements of this RFP or any apparent omission or discrepancy should be presented to the Town at this conference. The Town will then determine if any action is necessary and may issue a written amendment or addendum to the RFP. Oral statements or instructions will not constitute an amendment or addendum to this RFP. Any addendum issued as a result of any change in this RFP shall become part of the RFP and must be acknowledged in the Proposal submittal. Failure to indicate receipt of the addendum shall result in the Proposal being rejected as non-responsive.

6. Payment Requirements; Payment Discounts. Any Proposal that requires payment in less than 30 calendar days shall not be considered. Payment discounts of 30 calendar days or more will be deducted from the Proposal price in determining the low Proposal. The Town shall be entitled to take advantage of any payment discount offered by the Vendor provided payment is made within the discount period.

7. Federal Excise Tax. The Town is exempt from Federal Excise Tax, including the Federal Transportation Tax. Sales tax, if any, shall be indicated as a separate item.

8. Public Record. All Proposals shall become the property of the Town and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the Town's Procurement Code.

**TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT**

SECTION A

9. Confidential Information. If a Vendor believes that a Proposal or protest contains information that should be withheld from the public record, a statement advising the Town Representative of this fact shall accompany the submission and the information shall be identified. The information identified by the Vendor as confidential shall not be disclosed until the Town Representative makes a written determination. The Town Representative shall review the statement and information and shall determine in writing whether the information shall be withheld. If the Town Representative determines to disclose the information, the Town Representative shall inform the Vendor in writing of such determination.

10. Vendor Licensing and Registration. Prior to the award of the Agreement, the successful Vendor shall be licensed with the Arizona Corporation Commission to do business in Arizona. The Vendor shall provide licensure information with the Proposal. Corporations and partnerships shall be able to provide a Certificate of Good Standing from the Arizona Corporation Commission.

11. Certification. By submitting a Proposal, the Vendor certifies:

11.1 No Collusion. The submission of the Proposal did not involve collusion or other anti-competitive practices.

11.2 No Discrimination. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11456.

11.3 No Gratuity. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a Town employee, officer or agent in connection with the submitted Proposal. It (including the Vendor's employees, representatives, agents, lobbyists, attorneys, and subcontractors) has refrained, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the Selection Committee, elected officials, the Town Manager, Assistant Town Managers, Department Heads, and other Town staff. All contact must be addressed to the Town's Procurement Agent, except for questions submitted as set forth in Section 4, Inquiries, above. Any attempt to influence the selection process by any means shall void the submitted Proposal and any resulting Agreement.

11.4 Financial Stability. It is financially stable, solvent and has adequate cash reserves to meet all financial obligations including any potential costs resulting from an award of the Agreement.

11.5 No Signature/False or Misleading Statement. Failure to sign the Proposal, or signing it with a false or misleading statement, shall void the submitted Proposal and any resulting Agreement.

**TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT**

SECTION A

11.6 Professional Services Agreement. In addition to reviewing and understanding the submittal requirements, it has reviewed the attached sample Professional Service Agreement including the Scope of Work and other Exhibits.

12. Award of Agreement.

12.1 Selection. A Selection Committee composed of representatives from the Town will conduct the selection process according to the schedule listed on the cover page of this RFP. Proposals shall be opened at the time and place designated on the cover page of this RFP. The name of each Vendor and the identity of the RFP for which the Proposal was submitted shall be publicly read and recorded in the presence of witnesses. PRICES SHALL NOT BE READ. The Selection Committee shall award the agreement to the responsible and responsive Vendor whose Proposal is determined, in writing, to be the most advantageous to the Town and best meets the overall needs of the Town taking into consideration the scoring criteria set forth in this RFP. The amount of applicable transaction privilege or use tax of the Town shall not be a factor in determining the most advantageous Proposal. After the Town has entered into an Agreement with the successful Vendor, the successful Proposal and the scoring documentation shall be open for public inspection.

12.2 Line Item Option. Unless the Proposal states otherwise, or unless otherwise provided within this RFP, the Town reserves the right to award by individual line item, by group of line items, or as a total, whichever is deemed most advantageous to the Town.

12.3 Form of Agreement. The selected Vendor will be required to execute the Town's standard Professional Services Agreement in a form acceptable to the Town Attorney. A sample of the standard agreement is included with this RFP. If the Town is unsuccessful in negotiating an Agreement with the highest-scoring Vendor, the Town may then negotiate with the second, then third, highest-scoring Vendor until an Agreement is executed. Town Council approval may be required. The Town reserves the right to terminate the selection process at any time.

12.4 Waiver; Rejection; Reissuance. Notwithstanding any other provision of this RFP, the Town expressly reserves the right to: (a) waive any immaterial defect or informality, (b) reject any or all Proposals or portions thereof and (c) reissue an RFP.

12.5 Protests. Any Vendor may protest this RFP issued by the Town, the proposed award of an Agreement, or the actual award of an Agreement. All protests will be considered in accordance with the Town Procurement Code.

13. Offer. A Proposal is an offer to contract with the Town based upon the terms, conditions and specifications contained in this RFP and the Vendor's responsive Proposal, unless any of the terms, conditions, or specifications is modified by a written addendum or agreement amendment. Provided, however, that no contractual relationship shall be established until the Vendor has signed, and the Town has approved, a professional services agreement between the

**TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT**

SECTION A

Town and the Vendor in the form acceptable to the Town Attorney. A sample Professional Services Agreement is included herein.

II. PROPOSAL FORMAT; SCORING

Upon receipt of a Proposal, each submittal will be reviewed for compliance with the Proposal requirements by the Selection Committee. Proposals shall be organized and submitted in the format as outlined below. Failure to conform to the designated format, standards and minimum requirements shall result in a determination that the Proposal is non-responsive. Additionally, the Selection Committee will evaluate and award points to each Proposal based upon the evaluation criteria as outlined in this document. Points listed below are the maximum number of points possible for each criteria and not the minimum number that the Selection Committee may award. If necessary, the Selection Committee may conduct oral interviews with at least three (3) of the highest ranked Vendors based upon the Proposal submittal scoring.

Section 1: General Information

10 pts

- A. One page cover letter as described in Section I, 2.3.
- B. Explain the legal organization of the Vendor. Provide identification information of the Vendor. Include the legal name, address, identification number and legal form of the Vendor (e.g., partnership, corporation, joint venture, sole proprietorship). If a joint venture, identify the members of the joint venture and provide all of the information required under this section for each member. If the Vendor is a wholly owned subsidiary of another company, identify the parent company. Provide the name, address and telephone number of the person to contact concerning the Proposal.
- C. Identify the location of the Vendor's principal office and the local work office, if different.
- D. Provide a general description of the Vendor that is proposing to provide the Services, including years in business.
- E. Identify any contract or subcontract held by the Vendor or officers of the Vendor that have been terminated within the last five (5) years. Briefly describe the circumstances and the outcome.
- F. Identify any claims arising from a contract which resulted in litigation or arbitration within the last five (5) years. Briefly describe the circumstances and the outcome.
- G. Vendor Information Form (may be attached as separate appendix).

**TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT**

SECTION A

Section 2: Experience and Qualifications of the Vendor

20 pts

A. Provide a detailed description of the Vendor's experience in providing similar services to municipalities or other entities of a similar size to the Town; specifically relating experience with respect to EMS improvements.

B. Provide a list of at least three (3) organizations of a similar size or similar operation to the Town in which work has been performed. This list shall include, at a minimum, the following:

- (i) Name of company or organization.
- (ii) Contact name.
- (iii) Contract address, telephone number and e-mail address.
- (iv) Type of services provided.

The above information must be current, as this will be used to verify references. Inability of the Town to verify references shall result in the Proposal being considered non-responsive.

Section 3: Key Positions

15 pts

A. Identify each key personnel member that will render services to the Town including title and relevant experience required, including the proposed Project Manager and Project Engineer.

B. Indicate the roles and responsibilities of each key position. Include senior members of the Vendor only from the perspective of what their role will be in providing services to the Town.

C. If a subcontractor will be used for all work of a certain type, include information on this subcontractor. A detailed plan for providing supervision must be included.

D. Attach a résumé and evidence of certification, if any, for each key personnel member and/or subcontractor to be involved in this Project. Résumés should be attached together as a single appendix at the end of the Proposal and will not count toward the Proposal page limit.

Section 4: Project Approach

20 pts

A. Describe the Vendor's approach to performing the required Services in the Scope of Work described in the Professional Services Agreement in Exhibit C, addressing each item therein and its approach to contract management, including its perspective and experience on energy management systems, grant compliance, customer service, quality control, scheduling and staff.

**TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT**

SECTION A

B. Describe any alternate approaches if it is believed that such an approach would best suit the needs of the Town. Include rationale for alternate approaches, and indicate how the Vendor will ensure that all efforts are coordinated with the Town's general objectives.

Section 5: Project Schedule:

20 pts

Provide a Project schedule showing key project milestones and deliverables. The schedule shall demonstrate Vendor's ability to meet the designated milestones as listed below. All Services of the successful Vendor must reach full completion and shall not exceed a 45 day period after the Notice to Proceed has been issued by Town. Assumptions used in developing the schedule shall be identified and at a minimum the proposed schedule shall include the following dates.

- A. Contract Award Date: On or about August 18, 2011
- B. Notice to Proceed Date: On or about August 22, 2011
- C. Proposed Kick-Off Meeting: August 25, 2011
- D. Implementation Start Date:
- E. Project Completion Date:

Section 6: Pricing

15 pts

Vendor shall submit the same number of copies of the Fee Proposal as described in Section I, 2.6 in a separate, sealed envelope enclosed with the Vendor's Proposal with the signature of the representative of the Vendor who is authorized to make such an offer. The Fee Proposal shall list the individual cost for each of the expenses and shall be provided in a spreadsheet format to enable the Town staff to determine (A) all materials necessary to accomplish the Services outlined in the Scope of Work, attached hereto as Exhibit C, and (B) total labor hours and Proposal Price, and (C) key project team member(s) proposed for each task and sub-task.

Total Possible Points for Proposal:

100

SECTION A

III. ORAL INTERVIEWS; SCORING

In the event that a Vendor cannot be selected based solely on the Proposals submitted, up to three Vendors may be selected for oral interviews. The selected Vendors will be invited to participate in discussions with the Selection Committee on the date indicated on the cover page of this RFP and awarded points based upon the criteria as outlined below. Vendors may be given additional information for these oral interviews. These discussions will relate less to past experience and qualifications already detailed in the Proposals and relate more to identification of the Vendor's project approach and to an appraisal of the people who would be directly involved in this Services for this RFP.

Oral Interview

10	General Information
25	Experience and Qualifications of the Vendor
20	Key Positions
<u>45</u>	Proposed Services Provided
100	Total Possible Points for Oral Interview

Total Points Possible for this RFP:

200

**TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT**

SECTION A

IV. VENDOR INFORMATION FORM

By submitting a Proposal, the submitting Vendor certifies that it has reviewed the administrative information and draft of the Professional Services Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

VENDOR SUBMITTING PROPOSAL

FEDERAL TAX ID NUMBER

PRINTED NAME AND TITLE

AUTHORIZED SIGNATURE

ADDRESS

TELEPHONE

FAX #

CITY STATE ZIP

DATE

WEB SITE: _____

E-MAIL ADDRESS: _____

SMALL, MINORITY, DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES (check appropriate item(s):

- _____ Small Business Enterprise (SBE)
- _____ Minority Business Enterprise (MBE)
- _____ Disadvantaged Business Enterprise (DBE)
- _____ Women-Owned Business Enterprise (WBE)

Has the Vendor been certified by any jurisdiction in Arizona as a minority or woman-owned business enterprise?

If yes, please provide details and documentation of the certification.

EXHIBIT B
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
URBAN ENERGY SOLUTIONS, INC.

[Contractor's Proposal]

See following pages.



Request for Proposals
Energy Management System

Submitting Firm:
Urban Energy Solutions, Inc.

**TOWN OF FOUNTAIN HILLS
ENERGY MANAGEMENT SYSTEM**

Time/Date Due: 3:00 PM, July 18, 2011



COPY



July 18, 2011

Mr. Raymond Rees
Town of Fountain Hills
Environmental Planner / Stormwater Management, Development Services
16705 East Avenue of the Fountains
Fountain Hills, AZ 85268

Re: Request for Proposal
Energy Management System

Dear Mr. Rees, Mr. Mood and Selection Committee Members:

Urban Energy Solutions, Inc. (UES, Inc.) is a multi-disciplined contractor delivering complete turnkey solutions. We perform all facets of the project delivery in house including design, implementation and service. We are a licensed electrical contractor in the State of Arizona.

UES, Inc. has certified technicians and decades of experience working on various building control systems from multiple manufacturers and multiple communication protocols. We specialize on integration solutions using the Tridium Niagara AX product such as the Johnson Equipment the Town of Fountain Hills currently has installed throughout their buildings. We provide only open systems and consistently deliver the highest levels of customer service in order to retain our clients.

We are uniquely positioned to help you with customized solutions for building controls, energy management, systems integration and electrical services. At Urban Energy, we deliver high quality performance based solutions custom tailored to your needs. Our professional design, installation and service staff are ready to take on any challenge.

Our project experience is vast and crosses many vertical markets including municipal, health care, manufacturing, industrial, commercial, K-12 and higher education. We have the depth and resources to become your partner on the Energy Management System project.

Sincerely,

Scott Copeland, President

504 East Southern Avenue
Tempe, AZ 85282

P: 480-282-9501
F: 480-838-9445
www.UrbanEnergyInc.com



SECTION 1 | General Information

A. One page cover letter as described in Section I, 2.3.

Please refer to the previous page for a one page cover letter.

B. Explain the legal organization of the Vendor. Provide the identification information of the Vendor. Include the legal name and address, identification number and legal form of the Vendor (e.g., partnership, corporation, joint venture, sole proprietorship). If a joint venture, identify members of the joint venture and provide all of the information required under this section for each member. If the Vendor is a wholly owned subsidiary of another company, identify the parent company. Provide the name, address and telephone number of the person to contact concerning the Proposal.

Legal Organization: Urban Energy Solutions, Inc. is a Corporation, incorporated in the State of Arizona.

Legal Name and Address: Urban Energy Solutions, Inc. - 504 East Southern Avenue | Tempe, AZ 85282

Phone Number: 480-982-9501

Fax Number: 480-838-9445

Web-Site: www.UrbanEnergyInc.com

License Information: - State of Arizona License: K-11 ROC252925

- State of Nevada License: C-2 0075524

- Johnson Controls-Multiple certifications

- Niagara AX-Multiple certifications

- KMC Control-Multiple certifications

- Honeywell Webs-Certification

- Salt River Pima-Maricopa Indian Community Vendor Gaming License

Person to Contact: Scott Copeland, President - Direct Line: 602-722-8157

C. Identify the location of the Vendor's principal office and the local work office, if different.

Urban Energy Solutions, Inc. is headquartered in Tempe at 504 East Southern Avenue. UES operates offices in both the Phoenix and Tucson areas.

D. Provide a general description of the Vendor that is proposing to provide the Services, including years in business.

Urban Energy Solutions, Inc. is a licensed electrical and building automation contracting firm. Since the company's inception, we have been performing energy related services to clients across multiple markets. Our experience includes energy management and building controls, systems integration, electrical, commissioning and service. We have completed many notable projects over the past 2 years in both new construction and retrofit.



SECTION 1 | General Information

E. Identify any contract or subcontract held by the Vendor or officers of the Vendor that have been terminated within the last five (5) years. Briefly describe the circumstances and the outcome.

There are no contracts or subcontracts held by UES or the officers of UES that have been terminated within the last five (5) years.

F. Identify any claims arising from a contract which resulted in litigation or arbitration within the last five (5) years. Briefly describe the circumstances and the outcome.

There are no claims arising from a contract which resulted in litigation or arbitration within the last five (5) years.

G. Vendor Information Form (may be attached as a separate appendix).

Please refer to the following page for the Vendor Information Form.

**TOWN OF FOUNTAIN HILLS
DEVELOPMENT SERVICES DEPARTMENT**

SECTION A

IV. VENDOR INFORMATION FORM

By submitting a Proposal, the submitting Vendor certifies that it has reviewed the administrative information and draft of the Professional Services Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

Urban Energy Solutions, Inc.
VENDOR SUBMITTING PROPOSAL

26-4053008
FEDERAL TAX ID NUMBER

Scott Copeland, President
PRINTED NAME AND TITLE


AUTHORIZED SIGNATURE

504 East Southern Avenue
ADDRESS

480-282-9501 480-838-9445
TELEPHONE FAX #

Tempe, AZ 85282
CITY STATE ZIP

July 18, 2011
DATE

WEB SITE: www.UrbanEnergyInc.com

E-MAIL ADDRESS: ScottCopeland@UrbanEnergyInc.com

SMALL, MINORITY, DISADVANTAGED AND WOMEN-OWNED BUSINESS ENTERPRISES (check appropriate item(s):

- Small Business Enterprise (SBE)
- Minority Business Enterprise (MBE)
- Disadvantaged Business Enterprise (DBE)
- Women-Owned Business Enterprise (WBE)

Has the Vendor been certified by any jurisdiction in Arizona as a minority or woman-owned business enterprise? No.

If yes, please provide details and documentation of the certification.



SECTION 2 | Experience and Qualifications of the Vendor

A. Provide a detailed description of the Vendor’s experience in providing similar services to municipalities or other entities of similar size to the Town; specifically relating experience with respect to EMS improvements.

Urban Energy Solutions, Inc has dedicated service staff and provides EMS Service throughout the state of Arizona. We provide normal service as well as after hours service with on call technicians at all times. We will work with the client to determine the appropriate levels of response including off site remote assistance and on site emergency service including guaranteed response times.

B. Provide a list of at least three (3) organizations of a similar size or similar operation to the Town in which work has been performed.

YAVAPAI REGIONAL MEDICAL CENTER | Womens Breast Care (EMS)

Prescott, AZ

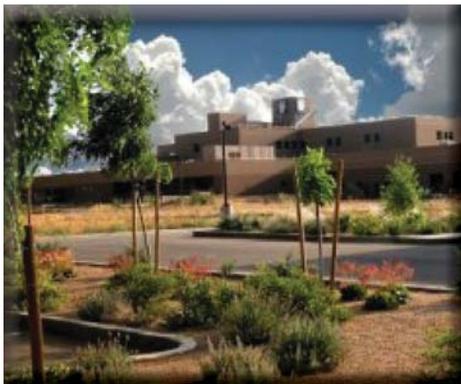
PROJECT DESCRIPTION AND SERVICES PROVIDED:

The Yavapai Regional Medical Center is a full service local hospital consisting of 2 campuses in Prescott, Arizona. Urban Energy Solutions, Inc. is the sole Energy Management System (EMS) servicing provider for both sites.

The work performed for the hospital sites consists of multi-protocol integration, a ground up campus new construction project and numerous tenant improvement projects. Urban Energy has completed construction of a new central plant and renovations to the existing central plant on the East campus.

The scope of work for the current projects consists of a complete multi-year modernization contract on the West campus EMS as well as a new construction addition of a state of the art Women’s Health Wing on the East campus.

Urban Energy is performing complete turnkey energy management system installation and electrical site and building installation. Urban Energy takes pride in providing full preconstruction services as well as the building construction services associated with being an energy management systems company. Our company will see this project through, from conception to completion and maintenance.



AWARD DATE: OCTOBER 2010

COMPLETION DATE: Anticipated AUGUST 2011

ORIGINAL COST: \$271,360

FINAL COST: TBD

REFERENCE: John Rentschler | 928-771-5776



SECTION 2 | Experience and Qualifications of the Vendor

GREENWAY MIDDLE SCHOOL | Energy Management System (EMS)

Phoenix, AZ

AWARD DATE:
MAY 2009

COMPLETION DATE:
JULY 2009

ORIGINAL COST:
\$382,760

FINAL COST:
\$382,760

REFERENCE:
Greg Hesse | 602-918-0042

PROJECT DESCRIPTION AND SERVICES PROVIDED:

Urban Energy Solutions, Inc. designed and implemented a system that was custom tailored to meet the District’s aggressive energy reduction goals set forth in this Construction Manager at Risk project. Urban Energy worked on this project from conception to completion.

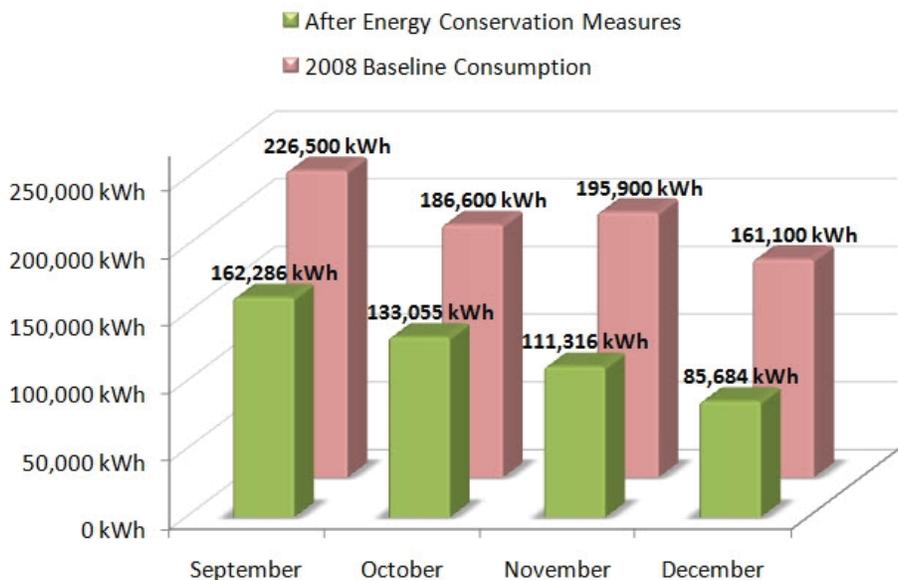
Through the use of state of the art open protocol systems and the highest levels of customer service, the school is consuming at least 30% less energy than before.

The use of real time power monitoring equipment and constant evaluation allow us to continually reduce energy consumption while maintaining occupant comfort.



QUICK FACTS

- More than 30% Energy Savings
- Web Based Energy Management & Control System
- Real Time Energy Monitoring & Reporting
- High Efficiency Lighting & Occupancy Based Controls
- Demand & Occupancy Based Ventilation Controls





SECTION 2 | Experience and Qualifications of the Vendor

STATE FARM INSURANCE SUPPORT CENTER WEST (DATA CENTER) | EMS Service Contract Phoenix, AZ

AWARD DATE:
OCTOBER 2010

COMPLETION DATE:
ON-GOING

ORIGINAL COST:
\$19,000

FINAL COST:
\$19,000

REFERENCE:
Anthony Accola | 602-286-7559

PROJECT DESCRIPTION AND SERVICES PROVIDED:

Urban Energy Solutions, Inc. is providing maintenance, repair, calibration, trouble shooting, training and consultation for the State Farm Support Center Energy Management and Temperature Control Systems on a service-based on-call type contract.

The use of real time power monitoring equipment and constant evaluation allow us to continually reduce energy consumption while maintaining occupant comfort.



Please contact any of the references listed below to better understand Urban Energy Solution’s commitment to excellence. We have performed EMS services for each of these clients listed below.

Paradise Valley School District	Rudy Martinez	(602)722-5225	rmartinez@pvschools.net
Amphitheater School District	Pat Sledge	(520) 696-3754	psledge@amphi.com
LBA Realty	Emile Detiege	(480) 212-2639	edetiege@lbarealty.com
Casino Arizona	Chuck Mielak	(480)850-7706	Chuck.Mielak@casinoaz.com

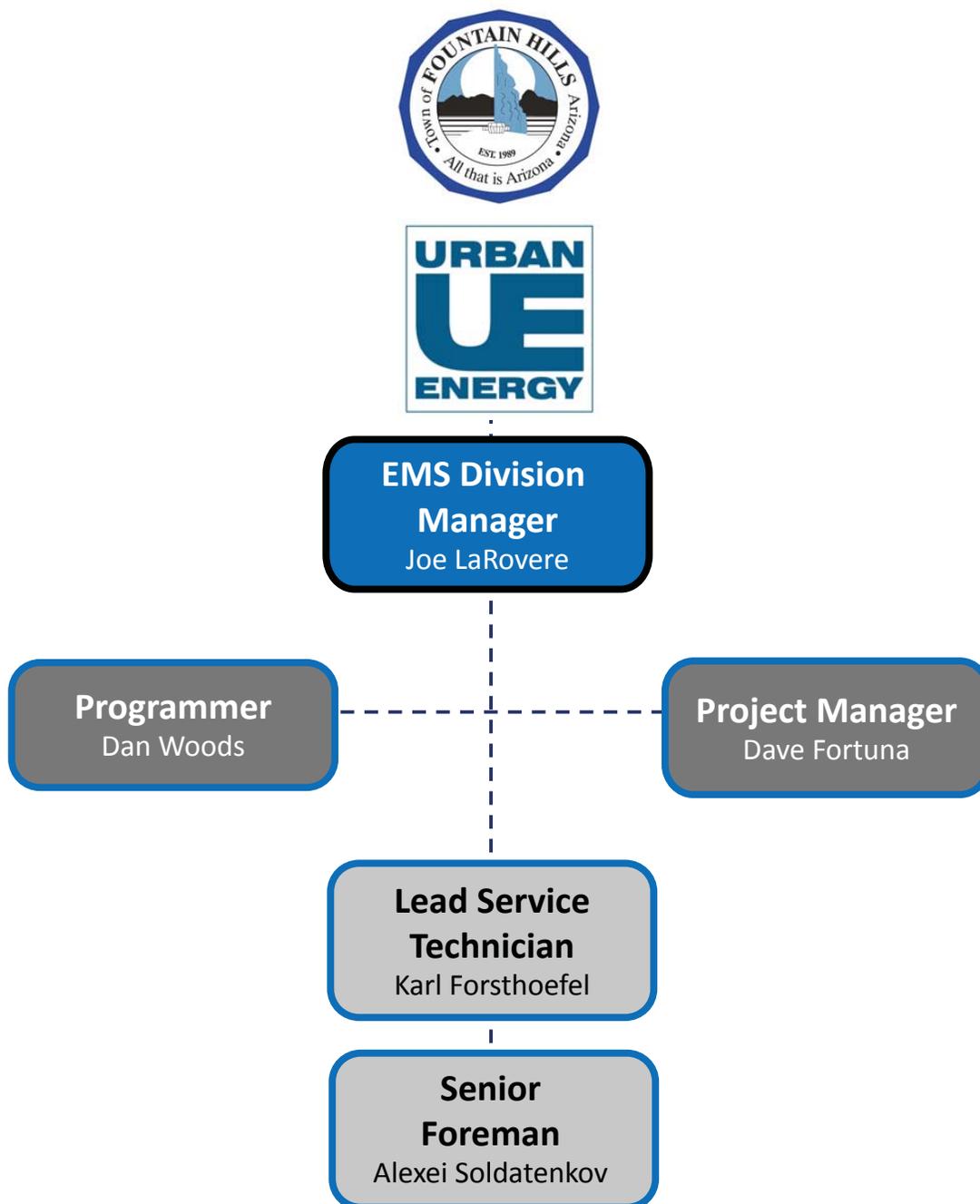


SECTION 3 | Key Positions

A. Identify each key personnel member that will render services to the Town including title and relevant experience required, including the proposed Project Manager and Project Engineer.

The team that Urban Energy Solutions, Inc. has identified for your Energy Management System project is a team of veteran EMS professionals with the experience, expertise and training to provide the Town of Fountain Hills with the highest level of quality and customer service.

Below is an organization chart that represents the key members that we have assigned to your project.





SECTION 3 | Key Positions

B. Indicate the roles and responsibilities of each key position. Include senior members of the Vendor only from the perspective of what their role will be in providing services to the Town.

<p>JOE LAROVERE 27 Years Experience <i>EMS Division Manager</i></p>	<p>Certifications</p> <ul style="list-style-type: none">• Johnson Controls Metasys• Tridium Niagara AX• AEE-Certified Energy Manager• LEED AP BD+C• RSI-Refrigeration and air conditioning• USN-Quality Assurance Inspector• ABA-Leadership Development Forum Graduate
<p>DAVE FORTUNA 30 Years Experience <i>Project Manager</i></p>	<p>Certifications</p> <ul style="list-style-type: none">• Johnson Controls Metasys• Tridium Niagara AX• AEE-Certified Energy Manager• KMC Controls• ABA-Leadership Development Forum Graduate• OSHA Certified (10 hours)
<p>DAN WOODS 15 Years Experience <i>Programmer and Start-Up</i></p>	<p>Certifications</p> <ul style="list-style-type: none">• Johnson Controls Metasys• Tridium Niagara AX• KMC Controls• Honeywell Webs
<p>KARL FORSTHOFEL 19 Years Experience <i>Lead Service Technician</i></p>	<p>Certifications</p> <ul style="list-style-type: none">• Johnson Controls Metasys• Tridium Niagara AX• KMC Controls
<p>ALEXEI SOLDATENKOV 17 Years Experience <i>Foreman</i></p>	<p>Certifications</p> <ul style="list-style-type: none">• UE-EMS Installation Training• Solar Photovoltaic Installation• USSR-Electrical Trade School• Foreman Trade School• OSHA Certified (10 hours)



SECTION 3 | Key Positions

C. If a subcontractor will be used for all work of a certain type, include information on this subcontractor. A detailed plan for providing supervision must be included.

Urban Energy Solutions, Inc. is a full service energy management contractor and will not be utilizing any subcontractors for the Town of Fountain Hills Energy Management System project.

D. Attach a resume and evidence of certification, if any, for each key personnel member and/or subcontractor to be involved in this Project. Resumes should be attached as a single appendix at the end of the Proposal and will not count toward the Proposal page limit.

Please refer to the appendix at the end of this proposal for resumes and certifications for each key personnel member that UES has assigned to your project.



SECTION 4 | Project Approach

A. Describe the Vendor's approach to performing the required Services in the Scope of Work described in the Professional Services Agreement in Exhibit C, addressing each item therein and its approach to contract management, including its perspective and experience on energy management systems, grant compliance, customer service, quality control, scheduling and staff.

Urban Energy Solutions factory trained Johnson Controls Facility Explorer technicians will perform the following scope of work outlined in exhibit C of the RFP.

The personnel working for Urban Energy Solutions, Inc. in the EMS division were involved in the original implementation of the Town of Fountain Hills EMS systems including design, installation and programming.

Urban Energy Solutions base scope of work includes the following:

- Installation of Facility Explorer Supervisor software on the owner provided PC. Configure software with new graphical user interface, scheduling, energy management programs and e-mail alarming.
- Program morning warm-up sequence that ensures the buildings are warmed up in the most efficient way possible by ensuring outside air dampers are closed and electric heaters are sequenced to limit electrical demand.
- Program schedules and set points to make use of E-32 rate structure to minimize electrical usage charges during higher rate periods.
- Provide additional operator training to the owner at the completion of the project to ensure fully automatic and economical operation of all HVAC systems.
- Installation of additional BTU meters, electrical power meters and programming to provide long term historical data and up to date information that can be used to analyze energy consumption by building.
- Upgrade existing N30 series controller with new FX series supervisory controllers in order to provide a seamless unified control system across the entire campus.
- Replace the existing outside air temperature and humidity sensors in the central plant with new sensors.
- Install communication cards in the existing Carrier chillers and connect to existing EMS system for full chiller system data at the head end.
- Configure e-mail alarms for the refrigerant monitoring system and chillers to notify town personnel in the event of an alarm.
- Install motorized dampers on the wall louver in the central plant to shutoff outside air from the central plant and open in the event of a refrigerant alarm.
- Install and monitor door contacts to alarm when doors are left open (7) Community Center and (7) library.
- Provide scheduled start stop EMS control of exhaust fans in the (4) community center and (2) library.
- Check and calibrate outside air dampers on all existing rooftop air handlers and fan coils to ensure proper operation.
- Perform a checkout of the Town Hall VAV boxes and make any necessary programming modifications to ensure that VAV system auto calibration sequences are operating properly.
- Provide programming necessary to ensure that all HVAC equipment is scheduled individually.



SECTION 4 | Project Approach

B. Describe any alternate approaches if it is believed that such an approach would best suit the needs of the Town. Include rationale for alternate approaches, and indicate how the Vendor will ensure that all efforts are coordinated with the Town's general objectives.

Urban Energy Solutions, Inc. recommends these alternate approaches.

- Provide digital interface setup and connection of existing lighting control panel to the EMS system, install sensors and controllers and program daylight harvesting sequence for up to (8) zones outlined in the RFP.
- Provide additional programming to reset chilled water temperature set points based on building load conditions.
- Provide additional programming to reset VAV air handler duct static pressure set points based on building load conditions
- Provide additional programming to reset VAV air handler discharge air temperature set point based on building load conditions
- Upgrade existing 2-position outside air damper actuators on rooftop units to modulating control and install CO2 demand control ventilation sensors.
- Reconfigure controls on Town Hall rooftop air handlers to enable independent operation of the tandem units to conserve energy.
- Conduct an entire system point to point inspection to verify proper operation of all existing control devices and generate a deficiency list.



SECTION 5 | Project Schedule

Provide a project schedule showing key project milestones and deliverables. The schedule shall demonstrate Vendor's ability to meet the designated milestones as listed below. All Services of the successful Vendor must reach full completion and shall not exceed a 45 day period after the Notice to Proceed has been issued by the Town.

Please refer to the following page for a project schedule showing key milestones and deliverables.



SECTION 6 | Pricing

Vendor shall submit the same number of copies of the Fee Proposal as described in Section I, 2.6 in a separate, sealed envelope enclosed with the Vendor's Proposal with the signature of the representative of the Vendor who is authorized to make such an offer. The Fee Proposal shall list the individual cost for each of the expenses and shall be provided in a spreadsheet format to enable the Town staff to determine (a) all materials necessary to accomplish the Services outline in the Scope of Work, attached hereto as Exhibit C, and (b) total labor hours and Proposal Price, and (c) key project team members(s) proposal for each task and sub-task.

Please refer to the separate, sealed envelope for our Fee Proposal.

EXHIBIT C
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
URBAN ENERGY SOLUTIONS, INC.

[Scope of Work]

See following pages.

ENERGY MANAGEMENT SYSTEM (EMS) SPECIFICATIONS

Contractor shall be responsible for expansion of the existing Metasys Energy Management Systems (“EMS”) currently installed in the four buildings of the Town Hall Complex, including Town Hall, the Community Center, the Library/Museum and the Chiller Central Plant (the “Project”). Contractor must have members on their staff that has experience with the Johnson Control Systems.

The Contractor will be responsible for improving the existing EMS equipment and to make changes that will maximize energy savings and improve the automatic operation of the Heating, Ventilating and Air Conditioning equipment (“HVAC”) that does not manually make continuous changes. Contractor shall make improvements as necessary to correct shortcomings on the existing EMS. The electric heat strips (224 kW) are not controlled by the EMS. The new expanded EMS MUST control or be able to lock out all such heaters. The Project must utilize enhanced scheduling capability to make operational changes based on the Salt River Project (“SRP”) Time-of-Use General Schedule (Rate 32). The Town can minimize the kW peak demand in the winter by controlling these electric strip heaters. However, the Town desires to realize a bigger savings by reducing the kWh use during all three billing seasons. During the six winter months, M-F, 5am-9am, the cost/kWh is \$0.1347. However, before 5am and after 9am, the cost is only \$0.0531/kWh. The Town desires to drastically limit energy use during those morning hours. It may be necessary to pre-heat some spaces before 5am.

The Contractor will be responsible for implementing changes to correct a similar problem the Town experiences in the summer months. During July and August, energy peak times are M-F, 2pm-7pm; the kWh cost is \$0.1667. The Contractor will be responsible for an upgraded EMS that will trim the kWh usage as much as possible. Because Fridays are very low usage days, the Town expects to realize significant savings. The other four summer months have a similar associated cost issues. Contractor shall utilize SRP Time-of-Use General Schedule (Rate 32) as a reference.

Due to the varying electric rates, all of the schedules MUST be reviewed and approved by the facilities supervisor.

Contractor shall be responsible for addressing the Town’s other EMS concerns, including:

- Zone or floor specific cooling or heating.
- Monitor the total energy consumption at each building utilizing the most cost effective method.
- The Town Hall, the Community Center, the Library/Museum must have the capability to record the cooling BTU’s used by each building in order to permit the Town to monitor the exact total energy used by each building. The monitoring system must be able to store such data for at least 90 days.
- New supervisory controllers as replacement for the older N30’s at the Community Center and the Library/Museum.
- All current programming for all buildings must be reviewed by the Contractor and then discussed with the Town’s Facilities Supervisor.

- Providing upgraded graphical programming changes to the Facilities Supervisor's workstation.
- Installation of new temperature and humidity sensors in the Central Plant. The old units are too unstable. The new sensors must be able to indicate degrees in Fahrenheit and Celsius; Relative Humidity; Wet-bulb temperature and dew point.
- Ensuring that the EMS controller used on the Carrier chillers are upgraded or replaced by an authorized technician. The new EMS needs the 2 Carrier chillers to transmit all of the information that can be "read" on the Carrier Comfort link "Handheld Navigator" to the front end in the Facilities Supervisor's office. When the chillers have an alarm, the EMS must be able to transmit that alarm data via text/email as soon as possible to the Facility Supervisor. In addition the Freon alarm in the Chiller Central Plant shall be able to transmit text/email messages when the alarm is activated. The louvered vent in the Central Plant must be controlled by the EMS.
- When installing new supervisory controllers, Contractor shall ensure that there is adequate expansion capability for future use. (i.e. lighting controls)
- The Contractor must provide a 2nd quote as an option for daylight harvesting and scheduling for lighting in the Town Hall's North and South's 1st floor lobby; Town Hall's 2nd floor lobby; Community Center's lobby and glass hallway; and Library's lobby and lounge/reading area. (total of 7 zones)
- Another alarm situation that must be added to the EMS is when doors are left opened for longer than five minutes. There are 7 specific doors in the Community Center and 7 specific doors in the Library.
- Exhaust fans in the Community Center and the Library shall be controlled by the EMS and scheduled operations initiated when those areas are unoccupied.
- Contractor shall check operation/calibration/adjustments/programs of the damper control mechanisms in all roof top air handler units and fan coil units to assure proper operation and building static pressure.
- The Contractor must inspect/diagnose/reprogram the self-calibration diagnostic function in the Town Hall's existing EMS FX-60 system for all VAV boxes.
- It is imperative that every mechanical unit must be able to be scheduled as a stand alone unit.

Prior to the Notice to Proceed, SRP/Nexant will review the Scope of Work.

I. Description and Condition

Town Hall Building (T/H)

Heating and Cooling

The Town Hall Building is served by two roof-mounted air-handling units (AHUs), and by five roof-mounted split-system condenser units. The Town Hall Building is heated by electric duct heaters located at ceiling-mounted VAV boxes. Chilled water provided to the AHUs is provided from a nearby adjacent central plant building.

The Town Hall Building is served by a new Johnson Controls energy management system (EMS) and the central plant is served by an older Johnson Controls Metasys system. A Data Industrial-brand BTU meter is located at the Town Hall Building to monitor energy consumption, but the BTU meter is not configured to report data to a hard drive and no long-term data could be collected.

A detailed listing of observed equipment is provided as follows:

HVAC EQUIPMENT – TOWN HALL BUILDING						
I.D.	Type	Manufacturer	Capacity	Age	Electrical	Comments
	controller	Johnson Controls Metasys N30				
none	Portable Cooler – Facilities Office	OceanAire	60-oz. R-22	Unknown	208/230 single phase 20.5-amps	
AHU-1	Roof-mounted air handling unit	McQuay Model: RAH047CLY S/N: FBOU050300426 02	22,000-cfm 873.5-MBH Approx. 73-tons	2005	460/60/3 53 amps MCA 80 amps MROPD	
AHU-2	Roof-mounted air handling unit	McQuay Model: RAH047CLY S/N: FBOU050300420 02	22,000-cfm 873.5-MBH Approx. 73-tons	2005	460/60/3 53 amps MCA 80 amps MROPD	
C/U-1	Condensing Unit	McQuay Model: ACU100D-QBAC S/N: 20472294 00005		May 2004	460/60/3 22.1 minimum circuit amps	Also identified as IU-1 on drawings and indicated to be emergency back up unit.
C/U-2	Condensing Unit	Goodman Model: CLJ36-1C S/N: 0504244230	3-tons	2005	208/230 single phase 19.5 minimum circuit amps	Also identified as IU-2 on drawings and indicated to be emergency backup

HVAC EQUIPMENT – TOWN HALL BUILDING

I.D.	Type	Manufacturer	Capacity	Age	Electrical	Comments
						unit.
C/U-3	Condensing Unit	Trane Model: TTA090A400FA S/N: 74xxxxxxxx (remainder illegible)	7.5-tons	October 2007	460/60/3 18.1 minimum circuit amps	Identified as computer room unit.
C/U-4	Condensing Unit	Goodman Model: CLJ18-1C S/N: 0504151440	1.5-tons	2005	208/230 single phase 12.1 minimum circuit amps	Identified as elevator equipment room unit.
C/U-5	Condensing Unit	Goodman Model: CLJ18-1C S/N: 0504151441	1.5-tons	2005	208/230 single phase 12.1 minimum circuit amps	Identified as exit stair unit.
EF-1	Exhaust Fan	N/A	3,305-cfm		460 – 3 phase ¾-horsepower	From drawings
TU-A	Terminal Unit	Krueger	2.5-MBH		480 – 3 phase 0.75-kW	From drawings
TU-B	Terminal Unit	Krueger	5.1-MBH		480 – 3 phase 1.5-kW	From drawings
TU-C	Terminal Unit	Krueger	10.2-MBH		480 – 3 phase 3.0-kW	From drawings
TU-D	Terminal Unit	Krueger	17.0-MBH		480 – 3 phase 5.0-kW	From drawings
TU-E	Terminal Unit	Krueger	22.1-MBH		480 – 3 phase 6.5-kW	From drawings
TU-F	Terminal Unit	Krueger	29.0-MBH		480 – 3 phase 8.5-kW	From drawings
TU-G	Terminal Unit	Krueger	34.1-MBH		480 – 3 phase 10.0-kW	From drawings

Physical Plant (P/P)

The Physical Plant Building is a non-occupied structure that generates and distributes chilled water to the occupied buildings of the campus. The Physical Plant Building houses chillers, pumps and cooling towers. An associated storage shed with a package HVAC unit is located nearby.

The Physical Plant Building is served by an older Johnson Controls Metasys system. It should be noted that the numbering of major equipment begins with “2”; it was reported that additional equipment is planned for future expansion. A detailed listing of observed equipment is provided as follows:

HVAC EQUIPMENT – PHYSICAL PLANT						
I.D.	Type	Manufacturer	Capacity	Age	Electrical	Comments
CH-2	Chiller	Carrier Model: 30HXC136RY-61435 S/N: 3600F30549	136-tons	2000	460-volt 3-phase 183.8 minimum circuit amps	
CH-3	Chiller	Carrier Model: 30HXC136RY-640AA S/N: 3700F32007	136-tons	2000	460-volt 3-phase 183.8 minimum circuit amps	
CT-2	Cooling Tower	Baltimore Air Coil Model: 15176 S/N: U1464901MAD			460-volt 3-phase 1 fan at 7.5-h.p.	
N/A	Sand Filter at Cooling Tower - 2	Lakos-brand sand filter with U.S. Electrical Motors-brand motor	3-h.p.		208-230/460 3-phase FL amps: 9.4-8.5/4.3	
CT-3	Cooling Tower	Baltimore Air Coil Model: 15146 S/N: U1464201MAD			460-volt 3-phase 1 fan at 15-h.p.	
N/A	Sand Filter at Cooling Tower - 3	Lakos-brand sand filter with U.S. Electrical Motors-brand motor	3-h.p.		208-230/460 3-phase FL amps: 9.4-8.5/4.3	
CWP-2	Condenser water pump	Baldor motor: Taco pump:	7.5-h.p. 378-gpm	2000	230/460 3-phase 21.6/10.8 amps	

HVAC EQUIPMENT – PHYSICAL PLANT

I.D.	Type	Manufacturer	Capacity	Age	Electrical	Comments
CWP-3	Condenser water pump	Baldor motor: Taco pump:	10-h.p. 500-gpm	2000	230/460 3-phase 28/14 amps	
CHP-2	Chilled water pump	Baldor motor	3-h.p.		230/460 3-phase 8/4 amps	
CHP-3	Chilled water pump	Baldor motor	3-h.p.		230/460 3-phase 8/4 amps	
CHP-4	Chilled water pump	Baldor motor	Illegible		Illegible – believed to be similar to above: (230/460 3-phase 8/4 amps)	
CHP-5	Chilled water pump	Baldor motor	40-h.p.		230/460 3-phase 98/49 amps	
VFD for CHP-4		ABB				
VFD for CHP-5		ABB				
CHP-6	Chilled water pump	Baldor motor	5-h.p.		230/460 3-phase 13.2/6.5 amps	
HE-1	Heat Exchanger	Polaris Plate-and-Frame heat exchanger Model: S50 IS 114 S/N: 3749			N/A	
VFD for Cooling Tower 2		ABB				
VFD for Cooling		ABB				

HVAC EQUIPMENT – PHYSICAL PLANT

I.D.	Type	Manufacturer	Capacity	Age	Electrical	Comments
Tower 3						
EF-1	Exhaust Fan	Greenheck	2000-cfm	2005	120 volt – 1 phase 0.33-HP (1/3-horsepower)	
EF-2	Exhaust Fan	Greenheck	625-cfm	2005	120 volt – 1 phase 0.25-HP (1/4-horsepower)	

HVAC EQUIPMENT – STORAGE SHED

I.D.	Type	Manufacturer	Capacity	Age	Electrical	Comments
Exterior Unit	Package HVAC	Bard Model: WA102 – AG9WW4WWW S/N: FBOU050300426 02			230/208 1-phase 45 minimum circuit amps	

Community Center Building (C/C)

Heating and Cooling

The Community Center Building is served by roof-mounted air handling units (AHUs), ceiling-mounted fan coil units and by an evaporative cooled make-up air system at the kitchen area. Electric duct heaters located at ceiling-mounted fan coil units heat the Community Center. Chilled water provided to the AHUs is provided from the nearby physical plant building.

The Community Center Building is served by an older Johnson Controls Metasys system. No BTU meter is provided at the Community Center Building to monitor energy consumption.

A detailed listing of observed equipment is provided as follows:

HVAC EQUIPMENT – COMMUNITY CENTER						
I.D.	Type	Manufacturer	Capacity	Age	Electrical	Comments
AH-1	Roof-mounted air handling unit	Trane Model: I/L S/N: I/L	1,400-cfm		From drawings: 460 volt – 3 phase 1.0-HP	
AH-2	Roof-mounted air handling unit	Trane Model: I/L S/N: I/L	1,400-cfm		From drawings: 460 volt – 3 phase 1.0-HP	
AH-3	Roof-mounted air handling unit	Trane Model: I/L S/N: I/L	2,400-cfm		From drawings: 460 volt – 3 phase 2.0-HP	
AH-4	Roof-mounted air handling unit	Trane Model: I/L S/N: I/L	3,210-cfm		From drawings: 460 volt – 3 phase 3.0-HP	
AH-5	Roof-mounted air handling unit	Trane Model: I/L S/N: I/L	3,210-cfm		From drawings: 460 volt – 3 phase 3.0-HP	
AH-6	Roof-mounted air handling unit	Trane Model: I/L S/N: I/L	1,500-cfm		From drawings: 460 volt – 3 phase 5.0-HP	
AH-7	Roof-mounted air handling unit	Trane Model: I/L S/N: I/L	1,500-cfm		From drawings: 460 volt – 3 phase 5.0-HP	

HVAC EQUIPMENT – COMMUNITY CENTER

I.D.	Type	Manufacturer	Capacity	Age	Electrical	Comments
AH-8	Roof-mounted air handling unit	Trane Model: I/L S/N: I/L	8,000-cfm		From drawings: 460 volt – 3 phase 5.0-HP	
EF-3	Exhaust fan	Greenheck Model: GB-120-4-X S/N: 00J11312			120 volt – 1 phase 0.25-HP (1/4-horsepower)	
EF-4	Ceiling fan	Greenheck			120 volt – 1 phase 49-watts	
EF-5	Exhaust fan	Greenheck Model: CUBE-180HP-15-G S/N: 00J11614			120 volt – 1 phase 1.5-horsepower	
EF-8	Ceiling fan	Greenheck			120 volt – 1 phase 49-watts	
MUA-1	Make-up air unit	Greenheck Model: KSU-109-H10-DB S/N: 00J06169			460/60/3 5.59 amps nameplate	

Library and Museum Building (LIB)

Heating and Cooling

The Library and Museum Building is served by roof-mounted air handling units (AHUs), and by ceiling-mounted fan coil units. Electric duct heaters located at ceiling-mounted fan coil units heat the Library and Museum. Chilled water provided to the AHUs is provided from the nearby physical plant building.

The Library and Museum Building is served by an older Johnson Controls Metasys system. No BTU meter is provided at the Library and Museum Building to monitor energy consumption.

A detailed listing of observed equipment is provided as follows:

HVAC EQUIPMENT – LIBRARY AND MUSEUM							
I.D.	Type		Manufacturer	Capacity	Age		
AH-9	Roof-mounted handling unit	air	Trane Model: I/L S/N: I/L	3,700-cfm		From drawings: 460 volt – 3 phase 3.0-HP	
AH-10	Roof-mounted handling unit	air	Trane Model: I/L S/N: I/L	3,700-cfm		From drawings: 460 volt – 3 phase 3.0-HP	
AH-11	Roof-mounted handling unit	air	Trane Model: I/L S/N: I/L	5,000-cfm		From drawings: 460 volt – 3 phase 5.0-HP	
AH-12	Roof-mounted handling unit	air	Trane Model: I/L S/N: I/L	2,800-cfm		From drawings: 460 volt – 3 phase 2.0-HP	
EF-6	Exhaust fan		Greenheck	500-cfm		120 volt – 1 phase 0.25-HP (1/4-horsepower)	
EF-7	Exhaust fan		Greenheck	500-cfm		120 volt – 1 phase 0.025-HP (1/40-horsepower)	
NONE	Humidifier (reported to serve museum storage area)		DRISTEEM VF20	2-kW		From drawings 208-volts; 1-phase	

Unconfirmed Equipment

Equipment listed on provided drawings whose location could not be verified during the survey includes the following. The items were indicated to be located in either the Community Center or the Library/Museum.

HVAC EQUIPMENT – FAN COIL UNITS AND DUCT HEATERS (LOCATIONS NOT CONFIRMED – INDICATED TO BE LOCATED IN EITHER THE COMMUNITY CENTER OR THE LIBRARY/MUSEUM)						
I.D.	Type	Manufacturer	Capacity	Age	Electrical	Comments
FC-1	Fan Coil	Trane Model: BCHB090 S/N: Not Available	2,800-cfm		From drawings: 460/60/3 1.5-horsepower fan NO ELECTRIC HEAT	
FC-2	Fan Coil	Trane Model: BCHB036 S/N: Not Available	1,000-cfm		From drawings: 460/60/3 0.5-horsepower fan 3.5-kW electric heat	
FC-3	Fan Coil	Trane Model: BCHB024 S/N: Not Available	800-cfm		From drawings: 460/60/3 0.33-horsepower fan 3.0-kW electric heat	
FC-4	Fan Coil	Trane Model: BCHB036 S/N: Not Available	1,100-cfm		From drawings: 460/60/3 0.5-horsepower fan 7.0-kW electric heat	
FC-5	Fan Coil	Trane Model: BCHB036 S/N: Not Available	1,200-cfm		From drawings: 460/60/3 0.5-horsepower fan 7.5-kW electric heat	
FC-6	Fan Coil	Trane Model: BCHB036 S/N: Not Available	1,200-cfm		From drawings: 460/60/3 0.5-horsepower fan 7.5-kW electric heat	

HVAC EQUIPMENT – FAN COIL UNITS AND DUCT HEATERS						
(LOCATIONS NOT CONFIRMED – INDICATED TO BE LOCATED IN EITHER THE COMMUNITY CENTER OR THE LIBRARY/MUSEUM)						
I.D.	Type	Manufacturer	Capacity	Age	Electrical	Comments
FC-7	Fan Coil	Trane Model: BCHB024 S/N: Not Available	800-cfm		From drawings: 460/60/3 0.33-horsepower fan 5.5-kW electric heat	
FC-8	Fan Coil	Trane Model: BCHB024 S/N: Not Available	800-cfm		From drawings: 460/60/3 0.33-horsepower fan 5.5-kW electric heat	
FC-9	Fan Coil	Trane Model: BCHB036 S/N: Not Available	1,200-cfm		From drawings: 460/60/3 0.5-horsepower fan 3.0-kW electric heat	
FC-10	Fan Coil	Trane Model: BCHB024 S/N: Not Available	800-cfm		From drawings: 460/60/3 0.33-horsepower fan 1.5-kW electric heat	
FC-11	Fan Coil	Trane Model: BCHB072 S/N: Not Available	2,250-cfm		From drawings: 460/60/3 1.0-horsepower fan 13.0-kW electric heat	
FC-12	Fan Coil	Trane Model: BCHB018 S/N: Not Available	600-cfm		From drawings: 460/60/3 0.5-horsepower fan 1.5-kW electric heat	
FC-13	Fan Coil	Trane Model: BCHB090 S/N: Not Available	2,800-cfm		From drawings: 460/60/3 1.5-horsepower fan 9.0-kW electric heat	

HVAC EQUIPMENT – FAN COIL UNITS AND DUCT HEATERS (LOCATIONS NOT CONFIRMED – INDICATED TO BE LOCATED IN EITHER THE COMMUNITY CENTER OR THE LIBRARY/MUSEUM)						
I.D.	Type	Manufacturer	Capacity	Age	Electrical	Comments
FC-14	Fan Coil	Trane Model: BCHB054 S/N: Not Available	1,600-cfm		From drawings: 460/60/3 0.5-horsepower fan 5.0-kW electric heat	
FC-15	Fan Coil	Trane Model: BCHB054 S/N: Not Available	1,725-cfm		From drawings: 460/60/3 0.75-horsepower fan 8.0-kW electric heat	
FC-16	Fan Coil	Trane Model: BCHB054 S/N: Not Available	1,700-cfm		From drawings: 460/60/3 0.75-horsepower fan 5.0-kW electric heat	
FC-17	Fan Coil	Trane Model: BCHB072 S/N: Not Available	2,000-cfm		From drawings: 460/60/3 0.75-horsepower fan 8.0-kW electric heat	
FC-18	Fan Coil	Trane Model: BCHB036 S/N: Not Available	1,000-cfm		From drawings: 460/60/3 0.5-horsepower fan 3.0-kW electric heat	
FC-19	Fan Coil	Trane Model: BCHB024 S/N: Not Available	700-cfm		From drawings: 460/60/3 0.33-horsepower fan 3.0-kW electric heat	
FC-20	Fan Coil	Trane Model: BCHB054 S/N: Not Available	1,600-cfm		From drawings: 460/60/3 0.5-horsepower fan 5.0-kW electric heat	

HVAC EQUIPMENT – FAN COIL UNITS AND DUCT HEATERS						
(LOCATIONS NOT CONFIRMED – INDICATED TO BE LOCATED IN EITHER THE COMMUNITY CENTER OR THE LIBRARY/MUSEUM)						
I.D.	Type	Manufacturer	Capacity	Age	Electrical	Comments
FC-21	Fan Coil	Trane Model: BCHB036 S/N: Not Available	1,000-cfm		From drawings: 460/60/3 0.5-horsepower fan 1.5-kW electric heat	
FC-22	Fan Coil	Trane Model: BCHB036 S/N: Not Available	900-cfm		From drawings: 460/60/3 0.5-horsepower fan 3.0-kW electric heat	
DH-1	Electric Duct Heater	Brasch	1,400-cfm		From drawings 460 – 3 phase 8-kW	
DH-2	Electric Duct Heater	Brasch	1,400-cfm		From drawings 460 – 3 phase 8-kW	
DH-3	Electric Duct Heater	Brasch	2,400-cfm		From drawings 460 – 3 phase 4-kW	
DH-4	Electric Duct Heater	Brasch	3,210-cfm		From drawings 460 – 3 phase 21-kW	
DH-5	Electric Duct Heater	Brasch	3,210-cfm		From drawings 460 – 3 phase 21-kW	
DH-6	Electric Duct Heater	Brasch	4,200-cfm		From drawings 460 – 3 phase 22.5-kW	
DH-7	Electric Duct Heater	Brasch	4,200-cfm		From drawings 460 – 3 phase	

HVAC EQUIPMENT – FAN COIL UNITS AND DUCT HEATERS						
(LOCATIONS NOT CONFIRMED – INDICATED TO BE LOCATED IN EITHER THE COMMUNITY CENTER OR THE LIBRARY/MUSEUM)						
I.D.	Type	Manufacturer	Capacity	Age	Electrical	Comments
					22.5-kW	
DH-8	Electric Duct Heater	Brasch	8,000-cfm		From drawings 460 – 3 phase 40-kW	
DH-9	Electric Duct Heater	Brasch	3,700-cfm		From drawings 460 – 3 phase 21-kW	
DH-10	Electric Duct Heater	Brasch	3,700-cfm		From drawings 460 – 3 phase 15-kW	
DH-11	Electric Duct Heater	Brasch	5,000-cfm		From drawings 460 – 3 phase 24-kW	
DH-12	Electric Duct Heater	Brasch	2,800-cfm		From drawings 460 – 3 phase 15-kW	

Discussion

Items of note ascertained during the survey include the following:

- A BTU meter indicated on the drawings was not reported to exist or located on EMS software or hardware listings. The BTU meter was subsequently identified as having been installed and was determined to be providing data, but was determined to be writing over the acquired day at the end of each day, resulting in only a day's worth of data at a time. No long-term data was reported to have been stored or is reported to be able to be recovered. (see ECM #2)
- The EMS consists of two separate Johnson Controls systems that are currently incompatible for communication.
- Insufficient scheduling control appears to be available to regulate and/or control equipment operation.
- The Town Hall Building is currently scheduled to operate 4 days per week, 10 hours per day.
- The Town Hall Building has a Sheriff's Office tenant that requires 24/7 cooling.
- The Community Center Building operates on a varying 7 day per week schedule depending upon scheduled events.
- Damper control mechanisms have been replaced at some rooftop units – no determination has been made regarding full functioning capability of individual air handling units. Damper control mechanisms are utilized to regulate outside air. Outside air requirements are mandated by building codes, but can also provide “free cooling” during temperate months to reduce energy consumption.
- Damaged piping insulation was observed at roof locations.
- Heat island effects were reported and noted at electrical rooms and telephone and data rooms. The identified areas produce significant quantities of heat that are transferred to adjacent, occupied spaces.
- The Physical Plant did not appear to be provided with a louver and an air inlet to accommodate required refrigerant exhaust fan.

Energy Management System (EMS) and HVAC Equipment Controls

Several items relating to apparent deficiencies of the EMS and HVAC equipment controls were noted during the survey. These items include EMS software and hardware issues, BTU meter, and damper controls.

During the survey, it was discovered that the energy management system consists of 2 separate systems that are currently incompatible for communication and the existing EMS software configuration does not allow for automatic programming of individual VAV boxes, requiring the facility supervisor to manually shutdown unused equipment to conserve energy.

It was also discovered that the FX-60 program does not appear to be functioning at full capacity and may not be properly controlling individual elements.

A self-calibration diagnostic function of some sensors was performed during the survey. The results of the self-calibration of sensors appeared inconclusive and it is unknown at this time if improperly calibrated sensors are causing inappropriate actions.

The identification of the BTU meter on the provided construction drawings prompted a search to identify if it had been installed to assess if contractual obligations regarding construction had adequately been performed. Mr. Koveikis, Town of Fountain Hills Facilities Supervisor, performed an investigation and identified that it had been installed. Mr. Koveikis has been able to download some information; however, no long-term data has been stored and accurate trending from past data is not possible.

Reconfiguration of outside air sensors to accommodate available EMS inputs currently requires both Remote Thermal Unit (“RTU”) units serving the Town Hall to operate in tandem and does not allow for independent operation of each RTU. Operating only one RTU during appropriate time periods can reduce operating costs.

Some repairs have been made to damper controls at rooftop units. An operational survey of existing equipment may be required to determine the operating condition of individual dampers, valves, controllers and sensors to ensure the proper execution of system commands, particularly since system commands are intended to be the primary means of achieving energy savings.

EXHIBIT D
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
URBAN ENERGY SOLUTIONS, INC.

[Fee Proposal]

See following pages.

Urban Energy Solutions, Inc.
 Fountain Hills Cost Proposal
 RFP for Energy Management System



Base Bid	Labor Hours	Labor & Material
Town Hall		
Configure existing BTU meter	2	\$ 175.00
Install new power meter	6	\$ 1,600.00
Checkout and verify proper operation of existing air handling units	6	\$ 320.00
Checkout and calibration of VAV DPT sensors	50	\$ 4,500.00
Implement revised programming and scheduling	6	\$ 580.00
Physical Plant		
Open protocol communication to Carrier chillers	12	\$ 6,500.00
Replace outside air temperature/humidity sensors	2	\$ 650.00
Motorized damper for wall louver	10	\$ 3,200.00
Provide email alarm notification for refrigerant and chiller alarms	6	\$ 450.00
Community Center		
Install new N2 global controller	24	\$ 6,700.00
Install new BTU meter	6	\$ 2,700.00
Install new power meter	6	\$ 1,600.00
Control (4) exhaust fans	8	\$ 800.00
Checkout and verify proper operation of existing air handling units	24	\$ 1,280.00
Implement revised programming and scheduling	6	\$ 580.00
Install door contacts to monitor (7) doors	10	\$ 1,050.00
Library & Museum Building		
Install New N2 global controller	24	\$ 6,700.00
Install new BTU meter	6	\$ 2,700.00
Install new power meter	6	\$ 1,600.00
Control (2) exhaust fans	4	\$ 400.00
Checkout and verify proper operation of existing air handling units	9	\$ 640.00
Implement revised programming and scheduling	6	\$ 580.00
Install door contacts to monitor (7) doors	10	\$ 1,050.00
Global		
Provide and install Supervisor Software on owner PC	12	\$ 7,500.00
Configure new graphical programming and scheduling	18	\$ 1,500.00
Provide additional operator training	16	No Charge
Base Bid Total	295	\$55,355.00

Payment & performance Bond 1.5% \$830.33
 Tax 6.045944 \$3,396.93

\$59,582.26 P.M.

Add Alternate Bids (Bonds & Tax Not Included)

Daylight harvesting control add	30	\$ 12,500.00
Program chilled water temperature reset	8	\$ 750.00
Program VAV AHU static pressure reset	12	\$ 800.00
Program VAV AHU discharge air temperature reset	10	\$ 600.00
Upgrade existing 2 position outside air dampers to modulating	24	\$ 4,000.00
Install CO2 sensors and demand control ventilation	24	\$ 5,200.00
Reconfigure Town Hall tandem RTU for independent operation	6	\$ 1,500.00
Conduct entire system point to point checkout and deficiency list	60	\$ 5,600.00

Project Management - Dave Fortuna
 Pre-Construction Services - Joe LaRovere
 Quality Assurance - Joe LaRovere
 Graphics and Head end programming - Dan Woods
 Point to Point checkout & field programming - Karl Forsthoefel

Scott Copeland

Scott Copeland, President

EXHIBIT E
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
URBAN ENERGY SOLUTIONS, INC.

[Assurances - Construction Programs]

See following pages.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

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

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

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards of merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

* SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	* TITLE <div style="border: 1px solid black; background-color: yellow; height: 20px; width: 100%;"></div>
* APPLICANT ORGANIZATION <div style="border: 1px solid black; background-color: yellow; height: 20px; width: 100%;"></div>	* DATE SUBMITTED <div style="border: 1px solid black; padding: 2px;">Completed on submission to Grants.gov</div>

EXHIBIT F
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
URBAN ENERGY SOLUTIONS, INC.

[EECBG Special Terms and Conditions]

See following pages.

**SPECIAL TERMS AND CONDITIONS FOR THE ENERGY EFFICIENCY AND
CONSERVATION BLOCK GRANT PROGRAM – FORMULA GRANTS**

1. RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the prime grantee administrator for guidance.

2. AWARD AGREEMENT TERMS AND CONDITIONS

This award/agreement consists of the requirements incorporated by reference below:

- a. Applicable program regulations: Title V, Subtitle E of the Energy Independence Security Act (EISA) of 2007, Public Law 110-140.
- b. DOE Assistance Regulations, 10 CFR Part 600 located at <http://ecfr.gpoaccess.gov/>
- c. Application/proposal as approved by the grantee.
- d. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm
- e. Applicable audit and cost principles found in 2 CFR 215OMB Circulars A-102, A-21, A-87, A-122, A-133, and/or 48 CFR Part 31.

3. REBUDGETING AND RECOVERY OF INDIRECT COSTS (AS APPLICABLE)

THE APPLICABLE TERM IS MARKED BELOW.

- REBUDGETING AND RECOVERY OF INDIRECT COSTS - REIMBURSABLE INDIRECT COSTS AND FRINGE BENEFITS
- a. If actual allowable indirect costs and fringe benefits are less than those budgeted and funded under the award, you may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct, indirect, fringe benefits), is less than the total costs reimbursed, you must refund the difference.
 - b. Recipients are expected to manage their indirect costs and fringe benefits. DOE will not amend an award solely to provide additional funds for changes in indirect costs and fringe benefits. DOE recognizes that the inability to obtain full reimbursement for indirect costs and fringe benefits means the recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.
- REBUDGETING AND RECOVERY OF INDIRECT COSTS – REIMBURSABLE INDIRECT COSTS
- a. If actual allowable indirect costs are less than those budgeted and funded under the award, you may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, you must refund the difference.
 - b. Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates. DOE recognizes that the inability to obtain full reimbursement for indirect costs means the recipient must absorb

the underrecovery. Such underrecovery may be allocated as part of the organization's required cost sharing.

- c. The budget for this award includes indirect costs, but does not include fringe benefits. Therefore, fringe benefit costs shall not be charged to nor shall reimbursement be requested for this project nor shall the fringe benefit costs for this project be allocated to any other federally sponsored project. In addition, fringe benefit costs shall not be counted as cost share unless approved by the Contracting Officer.

[] **REBUDGETING AND RECOVERY OF INDIRECT COSTS - INDIRECT COSTS AND FRINGE BENEFITS ARE NOT REIMBURSABLE**

The budget for this award does not include indirect costs or fringe benefits. Therefore, these expenses shall not be charged to nor reimbursement requested for this project nor shall the fringe and indirect costs from this project be allocated to any other federally sponsored project. In addition, indirect costs or fringe benefits shall not be counted as cost share unless approved by the Contracting Officer.

4. CEILING ON ADMINISTRATIVE COSTS

- a. Recipients may not use more than 10 percent of amounts provided under this program, or \$75,000, whichever is greater (EISA Sec 545(b)(3)(A)), for administrative expenses, excluding the costs of meeting the reporting requirements under Title V, Subtitle E of EISA. These costs should be captured and summarized for each activating under the Projected Costs Within Budget: Administration.
- b. Recipients are expected to manage their administrative costs. DOE will not amend an award solely to provide additional funds for changes in administrative costs. The Recipient shall not be reimbursed on this project for any final administrative costs that are in excess of the designated 10 percent administrative cost ceiling. In addition, the Recipient shall neither count costs in excess of the administrative cost ceiling as cost share, nor allocate such costs to other federally sponsored projects, unless approved by the Contracting Officer.

5. LIMITATIONS ON USE OF FUNDS

- a. Recipients may not use more than 20 percent or \$250,000, whichever is greater (EISA Sec. 545(b)(3)(B)), for the establishment of revolving loan funds.
- b. Recipients may not use more than 20 percent or \$250,000, whichever is greater (EISA Sec. 545(b)(3)(C)), for subgrants to nongovernmental organizations for the purpose of assisting in the implementation of the energy efficiency and conservation strategy of the eligible unit of local government.

6. USE OF PROGRAM INCOME - ADDITION

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and use it to further eligible project objectives.

7. STATEMENT OF FEDERAL STEWARDSHIP

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

8. SITE VISITS

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

9. REPORTING REQUIREMENTS

- a. Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to comply; a history of failure to comply; may also result in a debarment action to preclude future awards by Federal agencies.
- b. Additional Recovery Act requirements listed elsewhere in this document.

10. PUBLICATIONS

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number [*Enter the award number*]."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

11. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

12. INTELLECTUAL PROPERTY PROVISIONS AND CONTACT INFORMATION

Nonprofit organizations are subject to the intellectual property requirements at 10 CFR 600.136(a), (c) and (d). All other organizations are subject to the intellectual property requirements at 10 CFR 600.136(a) and (c).

600.136 Intangible property.

(a) Recipients may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. DOE reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) DOE has the right to:

- (1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and
- (2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(c) In addition, in response to a Freedom of Information act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DOE shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If the DOE obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect the costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

A list of all intellectual property provisions may be found at http://www.gc.doe.gov/financial_assistance_awards.htm.

13. LOBBYING RESTRICTIONS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

14. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

15. INSOLVENCY, BANKRUPTCY OR RECEIVERSHIP

- a. You shall immediately notify the grantee of the occurrence of any of the following events: (i) you or your parent's filing of a voluntary case seeking liquidation or reorganization under the Bankruptcy Act; (ii) your consent to the institution of an involuntary case under the Bankruptcy Act against you or your parent; (iii) the filing of any similar proceeding for or against you or your parent, or its consent to, the dissolution, winding-up or readjustment of your debts, appointment of a receiver, conservator, trustee, or other officer with similar powers over you, under any other applicable state or federal law; or (iv) your insolvency due to your inability to pay your debts generally as they become due.
- b. Such notification shall be in writing and shall: (i) specifically set out the details of the occurrence of an event referenced in paragraph a; (ii) provide the facts surrounding that event; and (iii) provide the impact such event will have on the project being funded by this award.
- c. Upon the occurrence of any of the four events described in the first paragraph, the grantee reserves

the right to conduct a review of your award to determine your compliance with the required elements of the award (including such items as cost share, progress towards technical project objectives, and submission of required reports). If the grantee review determines that there are significant deficiencies or concerns with your performance under the award, the grantee reserves the right to impose additional requirements, as needed, including (i) change your payment method; or (ii) institute payment controls.

- d. Failure of the recipient to comply with this provision may be considered a material noncompliance of this award.

16. WASTE STREAM

The subrecipient assures that it will create or obtain a waste management plan addressing waste generated by a proposed project prior to the project generating waste. This waste management plan will describe the subrecipient's plan to dispose of any sanitary or hazardous waste (e.g., construction and demolition debris, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos) generated as a result of the proposed project. The subrecipient shall ensure that the project is in compliance with all Federal, state and local regulations for waste disposal. The subrecipient shall make the waste management plan and related documentation available to the recipient to the grantee/recipient or DOE upon request (for example, during a post-award audit).

17. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project. Prohibited actions include: [*Activities that cannot be performed before the NEPA clearance or decision is completed*]. This restriction does not preclude you from: [*activities that can be performed before the NEPA clearance or decision is completed*].

If you move forward with activities that are not authorized for federal funding by the DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving federal funding and such costs may not be recognized as allowable cost share.

If this award includes construction activities, you must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE initiating the NEPA process.

18. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the recipient's facilities, or (ii) any costs which may be incurred by the recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of this Agreement.

19. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAY 2009)

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds – the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

C. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized –

- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions relation to, the subcontract, subcontract, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

D. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

E. Protecting State and Local Government and Contractor Whistleblowers

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a

State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct, a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

F. Request for Reimbursement (revised)

NOTE: reimbursement is to be immediately requested of the grantee by the subrecipient to ensure prompt reimbursement and availability of funds before the grant period of performance expires.

G. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict or interest, bribery, gratuity or similar misconduct involving those funds.

H. Information in supporting of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the

Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

I. Availability of Funds (revised)

Funds appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015. **NOTE:** EECBG funding must be expended during the grantee's period of performance during 2009 to 2012 or thereabouts as specified in their grant award.

J. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Applicable if award is to a State Government or an Agency

Certification by Governor -- Not later than April 3, 2009, for funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

K. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

20. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT (MAY 2009)

- a. This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.
- b. The reports are due no later than ten calendar days after each calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.
- c. Recipients and their first-tier recipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

- d. The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

21. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS -- SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAY 2009)

THIS AWARD TERM IS APPLICABLE TO ANY RECOVERY ACT FOR CONSTRUCTION, ALTERATION, MAINTENANCE, OR REPAIR OF A PUBLIC BUILDING OR PUBLIC WORK AND THE TOTAL PROJECT VALUE IS ESTIMATED LESS THAN \$7,443,000. THIS AWARD TERM ALSO APPLIES TO ALL SUBGRANTS AND CONTRACTS.

- a. Definitions. As used in this award term and condition--
- (1) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—
 - (i) Processed into a specific form and shape; or
 - (ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.
 - (2) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.
 - (3) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.
- b. Domestic preference.
- (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111--5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.
 - (2) This requirement does not apply to the material listed by the Federal Government as follows:

None

[Award official to list applicable excepted materials or indicate "none"]
 - (3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that--
 - (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
 - (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

c. Request for determination of inapplicability of Section 1605 of the Recovery Act.

(1)

(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government valuation of the request, including—

- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
- (B) Unit of measure;
- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;
- (F) Location of the project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

d. Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of Measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			

Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

*Include all delivery costs to the construction site.

22. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS)--SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAY 2009)

THIS AWARD TERM IS APPLICABLE TO ANY RECOVERY ACT FUNDS FOR CONSTRUCTION, ALTERATION, MAINTENANCE, OR REPAIR OF A PUBLIC BUILDING OR PUBLIC WORK WITH A TOTAL PROJECT VALUE OVER \$7,443,000 THAT INVOLVES IRON, STEEL, AND/OR MANUFACTURED GOODS MATERIALS COVERED UNDER INTERNATIONAL AGREEMENTS. THIS AWARD TERM ALSO APPLIES TO ALL SUBGRANTS AND CONTRACTS.

- a. Definitions. As used in this award term and condition--

Designated country –

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);
- (2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or
- (3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods –

- (1) Is wholly the growth, product, or manufacture of a designated country; or
- (2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good –

- (1) Is wholly the growth, product, or manufacture of the United States; or
- (2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been--

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

b. Iron, steel, and manufactured goods.

- (1) The award term and condition described in this section implements--
 - (i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and
 - (ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.
- (2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.
- (3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

None

[Award official to list applicable excepted materials or indicate "none"]

- (4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that--
 - (i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;
 - (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
 - (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.
- c. Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.
- (1) (i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including--
 - (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
 - (B) Unit of measure;
 - (C) Quantity;
 - (D) Cost;
 - (E) Time of delivery or availability;
 - (F) Location of the project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.
 - (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.
 - (iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.
 - (iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.
- (2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods.. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).
 - (3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

- d. Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of Measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

*Include all delivery costs to the construction site.

23. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT (MAY 2009)

THIS AWARD TERM IS APPLICABLE TO RECOVERY ACT PROGRAMS OR ACTIVITIES THAT MAY INVOLVE CONSTRUCTION, ALTERATION, MAINTENANCE, OR REPAIR. THIS AWARD TERM ALSO APPLIES TO ALL SUBGRANTS AND CONTRACTS.

- a. Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

- b. For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

24. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS (MAY 2009)

- a. To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A--102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A--102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>
- b. For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.
- c. Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.
- d. Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

25. DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (NOV 2009)

THIS AWARD TERM IS APPLICABLE TO ARRA AWARDS WHEN WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT TERM IS APPLICABLE. THIS AWARD TERM IS ALSO APPLICABLE TO SUBGRANTS AND CONTRACTS.

Definitions: For purposes of this clause, Clause 30, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:

(1) "Award" means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors, and subcontractors.

(2) "Contractor" means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients' or Subrecipients' contractors, subcontractors, and lower-tier subcontractors. "Contractor" does not mean a unit of State or local government where construction is performed by its own employees."

(3) “Contract” means a contract executed by a Recipient, Subrecipient, prime contractor, or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. “Contract” does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.

(4) “Contracting Officer” means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.

(5) “Recipient” means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement, or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.

(6) “Subaward” means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower-tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient’s procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of “Award” above.

(7) “Subrecipient” means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.

(a) Davis Bacon Act

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and, without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in §5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional

classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage

requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees—

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

at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

(6) Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient's, and Subrecipient's contractors and subcontractor shall insert in any Contracts the clauses contained herein in(a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.

(7) Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors), and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be

necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4)Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient's and Subrecipient's contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

26. HISTORIC PRESERVATION (Revised 3/17/10)

Prior to the expenditure of Project funds to alter any historic structure or site, the Recipient or subrecipient shall ensure that it is compliant with Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. If applicable, the Recipient or subrecipient must contact the State Historic Preservation Officer (SHPO), and the Tribal Historic Preservation Officer (THPO) to coordinate the Section 106 review outlined in 36 CFR Part 800. In the event that a State, State SHPO and DOE enter into a Programmatic Agreement, the terms of that Programmatic Agreement shall apply to all recipient and subrecipient activities within that State. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>. Section 110(k) of the NHPA applies to DOE funded activities.

The Recipient or subrecipient certifies that it will retain sufficient documentation to demonstrate that the Recipient or subrecipient has received required approval(s) from the SHPO or THPO for the Project. Recipients or subrecipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106. The Recipient or subrecipient shall deem compliance with Section 106 of the NHPA complete only after it has received this documentation. The Recipient or sub-recipient shall upon receipt forward a digital copy of all documentation to DOE relating to NHPA compliance. Recipient will be required to report annually on September 1 the disposition of all historic preservation consultations by category.

27. ADVANCE UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS

The parties recognize that the Recipient may use funds under this award for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy intends to publish "Best Practices" or other guidelines pertaining to the use of funds made available to the Recipient under this award pertaining to the programs identified herein. By accepting this award, the Recipient agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into any such program(s) within a reasonable time after notification by DOE that the Best Practices or guidelines have been made available. The Recipient also agrees, by its acceptance of this award, to require its sub-recipients to incorporate to the maximum extent practicable the best practices and other guideline into any such program used by the sub-recipient.

EXHIBIT G
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
URBAN ENERGY SOLUTIONS, INC.

[Wage Determination]

See following pages.

Fountain Hills: 6-27-2011

General Decision Number: AZ100001 06/17/2011 AZ1

Superseded General Decision Number: AZ20080001

State: Arizona

Construction Type: Building

Counties: Coconino, Maricopa, Mohave, Pima, Pinal and Yuma Counties in Arizona.

BUILDING CONSTRUCTION PROJECTS (does not include residential construction consisting of single family homes and apartments up to and including 4 stories)

Modification Number	Publication Date
0	03/12/2010
1	06/04/2010
2	07/02/2010
3	07/09/2010
4	07/23/2010
5	08/06/2010
6	08/27/2010
7	09/10/2010
8	10/15/2010
9	11/05/2010
10	11/19/2010
11	12/03/2010
12	01/21/2011
13	02/04/2011
14	04/01/2011
15	04/08/2011
16	04/15/2011
17	05/13/2011
18	06/17/2011

BRAZ0003-003 11/23/2009

COCONINO, MARICOPA, MOHAVE, PINAL (Area West and North of the San Francisco River to the Gila River), & YUMA COUNTIES

	Rates	Fringes
Bricklayer - Cement Block Layer.....	\$ 24.62	4.57

BRAZ0003-008 11/23/2009

PIMA AND PINAL (Area East and South of the San Francisco River to the Gila River) COUNTIES

	Rates	Fringes
Bricklayer - Cement Block Layer.....	\$ 18.00	4.49

CARP0408-001 07/01/2009		

	Rates	Fringes
CARPENTER.....	\$ 23.00	7.24

CARP1327-001 01/01/2010		

	Rates	Fringes
DRYWALL HANGER.....	\$ 19.25	6.61

ELEC0570-003 12/01/2010		

PIMA, PINAL (Southern Part), AND YUMA COUNTIES

	Rates	Fringes
Electrician/Wireman.....	\$ 22.90	18%+4.70

Zone Definitions

(b) ZONE PAY -Workmen employed in Zones B and C shall be paid Zone Pay as follows:

Zone B.....an additional \$ 1.25 per hour
 Zone C.....an additional \$ 3.75 per hour

SECTION 3.05 ZONES

(a) Zones shall be created in Tucson, Arizona, the headquarters of the Union. Zones may be established in other localities by mutual consent of the parties hereto (Section 1.03). Zones and the applicable rates of pay shall be the same for all Employers coming under the terms of this Agreement.

In Tucson, Zone A shall be the area within a twenty-nine (29) mile radius from a basing point at the City Hall.

Zone B shall be the area from the outer limits of the twenty-nine (29) mile radius, extending out another seventeen (17) miles (a 46 mile radius total).

Zone C shall be the area from the forty-six (46) mile radius, extending to the outside limits of the Local Union's jurisdiction.

If any owner's contiguous property falls within more than one Zone, it shall all be considered to be within the closer Zone.

ELEC0640-005 06/21/2010		

COCONINO, MARICOPA, MOHAVE, and PINAL (Area North and West of the boundary line beginning at a point where Papago Indian Reservation Road No. 15 crosses the Pima-Pinal County line, then Northeasterly on Road No. 15 to the intersection with Highway FAS-267, extending North on FAS-267 to the intersection with Florence Canal, North & East on Florence Canal to the

intersection of the line "Second Guide Meridian East" then North to the Maricopa-Pinal County Lines) COUNTIES

	Rates	Fringes
Electrician/Wireman.....	\$ 24.80	3%+7.14

ENGI0428-003 06/01/2010

	Rates	Fringes
Power Equipment Operator		
(2) Crane under 15 tons.....	\$ 25.22	9.79
(3) Crane, 15 tons to 100 tons.....	\$ 26.30	9.79
(4) Crane, 100 tons and over.....	\$ 27.33	9.79

IRON0075-002 08/01/2009

	Rates	Fringes
IRONWORKER, STRUCTURAL		
Zone 1:.....	\$ 26.52	17.59

Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson
 Zone 2: 050 to 100 miles - Add \$4.00
 Zone 3: 100 to 150 miles - Add \$5.00
 Zone 4: 150 miles & over - Add \$6.50

LABO0383-005 06/01/2009

	Rates	Fringes
LABORER (Brick/Block Tender).....	\$ 16.72	4.35

PAIN0086-003 04/01/2010

	Rates	Fringes
PAINTER.....	\$ 17.85	4.70

* PAIN0086-005 06/01/2011

	Rates	Fringes
GLAZIER.....	\$ 26.50	6.98

PLUM0469-002 07/01/2010

ZONE A: COCONINO, MARICOPA, MOHAVE & YUMA COUNTIES

ZONE B: PIMA AND PINAL COUNTIES

Rates	Fringes
-------	---------

PLUMBER/PIPEFITTER		
Zone A.....	\$ 31.65	14.90
Zone B.....	\$ 28.55	14.65

SFAZ0669-001 04/01/2011

	Rates	Fringes
SPRINKLER FITTER (Fire Sprinklers).....	\$ 29.85	17.45

SHEE0359-002 01/01/2011

PIMA and PINAL (South of the 33rd Parallel) COUNTIES

	Rates	Fringes
Sheet Metal Worker (Including HVAC)		
Zone 1.....	\$ 28.75	13.00+3%

SHEE0359-003 01/01/2011

COCONINO, MARICOPA, MOHAVE, PINAL (North of the 33rd Parallel),
and YUMA COUNTIES

	Rates	Fringes
Sheet Metal Worker (Including HVAC).....	\$ 28.75	13.00+3%

SUAZ2004-001 01/14/2004

	Rates	Fringes
Cement Mason/Finisher.....	\$ 15.25	5.01
Laborers		
Concrete Worker.....	\$ 8.88	0.00
Form Setter.....	\$ 9.63	0.00
General/Cleanup.....	\$ 11.37	2.91
Waterproofing.....	\$ 12.59	0.00
PLASTERER.....	\$ 15.00	0.00
Power Equipment Operator		
Backhoe.....	\$ 14.78	0.00
TILE FINISHER.....	\$ 11.00	0.00
TILE SETTER.....	\$ 14.98	0.00

WELDERS - Receive rate prescribed for craft performing operation to which
welding is incidental.

=====

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses(29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator(See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION

EXHIBIT H
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
URBAN ENERGY SOLUTIONS, INC.

[Buy America Certification]

See following page.

Buy America Certification

Project Name: Energy Management Systems

Contractor hereby certifies the following:

1. Identification of American-made Iron, Steel, and Manufactured Goods: Consistent with the terms of the provisions of ARRA Section 1605 and OMB regulations, Code of Federal Regulations, Volume 2, Part 176, the Contractor certifies that this bid/procurement reflects the Contractor's best, good faith effort to identify domestic sources of Iron, Steel, and Manufactured goods for every component contained in the solicitation/procurement where such American-made components are available on the schedule of values and consistent with the deadlines prescribed in or required by the bid solicitation/procurement.
2. Verification of U.S. Production: The Contractor certifies that all components contained in the bid solicitation/procurement that are American-made have been so identified, and if this bid/procurement is accepted, the Contractor agrees that it will provide reasonable, sufficient, and timely verification to the Town of the U.S. production of each component so identified.
3. Documentation Regarding Non-American made Iron, Steel, or Manufactured Goods: The Contractor certifies that for any component or components that are not American-made and are so identified in this bid/procurement, the Contractor has included in or attached to this bid/procurement one or both of the following, as applicable:
 - a. Identification of and citation to a categorical waiver published by the U.S. Department of Energy in the Federal Register that is applicable to such component or components, and an analysis that supports its applicability to the component or components.
 - b. Verifiable documentation sufficient to the Town, as required in the bid solicitation or otherwise, that the Contractor has sought to secure American-made components but has determined that such components are not available on the schedule and consistent with the deadlines prescribed in the bid solicitation/procurement.
4. Information and Detailed Justification Regarding Non-American made Iron, Steel, or Manufactured Goods: The Contractor certifies that for any such component or components that are not so available, the Contractor has also provided in or attached to this bid/procurement information, including, but not limited to, the verifiable documentation and a full description of the Contractor's efforts to secure any such American-made component or components, that the Contractor believes is sufficient to provide and as far as possible constitutes the detailed justification required for a waiver under Section 1605 with respect to such component or components. The Contractor further agrees that, if this bid/procurement is accepted, it will assist the Town in amending, supplementing, or further supporting such information as required by the Town to request and, as applicable, implement the terms of a waiver with respect to any such component or components.

Contractor Name (printed or typed)
Name of Authorized Official (printed or typed)
Title (printed or typed)
Signature of Authorized Official
Date

EXHIBIT I
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
URBAN ENERGY SOLUTIONS, INC.

[Performance Bond]

See following page.

PERFORMANCE BOND
ENERGY MANAGEMENT SYSTEMS

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____ (hereinafter called Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the Town of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the Town of Fountain Hills (hereinafter called the Oblige) in the amount of _____(Dollars) (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Oblige, dated the _____ day of _____ 20____, for the material, service or construction described as _____ is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the Contract during the original term of the Contract and any extension of the Contract, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this _____ day of _____ 20____.

Principal Seal

BY: _____

Surety Seal

BY: _____

Agency of Record

EXHIBIT J
TO
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF FOUNTAIN HILLS
AND
URBAN ENERGY SOLUTIONS, INC.

[Payment Bond]

See following page.

PAYMENT BOND
ENERGY MANAGEMENT SYSTEMS

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____ (hereinafter called Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the Town of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the Town of Fountain Hills (hereinafter called the Obligee) in the amount of _____ (Dollars) (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____ 20____, for the material, service or construction described as _____ which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the Contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this _____ day of _____, 20____.

Principal Seal

BY: _____

Surety Seal

BY: _____

Agency of Record

PERFORMANCE BOND
ENERGY MANAGEMENT SYSTEMS

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, Urban Energy Solutions, Inc. (hereinafter called Principal), as Principal, and Travelers Casualty and Surety Company of America, a corporation organized and existing under the laws of the State of Connecticut, with its principal office in the Town of Hartford (hereinafter called the Surety), as Surety, are held and firmly bound unto the Town of Fountain Hills (hereinafter called the Obligee) in the amount of Fifty-Nine Thousand Five hundred Eighty-two and 26/100 (Dollars) (\$ 59582.26), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the 9th day of August 2011, for the material, service or construction described as Energy Management System is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the Contract during the original term of the Contract and any extension of the Contract, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this 12th day of August 2011.

Urban Energy Solutions, Inc.
Principal Seal

BY: Scott Copel

Travelers Casualty and Surety Company of America
Surety Seal

BY: Scott Howard
Scott Howard, Attorney-in-Fact

Kuhl & Company Insurance
Agency of Record

PAYMENT BOND
ENERGY MANAGEMENT SYSTEMS

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, Urban Energy Solutions, Inc. (hereinafter called Principal), as Principal, and Travelers Casualty and Surety Company of America, a corporation organized and existing under the laws of the State of Connecticut, with its principal office in the Town of Hartford (hereinafter called the Surety), as Surety, are held and firmly bound unto the Town of Fountain Hills (hereinafter called the Obligee) in the amount of Fifty-Nine Thousand Five hundred Eighty-two and 26/100 (Dollars) (\$ 59,582.26), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the 9th day of August 2011, for the material, service or construction described as Energy Management System which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's subcontractors in the prosecution of the work provided for in the Contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this 12th day of August, 2011.

Urban Energy Solutions, Inc.

Principal Seal

BY: Scott Cope

Travelers Casualty and Surety Company of America

Surety Seal

BY: Scott Howard
Scott Howard, Attorney-in-Fact

Kuhl & Company Insurance
Agency of Record

STATE OF Illinois _____

COUNTY OF Tazewell _____

On this 12th ___ day of August _____, 2011 before me personally appeared Scott Howard _____ with whom I am personally acquainted, who, being by me duly sworn, said: That she is Attorney-in-Fact of Travelers Casualty and Surety Company of America, the corporation described in and which executed the foregoing instrument; that he/she knows the corporate seal of said Company; that said seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors thereof and of his/her office under the Standing Resolutions of said Company; and that he/she signed his/her name thereto as Attorney-in-Fact by like authority.

Miranda L. Leininger



Notary Public

NOTARY STAMP

My commission expires:





POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 223318

Certificate No. 004093716

KNOW ALL MEN BY THESE PRESENTS: That St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company and St. Paul Mercury Insurance Company are corporations duly organized under the laws of the State of Minnesota, that Farmington Casualty Company, Travelers Casualty and Surety Company, and Travelers Casualty and Surety Company of America are corporations duly organized under the laws of the State of Connecticut, that United States Fidelity and Guaranty Company is a corporation duly organized under the laws of the State of Maryland, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

Philip A. Kuhl, Sue Carruthers, Laura L. Andrews, Mike Kuhl, Amy Boll, Nancy J. Luchtefeld, Scott Howard, and Miranda L. Leininger

of the City of Morton, State of Illinois, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 22nd day of February, 2011.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
George W. Thompson, Senior Vice President

On this the 22nd day of February, 2011, before me personally appeared George W. Thompson, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal. My Commission expires the 30th day of June, 2011.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kori M. Johanson, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 9 day of August, 20 11


Kori M. Johanson, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.